

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

AGENDA

WORK SESSION OF THE CITY COUNCIL

6:00 P.M.

AND

REGULAR MEETING OF THE CITY COUNCIL

7:30 P.M.

JANUARY 27, 2009

TOWN HALL

5300 BELT LINE ROAD

WORK SESSION

Item #WS1 - Discussion with Royce Trout regarding American-Made and other Fireworks.

Item #WS2 - Discussion regarding Expanding Shakespeare in the Park.

Item #WS3 - Discussion regarding Worldfest 2009.

Item #WS4 - Discussion regarding Crowne Plaza Contract for Services for meeting space and sleeping rooms for the 2011 North Texas Jazz Festival.

REGULAR SESSION

Pledge of Allegiance

Item #R1 - Consideration of Old Business.

Introduction of Employees

Discussion of Upcoming Events

Item #R2 - Consent Agenda.

#2a - Approval of the Minutes for:

January 13, 2009, Regular City Council Meeting and Work Session

#2b - Approval of a contract for services with Atlas Enterprises for production of the 2009 Addison Kaboom Town® Fireworks Show with the option to renew for two additional years, subject to City Attorney approval.

#2c - Approval of a contract for services with Shakespeare Dallas for the Town's sponsorship of "Shakespeare in the Park" in Addison Circle Park annually from October 2009–October 2010, subject to City Attorney approval.

#2d - Approval of a contract with Crowne Plaza Hotel for the meeting space and sleeping room guarantee for the 2011 North Texas Jazz Festival, subject to City Attorney approval.

Item #R3 - Council recognition of patrol shift "Nights B" and dispatchers for actions beyond their normal scope of duty that resulted in saving the life of a critically injured person in the City of Dallas.

Item #R4 - Discussion and consideration of approval of an agreement with Cima Solutions Group, for the purchase of three (3) IBM servers, in the amount of \$65,820.71.

Attachments:

1. Council Agenda Item Overview
2. CIMA-IBM Comparison
3. CIMA CAD Hardware Quote

Administrative Recommendation:

Administration recommends approval.

Item #R5 - Discussion and consideration of approval of a contract with AT&T Corp. for construction and installation of a full-band Opt-E-Man network to replace the Town's existing T1(s) communication lines, subject to the City attorney's final approval.

Attachments:

1. Council Agenda Item Overview
2. AT&T Comparison
3. AT&T Contract for Opt-E-Man
4. AT&T Master Agreement
5. Town of Addison Entrances-Construction Contract
6. AT&T Construction Lease Proposal

Administrative Recommendation:

Administration recommends approval.

Item #R6 - Discussion of Cities Aggregation Power Project Long-Term Power Purchase Initiative.

Attachments:

1. Council Agenda Item Overview
 2. CAPP Letter-Epilogue to Long-Term Contract
 2. "Trial and Error in Texas" Report
-

Administrative Recommendation:

Administration recommends approval.

Item #R7 - Presentation of the completed RSA (Runway Safety Area) Project at Addison Airport.

Item #R8 - Presentation of the FAA Class "B" airspace update related to Addison Airport and consideration of approval of a Resolution related to FAA Class "B" airspace.

Attachment:

1. Resolution

Administrative Recommendation:

Administration recommends approval.

Item #R9 - Discussion and consideration of approval of final payment to Fairfield Addison Circle, L.P., in the amount of \$471,947.74, for the construction of a portion of Quorum Drive in accordance with the Fourth Amendment to the Master Facilities Agreement for Addison Circle.

Attachments:

1. Council Agenda Item Overview
2. Larry Lee Letter
3. Fairfield Summary of Costs

Administrative Recommendation:

Administration recommends approval.

Adjourn Meeting

Posted:
January 23, 2008, at 5:00 P.M.
Lea Dunn - 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.**

Council Agenda Item **#WS1**

There are no attachments for this Item.

Council Agenda Item **#WS2**

There are no attachments for this Item.

Council Agenda Item **#WS3**

There are no attachments for this Item.

Council Agenda Item **#WS4**

There are no attachments for this Item.

**OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL
WORK SESSION**

January 13, 2009
6:00 P.M. – Town Hall
5300 Belt Line Road
Council Chambers

Council Members Present:

Mayor Chow, Councilmembers Braun, Hirsch, Lay, Meier, Mellow and Niemann

Absent: None

Work Session

Item #WS1 - Discussion regarding branding for the Town of Addison.

Lea Dunn and Jim Krause with jimbobkrause Company led the discussion

There was no action taken.

Mayor-Joe Chow

Attest:

City Secretary-Lea Dunn

**OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL
REGULAR SESSION**

January 13, 2009
7:30 P.M. – Town Hall
5300 Belt Line Road
Council Chambers

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

Absent: None

Regular Session

Item #R1 - Consideration of Old Business.

The following employees were introduced to the Council: John Peacock with the Fire Department, Neil Gayden with the Environmental Services Department and Juan Gutierrez with the General Services Department.

Item #R2 - Consent Agenda.

#2a - Approval of the Minutes for:

December 30, 2008, Special City Council Meeting

The Minutes for December 30, 2008, Special City Council Meeting, were approved with the following changes:

Item #R7 - Add the following after “Absent” at the end of Item #R7:

Abstained: Niemann

Item #R9 - Add the following after “Absent” at the end of Item #R9:

Abstained: Meier

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

Councilmember Meier seconded. Motion carried.

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

Voting Nay: None

Absent: None

Item #R3 - Swearing in of Kimberly Lay as Council Member filling a vacancy (by appointment) in the position of City Council Member of the Town of Addison until the May 9, 2009, general Town election.

Kimberly Lay was sworn in by Mayor Chow as Council Member filling a vacancy (by appointment) in the position of City Council Member of the Town of Addison until the May 9, 2009, general Town election.

Item #R4 - Recognition of 2008 Citizen Academy Graduates.

Mayor Chow presented Certificates of Completion to the 2008 Citizen Academy Graduates.

Item #R5 - Discussion and consideration of appointment of a member to the Planning and Zoning Commission.

Councilmember Mellow moved to appoint Ralph Doherty as Planning and Zoning Commissioner.

Councilmember Hirsch seconded. Motion carried.

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

Voting Nay: None

Absent: None

Item #R6 - Discussion and consideration of approval of a Third Amendment to Ground Lease between the Town of Addison, as Landlord, and Turbine Aircraft Services, Inc., as Tenant, at Addison Airport, that includes: (i) certain structural improvements made to the leased premises, (ii) increasing the land area subject to the Ground Lease, (iii) extension of the said Ground Lease term (the property being generally located at 4550 Jimmy Doolittle Drive, Addison, Texas 75001, and being generally described as Hangar 6 at Addison Airport).

Councilmember Niemann moved to duly approve of a Third Amendment to Ground Lease between the Town of Addison, as Landlord, and Turbine Aircraft Services, Inc., as Tenant, at Addison Airport, that includes: (i) certain structural improvements made to the leased premises, (ii) increasing the land area subject to the Ground Lease, (iii) extension of the said Ground Lease term (the property being generally located at 4550 Jimmy Doolittle Drive, Addison, Texas 75001, and being generally described as Hangar 6 at Addison Airport), subject to approval of the City Attorney.

Councilmember Mellow seconded. Motion carried.

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

Item #R7 - Discussion and update regarding Agreement for the Operation and Management of Addison Airport between the Town of Addison and Washington Staubach Addison Airport Venture.

Chris Terry led the discussion and update regarding Agreement for the Operation and Management of Addison Airport between the Town of Addison and Washington Staubach Addison Airport Venture.

Bob Jacoby and Bill Signs requested permission to speak regarding Item #R7. Council granted the request.

There was no action taken.

Item #R8 - Discussion and approval of an award to Nortex Concrete Lift and Stabilization, Inc., in the amount of \$31,790.00, for raising and undersealing pavement on Marsh Lane and Westgrove Drive.

Councilmember Niemann moved to duly approve an award to Nortex Concrete Lift and Stabilization, Inc., in the amount of \$31,790.00, for raising and undersealing pavement on Marsh Lane and Westgrove Drive.

Councilmember Braun seconded. Motion carried.

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

Item #R9 - Discussion and consideration of award of a contract to Curtco, Inc., in the amount of \$170,820.50, for joint and crack sealing on various roadways.

Councilmember Braun moved to duly approve award of a contract to Curtco, Inc., in the amount of \$170,820.50, for joint and crack sealing on various roadways.

Councilmember Mellow seconded. Motion carried.

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

Item #R10 - Discussion and consideration of approval of a contract with Ratliff Hardscape, LLC, in the amount of \$471,080.10, for construction of Spruill Park in the Fairfield Development.

Councilmember Niemann moved to approve a contract with Ratliff Hardscape, LLC, in the amount of \$471,080.10, for construction of Spruill Park in the Fairfield Development.

Councilmember Braun seconded. Motion carried.

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

Item # R11 - Discussion and consideration of approval of final payment to Tri Dal Celina, Ltd., in the amount of \$39,991.70, for the Vitruvian Park Public Infrastructure Phase 1A.

Councilmember Braun moved to duly approve final payment to Tri Dal Celina, Ltd., in the amount of \$39,991.70, for the Vitruvian Park Public Infrastructure Phase 1A.

Councilmember Mellow seconded. Motion carried.

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

Item #R12- Discussion and consideration of approval to fund the Cavanaugh Flight Museum sponsorship request, in the amount of \$50,000.00, to assist the Museum in their marketing efforts.

Item #R12 was removed for consideration and will be addressed during a future Council Meeting.

There was no action taken.

Item #R13- Discussion and consideration of approval to enter into a contract with Mr. Fred Hill to provide legislative consulting services.

Councilmember Niemann moved to approve a contract with Mr. Fred Hill to provide legislative consulting services, subject to City Attorney approval.

Councilmember Braun seconded. Motion carried.

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

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

Mayor-Joe Chow

Attest:

City Secretary-Lea Dunn

Council Agenda Item: #2b

SUMMARY:

Subject to City Attorney final approval, Council approval is sought of a Contract for Services with Atlas Enterprises for production of the 2009 Addison Kaboom Town® Fireworks Show with the option to renew for 2 additional years.

FINANCIAL IMPACT:

Budgeted Amount:	2009: \$52,000.00
Cost:	2009: \$52,000.00

2010-2011 budgets have not been adopted by City Council.

If over budget or not budgeted, what is the budget impact? N/A

BACKGROUND:

Atlas Enterprises has produced outstanding fireworks shows for the Town of Addison since the event's inception twenty three years ago. In fact, the *Wall Street Journal*, *USA Today*, American Pyrotechnics Association and others have rated Kaboom Town® one of the top fireworks shows in the country.

There are many factors that go into producing a large-scale aerial fireworks show (price, creative expertise, safety standards, and reliability to name just a few). As a result, we have classified production of the fireworks show as a professional service and exempted Atlas Enterprises from the competitive bid process.

The contract price has increased by 30% (\$12,000) due to economic factors affecting the production and transportation of fireworks: new homeland security safety measures, price of fuel and new import/export rules. In an effort to maintain the integrity of the show (shell count and length), we recommend the increased price adjustment and have included it in the FY '09 budget that was adopted by Council last October.

RECOMMENDATION:

Staff recommends approval.

Council Agenda Item: #2c

SUMMARY: Subject to City attorney final approval, Council approval is sought of a Contract for Services with Shakespeare Dallas for the Town’s sponsorship of “Shakespeare in the Park” in Addison Circle Park annually from October 2009 – October 2010.

FINANCIAL IMPACT:

Proposed Budget Amount: 2009 \$46,500
 Proposed Budget Amount: 2010 \$46,500

If over budget or not budgeted, what is the budget impact?

FY ‘09-10 and ‘10-11 has not yet been adopted by the City Council. The following will recap the proposed payment schedule:

Budget	Event Date	Production	Deposit \$ / Due Date	Final \$ / Due Date	FY Budget
					FY '09 \$ (already funded)
\$46,500	October 7-18, 2009	Julius Caesar	\$15,500 Feb 2009	\$31,000 Oct 2009	FY '10 \$
\$46,500	October 6-17, 2010	TBD	\$15,500 Feb 2010	\$31,000 Oct 2010	FY '11 \$

BACKGROUND: Established in 1971, Shakespeare Dallas is a treasured North Texas cultural landmark and the only company in the area that provides accessible Shakespeare programs for audiences of all ages. The Town of Addison has partnered with Shakespeare Dallas to present Shakespeare in the Park in Addison for the past eight years. Through this association, we have been able to enhance Addison’s reputation as a destination for quality events and artistic performances.

We have seen significant growth in attendance each year so Shakespeare Dallas is requesting to extend the production to two full weekends in 2009 for an incremental cost of \$12,000. Because this event takes place within the first week of the '09-10 fiscal year, we ask that the Council pre-authorize the expenditure of these funds prior to the formal adoption of the '09-10 budget so marketing and production efforts to produce a quality show may begin. Since the deposit and final payment for each show falls within two different fiscal years, we are also recommending the approval of a two show contract.

2008	2007	2006	2005
4,059	2,899	2,132	1,799
Up 40%	Up 36%	Up 19%	Up 17%

RECOMMENDATION: Staff recommends approval.



Town of Addison and Shakespeare Dallas
January 27, 2009

Financial Overview

Historical Funding Overview

2005 - *Twelfth Night*

Overall Production Costs	\$60,000
Addison Sponsorship	\$31,000
Percentage of Overall Costs	52%

2006 - *Much Ado About Nothing*

Overall Production Costs	\$70,000
Addison Sponsorship	\$31,000
Percentage of Overall Costs	44%

2007 - *Macbeth*

Overall Production Costs	\$84,000
Addison Sponsorship	\$31,000
Percentage of Overall Costs	37%

2008 - *The Merchant of Venice*

Overall Projected Production Costs	\$104,000
Total Proposed 2008 Addison Sponsorship	\$34,500
Percentage of Overall Costs	33%

Proposed Future Funding

2009 – *Julius Caesar*

Overall Projected Production Costs	\$127,000
Base Sponsorship	\$34,500
Additional Week Production Costs	\$12,000
Total Proposed 2009 Addison Sponsorship	\$46,500
Percentage of Overall Costs	37%

2010 – Production TBD

Overall Projected Production Costs	\$133,000
Base Sponsorship	\$34,500
Additional Week Production Costs	\$12,000
Total Proposed 2010 Addison Sponsorship	\$46,500
Percentage of Overall Costs	34.9%

STATE OF TEXAS

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CONTRACT FOR SERVICES

COUNTY OF DALLAS

This Contract for Services is made and entered into as of the _____ day of _____, 2009 by and between the Town of Addison, Texas (the "City") and Shakespeare Dallas ("Shakespeare Dallas") for the City's sponsorship of the "Shakespeare in the Park" (the Show) that is to be held in annually in Addison Circle Park from October 2009 and October 2010.

WITNESSETH:

WHEREAS, Shakespeare Dallas is a private, non-profit organization established under the laws of the State of Texas for the purpose of promoting the cultural enrichment of the community through live, professional theatrical productions of superior quality based on the works of William Shakespeare; and

WHEREAS, Shakespeare Dallas' 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 visual, theatrical and musical arts; and

WHEREAS, the City is authorized to expend revenues from its hotel occupancy tax for the encouragement, promotion, improvement, and application of the arts, and desires to encourage and promote the arts 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 Shakespeare Dallas do hereby contract, covenant and agree as follows:

I. TERM

The term of this Contract and Agreement shall be from January 28, 2009 through October 31, 2010.

II. SERVICES

A. Shakespeare Dallas shall conduct and present a production entitled "Julius Caesar" (the "Show") within the City on October 7, 8, 9, 10, 11, 14, 15, 16, 17 and 18, 2009 in accordance and compliance with the terms and conditions hereof and all laws, ordinances, rules, regulations, standards, guidelines, and policies of the City or any other governmental authority having jurisdiction over the Show. The Show shall be conducted within the Bowl area of Addison Circle Park located within the Addison Arts & Events District (the "Show Site").

A similar production will be held in 2010 with dates and production titles mutually approved by the City and Shakespeare Dallas no later than November 15, 2009 for the 2010 production.

B. In connection with its conducting and presenting the Show held annually, Shakespeare Dallas shall provide the City with the following:

- (a) A listing of the City logo as a sponsor of the Show on collateral pieces, including but not limited to posters, fliers, invitations, admission passes, tickets, brochures, programs, etc.
- (b) A listing of the City logo as a sponsor of the Show on all print, broadcast, outdoor and electronic advertising, including but not limited to newspaper ads, magazine ads, radio ads, billboards, newsletters, web communications, etc.
- (c) A listing of the City as a sponsor of the Show in all press releases, and other communications regarding the Show.
- (d) A listing of the City logo as a sponsor on all street banners and signs in connection with the Show.
- (d) The inclusion of the Addison logo on the Shakespeare Dallas web site (www.shakespearedallas.org) or any other web site of Shakespeare Dallas and a link to the City's website (www.addisontexas.net).
- (e) Provide recognition of the Town of Addison from the stage at the Show.
- (f) Provide the City with placement of one banner display at the Show.
- (g) Provide the City with one full-page advertisement in the Shakespeare Dallas Playbill.
- (h) Provide city with fifty (50) complimentary VIP admission and parking passes.
- (i) Submit detailed financial statements and program results to the City within thirty (30) days after the end of Show listing the expenditures made by Shakespeare Dallas with the revenues received pursuant to this Contract.
- (j) Payment of all fees including but not limited to city services, electrical service, rental equipment and services, site preparation materials and Pavilion cleaning fees.

B. The City shall provide to Shakespeare Dallas the following:

- (a) Compensation as outlined in Section III below.
- (b) Display of banner(s) (in the City's sole discretion and subject to availability) across Belt Line Road advertising the Show. Such banner(s) shall be supplied by Shakespeare Dallas to the City no later than October 5, 2009 for display on October 6, 2009 through October 20, 2009. Display dates for the 2010 production will be determined by the City by January 1, 2010 for the 2010 production.
- (c) Assistance with marketing and promotions, including but not limited to the following:

- a. Listing on the City's website (www.addisontexas.net) with link to Shakespeare Dallas' website (www.shakespearedallas.org).
- b. Listing on the City's toll-free recording (1-800-ADDISON).
- c. Listing on the City's calendar of events that is distributed for publicity purposes and printed on collateral, subject to the Town's printing schedule and funding.
- d. Flier (provided by Shakespeare Dallas) insertion in the City's September 2009 and 2010 utility statements, subject to availability.

(d) Provide Shakespeare Dallas with the Show site for conducting the Show, provided Shakespeare Dallas has complied with the terms and conditions of this Contract.

III. COMPENSATION

For the operation and provision of the services, projects and programs of Shakespeare in the Park in October 2009 as described herein, the City shall pay Shakespeare Dallas the sum of Forty-Six Thousand, Five Hundred and No 100 Dollars (\$46,500.00). Such sum shall be paid in two installments: the first in the amount of \$15,500.00 payable February 6, 2009 and the second in the amount of \$31,000.00: payable upon completion of the Show and Show marketing and performance reports are received by the City.

For the operation and provision of the services, projects and programs of Shakespeare in the Park in October 2010 as described herein, the City shall pay Shakespeare Dallas the sum of Forty-Six Thousand, Five Hundred and No 100 Dollars (\$46,500.00). Such sum shall be paid in two installments: the first in the amount of \$15,500.00 payable February 5, 2010 and the second in the amount of \$31,000.00: payable upon completion of the Show and Show marketing and performance reports are received by the City.

IV. ASSUMPTION OF RESPONSIBILITY; SHOW CANCELLATION; INDEMNIFICATION

In connection with the Show and this Contract, Shakespeare Dallas agrees to assume and does hereby assume all responsibility and liability for any and all damages or injuries of whatsoever kind or nature sustained by any person or property, whether real or asserted, by or from the performance of services hereunder by, or any act or omission of Shakespeare Dallas, its officials, officers, employees, agents, contractors, subcontractors, concessionaires, invitees, guests, or any other person acting by, through, or under the authority or direction of Shakespeare Dallas (together, "Responsible Parties"). Addison assumes, and shall have, no responsibility for any property placed by the Responsible Parties or any of them on the Show premises, and Shakespeare Dallas hereby releases the City, its officials, officers, employees and agents from any and all claims or liabilities for any loss, injury or damages whatsoever to persons or property that are sustained by reason of the occupancy of the Show site under this Agreement.

Should the Show be postponed or canceled due to an Act of God, public safety, public welfare consideration, or for any other reason whatsoever, as may be determined by the City in its sole discretion and opinion, Shakespeare Dallas hereby releases the City, its officials, officer, employees and agents from any and all liability and claims for damages (including consequential damages) or injuries of any kind whatsoever which result from such

postponement or cancellation. In addition, neither party to this Contract shall be liable for damages caused by delay or failure to perform hereunder when such delay or failure to perform is due to terrorism, fire, acts of God, national emergency, war, civil disorder, labor dispute, inclement weather, any unavoidable casualties, or any causes beyond their respective control.

Shakespeare Dallas covenants and agrees to and shall defend and indemnify the City, its officials, officers, agents and employees (together, "Indemnified Persons") against, and hold the Indemnified Persons harmless from, any and all claims, liability, losses, lawsuits, actions, causes of action, penalties, fines, damages, costs, expenses, or fees (together, "Claims"), including attorney's fees, which may arise out of or are caused by, in whole or in part, any act or omission of the Responsible Parties or any of them in connection with the Show (including the performance of this Contract or any of its activities by any of the Responsible Parties) or this Contract. Shakespeare Dallas agrees to reimburse the City for all sums which the City may pay or may be paid on behalf of the City or which the City may be compelled to pay in settlement of any Claims, including without limitation any claim under the provisions of any workers compensation law or other similar law, or under any plan for employee benefits which the City may have or adopt. The provisions of this paragraph shall survive the termination or expiration of this Contract.

V. INSURANCE

Shakespeare Dallas shall carry insurance, throughout the length and term of this Contract, with responsible insurance companies qualified to do business in the State of Texas, in the minimum amounts set forth in Section 67-16 of the Code of Ordinances of the City, a true and correct copy of which is attached hereto as Exhibit "B" and incorporated herein (with the addition that the requirement for commercial general liability shall also include coverage for death); provided, however, that the City Manager may waive the requirement of any of such insurance where, in the sole opinion of the Manager, such insurance is not necessary to cover or protect a function or purpose of Shakespeare. Certified copies of all such policies shall be delivered to the City no later than September 2 in years 2009, and 2010.

VI. TERMINATION

This Contract may be canceled and terminated by either party 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) days 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 Shakespeare Dallas has failed at the time of such cancellation and termination to provide all of the services set forth herein, Shakespeare Dallas shall refund to the City that portion of funds paid to Shakespeare Dallas under the terms of this Contract in accordance with the following: Prorata funding returned to the City by Shakespeare Dallas shall be determined by dividing the amount paid by the City under this Contract by 82 (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 Shakespeare Dallas and the City under this Contract shall be discharged and terminated 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.

VII. 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.

VIII. ACCOUNTING

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

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.

Shakespeare Dallas 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 thirty (30) day after the close of the Show, Shakespeare Dallas shall provide the City a detailed financial report for the Show listing the expenditures made by Shakespeare Dallas of the funds paid to Shakespeare Dallas under this Agreement.

IX. INDEPENDENT CONTRACTOR

In performing services under this Contract, the relationship between the City and Shakespeare Dallas is that of independent contractor, and the City and Shakespeare Dallas by the execution of this Contract do not change the independent status of Shakespeare Dallas. No term or provision of this Contract or action by Shakespeare Dallas in the performance of this Contract shall be construed as making Shakespeare Dallas the agent, servant or employee of the City.

X. NON-ASSIGNABILITY

Shakespeare Dallas may not and shall have no authority to assign, transfer, or otherwise convey this Contract or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City. Any such assignment, transfer, pledge, or other conveyance in violation hereof shall entitle the City to immediately terminate this Contract, and upon such termination all funds paid to Shakespeare Dallas shall be promptly reimbursed to the City.

XI. NO PARTNERSHIP OR JOINT VENTURE

Nothing contained in this Contract shall be deemed to constitute that the City and Shakespeare Dallas are partners or joint venturers with each other.

XII. COPYRIGHT; MARKS

Shakespeare Dallas 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 Shakespeare Dallas', transmissions or broadcasts, and Shakespeare Dallas, without limiting any other indemnity given by Shakespeare Dallas as set forth herein, agrees to defend, indemnify, and hold harmless the City, its officials, officers, employees, and agents, for any liability, claims or damages (including but not limited to court costs and reasonable attorney's fees) growing out of Shakespeare Dallas's infringement or violation of any statute, treaty term or regulation applicable to intellectual property rights, including but not limited to copyrights.

In connection with the Show, each party grants to the other party a non-exclusive, non-transferable, royalty-free right and license to reproduce, publish and display, in accordance with and subject to the terms and conditions of this Contract and solely for the limited purposes set forth herein, the party's trademarks, service marks, logos, or other content (together, "Marks") provided in connection with advertising of the Show as described herein. Such reproduction, publication, display or use shall be subject to the approval of the party which is the owner of the Logos. Except for the express license rights granted herein, all right, title and interest in and to the Marks shall remain in the respective party who owns the Marks. Neither party hereto shall copy, distribute, reproduce, display, or use any Marks except as expressly permitted under this Agreement. Each party hereto acknowledges the other party's rights and interests in and to such other party's Marks and agrees not to claim any right, title or interest in or to such Marks or to at any time challenge such other party's rights in or to such Marks for any reason whatsoever. All use of either party's Marks or the goodwill generated thereby shall inure to the benefit of the respective party which owns such Marks.

Each party hereto represents that its execution and delivery of this Agreement, and its performance hereunder, will not violate or conflict with (i) any other contract or agreement to which it is a party, or (ii) the intellectual property rights or other rights of any third party.

XIII. NON-DISCRIMINATION

During the term of this Contract, Shakespeare Dallas 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.

XIV. LEGAL COMPLIANCE

Shakespeare Dallas shall observe and abide by all applicable federal laws, state statutes and the Charter and Ordinances of the City, and all rules and regulations of any lawful regulatory body acting thereunder in connection with the services performed.

XV. APPLICABLE LAWS

This Contract is made subject to the provisions of the Charter and ordinances of the City, as amended, and all applicable state and federal laws.

XVI. VENUE

The validity of this Contract and of any of its terms or provisions, as well as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas. Venue for any action brought on or under this agreement shall lie exclusively in Dallas County, Texas.

XVII. 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.

XVIII. GOVERNING LAW

This Contract shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

XIX. NO WAIVER; SURVIVABILITY; NO THIRD PARTY BENEFICIARIES

The failure by either party to exercise any right, 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 Agreement 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. Any rights, remedies, duties, or obligations either party may have with respect to the other arising out of the performance of or in connection with this Contract shall survive the cancellation, expiration or termination of this Contract.

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

XX. 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 Shakespeare Dallas agree to provide the other with written notification within five (5) days, if the address, provided below, is changed. 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 fifth (5th) day after mailing.

The City's address:

Shakespeare Dallas' address:

Assistant City Manager
Town of Addison
Post Office Box 9010
Addison, Texas 75001-9010

Executive and Artistic Director
Shakespeare Dallas
3630 Harry Hines Blvd., 4th Floor
Dallas, Texas 75219

XXI. LEGAL CONSTRUCTION; SEVERABILITY

The terms of this Contract are severable, and if any article, clause, paragraph, section 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 clause, section, paragraph or portion had not been in the Contract initially.

XXII. 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.

XXIII. ENTIRE AGREEMENT

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

IN WITNESS THEREOF, the parties hereto have caused this agreement 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

SHAKESPEARE DALLAS

By: _____
Chris Terry, Assistant City Manager

By: _____

Its: _____

Council Agenda Item: #2d

SUMMARY: Subject to the City Attorney final approval, Council approval is sought to enter into a contract with Crowne Plaza Hotel for the meeting space and sleeping room guarantee for the 2011 North Texas Jazz Festival.

FINANCIAL IMPACT:

Budgeted Amount: \$50,284*
Cost: \$50,284*

* Budget for FY 2011 has not yet been adopted by the City Council; however, the amount will be partially offset by revenues from the sleeping rooms booked by the participants.

2011 Financial Commitment Recap – \$50,284

- 80% of the room block (\$40,284)
 - 499 Room Nights @ \$95 each = \$47,405
 - 50 Room Nights @ \$59 each = \$2,950
- \$10,000 in food and beverage
- In 2008, festival participants booked 616 room nights (\$58,520), which exceeded the 80% block requirement so the Town was only responsible for the food and beverage requirement; however, a total of \$20,675.21 was spent for food and beverage, sleeping rooms and other miscellaneous expenses.

BACKGROUND: 2011 will be the 11th year the Town of Addison has hosted the educational aspect of the North Texas Jazz Festival and the 4th year at the Crowne Plaza Hotel. Full-service hotels are typically booked for convention and large group business at least three to five years out. The Crowne Plaza has been a great venue for the Jazz Festival so we want to secure our dates for at least 2011 so we don't lose the opportunity to host the event there.

No money will be spent until fiscal year 2011; however, the Crowne Plaza needs a signed contract now to reserve the space. The following will recap our cancellation terms if that should become necessary:

Cancellation Date	% of Revenue Penalty	Financial Commitment
Before September 25, 2009	0%	\$0.00
September 25, 2009-March 29, 2010	15%	\$7,542
April 1, 2010-June 2, 2010	25%	\$12,571
July 2, 2010-September 30, 2010	50%	\$25,142
Sept. 30, 2010-December 29, 2010	75%	\$37,713
December 29, 2010-March 30, 2011	100%	\$50,284

As in previous years, Helms-Brisco negotiated the terms of this Agreement, which are virtually identical to the 2008, 2009 and 2010 agreements that were approved by Council in 2007.

RECOMMENDATION:

Staff recommends approval.



CROWNE PLAZA

DALLAS NEAR THE GALLERIA

CONFIRMATION AGREEMENT

January 21, 2009

TOWN OF ADDISON, TEXAS

16801 Westgrove Drive
P.O. Box 9010
Addison, TX 75001-9010

This confirmation agreement (henceforth known as "Agreement") is a contract between AZ Crowne LP, a Texas limited partnership (the Crowne Plaza Dallas – Near the Galleria) (hence forth known as "Owner") and the Town of Addison, Texas (henceforth known as the "Group") for sleeping rooms, function space, and associated services at the Crowne Plaza Hotel Dallas – Near the Galleria (the "Hotel") for the **11th Annual North Texas Jazz Festival in Addison** (the "Event") to be held **Wednesday, March 31, 2011** through **Sunday, April 3, 2011** (the terms "Owner" and "Hotel" are sometimes used interchangeably herein). The commitments outlined below include or supersede any and all previous commitments, oral or written. The parties agree that any changes to this Agreement will be in writing and signed by both parties.

1. SLEEPING ACCOMMODATIONS AND RATES

(1.A) Sleeping Room Block: The Owner has reserved the following room block at the Hotel exclusively for **11th Annual North Texas Jazz Festival in Addison**:

Day	Wed	Thu	Fri	Sat	Sun
Date	3/30/2011	3/31/2011	4/1/2011	4/2/2011	4/3/2011
Room Block	20	160	200	180	Depart
Standard - 2-double beds NS	20	142	175	160	Depart
Standard - 2-double beds S	-	3	5	5	Depart
Standard - Queen bed with sleeper sofa NS	-	15	20	15	Depart

(1.B) Group Rate: The rates listed below are negotiated specifically for Group attendees. Special rates and accommodations offered are listed under paragraph 2. HOTEL CONCESSIONS of this Agreement.

Room Type	Group Rate
Standard room – any bed type	\$95.00 Single - Quadruple Occupancy
Executive Suite – king bed type	\$125.00 Single - Quadruple Occupancy
Deluxe hospitality suite	\$225.00 Maximum Occupancy

(1.C) Occupancy tax: Rates are subject to a total 13% occupancy tax (comprised of a 7% local hotel occupancy tax and a 6% state hotel occupancy tax). The Owner recognizes that guests traveling on behalf of Texas educational institutes and religious organizations may be state occupancy tax exempt with the proper exemption certificates provided prior to or at check-in.

(1.D) Rebate: Owner agrees to quote a higher rate than the Group rate offered in this Agreement, as determined by Group, to attendees. The total amount of the rate difference or

“rebate” collected by Owner will be posted against Group’s Master Account (as described in Section 5.B.) charges at the conclusion of the event.

(1.E) Placement Fee: See Addendum “A” to this Agreement.

(1.F) Parking: The Owner offers 725 free parking spaces at the Hotel.

(1.G) Check-in and Checkout Times: Hotel check-in time begins at 3:00 PM and Hotel checkout time is 12:00 PM. Luggage storage is available for guests arriving prior to check-in and/or departing after checkout. Due to hotel occupancy, late checkout for groups is not guaranteed.

2. HOTEL CONCESSIONS

The Owner offers the following concessions based on Group meeting at least 80% of the “Anticipated Rooms Revenue” for event, as outlined in paragraph **6. COMMITMENT** of this Agreement:

- Two deluxe hospitality suites will be provided to Group complimentary (i.e. without charge or cost) up to four nights (March 30, 2011 through April 3, 2011)
- For every fifty paid room nights, Group will receive one complimentary room night
- For event staff, hotel will provide a rate of \$59.00 per night for up to fifty room nights
- Executive Suites for up to five event VIPs at the \$95 group standard room rate
- Priority Club Meeting Rewards of three points for every dollar spent to a maximum of 60,000 points will be split and awarded to Helms Briscoe’s Renee McKinney, PC acct # 775560586 and Barbara VanHollenbeck, PC acct # 675458327.
- Priority Club Meeting Rewards of three points for every dollar spent to a maximum of 60,000 points will be awarded to the Town of Addison’s PC acct# 195709768.

All complimentary, discounted, and upgrade accommodations must be assigned prior to group arrival. Concessions offered have no cash or credit value and will be forfeited if not assigned.

3. RESERVATION PROCEDURES

(3.A) Attendee Reservation Procedures: to receive the special rate and their preferred room type, attendees of the Jazz Festival will reserve rooms by **CALLING THE HOTEL** or **ON-LINE** per the instructions below prior to the reservation cut-off date of **March 17, 2011** (12:00:00 AM). Room and rate availability is guaranteed until room block is full or the cut-off date has passed, whichever comes first. Additional reservations (i.e., reservation requests made after the room block is full or after the cut-off date) will be accommodated based on availability at the Group rate.

(a.) Attendees may **CALL** the Hotel Reservations Department at 972-980-8877 during regular business hours, or 800-377-9778 24 hours a day. They should identify themselves as part of the **11th Annual North Texas Jazz Festival in Addison**. Upon the completion of the call, individuals will receive a confirmation number that should be saved to expedite changes, cancellations, and check-in.

(b.) Attendees may **BOOK ON-LINE** through the Hotel website, www.cpgalleria-nr.crowneplaza.com; by completing **TRAVELER INFORMATION**; providing a three (3) letter **GROUP CODE** (provided by the Hotel Sales Department); and then clicking **RESERVE A ROOM**. By clicking **RESERVE A ROOM**, the attendee will be able to see all available room types remaining in the Group block and the special rates. Once complete, the attendee will receive their confirmation number which should be kept for ease of reservation changes and

cancellation or check-in. (The Hotel Sales Department can also provide a direct link to the Hotel website for reservations.)

(3.B) Guarantee Status: Reservations must be guaranteed to an individual's credit card or by advance deposit. A guaranteed room reservation assures a room regardless of the time of arrival. Any guaranteed reservation not utilized and not canceled before 4:00 P.M. on the day of arrival will be billed one night room and tax to the credit card or against the advance deposit.

(3.C) Reservation Procedures for Rooms Purchased by Group: Staff and VIP room reservations will be submitted on a rooming list to the Hotel Meeting Director. The rooming list will be headed with the organization name; event name; contact person's name and phone number. The list will include name of all adult guests in each room, arrival and departure dates, room type requested, and billing for each room. All rooms will be guaranteed for late arrival to the Master Account.

4. FUNCTION ARRANGEMENTS

(4.A) Function Space: Owner commits the function space as listed in the schedule of events set forth below. The function space shall be available for the Event on the dates and at the times set for in the schedule of events. Changes to the function space, as with all changes to this Agreement, must be made in writing and agreed upon by both parties.

(4.B) Schedule of Events

Day	Date	Start	End	Function	Setup	Room
Wed	3/30/2011	8:00 AM	24 Hours	Storage	-	N. Lobby Reg.
		8:00 AM	24 Hours	Storage	-	Director's
		8:00 AM	24 Hours	Storage	-	Magnolia
		8:00 AM	24 Hours	Setup	Staging	Trinity Ballroom
		6:00 PM	24 Hours	Setup	Staging	Oak Ballroom
		8:00 AM	24 Hours	Setup		Boardroom
		8:00 AM	24 Hours	Setup		2031, 2021, 2037
		8:00 AM	24 Hours	Setup		Trinity Gallery
		8:00 AM	24 Hours	Setup		Chinaberry
		8:00 AM	24 Hours	Setup		Whispering Oaks
		8:00 AM	24 Hours	Setup		Palm
		8:00 AM	24 Hours	Setup		Pecan, Elm, Maple, Willow, Dogwood
Thu	3/31/2011	8:00 AM	24 Hours	Registration	Existing	N. Lobby Reg.
		8:00 AM	24 Hours	Storage	Existing	Director's
		8:00 AM	24 Hours	Storage	-	Magnolia
		8:00 AM	24 Hours	Crew Meals	Existing	Boardroom
		8:00 AM	24 Hours	Hospitality	Existing	2031, 2021, 2037
		8:00 AM	24 Hours	Setup	Ex. Tables	Trinity Gallery
		8:00 AM	6:00 PM	Setup	Sound	Trinity Ballroom
		8:00 AM	24 Hours	Setup	Sound	Oak Ballroom

		8:00 AM	24 Hours	Setup	Stage & Sound	Chinaberry
		8:00 AM	24 Hours	Setup	Sound	Whispering Oaks
		8:00 AM	24 Hours	Setup	Sound	Palm
		6:00 PM	24 Hours	Setup	TBD	Pecan, Elm, Maple, Willow, Dogwood
		6:00 PM	24 Hours	Hal Miller Films	Existing	A. Lecture Hall
		7:00 PM	8:00 PM	Reception	Reception	Whispering Oaks
		7:00 PM	8:00 PM	Reception	Reception	Palm
		7:00 PM	11:30 PM	Opening Concert	Theatre	Trinity Ballroom

Day	Date	Start	End	Function	Setup	Room
Fri	4/1/2011	8:00 AM	24 Hours	Registration	Registration	N. Lobby Reg.
		8:00 AM	24 Hours	Storage	Existing	Director's
		8:00 AM	24 Hours	Storage	-	Magnolia
		8:00 AM	24 Hours	Crew Meals	Existing	Boardroom
		8:00 AM	24 Hours	Hospitality	Existing	2031
		8:00 AM	24 Hours	Exhibitors	Ex. Tables	Trinity Gallery
		9:00 AM	24 Hours	Big Band Perf. A	Theatre	Trinity Ballroom
		8:15 AM	24 Hours	Big Band Perf./ Clinic B	Theatre	Oak Ballroom
		8:15 AM	24 Hours	Vocal Perf/Clinic	Theatre	Chinaberry
		9:00 AM	24 Hours	Combo Perf.	Theatre	Whispering Oaks
		8:30 AM	24 Hours	Combo warmup		Palm
		9:00 AM	5:00 PM	Hal Miller Films	Theatre	TBD – PDR II
		8:30 AM	24 Hours	Big band warmup A		Pecan
		8:30 AM	24 Hours	Big band warmup B		Elm
		8:30 AM	24 Hours	Vocal warmup		Maple
		9:00 AM	24 Hours	Combo Clinic		Willow
		9:00 AM	24 Hours	Big Band Clinic A		Dogwood
Sat	4/2/2011	8:00 AM	24 Hours	Registration	Registration	N. Lobby Reg.
		8:00 AM	24 Hours	Storage	Existing	Director's
		8:00 AM	24 Hours	Storage	-	Magnolia
		8:00 AM	24 Hours	Crew Meals	Existing	Boardroom
		8:00 AM	24 Hours	Hospitality	Existing	2031
		8:00 AM	24 Hours	Exhibitors	Ex. Tables	Trinity Gallery
		9:00 AM	24 Hours	Big Band Perf. A	Theatre	Trinity Ballroom
		8:15 AM	24 Hours	Big Band Perf./ Clinic B	Theatre	Oak Ballroom
		8:15 AM	24 Hours	Vocal Perf/Clinic	Theatre	Chinaberry
		9:00 AM	24 Hours	Combo Perf.	Theatre	Whispering Oaks
		8:30 AM	24 Hours	Combo warmup		Palm
		9:00 AM	5:00 PM	Hal Miller Films	Existing	A. Lecture Hall
		8:30 AM	24 Hours	Big band warmup A		Pecan
		8:30 AM	24 Hours	Big band warmup B		Elm
		8:30 AM	24 Hours	Vocal warmup		Maple
		9:00 AM	24 Hours	Combo Clinic		Willow
		9:00 AM	24 Hours	Big Band Clinic A		Dogwood
		5:00 PM	6:00 PM	Awards Ceremony	SRO	Whispering Oaks

		5:00 PM	6:00 PM	Awards Ceremony	SRO	Palm
Sun	4/3/2011	8:00 AM	3:00 PM	Storage	Existing	N. Lobby Reg.
		8:00 AM	3:00 PM	Storage	Existing	Director's
		8:00 AM	3:00 PM	Storage	-	Magnolia
		8:00 AM	3:00 PM	Storage	Existing	2031
		8:00 AM	3:00 PM	Storage	-	Dogwood

(4.C) Banquet Equipment: Owner will provide to the Group for use in connection with the Event standard banquet equipment, such as tables, table skirting, linen, tableware, serving items, chairs, risers, podiums, easels, and dance floor, at no additional cost to Group. The current inventory of risers is 12 pieces of 4'x8' (16" – 24" high) and 10 pieces of 6'x8' (16"-24" high). Should the Group request equipment that exceeds the Hotel's inventory, Group may bring in equipment or use a vendor's equipment without additional charge. Group will inform the Hotel Meetings Director of the type of equipment to ensure proper fit and inclusion on banquet event orders. Group will also provide the Owner with the vendor name and contact information. If needed and at the Group's request, the Hotel's Meetings Director may assist with procurement of equipment but the cost of renting or buying additional equipment is the responsibility of Group. If such additional banquet equipment is needed by the Group and if the set-up of such additional banquet equipment by the Hotel will require the Owner to incur labor costs beyond its routine and normal labor costs, Owner will notify the Group of such additional labor costs; if the Group accepts the Hotel's set-up of the additional banquet equipment, such costs will be charged to the Group's Master Account.

(4.D) Audio Visual Equipment: Audio Visual equipment is available on-site from Swank Audio-visuals, the Hotel's in-house technicians. Group may bring its own equipment, vendor, technicians, or services without a charge by the Owner to Group. If Group requests technical assistance from the Hotel, all such technical assistance Group may require will be provided by Swank and labor charges will apply. Use of Hotel's in-house sound systems is included in the price of audio equipment rental.

Notwithstanding the foregoing, Group is not required to use Hotel's in-house audio-visual company (Swank Audio-visuals); Group may bring in its own audio-visual equipment, vendor, technicians, or services (at no charge by the Owner to the Group). A \$50 patch fee per contiguous room, per day will apply for usage of Hotel's in-house sound systems.

(4.E) Banquet Food & Beverage Restrictions: All the food and beverage products served must be provided by the Hotel including (but not limited to) candy, cookies, and sodas. Group must have advance written consent from the Hotel to bring in outside food or beverage items to be served by the Hotel staff.

(4.F) Function Space Rental or Banquet Food Minimum: Group will pay Owner **\$5,000** plus 22% service charge and 6% state occupancy tax (subject to any tax exemption) to rent the function space provided unless Group purchases a minimum of **\$10,000** in banquet food (and beverage). Only banquet food and beverage that is billed to the Group Master Account will be applied to this minimum. All food and beverage purchased is subject to a 22% service charge and an 8.25% state sales tax unless Group is tax exempt. The minimum purchase amount does not include service charge or tax. Menu prices are subject to change unless the menus are attached to this Agreement.

(4.G) Alcoholic Beverages Services: It is the policy of the Hotel to serve alcohol in a responsible manner. For the concern for your guests' well being, the Owner reserves the right

to refuse alcoholic beverages service to anyone, who appears to be less than the age of 21 or in the sole opinion of the Hotel Management, appears intoxicated. Please note that all alcoholic beverages served on the Hotel premises must be provided by the Hotel and dispensed by Hotel staff.

Hotel guests may bring alcoholic beverages into their guestrooms for their personal consumption, but may not carry alcoholic beverages into public areas of the hotel including guestroom corridors.

(4.H) Exhibitors or Vendors: Exhibit space is reserved for Group as specified in the Schedule of Events. Owner agrees to provide labor and the following equipment for exhibitor setup: tables, linen, chairs, waste receptacle, and 30 amps of power. Exhibitor Setup is provided complimentary. Requests from exhibitors for special equipment, more power, and/or high-speed Internet access must be made in advance of arrival through the Hotel Meeting Director and additional fees will apply. A price list of the additional fees is attached to this Agreement.

(4.I) Banquet Event Orders: The Hotel Meeting Director will contact Group as time grows near the arrival date to discuss and finalize exact room set-up requirements, menu selections and audio-visual equipment needed. Once finalized, Banquet Event Orders will be submitted to the Group contact person for changes or approval.

(4.J) Banquet Function Guarantees: A final guarantee on catered food functions is due no later than 72 hours (or 3 business days) prior to the Group arrival. This guarantee ensures all your guests receive the selected meal option and are easily accommodated.

5. BILLING AND PAYMENT ARRANGEMENTS

(5.A) Guestroom Payment: Attendees will pay for their own room, tax and all incidental charges attributable to the attendee and the attendee's room upon departure. Guests listed on Staff & VIP rooming list will have room & tax charged to the Group Master Account. Incidental charges for these special guests which are attributable to the guests and their respective rooms will be paid as noted on the rooming list.

(5.B) Master Account and Payment of Charges: A Master Account (herein so called) will be established for the Event. All charges for which Group is responsible will be compiled in the Master Account to create a master bill. Billing questions or disputes will be directed to the Hotel Meeting Director immediately for resolution.

Group has applied for credit with Hotel and has been approved by Hotel.

That portion of a bill, to Group that is undisputed is due immediately upon the Group's receipt of invoice from Owner. Group will pay a service charge of 1.5% per month (18% per annum) on non-disputed charges that remain outstanding after 30 days of the Group's receipt of Owner invoice. In addition, without further delay or additional demand, Group shall be responsible for any and all costs, expenses, and fees associated with any collection efforts made on Owner's behalf, including but not limited to reasonable attorneys' fees and court costs.

DUNN & BRADSTREET ID: 6555-294910984

(5.C) Billing Contact Name, Address, Phone, and Email:

Nicole Newkham, Town of Addison, P.O. Box 9010, Addison, TX 75001-9010
5300 Belt Line Road, Dallas, Texas 75254
Email: nnewkham@addisontx.gov ; Phone: 972-450-6281

6. COMMITMENT

Upon signing this Agreement, Owner is committed to reserve the sleeping rooms and banquet space for Group to the exclusion of other business opportunities. Subject to the Group's right to cancel the Event and this Agreement and to events of force majeure, Group is therefore committed to utilize and pay for the sleeping rooms, banquet space and banquet food and beverage as set forth in this Agreement. The pricing and discounts offered by Owner are based on "Total Anticipated Revenue" for this event of **\$60,355.00**. "Total Anticipated Revenue" for the Event is the total of: "Anticipated Rooms Revenue" of **\$50,355.00**, calculated by the number of attendee rooms reserved (**499**) multiplied by the Group rate (**\$95**); plus the number of staff rooms reserved (**50**) multiplied by the staff rate (**\$59**) plus 11 complimentary rooms; and the minimum guaranteed banquet food and beverage of **\$10,000.00**.

7. GUEST ROOM ATTRITION

Hotel is relying on, and the Group agrees to provide, a minimum dollar amount of Guest Room Revenue which shall be defined as an amount equal to the number of room nights set forth in the Guest Room Accommodation chart above times the \$95.00 average room rate (exclusive of taxes and excluding food and beverage charges, meeting room rentals, and other non-room charges).

The Hotel will extend a [20%] allowance in such expected guest room revenue. Should the actual Guest Room Revenue fall below 80% of the expected Guest Room Revenue, ADDISON JAZZ FESTIVAL will be responsible for the difference between [80%] of the expected Guest Room Revenue set forth above and the actual Guest Room Revenue, less the guest room revenue resulting from any rooms resold by the Hotel, at an agreed upon resale value equal to [80%] of the average Group room rate (or higher if the actual resale amount is higher than a value equal 80% of the average Group room rate).

Such resulting amount shall be subject to all applicable taxes, which shall be paid by the Group. For purposes of this Agreement, "rooms resold by the Hotel" shall be calculated by using the number of rooms that remain unsold by the Hotel. (By way of example, if the Group does not utilize 30 rooms from the room block on a given night, and 10 rooms remain unsold in the Hotel on that night, the payment due will be reduced by the revenue resulting from 20 rooms at a rate equal to 80% of the Group average room rate).

The Hotel and the Group agree that the payment described above is a reasonable estimate of the Hotel's damage resulting from the non-use of the room block and that the agreed rate is a reasonable estimate of the rate which will be achievable at the time of resale, and the payment does not constitute a penalty. The remedy provided in this section shall be Hotel's sole remedy for Guest Room Attrition.

8. CANCELLATION BY GROUP

Notwithstanding any other provision of this Agreement, the Group may cancel the Event and this Agreement at any time. Cancellation of the Event and of this Agreement by Group will be done in writing and sent to the Owner either registered mail or read-receipt email. The closer in time to the event of the cancellation, the more difficult it is for the Hotel to resell the reserved

rooms and function space and thus a greater damage to the Hotel. Therefore, it is agreed that should Group cancel the Event, it will pay liquidated damages equal to a percentage of the "Total Anticipated Revenue" for the Event in accordance with the table set forth below. The closer in time to the event of the cancellation, the greater the percentage of "Total Anticipated Revenue" will be paid.

<u>Receipt of Cancellation</u>	<u>Total Anticipated Revenue</u>
Within 90 Days of Arrival	100% of Anticipated Revenue
91 Days to 180 Days Prior to Arrival	75% of Anticipated Revenue
181 Days to 270 Days Prior to Arrival	50% of Anticipated Revenue
271 Days to 365 Days Prior to Arrival	25% of Anticipated Revenue
366 Days to 550 Days Prior to Arrival	15% of Anticipated Revenue
551 or More Prior to Arrival	No Damages

Once notice of cancellation is given, the Owner shall immediately return the room block and reserved function space and meeting rooms to its inventory and make good faith, commercially reasonable (based on standards of first class hotels in the Dallas, Texas metropolitan area) efforts to resell the rooms, function space and meeting rooms. If, as a result of its efforts, the Owner's losses as determined in good faith by the Owner are less than the cancellation fees already invoiced to or paid by the Group, Owner shall adjust the invoice and refund any such difference to the Group.

9. CANCELLATION BY HOTEL

Owner reserves the right to cancel this contract in its entirety only in the event the Group fails to pay in accordance with the terms of this Agreement.

See also Addendum "A" of this Agreement (which Addendum is incorporated into and made a part of this Agreement for all purposes).

10. ACTS OF GOD (AND MAN)

See Addendum "A" of this Agreement – **FORCE MAJEURE**

11. AMERICANS WITH DISABILITIES ACT

The Crowne Plaza Dallas-Near the Galleria represents and Group acknowledges that beginning on January 1, 1992, and continuing thereafter in accordance with the compliance dates established or required under Title III of the Americans With Disabilities Act and the regulations promulgated ("ADA"), the Crowne Plaza facilities being rented to Group, its guest rooms, common areas and its transportation services will be in compliance with the public accommodation requirements of the ADA and with all other applicable federal, state, and local laws, ordinances, rules, regulations, and codes.

The Owner represents and warrants that, as a place of "public accommodation", the Hotel is in compliance to the extent applicable with the applicable provisions of Title III of the Americans with Disabilities Act and that the Hotel is in compliance with all applicable safety codes, and will DEFEND, INDEMNIFY, and HOLD HARMLESS the Group (and the officials, officers, employees and agents of the Town of Addison, Texas (in both their official and private capacities)) from and against any and all claims arising from charges of non-compliance by the Hotel with the regulations of the Americans with Disabilities Act and any other laws, rules, regulations, or codes regarding public accommodation, including specifically those applicable to public accommodations, and such safety codes. Hotel facilities, including, but not limited to, meeting space, restrooms, dining areas, other common areas and sufficient guest rooms, shall be reasonably accessible and usable by persons with disabilities.

12. INDEMNIFICATION

See Addendum "A" of this Agreement.

13. MISCELLANEOUS

In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

Except to a purchaser of the Hotel, this Agreement may not be assigned, transferred, sold, pledged, or otherwise conveyed by the Owner in whole or in part, and Owner shall have no power or authority to assign, transfer, sell, pledge, or otherwise convey this Agreement or any part thereof, without the Group's prior written consent. In the event of the sale of the Hotel, the Group has certain cancellation rights regarding this Agreement as set forth in Addendum "A" (under "Change of Ownership"). Any attempted transfer or conveyance of any kind or by any method without the Group's prior written consent shall be null and void, and the Group shall be entitled to immediately terminate this Agreement.

The provisions of this Agreement are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination or expiration of this Agreement shall survive termination or expiration.

The failure by either party to exercise any right, power, or option given to it by this Agreement, or to insist upon strict compliance with the terms of this Agreement, shall not constitute a waiver of the terms and conditions of this Agreement 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 Agreement are cumulative to any other rights or remedies, which may be granted by law, in equity, or otherwise.

The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies.

In an effort to resolve claims, disputes or other matters in question arising out of or relating to this Agreement or breach thereof, the parties agree that all claims, disputes, or other matters in question may be submitted to nonbinding mediation as a first step in seeking a resolution of the same. By mutual agreement, the parties may use a nonbinding form of dispute resolution other than mediation.

This Agreement shall be governed by and construed under the laws of the State of Texas, 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. Venue for all actions or causes of action under or in connection with this Agreement shall be instituted and maintained in Dallas County, Texas.

For purposes of this Agreement, notices and other communications provided for herein shall be in writing, addressed as provided hereinafter to the party to whom the notice or request is given, and shall (unless otherwise provided for herein) be (i) delivered personally, (ii) sent by United States certified mail, postage prepaid, return receipt requested, or (iii) placed in the custody of Federal Express Corporation or other nationally recognized carrier to be delivered overnight. Notice shall be deemed given: when received if delivered personally; forty-eight (48) hours after deposit if sent by mail; and twenty-four (24) hours after deposit if sent by Federal Express or other nationally recognized carrier to be delivered overnight. From time to time either party may designate another address within the Town of Addison, Texas for all purposes of this Agreement by giving the other party not less than ten (10) days advance notice of such change of address in accordance with the provisions hereof. For purposes of this Agreement, notices and other communications shall be sent to the following addresses:

<u>To Hotel:</u> _____ _____ Attn: _____	<u>To Group:</u> 16801 Westgrove Drive P.O. Box 9010 Addison, Texas 75001 Attn: Chris Terry, Assistant City Manager
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14. ACCEPTANCE

The undersigned are authorized to sign and enter into this Agreement. The commitments for this event including space and sleeping rooms will be considered definite once Owner has received a **signed agreement and a signed payment form** by **January 21, 2009**. Any changes or cancellation of the agreement will be made in writing and signed and dated by both parties.

Accepted and agreed for **Town of Addison** by:

Mr. Chris Terry Date
Assistant City Manager

Accepted and agreed for **Crowne Plaza Dallas - Near the Galleria** by:

David Ramasharan Date
Director of Sales

Priscilla Johnson Date
Sales Manager

Crowne Plaza Dallas Near the Galleria Catering Policies

Contracts/Commitments

Contracts must be signed and approved by the Group and the Owner. Any changes to the contract must be signed and approved by both parties to be valid. All commitments from the parties are in writing and written commitments supersede any and all verbal commitments when controversial.

Function Room Reservations

All banquet rooms are assigned based on the anticipated number of guests and the basic requirements of your function. If attendance increases or decreases, or your program changes, the Owner reserves the right to reassign a room appropriate to the event.

Seating

Banquet seating will be at round tables that seat ten (10) guests. Banquet seating at round tables that seat eight (8) guests are available at an additional charge of \$2.00 per person. Room diagrams are provided upon requests.

Linen

The Crowne Plaza Dallas Near the Galleria offers a variety of linen choices. Specialty linens can be arranged at an additional charge.

Decorations, Music, Entertainment

Our staff will be happy to assist you in arranging for your musical and entertainment requirements, as well as advise you on the appropriate flowers, and theme decorations to create the perfect ambiance for your affair.

Food and Beverage

All food and beverage served in the Hotel is to be provided by the Owner. Dietary substitutions may be made in advance. Alcoholic beverages are to be served on the Hotel premises only by Hotel servers and bartenders. The Hotel's Alcoholic Beverage License requires the Hotel to (1) request proper Identification (photo ID) of any person of questionable age and refuse alcoholic beverage service if the person is either underage or proper identification cannot be produced and (2) refuse alcoholic beverage service to any person who, in the Hotel's judgment, appears intoxicated.

Audio Visual Equipment

The Hotel offers a wide selection of audio-visual equipment available on a rental basis, along with our highly trained technical staff to assist you. Additional power is available for most function rooms. Charges are based on labor and power needs. To ensure the success of your program, it is recommended to rent the hotel's wireless microphones to avoid frequency issues with three other wireless microphones, nearby Addison Airport and local radio stations.

Engineering

Should your event(s) require additional electrical needs, lighting, banners hung, or Engineering assistance, this information must be provided fourteen (14) days prior to the event date. Charges will be based on the extent of the services required. Additional requests at the time of the event(s) and or last minute requests may result in additional surcharge and labor charges.

Guarantee

A minimum guarantee number of attendance is required three (3) business days in advance of the function. This number will be considered a guarantee, not subject to reduction, and charges will be made accordingly. If the Catering Office is not notified, the expected attendance will become the guarantee. The Hotel will be prepared to set and service 5% above the guarantee number.

Security

The Hotel will not assume responsibility or liability for the loss or damage of any merchandise left at the Hotel prior to, or following a function. Arrangements can be made for security of exhibits, merchandise or display items prior to your event through the Catering Department.

Prices and Service Charge

All prices are subject to change without notice until written guarantee is confirmed. Food, beverage and audio-visual prices quoted are subject to a 22% Taxable Service Charge and 8.25% State Sales Tax. It is Texas State Law that taxes are charged on a service charge. Tax-exempt organizations must provide the Hotel with Texas State Tax Exemption Certificates prior to their functions.

Payment

Payment in full must be made ten (10) days prior to your event unless prior credit has been established. A direct bill application form needs to be completed in full and returned with your signed contract a minimum of fourteen (14) days prior the arrival date in order to establish credit. With the Controller's approval, a master account will be set up for any authorized charges.

Packages and Deliveries

There is a \$3.00 per box handling fee for all boxes received. Crates and Pallets do not qualify as boxes. A separate labor charge will be assessed for the handling of these items. Any boxes left at the Crowne Plaza Dallas Near the Galleria seven (7) days after the event without prior instructions will be disposed of. Any package delivered to the Hotel must arrive no sooner than seven (7) working days prior to the function. When shipping packages to the Hotel, please address your boxes as follows:

**Ms. Barbara Kovacevich/TOWN OF ADDISON
C/o THE CROWNE PLAZA DALLAS - NEAR THE GALLERIA
14315 Midway Road, Addison, TX 75001
Hold For Tuesday, April 1, 2008 Arrival**

Business Center

The Business Center at the Crowne Plaza Dallas Near the Galleria will be available twenty-four (24) hrs with workstations, printer and fax machine.

Client Signature

ADDENDUM 'B'

ADDITIONAL FEES THAT MAY APPLY:

Phone & Internet Fees:

Phone	\$30 per day
Multiline Phone	\$75 per day
Dial 9 Line	\$40 per day
Dedicated Phone Line	\$150 per day
T1 Line / High Speed Internet	\$150 per day
Additional Connections to T1	\$10 per person per day

Power Fees:

120 Volt Single Phase 20 AMP	\$30 per day
120 Volt Single Phase 30 AMP	\$40 per day
120 Volt Single Phase 50 AMP	\$60 per day
208 Volt Single Phase 20-30 AMP	\$60 per day
208 Volt Single Phase 50 AMP	\$115 per day
208 Volt 3 Single Phase 20-30 AMP	\$115 per day
208 Volt 3 Single Phase 50-100 AMP	\$270 per day
Extension Cord	\$10.00 per day
Power Strip / Surge Protector	\$15.00 per day

Rental Fees:

Folding Chair	\$1.55 - \$4.00 each*
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ADDENDUM "A"

This Addendum "A" is a part of and incorporated into the Confirmation Agreement between the **TOWN OF ADDISON, TEXAS** (referred to as 'Group') and **AZ CROWNE LP, THE CROWNE PLAZA DALLAS NEAR THE GALLERIA** (referred to as 'Owner') regarding the 11th Annual North Texas Jazz Festival in Addison to be held at the Crowne Plaza Hotel Dallas – Near the Galleria over the official dates of **March 31st - April 3rd, 2011** (the terms "Owner" and "Hotel" are sometimes used interchangeably herein). In the event of any conflict between the Agreement and this Addendum "A", the terms and provision of this Addendum "A" shall control.

CUT-OFF DATE

Any reservations accepted after the cut-off date or an increase in rooms shall be accepted at the Group rate, if the Hotel has rooms available. In addition to the Group rate being available during the Event, the Group rate will be available to the Event attendees three days prior to and after the official dates of the Event.

CONCESSIONS

The Hotel agrees to provide the following concessions throughout the contracted dates of this agreement:

- **SEE CONTRACT**

PLACEMENT FEE

HelmsBriscoe will be compensated at the sole expense of the Hotel with a 10% placement fee paid for by the Hotel on all consumed guestrooms. This placement fee is non-transferable and non-cancelable.

The rates listed were not increased due to HelmsBriscoe's involvement.

RELOCATION PROCEDURE

If the Owner is unable to provide a guestroom at the Hotel to an Event attendee holding a confirmed reservation, Owner will provide for each such attendee for the nights the attendee is not accommodated:

- Arrangements for accommodations at a comparable or better nearby hotel and payment for that night's accommodations (including applicable taxes), or for accommodations at such nearby hotel until a room becomes available at the conference hotel.
- Free and convenient transportation for attendee to and from the Hotel daily until a room becomes available at the Hotel.
- Priority reservations for the first available room at Hotel the next night.
- One long distance phone call of reasonable length to notify of change of location.
- Upon being relocated back into the Hotel, each walked attendee will receive an apology letter from the General Manager and a complimentary welcome back amenity of the Hotel's choice.
- Hotel will credit all rooms/room nights it was unable to accommodate Group's attendees on, and reflect these updates and credits on a revised report of Group's final room block count, reservation list, and pickup history report. Additionally, Hotel will recalculate these additional rooms/room nights and reflect them on Group's master account as they apply to additional/adjusted complimentary room credits earned by the Group, pickup history reports,

- additional performance fees to be paid at Owner's sole expense to HelmsBriscoe, and potential attrition.
- Hotel agrees that no Group attendee(s) will be walked by any Hotel employee without first consulting with the designated Authorized Group Representative as to which Group attendees will be walked. The determination and decision of which attendees will be temporarily relocated may ONLY be made by the Authorized Group Representative. Group's Representative shall not unreasonably withhold or delay selection of attendees to be relocated, and agrees to make said determination in a timely fashion with the assistance of the Hotel employee(s) and/or front desk manager bringing this to the Authorized Group Representative's attention.
 - Should the attendee prefer not to move back to the Host hotel once they have been moved, the Hotel will agree to apply that room to the block and they will ensure that the rate will be the same as the contracted rate.

ENVIRONMENT

The Hotel guarantees that the meeting rooms are conducive to a quiet learning environment or to conducting business. Surrounding rooms must be monitored for any loud microphones or other disturbances. The Hotel is responsible for notifying the Group before confirming any bookings that might interfere with the Group's reserved space. The Hotel will also respond promptly to requests to adjust the temperature in meeting rooms.

HIDDEN FEES

Hotel shall impose no fees for services utilized by the Group or its attendees, other than those specified herein, without prior written consent of the Group. Any mandatory charges on sleeping rooms, other than taxes, including but not limited to energy surcharges and resort fees, if not specified herein, must first be disclosed to and agreed to by the Group and must be disclosed to attendees no later than time of check in, in order to be valid.

MEETING & BANQUET AGENDA AND FOOD BEVERAGE POLICIES

The designated space agenda is being held for the Group's meeting and cannot be changed or altered in any way without written permission from the Group. The Hotel understands that meeting room space is a key element in the success of the Event. This includes room size, layout, and physical location in respect to each of the Group's functions. The Hotel agrees that the attached designated space agenda is a part of this Agreement and cannot be changed or altered without the Group's prior written consent.

FORCE MAJEURE

The performance of this Agreement by either party is subject to acts of God, war, terrorist attack or threat thereof, epidemic, government order or regulation, disaster, strike, civil disorder, curtailment of transportation facilities, or other emergency making it, illegal, extraordinary hazardous, inadvisable, or impossible to provide the facilities, travel to the meeting, or hold the Event. It is provided that this Agreement may be terminated without penalty for any one or more of such reasons by written notice from one party to the other.

In the event an act of God, war, terrorist attack or threat thereof, epidemic, government order or regulation, disaster, strike, civil disorder, curtailment of transportation facilities, or other emergency makes it illegal, extraordinarily hazardous, or impossible for some or

all meeting attendees to travel to or attend the meeting, any room, food service, beverage service, or other guaranteed minimum requirements stipulated in this agreement do not apply, and no liquidated damages will be due from the Group.

CANCELLATION BY HOTEL

Should the Hotel fail to fulfill its obligations under this Agreement for any reason, the parties will use reasonable efforts to obtain alternative accommodations, convention center facilities and/or function space facilities of comparable type, size, quality and location for the Group and its guests at costs and guest room rates that are the same or less than the costs provided for under this Agreement.

The Hotel agrees to pay the Group an amount equal to any and all costs, losses, and expenses incurred as a result of having to relocate the entire Event or portions of the Event, to other than the originally scheduled locations and dates and/or times. The Group will have, at its own discretion, the sole right to accept any alternative arrangements offered or proposed by the Hotel. Nothing contained in this Agreement will limit, in any fashion, the Group's right to pursue all legal and equitable (or other) remedies available to it for breaches of this Agreement by Owner or Hotel.

The Hotel agrees it will not unilaterally reduce the room block prior to the cut-off date without the written consent of the Group. If the Hotel reduces or cancels the guestroom block or reduces the number of confirmed reservations, without the prior written consent of the Group, the Hotel will be liable for liquidated damages which are based on a reasonable approximation and a fair and reasonable measure of the damages incurred by the Group and not as a penalty.

If the Group decides to continue to hold the meeting at the Hotel, the Hotel will credit the equivalent number of room nights the block was reduced to the Group's guestroom block for record-keeping purposes for determining attrition, complimentary rooms, meeting room rental, and/or any other areas of this agreement affected by the Group's guestroom block.

RE SELL

Upon notice of cancellation and/or guestroom attrition by the Group to Hotel, Hotel will use reasonable efforts to resell the guestrooms. Hotel will prorate and credit the cancellation fee and/or attrition fee to the Group for any or all guestrooms resold. In addition, any fees received by Hotel from pre-paid nonrefundable group sub-block rooms and individual Event attendees under Hotel's individual no-show, room cancellation or early departure policies, will be credited to the Group. Prior to billing for cancellation/attrition Hotel must provide appropriate back-up, and then invoice the Group for only the difference in revenues (if any) still owed after the contracted dates of the Event have passed, and a mutually satisfactory audit has been completed by both parties.

DISCLOSURE OF IN-HOUSE GROUPS

The Hotel shall keep the Group informed of other in-house groups during the dates of the Event. Disclosure of in-house groups is to monitor the Group's affiliates that are hosting events in conjunction with the conference and to avoid other groups that could negatively affect the conference. (List Competitors Below)

RENOVATION

The Hotel shall promptly notify Group of any construction or remodeling to be performed either prior or over the meeting dates and the Hotel warrants that any such activity shall not interfere in any way with Group's meeting. Should this situation occur the Group would have justifiable reason to cancel without prejudice or penalty from the Hotel.

CHANGE OF OWNERSHIP

In the event of a sale, change in management, or the flag of the Hotel, the new owner and/or manager will be required, as a term of condition of the sale, to honor the Agreement for the Group. In the event of a change in current ownership and/or management of the Hotel prior to the arrival of this Event, the Group will have the opportunity to evaluate such change for the sole purpose of determining the new owner's or manager's management company's ability to provide the rooms and services set forth in this Agreement at a similar level of service than has been or is anticipated to be provided by the current owners and/or manager. The new owner or manager, as its option, shall have thirty (30) days to respond to said concerns. If adequate assurances related to the Group's specific concerns cannot be provided to the Group's satisfaction by the Hotel, then the Group may cancel the Agreement without liability or penalty of any kind whatsoever, and the Hotel shall refund all sums or deposits paid by the Group, under the Agreement.

ROOM BLOCK

The Group and HelmsBriscoe shall earn credit for any reservation, which may not be coded to the Group block, but can be proven to be a registered attendee at the meeting. Individual reservations made through an independent source and not originally viewed as an attendee reservation shall be counted towards the group room block. The Hotel will agree to credit the Group for these rooms/room nights for the purposes of earned comps and attrition. The Group may provide the Hotel with a printed registration list of meeting attendees for the Hotel to compare with the in-house total hotel list.

Hotel agrees to give Group credit for reservations made in a manner other than specified under Reservation Procedures in this Agreement. However, Hotel does not agree to increase or decrease the room rate; change any policies or special requirements associated with the reservation; nor eliminate, change, or pay additional commissions. The attendee must cancel or change the reservation through the channel in which the reservation was made.

BEST RATE AVAILABLE

The Group rate, before rebate, offered in this Agreement is and will remain the best rate available without restriction for a reservation made with Group's scheduled arrival and departure pattern. This will not include corporate volume or wholesale accounts.

GUEST ROOM ATTRITION

Hotel is relying on, and the Group agrees to provide, a minimum dollar amount of Guest Room Revenue which shall be defined as an amount equal to the number of room nights set forth in the Guest Room Accommodation chart above times the \$115.00 average room rate (exclusive of taxes and excluding food and beverage charges, meeting room rentals, and other non-room charges.)

The Hotel will extend a [20%] allowance in such expected guest room revenue. Should the actual Guest Room Revenue fall below 80% of the expected Guest Room Revenue, ADDISON JAZZ FESTIVAL will be responsible for the difference between [80%] of the expected Guest Room Revenue set forth above and the actual Guest Room Revenue, less the guest room revenue resulting from any rooms resold by the Hotel, at an agreed upon resale value equal to [80%] of the average Group room rate (or higher if the actual resale amount is higher than a value equal 80% of the average Group room rate).

Such resulting amount shall be subject to all applicable taxes, which shall be paid by the Group. For purposes of this Agreement, "rooms resold by the Hotel" shall be calculated by using the number of rooms that remain unsold by the Hotel. (By way of example, if the Group does not utilize 30 rooms from the room block on a given night, and 10 rooms remain unsold in the Hotel on that night, the payment due will be reduced by the revenue resulting from 20 rooms at a rate equal to 80% of the Group average room rate).

The Hotel and the Group agree that the payment described above is a reasonable estimate of the Hotel's damage resulting from the non-use of the room block and that the agreed rate is a reasonable estimate of the rate which will be achievable at the time of resale, and the payment does not constitute a penalty. The remedy provided in this section shall be Hotel's sole remedy for Guest Room Attrition.

 Authorized Hotel Signature
 (Print and sign)

 Date

 Authorized Group Signature
 (Print and sign)

 Date

Council Agenda Item: #R3

There are no attachments for this Item.

Council Agenda Item: #R4

SUMMARY:

This item is to request the Council's approval of an agreement with Cima Solutions Group for the purchase of three (3) IBM servers to replace the existing servers needed for the upgrade of the CAD (Computer Aided Dispatch) system. Cima Solutions Group is a State contractor... We chose Cima Solutions Group through DIR (Texas Department of Information Resources) instead of releasing a RFP.

DIR (Texas Department of Information Resources) is responsible for a cooperative contracts program that enables government entities to efficiently pool their purchasing power to drive down costs. The program provides an effective procurement channel to thousands of public sector entities across Texas. DIR simplifies the procurement process for public sector entities throughout the State by releasing RFP (Request for Proposal) and choosing vendors at the State level whom can be selected by State agencies and Local governments without issuing RFP... A copy of evaluation sheet and Cima's quote are attached.

FINANCIAL IMPACT:

Budgeted Amount: \$100,000

Cost: \$65,820.71

BACKGROUND:

In 2002, Tiburon, the Town's Public Safety Software Provider contacted the Town to inform us that in order for them to stabilize the cost of system support and upgrade, they were encouraging their clients, including Addison, to upgrade from their customized system to the baseline application. Addison welcomed their strategy and also suggested the creation of a steering committee comprised of their clients as a vehicle to recommend future enhancement for the baseline application, which indeed made future upgrades inexpensive and less labor intensive ... Addison has been in compliance and support of their strategy since then...

Currently the town's CAD is running on version 7.4 baseline which needs to be upgraded to 7.5 baseline in order to be in compliance with State and Federal requirements...

Because of the nature of the Public Safety environment, the Town is planning to implement this upgrade in parallel with the existing system. Under this design the existing system will be supporting the department's daily operation and the proposed servers will be used for the version 7.5 testing, training, migration, and replacement of the existing servers after system acceptance.

RECOMMENDATION:

Staff recommends that the Council authorize the City Manager to enter into an agreement with Cima Solutions Group for the purchase of (3) IBM servers, in the amount of \$65,820.71.



Quote 1638/1

Cima Solutions Group, LTD
 1503 LBJ Freeway, Suite 110
 Dallas, TX 75234
 Phone (972) 499-8260
 Fax (866) 259-0320

**Town of Addison - 911 System
 01/16/09**

Part #/Feature Code	Description	Quantity	Extended Price	Unit Price
Hardware and Software				
9110-51A/0000	SERVER 1:9110 MODEL 51A	1		
0009	SDI - LIGHT MFG ORDER	1		
0265	AIX PARTITION SPECIFY	1		
1900	IBM 4.7 GB IDE SLIMLINE DVD-RAM DRIVE	1		
1913	PCI-X DDR DUAL CHANNEL ULTRA320 SCSI RAID ADAPTER	1		
1930	1024 MB (2X512MB) DIMMS, 276-PIN, 533 MHZ, DDR-2 SDRAM	4		
1955	36/72GB INTERNAL TAPE DRIVE	1		
1971	73.4 GB 15,000 RPM ULTRA320 SCSI DISK DRIVE ASSEMBLY	2		
1980	POWER GXT135P GRAPHICS ACCELERATOR WITH DIGITAL SUPPORT	1		
4651	RACK INDICATOR, RACK #1	1		
6458	POWER CABLE -- DRAWER TO IBM PDU, 14-FOOT, 250V/10A	2		
7166	IBM/OEM RACK-MOUNT DRAWER RAIL KIT	1		
7195	IBM RACK-MOUNT DRAWER BEZEL AND HARDWARE	1		
7305	SOFTWARE PREINSTALL (SDI)	1		
7989	AC POWER SUPPLY, 700 W	1		
8283	1-CORE 2.1 GHZ POWER5+ PROCESSOR CARD, 36MB L3 CACHE	1		
8483	ZERO-PRICED EXPRESS PRODUCT OFFERING PROCESSOR ENTITLEMENT FOR #8283	1		
9300	LANGUAGE GROUP SPECIFY - US ENGLISH	1		
7014-T00/0000	RACK 1:RACK MODEL T00	1		
0233	RACK CONTENT SPECIFY: 7316/TF3 - 1EIA	1		
0249	RACK CONTENT SPECIFY: FC #5786 OR 7031-D24 - 4U	2		
0316	RACK CONTENT SPECIFY: 9110-51A - 2EIA	1		
4651	RACK INDICATOR, RACK #1	4		

Part #/Feature Code	Description	Quantity	Extended Price	Unit Price
6068	FRONT DOOR (BLACK) FOR HIGH PERFORATION (1.8M RACKS)	1		
6098	SIDE PANEL (BLACK)	2		
6654	PDU TO WALL POWERCORD 14', 200-240V/24A, UTG0247, PT#12	2		
7188	POWER DIST UNIT-SIDE MOUNT, UNIVERSAL UTG0247 CONNECTOR	1		
9188	POWER DISTRIB UNIT SPECIFY - BASE/SIDE MOUNT, UNIVERSAL UTG0247 CONNECTOR	1		
9300	LANGUAGE GROUP SPECIFY - US ENGLISH	1		
5313-HPO/0000	IBM POWER SOFTWARE HIPO	1		
0539	9110-51A ROUTING CODE	1		
0967	BASE OS	1		
1053	OS SPECIFY CODE FOR 5.3	1		
1403	64-BIT KERNEL	1		
1488	FIREFOX	1		
1489	IBM POWERHA 5.4	1		
1492	TAMOS CLIENT	1		
5924	ENGLISH PREINSTALL PII LANGUAGE	1		
7306	SDI SERIALIZE ONLY	1		
9210	HW IS RACK INTEGRATED	1		
	CAD 2000 Server Software			
5662-HMP/0000	IBM POWERHA REG:3YR	1		
0208	IBM POWERHA BASE SWMA PER PROC 3Y REG SMALL	1		
0210	IBM POWERHA BASE 3Y MNT PER PROC 24X7 SUP SMALL	1		
5692-A5L/0000	SYSTEM SOFTWARE	1		
0957	AIX TOOLBOX FOR LINUX SOURCE CD	1		
0967	AIX V5.3 STANDARD EDITION	1		
0968	EXPANSION PACK	1		
0970	AIX 5L V5.3 UPDATE CD	1		
1100	DVD PROCESS CHARGE	1		
1488	FIREFOX	1		
1489	IBM POWERHA V5.4	1		
2924	ENGLISH LANGUAGE	1		
3435	DVD/CD-ROM	1		
5765-F62/0000	IBM POWERHA V5	1		
0041	PER PROC WITH 1 YEAR SW MAINT SMALL	1		
5765-G03/0000	AIX 5L V5.3	1		
0034	VALUE PAK PER PROCESSOR D5 AIX V5.3	1		
5773-SM3/0000	SOFTWARE MAINTENANCE FOR AI 3 YEAR	1		
0458	D5 3 YR SWMA FOR AIX PER PROCESSOR REG/REN	1		
0460	D5 3 YR SERVICES 7X24 SUPPORT	1		

Part #/Feature Code	Description	Quantity	Extended Price	Unit Price
	PER PROCESSOR REG/REN			
	RMS 2000 Server with Storage			
9111-285/0000	SERVER 2:IBM INTELLISTATION 9111 MODEL 285	1		
0009	SDI - LIGHT MFG ORDER	1		
0009	PCI-X DDR Dual Channel Ultra320 LVD SCSI Adapter	1		
1913	PCI-X DDR DUAL CHANNEL ULTRA320 SCSI RAID ADAPTER	2		
1932	4096MB (2X2048MB) DIMMS, 276-PIN, 533 MHZ DDR-2 SDRAM	2		
1971	73.4 GB 15,000 RPM ULTRA320 SCSI DISK DRIVE ASSEMBLY	2		
1979	IBM 10/100/1000 BASE-TX ETHERNET PCI-X ADAPTER	1		
1980	POWER GXT135P GRAPHICS ACCELERATOR WITH DIGITAL SUPPORT	1		
5170	AC POWER SUPPLY, 700 W	1		
5326	1-CORE 2.1 GHZ POWER5+ PROCESSOR CARD, 36MB L3 CACHE	1		
6470	POWER CORD (6-FOOT), TO WALL (125V, 15A), PLUG TYPE #4	1		
6574	ULTRA320 SCSI 4-PACK	1		
7305	SOFTWARE PREINSTALL (SDI)	1		
7336	ONE PROCESSOR ENTITLEMENT F PROCESSOR FEATURE #5326	1		
7801	ETHERNET CABLE, 6M, HARDWARE MANAGEMENT CONSOLE TO SYSTEM UNIT	1		
7877	MEDIA BACKPLANE CARD	1		
9300	LANGUAGE GROUP SPECIFY - US ENGLISH	1		
7316-TF3/0000	IBM 7316-TF3 RACK-MOUNTED FLAT PANEL CONSOLE KIT	1		
4281	IBM 3M CONSOLE SWITCH CABLE (USB)	1		
4283	IBM 1X8 CONSOLE SWITCH	1		
4651	RACK INDICATOR, RACK #1	1		
8880	SPACE SAVER 2 KEYBOARD, US ENGLISH	1		
9300	LANGUAGE GROUP SPECIFY - US ENGLISH	1		
9911	POWER CORD (4M) ALL (STANDAR CORD)	1		
7031-D24/0000	I/O ENCLOSURE 1:IBM 7031 ULTRA 320 SCSI DISK STORAGE ENCLOSURE	1		
2125	ULTRA 320 SCSI CABLE 3 METER	3		
3278	73.4 GB 15,000 RPM ULTRA320 SCSI DISK DRIVE ASSEMBLY	17		
4651	RACK INDICATOR, RACK #1	1		
5741	SINGLE BUS ULTRA 320 SCSI REPEATER CARD	3		

Part #/Feature Code	Description	Quantity	Extended Price	Unit Price
6260	REDUNDANT OR BASE POWER SUPPLY FOR 7031 MODEL D24/T24 I/O ENCLOSURE	2		
6458	POWER CORD (14FT) 250V/14A, IEC320/C13, IEC320/C14	2		
9300	LANGUAGE GROUP SPECIFY - US ENGLISH	1		
5313-HPO/0000	IBM POWER SOFTWARE HIPO	1		
0540	9111-285 ROUTING CODE	1		
0967	BASE OS	1		
1053	OS SPECIFY CODE FOR 5.3	1		
1403	64-BIT KERNEL	1		
1488	FIREFOX	1		
1489	IBM POWERHA 5.4	1		
1492	TAMOS CLIENT	1		
5924	ENGLISH PREINSTALL PII LANGUAGE	1		
7306	SDI SERIALIZE ONLY	1		
	RMS 2000 Server Software			
5662-HMP/0000	IBM POWERHA REG:3YR	1		
0208	IBM POWERHA BASE SWMA PER PROC 3Y REG SMALL	1		
0210	IBM POWERHA BASE 3Y MNT PER PROC 24X7 SUP SMALL	1		
5692-A5L/0000	SYSTEM SOFTWARE	1		
0957	AIX TOOLBOX FOR LINUX SOURCE CD	1		
0967	AIX V5.3 STANDARD EDITION	1		
0968	EXPANSION PACK	1		
0970	AIX 5L V5.3 UPDATE CD	1		
1100	DVD PROCESS CHARGE	1		
1488	FIREFOX	1		
1489	IBM POWERHA V5.4	1		
2924	ENGLISH LANGUAGE	1		
3435	DVD/CD-ROM	1		
5765-F62/0000	IBM POWERHA V5	1		
0041	PER PROC WITH 1 YEAR SW MAINT SMALL	1		
5765-G03/0000	AIX 5L V5.3	1		
0031	PER PROCESSOR D5 AIX 5L V5.3	1		
5773-SM3/0000	SOFTWARE MAINTENANCE FOR AI 3 YEAR	1		
0458	D5 3 YR SWMA FOR AIX PER PROCESSOR REG/REN	1		
0460	D5 3 YR SERVICES 7X24 SUPPORT PER PROCESSOR REG/REN	1		
	x3550 WebQuery and CARS Server			
7978BJU/0000	IBM SYSTEM X3550 3.00G 12 2/0	1		
39M5785/0000	2GB (2X1GB) PC2-5300 DDR2	1		
43X0824/0000	IBM SERVER 146GB SAS 10K SFF HS	2		
32R2815/0000	X3550 REDUNDANT POWER SUPPL	1		

Part #/Feature Code	Description	Quantity	Extended Price	Unit Price
	670W (US)			
P177/E2/0000	INTEGRATION SERVICES	1		
	Hardware and Software Total		\$52,842.63	
	HW Maintenance and Services			
21P2073	24x7x4 3-Yr Maintenance x3550 Intel Server	1		
WSU_Maint	24x7x4 3-Yr Maintenance AIX/Storage Hardware	1		
	Maintenance and Services Total		\$12,978.08	
	cima rebate	1		
	GRAND TOTAL FOR CONFIG			
			Grand Total	\$65,820.71

Pricing contained in this quote is valid from 01/15/09 until 01/29/09.

Council Agenda Item: **#R5**

SUMMARY:

This item is to request the Council's approval of a contract with AT&T for construction and installation of an Opt-E-Man network to replace the existing T1(s) communication lines (Data & Voice) between 16801 Westgrove Dr. and 5300 Belt Line Rd., 5350 Belt Line Rd., 4799 and 4798 Airport Parkway, 15650 Addison Rd. and 3900 & 3950 Beltway Dr. A copy of evaluation sheet and contracts are attached...

FINANCIAL IMPACT:

The Town currently pays ATT \$4,611 per month for telecommunication services (voice and data). Installation of an enhanced communication system will require a non-recurring capital cost of \$64,444. However, once the system is installed, monthly rates will drop to \$3,899. The costs of installation can be supported by the Information Technology Capital Replacement fund. Although this item is not budgeted, the fund has sufficient resources to support this expense that would be recognized with a mid-year budget adjustment.

BACKGROUND:

In June of 2006, the Information Technology Department was charged with the responsibility of supporting and managing the town's existing telecommunication (Voice) network in addition to managing and supporting its existing data network. In order to minimize cost and optimize our resources we started searching for a solution to upgrade and consolidate the town's data and voice networks...

Currently, Addison has a ***star topology*** network for its data and voice networks... Under the current layout there are 2 dedicated T1(s) communication lines (one dedicated to data and one to voice) that are connecting 16801 Westgrove Dr. (Service Center) to each facility in the town (Town Hall, Finance, Conference Centre/Theatre, Athletic Club/Fire Station2, Celestial Pump Station, and Police/Fire #1).

Initially, when we installed the data network 11 years ago the current design was an ideal solution. But as the network grew so did the demand on the network bandwidth which is now overtaxed and has become a challenge to manage, with users encountering significant delays in accessing information.

However, due to our persistent effort, excessive buried Fiber lines nationwide, and drastic drop on Fiber cost, Addison is in a favorable situation to consolidate

and upgrade its data and voice networks from T1 (1.544 Mbps) to a burst-able Fiber (10Mbps) network.

The proposed solution will put Addison's network on a VLAN (Virtual Local Area Network) with 10 Mbps speed to each location and 50 Mbps speed to the public domain network. This proposed design will increase our connectivity speed by 10 times to each location and 50 times to the outside world. It also provides the following benefits:

- It has scalable bandwidth on DEMAND (e.g. Live broadcast of Special Events and Council Meetings),
- It's truly redundant - Disaster Recovery connection,
- It's an expandable network (e.g. Surveillance cameras at intersection, possible additional locations)
- It's robust enough to resolve the current challenges (e.g. Online Training, File Transfer, and Full Streaming Video) and offer more.

RECOMMENDATION:

Staff recommends that the Council authorize the City Manager to enter into a contract with AT&T for construction and installation of an Opt-E-Man network to replace the town's existing T1(s) communication lines subject to the City attorney's final approval.

#R5-2

Four (4) carriers/providers offered proposals.

Rescue Communications, an XO reseller, quoted \$9000 monthly for six sites, Service Center and five secondary sites. This is significantly higher than the AT&T and Time Warner proposals.

RWT (Randy White Telecommunications) quoted \$10,050 monthly for six sites, Service Center and five secondary sites....

	AT&T Opteman	Time Warner Cable Metro Ethernet
Cost as proposed	<p>\$5,155.01 monthly is the total quote after speaking to AT&T on 7/23/2008 when he clarified that AT&T's quote is the total of 3/18 and 7/17 quotes. This is for 5 years. Per AT&T this is for normal Opte-Man service rather than mid-band Opte-Man, which AT&T would have even more difficulty providing.</p> <p>\$3,899 monthly for the actual WAN links or \$780.21 monthly per 10 Mbps link on a 5-year contract. This was proposed on 3/18/2008. See below for additional links.</p> <p>\$64,443.60 in construction costs, or \$1256.01 monthly over 5 years (to match the above 5-year contract). This quote was proposed on 7/17/2008.</p> <p>AT&T costs should go down after the initial 5-year contract expires and construction payments have been completed. However, the \$3901.04 rate was originally proposed in 2006 and AT&T went to great lengths to get approval to offer this rate to us again in March 2008. Therefore, while our rate after 5 years will no longer include construction costs, it may be somewhat higher than our current rate.</p>	<p>\$5400 monthly for Service Center and six sites, plus a one-time \$3000 install cost (\$500 per site) over a 3-year contract.</p> <p>Time Warner costs would remain basically the same after the 3-year contract expires.</p>
Initial Length of Contract	5 Years	3 Years

	AT&T Opteman	Time Warner Cable Metro Ethernet
QoS and/or Traffic Shaping?	<p>On 9/15/2008, AT&T stated that AT&T can provide QoS but they do not provide any traffic shaping. In other words, they can tag packets as “voice,” but they do not set minimum or maximum bandwidth allocations.</p> <p>Bottom line: We must provide this ourselves.</p> <p>12/24/2008: When researching WAN optimization products. Rate shaping appears to be a standard QoS feature for equipment. It seems that it would be more accurate, then, to say that AT&T can tag voice traffic for us but they will not rate shape it.</p>	<p>Time Warner does not provide this. We must provide this ourselves.</p>
Point-to-Point?	<p>Yes, we do not need to provide VPNs between sites.</p>	<p>Yes, we do not need to provide VPNs between sites.</p>
Installation Prerequisites	<p>AT&T has strict installation requirements. Equipment must have adequate wall space or be installed in a dedicated rack containing only AT&T equipment. The additional time and cost of these prerequisites is difficult to quantify.</p> <p>This may not be a disadvantage. While this is less flexible, it may simplify troubleshooting as it may be easier to isolate faults that occur in AT&T’s equipment.</p>	<p>Time Warner is flexible with respect to installation of on-premise equipment. Equipment may share racks with customer-owned equipment.</p>
Maximum Bandwidth	<p>Maximum is 1 Gbps but would require installation of additional equipment if/when we go above 100 Mbps per AT&T on 10/13/2008.</p>	<p>Maximum is 1 Gbps. On 10/14/2008, a document summarizing answers to prior questions states that it may be necessary to install a switch with additional “headroom” if growth exceeds original plans.</p>

	AT&T Opteman	Time Warner Cable Metro Ethernet
<p>Bandwidth Increments</p>	<p>5 Mbps 10 Mbps 20 Mbps 50 Mbps 100 Mbps 250 Mbps 500 Mbps 1000 Mbps</p>	<p>10 Mbps 20 Mbps 30 Mbps 45 Mbps 60 Mbps 70 Mbps 85 Mbps 100 Mbps 300 Mbps 500 Mbps 700 Mbps 1000 Mbps</p>
<p>Packet Delivery Rate</p> <p>http://www.en.voipforo.com/QoS/QoS_PacketLoss.php</p> <p>According to the above independent site, the lowest acceptable packet loss rate for VoIP is 1%. Both AT&T and Time Warner exceed this requirement.</p> <p>If our VoIP is configured so that silence is not sent, this should free up some bandwidth to further mitigate packet loss.</p>	<p>99.9% Silver Service Level Agreement (recommended for voice)</p> <p>This is a key advantage of AT&T's proposal. The difference between voice and "normal data" is that dropped voice packets cannot be re-transmitted.</p> <p>AT&T recommends that the customer implement traffic shaping to ensure that packets are not dropped.</p>	<p>99.9% On 10/14/2008 via voice mail, Time Warner said 0.1% packet loss.</p>

	AT&T Opteman	Time Warner Cable Metro Ethernet
<p>Latency</p> <p>http://www.en.voipforo.com/QoS/QoS_Latency.php</p> <p>Latency is delay. In VoIP, it is recommended that latency is kept below 150 ms as latency becomes noticeable at 150 ms. Reserving bandwidth (traffic shaping) helps ensure that VoIP traffic occurs in real-time.</p>	<p>18 ms one way Silver Service Level Agreement</p> <p>From Morris Starks 9/08/2006. This is a key advantage of AT&T's proposal.</p>	<p>65 ms is less than AT&T, but still well within recommended limit of 150 ms.</p>
<p>Jitter</p> <p>http://www.en.voipforo.com/QoS/QoS_Jitter.php</p> <p>Jitter is how much latency varies. In VoIP, if voice packets do not arrive within a certain time, the net effect is comparable to dropped packets. The recommended VoIP threshold is that jitter should be under 100 ms. Jitter buffers may help mitigate the effects of jitter. Note that large buffers can effectively eliminate jitter but would introduce delay into the voice conversation.</p>	<p>12 ms Silver Service Level Agreement</p> <p>This is a key advantage of AT&T's proposal.</p>	<p>On 10/14/2008 voice mail, Time Warner said they should be with 65 ms latency and that shouldn't have jitter. Time Warner said jitter usually doesn't occur unless latency is over 150 ms. Time Warner also said he is looking into jitter in more detail.</p> <p>This answer suggests that jitter isn't expected to be a problem over fiber but it isn't guaranteed by Time Warner's Service Level Agreement. This response also underscores Time Warner's lack of emphasis on voice.</p>

	AT&T Opteman	Time Warner Cable Metro Ethernet
Availability	99.95%	99.95%
Turnaround Time to Increase Bandwidth	AT&T had stated this is a matter of provisioning, but neither have provided average response time to complete such a request.	This is a matter of provisioning, and Time Warner has consistently stated that such requests would be completed in 72 hours.
On-premise Requirements	<p>4' X 4' wall space or room for a rack dedicated to AT&T equipment, which may not reside in a rack with customer-owned equipment.</p> <p>One 110V 15amp outlet, grounded. Must be a dedicated wall outlet. Since a dedicated wall outlet is required, we must install an outlet at Athletic Club 2nd floor where the on-premise equipment would be located.</p> <p>After meeting with AT&T, my notes from 4/24/2008 are that construction is definitely required for Fire2/Athletic, Town Hall, and Finance.</p>	<p>4' X 6' wall space or 3' X 3' floor space. Equipment may reside in a customer rack with customer-owned equipment.</p> <p>One 110V 20amp outlet.</p> <p>After site visits with TWC, my notes from 6/04/2008 are that Conference/Theatre does not have any known path for cable service so this requires construction. Construction required for Town Hall and Finance.</p>
Connecting the "Last Mile" from provider's network to our buildings	Traditional wired installation. Construction is required for Fire2/Athletic, Town Hall, and Finance.	<p>Would like to discuss traditional wired installation. Can provide FSO (free space optics/lasers) upon request. While we wouldn't depend on FSO, this could provide redundant "last mile" connections.</p> <p>Construction is required for Town Hall and Finance, and is likely required for Conference/Theatre.</p>

	AT&T Opteman	Time Warner Cable Metro Ethernet
<p>Disaster Recovery</p> <p>In a worst case scenario, the Service Center would be lost. Regardless of whether we choose AT&T or Time Warner, we would need to order new Internet and PRI phone service for a replacement data center.</p> <p>The actions required to re-establish our WAN, however, would differ.</p>	<p>For the most part, we would have a hub & spoke topology with the Service Center as the hub, plus a likely redundant link from Fire1/Police to/from Fire2/Athletic.</p> <p>In the event of a disaster to the Service Center, AT&T would have to re-provision links to connect the Town's remaining sites and we would need to reprogram our remaining routers for the new network configuration.</p>	<p>We could have as many links as we'd like. In the event of a disaster to the Service Center, redundant links would already exist to/from the Town's remaining sites. It would be relatively simple to implement a logical ring topology that provides every site with a redundant link.</p>

	AT&T Opteman	Time Warner Cable Metro Ethernet
<p>Reputation & Intangibles</p>	<p>The Town has an established working relationship with AT&T. AT&T has more procedural requirements/limitations.</p>	<p>Time Warner provided 7 public sector references since we have not previously worked with them to provide mission critical services.</p> <p>The following references responded with positive comments, but none use Time Warner for voice:</p> <ul style="list-style-type: none"> • Lenann Welter, Copperra Cove ISD • Wesley Terry, City of Lewisville • Paul Chavez, Region 13 Educational Service Center <p>The following references did not respond:</p> <ul style="list-style-type: none"> • Jesus Medeles, Region 1 Educational Service Center • Jacque Davidson, Region 19 Educational Service Center • Dustin Malcom, Town of Flower Mound <p>Incorrect contact information was provided for the following reference:</p> <ul style="list-style-type: none"> • Harriet Jackson, Region 20 Educational Service Center



**Pricing Schedule for AT&T ILEC Services
Provided in the State of Texas Pursuant to
Tariff or Guidebook**

Pricing Schedule to AT&T Agreement Reference No. _____

CUSTOMER ("Customer")	AT&T ("AT&T")
Town of Addison Street Address: 16802 Westgrove Dr City: Addison State: TX Zip Code: 75001 Billing Address (if different) Street Address: 16801 Westgrove Dr City: Addison State: TX Zip Code: 75001	AT&T Corp.
CUSTOMER Contact (for Contract Notices)	AT&T Sales Contact Information and for Contract Notices <input checked="" type="checkbox"/> Primary Sales Contact
Name: Hamid Khalighapour Title: Director of IT Telephone: 972-450-2868 Fax: 972-450-2834 Email: hkhalighapour@addisontx.gov Address for Notices <input checked="" type="checkbox"/> Same as Cust. Address above <input checked="" type="checkbox"/> Same as Billing Address Address for Notices (if different) Street Address: City: State: Zip Code:	Name: Trasey Allen Title: TSC I Telephone: 214-571-7949 Fax: 214-761-8179 Email: tn2223@att.com Street Address: 208 S. Akard St. 12 th floor City: Dallas State: TX Zip Code: 75202 <u>With a copy to:</u> AT&T Corp. One AT&T Way, Bedminster, NJ 07921-0752 ATTN: Master Agreement Support Team Email: mast@att.com
AT&T Authorized Agent or Representative Information (if applicable) <input type="checkbox"/> Primary Sales Contact	
Name: Company Name: Agent Street Address: City: State: Zip Code: Telephone: Fax: Email: Agent Code	

This Pricing Schedule ("Pricing Schedule") is an attachment to the Master Agreement between AT&T and Customer referenced above, and is part of the parties' Agreement. The Parties acknowledge and agree that this Pricing Schedule represents individual case pricing that is offered to Customer because of the unique or specialized conditions of the AT&T business services purchased by Customer, and, where required, that this Pricing Schedule will be filed with the state public utilities commission with competent jurisdiction over the service offering provided hereunder. Service is provided by the AT&T Incumbent Local Exchange Carrier (ILEC) Affiliate identified below as the Service Provider within its respective service area. References to "Pricing Schedule" refer to this Pricing Schedule and any attachments attached hereto, and referencing this document.

[] By initialing, Customer hereby acknowledges receipt of the AT&T customer building / site preparation document for OPT-E-MAN Service which describes the physical conditions of customer premises that must be made available before Service can be installed. Note: Customer site preparation is a major factor impacting service implementation dates.

Service Provider: Southwestern Bell Telephone Company d/b/a AT&T Texas

Customer (by its authorized representative)	AT&T (by its authorized representative)
By:	By:
Printed or Typed Name:	Printed or Typed Name:
Title:	Title:
Date:	Date:



GENERAL TERMS AND CONDITIONS

The following terms and conditions apply to the Services subscribed to by Customer under this Pricing Schedule.

1. DEFINITIONS

“Cutover” is when the Service is first provisioned or otherwise available for Customer’s use at any single Site pursuant to this Pricing Schedule.

Tariffs and Guidebooks. “Tariffs” are documents containing the standard descriptions, pricing, and other terms and conditions for a Service that AT&T files with regulatory commissions. “Guidebooks” are documents containing the standard descriptions, pricing, and other terms and conditions for a Service that were, but no longer are, filed with regulatory commissions. Tariffs and AT&T Guidebooks may be found at URL www.att.com/servicepublications.

2. GENERAL DESCRIPTION OF SERVICE(S) TO BE PROVISIONED, INSTALLED AND MAINTAINED.

The Service(s) described below are provided solely by the AT&T entity or entities identified above and are not jointly provided with any other carrier. Service(s) are provided pursuant to the terms and conditions set forth in the appropriate Tariff(s) and/or Guidebook. To the extent there are any inconsistencies between this Pricing Schedule and the applicable Tariff or Guidebook, this Pricing Schedule shall take precedence.

Service	Description
OPT-E-MAN®	<p><u>OPT-E-MAN® Service.</u> OPT-E-MAN® Service transparently interconnects two or more Customer locations within a Metropolitan Area Network (MAN) as if they were segments on the same LAN using packet-based switching technologies. OPT-E-MAN® Service provides dedicated bandwidth from 2 Mbps up to 1 Gbps. The handoff to Customer will be a 10/100 Mbps or 1 Gbps Ethernet interface.</p> <p>Customers may connect any two or more locations together, as long as they are in the same LATA or MAN and OPT-E-MAN® Service is available. OPT-E-MAN® Service offers logical point-to-point or point-to-multipoint or multipoint-to-multipoint configurations that support Ethernet-to-Ethernet LAN connections. If Customer connects to the OPT-E-MAN network using a bridge or switch for Layer 2 connectivity, only 50 Media Access Control (MAC) addresses can be used per Layer 2 device, per port. Any additional MAC addresses will be assigned additional charges, with a limit of 100 MAC addresses total per port as set forth in the applicable Tariff or Guidebook.</p>

3. TERM START DATE; PRICING SCHEDULE TERM; PROVISION OF SERVICES AFTER PRICING SCHEDULE TERM

Term Start Date and Pricing Schedule Term
<p>For the Service(s) offered under this Pricing Schedule, the Term Start Date shall be the later of (1) Cutover of the first Service(s) at the first Customer Site or (2) the Effective Date or (3) the date of approval of this Pricing Schedule by an appropriate regulatory body, if regulatory approval is required for this Pricing Schedule for Service(s). For the Service(s) offered under this Pricing Schedule, the term of this Pricing Schedule shall be sixty (60) months after the Term Start Date (“Pricing Schedule Term”). Rates or discounts under this Pricing Schedule shall be applied on Term Start Date. Upon the expiration of the Pricing Schedule Term, no rates or discounts provided under this Pricing Schedule will apply to the Service(s). For the Service(s) provided under this Pricing Schedule, upon expiration of the Pricing Schedule Term, Customer will have the option to either (a) cease using the Service(s) (which will require Customer to take all steps required by AT&T to terminate the Service(s)), or (b) continue using the Service(s) on a month-to-month service arrangement, during which the prices in the Pricing Schedule will automatically be changed to the then-current monthly extension rates (if any) or month-to-month rate specified in the applicable Tariff or Guidebook. After expiration of the Pricing Schedule Term, AT&T may modify rates, terms and conditions applicable to the Service(s) on thirty days’ notice.</p> <p>This Pricing Schedule will expire when Service(s) or Service Component(s) are no longer provided under this Pricing Schedule.</p> <p>New Service(s) in at least the minimum quantities specified in Section 11.2 must be ordered under this Pricing Schedule with a scheduled installation date not later than six (6) months after the Term Start Date.</p>



4. ADDITIONAL SERVICES, INSTALLATION, ADDS, MOVES AND CHANGES

Unless otherwise stated herein, for all other moves and changes of any Service provided hereunder, Customer will pay the prevailing Tariff or Guidebook recurring and non-recurring charge, plus any additional cost recovery that may be assessed. If the Service or Service Component is available only under an individual case pricing, then for all moves and changes of any Service provided hereunder Customer will pay AT&T's price for such move or change, as determined by AT&T at the time of the move or change. Any additional services other than the Service(s) provided under this Pricing Schedule will be provided at the prevailing Tariff or Guidebook rates, terms and conditions unless otherwise mutually agreed in writing, and must be purchased under either a separate Pricing Schedule, or an amendment to this Pricing Schedule, signed by both Customer and AT&T.

For the Service Component(s) listed under the "Quantity New" column in Section 11.2 below, the monthly rate per USOC as provided in Section 11.2 includes the non-recurring charge (or portion thereof) to initially provision and install the new Service(s).

5. PRICING

Customer will pay the rates set forth in Section 11.2 below. The rates and charges stated in this Pricing Schedule are stabilized until the end of the Pricing Schedule Term, and apply in lieu of the corresponding rates and charges set forth in the applicable Tariff or Guidebook. No discount, promotion, credit or waiver set forth in a Tariff or Guidebook will apply unless specifically set forth herein and, when set forth herein, such discount, promotion, credit or waiver shall only be applied in the manner set forth in the applicable Tariff or Guidebook. No other discount, promotion, credit or waiver set forth in a Tariff or Guidebook will apply.

6. TAXES & OTHER CHARGES-

6.1 Other Rate Elements. Any rate elements not described herein will be subject to the applicable rates and charges outlined in the Tariff(s) or Guidebook(s).

6.2 Additional Charges and Taxes. Rates set forth in this Pricing Schedule and the Tariff(s) or Guidebook(s) are exclusive of, and Customer will pay, all current and future taxes (excluding those on AT&T's net income), surcharges, recovery fees, end user access charges, and other similar charges (and any associated interest and penalties resulting from Customer's failure to timely pay such taxes or similar charges) relating to the sale, transfer of ownership, installation, license, use or provision of the Services, except to the extent Customer provides satisfactory proof of a valid tax exemption prior to the delivery of Services. To the extent Customer is required by law to withhold or deduct any applicable taxes from payments due to AT&T, Customer will use reasonable commercial efforts to minimize any such taxes to the extent allowed by law or treaty, and Customer will furnish AT&T with such evidence as may be required by relevant taxing authorities to establish that such tax has been paid so that AT&T may claim any applicable credit.

7. TERMINATION BEFORE EXPIRATION OF PRICING SCHEDULE TERM (E.G., TERMINATION FOR CONVENIENCE)

If Customer terminates Service(s), in whole or in part, for any reason other than default by AT&T, or AT&T terminates for Customer's default, prior to the Cutover Date, the Customer must reimburse AT&T for all expenses incurred in processing the Order and installing the required equipment and facilities completed up to the date of termination, and termination liability as provided in this section below shall not apply.

If Customer terminates Service(s), in whole or in part, for any reason other than default by AT&T, or AT&T terminates for Customer's default, on or after the Term Start Date but before the scheduled completion of the Pricing Schedule Term or term applicable to such Service(s), Customer shall pay a termination liability of an amount equal to (a) all unpaid non-recurring charges (excluding non-recurring charges that were waived or incorporated into the monthly recurring rates), (b) fifty percent (50%) of the recurring monthly charges rate for the terminated Service(s) as set forth in this Pricing Schedule, multiplied by the number of months remaining in the term applicable to such Service(s) at the time of termination, and (c) any unpaid applicable special construction liabilities and/or and customer premise custom fiber build liabilities.

Unless otherwise stated herein, Service(s) provided under this Pricing Schedule must remain at the location(s) at which the Service(s) are installed for the entire Pricing Schedule Term or the term applicable to such Service(s). If Customer fails to maintain the Service(s) provided under this Pricing Schedule at the locations required under the preceding sentence for any reason other than default by AT&T, Customer shall be liable for termination charges calculated in the manner specified in this Section.



8. TARIFFS AND REGULATORY REQUIREMENTS

This Pricing Schedule may be subject to the jurisdiction of a regulatory commission and will be subject to changes or modifications as the controlling commission may direct from time to time in the exercise of its jurisdiction. Therefore, for this purpose, this Pricing Schedule will be deemed to be a separate agreement with respect to the Services offered in a particular jurisdiction.

AT&T will, subject to the availability and operational limitations of the necessary systems, facilities, and equipment, provide the Services pursuant to the terms and conditions in the Tariff or Guidebook. If approval is required and not obtained, then this Pricing Schedule will immediately terminate, and Customer shall receive a refund of any non-recurring charge paid and pre-paid amounts for Services not received.

9. SPECIAL TERMS AND CONDITIONS

9.1 Texas Terms and Conditions. To the extent this Pricing Schedule relates to regulated Services provided in Texas, Customer acknowledges the possibility of purchasing the Services provided hereunder from other providers.

10. SERVICES AND JURISDICTION CERTIFICATION

Customer acknowledges and certifies that the total interstate traffic (including Internet traffic) on the Service(s) constitutes ten percent (10%) or less of the total traffic on the Service.

11. CUSTOMER COMMITMENT AND RATES

Terms and conditions relating to MARCs, MARC-Eligible charges and Minimum Payment Period set forth in the Agreement shall not apply to the Service(s) provided under this Pricing Schedule rather, the following will apply:

11.1. Customer Commitment

SERVICE QUANTITY COMMITMENT	AS SPECIFIED IN SECTION 11.2
Customer agrees to purchase the Service(s) identified in Section 11.2 in the quantities identified in Section 11.2 for the duration of the Pricing Schedule Term or other applicable minimum Service term.	
If Customer does not order at least the specified quantities of each of the New Services identified in Section 11.2 below and have them installed pursuant to this Pricing Schedule, AT&T reserves the right to charge a one-time shortfall charge of 50% of the Monthly Recurring Rate for each such Service Component not installed by the end of such time period times the number of months in the Pricing Schedule Term. Customer will be billed for the shortfall charge, and payment will be due 30 days after the invoice date.	

11.2 Rates

Service Components, Quantities, Monthly Rates

Service	Description – Service Components / USOC	Quantity New	Monthly Recurring Rate, each
OPT-E-MAN	OPT-E-MAN [®] Basic Connect 1G / P9FGX	1	\$399.50
OPT-E-MAN	OPT-E-MAN [®] Basic Plus Connect 10/100M / P9FFX	5	\$270.25
OPT-E-MAN	CIR Speed 10 Mbps (Silver) / R6EBC	5	\$314.50
OPT-E-MAN	CIR Speed 50 Mbps (Silver) / R6EHC	1	\$575.75



12. SERVICE LOCATIONS - Texas

LOCATION (street address and Common Language Location Identifier (CLLI) code and/or City)
16801 Westgrove, Addison, ADSNTXEG
5300 Belt Line Rd, Dallas, ADSNTXEF
15650 Addison Pkwy, Addison, ADSNTXED
5350 Belt Line Rd, Dallas, ADSNTXEH
4798 Airport Pkwy, Addison, ADSNTXFR
3900 Beltway Dr, Addison, ADSNTXEE

End of Document



MASTER AGREEMENT

Customer	AT&T
Town of Addison Street Address: 16801 Westgrove Drive City: Addison State/Province: TX Zip Code: 75001 Country: USA	AT&T Corp.
Customer Contact (for notices)	AT&T Contact (for notices)
Name: Hamid Khaleghipour Title: Director Information Technology Street Address: 16801 Westgrove Dr City: Addison State/Province: TX Zip Code: 75001 Country: USA Telephone: 972-450-2868 Fax: 972-450-2834 Email: hkhaleghipour@addisontx.gov	Street Address: 208 S. Akard St. 12 th Floor City: Dallas State/Province: TX Zip Code: 75202 Country: USA With a copy to: AT&T Corp. One AT&T Way Bedminster, NJ 07921-0752 ATTN: Master Agreement Support Team Email: mast@att.com

This Master Agreement ("Master Agreement"), between the customer named above ("Customer") and the AT&T entity named above ("AT&T"), is effective when signed by both Customer and AT&T, and continues in effect as long as Services are provided under this Master Agreement.

This Master Agreement will apply to all services and equipment Customer buys from AT&T, now and in the future, that are provided under Pricing Schedules attached to or referencing this Master Agreement ("Services"). Other Services may be provided by signing additional Pricing Schedules at any time. AT&T standard service offerings are described in Tariffs, Guidebooks, Service Guides and other documents identified in this Master Agreement.

Customer (by its authorized representative)	AT&T (by its authorized representative)
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:

1. INTRODUCTION

1.1 **Overview of Documents.** The terms and conditions governing the Services that AT&T provides to Customer are set forth in this Master Agreement, the following additional documents, and any other documents executed by the parties and referencing this Master Agreement (which documents together with this Master Agreement are called “this Agreement”):

- (a) **Pricing Schedules.** A Pricing Schedule (including related attachments) identifies the Services AT&T may provide to Customer, the price (including discounts, if applicable) for each Service, and the term during which such prices are in effect (“Pricing Schedule Term”).
- (b) **Tariffs and Guidebooks.** “Tariffs” are documents containing the standard descriptions, pricing, and other terms and conditions for a Service that AT&T files with regulatory commissions. “Guidebooks” are documents containing the standard descriptions, pricing, and other terms and conditions for a Service that were, but no longer are, filed with regulatory commissions. Tariffs and Guidebooks may be found at att.com/servicepublications or other locations AT&T may designate.
- (c) **Acceptable Use Policy.** AT&T’s Acceptable Use Policy (“AUP”) applies to Services provided over or accessing the Internet. The AUP may be found at att.com/aup, or other locations AT&T may designate.
- (d) **Service Guides.** The description, pricing, and other terms and conditions for the Service not covered by a Tariff or Guidebook may be contained in a Service Guide, which may be found at att.com/servicepublications or other locations AT&T may designate.

1.2 **Priority of Documents.** The order of priority of the documents that form this Agreement is: Pricing Schedules; this Master Agreement; the AUP; and Tariffs, Guidebooks and Service Guides; *provided that*, Tariffs will be first in priority in any jurisdiction where existing law or regulation does not permit contract terms to take precedence over inconsistent tariff terms.

1.3 **Revisions to Documents.** Subject to Section 8.2(c) (Materially Adverse Change), AT&T may revise Tariffs, Guidebooks, Service Guides or the AUP (collectively “Service Publications”) at any time.

1.4 **Execution by Affiliates.** An AT&T Affiliate or Customer Affiliate may sign a Pricing Schedule referencing this Agreement in its own name and such Affiliate contract will be a separate, but associated, contract incorporating the terms of this Master Agreement with respect to that Pricing Schedule. Customer and AT&T will arrange to have their respective Affiliates comply with this Agreement, regardless of whether an Affiliate has signed a Pricing Schedule.

1.5 **Capitalized Terms.** Capitalized terms not otherwise defined in this Agreement are defined in Section 11 (Definitions).

2. AT&T DELIVERABLES

2.1 **Services.** AT&T agrees to either provide or arrange to have an AT&T Affiliate provide Services to Customer in accordance with this Agreement, subject to availability and operational limitations of systems, facilities and equipment. Where required, an AT&T Affiliate authorized by the appropriate regulatory authority will be the service provider.

2.2 **AT&T Equipment.** Services may include use of certain equipment owned by AT&T that is located at the Site (“AT&T Equipment”), but title to the AT&T Equipment will remain with AT&T. Customer must provide electric power for the AT&T Equipment and keep the AT&T Equipment physically secure and free from liens and encumbrances. Customer will bear the risk of loss or damage to AT&T Equipment (other than ordinary wear and tear) except to the extent caused by AT&T or its agents.

2.3 **Software.** Any software used with the Services will be governed by the written terms and conditions applicable to such software. Title to software remains with AT&T or its supplier. Customer must comply with all such terms and conditions and they take precedence over this Agreement as to such software.

3. CUSTOMER’S COOPERATION

3.1 **Access Right.** Customer will in a timely manner allow AT&T to access property and equipment that Customer controls as reasonably required to provide the Services, and Customer will obtain, at Customer’s expense, timely access for AT&T to property that Customer does not control (other than public property) as reasonably required to provide the Services. Access rights include the right to construct, install, repair, maintain, replace and remove access lines and network facilities, as well as to use ancillary equipment space within a building, as necessary for Customer’s connection to AT&T’s network. Customer must provide AT&T timely information and access to Customer’s facilities and equipment as AT&T reasonably requires to provide the Services, subject to Customer’s reasonable security policies. Customer will furnish any conduit, holes, wireways, wiring, plans, equipment, space, power/utilities, and other items reasonably required to perform installation of the

Services, and obtain any necessary licenses, permits and consents (including easements and rights-of-way). Customer will have the Site ready for AT&T to perform its work according to a mutually agreed schedule.

3.2 Safe Working Environment. Customer will ensure that the location at which AT&T installs, maintains or provides Services is a suitable and safe working environment, free of Hazardous Materials. "Hazardous Materials" means any substance or material capable of posing an unreasonable risk to health, safety or property or whose use, transport, storage, handling, disposal, or release is regulated by any law related to pollution, protection of air, water, or soil, or health and safety. AT&T does not handle, remove or dispose of Hazardous Materials, and AT&T has no obligation to perform work at a location that is not a suitable and safe working environment. AT&T will not be liable for any Hazardous Materials.

3.3 Users. "User" means anyone who uses or accesses any Service provided to Customer. Customer will cause Users to comply with this Agreement, and Customer agrees that Customer is responsible for Users' use of any Services, unless expressly provided to the contrary in applicable Service Publications.

3.4 Internet Services. If a Service is provided over or accesses the Internet, Customer, Customer's Affiliates, and Users must comply with the AUP.

3.5 Resale of Services. Customer may not resell the Services to third parties without AT&T's written consent. Where permitted under applicable law, Customer may resell the Services to Customer's Affiliates without AT&T's consent.

4. PRICING AND BILLING

4.1 Pricing and Pricing Schedule Term; Terms Applicable After End of Pricing Schedule Term. Unless a Pricing Schedule states otherwise, the prices listed in a Pricing Schedule are stabilized until the end of the Pricing Schedule Term. No promotion, credit or waiver set forth in a Service Publication will apply unless the Pricing Schedule states otherwise. At the end of a Pricing Schedule Term, Customer will have the option to either: (a) cease using the Service (which will require Customer to take all steps required by AT&T to terminate the Service); or (b) continue using the Service under a month-to-month service arrangement. Unless a Pricing Schedule states otherwise, during any month-to-month service arrangement, the prices, terms and conditions in effect on the last day of the Pricing Schedule Term will continue until changed by AT&T on 30 days' prior notice to Customer.

4.2 Additional Charges and Taxes. Prices set forth in a Pricing Schedule are exclusive of, and Customer will pay, all current and future taxes (excluding those on AT&T's net income), surcharges, recovery fees, custom clearances, duties, levies, shipping charges, and other similar charges (and any associated interest and penalties resulting from Customer's failure to timely pay such taxes or similar charges) relating to the sale, transfer of ownership, installation, license, use or provision of the Services, except to the extent Customer provides satisfactory proof of a valid tax exemption prior to the delivery of Services. To the extent Customer is required by law to withhold or deduct any applicable taxes from payments due to AT&T, Customer will use reasonable commercial efforts to minimize any such taxes to the extent allowed by law or treaty, and Customer will furnish AT&T with such evidence as may be required by relevant taxing authorities to establish that such tax has been paid so that AT&T may claim any applicable credit.

4.3 Billing. Unless a Pricing Schedule specifies otherwise, Customer's obligation to pay for all Services will begin upon installation and availability of the Services to Customer. AT&T will invoice Customer for the Services on a monthly basis, or otherwise as specified in the Pricing Schedule. Customer will pay AT&T without deduction (except for withholding taxes as provided in Section 4.2 – Additional Charges and Taxes), setoff (except as provided in Section 4.5 – Delayed Billing; Disputed Charges), or delay for any reason. At Customer's request, but subject to AT&T's consent (which may be withheld if there will be operational impediments or tax consequences), Customer's Affiliates may be invoiced separately and AT&T will accept payment from such Affiliates. Customer will be responsible for payment if Customer's Affiliates do not pay charges in accordance with this Agreement. AT&T may require Customer or its Affiliates to tender a deposit if AT&T determines, in its reasonable judgment, that Customer or Customer's Affiliates are not creditworthy.

4.4 Payments. Payment is due within 30 days after the date of the invoice (unless another date is specified in an applicable Tariff or Guidebook) and must refer to the invoice number. Charges must be paid in the currency specified in the invoice. Restrictive endorsements or other statements on checks are void. Customer will reimburse AT&T for all costs associated with collecting delinquent or dishonored payments, including reasonable attorney's fees. AT&T may charge late payment fees (a) for Services contained in a Tariff or Guidebook, at the rate specified therein, or (b) for all other Services, at the lower of 1.5% per month (18% per annum) or the maximum rate allowed by law for overdue payments.

4.5 Delayed Billing; Disputed Charges. Customer will not be required to pay charges for Services invoiced more than 6 months after close of the billing month in which the charges were incurred, except for automated or live operator assisted calls of any type. If Customer disputes a charge, Customer will provide notice to AT&T specifically identifying the charges and the reason it is disputed within 6 months after the date of the affected invoice or Customer waives the right to dispute the charge (except to the extent applicable law or regulation otherwise requires). Disputed charges may be withheld, but if not paid when

due, Customer will incur late payment fees in accordance with Section 4.4 (Payments); however, to the extent AT&T determines the charges Customer disputed and withheld were invoiced in error, late payment fees for such charges will be reversed.

4.6 **MARC.** Minimum Annual Revenue Commitment (“MARC”) means an annual revenue commitment of MARC-Eligible Charges set forth in a Pricing Schedule that Customer agrees to satisfy during each 12 consecutive month period of the Pricing Schedule Term. At the end of each such 12 month period, if Customer has failed to satisfy the MARC for the preceding 12 month period, Customer will be invoiced a shortfall charge in an amount equal to the difference between the MARC and the total of the applicable MARC-Eligible Charges incurred during the 12 month period, and payment will be due in accordance with Section 4.4 (Payments).

4.7 **Adjustments to MARC.**

- (a) In the event of a business downturn beyond Customer’s control, or a corporate divestiture, merger, acquisition or significant restructuring or reorganization of Customer’s business, or network optimization using other Services, or reduction of AT&T’s prices, or force majeure events, any of which significantly impairs Customer’s ability to meet Customer’s MARC, AT&T will offer to adjust the affected MARC to reflect Customer’s reduced usage of Services (with a corresponding adjustment to the prices or discount available at the reduced MARC level). If the parties reach mutual agreement on a revised MARC, AT&T and Customer will amend the affected Pricing Schedule prospectively. This Section 4.7 will not apply to a change resulting from Customer’s decision to use service providers other than AT&T. Customer will provide AT&T written notice and evidence of the conditions Customer believes will require the application of this provision. This provision does not constitute a waiver of any charges, including monthly recurring charges and shortfall charges Customer incurs prior to amendment of the affected Pricing Schedule.
- (b) If Customer, through merger, consolidation, acquisition or otherwise, acquires a new business or operation, Customer and AT&T may mutually agree to include the new business or operation under this Agreement. Such agreement will specify the impact, if any, of such addition on Customer’s MARC or other volume or growth discounts, and Customer’s attainment thereof.

5. **CONFIDENTIAL INFORMATION**

5.1 **Confidential Information.** Confidential Information means: (a) information the parties share with each other in connection with this Agreement or in anticipation of providing Services under this Agreement, but only to the extent identified as Confidential Information in writing; and (b) except as may be required by applicable law or regulation, the terms of this Agreement and any pricing or other proposals.

5.2 **Obligations.** Each party’s Confidential Information will, for a period of 3 years following its disclosure to the other party (except in the case of software, which is indefinite): (a) be held in confidence; (b) be used and transmitted between countries only for purposes of using the Services or performing this Agreement (including in the case of AT&T, the ability to utilize Customer’s Confidential Information in order to detect fraud, check quality, and to operate, maintain and repair the Services); and (c) not be disclosed, except to the receiving party’s employees, agents and contractors having a need-to-know (but only if such agents and contractors are not direct competitors of the other party and agree in writing to use and disclosure restrictions as restrictive as this Section 5), or to the extent authorized to be revealed by law, governmental authority or legal process (but only if such disclosure is limited to that which is so authorized and prompt notice is provided to the disclosing party to the extent practicable and not prohibited by law, governmental authority or legal process).

5.3 **Exceptions.** The restrictions in this Section will not apply to any information that: (a) is independently developed by the receiving party; (b) is lawfully received by the receiving party free of any obligation to keep it confidential; or (c) becomes generally available to the public other than by breach of this Agreement.

5.4 **Privacy Laws.** Each party is responsible for complying with the privacy laws applicable to its business. If Customer does not want AT&T personnel to comprehend Customer data to which they may have access in performing Services, Customer should encrypt such data so that it will be unintelligible. Until directed otherwise by Customer in writing, if AT&T designates a dedicated account representative as Customer’s primary contact with AT&T, Customer authorizes that representative to discuss and disclose Customer’s customer proprietary network information (CPNI) to any employee or agent of Customer without a need for further authentication or authorization.

6. **DISCLAIMERS AND LIMITATIONS OF LIABILITY**

6.1 **Disclaimer of Warranties.** AT&T MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR ANY WARRANTY ARISING BY USAGE OF TRADE OR COURSE OF DEALING. FURTHER, AT&T MAKES NO REPRESENTATION OR WARRANTY THAT TELEPHONE CALLS

OR OTHER TRANSMISSIONS WILL BE ROUTED OR COMPLETED WITHOUT ERROR OR INTERRUPTION (INCLUDING CALLS TO 911 OR ANY SIMILAR EMERGENCY RESPONSE NUMBER), OR GUARANTEE REGARDING NETWORK SECURITY, THE ENCRYPTION EMPLOYED BY ANY SERVICE, THE INTEGRITY OF ANY DATA THAT IS SENT, BACKED UP, STORED OR SUBJECT TO LOAD BALANCING, OR THAT AT&T'S SECURITY PROCEDURES WILL PREVENT THE LOSS OR ALTERATION OF, OR IMPROPER ACCESS TO, CUSTOMER'S DATA AND CONFIDENTIAL INFORMATION.

6.2 Limitation of Liability.

- (a) AT&T'S ENTIRE LIABILITY, AND CUSTOMER'S EXCLUSIVE REMEDY, FOR DAMAGES ARISING OUT OF MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS OR DEFECTS IN THE SERVICES, AND NOT CAUSED BY CUSTOMER'S NEGLIGENCE, SHALL IN NO EVENT EXCEED THE APPLICABLE CREDITS SPECIFIED IN A SERVICE PUBLICATION OR PRICING SCHEDULE, OR IF NO CREDITS ARE SPECIFIED, AN AMOUNT EQUIVALENT TO THE PROPORTIONATE CHARGE TO CUSTOMER FOR THE PERIOD OF SERVICE DURING WHICH SUCH MISTAKE, OMISSION, INTERRUPTION, DELAY, ERROR OR DEFECT IN THE SERVICES OCCURS AND CONTINUES. IN NO EVENT SHALL ANY OTHER LIABILITY ATTACH TO AT&T.
- (b) SECTION 6.2(a) WILL NOT APPLY TO:
- (i) BODILY INJURY, DEATH, OR DAMAGE TO REAL OR TANGIBLE PROPERTY DIRECTLY CAUSED BY AT&T'S NEGLIGENCE;
 - (ii) BREACH OF SECTION 5 (Confidential Information), SECTION 10.1 (Publicity), OR SECTION 10.2 (Trademarks);
 - (iii) SETTLEMENT, DEFENSE OR PAYMENT OBLIGATIONS UNDER SECTION 7 (Third Party Claims); OR
 - (iv) DAMAGES ARISING FROM AT&T'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.
- (c) NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE, OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES, OR INCREASED COST OF OPERATIONS.

6.3 **Disclaimer of Liability.** AT&T WILL NOT BE LIABLE FOR ANY DAMAGES, EXCEPT TO THE EXTENT CAUSED BY AT&T'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, ARISING OUT OF OR RELATING TO: INTEROPERABILITY, ACCESS OR INTERCONNECTION OF THE SERVICES WITH APPLICATIONS, EQUIPMENT, SERVICES, CONTENT, OR NETWORKS PROVIDED BY CUSTOMER OR THIRD PARTIES; SERVICE DEFECTS, SERVICE LEVELS, DELAYS, OR INTERRUPTIONS (EXCEPT FOR LIABILITY FOR SUCH EXPLICITLY SET FORTH IN THIS AGREEMENT); ANY INTERRUPTION OR ERROR IN ROUTING OR COMPLETING CALLS OR OTHER TRANSMISSIONS (INCLUDING 911 CALLS OR ANY SIMILAR EMERGENCY RESPONSE NUMBER); LOST OR ALTERED MESSAGES OR TRANSMISSIONS; OR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS, OR DESTRUCTION OF CUSTOMER'S, ITS AFFILIATE'S, USERS', OR THIRD PARTIES' APPLICATIONS, CONTENT, DATA, PROGRAMS, CONFIDENTIAL INFORMATION, NETWORK, OR SYSTEMS.

6.4 **Application and Survival.** The disclaimer of warranties and limitations of liability set forth in this Agreement will apply regardless of the form of action, whether in contract, equity, tort, strict liability or otherwise and whether damages were foreseeable, and will apply so as to limit the liability of each party and its Affiliates, and their respective employees, directors, subcontractors, and suppliers. The limitations of liability and disclaimers set out in this Section 6 will survive failure of any exclusive remedies provided in this Agreement.

7. THIRD PARTY CLAIMS

7.1 **AT&T's Obligations.** AT&T agrees at its expense to defend or settle any third-party claim against Customer, its Affiliates, and its and their respective employees and directors, and to pay all compensatory Damages that a court may finally award against such parties to the extent the claim alleges that a Service provided to Customer under this Agreement infringes any patent, trademark, copyright, or trade secret, but not in circumstances where the claimed infringement arises out of or results from: (a) Customer's, its Affiliate's or a User's content; (b) modifications to the Service by Customer, its Affiliates or third parties, or combinations of the Service with any services or products not provided by AT&T; (c) AT&T's adherence to Customer's or its Affiliate's written requirements; or (d) use of the Service in violation of this Agreement.

7.2 **Customer's Obligations.** Customer agrees at its expense to defend or settle any third-party claim against AT&T, AT&T's Affiliates, and its and their respective employees, directors, subcontractors, and suppliers, and to pay all compensatory Damages that a court may finally award against such parties to the extent the claim: (a) arises out of

Customer's, its Affiliate's, or a User's access to, or use of, the Services and the claim is not the responsibility of AT&T under Section 7.1; (b) alleges that a Service infringes any patent, trademark, copyright or trade secret, and falls within the exceptions in Section 7.1; or (c) alleges a breach by Customer, its Affiliates, or Users of a software license agreement governing software provided in connection with the Services.

7.3 **Infringing Services.** Whenever AT&T is liable under Section 7.1, AT&T may at its option either procure the right for Customer to continue using, or may replace or modify, the alleged infringing Service so that the Service becomes non-infringing.

7.4 **Notice and Cooperation.** The party seeking defense or settlement of a third party claim under this Section 7 will notify the other party promptly upon learning of any claim for which defense or settlement may be sought, but failure to do so will have no effect except to the extent the other party is prejudiced thereby. The party seeking defense or settlement will allow the other party to control the defense and settlement of the claim and will reasonably cooperate with the defense; but the defending party will use counsel reasonably experienced in the subject matter at issue, and will not settle a claim without the consent of the party being defended, which consent will not be unreasonably withheld or delayed, except that no consent will be required where relief on the claim is limited to monetary damages that are paid by the defending party under this Section 7.

8. SUSPENSION AND TERMINATION

8.1 **Termination of Agreement.** This Agreement may be terminated immediately upon notice by either party if the other party becomes insolvent, ceases operations, is the subject of a bankruptcy petition, enters receivership or any state insolvency proceeding, or makes an assignment for the benefit of its creditors.

8.2 **Termination or Suspension of Services.** The following additional termination provisions apply:

- (a) **Fraud or Abuse.** AT&T may terminate or suspend an affected Service, and if the activity implicates the entire Agreement, terminate the entire Agreement, immediately by providing Customer with as much advance notice as is reasonably practicable under the circumstances if Customer: (i) commits a fraud upon AT&T; (ii) utilizes the Service to commit a fraud upon another party; (iii) unlawfully uses the Service; (iv) abuses or misuses AT&T's network or Service; or (v) interferes with another customer's use of AT&T's network or services.
- (b) **Material Breach.** If either party fails to perform or observe any material term or condition of this Agreement, including non-payment of charges (subject to Section 4.5 – Delayed Billing; Disputed Charges), and such failure continues unremedied for 30 days after receipt of notice, the non-breaching party may terminate the affected Service, and if the breach implicates the entire Agreement, terminate the entire Agreement. If Customer is in breach, AT&T may elect to suspend (and later terminate) the affected Service, and if the breach implicates the entire Agreement, suspend (and later terminate) the entire Agreement.
- (c) **Materially Adverse Change.** If AT&T revises a Service Publication and the revision has a materially adverse impact on Customer, and AT&T does not effect revisions that remedy such materially adverse impact within 30 days after notice from Customer, then Customer may, as Customer's sole remedy, elect to terminate the affected Service Components on 30 days' notice to AT&T, given not later than 90 days after Customer first learns of the revision to the Service Publication. However, a revision to a Service Publication will not be considered materially adverse to Customer if it changes prices that are not fixed (stabilized) in a Pricing Schedule, if the price change was mandated by a governmental authority, or if the change affects a charge imposed under Section 4.2 (Additional Charges and Taxes).
- (d) **Internet Services.** If Customer fails to rectify a violation of the AUP within 5 days after receiving notice from AT&T, AT&T may suspend the applicable portion of the Service. AT&T has the right; however, to suspend or terminate the applicable portion of the Service immediately when: (i) AT&T's suspension or termination is in response to multiple or repeated AUP violations or complaints; (ii) AT&T is acting in response to a court order or governmental notice that certain conduct must be stopped; or (iii) AT&T reasonably determines: (a) that it may be exposed to sanctions, liability, prosecution, or other adverse consequences under applicable law if AT&T were to allow the violation to continue; (b) that such violation may cause harm to or interfere with the integrity or normal operations or security of AT&T's network or networks with which AT&T is interconnected or interfere with another customer's use of AT&T Services or the Internet; or (c) that such violation otherwise presents imminent risk of harm to AT&T or AT&T's customers or their respective employees.
- (e) **Infringing Services.** If neither of the options described in Section 7.3 (Infringing Services) are reasonably available, AT&T may terminate the affected Service without liability other than as stated in Section 7.1 (AT&T's Obligations).

- (f) **Hazardous Materials.** If AT&T encounters any Hazardous Materials at the Site where AT&T is to install, maintain or provide Services, AT&T may terminate the affected Service or Service Component, or suspend performance until Customer removes and remediates Hazardous Materials at Customer's expense in accordance with applicable law.

8.3 **Withdrawal of Services.** Notwithstanding that a Pricing Schedule may commit AT&T to provide a Service to Customer for a Pricing Schedule Term, and unless applicable law or regulation mandates otherwise, AT&T may discontinue providing a Service upon 12 months' notice, or a Service Component upon 120 days' notice, but only where AT&T generally discontinues providing the Service or Service Component to similarly-situated customers.

8.4 **Effect of Termination.**

- (a) Termination by either party of a Service does not waive any other rights or remedies a party may have under this Agreement. Termination or suspension of a Service will not affect the rights and obligations of the parties regarding any other Service.
- (b) If a Service or Service Component is terminated, Customer will pay all amounts incurred prior to the effective date of termination. If Customer terminates a Service or Service Component prior to the date Customer's obligation to pay for Services begins as provided in Section 4.3 (Billing), Customer will reimburse AT&T for time and materials incurred prior to the effective date of termination, plus any third party charges resulting from the termination.

8.5 **Termination Charges.**

- (a) If Customer terminates this Agreement or an affected Service or Service Component pursuant to Sections 8.1 (Termination of Agreement), 8.2(b) (Material Breach), or 8.2(c) (Materially Adverse Change); AT&T terminates a Service pursuant to Section 8.2(e) (Infringing Services), or AT&T withdraws a Service pursuant to Section 8.3 (Withdrawal of Services), Customer will not be liable for the termination charges set forth in Section 8.5(b).
- (b) If Customer terminates a Service or Service Component other than as set forth in Section 8.5(a), or AT&T terminates an affected Service or Service Component pursuant to Sections 8.1 (Termination of Agreement), or 8.2(a) (Fraud or Abuse), 8.2(b) (Material Breach), 8.2(d) (Internet Services), or 8.2(f) (Hazardous Materials), Customer will pay applicable termination charges as follows: (i) if termination occurs before the end of the Minimum Payment Period, Customer will pay 50% (unless a different percentage is specified in the Pricing Schedule) of the monthly recurring charges for the terminated Service or Service Component multiplied by the months remaining in the Minimum Payment Period, plus any waived or unpaid non-recurring charges identified in the Pricing Schedule (including, but not limited to, any and all charges for failure to satisfy a Minimum Retention Period (MRP)), plus any charges incurred by AT&T from a third party (e.g., not an AT&T Affiliate) due to the termination, all of which will, if applicable, be applied to Customer's MARC-Eligible Charges; and (ii) if Customer terminates a Pricing Schedule that has a MARC, Customer will pay an amount equal to 50% of the unsatisfied MARC, after applying amounts received pursuant to (i), for the balance of the Pricing Schedule Term.
- (c) The charges set forth in Section 8.5(b)(i) will not apply if a terminated Service Component is replaced with an upgraded Service Component at the same Site, but only if (i) the Minimum Payment Period and associated charge for the replacement Service Component are equal to or greater than the Minimum Payment Period and associated charge for the terminated Service Component, and (ii) the upgrade is not restricted in the applicable Service Publication.

9. **IMPORT/EXPORT CONTROL**

The parties acknowledge that equipment, services, software, and technical information (including technical assistance and training) provided under this Agreement may be subject to import and export laws, conventions or regulations, and any use or transfer of the equipment, products, software, and technical information must be in compliance with all such laws, conventions and regulations. The parties will not use, distribute, transfer, or transmit the equipment, services, software, or technical information (even if incorporated into other products) except in compliance with such laws, conventions and regulations. Customer, not AT&T, is responsible for complying with such laws, conventions and regulations for all information, equipment and software Customer transmits between countries using the Services.

10. **MISCELLANEOUS PROVISIONS**

10.1 **Publicity.** Neither party may issue any public statements or announcements relating to the terms of this Agreement or the provision of Services without the prior written consent of the other party.

10.2 **Trademarks.** Each party agrees not to display or use, in advertising or otherwise, any of the other party's trade names, logos, trademarks, service marks, or other indicia of origin without the other party's prior written consent, which consent may be revoked at any time by notice.

10.3 **Force Majeure.** Except for payment of amounts due, neither party will be liable for any delay, failure in performance, loss or damage due to fire, explosion, cable cuts, power blackout, earthquake, flood, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism, acts of God, acts of a public enemy, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies, or other causes beyond such party's reasonable control.

10.4 **Amendments and Waivers.** Any supplement to or modification or waiver of any provision of this Agreement must be in writing and signed by authorized representatives of both parties. A waiver by either party of any breach of this Agreement will not operate as a waiver of any other breach of this Agreement.

10.5 **Assignment and Subcontracting.**

(a) This Agreement may not be assigned by either party without the prior written consent of the other party (which consent will not be unreasonably withheld or delayed). Customer may, without AT&T's consent, but upon notice to AT&T, assign in whole or relevant part, its rights and obligations under this Agreement to an Affiliate, but Customer will remain financially responsible for the performance of such obligations. AT&T may, without Customer's consent, assign in whole or relevant part, its rights and obligations under this Agreement to an Affiliate, or subcontract to an Affiliate or a third party work to be performed under this Agreement, but AT&T will in each such case remain financially responsible for the performance of such obligations.

(b) In countries where AT&T does not have an Affiliate to provide Service, AT&T may assign its rights and obligations related to a Service to a local service provider, but AT&T will remain responsible to Customer for such obligations. In certain countries, Customer may be required to contract directly with the local service provider.

(c) Any assignment other than as permitted by this Section 10.5 is void.

10.6 **Severability.** If any portion of this Agreement is found to be invalid or unenforceable or if, notwithstanding Section 10.10 (Governing Law), applicable law mandates a different interpretation or result, the remaining provisions will remain in effect and the parties will negotiate in good faith to substitute for such invalid, illegal, or unenforceable provision a mutually acceptable provision consistent with the original intention of the parties.

10.7 **Injunctive Relief.** Nothing in this Agreement is intended, or should be construed, to limit a party's right to seek preliminary or permanent injunctive relief from a court of competent jurisdiction for a breach of any provision of this Agreement.

10.8 **Legal Action.** Any legal action arising in connection with this Agreement must be filed within 2 years after the cause of action accrues or it will be deemed time-barred and waived. The parties waive any statute of limitations to the contrary.

10.9 **Notices.** All notices required under this Agreement will be delivered in writing to the recipient's contact designated on the cover page of this Master Agreement, or to such other contact as designated in writing from time to time. Notices shall be by internationally recognized overnight courier, certified or registered mail, email, or facsimile and will be effective upon receipt or when delivery is refused, whichever occurs sooner.

10.10 **Governing Law.** This Agreement will be governed by the law of the State of New York, without regard to its conflict of law principles, unless a regulatory agency with jurisdiction over the applicable Service applies a different law. The United Nations Convention on Contracts for International Sale of Goods will not apply.

10.11 **Compliance with Laws.** Each party will comply with all applicable laws, regulations, and orders issued by courts or other governmental bodies of competent jurisdiction.

10.12 **No Third Party Beneficiaries.** This Agreement is for the benefit of Customer and AT&T, and does not provide any third party (including Users) the right to enforce or bring an action for any remedy, claim, liability, reimbursement, cause of action, or other right or privilege.

10.13 **Survival.** The respective obligations of Customer and AT&T that by their nature would continue beyond the termination or expiration of this Agreement, including without limitation, the obligations set forth in Section 5 (Confidential Information), Section 6 (Disclaimers and Limitations of Liability), and Section 7 (Third Party Claims), will survive termination or expiration.

10.14 **Agreement Language.** The authentic language of this Agreement is English. If there is a conflict between this Agreement and any translation, the English version will take precedence.

10.15 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the Services provided under this Agreement. Except as provided in Section 2.3 (Software), this Agreement supersedes all other agreements, proposals, representations, statements or understandings, whether written or oral, concerning the Services or the rights and obligations relating to the Services, and the parties disclaim any reliance thereon. This Agreement will not be modified or supplemented by any written or oral statements, proposals, representations, advertisements, service descriptions or purchase order forms not expressly set forth in this Agreement.

11. DEFINITIONS

The following terms have the meanings set forth below:

“**Affiliate**” of a party means any entity that controls, is controlled by, or is under common control with, such party.

“**Damages**” means collectively all injury, damage, liability, loss, penalty, interest and expense incurred.

“**Effective Date**” means, for any Pricing Schedule, the date on which the last party signs the Pricing Schedule unless a later date is required by regulation or law.

“**MARC-Eligible Charges**” means, unless the applicable Pricing Schedule indicates otherwise, the recurring and usage charges, after deducting applicable discounts and credits (other than outage or SLA credits), that AT&T charges Customer for the Services identified in the applicable Pricing Schedule as MARC-contributing. The following are not MARC-Eligible Charges: (a) charges for or in connection with Customer’s purchase of equipment; (b) taxes; and (c) charges imposed in connection with governmentally imposed costs or fees (such as USF, PICC, payphone service provider compensation, E911 and deaf relay charges).

“**Minimum Payment Period**” means, in respect to any Service, the minimum period for which Customer is required to pay recurring charges for the Service, as specified in the Pricing Schedules or Service Publication for that Service.

“**Minimum Retention Period**” means, in respect to any Service, the period of time for which Customer is required to maintain service to avoid the payment of certain credits, waived charges, or unpaid amortized charges, all as specified in the Pricing Schedule or Service Publication for that Service.

“**Service Component**” means an individual component of a Service provided under this Agreement.

“**Site**” means Customer’s physical location, including Customer’s collocation space on AT&T’s, its Affiliate’s, or subcontractor’s property, where AT&T installs or provides a Service.



Quote #: 302815-01
Quote Date: 07/11/2008

AT&T Point of Contact:

Michael S Mayhew
Phone: (214) 464-1404 Fax: (214) 464-1977
email: mm9465@att.com

#R5-5

Quotation Prepared for:

Town of Addison
5300 Beltline
Addison, Texas 75245

Ronnie Lee
Phone: (972) 450-7000

OptEman Entrance Conduits

Refer to attached Scope of Work Sheet(s) - Attachment A

Refer to attached Assumptions Sheet(s) - Attachment B

This quote is valid until 08/10/2008. After that date, the proposal is subject to price verification/adjustment.

Installation on an expedited basis will require a separate charge to cover short interval shipping and/or premium labor charges that are not reflected in this quotation.

Billing policy shall be as agreed upon in the Master Agreement between AT&T and Town of Addison unless mutually agreed upon changes are stated herein.

Total Material Price =

Total Installation (Labor) Price =

Grand Total (excluding expedited shipping or taxes) =

CUSTOMER APPROVAL / AT&T AUTHORIZATION

Town of Addison

AT&T

Signed: _____
Printed Name: _____
Title: _____
Date: _____

Signed: _____
Printed Name: _____
Title: _____
Date: _____

-- Proprietary Information --

Information Contained Herein is for the Authorized Parties Hereto and Not for General Distribution Within or Outside of Their Respective Organizations.

Attachment A - Scope of Work

1.0 General / Project Overview

- 1.01 AT&T shall furnish and install labor and materials associated with a structured cabling system at the Town of Addison facility at 5300 Beltline in Addison, Texas, providing a certified design and installation. This installation will be per the floor plans and directions provided by Town of Addison including discussions with Ronnie Lee (972-450-7000) and as further described below. Refer to the attached Bill of Materials / Project Report sheet for a detailed listing of materials and labor associated with this project.
- 1.02 There are no LAN Electronics included in this scope of work.
- 1.03 All horizontal cabling will be supported at regular intervals, per industry standards (not to exceed 60" on center). Where available, AT&T shall make use of existing, accessible cable-tray and/or building structure for data cabling installation and support. If any new cabling supports are required, AT&T shall install them independent of ceiling grid wiring, HVAC ductwork or water piping.
- 1.04 AT&T shall properly firestop all fire wall penetrations and label with name, company and date. AT&T shall fill with putty/caulk/bricks as required by the solution/product used and the prevailing standard.

2.0 Secondary Conduit Entrance

- 2.01 15650 Addison Rd.
Scope:
Rod and verify S.O.C., bury 1-3" PVC aprox 360 LF from PL to bldg, core drill building. Backboard and ground to steel.
- 2.02 4798 Airport Freeway
Scope:
Rod and verify S.O.C., bury 1-3" PVC aprox 200 LF from PL to bldg, Place 2" EMT conduit aprox. 130 LF, core drill building. Backboard and ground to steel.
- 2.03 3900 Beltway
Scope:
Core Drill wall, bury 1-3" PVC aprox 350 LF, Backboard and ground to steel.
- 2.04 5300 Beltline Rd. - City Hall
Scope:
Core Drill wall w/ riser, bury 1-3" PVC aprox 600 lf - bore, backboard and ground to steel, remove and repair aprox 15 sq ft concrete, place 2" emt aprox 180'
- 2.05 5350 Beltline Rd.
Scope:
Core Drill wall w/ riser, bury 1-3" PVC aprox 330 lf - bore, backboard and ground to steel

3.0 OSP Construction

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Attachment A - Scope of Work

- 3.01 All Sidewalks, streets, alleyways, gutters, façade, and landscaping items along the cable pathway and around the entrance facilities will be replaced to its original condition or better. All environmental conditions will be videotaped prior to construction activities to provide information of pre-existing conditions. AT&T reserves the right to replace sod, trees, and/or shrubbery during favorable times of the year to ensure growth of the replaced items. This will not preclude acceptance and payment of the project if substantial completion and operation of the network has been achieved.
- 3.02 AT&T will provide forty-eight hours prior notice to the building owner and/or designated representative to arrange unrestricted access. It is recommended that these site visits be conducted in the presence of the building owner's representative(s). Videotape shall be made as a record of pre-existing conditions. This videotape will remain the property of AT&T during and after project completion as a record of the project documentation.
- 3.03 Client and building owner must approve all penetrations into building structures, in writing, before commencement of work. All penetrations into building will be sealed around the conduits (sleeves) to help prevent water penetration or other material from intruding into structure from around the metal conduit sleeve.
- 3.04 AT&T shall place the conduit described above using directional boring as the primary method of installation. This is preferred due to the minimal impact upon the conduit route's environmental conditions. Directional boring techniques may reduce the restoration requirements of the project. Restoration efforts are directly affected by the utility density along the route and with the level of landscaping encountered along the parkways and around buildings.
- 3.05 AT&T shall place a portion of the conduit for this installation using open trenching methods. When trenching methods are utilized, during backfill activities, AT&T shall place a warning tape above the conduit to alert any future excavator of the presence of an underground facility. This Warning Tape will be placed approximately 18" below the existing ground surface. The tape may contain specific information about the owner of the facility, including contact information.
- 3.06 Prior to underground conduit placement operations, AT&T shall notify all utilities and agencies of the pending construction through a State-Approved One-Call service as required by law. AT&T may elect to "pot-hole" the marked utilities for location verification.

Note: Delays by Member Utilities in locating facilities in the public right-of-way or on private property may effect the timeline of this project. These types of delays are outside the control of AT&T.
- 3.08 Excavated surface areas shall be restored to equal or better than their state prior to construction.

4.0 Rock Clause

- 4.01 An additional charge may apply if solid rock is encountered while directional boring. In the event solid rock is encountered, AT&T shall notify Client in writing prior to incursion of additional fees related to the rock.

5.0 Quality of Work

- 5.01 AT&T's installation practices will be governed by EIA/TIA Telecommunications Building Wiring Standards, the BICSI Telecommunication Distribution Methods Manual and local building codes.
- 5.02 The cabling shall conform to EIA/TIA Category 5e channel <basic link> performance.
- 5.03 All work shall be done in accordance with the respective drawings, written specifications, supplemental information, industry standards, trade practice, and applicable regulatory agencies.

-- Proprietary Information --

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Attachment A - Scope of Work

- 5.04 All work shall be performed by competent personnel and executed in a neat and workmanlike manner providing a thorough and complete installation.
- 5.05 Any work deemed inferior shall be reported to AT&T for immediate corrective action.
- 5.06 AT&T shall be responsible on a daily basis for cleanup and removal of all debris resulting from work performed by AT&T. Upon completion of the project, AT&T shall remove all tools, equipment, obstructions or debris present as a result of AT&T's portion of the overall project.

6.0 Schedule

- 6.01 AT&T's normal work schedule for this project shall be Monday - Friday, 8:00am - 5:00pm. Work beyond this schedule requires the approval of AT&T or overtime rates will be charged to the Customer via a Change Order.
- 6.02 Refer to the attached 'Assumptions' list for additional schedule information.
- 6.03 The project duration is estimated at <xx> work days once construction begins. A shorter project duration may be available at additional cost.

7.0 Project Management

- 7.01 AT&T shall provide project management/coordination to monitor and control all technical and administrative support activities related to this SOW.
- 7.02 AT&T shall provide qualified on-site installation supervision.
- 7.03 AT&T shall, upon completion of inspection and review of site, establish a schedule to accomplish the objectives of this project and submit to Client.
- 7.04 AT&T shall provide a Progress Report that shall highlight all completed and work scheduled during the project.

8.0 Warranty

- 8.01 AT&T's proposal includes a 90-day labor warranty and a 20 year manufacturer's application warranty.
- 8.02 AT&T warrants that: (i) For a period of ninety (90) days following completion of the Project, Services provided will have been performed in a workmanlike manner and (ii) Any material provided will be free from defects for a period of ninety (90) days following completion of the project.
- 8.03 If AT&T responds to a Client's request for repairs during the warranty period and determines that the problem(s) is not covered by the contracted warranties, AT&T will invoice and Client agrees to pay AT&T a minimum two (2)-hour service charge (at AT&T's then current hourly rates).
- 8.04 All manufacturers' warranties that extend past the AT&T standard warranty period will be passed through to Client. Warranty issues outside the AT&T standard warranty period must be negotiated direct between Client and the Manufacturer.

9.0 Facility Damage

- 9.01 AT&T shall take necessary steps to protect all received materials from dents, scratches, dust, temperature, weather, cutting and other hazardous conditions.
- 9.02 AT&T Risk Management Services is responsible for handling any damage claims occurring as a result of performing work, i.e. damaged voice and/or data hardware, broken ceiling tiles, damaged walls, scratched furniture, etc.

-- Proprietary Information --

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Attachment A - Scope of Work

- 9.03 AT&T reserves the right to replace required items with suitable substitutes of the removed items. This will not preclude acceptance and payment of the project if substantial completion and operation of the network has been achieved.

10.0 Changes to the Scope of Work

- 10.01 After the project begins AT&T will not perform any verbally-requested change orders. Any work not specifically outlined within this Scope of Work is deemed to be Out of Scope and subject to the Change Order process. AT&T has endeavored to provide accurate counts of equipment, cabling, etc. based on the information provided within the RFP.
- 10.02 If Client requests additional connections AT&T can provide these connections on a "Change Order" basis.
- 10.03 All Change Orders will be accepted in written form and approved by Client and AT&T prior to commencement of work on Change Order Requests.

11.0 Project 'As-Built' Documentation

- 11.01 AT&T shall provide the Client with labeling convention and numbering scheme for authorization prior to start of work.
- 11.02 AT&T shall keep a complete set of drawings at all times and will record the progress of installation and markup as they occur.
- 11.03 Within 30 days of project completion, AT&T shall provide 'as-built' drawings that accurately reflect the installation, termination and labeling of all wiring and installed cable plant associated with this installation.
- 11.04 AT&T will provide drawings in VISIO/AutoCAD format when provided the source documents (backgrounds) in electronic format. If electronic format drawings are not available, AT&T shall furnish 'marked-up' hardcopy 'as-built' drawings only.
- 11.05 AT&T will provide one hard copy and one soft copy (when applicable).

12.0 Cable Testing and Verification

- 12.01 AT&T will test all drops using a hand-held, standards compliant test set. The test results will be provided to the Customer via hard-copy and electronic version upon request.
- 12.02 Testing shall verify that the final termination of all cabling is operational at the level which is the current standard and meets the operational specifications for each type of wiring.

13.0 Labeling Specifications

- 13.01 AT&T shall label all installed cables, jacks, and patch panels in accordance with Town of Addison requirements.

14.0 Milestones

- 14.01 Payment terms shall be determined at the time of final contract negotiations. AT&T prefers milestone billing based on completed tasks and overall project completion. A typical arrangement, for review, is 25% due at contract signing, another 50% when the installation is 50% complete and the remaining 25% upon client acceptance.

-- Proprietary Information --

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Attachment A - Scope of Work

Customer Acknowledgement - Scope of Work

I have read, understand and agree the above Scope of Work accurately represents my expectations regarding this Structured Cabling System quotation

Customer Representative Signature

Date

-- Proprietary Information --

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Attachment B - Assumptions

1.0 General

- 1.01 For reference in this proposal only, Town of Addison shall be identified as Client.
- 1.02 This proposal is valid only if Client signs (or already has in place) a contract which incorporates the AT&T terms and conditions.
- 1.03 Client agrees to all terms and conditions herein, including payment terms and the timely return of Client Acceptance Form(s) provided upon project completion.
- 1.04 Sales tax, if included in this proposal, is an **ESTIMATE** of taxes based on the available tax-rate information for the installation location. Actual sales tax applied at time of billing will be Client's responsibility.
- 1.05 If Client declares exemption from State and Local sales tax, Proof of Tax Exemption must be provided prior to contract signing. If Tax Exemption Certificate is not on file at contract signing all taxes (State and Local) will apply.
- 1.06 AT&T liability arising out of or relating to the work described in this quote is limited to the amount paid to AT&T for this work.
- 1.07 This proposal is based on the completion of the entire scope of work. A reduction in the amount of work to be completed may increase the price of individual work functions.
- 1.08 This proposal includes horizontal cabling installation based on a plenum environment.
- 1.09 If Client is not the property owner, then Client represents and warrants to AT&T that it has obtained any necessary approvals from the property and/or building owner for this project.
- 1.10 This proposal assumes there is no requirement for the payment of prevailing Wages, Davis Bacon Wages, Walsh-Healy wages, Contract Service Act Wages or any other predetermined or prevailing Wages or fringe benefits. In the event there is a requirement for the payment of specific wages and/or fringe benefits, the difference between such specific wages and / or benefits and the actual wages and / or benefits paid, plus AT&T's normal mark-up for overhead and profit shall be an extra to this proposal.
- 1.11 Any new cable pathway structures (metallic conduit, duct, innerduct, pull-boxes, etc.) included in this proposal, even if installed exclusively to support installation of AT&T service-providing cable, shall be considered Client-owned.
- 1.12 Material pricing in this proposal represents "price in effect" at the time of purchase. Receipt of a Client Purchase Order will authorize AT&T to purchase the products required to complete the project as scheduled. AT&T reserves the right to adjust this proposal based on the cost of materials at the time Client provides a Purchase Order.

2.0 Exclusions

- 2.01 This proposal does not include any costs associated with third party/independent quality assurance or testing.
- 2.02 This proposal does not include any bid, performance or payment bonds (or associated costs).
- 2.03 This proposal does not include bringing the existing facilities up to code.
- 2.04 This proposal does not include assembly/reassembly of modular furniture.

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Attachment B - Assumptions

- 2.05 This proposal does not include grounding and bonding of *existing* equipment, manholes or cabling.
- 2.06 This proposal does not include conduit or power for the alarm system.
- 2.07 This proposal does not include any power strips.

3.0 Schedule

- 3.01 AT&T's requires a minimum of 10 working days notice before the start of work.
- 3.02 AT&T installation charges indicated in this proposal are based on a construction interval as noted on the quotation sheet and/or Scope of Work. Client may be responsible for increased charges if additional labor or premium wages are required to achieve a shorter installation interval at Client's request. Client may be responsible for increased charges if additional labor or premium wages are required to maintain the contracted installation interval following Client delays.
- 3.03 Alterations or deviations, if any, from the above scope of work, or any delays or postponements of the work by the Client or it's agents which result in additional materials or labor costs, will become an extra charge which will be billed as an addition to this proposal amount. Any extra move on or off the job site due to circumstances beyond AT&T's control will be billed as an extra at hourly labor and equipment rates in effect at the time.
- 3.04 AT&T will perform this job in its entirety only and all work will be performed within AT&T's normal work schedules, unless Client contracts for premium work scheduling.
- 3.05 Completion date for this project will be negotiated pending contract signing and/or Client Purchase Order receipt by AT&T, and may depend on the manufacturer's ability to ship the necessary products.
- 3.06 This proposal assumes all material and /or equipment will be transported standard ground fashion. No air freight or expedite costs are included.
- 3.07 Any delays caused by outside parties (i.e., the Client, general contractor, electricians or contract vendors other than AT&T) will be documented and presented to the Point of Contact for resolution.

4.0 Existing Conditions

- 4.01 AT&T assumes there are no abnormal environmental or hazardous conditions on the Client's premise which would require extraordinary safety and/or regulatory functions, activities, permits or certifications for AT&T to perform the required work.
- 4.02 AT&T assumes the client will provide free and clear cable pathways for the installation of the proposed cable system. Additional time, labor, and material required by AT&T to make pathways free and clear shall be at Client's expense.
- 4.03 Existing conduit must be usable, undamaged, and have room to place additional cable/s. If existing conduit is not usable the Client will incur additional costs.
- 4.04 Client-provided conduit will be installed per industry standards, will be sized to accommodate proposed cable placements, must be usable and will have pull lines in place. If rodding or placing a pull string is required, the Client will be responsible for the additional cost.
- 4.05 Unless specifically described otherwise in the Scope of Work, no provision has been made in this proposal for the removal, evacuation or disposal of Client-owned, obsolete cabling facilities or components. Compliance with local, state, and federal codes beyond the installation of the cabling system mentioned in this proposal, is the responsibility of Client.

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Attachment B - Assumptions

- 4.06 The attached Scope of Work does not include abandoned cable removal. AT&T can provide this service at time and materials rate and an estimate of time. This change to the scope of work can be addressed with a Job Change Order.
- 4.07 AT&T assumes an existing TIA-607 compliant Building Ground System meeting local, state, and national electrical codes within each telecommunications room. Where bonding to this ground system is required, AT&T shall install a telecommunications grounding bus bar and #6 AWG ground conductor for bonding to the existing building grounding system. Where a building ground system is not installed, code or standards compliant, Client will be notified and given an opportunity to make appropriate corrections. Additional work performed by AT&T to provide code or standard compliance shall be at Client's expense.
- 4.08 AT&T does not guarantee Client's existing cable facilities.
- 4.09 AT&T assumes all existing cable is color-coded and requires no tagging for identification.
- 4.10 Custom pricing will be required if lift-out ceilings are not available along the entire cable path, or metallic conduit or raceway is required to be installed by AT&T.
- 4.11 AT&T assumes client-provided quantities and footages are accurate. Additional costs incurred as a result of discrepancies may be charged to Client as a 'Change Order.'

5.0 Client Responsibilities

- 5.01 Client is responsible for furnishing floor plans with desired outlet locations prior to contract signing.
- 5.02 Client will be responsible for identifying all areas containing asbestos, lead paint, and /or other hazardous materials. Client will also be responsible for the removal and /or abatement of all hazardous materials and any associated costs.
- 5.03 Client will be responsible for identifying and additional costs associated with any Historical or environmental (endangered species, archeological sites/digs, etc.) issues.
- 5.04 Client is responsible for providing access to any buildings, equipment rooms, etc., necessary for AT&T to complete the required work. Client will provide adequate parking for AT&T equipment and employees at no additional cost to AT&T or it's sub-contractors, for the duration of this project.
- 5.05 Client will provide a point of contact to interface with AT&T point of contact.
- 5.06 Client will provide access to all work areas during normal and after duty hours if required.
- 5.07 Client is responsible for providing adequate power and power access in locations where equipment is to be placed. If additional power is required it will be responsibility of Client.
- 5.08 Client is responsible for providing a safe, secure and lockable location for the storage of equipment and materials during the installation interval.
- 5.09 AT&T assumes that the regulated network circuit or circuits will be installed and tested, by the regulated utility company, prior to any service installation provided by AT&T.
- 5.10 Client will provide power poles, if required.
- 5.11 Client will provide backboards and clear space for working areas.

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Attachment B - Assumptions

- 5.12 Client will provide all building entrances, core drills and/or openings that are required to place facilities on the premise. AT&T can provide these services at an additional cost, if Client desires.
- 5.13 Client is responsible for all costs associated with permits, easements and / or right-of-ways.
- 5.14 Client will provide cable trays, raceways, sleeves, floor penetrations, and junction boxes.
- 5.15 Client is responsible for providing the latest construction schedule from the General Contractor in order to coordinate with the ceiling tile contractor and the furniture contractor schedule prior to the commencement of telecommunications cabling work.

6.0 Underground Construction

- 6.01 AT&T will utilize the one call locate system to have the existing public utilities located. The Client, at the Client's expense, will locate private lines (water, sewer, power, sprinkler, coax, telephone, etc.). A good locate is a mark within 18" of the actual underground facility (per American Public Works Association guidelines). AT&T is not responsible for damages that occur as a result of a miss-located or "not located" facility.
- 6.02 AT&T shall sod all excavation areas for handhole installations and for conduit tie-in locations. All other trenched locations shall be seeded, not full sod, with grass seed compatible or equal to existing turf conditions. AT&T reserves the right to seed at suitable times of the year to promote growth of the seeded areas.
- 6.03 Costs associated with underground construction are based on standard soil conditions assuming a clear and unobstructed pathway. If more than 5% of the proposed route is rock or wetlands, additional costs may apply.
- 6.04 All existing manholes are equipped with racks, bonded, and grounded according to telecommunication industry standards. The proposal does not include bring existing facilities up to industry standards.
- 6.05 Soil type is dirt.
- 6.06 No soil compaction testing is required.
- 6.07 This proposal does not include any soil erosion control.
- 6.08 This proposal does not include any de-watering (well points)
- 6.09 Hand digging is estimated to be no more than 5% of the total digging.
- 6.10 No more than 5% of hand digging due to existing utilities.
- 6.11 No more than 5% of trenching will be in/through rock.

Customer Acknowledgement - Assumptions

I have read, understand and agree the above Assumptions accurately represent my expectations regarding this Structured Cabling System quotation

Customer Representative Signature

Date

-- Proprietary Information --

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Attachment C - Bill of Materials / Project Report

Description	Qty	Unit	Unit Price	Extended Price
Town of Addison				
15650 addison Rd				
Materials				
Materials to Install new Entrance	1	ls	\$ 8,923.08	\$ 8,923.08
Materials Sub-total				\$8,923.08
Labor				
Labor to Install new Entrance	1	ls	\$ 2,658.97	\$ 2,658.97
Labor Sub-total				\$2,658.97
15650 addison Rd Sub Total				\$11,582.05
4798 Airport Freeway				
Materials				
Materials to Install new Entrance	1	ls	\$ 9,256.41	\$ 9,256.41
Materials Sub-total				\$9,256.41
Labor				
Labor to Install new Entrance	1	ls	\$ 3,115.38	\$ 3,115.38
Labor Sub-total				\$3,115.38
4798 Airport Freeway Sub Total				\$12,371.79
3900 Beltway Rd				
Materials				
Materials to Install new Entrance	1	ls	\$ 7,179.49	\$ 7,179.49
Materials Sub-total				\$7,179.49
Labor				
Labor to Install new Entrance	1	ls	\$ 3,237.18	\$ 3,237.18
Labor Sub-total				\$3,237.18
3900 Beltway Rd Sub Total				\$10,416.67
5300 Beltline Rd				
Materials				
Materials to Install new Entrance	1	ls	\$ 12,948.72	\$ 12,948.72
Materials Sub-total				\$12,948.72
Labor				
Labor to Install new Entrance	1	ls	\$ 7,166.67	\$ 7,166.67
Labor Sub-total				\$7,166.67
5300 Beltline Rd Sub Total				\$20,115.39
5350 Beltline Rd				
Materials				
Materials to Install new Entrance	1	ls	\$ 7,410.26	\$ 7,410.26
Materials Sub-total				\$7,410.26

-- Proprietary Information --

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Attachment C - Bill of Materials / Project Report

Description	Qty	Unit	Unit Price	Extended Price
Labor				
Labor to Install new Entrance	1	ls	\$ 2,547.44	\$ 2,547.44
Labor Sub-total				\$2,547.44
5350 Beltline Rd Sub Total				\$9,957.70
Project Engineering				
Labor				
AT&T Project engineering	1	ls	\$ -	\$ -
Labor Sub-total				\$0.00
Project Summary				
Materials Total				\$45,717.96
Labor Total				\$18,725.64
Grand Total				\$64,443.60
<i>Prices above do not reflect Shipping or Taxes.</i>				

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#R5-6

November 17, 2008

1-31320013

RONNIE LEE
TOWN OF ADDISON, TX
5300 BELTLINE
ADDISON, TX 75245

AT&T Capital Services, Inc. is pleased to provide a proposal for the lease of the equipment and/or services as submitted to us. The proposed lease terms are as follows:

Proposal Lease Type	Lease Term	Total Cost	Lease Rate	Payment Amount
Muni - \$1 Buyout	60	\$64,443.60	0.01949	\$1,256.01
Muni - \$1 Buyout	48	\$64,443.60	0.02357	\$1,518.94
Muni - \$1 Buyout	36	\$64,443.60	0.03045	\$1,962.31
Muni - \$1 Buyout	24	\$64,443.60	0.04429	\$2,854.21
Muni - \$1 Buyout	12	\$64,443.60	0.08605	\$5,545.37

This is a net lease proposal. Any applicable taxes are additional. Shipping is not included on Data Equipment. The lease rates and monthly cost listed above are indexed to current US Treasury Bills. Any increase or decrease in the corresponding Treasury Bill will cause the lease rate factor to be adjusted point for point at the time of lease commencement. This proposal is subject to final investment committee approval. The above offer is valid for 30 days.

Lessee hereby grants to Lessor permission to file any and all UCC Financing Statements, which in Lessor's discretion are necessary or proper to secure Lessor's interest in the Equipment and/or Services in all applicable jurisdictions.

If the above offer is acceptable to you, please approve below and fax back to me at (847)427-5689. Upon final credit approval, our contract administration department will then prepare and send lease documentation to you. If you have any additional questions, please call me at (847)290-5077.

Thank you for this leasing opportunity. I am looking forward to working with you.

Sincerely,

Diane Carrozza
Sales Support Manager

AGREED TO AND ACCEPTED BY:

Requested Term/Lease Type: _____

Name: _____

Title: _____

Date: _____

Council Agenda Item: #R6

SUMMARY:

This item provides Council with an analysis of the Cities Aggregation Power Project (CAPP) long-term power purchase initiative.

FINANCIAL IMPACT:

There is no financial impact associated with this item.

BACKGROUND:

The Town of Addison was one of 41 member cities of CAPP that had elected to pursue a long-term purchase of electricity from seven dedicated coal power plants with the objective of having stable pricing of power for 24 years. The power purchase initiative was aborted when CAPP failed to meet the 50 megawatt threshold required of Luminant, the company CAPP had negotiated with to obtain the power.

Attached is a memorandum authored by CAPP's consultant, Geoffrey Gay, which explains the history of the project and the reasons for the inability of CAPP to consummate a long-term purchase agreement. Although the initiative ultimately failed, the attempt allowed CAPP to obtain extensive information of how the power market works and how difficult it is to obtain competitively priced electricity in Texas' deregulated market. The initiative also provides a template for how CAPP will pursue future opportunities to provide stable, low-priced power for its member cities.

Also attached is an article published in an industry periodical that offers an interesting analysis of the Texas electric power market. The article gives a layperson a glimpse into the complexity of power generation, distribution, and consumption in the Texas market. This article provides background to the legislative agenda CAPP will be pursuing in order to transform Texas' deregulated market into a truly competitive market. CAPP's legislative agenda will be brought to Council for its review and approval at the February 9, 2009 council meeting.

RECOMMENDATION:

This item is for information purposes only and there is no recommendation for council action.

For the first nine months of 2006, TXU Generation and CAPP worked on a deal that was approximately 80% complete for capacity from its proposed Oak Grove project. Contract efforts were suspended by TXU in October of 2006. For the next 12 months, no contract discussions took place while TXU focused on getting a license for the new coal units at Oak Grove and on completing a leveraged buyout of the Company.

Luminant (successor to TXU Generation) finally renewed its offer to CAPP in early 2008, but this time the offer was for power from seven units (five of which were already operational) rather than from just the two units that were under construction. Luminant desired as long of a term as possible. From a statutory perspective, political subdivisions cannot participate in the kind of transaction then contemplated (because of debt obligations) for more than 25 years. The indicative fixed prices quoted by Luminant were proportionate to the length of the term. Thus, the parties agreed to a 24-year term to achieve the most economic proposal, but 24 years ultimately proved to be an intimidating factor for some CAPP and STAP members.

At the point in the summer of 2008 that the PPA was being finalized, the market price for electric energy (without mark-up for “wires” and other non-bypassable charges) was approximately 14¢ per kWh and projected to go higher by the end of the year. Based upon the 13.5¢ commodity price the CAPP Board felt compelled to accept for the last quarter of 2008, the near and long-term savings available under the PPA appeared to provide a dramatic benefit to CAPP members, even beyond the pricing predictability and stability sought in a long-term contract.

Once the contract terms and conditions were agreeable to both parties, it became necessary to draft: (1) a model ordinance for members approving the PPA, (2) a Disclosure Statement explaining potential risks of the arrangement, and (3) a contract between an individual participating member and CAPP. As these documents were being drafted and then presented as a package to CAPP and STAP members, the energy market started collapsing in response to the global financial crisis and economic slowdown. Near term market prices for electricity, based primarily on the NYMEX Futures Market for natural gas, would ultimately drop below the fixed prices under the PPA, which in turn eliminated the perception of savings under the PPA for the years 2009-2014. Six months earlier, the blended rate available as a result of the PPA had appeared to be significantly less than projected market prices for 2009. The historic volatility of energy prices has never been more dramatically illustrated than in the 12 months of 2008.

The Final Tally and the CAPP Board’s Decision to Suspend PPA Efforts

The original agreement between CAPP and Luminant was for 150 MWs of power on a daily basis (with 90% availability) for 24 years. The 150 MWs would serve the base load needs during 2009 of every CAPP and STAP member and that of several cities that were thought in early 2008 to be interested in joining CAPP or STAP. The original agreement was amended to permit the completion of the contract for as little as 50 MWs of energy. Forty-one CAPP and STAP members approved the PPA by the deadline of December 17, 2008. The load of the 41 participants in the PPA would have justified a contract for approximately

40 MWs, but not 50 MWs. Rather than ask Luminant to further amend the agreement, the CAPP Board unanimously decided to terminate the effort. Influencing that decision was the fact that debt issuance costs likely would not decline proportionate to the reduction in debt necessary to support the reduced load. An additional cost consideration was the Board's policy decision that after December 17, costs associated with completion of the transaction (including the costs of a bond validation suit) should only be borne by the 41 entities desiring to participate in the PPA. Additionally, on December 18 the price of natural gas was below the price secured by FPL to set the base load energy prices in the five-year contract. If FPL had to sell some gas contracts supporting the five-year deal at a loss when CAPP exercised the option to replace some FPL energy with Luminant energy, PPA participants would have been obligated to make FPL whole. And uncertainty in the credit markets remained. Ultimately, the financial crisis killed the PPA and the Board recognized that reality.

Root Causes of Failure to Implement the PPA

The primary root cause of the inability to complete the long-term contract with Luminant was the global financial and credit crisis, but related causes were:

1. *Timing* – Negotiations with Luminant were unnecessarily protracted because of bureaucratic delay within Luminant and the uniqueness of the contract. Had the contract been completed in the early spring of 2008 and presented to members when market prices were peaking, receptivity would have been greater.
2. *Lack of Momentum* – Too many members delayed consideration of the PPA until the last minute (another timing problem) in order to evaluate who had passed and who had rejected the contract. The uniqueness of the contract needed a strong demonstration of support at the outset of the member review process.
3. *The Favorable Five Year Deal* – While advocating for the PPA the Board and its consultants had the foresight to pursue a hedge that would wound the primary objective, the PPA. What had been viewed as a necessary short-term “wrap” agreement became a very favorably priced five-year, full requirements contract with an option to back-out power for participants to the PPA. The financial crisis that was the root cause of the failure to finalize the PPA was also the root cause of the successful completion of the five-year contract. Ironically, the two other factors facilitating the five-year deal were: (1) CAPP's historic three-party agreement (with Florida Power & Light and Direct Energy) that anticipated a long-term contract and multiple supply agreements and (2) FPL's knowledge of CAPP's load and CAPP's commitment to the long run and price stability.

Reasons Given for Rejection

Reasons that various CAPP and STAP member's governing bodies gave for rejection of the PPA rarely included items focused on in the Disclosure Statement. Questions were sometimes asked by city officials about the potential for Luminant bankruptcy and the possible early termination of the PPA. However, concerns on those subjects did not sink the PPA.

Based on the numerous briefings given to elected officials around the state, the CAPP Board believes that the Number One reason for rejecting the PPA was that 24 years was thought to be too long. Coupled with the fear of the lengthy term was contentment with the five-year contract that provided relative stability for what many elected officials could accept as a reasonable period.

The other primary reason for rejection was credit market uncertainty. A number of cities were uncomfortable with the uncertainty over how bond rating agencies would react to the shifting of some traditional operating and maintenance expense to debt. The fact that CAPP and its advisors could not provide a universal answer to this question was problematic, particularly in the context of an increasingly restrictive credit market.

Objections and reasons for rejection varied, but the Board is convinced the PPA would have been completed but for the financial and credit crisis and the resulting collapse in market energy prices.

Lessons Learned

It will likely be a few years before CAPP and STAP pursue another long-term transaction, but if the retail market remains deregulated, diversification of supply and contract terms will likely be the prudent ultimate course of conduct. When long-term contract efforts resume, the initial focus should be on ten to fifteen years. Twenty-five years was simply too long for a number of members to contemplate.

Additionally, it is awkward and difficult to seek endorsement of a long-term contract from political subdivisions that are not totally committed to the idea of aggregation. In 2001, 2002 and 2003 all CAPP and STAP members were cautioned that they could not shop CAPP indicative prices with other groups or on their own. Such shopping creates uncertainty and confidentiality concerns for potential counterparties and jeopardizes receipt of the best indicative price quotes. Consideration of the PPA unfortunately occurred too close to the expiration date for the existing contract, causing some members to believe that their exercise of due diligence required them to evaluate other options to CAPP or STAP. This problem flowed from a lack of understanding of how the market operates. It is impossible to receive an apples-to-apples price comparison of different alternatives unless the prices are based upon the same gas price forecast for comparable terms. In the future, a long-term option should only be presented to members when the members have at least another year or two to run on the current contract. This should keep members focused on whether it is prudent and wise from a policy perspective to diversify supply and stabilize prices over a long period

without the distraction of whether the short term price is the lowest price available in the market at a particular point.

Note: - Rumors were circulating at one point that CAPP and STAP were losing members because of the long-term contract efforts. No members left because of the long-term contract. The members who left would have done so in any event. At this point, CAPP has 102 members and STAP has 49 members under the five-year contract. Membership has grown over time, not contracted. No entity that left CAPP got a better price for a comparable term.

Another lesson learned is that the educational process for members should start before the supply contract is completed, particularly if the contract involves a prepayment and the assumption of debt.

CAPP is pleased with the five-year full requirements agreement. It is anticipated that five years will provide the right amount of time to plan for and implement future contracts that will provide comparable stability and savings.

Trial and Error In Texas

A tall, dark metal flagpole stands on the right side of the image, flying the Texas state flag. The flag is partially visible, showing the blue field with a white star, the white field, and the red field. The background is a clear blue sky.

A hard year
puts deregulation
to the test.

BY STEVEN ANDERSEN

Ot never rains but it pours on the Texas utility market. And 2008 was a particularly stormy year, bringing disasters economic, natural, and of the market's own making. In the spring, a series of price spikes forced several Retail Electric Providers (REPs) out of business, and led briefly to dramatically higher rates for some customers.

In September, Hurricane Ike—the third costliest hurricane ever to hit the United States—slammed into the Texas coast, wreaking havoc on utility infrastructure. CenterPoint Energy alone announced repair costs totaling \$750 million.

Then there's the global economic crisis. The utility sector, as the third-largest borrower after the financial sector and the federal government, already faces massive exposure to the credit crunch. But that exposure is amplified for Texas REPs, which require large amounts of capital to cover their positions in the Electric Reliability Council of Texas's (ERCOT) various markets (see sidebar, "Texas Credit Quality").

Such developments set the stage for a November 18 pre-session hearing of the Texas Senate Business and Commerce Committee, which oversees regulated industries. Committee Chairman Sen. Troy Fraser billed the hearing as an annual forum in which to ask the central question, "Is our deregulated market working?" The first person to testify responded by invoking Dickens.

"It was the best of times, it was the worst of times," stated Barry Smitherman, chairman of the Public Utilities Commission of Texas (PUC). "Things are positive here in our state. We continue to see development in generation and transmission. Nevertheless, there are storm clouds on the horizon, coming in from outside Texas, that are beginning to have an effect on the Texas market."

The crises that buffeted Texas in 2008 tested the state's deregulation model, now in its seventh year, on several fronts. And though the challenges largely were met, companies and consumers paid a heavy cost. Experts hope the lessons learned will strengthen the market and provide a better framework going forward.

A Brief History of Texas

"From my perspective, the punch line of all this is that every time we do something we learn that restructuring in this industry is harder than we thought it would be," says Lynne Kiesling, an economics professor at Northwestern University who has written extensively on the Texas market.

Kiesling says it's important to understand the ways the Texas experience differs from deregulation efforts elsewhere, differences that extend well beyond the simple fact that the state is an energy island—ERCOT being the only North American grid contained within the borders of a single state.

First consider the culture.

"There is a deep cultural element of independence, meritoc-

"Restructuring in this industry is harder than we thought it would be."

—Lynne Kiesling,
Northwestern University

racy and self sufficiency that goes back to the Republic of Texas," she says. Then there's political will. The deregulation movement in Texas was accelerated by the state's governor in the 1990s—George W. Bush—a self-described "decider," who was keenly focused on developing a retail power market in the state.

"There wasn't a specific, clearly defined notion of what that meant," Kiesling explains. "But that's a feature, not a bug. California was very defined, but they fell on their face."

Finally, there was infrastructure and experience. The industrial community in Texas, particularly the oil and gas sector along the Gulf Coast, had been using distributed generation, cogeneration and waste-heat recovery technology for decades. Put it all together and it created an ideal market for deregulation.

In 1999, then-Gov. Bush signed Senate Bill 7, Texas's deregulation statute, and it took effect in January 2002. The wholesale market was created first, followed by retail competition. Industrial customers had lobbied hard for retail choice, and their robust participation was anticipated. Smaller customers initially were slow to switch providers, but by early 2008, 67 percent of residential customers had either switched to a different REP or to a new rate package with their existing provider. Deregulation was looking like a success.

However, underlying flaws in the relationship between wholesale and retail markets were about to emerge.

"I've been ranting for more than a decade about dynamic pricing and demand response, and how if you reduce barriers in retail markets to entry you're going to get this array of products and services," Kiesling says. "I'm not happy about it, but I'm willing to admit that even I oversimplified things. It's not that easy."

Wind Buffets the Markets

"Wind is an uncontrollable resource," says Dan Jones, the independent market monitor for ERCOT. "It's a piece of the sup-

ply mix unlike anything we've traditionally had."

In other words, it blows when it wants to. A strong wind can push thousands of megawatts onto the grid, and then drop off to almost nothing. Although modern forecasting systems can model wind generation patterns with a great degree of accuracy, ERCOT's rudimentary forecasting methods didn't prepare the market for ebbs and surges in wind power coming from the flatlands—culminating in a dangerous frequency sag when wind generation didn't deliver as expected on Feb. 26, 2008.

Moreover, ERCOT's zonal model didn't correlate to the actual location of generation and congestion. The result was several weeks of tremendous volatility and price spikes in the spot market. At times, electricity prices in southern Texas almost doubled those in northern Texas.

"We got a good dose of what the limitations on the system are," Jones says. "Even though we had the same model for the first seven years of the system, we obviously knew problems needed to be solved. It was just a matter of time before something like that occurred. We put in some changes, but the ulti-

Texas officials began voicing concerns about the very same market distortions seen earlier in California.

turbines in the state are constructed in the vast, sparsely populated regions of West Texas and the panhandle, there simply aren't enough wires to move the power to market. The result is congestion in regions with comparatively light infrastructure.

The ERCOT wholesale markets rely on what's called zonal pricing to accommodate congestion cost—prices reflect the average congestion in each of more than 30 zones. But zonal congestion pricing largely has become discredited, according to the latest thinking about wholesale electricity markets. Even CAISO, the California Independent System Operator—the most well-known prior adherent to that idea—decided to scrap zonal pricing in favor of nodal pricing in its MRTU initiative (Market Redesign and Technology Update).

"To the PUC's credit, they saw this coming and were already working really hard to develop nodal pricing market platform for ERCOT," Kiesling explains. "It's just a massive endeavor."

In fact, ERCOT and the PUC long have contemplated a move away from a zonal congestion pricing model, with the PUC launching an investigation to study ERCOT's wholesale market design as far back as April 2002. That move came on the heels of a sharp spike in natural gas prices in the fall of 2000, which in turn produced an explosion of wind farms in West Texas in 2001. But with the ERCOT market lacking the nodal-locational price signals then common to such wholesale markets as PJM and New York, Texas saw developers locate 1,000 MW of new wind capacity in West Texas on the wrong side of a 500-MW transmission constraint in the Pecos River area. That left the new wind turbines partially stranded, lacking grid

access to load centers farther east.

Moreover, Texas officials began voicing concerns about phantom congestion and gaming of decremental bids—the very same market distortions seen earlier in California, at the peak of the Golden State's notorious power crisis, due in no small part to CAISO's reliance on imprecise zonal approximations for congestion pricing.

Beginning in 2002, proposals started to emerge to move the

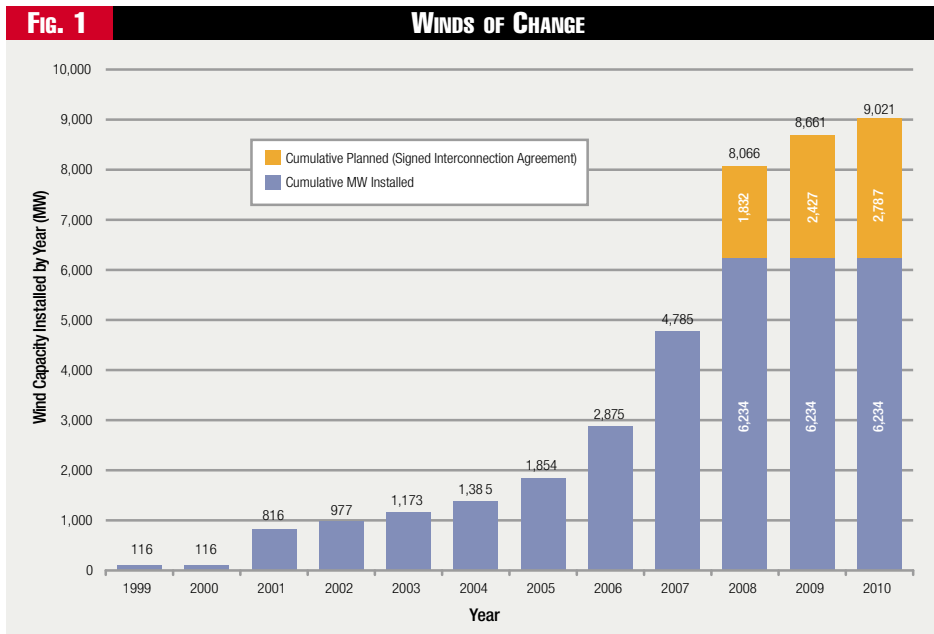


Fig. 1 Texas' wind generation capacity has grown at an extraordinary rate in recent years, but the rapid expansion has created new challenges for ERCOT in managing load and its markets. Note: Megawatts planned includes all wind projects with signed interconnection agreements.

mate solution is to get the market redesign in place."

In 2006, Texas passed California to become the national leader in wind power generation. The Texas deregulation scheme provides significant incentives for renewable power development, and the state's wind resource is sufficient for it to become a competitive energy source. But the development has happened so fast that wind generation already has exceeded transmission capacity (see Figure 1, "Winds of Change"). Because most wind

TEXAS CREDIT QUALITY

Looking at the Texas market from the outside, one tends to focus on the financial performance of companies in that market, or more properly, its various segments. There are valid distinctions to consider. Even in the still-regulated T&D segment, for example, Texas companies' more aggressive business models differentiate them from the rest of what is generally a stable, investment grade industry.

"The overall credit quality of Texas-based utilities, on average, is lower than the average credit quality of the rest of the sector," says Jim Hempstead, senior vice president at Moody's Investors Service. "While they still have access to capital, it may be more costly."

On the retail side, the risk can be

more dramatic.

Houston-based Reliant Energy in particular saw significant volatility in 2008. In November the company posted a third quarter net income loss of more than \$1 billion and announced it would wind down its commercial and industrial unit, fueling widespread speculation of an imminent takeover.

"We believe the REPs are definitely going back and reassessing how much credit is

"Texas retailers are reassessing how they're going to manage this volatile, complex, risky business plan."

—Jim Hempstead, Moody's Investors Service

costing them and how they're going to manage this volatile, complex, risky business plan that they have," Hempstead says.

Still, it would be a mistake to confuse corporate performance or credit ratings with the fundamental integrity of Texas' deregulated market.

For example, Moody's changed the rating outlook for Energy Future Holdings Corp., and its operating subsidiary Texas Competitive Electric Holdings Co., from stable to negative in November. Hempstead said the move was a "macro call" that owed mainly to the company's outstanding debt and limited financial flexibility.

"They have attractive, positive cash flow assets," he says. "It's just that they put so much debt on top of those assets that it calls into question the resiliency of their business plan when presented with unexpected challenges or stress." —SA

ERCOT market toward a more granular design, with unit-specific bidding in place of portfolio bidding, and locational marginal pricing (LMP) with prices specific to individual buses (termed "nodes") on the grid system. The PUC's market oversight division suggested a hybrid, middle way, based upon flow gates and physical grid rights. But even then, industry leaders warned that such changes would come only at very high cost—and with customer benefits uncertain at best (see "Winds of Change in Texas," *Fortnightly*, April 1, 2003).

Now, some six years later—on November 26, 2008 to be exact—ERCOT submitted a revised timeline to the PUC, reporting that it will implement nodal pricing in December 2010, at a projected project cost of \$660 million.

Retailers of Last Resort

Other changes are coming in Texas as well—some involving barriers to entry in the retail market.

"The market spikes caused five small REPs to go out of business," says John Fainter, president of Association of Electric Companies of Texas. "It affected 40,000 customers—less than one-tenth of 1 percent of the market. I don't want to minimize anything, because I think it's going

to take time to work through, but I think to a large extent it's stabilized."

Stabilized, yes. Resolved, no.

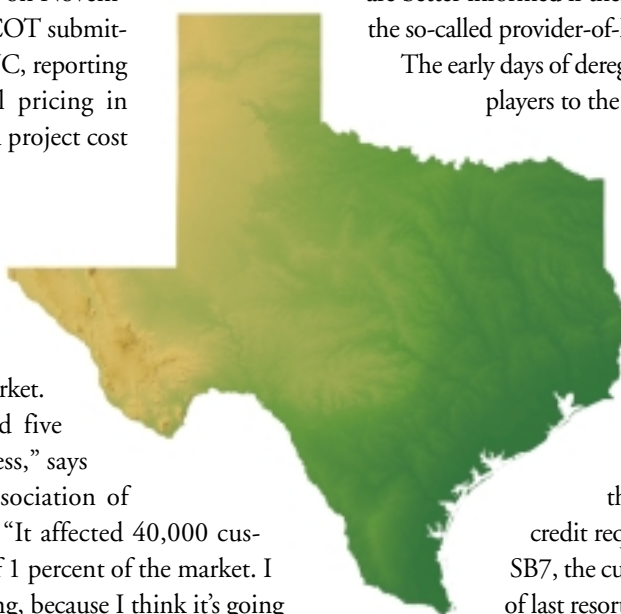
"The commission, as a result of what happened earlier this year, is undergoing a rulemaking modification to strengthen the financial assurance requirements of retail providers," says Terry Hadley, a spokesman for the PUC.

Those changes include beefing up financial certification standards for REPs, improving disclosure practices so customers are better informed if their provider goes under, and revising the so-called provider-of-last-resort process.

The early days of deregulation were all about drawing new players to the table. Market barriers, traditionally

almost insurmountable in the electric business, were intentionally left low. The strategy succeeded in giving customers choice—dozens of REPs now operate in Texas—but not all the new players could afford the game.

When the wholesale market went haywire in May, five of the smaller REPs couldn't meet their credit requirements. In that situation, under SB7, the customer account passes to a provider of last resort. Electric service is not interrupted,



but rates almost always go up, sometimes significantly. Hadley says the crisis demonstrated a need to improve the system.

“Most troubling was the effect on customers who essentially did the right thing,” he says. “They shopped for a provider, looking for value. However when the provider left the market suddenly, the provider-of-last-resort rule as it currently exists dramatically increased their electricity rate until they were able to switch.

“They can switch at any time, but the dilemma is that these smaller providers that go out of business often do not provide necessary notification, so there’s a delay in the customers find-

for load forecasting and market management.

“We have to get smart about predicting wind generation,” Hadley says. “If you think you’re going to have 5,000 MW of wind blowing tomorrow and it doesn’t show up, that’s a big number. And vice versa, if you decide not to count on any of it, then you might bring on a lot of units that you don’t need, which is costly. It’s a real balancing act. We need to get a lot better about forecasting the wind output.”

Toward that end, ERCOT has been testing a state-of-the-art wind forecasting system from AWS Truewind, and expects to implement such a system when it converts to a nodal market.

Further, the Texas PUC has come to be seen as the best-practices leader on the question of assuring enough electric transmission capacity to bring renewable energy from its often-remote production areas to the big population centers where it’s needed.


Under the Texas solution, known as the CREZ model (Competitive Renewable Energy Zones) and implemented by a PUC order in October 2007, the state follows a top-down process that begins by mapping out geographic areas most suitable for wind energy development, and then conducts region-wide planning to get new grid lines in place—ideally before

the wind developers come forward with new projects and find themselves waiting in a lengthy interconnection queue for permission to hook up to the grid.

The Texas CREZ model has won praise as a logical way to break the chicken-and-egg impasse that can force delays in wind project development for lack of transmission capacity. California, the nation’s acknowledged leader in renewable energy development, has sought to emulate the Texas CREZ model under its Renewable Energy Transmission Initiative (*see www.energy.ca.gov/reti*).

Nevertheless, as always, the devil is in the details, and the details almost always have to be worked out in practice. But despite the difficulties, the solutions that emerge in Texas might show more about what’s right with ERCOT than what’s wrong with it.

“Deregulation in Texas hasn’t been a slam dunk,” Kiesling says. “There’s been price volatility. Every time you turn over a stone you find a new set of complex issues. But communicating price signals from the consumer all the way back to the generator part is partly how you get more efficient resource use, lower environmental impact, and reductions in cost.

“That’s the integration of retail and wholesale markets,” she says, “an important idea that’s reflected in the Texas market design.” 

Steven Andersen is a freelance writer based in New York. Email him at andersenwriting@gmail.com.

“The market spikes caused five small REPs to go out of business, affecting less than one-tenth of 1 percent of the market. I don’t want to minimize anything, but I think to a large extent it’s stabilized.”

—John Fainter, president of Association of Electric Companies of Texas

ing out. The process worked in terms of keeping the juice on, but the notification aspect did not.”

Neither did the low table stakes.

“Right now the lowest barrier to be a retail provider is \$100,000 cash,” Hadley says. “That will be significantly strengthened.” The PUC is considering new rules that would require prospective REPs to have an investment grade rating or tangible net worth of at least \$100 million, with liquid capital of at least \$1 million.

“Early on the intent was to encourage as much market entry as possible,” Hadley says. “Now that the market has matured, the current commission has realized it’s time to strengthen the minimum financial requirements for providers.”

Work in Progress

The challenges of 2008 revealed a lot about Texas’s deregulation scheme—both what works, and what doesn’t.

“I think it showed the evolution of [deregulation],” Hadley says. “We’re now in our seventh year. At first the key issue was getting customers to realize that they had to shop for electricity if they wanted the best price. Now we’ve evolved to the point where a significant number of customers have to deal with the fallout when smaller providers can’t meet financial requirements.”

The ongoing maturation process will reshape the PUC’s approach to reducing transaction costs and increasing consumer protection. Plus, wind generation presents growing challenges

Council Agenda Item: #R7

There are no attachments for this Item.

TOWN OF ADDISON
RESOLUTION NO. RXX-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS, IN SUPPORT OF THE AIRCRAFT OWNERS AND PILOTS ASSOCIATION (AOPA) POSITION IN OPPOSITION TO THE PROPOSED FEDERAL AVIATION ADMINISTRATION (FAA) CLASS B AIRSPACE EXPANSION.

WHEREAS, the FAA has proposed expanding the Dallas Class B airspace to contain approaches to area airports which adversely affects Addison Airport and its users; and

WHEREAS, the approaches to area airports could be redesigned to stay within the existing airspace; and

WHEREAS, the AOPA has raised questions about the need for such a large expansion of the Dallas Class B airspace and is asking the FAA to consider changing procedures to increase efficiency and better accommodate all users before changing the airspace; and

WHEREAS, the AOPA also is raising concerns about the safety and economic impact the airspace changes will have on general aviation operators, who may be forced to travel long distances to circumnavigate the Class B. Businesses at underlying airports also could be negatively affected.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS: That we support the AOPA position and in support of our users, tenants and tenant businesses, respectfully request the FAA reconsider their proposal to expand the Class B Airspace and reevaluate their approach procedures to favor containing the approaches within the existing Class B Airspace.

PASSED AND ADOPTED this 27th day of January 2009.

Joe Chow, Mayor

ATTEST:

Lea Dunn, City Secretary

FAIRFIELD DEVELOPMENT LP

DEVELOPMENT

P.O. Box 5407
Arlington, Texas 76005
Tel 214-574-1500
Fax 214-574-1300

CONSTRUCTION

January 20, 2009

Summary of Costs: Public Improvements Costs isolated to "Quorum Drive" only

The amounts shown here are the values associated with improvements in the Quorum Drive R.O.W. only.

<u>Concrete:</u>	Paving, sidewalk sub-base, parking, median	\$130,370
<u>Pavers:</u>	Sidewalks, median	\$42,330
<u>Landscaping:</u>	Plants, irrigation, sleeves, drainage	\$99,040
<u>Furniture:</u>	Benches, bike racks, litter containers	\$2,411
<u>Street Lighting:</u>	Poles and fixtures	\$23,922
<u>Electrical:</u>	Conduit and conductors, pole assembly	\$13,692
<u>Utilities:</u>	Water, sewer, storm	\$146,115
	Sub total:	\$457,880
	Survey:	\$2,700
	Geotech:	\$3,452
	<u>Bond:</u>	\$9,939
	Total:	\$473,471

* Grand Total of actual cost exceeds allowable reimbursement amount by \$2,024.00

FAIRFIELD ADDISON CIRCLE L.P.
2045 North Highway 360, Suite 250
Grand Prairie, Texas 75050

November 11, 2008

Ms. Carmen Moran, AICP
Director of Development Services
16801 Westgrove Drive
Addison, Texas 75001-9010

Re: Fourth Amendment to Master Facilities Agreement, June 11, 2007
Reimbursement Request

Dear Ms. Moran;

Per the above referenced agreement, Fairfield Addison Circle L.P. is submitting documentation to obtain payment for completed work. Per the agreement, we are requesting payment of \$471,947.74 which includes the City's portion which is a total of \$287,700.74 and \$184,247.00 which was advanced by Fairfield to the Town in 2007.

The attached binder includes copies of invoices and back up documents that support the completed work.

Please review the attached materials and let us know if there is anything else needed to complete our reimbursement processing. We have enjoyed working with the Town of Addison on this project and look forward to future endeavors in the Town.

Sincerely,

Fairfield Addison Circle L.P.,
a Texas limited partnership

By: FF Addison LLC,
a Texas limited liability company, General Partner

By: FF Properties, Inc.,
a Delaware corporation, Manager

By: 
Sandra Hill, Vice President

cc: Larry Lee—Fairfield
Stan Himes--- Fairfield
Clay Barnett, PE--- Town of Addison