



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.

OCTOBER 27, 2009

TOWN HALL

5300 BELT LINE ROAD

WORK SESSION

Item #WS1 - Discussion regarding review of the Addison City Charter.

Item #WS2 - Discussion with Judge Dwight regarding the conducting of weddings by Addison municipal court judges.

Item #WS3 - Discussion regarding amending a lease agreement with Twin City Hotels, LLC of the Clay Pit restaurant site (located at 4460 Belt Line Road).

REGULAR SESSION

Pledge of Allegiance

Item #R1 - Consideration of Old Business.

Introduction of Employees

Discussion of Upcoming Events

Item #R2 - Consent Agenda (Items #2a through #2g).

Item #2a - Approval of the Minutes for:

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

Item #2b - Approval of the final payment to Ratliff Landscaping for Spruill Park landscaping improvements.

Item #2c - Approval of an agreement with The Margulies Communications Group (MCG) to assist the Town with media communications in the amount of \$42,000.00, subject to the final review and approval of the City Manager and the City Attorney.

Item #2d - Approval of an agreement with Liz Oliphant & Associates to assist the Town with special projects as specified, subject to the final review and approval of the City Manager and the City Attorney.

Item #2e - Approval of an agreement with Rodney Hand & Associates Marketing Communications, LP, to advertise in the November 2009, February 2010, May 2010 and August 2010 editions of the Addison/North Dallas Corridor Guide publication, subject to the final review and approval of the City Manager and the City Attorney.

Item #2f - Approval of an agreement with Shiroma Southwest to provide public relations and media publicity programs to promote Addison Perks and certain special events in the Town of Addison, subject to the final review and approval of the City Manager and the City Attorney.

Item #2g - Approval of a Private Easement Without Warranty for Equipment Station and Underground Lines from the Town to Southwestern Bell Telephone Company adjacent to Brookhaven Club Drive in that are of the Town generally known as Vitruvian Park, subject to the final review and approval of the City Manager and the City Attorney.

Item #R3 - Presentation and discussion regarding economic development.

Item #R4 - Presentation, discussion and consideration of approval of a Resolution approving a Shopping Center Lease between the Town, as tenant, and G & I v VOP, LP, a Delaware Limited Partnership, as landlord, for the lease by the Town of certain space within the Village on the Parkway shopping center for visitor information center and other uses, and of a Resolution approving a sublease or subleases of a portion of such space.

Attachment:

1. Resolution

Administrative Recommendation:

Administration recommends approval.

Item #R5 - Presentation, discussion and consideration of approval of a STEP (Selective Traffic Enforcement Program) grant for 2010.

Attachments:

1. Council Agenda Item Overview
2. STEP Grant Documents
3. Resolution

Administrative Recommendation:

Administration recommends approval.

Item #R6 - Presentation, discussion and consideration of approval of the annual contract for Fiscal Year 2009-2010 with the Trinity River Authority to provide inspection, sampling and laboratory analysis on certain industries in Addison to comply with wastewater pretreatment laws as required by EPA.

Attachments:

1. Council Agenda Item Overview
2. TRA Cover Letter
3. Contract with Exhibits

Administrative Recommendation:

Administration recommends approval.

Item #R7 - Presentation, discussion and consideration of approval of the annual contract with Dallas County Health & Human Services (DCHHS) for the Town of Addison to participate in the cost of providing selected public health services at reduced prices to Addison residents.

Attachments:

1. Council Agenda Item Overview
2. Dallas County Cover Letter
3. Contract with Exhibits

Administrative Recommendation:

Administration recommends approval.

Item #R8 - Presentation, discussion and consideration of approval of an ordinance Amending Chapter 18, Article IV, Section 18-246 (relating to the National Electrical Code) of the Code of Ordinances of the Town of Addison, Texas, to provide minimum standards to safeguard life or limb, property, and public welfare by regulating the design, construction, quality of materials, use and occupancy, location and maintenance of buildings and structures.

Attachments:

1. Council Agenda Item Overview
2. Ordinance

Administrative Recommendation:

Administration recommends approval.

Item #R9 - Presentation, discussion and consideration of approval of an Ordinance of the Town of Addison, Texas, amending various provisions of the Code of Ordinances of the Town, including provisions relating to the International Building Code, International Property Maintenance Code, ICC Electrical Code, International Maintenance Code, International Plumbing Code, International Fire Code, and other Codes, and provisions relating to fences, satellite earth stations, swimming pools and spas, and solar energy systems, by providing for the establishment of a board of appeals comprised of the members of the Zoning Board of Adjustment to hear appeals and other matters in connection with such Codes and other provisions, and providing for other amendments to such Codes.

Attachments:

1. Council Agenda Item Overview
2. Ordinance

Administrative Recommendation:

Administration recommends approval.

Item #R10 - Presentation, discussion and consideration of approval of an amendment to a lease between the Town and Twin City Hotels, LLC of the Clay Pit Restaurant site located at 4460 Belt Line Road.

Adjourn Meeting

Posted:
October 23, 2009 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.

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

October 13, 2009
8:00 P.M. – Town Hall
5300 Belt Line Road
Council Chambers

Present: Mayor Chow, Councilmembers Braun, Clemens, Daseke, Lay, Mellow and Noble

Absent: None

Regular Session

Item #R1 - Consideration of Old Business.

The following employees were introduced to the Council: Mike Hardin with the Police Department and Tom Hess with the General Services Department.

Item #R2 - Consent Agenda.

#2a - Approval of the Minutes for:

September 22, 2009, Regular City Council Meeting

Item #2b - Approval of (i) a Contract for Services with each of the following non-profit entities: Communities in Schools–Dallas, Contact Crisis Line, Dance Council, Metrocrest Chamber of Commerce, Metrocrest Family Medical Clinic, Metrocrest Social Services, Richardson Symphony Orchestra, Second Thought Theatre, Senior Adult Services, Special Care and Career Services, The Family Place, and WaterTower Theatre, Inc., and (ii) an Agreement for Use of the Addison Theatre Centre with WaterTower Theatre, Inc., and an Agreement for Use of the Addison Theatre Centre with Second Thought Theatre; subject to the final review and approval of the City Manager and the City Attorney.

Councilmember Braun moved to approve Items #2a and #2b.

Councilmember Clemens seconded the motion. Motion carried.

Voting Aye: Chow, Braun, Clemens, Daseke, Lay, Mellow and Noble
Voting Nay: None
Absent: None

Item #R3 - Presentation, discussion and consideration of approval of the appointment of a member to the Planning and Zoning Commission to replace Jamie Gaines (appointment recommendation to be received from Councilmember Noble).

Councilmember Noble moved to appoint John Oliver to the Planning and Zoning Commission to replace Jamie Gaines.

Councilmember Braun seconded the motion. Motion carried.

Voting Aye: Chow, Braun, Clemens, Daseke, Lay, Mellow and Noble
Voting Nay: None
Absent: None

Item #R4 - Presentation and consideration of approval of the payment of \$50,000.00 to assist with advertising for Cavanaugh Museum.

Councilmember Clemens moved to approve the payment of \$50,000.00 to assist with advertising for Cavanaugh Museum.

Councilmember Lay seconded the motion. Motion carried.

Voting Aye: Chow, Braun, Clemens, Daseke, Lay, Mellow and Noble
Voting Nay: None
Absent: None

Item #R5 - Presentation, discussion and consideration of approval of an ordinance amending the Town's investment policy set forth in Chapter 2, Article IV, Division 3 of the Town's Code of Ordinances.

Councilmember Daseke moved to approve Ordinance 009-035 amending the Town's investment policy set forth in Chapter 2, Article IV, Division 3 of the Town's Code of Ordinances.

Councilmember Clemens seconded. Motion carried.

Voting Aye: Chow, Braun, Clemens, Daseke, Lay, Mellow and Noble
Voting Nay: None
Absent: None

Item #R6 - Presentation, discussion and consideration of approval of a resolution adopting the Town of Addison Investment Strategy for Fiscal Year 2009-2010.

Councilmember Braun moved to approve Resolution R09-017 adopting the Town of Addison Investment Strategy for Fiscal Year 2009-2010.

Councilmember Clemens seconded. Motion carried.

Voting Aye: Chow, Braun, Clemens, Daseke, Lay, Mellow and Noble
Voting Nay: None
Absent: None

Item #R7 - Presentation, discussion and consideration of approval of a resolution modifying the Addison Airport fuel flowage fee applicable to non-public fuelers (non-public operators) by establishing the said fee in an amount equal to twenty cents (\$0.20) for each gallon of aviation fuel received by non-public fuelers, and providing for the continuation of the fuel flowage fee applicable to public fuelers in the amount equal to twelve cents (\$0.12) for each gallon of aviation fuel received by public fuelers.

Councilmember Daseke moved to approve Resolution R09-018 modifying the Addison Airport fuel flowage fee applicable to non-public fuelers (non-public operators) by establishing the said fee in an amount equal to twenty cents (\$0.20) for each gallon of aviation fuel received by non-public fuelers, and providing for the continuation of the fuel flowage fee applicable to public fuelers in the amount equal to twelve cents (\$0.12) for each gallon of aviation fuel received by public fuelers.

Councilmember Braun seconded. Motion carried.

Voting Aye: Chow, Braun, Clemens, Daseke, Lay, Mellow and Noble
Voting Nay: None
Absent: None

Item #R8 - Presentation, discussion and consideration of approval of radio agreements between the Town of Addison and the City of Carrollton.

Councilmember Lay moved to approve radio agreements between the Town of Addison and the City of Carrollton.

Councilmember Daseke seconded. Motion carried.

Voting Aye: Chow, Braun, Clemens, Daseke, Lay, Mellow and Noble
Voting Nay: None
Absent: None

Item #R9 - **PUBLIC HEARING** Case 1586-Z/Vitruvian Park, Phase 1-B. Presentation, discussion and consideration of approval of an ordinance approving development plans for a multi-family project in a Planned Development District, (007-034), located on 3.64 acres at 3900 Brookhaven Club Drive, on application from United Dominion Realty, represented by Mr. Matt Brendel.

Councilmember Braun recused himself for Item #R9 and left Council Chambers. He did not participate in the discussion or vote.

Tom Lamberth with United Dominion Realty gave an update on the Vitruvian Park Project.

Mayor Chow opened the meeting as a Public Hearing. No one spoke.

Mayor Chow closed the meeting as a Public Hearing.

Councilmember Clemens moved to approve Ordinance 009-036 approving development plans for a multi-family project in a Planned Development District, (007-034), located on 3.64 acres at 3900 Brookhaven Club Drive, on application from United Dominion Realty, represented by Mr. Matt Brendel, subject to the following conditions:

Prior to the issuance of a building permit, the drawings shall be revised as follows:

A landscaping plan showing the landscaping along both streets shall be provided.

The sidewalk connections shown from the east side of the Phase I- B building shall be specified to match the rock-salt concrete finish proposed for the park trail.

Landscaping planting plans for the private open space contained in the courtyard areas shall be submitted.

On sheet A321 (east elevation of Building B), the sixth-story structures shall be redrawn so that it is clear they do not enclose air-conditioned space.

On sheet A102 the partial fire lane shown between Building A and Building B shall be extended out to Vitruvian Way (currently Brookhaven Club Drive).

On sheet LO.02, the fences between the pool and the park property that appears to be enclose public space shall be deleted.

Councilmember Lay seconded. Motion carried.

Voting Aye: Chow, Clemens, Daseke, Lay, Mellow and Noble
Voting Nay: None
Absent: None
Abstaining: Braun

Councilmember Braun returned to Council Chambers.

Item #R10 - Presentation, discussion and approval of a five year contract in the amount of \$26,400.00 with Metrocrest Medical Services for pre-hospital emergency medical control and EMS continuing education purposes.

Councilmember Clemens moved to approve a five year contract in the amount of \$26,400.00 with Metrocrest Medical Services for pre-hospital emergency medical control and EMS continuing education purposes, with the understanding that this is a five year contract in the amount of \$26,400.00 for each of the first two years and is subject to the approval of the City Attorney.

Councilmember Braun seconded. Motion carried.

Voting Aye: Chow, Braun, Clemens, Daseke, Lay, Mellow and Noble
Voting Nay: None
Absent: None

Item #R11 - Presentation, discussion and consideration of approval of a supplemental agreement to the Engineering Services Agreement with Freese & Nichols, Inc., in an amount not to exceed \$56,155.00, for additional design services on the proposed 1.5 Million Gallon Elevated Storage Tank.

Councilmember Braun moved to approve a supplemental agreement to the Engineering Services Agreement with Freese & Nichols, Inc., in an amount not to exceed \$56,155.00, for additional design services on the proposed 1.5 Million Gallon Elevated Storage Tank.

Councilmember Daseke seconded. Motion carried.

Voting Aye: Chow, Braun, Clemens, Daseke, Lay, Mellow and Noble
Voting Nay: None
Absent: None

Item #R12 - Presentation, discussion and consideration of a Resolution providing that the Town pursue available energy efficiency and conservation block grant funding from the American Recovery and Reinvestment Act of 2009 and allocated by the State Energy Conservation Office.

Councilmember Clemens moved to approve Resolution R09-019 providing that the Town pursue available energy efficiency and conservation block grant funding from the American Recovery and Reinvestment Act of 2009 and allocated by the State Energy Conservation Office.

Councilmember Daseke seconded. Motion carried.

Voting Aye: Chow, Braun, Clemens, Daseke, Lay, Mellow and Noble
Voting Nay: None
Absent: None

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

Attest:

Mayor-Joe Chow

City Secretary-Lea Dunn

Council Agenda Item:#2b

SUMMARY:

Staff recommends that the Council approve final payment totaling \$24,548.36 to Ratliff Hardscape for completion of Spruill Park.

FINANCIAL IMPACT:

Construction Budget	<u>\$650,000.00</u>
Original Contract Amount:	<u>\$471,080.10</u>
Change Order Amount:	<u>\$7116.37</u>
Final Contract Amount:	<u>\$478,196.47</u>
Project Manager:	<u>Slade Strickland</u>

This project was funded out of the Parks Capital Projects Fund. There were two change orders that involved relocation of an existing irrigation mainline, additional surveying, and addition of plant material on the northeast corner of the park.

BACKGROUND:

The 1.57 acre Spruill Park construction project is the final park development in the Addison Circle District. The budget for the park was established at \$650,000 in the 1996 Addison Circle District Master Facilities Agreement. The improvements consist of decorative paving, site lighting, park benches, drinking fountain, pavilion structure, landscaping, drip and spray irrigation, pavilion with bistro tables, pet waste dispenser stations and a plaza area.

RECOMMENDATION:

Ratliff Hardscape completed the project in a satisfactory manner. Staff recommends approval.

Council Agenda Item: #2c

SUMMARY:

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

FINANCIAL IMPACT:

Budgeted Amount: \$42,000 (General, Airport and Hotel funds)

Cost: \$42,000 plus expenses that may be incurred

BACKGROUND:

For the last several years, the Town has utilized the services of The Margulies Communications Group to respond to media inquiries, particularly as it relates to crisis situations. The Margulies Group provides a team of five media relations specialists who are on call 24/7 to assist with media issues. This includes assisting the Addison Police Department on scene with public safety related incidents, Addison Airport as well as all other city departments. In addition the agreement is structured so that the Town may utilize the services of the Margulies Group on specific projects to communicate the Town's position clearly to the public, media and other interested parties and to minimize the potential for negative publicity for the Town by achieving accurate coverage of important issues. The arrangement has served the Town well and enabled the Town to address the media in an efficient, effective manner.

RECOMMENDATION:

Staff recommends approval.

Margulies Communications Group (MCG)

This letter, when signed by you, will confirm that the Town of Addison (Client) has retained The Margulies Communications Group (MCG), a Texas Corporation as public relations counsel to provide the services described below. Such services shall be provided beginning on October 1, 2009.

Services

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

For the services described above, Client will pay MCG a monthly retainer of \$3,500 for each calendar month during the term hereof (the "Monthly Fee"). If incurred, MCG will bill Client for reimbursement of out-of-pocket expenses incurred on Client's behalf when these expenses have been approved by Client in advance.

MCG shall submit to Client, on or before the fifth day of each month, an invoice for the Monthly Fee. Each such invoice shall include (i) a description of the work performed for the month preceding the date of the invoice, (ii) time reports for that month for all MCG personnel who work under this contract, (iii) an itemized statement of any reimbursable expenses incurred; (iv) true and correct copies of any and all receipts, invoices, and other documents and materials in support of the invoice, and (v) any such additional documents or materials as Client may request in connection with the invoice and/or the compensation paid to MCG. Client shall pay the Monthly Fee set forth in the invoice for service properly performed and all expenses properly incurred by MCG and set forth in the invoice within thirty (30) days following Client's receipt of the invoice.

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

Either party may terminate this contract at any time and for any reason by giving to the other party at least 30 days written notice of such termination. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such

termination. In the event of termination, all finished or unfinished reports and other materials and items (whether kept electronically, in writing, or otherwise) prepared by MCG shall be and become the property of Client, and MCG shall promptly deliver such items to Client. MCG shall be paid for all work satisfactorily completed prior to the effective date of said termination.

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

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

- (i) Workers Compensation insurance at statutory limits, including Employers Liability coverage a minimum limits of \$500,000 each-occurrence each accident/\$500,000 by disease each-occurrence/\$500,000 by disease aggregate;
- (ii) Commercial general liability insurance at minimum combined single limits of \$1,000,000.00 per occurrence and \$2,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations (\$1,000,000 products/completed operations aggregate) and contractual liability (covering, but not limited to, the liability assumed under the indemnification provisions of this Agreement).
- (iii) Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage.
- (iv) Professional Liability coverage at minimum limits of \$1,000,000. This coverage must be maintained for at least two (2) years after the termination of this letter agreement. If coverage is written on a claims-made basis, a policy retroactive date equivalent to the inception date of the contract (or earlier) must be maintained during the full term of this agreement or any extensions or renewals thereof.

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

- (a) The Town of Addison shall be named as an additional insured with respect to General Liability and Automobile Liability.
- (b) All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.

- (c) A waiver of subrogation in favor of the Town of Addison shall be contained in the Workers Compensation and all liability policies.
- (d) All insurance policies shall be endorsed to require the insurer to immediately notify the Town of Addison of any material change in the insurance coverage.
- (e) All insurance policies shall be endorsed to the effect that the Town of Addison will receive at least sixty (60) days notice prior to cancellation or non-renewal of the insurance.
- (f) All insurance policies, which name the Town of Addison as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
- (g) Required limits may be satisfied by any combination of primary and umbrella liability insurances.
- (h) MCG may maintain reasonable and customary deductibles, subject to approval by the Town of Addison.
- (i) Insurance must be purchased from insurers that are financially acceptable to the Town of Addison.

All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of Insurance, satisfactory to Client, shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting the following:

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

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

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

RELATED TO, OR IN CONNECTION WITH, THIS AGREEMENT (AND INCLUDING, WITHOUT LIMITATION, ANY CLAIM OR DAMAGES RELATING TO COPYRIGHT OR ANY OTHER INTELLECTUAL PROPERTY RIGHT), INCLUDING DAMAGES CAUSED BY THE INDEMNITEE'S OWN NEGLIGENCE, EXCEPT AS SPECIFICALLY LIMITED HEREIN.

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

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

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

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

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

To Client:

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

To MCG:

6210 Campbell Rd.
Suite 200
Dallas, Texas 75248

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

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

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

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

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

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

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

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

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

Margulies Communications Group, Inc



David S. Margulies, President

Date: _____

Accepted and Approved:

Town of Addison

By: _____ (name and title)

Date: _____

Council Agenda Item: #2d

SUMMARY:

Staff is requesting approval to enter into an agreement with Liz Oliphant & Associates, Inc. to assist with special projects as determined by the City Manager.

FINANCIAL IMPACT:

Principal (Liz Oliphant)	\$150.00 per hour
Production Coordinator	\$50.00 per hour
Clerical/Detail Service Fee	\$20.00 per hour

Attendance at Council Meetings/staff meetings \$40.00 per hour.

Funds are budgeted in the General Fund. Ms. Oliphant's services for FY2008-2009 were \$30,478.00.

BACKGROUND:

For the last several years, the Town has utilized the services of Liz Oliphant & Associates for a variety of special projects and to promote certain stories to the local/regional press. Staff is very pleased with the results that Liz Oliphant consistently provides. The term of the contract is one year with an automatic renewal for additional year subject to annual appropriations.

RECOMMENDATION:

Staff recommends approval.

AGREEMENT FOR PUBLIC RELATIONS SERVICES

THIS AGREEMENT is between the Town of Addison, a municipal corporation, of Dallas County, Texas (herein referred to as "TOWN") (acting through its City Manager with approval of the City Council) and Liz Oliphant & Associates, Inc. (herein referred to as "AGENCY"), a Texas corporation with its principal place of business in the City of Dallas, Dallas County, Texas.

WHEREAS, the TOWN requires the assistance of a public relations firm to assist with special projects; and

WHEREAS, the TOWN desires to retain the services of Liz Oliphant & Associates, Inc. to provide such assistance;

NOW, THEREFORE, in consideration of the mutual covenants set out herein and for other good and valuable consideration, the TOWN and AGENCY hereby agree as follows:

SECTION I DUTIES

(a) TOWN hereby retains AGENCY to assist in the development and maintenance of a communications program for the TOWN.

(b) During the term of this Agreement, the TOWN may assign additional duties to AGENCY from time to time, subject to AGENCY's desire to handle same. If additional duties are assigned to AGENCY and AGENCY agrees to handle the same, all terms and conditions hereof shall apply in the same manner as with respect to the originally assigned duties.

SECTION II SCOPE OF SERVICES

At the TOWN's request, AGENCY shall assist in the development of a plan for communications and public relations for the community. AGENCY'S services shall include the following:

(a) AGENCY shall be responsible for assisting TOWN Staff in meeting the needs of the Mayor, Council Members and senior Staff.

(b) AGENCY shall develop plans and assist with other special projects as determined and directed by the City Manager or his designated representative.

SECTION III COST ESTIMATES

AGENCY agrees to provide to the TOWN cost estimates of all work it is asked to perform on the TOWN's behalf, to the best of AGENCY's ability, based upon the items and services described in Section II, Scope of Services.

SECTION IV COMPENSATION

(a) The TOWN agrees to compensate AGENCY for the services rendered under this Agreement on an hourly basis according to the following schedule (except for attendance at TOWN Council or Staff meetings as set forth below):

Principal (Liz Oliphant)	\$150.00 per hour
Production Coordinator	\$ 50.00 per hour
Clerical/Detail Service Fee	\$ 20.00 per hour

Attendance at Council meetings or Staff meetings, upon the request of, or with the prior approval of the City Manager, shall be at a rate of \$40.00 per hour.

(i) Outside Art and Production Cost — Copies of invoices for outside art and production costs incurred by AGENCY on behalf of the TOWN must be accompanied by invoices to receive reimbursement.

(ii) Out-of-Pocket Costs — The TOWN will reimburse AGENCY at cost for AGENCY's expenditures for copies, telegrams, telephone, freight express, local deliveries, and postage incurred by AGENCY on behalf and at the request of the TOWN. Such costs will be contained in the billing provided to the TOWN.

(b) AGENCY agrees to provide to the TOWN a time frame or "number of days to complete" on the cost estimate for each project.

SECTION V BILLING AND PAYMENT

(a) Detailed invoices for all work related to the services performed hereunder and for printed collateral material, and other projects shall be provided to the TOWN on a monthly basis. The invoice shall include a detailed listing of hourly charges for each service rendered including meetings, etc. as well as references as to the projects to which the hourly charge applies. In addition, attachments of all related receipts, shipping receipts for any and all items related to a project including but not limited to materials, out-of-pocket expenses, printed materials, etc. should be included. Should AGENCY fail to substantiate the costs contained in the invoice, then the TOWN reserves the right to request clarification prior to payment. The TOWN agrees to use reasonable efforts to inform AGENCY of any questions concerning an invoice within seven working days. All invoices not in question shall be payable within thirty (30) days of the date of the TOWN's receipt of the statement and shall be past due after that date.

(b) AGENCY reserves the right to charge interest to the TOWN and the TOWN hereby agrees to pay AGENCY interest at the rate of prime plus 1% per annum for charges not in question that are delinquent for more than sixty (60) days from receipt of such ; provided, however, that such amount shall not exceed the maximum amount of interest permitted to be paid by the TOWN under any law or regulation.

(c) In the event of any question on a statement, AGENCY agrees to provide the TOWN with a revised invoice containing those items for payment not in question. The TOWN agrees to pay such within thirty (30) days of receipt.

SECTION VI RELATIONSHIP BETWEEN AGENCY AND THE TOWN

(a) Title to all materials which AGENCY purchases on the TOWN's behalf passes to the TOWN as principal. AGENCY agrees to defend and indemnify the TOWN and its employees and officials from claims made against the TOWN by a supplier in connection with any purchase to the extent the TOWN has made payment to AGENCY for such purchase.

(b) Nothing herein contained shall be deemed to require that AGENCY undertake any campaign, prepare any advertising material or publicity, or cause publication of any advertisement or article, which, in AGENCY's judgment, would be misleading, indecent, libelous, unlawful or otherwise prejudicial to the TOWN's or AGENCY's interest.

(c) AGENCY assumes no responsibility and TOWN assumes all responsibility relative to the validity of claims made by the TOWN in its marketing efforts.

(d) AGENCY shall not contract with any persons employed by the TOWN or its officials or employees during the course of this Agreement.

(e) AGENCY is under a duty not to disseminate, or use for its own purposes, both during and after the termination of this Agreement, any "confidential information" imparted to AGENCY by the TOWN. "Confidential information" in regard to this contractual obligation shall mean any information imparted to AGENCY by the TOWN in either verbal or written form so designated as "confidential information."

(f) Ideas, plans, musical themes, slogans and any other creative products that have not been adopted by the TOWN in campaigns conducted by AGENCY or reserved by the TOWN for possible future use are to be considered the sole property of AGENCY to the untrammelled use of which AGENCY shall solely be entitled. Those adopted by the TOWN (or reserved by the TOWN for possible future use) are the sole property of the TOWN to the untrammelled use of the TOWN.

(g) **AGENCY'S Defense, Indemnity, and Hold Harmless Obligation.** AGENCY AGREES TO AND SHALL **DEFEND, INDEMNIFY AND HOLD HARMLESS** THE TOWN, ITS OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES (IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES) (EACH AN "INDEMNITEE") FROM AND AGAINST (I) ANY AND ALL CLAIMS ARISING FROM CONTRACTS BETWEEN THE AGENCY AND THIRD PARTIES MADE PURSUANT TO THIS AGREEMENT, AND (II) ANY AND ALL SUITS, CLAIMS, ACTIONS, JUDGMENTS, LIABILITIES, LOSSES, PENALTIES, FINES, EXPENSES, FEES AND COSTS (INCLUDING REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF DEFENSE), AND DAMAGES OF ANY KIND AND NATURE WHATSOEVER MADE UPON, INCURRED BY, SUFFERED BY, OR ASSERTED AGAINST THE TOWN OR ANY OTHER INDEMNITEE, WHETHER DIRECTLY OR INDIRECTLY (TOGETHER, "DAMAGES") RESULTING FROM, RELATING TO, ARISING OUT OF, OR IN CONNECTION WITH (I) AGENCY'S PERFORMANCE OF THE SERVICES OF THIS AGREEMENT AS SET FORTH IN SECTION II HEREOF, (II) REPRESENTATIONS OR WARRANTIES BY AGENCY UNDER THIS AGREEMENT, AND/OR (III) ANY ACT OR OMISSION OF AGENCY, ITS OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES AND CONTRACTORS, OR ANY OTHER PERSON FOR WHOM AGENCY IS LEGALLY RESPONSIBLE, UNDER, RELATED TO, IN CONNECTION WITH, OR IN THE PERFORMANCE OF THIS AGREEMENT. **SUCH DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION SHALL AND DOES INCLUDE DAMAGES ALLEGED OR FOUND TO HAVE BEEN CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF THE TOWN AND/OR ANY OTHER INDEMNITEE, OR BY ANY ACT OR OMISSION BY THE TOWN AND/OR ANY OTHER INDEMNITEE THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND. HOWEVER, AGENCY'S LIABILITY UNDER THIS CLAUSE SHALL BE REDUCED BY THAT PORTION OF THE TOTAL AMOUNT OF THE DAMAGES (EXCLUDING DEFENSE FEES AND COSTS) EQUAL TO THE TOWN'S OR OTHER**

INDEMNITEE'S PROPORTIONATE SHARE OF THE NEGLIGENCE, OR CONDUCT THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, THAT CAUSE THE LOSS. LIKEWISE, AGENCY'S LIABILITY FOR THE TOWN'S OR ANY OTHER INDEMNITEE'S DEFENSE COSTS AND ATTORNEYS' FEES SHALL BE REDUCED BY THAT PORTION OF THE DEFENSE COSTS AND ATTORNEYS' FEES EQUAL TO THE TOWN'S OR OTHER INDEMNITEE'S PROPORTIONATE SHARE OF THE NEGLIGENCE, OR CONDUCT THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, THAT CAUSED THE LOSS.

AGENCY shall promptly advise the TOWN in writing of any claim or demand against the TOWN, or any other Indemnitee, or AGENCY related to or arising out of AGENCY'S activities under or pursuant to this Agreement and shall see to the investigation and defense of such claim or demand at AGENCY's sole cost and expense. The Town and the other Indemnites shall have the right, at the Town and other Indemnites' option and at their own expense, to participate in such defense without relieving AGENCY of any of its obligations hereunder. This indemnity, hold harmless, and defense obligation shall survive the expiration or earlier termination of this Agreement.

(h) AGENCY shall coordinate all its activities and efforts through and with the office of the City Manager for the TOWN. All materials prepared for publication or released to news media shall be approved by the City Manager or his designated representative, prior to publication or release. All AGENCY'S billing under this Agreement will be sent to the City Manager and any other special projects or assignments from the TOWN will be received only from the City Manager.

(i) AGENCY is an independent contractor and nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, a joint enterprise relationship, or to allow the TOWN to exercise discretion or control over the professional manner in which AGENCY performs the services which are the subject matter of this Agreement; provided always however that the services to be provided by AGENCY shall be provided in a manner consistent with all applicable standards and regulations governing such services.

SECTION VII ACCOUNTING

AGENCY shall keep complete and accurate books and records. AGENCY, upon receiving reasonable notice from the TOWN, shall provide the TOWN and/or the TOWN's designated accountants with full and reasonable disclosure of its accounting practices, procedures, receipts and disbursements related to the TOWN's account, and an opportunity to examine all supporting documentation.

SECTION VIII TERM OF AGREEMENT; TERMINATION

(a) The term of this Agreement shall be from October 1, 2009 to September 30, 2010; provided, however, that unless otherwise terminated as provided for herein, this Agreement shall automatically renew for a period of one year following the said date of termination, subject to the annual appropriation and budgeting of revenues by the TOWN to pay the amounts set forth in this Agreement (and in the event such appropriation and budgeting of revenues is not made by the TOWN, this Agreement shall terminate at the end of the fiscal year for which revenues to pay for the services set forth in this Agreement have been appropriated and budgeted by the Town). During the term of this Agreement, should either AGENCY or the TOWN wish to terminate this Agreement, each shall have that right upon giving the other a sixty (60) day written notice of termination. During

the sixty (60) day period, the compensation and service arrangements stated herein apply. All notices under this Agreement shall be provided in writing to the following:

To Agency:

Liz Oliphant
Liz Oliphant and Associates, Inc.
16400 Ledgemont Lane @ 1211
Addison, TX 75001

To the Town:

Ron Whitehead
Town of Addison
P.O. Box 9010
Addison, Texas 75001

(b) At the date of termination, any advertising, merchandising, package and similar plans and ideas prepared by AGENCY and submitted to the TOWN but not used by TOWN shall remain AGENCY's property unless it was either mutually agreed in writing that any such plan or idea became the TOWN's property or specific payment of the cost of its development was agreed upon and made by the TOWN.

(c) Upon termination of this Agreement, AGENCY shall transfer, assign and make available to the TOWN all property and materials in AGENCY's possession or control belonging to and paid for by the TOWN.

(d) At the termination of this Agreement, AGENCY shall give all reasonable cooperation toward transferring, with the approval of third parties in interest, all contracts and other arrangements with advertising media or others, for advertising space, facilities and talent, and other materials yet to be used, and all rights and claims thereto and therein, pertaining to the TOWN's account, upon being duly released from the obligations thereof.

(e) Upon termination of this Agreement, any non-cancelable contracts made on the TOWN's authorization and still existing at termination hereof, which contracts were not or could not be assigned by AGENCY to the TOWN, shall be carried to completion by AGENCY and paid for by the TOWN in the manner described herein.

SECTION IX MISCELLANEOUS

(a) Principals of the AGENCY agree to adhere to the Code of Professional Standards established by the Public Relations Society of America.

(b) AGENCY and the TOWN hereby agree that should any dispute arise out of this contract, then venue of any litigation arising therefrom shall be exclusively in Dallas County, Texas. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas without regard to its conflict of laws provisions.

(c) Any amendments, modifications, deletions or other changes from the terms of this Agreement shall be valid only if made by subsequent written instrument signed by the duly authorized representatives of both AGENCY and TOWN. If any section, paragraph, sentence, clause, phrase word, or any other provision of this Agreement is held to be illegal, void, invalid or unenforceable under present or future laws, such section, paragraph, sentence, clause, phrase, word, or other provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, void, invalid or unenforceable section, paragraph, sentence, clause, phrase, word, or

other provision is not a part hereof, and the remaining sections, paragraphs, sentences, clauses, phrases, words, and provisions hereof shall remain in full force and effect.

(d) The failure of either party to this Agreement to object or to take affirmative action with respect to any conduct of the other party which is in violation of this Agreement shall not be construed as a waiver thereof, or of any future breach of subsequent wrongful conduct. Except as provided in this Agreement, this Agreement and all of its terms and provisions 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.

(e) This Agreement contains the complete agreement of the parties and cannot be varied except by written agreement of the parties. The parties agree that there are no oral agreements, representations, or warranties that are not expressly set forth in this Agreement.

(f) The captions used herein are for convenience of reference only and shall not be deemed neither to impart substance of meaning nor modify the content of the text of this Agreement. For purposes of this Agreement, "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

(g) Except as provided herein, neither party may assign any rights or delegate any duties under this Agreement without the prior written consent of the other party.

EXECUTED TO BE EFFECTIVE as of _____, 2009.

TOWN OF ADDISON, TEXAS

LIZ OLIPHANT & ASSOCIATES, INC.

By: _____
Ron Whitehead, City Manager

By: _____

ATTEST:

Printed Name: _____

Title: _____

By: _____
Lea Dunn, City Secretary

Council Agenda Item: #2e

SUMMARY: Approval of an agreement with Rodney Hand & Associates Marketing Communications, LP to advertise in the Holiday/Winter 2009/2010, Spring 2010, Summer 2010 and Fall 2010 publications of the Addison and The North Dallas Corridor Visitors Guide (Visitors Guide) and the Addison and The North Dallas Corridor Magazine (the Magazine).

FINANCIAL IMPACT:

Budgeted Amount: \$111,750 (Hotel Fund)
\$105,000 for advertising (\$26,250 per edition)
\$6,750 for distribution to the specific employers and buildings within the designated area

BACKGROUND: In the Fall of 1998 the Town entered into agreement with Hand & Associates to buy advertising in the Addison/North Dallas Visitors Guide for the purpose of promoting Addison and the surrounding area to visitors. The Guide continues to be well received and is distributed to all the hotel rooms in the Addison and LBJ corridor as well as the lobbies of specific buildings and employers within the defined geographic area.

Two years ago Hand launched a new publication, Addison and The North Dallas Corridor Magazine that is mailed to all residential properties in Addison and the North Dallas area. The publication continues to be well received.

RECOMMENDATION:

Staff recommends approval.

STATE OF TEXAS

Addison/North Dallas Advertising Agreement

COUNTY OF DALLAS

This Agreement is made as of _____, 2009 by and between the Town of Addison, Texas (the "Town") and Rodney Hand & Associates Marketing Communications, LP ("Hand").

WHEREAS, the Town is a duly incorporated municipality pursuant to the laws of the State of Texas; and

WHEREAS, Hand is a limited partnership doing business in the State of Texas; and

WHEREAS, Hand is the owner of two publications known as "Addison and The North Dallas Corridor Visitors Guide" (the "Visitors Guide") and the "Addison and The North Dallas Corridor Magazine" (the "Magazine"), and the Town desires to advertise in these Publications for the purpose of promoting the Town and the surrounding area to residents and visitors through distribution in hotel rooms in the Town and North Dallas area;

WHEREAS, the Town and Hand agree that these Publications shall be produced and distributed in accordance with the terms of this Agreement (including Exhibit A attached hereto and incorporated herein).

NOW, THEREFORE, for and in consideration of the above and foregoing premises, the mutual promises and covenants contained herein, and other good and valuable consideration, the Town of Addison, Texas and Hand & Associates Marketing Communications do contract and agree as follows:

1. Incorporation of Premises. The above and foregoing premises are true and correct and are incorporated herein in their entirety.
2. Term. This Agreement shall be in effect from the date of execution hereof by the Town and shall terminate, except as otherwise provided for herein, upon completion of the fourth issue of the Publication, including its distribution.
3. Conduct of Publication. Hand shall be the owner/publisher of the Publications and the Town shall be considered an advertiser. The Visitors Guide shall be directed and distributed primarily to Addison and North Dallas hotels and visitors (as identified and agreed upon by the Town and Hand). The Magazine shall be directed and distributed primarily to Addison and North Dallas residential properties (as identified and agreed upon by the Town and Hand). The content of the Visitors Guide and of the Magazine will be similar, but the Magazine may include some additional information or features which is pertinent and unique to a residential audience.
4. Obligations, Representations and Warranties; Indemnification.

A. Hand: Hand represents, warrants and covenants that:

- (1) Hand shall acquire any and all licenses, agreements, permits, waivers, releases, registrations, approvals, authorizations, or any other permit or document required or necessary to produce the Publication.
- (2) In the production of the Publications, Hand shall comply with all applicable federal, state and local laws, rules and regulations.
- (3) During the term of this Agreement, neither Hand nor any of Hand's associates or employees shall participate, whether directly or indirectly, financially or otherwise, in the production of any other publication related to Addison or the North Dallas area.
- (4) Hand shall keep and hold all information provided to it by the Town in connection with this Agreement in confidence and shall not disclose such information to any third party. This paragraph shall survive the termination hereof.
- (5)(a) IN CONSIDERATION OF THE GRANTING OF THIS AGREEMENT, HAND AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN, ITS, OFFICERS, AGENTS AND EMPLOYEES (EACH AN "INDEMNITEE") FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, JUDGMENTS, LIABILITIES, LOSSES, CLAIMS, PENALTIES, FINES, EXPENSES, FEES AND COSTS (INCLUDING REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF DEFENSE), AND DAMAGES (TOGETHER, "DAMAGES") ARISING OUT OF OR IN CONNECTION WITH HAND'S PERFORMANCE OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY NEGLIGENT ACT OR OMISSION OF HAND OR ANY OWNER, PARTNER, OFFICER, EMPLOYEE, AGENT, REPRESENTATIVE, CONTRACTOR, SUBCONTRACTOR, LICENSEE, GUEST, OR INVITEE OF HAND, OR ANY OTHER PERSON OR ENTITY FOR WHOM HAND MAY BE LIABLE UNDER, RELATED TO, OR IN CONNECTION WITH, THIS AGREEMENT, INCLUDING DAMAGES CAUSED BY THE INDEMNITEE'S OWN NEGLIGENCE, OR GROSS NEGLIGENCE, OR CONDUCT THAT MAY EXPOSE AN INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY, EXCEPT AS SPECIFICALLY LIMITED HEREIN.
- (b) WITH RESPECT TO HAND'S INDEMNITY OBLIGATION SET FORTH IN SUBSECTION (A), HAND SHALL HAVE NO DUTY TO INDEMNIFY AN INDEMNITEE FOR ANY DAMAGES CAUSED BY THE SOLE NEGLIGENCE OF THE INDEMNITEE, OR SOLE GROSS NEGLIGENCE OF THE INDEMNITEE, OR SOLE CONDUCT OF THE INDEMNITEE THAT MAY OR DOES

EXPOSE THE INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY.

- (c) IF AN INDEMNITEE SUFFERS DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT THAT ARE CAUSED BY THE CONCURRENT NEGLIGENCE, GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES RESULT IN EXPOSURE TO STRICT LIABILITY, OF BOTH HAND AND THE INDEMNITEE, HAND'S INDEMNITY OBLIGATION SET FORTH IN SUBSECTION (A) WILL BE LIMITED TO A FRACTION OF THE TOTAL DAMAGES EQUIVALENT TO HAND'S OWN PERCENTAGE OF RESPONSIBILITY.
- (d) With respect to Hand's duty to defend set forth herein in subsection (a), Hand shall have the duty, at its sole cost and expense, through counsel of its choice, to litigate, defend, settle or otherwise attempt to resolve any claim, lawsuit, cause of action, or judgment arising out of or in connection with this Agreement; provided however, that the Town shall have the right to approve the selection of counsel by Hand and to reject Hand's selection of counsel and to select counsel of the Town's own choosing, in which instance, Hand shall be obligated to pay reasonable attorney fees and the expenses associated thereto. The Town agrees that it will not unreasonably withhold approval of counsel selected by Hand, and further, the Town agrees to act reasonably in the selection of counsel of its own choosing.
- (e) In the event that Hand fails or refuses to provide a defense to any claim, lawsuit, judgment, or cause of action arising out of or in connection with this Agreement, the Town shall have the right to undertake the defense, compromise, or settlement of any such claim, lawsuit, judgment, or cause of action, through counsel of its own choice, on behalf of and for the account of, and at the risk of Hand, and Hand shall be obligated to pay the reasonable and necessary costs, expenses and attorneys' fees incurred by the Town in connection with handling the prosecution or defense and any appeal(s) related to such claim, lawsuit, judgment, or cause of action.
- (f) The indemnity, hold harmless, and defense obligations of Hand set forth in this section or elsewhere in this Agreement shall survive the expiration or earlier termination of this Agreement.
- (6) Hand, its officers, agents and employees do hereby waive any and all claims for damage, injury or loss to any person or property, including the death of any person, that may be caused, in whole or in part, by the act or failure to act of any officer, agent or employee of the Town. Hand, its officers agents and employees assume the risk of all conditions whether dangerous or otherwise, in and about the premises

of the Town, and waive any and all specific notice of the existence of any defective or dangerous condition in or about the said premises. The provisions of this paragraph shall survive the termination of this Agreement.

B. Town: The Town represents, warrants, and covenants that:

- (1) The Town shall pay Hand a sum of \$26,250 for 18 pages of R.O.B. (Run of Book) advertising in the November 2008 issue of the Publications, \$26,250 for 18 pages of R.O.B. advertising in the February 2009 issue, \$26,250 for 18 pages of R.O.B. advertising in the May 2009 issue and \$26,250 for 18 pages of R.O.B. advertising in the August 2009 issue of the Publications. Such payment shall be made in accordance with the terms of this Agreement, including Exhibit A.
- (2) The Town shall pay Hand a sum of \$1,687.50 for local distribution of each of the Holiday/Winter 2009/2010, Spring 2010, Summer 2010 and Fall 2010 Publications respectively to various locations approved by the City Manager. The area distribution will include the Town and extends from the borders of the Town south to LBJ Freeway (IH 635), north to Legacy, east to Hillcrest Road, and west to Marsh Lane. The various local distribution points shall be determined by the Town. Such sum shall be paid by the Town to Hand upon the Town receiving proof acceptable to the Town of the completion of the distribution.

5. Termination. This Agreement may be terminated at any time by either party hereto in the event that the other party is in breach of any term of this Agreement and such breach continues for more than three (3) days after receipt by the breaching party of written notice of the breach from the non-breaching party. In the event of such termination Hand shall be compensated for all services properly performed to the date of termination. In the event of such termination, should Hand have been paid by the Town for services not yet properly performed then Hand shall reimburse the Town all such payments. Acceptance or payment of such reimbursement shall not constitute a waiver of any claim that may otherwise arise out of this Agreement.
6. Delays. No delay by either of the parties hereto in performing their respective duties, or obligations hereunder shall be deemed a breach of this Agreement if such delay arises from causes beyond the reasonable control of party, including delays resulting from labor disputes, strikes, wars, riots, insurrection, civil commotion, government regulations, fire, flood, storm, or acts of God, provided that such affected party uses its best efforts to avoid non-performance and resumes full performance hereunder as soon as practical. Shortage of material or equipment or changes in price of materials or equipment shall not constitute valid grounds for delay.

- b. It will constitute a breach of this Agreement, allowing for termination and/or recovery of damages which the non-breaching party sustains if:
- (i) The Town fails to make any payment due hereunder within thirty (30) days following the receipt of an invoice therefor, (and each such invoice shall include a summary statement of services rendered; and Hand shall supply such supporting documentation with each invoice regarding the services performed by Hand as may be requested by Town from its Staff employees), or
 - (ii) Hand fails to deliver the Holiday/Winter 2009/2010 issue of the Publications, in the required quantities (see Exhibit A) on or before November 27, 2010, the Spring 2010 issue in the required quantities (see Exhibit A) on or before March 1, 2010, the Summer 2010 issue in the required quantities (see Exhibit A) on or before May 24, 2010 or the Fall 2010 issue in the required quantities (see Exhibit A) on or before August 23, 2010; provided, however, that the Town agrees to allow Hand a period not to exceed five (5) business days from the delivery date set out above to fully complete Hand's required distribution of the Publications. Failure by Hand to deliver on the dates set above shall result in a late fee of \$400.00 per day which the Town may deduct from the final amount then payable.
7. Notice: Where the terms of this Agreement require that notice in writing be provided, such notice shall be deemed received by the party to whom it is directed upon being hand-delivered or upon three (3) days following the deposit of the notice in the United States mail, postage pre-paid, and sent by certified mail, return receipt requested and properly addressed as follows:

To Addison:

Town of Addison
P. O. Box 9010
Addison, TX 75001
Attn: Lea Dunn
Deputy City Manager

To Hand:

Rodney Hand & Associate
Communications, LP
PO Box 7444
Dallas, TX 75209
Attn: Rodney Hand

8. Assignment. This Agreement shall not be assigned or otherwise conveyed in whole or in part by Hand without the prior written consent of the Town. Because this is a services contract, the Town is not obligated to consent to any assignment or other conveyance of any portion of this Agreement. Any attempted assignment or other conveyance hereof by Hand shall be null, void and of no force or effect.
9. Independent Contractor. The relationship of Hand to the Town is that of an independent contractor. Neither the Town nor Hand shall be deemed to be the agent of the other and neither is authorized to take any action binding upon the

other. No term or provision of this Agreement or any action in the performance hereof is intended nor shall be construed as making Hand the agent, servant or employee of the Town, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship.

10. Texas Law to Apply. This Agreement and Exhibit "A" shall be governed by the laws of the State of Texas (without reference to its conflict of law provisions), and shall be performable and all compensation payable in Dallas County Texas. Venue under this Agreement lies in Dallas County, Texas.
11. Entire Agreement. This Agreement and the attached "Exhibit A" represents the entire and integrated agreement between the Town and Hand 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 parties.
12. Severability. If any clause, paragraph, section or portion of this Agreement shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Agreement shall remain in full force and effect.
13. Authority to Execute. The undersigned officers and/or agents of the Town and Hand are properly authorized officials of the said parties and have the authority necessary to execute this Agreement on behalf of the respective party, and the parties hereby certify one to the other that any necessary resolutions extending said authority have been duly passed and are now in full force and effect.

EXECUTED at Dallas County, Texas on the day and year first written above.

TOWN OF ADDISON, TEXAS

**RODNEY HAND & ASSOCIATES
MARKETING
COMMUNICATIONS, LP**

By: _____
Ron Whitehead, City Manager

By: _____
Rodney Hand, Principal

Attest: _____
Lea Dunn, City Secretary

EXHIBIT "A"

DESCRIPTION OF ADDISON/NORTH DALLAS PUBLICATIONS

- A. Schedule: The (i) Holiday/Winter 2009/2010 issue of the Publications shall be completed and distributed by Hand on or before November 27, 2010, (ii) the Spring 2010 issue of the Publications on or before March 1, 2010, (iii) the Summer 2010 issue of the Publications shall be completed and distributed on or before May 24, 2010 and the (iv) Fall 2010 issue of the Publications shall be completed and distributed by Hand on or before August 23, 2010;.

- B. Duties of Town: The Town shall:

1. Become the anchor advertiser for the Holiday/Winter 2009/2010, Spring 2010, Summer 2010 and Fall 2010 issue of the Publications. The Town shall be provided (a) 18 pages of R.O.B. (Run of Book) advertising and editorial, for the Holiday/Winter 2009/2010 issue of the Publications at a total cost not to exceed \$26,250, (b) 18 pages of R.O.B. (Run of Book) advertising and editorial, for the Spring 2010 issue of the Publication at a total cost not to exceed \$26,250, (c) 18 pages of R.O.B. (Run of Book) advertising and editorial, for the Summer 2010 issue of the Publications at a total cost not to exceed \$26,250 and (d) 18 pages of R.O.B. advertising and editorial for the Fall 2010 issue of the Publications at a total cost not to exceed \$26,250. Payments shall be due based on the following schedule:

For the Holiday/Winter 2009/2010 issue, a total of \$26,250.00 will be due not later than 30 days after the Town's receipt from Hand of Hand's certification, in form and content satisfactory to the Town, that Hand has completed (a) delivery of the Visitors Guide to all the hotels, and delivery of the Magazine to all the residential properties, contained on a distribution list designated by the Town, and (b) the distribution of the Publications to all other sources as described herein or as may be designated by the Town.

For the Spring 2010 issue, a total of \$26,250.00 will be due not later than 30 days after the Town's receipt from Hand of Hand's certification, in form and content satisfactory to the Town, that Hand has completed (a) delivery of the Visitors Guide to all the hotels, and delivery of the Magazine to all the residential properties, contained on a distribution list designated by the Town, and (b) the distribution of the Publications to all other sources as described herein or as may be designated by the Town.

For the Summer 2010 issue, a total of \$26,250.00 will be due not later than 30 days after the Town's receipt from Hand of Hand's certification, in form and content satisfactory to the Town, that Hand has completed (a) delivery of the Visitors Guide to all the hotels, and delivery of the Magazine to all the residential properties, contained on a distribution list designated by the Town, and (b) the distribution of the Publications to all other sources as described herein or as may be designated by the Town.

For the Fall 2010 issue, a total of \$26,250.00 will be due not later than 30 days after the Town's receipt from Hand of Hand's certification, in form and content satisfactory to the Town, that Hand has completed (a) delivery of the Visitors Guide to all the hotels, and delivery of the Magazine to all the residential properties, contained on a distribution list designated by the Town, and (b) the distribution of the Publications to all other sources as described herein or as may be designated by the Town.

2. Submit to Hand in writing: changes and/or corrections to proofs or artwork, photos, and editorial layout. The Town shall return requests for proofing within 96 hours of receipt from Hand.
3. The Town agrees to permit Hand to review its collection of photographs, and agrees to grant to Hand a non-exclusive, royalty free license to use or reproduce such photographs, but solely as a part of the content of the publications which are the subject hereof; provided, however, that if any other person, firm or entity is the owner of any intellectual property rights in connection with any of such photographs, Hand is required to pay such fees, or enter into agreements with third parties as Hand and such third party may agree, without any cost or expense to the Town
4. Town authorizes Hand to produce the Town's logo, royalty free, but solely in connection with the publications which are the subject of this Agreement, and for no other purpose.

C. Duties of Hand: Hand shall provide:

1. On or before November 1, 2008 a timeline that details the elements of the Publications with key milestones.
2. A minimum 64-page Perfect Bound magazine of 22,500 copies each for the November 2008 issue, February 2009 issue, May 2009 issue and the August 2009 issue of the Publications.
3. Proofs of the editorial outline, story ideas, cover design, photos, artwork, and layout and input for approval by the Town. No editorial material of any nature will appear in the Publications unless it has been reviewed and approved by the Town.
4. The Town shall have prior approval of all promotional material including advertising rates pertaining to the Publications.
5. (a) With respect to the Visitors Guide, Hand shall be responsible for its distribution to the participating hotels and shall also verify placement of the Visitors Guide in guest rooms. Hand shall also provide placement copies of the Visitors Guide to hotels as needed. In addition, Hand shall also distribute the Visitors Guide to the following sources:

Participating Hotel Sales Offices
Corporate Concierges
Commercial Leasing Offices and Residential Real Estate Offices
Certain Advertisers

(b) With respect to the Magazine, Hand shall be responsible for its distribution to the residential properties identified and agreed upon by Hand and the Town, and Hand shall verify the distribution of the same.

(c) Hand shall provide to the Town a list of all sources to whom copies of the Publications are distributed.

6. As the anchor advertiser, the Town will be given copies for distribution.

7. Advertising sales area will be limited to:

South of Legacy East
of Marsh Lane North
of Harvest Hill West
of Hillcrest Road

Restaurants outside the area shall not be included.

No advertising will be accepted from any person, business or organization unless it meets the geographic limitations set out above without express permission from the Town of Addison Deputy City Manager or City Manager. The Town shall receive a list of advertisers one (1) week following the posted space reservation deadline for each issue.

8. The Town and Hand agree that the ratio of advertising to editorial shall not exceed 40% ads to 60% editorial.

9. The Town and Hand agree that the average ad rate for a run of space, full page/4 color insertion shall not exceed \$3,500.00 and for exclusive positions, a full page/4 color insertion shall not exceed \$4595.00.

Council Agenda Item: #2f

SUMMARY:

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

FINANCIAL IMPACT:

Budgeted Amount: \$60,000 (Hotel Fund)

Cost: \$60,000 plus expenses that may be incurred

BACKGROUND:

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

RECOMMENDATION:

Staff recommends approval.

shiroma | southwest

17311 North Dallas Parkway, Suite 110 Dallas, TX 75248 972-732-6100 info@shiromasouthwest.com

October 19, 2009

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

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

SERVICES:

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

EVENTS ARE AS FOLLOWS:

EVENTS

Bookworm Bash
Resolution Run
Addison Perks
Out of the Loop Festival
Taste Addison
Summer Series
KaboomTown
Oktoberfest
Worldfest
Additional events
Miscellaneous consultation

FEES: The annual fee is \$60,000, with fees allotted proportionately to each event, based on the amount of hours required. The fee will be billed in 12 monthly increments of \$5,000.00.

EXPENSE REIMBURSEMENT:

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

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

This agreement is effective immediately upon signing and shall remain in effect through September 30, 2010.

FOR TOWN OF ADDISON

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

BY: _____

BY: _____

ITS: _____

ITS: _____

DATE: _____

DATE: _____

Council Agenda Item: #2g

SUMMARY:

Consideration of the approval of a Private Easement Without Warranty for Equipment Station and Underground Lines between the Town, as Grantor, and Southwestern Bell Telephone Company, as Grantee.

FINANCIAL IMPACT:

None

PROJECT MANAGER:

Clay Barnett, P.E.

BACKGROUND:

UDR, Inc. and AT&T (Southwestern Bell) have negotiated an agreement to move an existing cabinet off of Brookhaven Club Drive, enlarge it due to the additional residential units being added by UDR, Inc. and place it in a more remote area adjacent to the driveway for the parking lot to Vitruvian Park. The location where the existing pedestal is proposed to be moved has been previously dedicated to the Town of Addison; therefore, in order for Southwestern Bell to move the pedestal to that location, it is necessary for the Town to provide an easement to Southwestern Bell.

RECOMMENDATION:

Staff recommends the Council approve the Private Easement Without Warranty for Equipment Station and Underground Lines between the Town, as Grantor, and Southwestern Bell Telephone Company, as Grantee, subject to the final approval of the City Manager and City Attorney.

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

**PRIVATE EASEMENT WITHOUT WARRANTY
FOR EQUIPMENT STATION AND UNDERGROUND LINES**

THE STATE OF TEXAS §
 § KNOW ALL PERSONS BY THESE PRESENTS:
COUNTY OF DALLAS §

THIS Private Easement Without Warranty for Equipment Station and Underground Lines (the "Private Easement") is entered into by the undersigned, the TOWN OF ADDISON, TEXAS, hereinafter referred to as "Grantor", and SOUTHWESTERN BELL TELEPHONE COMPANY, a Missouri corporation, hereinafter referred to as "Grantee", wherein Grantor, in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00), and other good and valuable consideration, receipt of which is hereby acknowledged, and subject to the reservations and exceptions set forth herein and all of the terms, conditions, and provisions of this Private Easement, does by these presents, GRANT, SELL, and CONVEY unto Grantee, its successors and assigns, (hereinafter collectively referred to as "Grantee"), without warranty, express or implied, a private subsurface (underground) easement and a private equipment station easement (hereinafter together referred to as the "Easement") as described herein below for the purposes hereinafter set forth

Without limitation of any provision of this Private Easement, all warranties that might arise by common law as well as the warranties in section 5.023 of the Texas Property Code (or any successor statute thereto) are excluded. This Private Easement does not constitute a conveyance of the Property (as hereinafter defined), nor of the minerals therein and thereunder, but constitutes only an easement subject to all of the terms and conditions herein, including, without limitation, the following:

(a) This Easement is granted for the purpose of permitting Grantee to construct, operate, maintain, protect, repair, relocate, upgrade, replace, and remove:

(i) lines, circuits and conduits for the transmission of signals used in the provision of communication, data, video, and information services, and such appurtenances thereto (collectively, the "Underground Facilities") as Grantee may from time to time require, all to be located and placed underground and beneath the property described in the portion of Exhibit A attached hereto which is entitled "Telephone Easement No. 1 5.0 Foot Strip (Underground)" and which is shown on the survey dated October 12, 2009 attached hereto as a part of Exhibit A as "Easement 1 5.0' Strip Underground" (the "Underground Easement Property"); and

(ii) lines, circuits and conduits for the transmission of signals used in the provision of communication, data, video, and information services, associated equipment stations, vaults, cabinets and power pedestals, and such appurtenances thereto (collectively, the

“Equipment Station Facilities”) as Grantee may from time to time require, to be located upon, across, over, above, under and within the property described in the portion of Exhibit A attached hereto which is entitled “Telephone Easement No. 2 10’x20’ Easement (Above Ground)” and which is shown on the survey dated October 12, 2009 attached hereto as a part of Exhibit A as “Easement 2 10’X20’ Above Ground” (the “Equipment Station Easement Property”).

Subject to the terms and conditions of this Private Easement, the grant of the Easement includes the (i) the right of ingress and egress to and from the Easement by reasonable routes across the property of Grantor immediately contiguous to the Underground Easement Property and the Equipment Station Easement Property (collectively, the “Property”) as determined by Grantor from time to time (but Grantee must promptly restore such property of Grantor to its previous condition if damaged, modified, or changed by such use), (ii) the right to construct, operate and maintain, or license others to do so (with notice of any such license being promptly provided to Grantor upon the issuance of the same), underground service lines for electric power, and (2) the right to clear and trim trees, overhanging branches, roots, brush and other obstructions in the Property to the extent the same interfere with the purpose for which the Easement is granted. Grantee shall repair and replace at Grantee’s expense, all paving, curbing, fencing, walls, shrubbery, trees, landscaping, and other improvements located on the Property and any property adjacent thereto to the extent that any of the same is damaged by Grantee’s use and enjoyment of the Property.

Grantee’s rights to use the Underground Easement Property is nonexclusive; Grantee’s rights to use the Equipment Station Easement Property is exclusive in that Grantor may not grant any additional easements to use the Equipment Station Easement Property. Otherwise, Grantor reserves for Grantor and Grantor’s successors and assigns the right to use all or part of the Underground Easement Property and the Equipment Station Easement Property in conjunction with Grantee as long as such use by Grantor and its successors and assigns does not prevent use or enjoyment of the Easement by Grantee for the purposes set forth herein on the terms of this Private Easement.

The duration of the Easement is perpetual, except however that in the event of future abandonment of the Underground Facilities or the Equipment Station Facilities (collectively the “Facilities”) by Grantee, then, upon written request, Grantee shall execute and deliver a recordable release of this Easement in form reasonably acceptable to Grantor. Upon termination of the Easement for any reason, Grantee shall, at its expense, remove any Facilities and other improvements installed pursuant to this Private Easement within the Property and shall return the Property to its condition existing before the commencement of this Private Easement, if so directed by Grantor.

(b) During the period of installation, removal or replacement of the Facilities by Grantee within the Easement herein granted, Grantee shall have the right to use as temporary construction easements so much of the surface of the Property as may be reasonably necessary for Grantee’s construction, installation, removal or replacement of said Facilities. Following the initial installation of Grantee’s Facilities, and also after any later activities by Grantee which affect the Property, Grantee shall promptly restore and return the Property affected thereby to its condition that existed prior to such activity.

(c) The Easement granted hereby is given without warranty of title, express or implied, and is, without limitation, subject to: (i) all easements, rights-of-way and prescriptive rights, whether of record or not, pertaining to any portion of the Property, (ii) all oil, gas, sulfur, and other mineral exceptions, rights of development, or leases, unitization agreements, mineral and royalty grants and reservations, and/or other constituting oil, gas or other mineral interest severances of any kind, (iii) all restrictive covenants, terms, conditions, contracts, provisions, zoning ordinances and other items or encumbrances affecting the Property, whether of record or not; (iv) all instruments now of record which affect the Property, and (v) any condition(s) that would be revealed by a physical inspection and survey of the Property.

(d) Grantor reserves for Grantor and Grantor's successors and assigns all other rights to the Property, including the right to use all or part, the surface and subsurface, of the Property in conjunction with Grantee as long as such use by Grantor and Grantor's successors and assigns does not prevent the use or enjoyment of the Easement for the purpose(s) set forth in this Private Easement by Grantee. Grantor also reserves for Grantor and Grantor's successors and assigns the right to convey to others the right to use all or part of the Property in conjunction with Grantee, as long as such further conveyance is subject to the terms of this Private Easement.

(e) As a material part of the consideration for this Easement, Grantor and Grantee agree that Grantee is taking the Property in its "AS IS" condition, WITH ALL FAULTS AND AT GRANTEE'S OWN RISK with any and all latent and patent defects and without any warranty, express or implied, including without limitation, any warranty of title, liability, value, or fitness for a particular purpose, all such warranties being expressly disclaimed by Grantor. Grantee acknowledges and stipulates that Grantee is not relying on any representation, statement, or warranties made by Grantor or anyone acting on Grantor's behalf concerning the Property.

(f) Grantor shall have no obligation with respect to construction, maintenance or repair of the Property. Grantee shall repair and replace at Grantee's expense, all paving, curbing, fencing, walls, shrubbery, trees and landscaping located on the Property to the extent that any of the same is damaged by Grantee's use and enjoyment of the Property. Grantee shall at all times have the right and privilege to access the Property for the purpose(s) herein set forth subject to compliance with the terms of this Private Easement. Any damage caused to the Property or to any other property of the Grantor shall be promptly repaired and restored to the reasonable satisfaction of Grantor. Grantee shall provide advance written notice to Grantor at: Town of Addison, Department of Public Works, 16801 Westgrove Road, Addison, Texas 75001 or to such other address as may be confirmed by Grantor from time to time, prior to the conduct of any boring, drilling or other invasive work affecting the surface of the Property and such work shall be coordinated and conducted in such manner as may be reasonably required by Grantor to minimize interruption of use of the Property by Grantor and all other persons or entities with right of use of the Property.

(g) This Easement may be enforced by restraining orders and injunction (temporary or permanent) prohibiting interference and commanding compliance. Restraining order and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties to or those benefited by this Private Easement; provided, however,

that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law, in equity, or otherwise.

(h) **Grantor's Defense, Indemnity, and Hold Harmless Obligation.** Grantee shall DEFEND, INDEMNIFY AND HOLD HARMLESS the Town of Addison, Texas, and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas, individually or collectively, in both their official and private capacities (the Town of Addison, Texas, and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas each being an "Addison Person" and collectively the "Addison Persons"), from and against any and all claims, actions, proceedings, causes of action, demands, losses, liens, harm, damages, penalties, fines, liabilities, expenses, lawsuits, judgments, costs, and fees (including reasonable attorney fees and court costs) of any kind and nature whatsoever made upon, incurred by, suffered by, or asserted against any Addison Person or any Manager Person or the Property, whether directly or indirectly (collectively for purposes of this Section, "Damages"), that result from, relate to, or arise out of, in whole or in part, (i) any condition of the Property caused in whole or in part by Grantee or by any of Grantee's owners, directors, shareholders, partners, managers, officers, employees, agents, representatives, engineers, consultants, contractors, subcontractors, licensees, assigns, successors, invitees, patrons, concessionaires, or any other person or entity for whom Grantee is legally responsible, and their respective owners, directors, officers, managers, partners, employees, agents, representatives, engineers, contractors, subcontractors, licensees, assigns, successors, and invitees, or any other person acting by or under the authority or with the permission of Grantee, or any other person entering the Property upon the express invitation of Grantee or its licensee (individually, including Grantee, a "Grantee Person", and collectively, including Grantee, the "Grantee Persons"), (ii) any installation, repair, maintenance, construction, or replacement of any Facilities on, under, above or within the Property pursuant this Private Easement, or any use of the Property pursuant to this Private Easement, by Grantee or any other Grantee Persons, (iii) representations or warranties by Grantee under this Private Easement, and/or (iv) any act or omission of Grantee or any other Grantee Person under, in connection with, or in the performance of, this Private Easement and/or use of the Easement. SUCH DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION SHALL AND DOES INCLUDE DAMAGES ALLEGED OR FOUND TO HAVE BEEN CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE OF THE TOWN OF ADDISON, TEXAS AND/OR ANY ADDISON PERSON, OR BY ANY ACT OR OMISSION BY THE TOWN OF ADDISON, TEXAS AND/OR ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND. However, Grantee's liability under this clause shall be reduced by that portion of the total amount of the Damages (excluding defense fees and costs) equal to the Addison Person or Addison Persons' proportionate share of the negligence, or conduct that would give rise to strict liability of any kind, that caused the loss. Likewise, Grantee's liability for any Addison Person's defense costs and attorneys' fees shall be reduced by that portion of the defense costs and attorneys' fees equal to Addison Person or Addison Persons' proportionate share of the negligence, or conduct that would give rise to strict liability of any kind, that caused the loss.

Grantee shall promptly advise Grantor in writing of any covered claim or demand against the Town of Addison, Texas and/or any Addison Person, or Grantee or any other Grantee Person related to or arising out of Grantee's activities under or pursuant to this Private Easement and shall see to the investigation and defense of such claim or demand at Grantee's sole cost and expense. The Addison Persons shall have the right, at the Addison Persons' option and at their own expense, to participate in such defense without relieving Grantee of any of its obligations hereunder. This defense, indemnity, and hold harmless obligation shall survive the termination or expiration of the Easement or this Private Easement.

(i) This Private Easement binds and inures to the benefit of the parties and their respective heirs, successors, and permitted assigns.

(j) This Private Easement is subject to, governed by and to be construed under the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. Venue for all matters, claims, or proceedings hereunder lies exclusively in Dallas County, Texas. At all times, the Facilities and the use of the Easement and the Property shall be subject to, conform to and comply with all of the terms and conditions of this Private Easement, with all applicable statutes, constitutional provisions, charters, ordinances, laws, codes, rules, orders, permits, plans and regulations, whether in effect on the date of this Private Easement or as may be hereafter adopted, modified, or amended, whether federal, state or local (and including the Town of Addison, Texas).

(k) It is not a waiver of or consent to default if the nondefaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this Private Easement does not preclude pursuit of other remedies in this Private Easement or provided by law.

(l) This Private Easement together with the exhibits attached, contains the entire understanding between Grantor and Grantee with respect to the subject matter herein. Any prior correspondence, memoranda or agreements are replaced by this Private Easement and the exhibits attached.

(m) If any provision in this Private Easement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this Private Easement will be construed as if the unenforceable provision had never been a part of this Private Easement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this Private Easement are for reference only and are not intended to restrict or define the test of any section. This Private Easement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

(n) Any notice required or permitted under this Private Easement must be in writing. Any notice required by this Private Easement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Private Easement. Notice may also be given by regular mail, personal delivery, courier

delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein. As of the date of this Private Easement and pending further notice, notices shall be sent to the following addresses:

To Grantor: Town of Addison, Texas
Director of Public Works
16801 Westgrove Road
Addison, Texas 75001

To Grantee: _____

(o) Time is of the essence. Unless otherwise specified, all references to "days" mean calendar days. Business days exclude Saturdays, Sundays, and legal public holidays. If the date for performance of any obligation falls on a Saturday, Sunday, or legal public holiday, the date for performance will be the next following regular business day. The terms "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded. When the context requires it, singular nouns and pronouns include the plural.

SIGNED AND EXECUTED this _____ day of _____, 20__.

TOWN OF ADDISON, TEXAS

By: _____
Ron Whitehead, City Manager

ACKNOWLEDGMENT

THE STATE OF TEXAS
COUNTY OF DALLAS

BEFORE ME, the undersigned authority, on this day personally appeared Ron Whitehead, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for purposes and consideration therein expressed.

Given under my hand and seal of office this the _____ day of _____, 2009.

[SEAL]

Notary Public in and for the State of Texas

My Commission Expires:_____

Council Agenda Item #R3

There are no attachments for this Item.

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A SHOPPING CENTER LEASE BETWEEN THE TOWN, AS TENANT, AND G & I V VOP, LP, A DELAWARE LIMITED PARTNERSHIP, AS LANDLORD, FOR THE LEASE OF CERTAIN SPACE LOCATED IN THAT SHOPPING CENTER WITHIN THE TOWN KNOWN AS VILLAGE ON THE PARKWAY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Addison, Texas (the “City”) is a home rule municipality possessing the full power of local self government pursuant to article 11, section 5 of the Texas Constitution, State law, and its Home Rule Charter; and

WHEREAS, the City is empowered to exercise all powers granted to municipalities by the Texas Constitution or the laws of the State of Texas (Section 1.05, City Charter), is authorized to lease such property as the interest of the Town may require (Section 1.05, City Charter), authorized to acquire property within the corporate limits of the City for any municipal purpose (Section 1.05, City Charter), and authorized to hold property that it receives in any manner (Section 51.076, Tex. Loc. Gov. Code); and

WHEREAS, the City desires to enter into that certain Shopping Center Lease between the City, as tenant, and G & I V VOP, LP, a Delaware Limited Partnership, as landlord, a true and correct copy of which is attached to this Resolution as Exhibit A and incorporated herein for all purposes (the “Lease”), by which the City will lease from the landlord certain space located within the Town at the Village on the Parkway shopping center and as described in the Lease, which space is to be used for visitor information center purposes and other uses as set forth in the Lease; and

WHEREAS, the City intends that payments by the City under or pursuant to the Lease are to be, and such payments will be, made from lawfully available and currently unencumbered funds which are included within that fund of the City designated by the City as its “Hotel Occupancy Tax Fund” (the “Fund”), into which Fund are deposited revenues derived from the imposition by the City of a hotel occupancy tax pursuant to Chapter 351, Tex. Tax Code, and such payments are in accordance with and authorized by the said Chapter 351 (that is, they promote and will promote tourism and the convention and hotel industry and are for an authorized purpose or purposes as set forth in the said Chapter 351), and nothing under the Lease is intended to be, and does not create, a debt of the City within the meaning of the Texas Constitution or require or imply any obligation on the part of the City to levy and pay any obligation under the Lease from the Town’s ad valorem taxes; and

WHEREAS, the City Council does hereby find that the Lease and the use and occupancy of the premises described in the Lease are in the best interest of and beneficial to the City and its welfare, and that the same is made in accordance and in compliance with law.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

Section 1. The Shopping Center Lease, by and between the Town of Addison, as tenant, and G & I V VOP, LP, a Delaware Limited Partnership, as landlord, a true and correct copy of which is attached to this Resolution as Exhibit A and incorporated herein for all purposes (the "Lease"), is approved. The City Manager is authorized to execute the Lease on behalf of the City and to take such further acts as may be necessary in connection with the execution of the same.

Section 2. The above and foregoing recitals and premises to this Resolution are true and correct and are incorporated into and made a part of this Resolution for all purposes.

Section 3. This Resolution shall take effect immediately upon its passage and approval.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this the _____ day of _____, 2009.

Joe Chow, Mayor

ATTEST:

By: _____
Lea Dunn, City Secretary

APPROVED AS TO FORM:

By: _____
John Hill, City Attorney

Council Agenda Item: #R5

Summary:

Council consideration is requested authorizing the Town of Addison to reenter into an agreement with, the Texas Department of Transportation, for a Selective Traffic Enforcement Program (STEP) grant in the amount of \$35,153.78. This STEP grant will focus on Speeding, Safety Belt compliance and Intersection Traffic Control enforcement, for a total of 650 enforcement and 40 supervisory support hours.

Financial Impact:

- \$4,318.78: paid by Town in matching funds.
- \$30,835.00: reimbursement for enforcement hours worked.

This item was not included in the Police Department's Fiscal Year 09/10 Budget, but can be accommodated within the Police Department operating budget. As stated above, the total grant amount will be \$35,153.78. Within that amount, \$30,835.00 (\$27,720.00 plus \$3,115.00 travel expenses) is guaranteed to the Town for reimbursement of enforcement hours worked by department personnel. Derived from the total salary cost of \$30,835.00 and multiplied by the fringe benefit cost of 15.58%, the Town's matching funds equal \$4,318.78.

During the FY2009-2010 period, the Town of Addison will be eligible for mileage reimbursement for the vehicles used during STEP Grant enforcement hours.

Background:

During the previous grant period, October 2008 through September 2009, a total of 400 speeding, 26 safety belts, 230 intersection traffic controls, and 103 other citations issued. The Town received up to \$22,580 in wage reimbursements for the 540 enforcement/supervisory hours awarded for the listed time period. In compliance with the grant, numerous public speaking engagements and educational programs were performed for civic and children's groups.

After compiling the motor vehicle accident statistics for October 2008 through September 2009, our highest causative factors continue to be intersection traffic control violations such as red lights and failures to yield right of way. Therefore, the Police Department will continue Intersection Traffic Control to FY2009-2010 grant as an additional selected enforcement area. Seat belt and speed surveys conducted in September 2009, showed a 7% increase in seat belt compliance and a 6% increase in speed compliance city wide. An increase in speed compliance of 16% city wide has been seen over the last 18 months.

The Police Department is confident this program will continue to be successful in attaining traffic compliance through enforcement and public education.

Recommendation:

Staff recommends approval.

Texas Traffic Safety eGrants

Fiscal Year 2010

Organization Name: Town of Addison - Police Department

Legal Name: Town of Addison

Payee Identification Number: 17513335558001

Project Title: STEP - 2010 Comprehensive

ID: 2010-AddisonP-S-SYG-0106

Period: 10/01/2009 to 09/30/2010

TEXAS TRAFFIC SAFETY PROGRAM GRANT AGREEMENT

THE STATE OF TEXAS
THE COUNTY OF TRAVIS

THIS AGREEMENT IS MADE BY and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the Department and the, **Town of Addison** hereinafter called the Subgrantee, and becomes effective then fully executed by both parties. For the purpose of this agreement, the Subgrantee is designated as a(n) **Local Government**.

AUTHORITY: Texas Transportation Code, Chapter 723, the Traffic Safety Act of 1967, and the Highway Safety Performance Plan for the Fiscal Year 2010.

Project Title: **STEP - 2010 Comprehensive**

Grant Period: This Grant becomes effective on **10/01/2009** or on the date of final signature of both parties, whichever is later, and ends on **09/30/2010** unless terminated or otherwise modified.

Total Awarded: **\$35,153.78**

Amount Eligible for Reimbursement: **\$30,835.00**

Match Amount: **\$4,318.78**

TEXAS TRAFFIC SAFETY PROGRAM GRANT AGREEMENT

The signatory of the Subgrantee hereby represents and warrants that she/he is an officer of the organization for which she/he has executed this agreement and that she/he has full and complete authority to enter into this agreement on behalf of the organization.

THE SUBGRANTEE

Town of Addison

[Legal Name of Agency]

By:

[Authorized Signature]

[Name]

[Title]

Date: _____

Under the authority of Ordinance or
Resolution Number (for local government):
(If Applicable)

[Resolution Number]

THE STATE OF TEXAS

Executed for the Executive Director and
Approved for the Texas Transportation
Commission for the purpose and effect of
activating and/or carrying out orders,
established policies or work programs
approved and authorized by the Texas
Transportation Commission

By:

[District Engineer Texas Department of
Transportation]

[Name]

[Title]

Date: _____

By:

Director, Traffic Operations Division Texas
Department of Transportation (Not required
for local project grants under \$100,000.00)

Date: _____

Program Element Selection

YEAR LONG

- ☐ DWI DWI: Driving While Intoxicated
- ☒ Speed Speed: Speed Enforcement
- ☒ OP OP: Occupant Protection (Safety Belt and Child Safety Seat)
- ☒ ITC ITC: Intersection Traffic Control

WAVE

- ☐ DWI Jurisdiction wide (DWI enforcement effort must be focused at locations where there is an over-representation of alcohol-related crashes and/or DWI arrests)
- ☐ Speed Jurisdiction wide (Speed enforcement should be focused on areas where there is at least a 50% noncompliance with the posted speed limits and/or a higher number of speed-related crashes)
- ☐ OP Jurisdiction wide

CMV

- ☐ Speed, OP and HMV CMV: Commercial Motor Vehicle; HMV: Hazardous Moving Violations

Note: If a DWI component is selected above, an SFST letter is no longer required to be submitted with the proposal.

General Information

Project Title STEP - 2010 Comprehensive

How many years has your organization received funding for this project? This will be our third year.

Project Director Name

Organization Address 4799 Airport PW
Addison, TX 75001

Mailing Address

Multi Year Proposal Selection

Texas Traffic Safety Program

GRANT AGREEMENT GENERAL TERMS AND CONDITIONS

ARTICLE 1. COMPLIANCE WITH LAWS

The Subgrantee shall comply with all federal, state, and local laws, statutes, codes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, nondiscrimination laws and regulations, and licensing laws and regulations. When required, the Subgrantee shall furnish the Department with satisfactory proof of its compliance therewith.

ARTICLE 2. STANDARD ASSURANCES

The Subgrantee hereby assures and certifies that it will comply with the regulations, policies, guidelines, and requirements, including 49 CFR (Code of Federal Regulations), Part 18; 49 CFR, Part 19 (OMB [Office of Management and Budget] Circular A-110); OMB Circular A-87; OMB Circular A-102; OMB Circular A-21; OMB Circular A-122; OMB Circular A-133; and the Department's Traffic Safety Program Manual, as they relate to the application, acceptance, and use of federal or state funds for this project. Also, the Subgrantee assures and certifies that:

- A. It possesses legal authority to apply for the grant; and that a resolution, motion, or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
- B. It and its subcontractors will comply with Title VI of the Civil Rights Act of 1964 (Public Law 88-352), as amended, and in accordance with that Act, no person shall discriminate, on the grounds of race, color, sex, national origin, age, religion, or disability.
- C. It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970, as amended; 42 USC (United States Code) §§4601 et seq.; and United States Department of Transportation (USDOT) regulations, "Uniform Relocation and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR, Part 24, which provide for fair and equitable treatment of persons displaced as a result of federal and federally assisted programs.
- D. It will comply with the provisions of the Hatch Political Activity Act, which limits the political activity of employees. (See also Article 25, Lobbying Certification.)
- E. It will comply with the federal Fair Labor Standards Act's minimum wage and overtime requirements for employees performing project work.
- F. It will establish safeguards to prohibit employees from using their positions for a

purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

- G. It will give the Department the access to and the right to examine all records, books, papers, or documents related to this Grant Agreement.
- H. It will comply with all requirements imposed by the Department concerning special requirements of law, program requirements, and other administrative requirements.
- I. It recognizes that many federal and state laws imposing environmental and resource conservation requirements may apply to this Grant Agreement. Some, but not all, of the major federal laws that may affect the project include: the National Environmental Policy Act of 1969, as amended, 42 USC §§4321 et seq.; the Clean Air Act, as amended, 42 USC §§7401 et seq. and sections of 29 USC; the Federal Water Pollution Control Act, as amended, 33 USC §§1251 et seq.; the Resource Conservation and Recovery Act, as amended, 42 USC §§6901 et seq.; and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 USC §§9601 et seq. The Subgrantee also recognizes that the U.S. Environmental Protection Agency, USDOT, and other federal agencies have issued, and in the future are expected to issue, regulation, guidelines, standards, orders, directives, or other requirements that may affect this Project. Thus, it agrees to comply, and assures the compliance of each contractor and each subcontractor, with any such federal requirements as the federal government may now or in the future promulgate.
- J. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, 42 USC §4012a(a). Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase "federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any form of direct or indirect federal assistance.
- K. It will assist the Department in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 USC 470 et seq.), Executive Order 11593, and the Antiquities Code of Texas (National Resources Code, Chapter 191).
- L. It will comply with Chapter 573 of the Texas Government Code by ensuring that no officer, employee, or member of the Subgrantee's governing board or the Subgrantee's subcontractors shall vote or confirm the employment of any person related within the second degree of affinity or third degree by consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise such person. This prohibition shall not prohibit the employment of a person described in Section 573.062 of the Texas Government Code.
- M. It will ensure that all information collected, assembled, or maintained by the applicant relative to this project shall be available to the public during normal business hours in compliance with Chapter 552 of the Texas Government Code,

unless otherwise expressly provided by law.

- N. If applicable, it will comply with Chapter 551 of the Texas Government Code, which requires all regular, special, or called meetings of governmental bodies to be open to the public, except as otherwise provided by law or specifically permitted in the Texas Constitution.

ARTICLE 3. COMPENSATION

- A. The method of payment for this Agreement will be based on actual costs incurred up to and not to exceed the limits specified in the Project Budget. The amount included in the Project Budget will be deemed to be an estimate only and a higher amount can be reimbursed, subject to the conditions specified in paragraph B hereunder. If the Project Budget specifies that costs are based on a specific rate, per-unit cost, or other method of payment, reimbursement will be based on the specified method.
- B. All payments will be made in accordance with the Project Budget.

The Subgrantee's expenditures may overrun a budget category (I, II, or III) in the approved Project Budget without a grant (budget) amendment, as long as the overrun does not exceed a total of five (5) percent per year of the maximum amount eligible for reimbursement (TxDOT) in the attached Project Budget for the current fiscal year. This overrun must be off-set by an equivalent underrun elsewhere in the Project Budget.

If the overrun is five (5) percent or less, the Subgrantee must provide written notification to the Department, through the TxDOT Electronic Grants Management System (eGrants) messaging system, prior to the Request for Reimbursement being approved. The notification must indicate the amount, the percent over, and the specific reason(s) for the overrun.

Any overrun of more than five (5) percent of the amount eligible for reimbursement (TxDOT) in the attached Project Budget requires an amendment of this Grant Agreement.

The maximum amount eligible for reimbursement shall not be increased above the Grand Total TxDOT Amount in the approved Project Budget, unless this Grant Agreement is amended, as described in Article 5 of this Agreement.

For Selective Traffic Enforcement Program (STEP) grants *only*: In the Project Budget, Subgrantees are not allowed to use underrun funds from the TxDOT amount of (100) Salaries, Subcategories A, "Enforcement," or B, "PI&E Activities," to exceed the TxDOT amount listed in Subcategory C, "Other." Also, Subgrantees are not allowed to use underrun funds from the TxDOT amount of (100) Salaries, Subcategories A, "Enforcement," or C, "Other," to exceed the TxDOT amount listed in Subcategory B, "PI&E Activities." The TxDOT amount for Subcategory B, "PI&E Activities," or C, "Other," can only be exceeded within the 5 percent flexibility, with

- underrun funds from Budget Categories II or III.
- C. To be eligible for reimbursement under this Agreement, a cost must be incurred in accordance with the Project Budget, within the time frame specified in the Grant Period of this Grant Agreement, attributable to work covered by this Agreement, and which has been completed in a manner satisfactory and acceptable to the Department.
 - D. Federal or TxDOT funds cannot supplant (replace) funds from any other sources. The term "supplanting," refers to the use of federal or TxDOT funds to support personnel or an activity already supported by local or state funds.
 - E. Payment of costs incurred under this Agreement is further governed by one of the following cost principles, as appropriate, outlined in the Federal Office of Management and Budget (OMB) Circulars:
 - A-21, Cost Principles for Educational Institutions;
 - A-87, Cost Principles for State, Local, and Indian Tribal Governments; or,
 - A-122, Cost Principles for Nonprofit Organizations.
 - F. The Subgrantee agrees to submit monthly or quarterly Requests for Reimbursement, as designated in this Grant Agreement, within thirty (30) days after the end of the billing period. The Request for Reimbursement and appropriate supporting documentation must be submitted through eGrants.
 - G. The Subgrantee agrees to submit the final Request for Reimbursement under this Agreement within forty-five (45) days of the end of the grant period.
 - H. Payments are contingent upon the availability of appropriated funds.
 - I. Project agreements supported with federal or TxDOT funds are limited to the length of this Grant Period specified in this Grant Agreement. If the Department determines that the project has demonstrated merit or has potential long-range benefits, the Subgrantee may apply for funding assistance beyond the initial Agreement period. Preference for funding will be given to those projects for which the Subgrantee has assumed some cost sharing, those which propose to assume the largest percentage of subsequent project costs, and those which have demonstrated performance that is acceptable to the Department.

ARTICLE 4. LIMITATION OF LIABILITY

Payment of costs incurred hereunder is contingent upon the availability of funds. If at any time during this Grant Period, the Department determines that there is insufficient funding to continue the project, the Department shall so notify the Subgrantee, giving notice of intent to terminate this Agreement, as specified in Article 11 of this Agreement. If at the end of a federal fiscal year, the Department determines that there is sufficient funding and performance to continue the project, the Department may so notify the Subgrantee to continue this agreement.

ARTICLE 5. AMENDMENTS

This Agreement may be amended prior to its expiration by mutual written consent of both parties, utilizing the Grant Agreement Amendment in eGrants. Any amendment must be executed by the parties within the Grant Period, as specified in this Grant Agreement.

ARTICLE 6. ADDITIONAL WORK AND CHANGES IN WORK

If the Subgrantee is of the opinion that any assigned work is beyond the scope of this Agreement and constitutes additional work, the Subgrantee shall promptly notify the Department in writing through eGrants system messaging. If the Department finds that such work does constitute additional work, the Department shall so advise the Subgrantee and a written amendment to this Agreement will be executed according to Article 5, Amendments, to provide compensation for doing this work on the same basis as the original work. If performance of the additional work will cause the maximum amount payable to be exceeded, the work will not be performed before a written grant amendment is executed.

If the Subgrantee has submitted work in accordance with the terms of this Agreement but the Department requests changes to the completed work or parts thereof which involve changes to the original scope of services or character of work under this Agreement, the Subgrantee shall make such revisions as requested and directed by the Department. This will be considered as additional work and will be paid for as specified in this Article.

If the Subgrantee submits work that does not comply with the terms of this Agreement, the Department shall instruct the Subgrantee to make such revisions as are necessary to bring the work into compliance with this Agreement. No additional compensation shall be paid for this work.

The Subgrantee shall make revisions to the work authorized in this Agreement, which are necessary to correct errors or omissions appearing therein, when required to do so by the Department. No additional compensation shall be paid for this work.

The Department shall not be responsible for actions by the Subgrantee or any costs incurred by the Subgrantee relating to additional work not directly associated with or prior to the execution of an amendment.

ARTICLE 7. REPORTING AND MONITORING

Not later than thirty (30) days after the end of each reporting period, the Subgrantee shall submit a performance report through eGrants. For short-term projects, only one report submitted by the Subgrantee at the end of the project may be required. For longer projects, the Subgrantee will submit reports at least quarterly and preferably monthly. The frequency of the performance reports is established through negotiation between the Subgrantee and the program or project manager.

For Selective Traffic Enforcement Programs (STEPs), performance reports must be submitted monthly.

The performance report will include, as a minimum: (1) a comparison of actual accomplishments to the objectives established for the period, (2) reasons why established objectives and performance measures were not met, if appropriate, and (3) other pertinent information, including, when appropriate, an analysis and explanation of cost underruns,

overruns, or high unit costs.

The Subgrantee shall submit the Final Performance Report through eGrants within thirty (30) days after completion of the grant.

The Subgrantee shall promptly advise the Department in writing, through eGrants messaging, of events that will have a significant impact upon this Agreement, including:

- A. Problems, delays, or adverse conditions, including a change of project director or other changes in Subgrantee personnel, that will materially affect the ability to attain objectives and performance measures, prevent the meeting of time schedules and objectives, or preclude the attainment of project objectives or performance measures by the established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated and any Department or federal assistance needed to resolve the situation.
- B. Favorable developments or events that enable meeting time schedules and objectives sooner than anticipated or achieving greater performance measure output than originally projected.

ARTICLE 8. RECORDS

The Subgrantee agrees to maintain all reports, documents, papers, accounting records, books, and other evidence pertaining to costs incurred and work performed hereunder, (hereinafter called the records), and shall make such records available at its office for the time period authorized within the Grant Period, as specified in this Grant Agreement. The Subgrantee further agrees to retain said records for four (4) years from the date of final payment under this Agreement, until completion of all audits, or until pending litigation has been completely and fully resolved, whichever occurs last.

Duly authorized representatives of the Department, the USDOT, the Office of the Inspector General, Texas State Auditor, and the Comptroller General shall have access to the records. This right of access is not limited to the four (4) year period but shall last as long as the records are retained.

ARTICLE 9. INDEMNIFICATION

To the extent permitted by law, the Subgrantee, if other than a government entity, shall indemnify, hold, and save harmless the Department and its officers and employees from all claims and liability due to the acts or omissions of the Subgrantee, its agents, or employees. The Subgrantee also agrees, to the extent permitted by law, to indemnify, hold, and save harmless the Department from any and all expenses, including but not limited to attorney fees, all court costs and awards for damages incurred by the Department in litigation or otherwise resisting such claims or liabilities as a result of any activities of the Subgrantee, its agents, or employees.

Further, to the extent permitted by law, the Subgrantee, if other than a government entity, agrees to protect, indemnify, and save harmless the Department from and against all

claims, demands, and causes of action of every kind and character brought by any employee of the Subgrantee against the Department due to personal injuries or death to such employee resulting from any alleged negligent act, by either commission or omission on the part of the Subgrantee.

If the Subgrantee is a government entity, both parties to this Agreement agree that no party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds, as well as the acts and deeds of its contractors, employees, representatives, and agents.

ARTICLE 10. DISPUTES AND REMEDIES

This Agreement supercedes any prior oral or written agreements. If a conflict arises between this Agreement and the Traffic Safety Program Manual, this Agreement shall govern.

The Subgrantee shall be responsible for the settlement of all contractual and administrative issues arising out of procurement made by the Subgrantee in support of Agreement work. Disputes concerning performance or payment shall be submitted to the Department for settlement, with the Executive Director or his or her designee acting as final referee.

ARTICLE 11. TERMINATION

This Agreement shall remain in effect until the Subgrantee has satisfactorily completed all services and obligations described herein and these have been accepted by the Department, unless:

- This Agreement is terminated in writing with the mutual consent of both parties; or
- There is a written thirty (30) day notice by either party; or
- The Department determines that the performance of the project is not in the best interest of the Department and informs the Subgrantee that the project is terminated immediately.

The Department shall compensate the Subgrantee for only those eligible expenses incurred during the Grant Period specified in this Grant Agreement which are directly attributable to the completed portion of the work covered by this Agreement, provided that the work has been completed in a manner satisfactory and acceptable to the Department. The Subgrantee shall not incur nor be reimbursed for any new obligations after the effective date of termination.

ARTICLE 12. INSPECTION OF WORK

The Department and, when federal funds are involved, the US DOT, or any authorized representative thereof, have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed.

If any inspection or evaluation is made on the premises of the Subgrantee or its subcontractor, the Subgrantee shall provide and require its subcontractor to provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

ARTICLE 13. AUDIT

The Subgrantee shall comply with the requirements of the Single Audit Act of 1984, Public Law (PL) 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133, "Audits of States, Local Governments, and Other Non-Profit Organizations."

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under this Agreement or indirectly through a subcontract under this Agreement. Acceptance of funds directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

ARTICLE 14. SUBCONTRACTS

A subcontract in excess of \$25,000 may not be executed by the Subgrantee without prior written concurrence by the Department. Subcontracts in excess of \$25,000 shall contain all applicable terms and conditions of this Agreement. No subcontract will relieve the Subgrantee of its responsibility under this Agreement.

ARTICLE 15. GRATUITIES

Texas Transportation Commission policy mandates that employees of the Department shall not accept any benefit, gift, or favor from any person doing business with or who, reasonably speaking, may do business with the Department under this Agreement. The only exceptions allowed are ordinary business lunches and items that have received the advanced written approval of the Department's Executive Director.

Any person doing business with or who reasonably speaking may do business with the Department under this Agreement may not make any offer of benefits, gifts, or favors to Department employees, except as mentioned here above. Failure on the part of the Subgrantee to adhere to this policy may result in termination of this Agreement.

ARTICLE 16. NONCOLLUSION

The Subgrantee warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Subgrantee, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a

bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. If the Subgrantee breaches or violates this warranty, the Department shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, brokerage fee, contingent fee, or gift.

ARTICLE 17. CONFLICT OF INTEREST

The Subgrantee represents that it or its employees have no conflict of interest that would in any way interfere with its or its employees' performance or which in any way conflicts with the interests of the Department. The Subgrantee shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the Department's interests.

ARTICLE 18. SUBGRANTEE'S RESOURCES

The Subgrantee certifies that it presently has adequate qualified personnel in its employment to perform the work required under this Agreement, or will be able to obtain such personnel from sources other than the Department.

All employees of the Subgrantee shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of the Subgrantee who, in the opinion of the Department, is incompetent or whose conduct becomes detrimental to the work, shall immediately be removed from association with the project.

Unless otherwise specified, the Subgrantee shall furnish all equipment, materials, supplies, and other resources required to perform the work.

ARTICLE 19. PROCUREMENT AND PROPERTY MANAGEMENT

The Subgrantee shall establish and administer a system to procure, control, protect, preserve, use, maintain, and dispose of any property furnished to it by the Department or purchased pursuant to this Agreement in accordance with its own property management procedures, provided that the procedures are not in conflict with the Department's property management procedures or property management standards and federal standards, as appropriate, in:

- 49 CFR, Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," or
- 49 CFR, Part 19 (OMB Circular A-110), "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations."

ARTICLE 20. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

Upon completion or termination of this Grant Agreement, whether for cause or at the convenience of the parties hereto, all finished or unfinished documents, data, studies, surveys, reports, maps, drawings, models, photographs, etc. prepared by the Subgrantee, and equipment and supplies purchased with grant funds shall, at the option of the Department, become the property of the Department. All sketches, photographs, calculations, and other data prepared under this Agreement shall be made available, upon request, to the Department without restriction or limitation of their further use.

- A. Intellectual property consists of copyrights, patents, and any other form of intellectual property rights covering any data bases, software, inventions, training manuals, systems design, or other proprietary information in any form or medium.
- B. *All rights to Department.* The Department shall own all of the rights (including copyrights, copyright applications, copyright renewals, and copyright extensions), title and interests in and to all data, and other information developed under this contract and versions thereof unless otherwise agreed to in writing that there will be joint ownership.
- C. *All rights to Subgrantee.* Classes and materials initially developed by the Subgrantee without any type of funding or resource assistance from the Department remain the Subgrantee's intellectual property. For these classes and materials, the Department payment is limited to payment for attendance at classes.

ARTICLE 21. SUCCESSORS AND ASSIGNS

The Department and the Subgrantee each binds itself, its successors, executors, assigns, and administrators to the other party to this Agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this Agreement. The Subgrantee shall not assign, sublet, or transfer interest and obligations in this Agreement without written consent of the Department through eGrants messaging.

ARTICLE 22. CIVIL RIGHTS COMPLIANCE

- A. Compliance with regulations: The Subgrantee shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the USDOT: 49 CFR, Part 21; 23 CFR, Subchapter C; and 41 CFR, Parts 60-74, as they may be amended periodically (hereinafter referred to as the Regulations). The Subgrantee agrees to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 and as supplemented by the U.S. Department of Labor regulations (41 CFR, Part 60).
- B. Nondiscrimination: The Subgrantee, with regard to the work performed during the period of this Agreement, shall not discriminate on the grounds of race, color, sex, national origin, age, religion, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment.
- C. Solicitations for subcontracts, including procurement of materials and equipment: In all solicitations either by competitive bidding or negotiation made by the Subgrantee for work to be performed under a subcontract, including procurements of materials and leases of equipment, each potential subcontractor or supplier shall be notified

by the Subgrantee of the Subgrantee's obligations under this Agreement and the regulations relative to nondiscrimination on the grounds of race, color, sex, national origin, age, religion, or disability.

- D. Information and reports: The Subgrantee shall provide all information and reports required by the regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Department or the USDOT to be pertinent to ascertain compliance with such regulations or directives. Where any information required of the Subgrantee is in the exclusive possession of another who fails or refuses to furnish this information, the Subgrantee shall so certify to the Department or the US DOT, whichever is appropriate, and shall set forth what efforts the Subgrantee has made to obtain the requested information.
- E. Sanctions for noncompliance: In the event of the Subgrantee's noncompliance with the nondiscrimination provision of this Agreement, the Department shall impose such sanctions as it or the US DOT may determine to be appropriate.
- F. Incorporation of provisions: The Subgrantee shall include the provisions of paragraphs A. through E. in every subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations or directives. The Subgrantee shall take such action with respect to any subcontract or procurement as the Department may direct as a means of enforcing such provisions, including sanctions for noncompliance. However, in the event a Subgrantee becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Subgrantee may request the Department to enter into litigation to protect the interests of the state; and in addition, the Subgrantee may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE 23. DISADVANTAGED BUSINESS ENTERPRISE

It is the policy of the Department and the USDOT that Disadvantaged Business Enterprises, as defined in 49 CFR Part 26, shall have the opportunity to participate in the performance of agreements financed in whole or in part with federal funds. Consequently, the Disadvantaged Business Enterprise requirements of 49 CFR Part 26, apply to this Agreement as follows:

- The Subgrantee agrees to insure that Disadvantaged Business Enterprises, as defined in 49 CFR Part 26, have the opportunity to participate in the performance of agreements and subcontracts financed in whole or in part with federal funds. In this regard, the Subgrantee shall make good faith efforts in accordance with 49 CFR Part 26, to insure that Disadvantaged Business Enterprises have the opportunity to compete for and perform agreements and subcontracts.
- The Subgrantee and any subcontractor shall not discriminate on the basis of race, color, sex, national origin, or disability in the award and performance of agreements funded in whole or in part with federal funds.

These requirements shall be included in any subcontract.

Failure to carry out the requirements set forth above shall constitute a breach of this Agreement and, after the notification of the Department, may result in termination of this Agreement by the Department, or other such remedy as the Department deems appropriate.

ARTICLE 24. DEBARMENT/SUSPENSION

- A. The Subgrantee certifies, to the best of its knowledge and belief, that it and its principals:
1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency;
 2. Have not within a three (3) year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local public transaction or contract under a public transaction; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 3. Are not presently indicted or otherwise criminally or civilly charged by a federal, state, or local governmental entity with commission of any of the offenses enumerated in paragraph A. 2. of this Article; and
 4. Have not, within a three (3) year period preceding this Agreement, had one or more federal, state, or local public transactions terminated for cause or default.
- B. Where the Subgrantee is unable to certify to any of the statements in this Article, such Subgrantee shall attach an explanation to this Agreement.
- C. The Subgrantee is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension.
- D. The Subgrantee shall require any party to a subcontract or purchase order awarded under this Grant Agreement to certify its eligibility to receive federal grant funds, and, when requested by the Department, to furnish a copy of the certification.

ARTICLE 25. LOBBYING CERTIFICATION

The Subgrantee certifies to the best of his or her knowledge and belief that:

- A. No federally appropriated funds have been paid or will be paid by or on behalf of the

Subgrantee to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the party to this Agreement shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The Subgrantee shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

ARTICLE 26. CHILD SUPPORT STATEMENT

Unless the Subgrantee is a governmental or non-profit entity, the Subgrantee certifies that it either will go to the Department's website noted below and complete the Child Support Statement or already has a Child Support Statement on file with the Department. The Subgrantee is responsible for keeping the Child Support Statement current and on file with that office for the duration of this Agreement period. The Subgrantee further certifies that the Child Support Statement on file contains the child support information for the individuals or business entities named in this grant. Under Section 231.006, Family Code, the Subgrantee certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified grant or payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

The form for the Child Support Statement is available on the Internet at:
<http://www.dot.state.tx.us/cso/default.htm>.

RESPONSIBILITIES OF THE SUBGRANTEE:

- A. Carry out all performance measures established in the grant, including fulfilling the law enforcement objectives by implementing the Operational Plan contained in this Grant Agreement.
- B. Submit all required reports to the Department (TxDOT) fully completed with the most current information, and within the required times, as defined in Article 3 and Article 7 of the General Terms and Conditions of this Grant Agreement. This includes reporting to the Department on progress, achievements, and problems in monthly Performance Reports and attaching necessary source documentation to support all costs claimed in Requests for Reimbursement (RFR).
- C. Attend Department-approved grant management training.
- D. Attend meetings according to the following:
 - 1. The Department will arrange for meetings with the Subgrantee to present status of activities and to discuss problems and the schedule for the following quarter's work.
 - 2. The project director or other appropriate qualified persons will be available to represent the Subgrantee at meetings requested by the Department.
- E. Support grant enforcement efforts with public information and education (PI&E) activities. Salaries being claimed for PI&E activities must be included in the budget.
- F. When applicable, all newly developed PI&E materials must be submitted to the Department for written approval, through the TxDOT Electronic Grants Management System (eGrants) system messaging, prior to final production. Refer to the Traffic Safety Program Manual regarding PI&E procedures.
- G. For out of state travel expenses to be reimbursable, the Subgrantee must have obtained the written approval of the Department, through eGrants system messaging, prior to the beginning of the trip. Grant approval does not satisfy this requirement. For Department district-managed grants, the Subgrantee must have obtained written Department district approval, through eGrants system messaging, for travel and related expenses if outside of the district boundaries.
- H. Maintain verification that all expenses, including wages or salaries, for which reimbursement is requested is for work exclusively related to this project.
- I. Ensure that this grant will in no way supplant (replace) funds from other sources. Supplanting refers to the use of federal funds to support personnel or any activity already supported by local or state funds.
- J. Ensure that each officer working on the STEP project will complete an officer's daily

Town of Addison
STEP - 2010 Comprehensive

report form. The form should include at a minimum: name, date, badge or identification number, type of grant worked, grant site number, mileage (including starting and ending mileage), hours worked, type of citation issued or arrest made, officer and supervisor signatures.

K. Ensure that no officer above the rank of Lieutenant (or equivalent title) will be reimbursed for enforcement duty, unless the Subgrantee received specific written authorization from the Department, through eGrants system messaging, prior to incurring costs.

L. Subgrantee may work additional STEP enforcement hours on holidays or special events not covered under the Operational Plan. However, additional work must be approved in writing by the Department, through eGrants system messaging, prior to enforcement. Additional hours must be reported in the Performance Report for the time period for which the additional hours were worked.

M. If an officer makes a STEP-related arrest during the shift, but does not complete the arrest before the shift is scheduled to end, the officer can continue working under the grant to complete that arrest.

N. Subgrantees with a traffic unit will utilize traffic personnel for this grant, unless such personnel are unavailable for assignment.

O. Prior to conducting speed enforcement, the Subgrantee must select and survey enforcement sites that comply with existing state mandated speed limits in accordance with the Texas Transportation Code, Sections 545.352 through 545.356.

P. Officers assigned to speed sites should be trained in the use of radar or laser speed measurement devices.

Q. The Subgrantee should have a safety belt use policy. If the Subgrantee does not have a safety belt use policy in place, a policy should be implemented, and a copy maintained for verification during the grant year.

R. Officers working DWI enforcement must be trained in the National Highway Traffic Safety Administration/International Association of Chiefs of Police Standardized Field Sobriety Testing (SFST). In the case of a first year subgrantee, the officers must be trained, or scheduled to be SFST trained, by the end of the grant year. For second or subsequent year grants, all officers working DWI enforcement must be SFST trained.

S. The Subgrantee should have a procedure in place for contacting and using drug recognition experts (DREs) when necessary.

T. The Subgrantee is encouraged to use the DWI On-line Reporting System available through the Buckle Up Texas Web site at www.buckleuptexas.com.

RESPONSIBILITIES OF THE DEPARTMENT:

A. Monitor the Subgrantee's compliance with the performance obligations and fiscal requirements of this Grant Agreement using appropriate and necessary monitoring and inspections, including but not limited to:

- review of periodic reports
- physical inspection of project records and supporting documentation
- telephone conversations
- e-mails and letters
- quarterly review meetings
- eGrants system messaging

B. Provide program management and technical assistance.

C. Attend appropriate meetings.

D. Reimburse the Subgrantee for all eligible costs as defined in the project budget. Requests for Reimbursement will be processed up to the maximum amount payable as indicated in the project budget.

E. Perform an administrative review of the project at the close of the grant period to:

- Ascertain whether or not the project objectives were met
- Review project accomplishments (performance measures completed, targets achieved)
- Document any progress towards self-sufficiency
- Account for any approved Program Income earned and expended
- Identify exemplary performance or best practices

Goals and Strategies

Goal: To increase effective enforcement and adjudication of traffic safety-related laws to reduce fatal and serious injury crashes

Strategies: Increase enforcement of traffic safety-related laws.
Increase public education and information campaigns.

Goal: To increase occupant restraint use in all passenger vehicles and trucks

Strategy: Increase enforcement of occupant protection laws.

☒ I agree to the above goals and strategies.

Baseline Information

Baseline Year (12
months)

From 1/1/2007 to 12/31/2007

Baseline Measure	Baseline Number
Number of speed citations	3411
Number of safety belt citations	40
Number of child safety seat citations	10
Number of Intersection Traffic Control (ITC) citations	583
Number of speed-related crashes	27
Number of crashes occurring at intersections	74

	Baseline Number	Month/Year of Survey
Percentage of speed compliance	38 %	02/2009
Percentage of safety belt usage	86 %	02/2009
Attach Speed survey data	https://www.dot.state.tx.us/apps/egrants/_Upload/125519-scan0001.gif	
Attach Safety Belt survey data	https://www.dot.state.tx.us/apps/egrants/_Upload/125519-scan0001.gif	

Law Enforcement Objective/Performance Measure

Objective/Performance Measure	Target Number
1. Number and type citations/arrests to be issued under STEP	
a. Increase speed citations by	1430
b. Increase safety belt citations by	85
c. Increase child safety belt citations by	10
d. Increase ITC citations by	250
2. Proposed total number of traffic related crashes	
a. Reduce the number of speed-related crashes to	20
b. Reduce the number of ITC-related crashes to	60
3. Increase speed compliance	
a. Increase the speed compliance rate to	42%
4. Increase safety belt usage	
a. Increase the safety belt usage rate among drivers and front seat passengers to	92%
5. Number of Enforcement Hours	650

Note:

Nothing in this agreement shall be interpreted as a requirement, formal or informal, that a peace officer issue a specified or predetermined number of citations in pursuance of the Subgrantee's obligations hereunder.

In addition to the STEP enforcement activities, the subgrantee must maintain baseline non-STEP funded citation and arrest activity due to the prohibition of supplanting

Step Indicator	3.19
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PI&E Objective Performance/Measure

Object/Performance Measure	Target Number
Support Grant efforts with a public information and education (PI&E) program	
a. Conduct presentations	5
b. Conduct media exposures (e.g. news conferences, news releases, and interviews)	5
c. Conduct community events (e.g. health fairs, booths)	2
d. Produce the following number of public information and education materials	0
e. Number of public information and education materials distributed	1500

Town of Addison
STEP - 2010 Comprehensive

Operational Plan

<input type="checkbox"/> Not Applicable (Click on this check-box if this is a Multi-Year proposal and if you would like to use the Yr1 Operational Plan)				
Site Number	Type	Site Description	Survey Results (Compliance Percentage)	Enforcement Period
	OP	City Wide	86	7 Days a week daylight hours
1	Speed	Marsh Lane from Brookhaven Club Dr. to Arapaho Rd., 35 MPH, 1.5 miles	39	7 days a week 24 hours per day
2	Speed	Midway Rd. from Spring Valley Rd. to Dooley Rd., 40 MPH, 1.8 miles	37	7 Days a week 24 hours per day
3	Speed	Quorum Dr. from Landmark Place to Westgrove Dr., 30 MPH, .4 miles	28	7 Days a week 24 hours per day
4	Speed	Montfort Rd. from Belt Line Rd. to Verde Valley, 30 MPH, .4 miles	41	7 days a week 24 hours per day
5	Speed	Spring Valley Rd. from Midway Rd. to Marsh Lane, 35 MPH, .9 miles	42	7 days a week 24 hours per day
6	Speed	Arapaho Rd. from Addison Rd. to Surveyor Blvd., 40	40	7 days a week 24 hours

Town of Addison

Operational Plan

[illegible]

Budget Summary

Budget Category		TxDOT	Match	Total
Category I - Labor Costs				
(100)	Salaries:	\$27,720.00	\$0	\$27,720.00
(200)	Fringe Benefits:		\$4,318.78	\$4,318.78
	Sub-Total:	\$27,720.00	\$4,318.78	\$32,038.78
Category II - Other Direct Costs				
(300)	Travel:	\$3,115.00	\$0	\$3,115.00
(400)	Equipment:			\$0
(500)	Supplies:			\$0
(600)	Contractual Services:			\$0
(700)	Other Miscellaneous:			\$0
	Sub-Total:	\$3,115.00	\$0	\$3,115.00
Total Direct Costs:		\$30,835.00	\$4,318.78	\$35,153.78
Category III - Indirect Costs				
(800)	Indirect Cost Rate:			\$0
Summary				
	Total Labor Costs:	\$27,720.00	\$4,318.78	\$32,038.78
	Total Direct Costs:	\$3,115.00	\$0	\$3,115.00
	Total Indirect Costs:			\$0
Grand Total		\$30,835.00	\$4,318.78	\$35,153.78
	Fund Sources (Percent Share):	87.71%	12.29%	
Salary and cost rates will be based on the rates submitted by the Subgrantee in its grant application in Egrants.				

**TOWN OF ADDISON, TEXAS
RESOLUTION NO. R09-000**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF
ADDISON, TEXAS AUTHORIZING THE TOWN TO ENTER INTO AN
AGREEMENT WITH THE TEXAS DEPARTMENT OF
TRANSPORTATION, FOR A SELECTIVE TRAFFIC ENFORCEMENT
PROGRAM (STEP) GRANT IN THE AMOUNT OF \$35,153.78.**

WHEREAS, the Texas Department of Public Safety, the law enforcement community, training agencies, associations, prosecutors, the judiciary and the Texas Department of Transportation (TX DOT) work together to decrease crashes, fatalities, and injuries; and,

WHEREAS, to achieve this goal, the program combines a concerted local and statewide media campaign with additional law enforcement activities to reinforce the message; and,

WHEREAS, Selective Traffic Enforcement Programs (STEP) are grants provided by TX DOT to law enforcement agencies to enforce traffic safety laws such as speed and safety belt use; and,

WHEREAS, this STEP grant will focus on Speeding, Safety belt compliance and intersection control only, for a total of 650 enforcement and 40 supervisory support hours; and,

WHEREAS, in these grants, Texas peace officers work primarily overtime to issue citations in order to reduce fatalities, injuries, and crashes within their local jurisdiction; and,

WHEREAS, this item was not included in the Police Department's Fiscal Year 09/10 budget, but can be accommodated within the Police Department operating budget; now, therefore,

**BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON
TEXAS:**

THAT, the City Council does hereby approve of a resolution authorizing the Town of Addison to enter into an agreement with the Texas Department of Transportation, for a Selective Traffic Enforcement Program (STEP) grant in the amount of \$35,153.78.

PASSED AND APPROVED by the City Council of the Town of Addison,
Texas this 27th day of October 2009.

Mayor-Joe Chow

ATTEST:

City Secretary-Lea Dunn

Council Agenda Item: #R6

SUMMARY:

Annual contract for FY '10 with the Trinity River Authority to provide inspection, sampling and laboratory analysis on certain industries in Addison to comply with wastewater pretreatment laws as required by EPA.

FINANCIAL IMPACT:

Budgeted Amount: \$0

Cost: \$0

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

N/A

BACKGROUND:

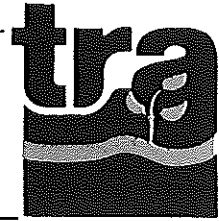
The EPA requires that industries categorized as significant industrial users (SIUs) regarding their wastewater discharges be scrutinized by the local governing authority for compliance with federal law. Since the Trinity River Authority (TRA) treats all of the wastewater generated in the industrially zoned areas in Addison and is the agency responsible to the EPA, in the interest of impartiality and credibility, we felt it is prudent to continue our relationship with TRA for EPA required services.

Being that the actual expenditures to TRA are recoverable from SIUs, no monies are budgeted for this regulatory program. An enterprise account (#01-000-11505) in the Utility Fund has been created to handle this financial arrangement. For your information, we do not expect expenditures for the term of this contract to exceed \$3,500. Terms of contract are identical to last year. Find attached a cover letter from TRA, a draft contract for Mr. Whitehead's signature and a fee schedule. Please forward two (2) signed contracts to TRA for their signature and provide to me a copy of the fully executed contract when it returns from TRA.

RECOMMENDATION:

Staff recommends approval

Trinity River Authority of Texas



Central Regional Wastewater System

3110.500.040.100

July 28, 2009

Mr. Neil Gayden
Supervisor, Environmental Services
City of Addison
P.O. Box 9010
Addison, Texas 75001-9010

Dear Mr. Gayden:

Subject: Contract for Services - Fiscal Year 2010
Revised Technical Services Fee Schedule
Central Regional Wastewater System

The Trinity River Authority Board of Directors, in Board Action June, 2009, approved the Technical Services Fee Schedule for Fiscal Year 2010 which is in connection with all contracting work relating to the analysis of water and wastewater, industrial inspections, and/or sampling services. As in past years we propose to continue performing associated services to all Authority Contributing Parties under the provisions of a contract for services. Enclosed please find two (2) copies of the Trinity River Authority Contract for Services and Fee Schedules for Fiscal Year 2010 attached for your review and official authorization. Upon the City's approval for requested services between the City and Trinity River Authority, please return both notarized or sealed copies with Attachment A - Technical Services Fee Schedules for final execution to this office. After execution by the Authority's General Manager, one (1) original Contract for Services will be returned for your files unless otherwise noted by the City.

Please address and refer the correspondence regarding this matter to:

Trinity River Authority
Central Regional Wastewater System
6500 West Singleton Blvd.
Dallas, Texas 75212
Attention: Wm. B. Cyrus, Manager
Technical Services

6500 W. Singleton Blvd.
Dallas, Texas 75212
Metro (972) 263-2251
Admin Fax (972) 331-4412
Lab Fax (972) 331-4414

July 28, 2009
FY-2010 Contract for Services
Page 2

To coordinate our efforts accordingly, the Authority requests the approval of the contract to begin on October 1, 2009, and terminate on date specified by the contracting party in Section VI. Please note that the contract may now be greater than one (1) year at the contracting party's preference.

Also enclosed are additional copies of our Board Approved Fiscal Year 2010 Services Fee Schedule for your use and files. The service fees are effective December 1, 2009 through November 30, 2010. Historically the fee schedule for these services is derived annually from the direct costs of performing each test, including manpower, materials, supplies, and equipment costs. Additionally, the cost associated with maintaining quality assurance is included in the cost of the test.

Should you have any questions concerning this contract or changes in fee schedule, please contact this office at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "WM. B. CYRUS", with a long horizontal flourish extending to the right.

WM. B. CYRUS
Manager, Technical Services

BC/mlt

Enclosures

CONTRACT FOR TECHNICAL SERVICES

I. CONTRACTING PARTIES

The Receiving Agency: **TOWN OF ADDISON**, whose authorized address is:

PO BOX 9010

ADDISON, TEXAS 75001

Attn; NEIL GAYDEN, RS ENVIRONMENTAL SERVICES OFFICIAL

The Performing Agency: Trinity River Authority of Texas, whose authorized address is 5300 South Collins, P. O. Box 240, Arlington, Texas 76004-0240, Attention: Danny F. Vance, General Manager (or his designated representative).

II. STATEMENT OF SERVICES TO BE PERFORMED

In order to discharge the responsibilities associated with the enforcement of Federal, State, and City regulations, the Receiving Agency requires services of a laboratory qualified to perform water and wastewater analysis, and of personnel to conduct industrial inspection and/or sampling services, such services detailed in Section A, Subsection(s) **1, 2, & 3**, below.

A. PERFORMANCE OF SERVICES

1. Industrial Inspection Services

In keeping with the foregoing, the Receiving Agency employs the Performing Agency and the Performing Agency agrees to perform industrial inspection services within the parameters listed on the attached schedule sheet.

The Performing Agency (Trinity River Authority of Texas) shall perform all Industrial Pretreatment Inspections, review permit applications and prepare for submittal Permits to Discharge Industrial Wastes to the Sanitary Sewer in accordance with procedures established by the Trinity River Authority of Texas in accordance with 40 CFR Part 403.8. Industrial Pretreatment Inspections, Application reviews and Permit preparations and submittals shall be in compliance with the Receiving Agency's Industrial Waste Ordinances, Sewer Ordinances Numbers **003-003**, and EPA General Pretreatment Regulations for Existing and New Sources. Records of Inspections, Applications and Permits shall be maintained as required by EPA General Pretreatment Regulations, 40 CFR Part 403.12.

2. Industrial Sampling Services

In keeping with the foregoing, the Receiving Agency employs the Performing Agency and the Performing Agency agrees to perform industrial sampling services within the parameters listed on the attached schedule sheet and in accordance with the Receiving Agency's Industrial Waste Ordinances and Sewer Ordinances Numbers **003-003**.

The Performing Agency (Trinity River Authority of Texas) shall perform all sample collections, sample preservation, and maintenance of chain-of-custody records in accordance to the approved procedures set forth in Test Methods for Evaluating Solid Waste, EPA Manual SW-846, Methods for Chemical Analysis of Water and Wastes,

EPA Manual EPA-600/4-79-020, and the Handbook for Sampling and Sample Preservation of Water and Wastewater, EPA Manual EPA-600/4-82-029. The samples shall be properly collected, preserved and delivered by the Performing Agency to the Performing Agency's laboratory located at 6500 West Singleton Blvd., Dallas, Texas. When feasible flow or time composited sampling will be conducted. When composited sampling is not feasible, grab sampling will be appropriate.

3. Analytical Services

In keeping with the foregoing, the Receiving Agency employs the Performing Agency and the Performing Agency agrees to perform analytical services within the parameters listed on the attached schedule sheet.

The Receiving Agency will collect samples and deliver them to the laboratory for analysis. It is understood that these samples will be properly collected and preserved in accordance with applicable sections of A Practical Guide to Water Quality Studies of Streams, Federal Water Pollution Control Administration publication and Methods for Chemical Analysis for Water and Wastes, EPA manual, as well as the latest edition of Standard Methods for the Examination of Water and Wastewater. Additionally, requirements set by the National Environmental Laboratory Accreditation Conference will be followed as mandated by the Texas Commission on Environmental Quality for state accreditation. A chain-of-custody procedure shall be maintained in the field and the laboratory in accordance with procedures to be established by the Receiving Agency. The Receiving Agency will furnish chain-of-custody.

The Performing Agency (Trinity River Authority of Texas) will perform all analyses according to the approved procedures set forth in Standard Methods for the Examination of Water and Wastewater, current edition or the latest edition of Methods for Chemical Analysis of Water and Wastes, EPA manual. Additionally, requirements set by the National Environmental Laboratory Accreditation Conference will be followed as mandated by the Texas Commission on Environmental Quality for state accreditation. Samples will be analyzed by these methods on the production basis, to include appropriate analytical quality assurance procedures. Records will be kept for documentation of the Performing Agency's quality assurance program and copies will be available to the Receiving Agency upon request. Unusual interferences and problems will be reported to the Receiving Agency at its authorized address noted above. Research into specific techniques to overcome these difficulties will be undertaken when practical, and by mutual agreement. The chain-of-custody sheet submitted with each sample will designate the particular analysis or analyses to be made of each sample submitted. The laboratory will be operated in such a manner as to insure the legal sufficiency of the sample handling; analytical and reporting procedures; and to remedy effects in the procedures should such be discovered.

The various laboratory personnel shall be directed upon receipt of written notice from the Receiving Agency 72 hours in advance, to appear and testify in enforcement actions. In such event, travel and per diem expenses for such employees shall be paid by the Receiving Agency. Travel and per diem for court appearances hereunder shall be based on current State laws.

Receiving Agency may deliver to Performing Agency samples for analysis separate and apart from those samples collected by the Performing Agency. When the Receiving Agency delivers samples to the Performing Agency for analysis, the Receiving Agency shall indicate the nature and extent of the analyses it desires to be conducted. Performing Agency shall not be responsible for the manner of collection

or chain-of-custody or sheets which are matters entirely outside Performing Agency's control. Performing Agency shall receive, log and perform such analyses of samples in accordance with that part of the chain-of-custody procedures identified as Transfer of Custody and Shipment attached hereto.

Samples analyzed to maintain the normal quality assurance program which the Performing Agency presently maintains in its laboratory will be charged to the Receiving Agency at the same rate as submitted samples.

B. TERMINATION

Either party to this Contract may terminate the Contract by giving the other party thirty (30) days notice in writing at their authorized address as noted previously. Upon delivery of such notice by either party to the other and before expiration of the thirty (30) day period, the Performing Agency will proceed promptly to cancel all existing orders, contracts, and obligations which are chargeable to this Contract. As soon as practicable after notice of termination is given, the Performing Agency will submit a voucher for work performed under this Contract through its termination. The Receiving Agency will pay the Performing Agency for the work performed less all prior payments. Copies of all completed or partially completed reports, documents, and studies prepared under this Contract will be delivered by the Performing Agency to the Receiving Agency when and if this Contract is terminated prior to the completion of the prescribed work.

C. AMENDING THE CONTRACT

The parties hereto without invalidating this Contract may alter or amend this Contract upon advance written agreement of both parties to exclude work being performed or to include additional work to be performed and to adjust the consideration to be paid hereunder by virtue of alterations or amendments.

III. BASIS FOR CALCULATING REIMBURSABLE COSTS

The financial basis for calculating reimbursable costs shall be as stated in Attachment A, said attachment A shall be revised and updated annually. A cost analysis shall be prepared each year by the Trinity River Authority of Texas and shall be approved by the Trinity River Authority of Texas Board of Directors prior to effective date of said revision.

The expenditures by the Trinity River Authority of Texas of funds paid to it under this Contract shall be subject to such State or Federal audit procedures as may be required by law and by accepted practices of the State or Federal auditor, or both, if requested. The Trinity River Authority of Texas shall be responsible for maintaining books of account that clearly, accurately and currently reflect financial transactions. The financial records must include all documents supporting entries on the account records which substantiate costs. The Trinity River Authority of Texas must keep the records readily available for examination for a period of three (3) years after the close of the last expenditure.

Reimbursement for the inspection, sampling, and/or analytical costs, and cost for any travel and per diem expenses shall not exceed **Three Thousand Five Hundred Dollars (\$3,500)** for the period of this Contract.

IV. CONTRACT AMOUNT

The total amount of this Contract shall not exceed **Three Thousand Five Hundred Dollars (\$3,500)** nor be less than **One Thousand Five Hundred Dollars (\$1,500)**, per annum, unless mutually agreed by the parties hereto.

V. PAYMENT FOR SERVICES

The Performing Agency shall bill the Receiving Agency monthly for services performed. Charges for these services shall be based on the attached cost schedules.

The Receiving Agency shall pay the monthly billings of the Performing Agency within thirty (30) days of their receipt.

VI. TERM OF CONTRACT

This Contract is to begin **October 1, 2009** and shall terminate **September 30, 2010**, subject to Section II, paragraph B of this contract.

VII. INTERLOCAL AGREEMENT

Inasmuch as the Receiving Agency and the Performing Agency are political subdivisions of this state, and inasmuch as the testing of water and wastewater are critical to the maintenance of public health and such testing is therefore, a governmental function and service, this contract shall be deemed authorized by the Interlocal Cooperation Act, Chapter 791, Texas Government Code.

Receiving Agency:

CITY OF _____

BY: _____

TITLE: _____

DATE: _____

ATTEST: _____
(SEAL)

Performing Agency:

TRINITY RIVER AUTHORITY OF TEXAS

BY: _____

GENERAL MANAGER

DATE: _____

ATTEST: _____
(SEAL)

CHAIN-OF-CUSTODY PROCEDURES

Sample Collection and Shipment

1. To the maximum extent achievable, as few people as possible should handle a sample.
2. Stream and effluent samples should be obtained using standard field sampling techniques and preservation procedures.
3. Chain-of-Custody sheets should be attached to each sample at the time it is collected. Sample containers must be appropriate for requested testing with appropriate preservation and legibly labeled.
The tag or sheet contains basically laboratory (requested parameters) information; however, certain identifying items including City, City Code, Contact Name and Phone Number, Type Sample Matrix, Material Sampled, and Method of Preservation must be completed by the field personnel collecting the sample.
In completing the Chain-of-Custody tag or sheet, care should be utilized to insure that all necessary information is correctly and legibly entered onto the form. A black ballpoint with water proof ink should be used at all times.
4. During shipment, samples should be appropriately cooled. TRA lab receiving technician will check temperature.

Transfer of Custody and Storage

1. All samples should be handled by the minimum possible number of persons.
2. All incoming samples shall be received by the laboratory technician or his alternate, and logged into a database. Information to be entered into the database shall include the client sample number, date received, source, time(s) sampled, date(s) sampled, and analyses requested and comments from the Chain of Custody.
3. Promptly after logging, the custodian technician will distribute the sample to an analyst or place the sample in the secure sample vault, which will be locked at all times except when samples are removed or returned by analysts. The sample will be tracked internally in the lab.
4. Samples shall be kept in the sample storage security area at all times when not actually being used by analysts, such as during overnight absences. The technician shall ensure that heat-sensitive samples, or other sample materials having unusual physical characteristics, or requiring special handling, are properly stored and maintained.
5. A log of sample removal and replacement will be kept in the secure sample vault and be retained as a permanent record of the laboratory.
6. The original Chain of Custody and a Sample Evaluation/Variance record shall be sent by the laboratory to the appropriate Receiving Agency control point as part of the final data report.

EXHIBIT A

TECHNICAL SERVICES FEE SCHEDULE

FOR

LABORATORY ANALYSES,

INDUSTRIAL INSPECTIONS

AND

INDUSTRIAL SAMPLING

FISCAL YEAR 2010

December 1, 2009 through November 30, 2010

NELAP CERTIFICATE T104704287-09-TX

CHEMICAL ANALYSES

Liquid Samples

Alkalinity:		Phosphorus:	
Total (*) (**)	\$10.75	Ortho (*)	\$11.50
Phenolphthalein	\$10.80	Total (*)	\$20.40
Bicarbonate	\$14.93		
Carbonate	\$15.75	Solids:	
Biochemical Oxygen Demand:		Total (TS)	\$12.80
5-Day (*)	\$26.10	Total Dissolved (TDS) (*)	\$17.75
5-Day Carbonaceous (*)	\$26.75	Total Suspended (TSS) (*)	\$15.65
5-Day Filtered (Dissolved)	\$34.30	Volatile Suspended (VSS) (*)	\$ 8.40
7-Day	\$31.10	(after TSS)	
Extra Dilution (Each)	\$ 2.50	Sulfate (Turbidimetric) (*)	\$18.95
Chlorophyll "a"	\$16.50	Sulfide	\$16.50
Chlorophyll "a" and Pheophytin	\$21.70	Surfactants - MBAS	\$34.56
Chemical Oxygen Demand (*)	\$14.55	Turbidity (*) (**)	\$10.00
Chloride (*)	\$11.00	UV254	\$18.75
Conductance, Specific (*) (**)	\$ 8.80	Mercury (*) (**)	\$22.70
Cyanide		Metals (EPA 200.8) (*) (**) (***)	\$11.55 each
Total (*)	\$37.80	Aluminum	Lead
Amenable to Chlorination) (*)	\$48.50	Arsenic	Manganese
Fluoride, Total (**)	\$14.95	Antimony	Molybdenum
Glycols	\$13.50	Barium	Nickel
Hardness (*) (**)	\$15.25	Beryllium	Selenium
Nitrogen:		Boron	Silver
Ammonia (*)	\$12.35	Cadmium	Thallium
Ammonia by Distillation (*)	\$19.75	Chromium	Tin
Kjeldahl, Total (*)	\$22.50	Cobalt	Vanadium
Nitrate (*)	\$11.50	Copper	Zinc
Nitrite (*)	\$11.50	Iron	
Organic	\$46.70	Minerals (*)	\$11.55 each
Oil and Grease (*)	\$49.15	Calcium	
Organic Carbon:		Magnesium	
Dissolved	\$17.25	Potassium (***)	
Total (*) (**)	\$15.75	Silica	
pH (*)	\$ 9.40	Sodium	

Solid Samples

Ammonia (***)	\$29.00
Chemical Oxygen Demand	\$36.50
Nitrogen, Kjeldahl, Total	\$27.50
Phosphorus, Total (***)	\$24.00
pH (***)	\$13.00
Percent Solids, Total and Volatile	\$12.80
Mercury (***)	\$51.95
Metals Preparation	\$29.25

NELAC Accreditation
 *Non-Potable Water
 **Drinking Water
 *** Solids

MICROBIOLOGICAL ANALYSES

Drinking Water:

Total Coliform (MMO/MUG) (**)	\$ 13.75
Heterotrophic Plate Count	\$ 15.75
Coliform, Total (Membrane Filter)	\$ 14.17

Other:

Coliform, Fecal (Membrane Filter) (*)	\$ 15.26
Coliform, Fecal (MPN) (***)	\$ 43.50
Coliform, Total (MPN-Q Tray)	\$ 16.25
E. Coli (MPN-Q Tray) (*)	\$ 16.25
Streptococcus, Fecal (Membrane Filter) (*)	\$ 15.65
Heterotrophic Plate Count	\$ 15.75
Microscopic General Examination	\$ 19.80

TRACE ORGANIC (GC-GC/MS) ANALYSES

Pesticides/PCB

EPA 624 (*)		Extraction/Preparation	
14 Day (preserved)	\$125.00	Liquids	\$100.00
3 Day (unpreserved)	\$250.00	Solids	\$120.00
BTEX (only)	\$105.00		
Trip Blanks	\$ 55.00	EPA 608 (*)	
		Full List	\$ 88.80
EPA 625(*)		Chlorinated Pesticides (only)	\$ 81.45
Total Semi-Volatiles	\$340.00	PCB (only)	\$ 95.00
EPA 525		EPA 8141	
Atrazine	\$118.00	Diazinon	\$ 88.80
		EPA 8082	
		Polychlorinated Biphenyls (PCB)	\$ 95.00

BY QUOTE

Chromium Hexavalent
Oil and Grease (solids)
Organophosphate Pesticide
Phenols
TCLP Metals
TCLP Organic Compounds
Total Petroleum Hydrocarbons (solids and liquids)

TOXICITY TESTING

Chronic, <u>C. dubia</u> (3 Brood) (*)	\$700.00
Chronic, <u>P. promelas</u> (Fathead Minnow – 7 Day) (*)	\$700.00
24 hr. Acute <u>C. dubia</u> (*)	\$225.00
24 hr. Acute <u>P. promelas</u> (Fathead Minnow) (*)	\$225.00
48 hr. Acute <u>C. dubia</u>	\$400.00
48 hr. Acute <u>P. promelas</u> (Fathead Minnow)	\$400.00

NELAC Accreditation
*Non-Potable Water
**Drinking Water
*** Solids

INDUSTRIAL PRETREATMENT SERVICES

SAMPLING

Composite Sample	\$ 100.00
Additional Composite Sample	\$ 35.00
Grab Sample	\$ 50.00
Additional Grab Sample	\$ 10.00
Field pH	\$ 5.50
Field Measurement	\$ 10.00
Field Surveillance Event	\$ 240.00
pH or DO only	\$ 50.00
Sampling Event Cost for a Failed Sample	\$ 50.00
Industry Split Sample	\$ 25.00
Boat Fee	\$ 40.00

~Grab Sampling
~Delivery to TRA Laboratory
~Field Testing Available
~Sample Preservation
~Proper Chain of Custody

INSPECTION

On-Site	\$ 105.00
On site unpermitted	\$ 90.00
Permit Preparation (New)	\$ 150.00
Permit Renewal	\$ 95.00

~Installation of Automatic Composite Samplers
~Verification of Application Data
~Consultation with Industries on Industrial Pretreatment
~Chemical Inventory Review
~Industry Split Sampling

NELAC Accreditation
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GENERAL SERVICE INFORMATION

1. Effective Date: December 1, 2009. All prices listed are per sample and subject to review.
2. All analyses are performed in accordance with "Standard Methods for the Examination of Water and Wastewater," 20th Edition, 1998 or most recent approved and/or EPA "Manual of Methods for Chemical Analysis of Water and Wastes," 1983 and the "3rd Edition of Solid Waste Manual SW 846."
3. Prices include a 10 percent charge added to the analyses cost to maintain the normal quality assurance program.
4. Standard turn-around time is considered 15 business days for most testing. Priority is half of the standard time. Customer requiring PRIORITY turn-around time will be billed at one and one-half (1 ½) times the routine rate. Customer requiring RUSH turn-around time will be billed at two times the normal rate. It is recommended to call in advance of sample submission or inquire at the time of submission for estimated turn-around time.
5. The Laboratory will follow instructions as stated on the Chain of Custody submitted with samples. The Customer may be contacted by the lab representative on any variance issues and written instruction may be requested concerning the variance.
6. For EPA624 VOC 3 day analysis, do not lower the pH of the sample.
7. Sampling supplies will be provided upon request at a reasonable charge. Bacteriological sampling supplies are included in the cost of analyses.
8. Samples should be delivered to the laboratory before 4:00 p.m. on weekdays. Samples cannot be accepted on weekends or holidays unless special arrangements are made in advance. Bacteriological samples should be delivered prior to 2:00 p.m. unless special arrangements are made in advance. For after-hour samples, please call and arrange for leaving in cold storage vault with analyses request form.
9. A monthly invoice for completed analyses is mailed the following month.
10. Laboratory hours are weekdays 7:00 a.m. to 4:30 p.m. To contact the lab about emergency samples use the number below.
11. Environmental Field, Engineering Field and Pretreatment Services office hours are Monday through Friday, 8:00 a.m. to 5:00 p.m. For after-hour emergencies, leave message with computer operator.
12. Environmental Field and Engineering Field Services are requested to be scheduled a minimum of 72 hours in advance.

FOR MORE INFORMATION, CONTACT:
METRO: (972) 263-2251 FAX: (972) 331-4414

WILLIAM B. CYRUS

Manager
Technical Services

CRAIG HARVEY
Laboratory Division
Chief

JENNIFER MOORE
Pretreatment
Coordinator

JOHN HERNDON
Environmental Service
Coordinator

CATHY HENDERSON
Quality Assurance
Coordinator

MARK ORBECK
Technical Services Engineer

NELAC Accreditation
*Non-Potable Water
**Drinking Water
***Solids

Council Agenda Item: #R7

SUMMARY:

Annual contract with Dallas County Health & Human Services (DCHHS) for the Town of Addison to participate in the cost of providing selected public health services at reduced prices to Addison residents.

FINANCIAL IMPACT:

Budgeted Amount: \$5,751

Cost: \$5,751

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

N/A

BACKGROUND:

Being that the Town of Addison does not offer public health services in-house (i.e. immunizations, sexually transmitted disease screening, etc.), we enter into an annual contract with DCHHS to make available and defray some of the costs of certain health services for less fortunate residents. Find attached a cover letter from Dallas County and a draft contract obligating the Town of Addison for payment of \$5,751. Be informed that contract language and cost are identical to last year.

Historically, contract costs for participating municipalities have been linked to the number and types of services accessed by citizens of Addison during previous fiscal years. However, DCHSS has recently adopted a “fair share” philosophy towards assessments that causes contract amounts for all municipalities to be identical to last year.

For your perusal, please find attached a historical summary of past contracts and several addendums relevant to this year’s contract.

RECOMMENDATION:

Staff recommends approval



DALLAS COUNTY
DEPARTMENT OF HEALTH AND HUMAN SERVICES
ADMINISTRATION

ZACHARY THOMPSON
DIRECTOR

July 22, 2009

Neil A. Gayden, Environmental Services Official
Town of Addison
P.O. Box 9010
Addison, TX 75001-9010

RE: Dallas County FY'10 Communicable Disease Contract

Dear Mr. Gayden:

Dallas County Department of Health and Human Services would like to thank you for contracting with our Health Division for your public health services.

The Dallas County Department of Health and Human Services is currently processing the FY'10 Communicable Disease Contract for the Town of Addison. The amount for the Town of Addison is \$5,751. These public health services include: tuberculosis, sexually transmitted disease, public health lab, and communicable disease. The communicable disease contract will be mailed as soon as it has been completed.

If you have any questions, please feel free to contact me at (214) 819-2101 or by email at zthompson@dallascounty.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Zachary Thompson", is written over a horizontal line.

Zachary Thompson
Director

c: Honorable Joe Chow, Mayor

THE STATE OF TEXAS	§	AGREEMENT BETWEEN DALLAS COUNTY,
	§	ON BEHALF OF DALLAS COUNTY HEALTH
	§	AND HUMAN SERVICES, AND THE TOWN OF
COUNTY OF DALLAS	§	ADDISON, TEXAS

1. PARTIES

Whereas, Dallas County ("County") has offered to provide certain health services to the various cities throughout Dallas County on a contract for services basis; and

Whereas, the Town of Addison, Texas ("Town") desires to participate with County in establishing coordinated health services for Town and County; and

Whereas, County will operate certain health services for the residents of Town in order to promote the effectiveness of local public health programs; and

Whereas, the cooperative effort will allow cities located within Dallas County to participate in providing public health services for their residents; and

Whereas, such cooperative effort serves and further the public purpose and benefit the citizens of County as a whole.

Now therefore, County, on behalf of Dallas County Health and Human Services ("DCHHS"), enters into this Agreement ("Agreement") with Town, pursuant to the authorities of the Texas Health and Safety Code Chapter 121, the Texas Government Code Chapter 791, and other applicable laws for health services to Town.

2. HEALTH SERVICES TO BE PERFORMED

- A. County agrees to operate the Dallas County Health Services Program ("Program"), which will include the following health services:
- 1) Tuberculosis Control Services: providing preventive, diagnostic treatment, and epidemiological services;
 - 2) Sexually Transmitted Disease Control Services: consisting of education to motivate people to use preventive measures and to seek early treatment, prophylaxis, epidemiological investigation, and counseling in accordance with County policy;
 - 3) Communicable Disease Control Services: providing information concerning immunization and communicable diseases and coordinating with the Texas Department of State Health Services ("DSHS") in monitoring communicable diseases;
 - 4) Laboratory Services: performing chemical, biological, and bacteriological analysis

and tests on which are based diagnosis of disease, effectiveness of treatment, the quality of the environment, the safety of substance for human consumption, and the control of communicable disease;

B. County agrees to provide to Town, in accordance with state and federal law, the following public health services:

- 1) Immunizations;
- 2) Child health care;
- 3) High risk infant case management; and
- 4) Home visits.

County also agrees to work with Town in order to decentralize clinics and to plan and provide for desired services by Town; however, any other services that Town requires, in addition to the above mentioned services, may result in additional fees to Town.

C. County agrees to charge a sliding fee based on ability to pay to all residents of every municipality, including Town, in Dallas County. The fees charged by County for the services listed in Section 2A of this Agreement will be used to offset the Town's Program costs for the next Agreement Term. A schedule of fees to be charged by County is set out in "Exhibit A" attached hereto and incorporated herein for all purposes.

D. County agrees that the level of service provided in the Program for Town will not be diminished below the level of service provided to Town for the same services in the prior Agreement Term except as indicated in Section 2E of this Agreement. For purposes of Section 2E, level of service is measured by the number of patient visits and number of specimens examined. County will submit to Town a monthly statement, which will also include the number of patient visits and number of specimens examined during the preceding month.

E. The possibility exists of reductions in state and federal funding to the Program that could result in curtailment of services if not subsidized at the local level. County will notify Town in writing of any amount of reduction, and any extent to which services will be curtailed as a result. The notice will also include an amount that Town may elect to pay to maintain the original level of services. Town will notify County in writing no later than fourteen (14) calendar days after the date of Town's receipt of the notice of funding reduction as to Town's decision to pay the requested amount or to accept the curtailment of service. If Town elects to pay the requested amount, payment is due no later than forty-five (45) calendar days after the date of the notice of funding reduction.

3. BUDGET

A. County agrees to submit to Town by July 31st of each year a proposed budget describing the

proposed level of services for the next Agreement Term;

- B. For the Term of this Agreement County agrees to provide the services listed in Section 2 of this Agreement at the level of services and for the amount stated in Exhibit D, which is attached hereto and incorporated herein for all purposes;
- C. Town shall pay to County for the Term of this Agreement the amount stated in Exhibit D, Five thousand seven hundred fifty one and 00/100 Dollars (\$5,751.00), which is the agreed upon amount of Town's share of the total cost of the Program less federal and state funding.
- D. In lieu of paying the actual dollar amount stated in this Agreement, Town has the option, to the extent authorized by law, ordinances or policy, of making a request to negotiate for in-kind services that are equal in value to the total amount.
- E. This Agreement is contingent upon Town's appropriation of funds, or ability to perform in-kind services as described in Section 3D of this Agreement, for the services set forth herein. In the event Town fails to appropriate such funds, or provide in-kind services, County shall not incur any obligations under this Agreement.

4. ASSURANCES

- A. County shall operate and supervise the Program.
- B. Nothing in this Agreement shall be construed to restrict the authority of Town over its health programs or environmental health programs or to limit the operations or services of those programs.
- C. Town agrees to provide to County or assist County in procuring adequate facilities to be used for the services under this Agreement. These facilities must have adequate space, waiting areas, heating, air conditioning, lighting, and telephones. None of the costs and maintenance expenses associated with these facilities shall be the responsibility of County and County shall not be liable to Town or any third party for the condition of the facilities, including any premise defects.
- D. Town and County agree that other cities/towns/municipalities may join the Program by entering into an agreement with County that contains the same basic terms and conditions as this Agreement.
- E. Each party paying for the performance of governmental functions or services under this Agreement must make those payments from current revenues available to the paying party.

5. FINANCING OF SERVICES

- A. The health services provided under this Agreement will be financed as follows:
 - 1) Town and County will make available to the Program all appropriate federal and

- 1) Town and County will make available to the Program all appropriate federal and state funds, personnel, and equipment to provide the health services included under this Agreement and will use best efforts to cause these funds and resources to continue to increase.
 - 2) Town shall pay to County, or provide in-kind services, its share of budgeted costs that are in excess of the federal and state funding for providing the health services under this Agreement. Budgeted costs shall not exceed those reflected in Exhibit D for the appropriate Agreement Term.
- B. Town has elected to pay to County a lump sum payment for the Term the amount stated in Exhibit D.
- C. Any payment not made within thirty (30) calendar days of its due date shall bear interest in accordance with Chapter 2251 of the Texas Government Code.
- D. Town and County agree that no more than ten percent (10%) of the Town's cost of participating in the Program will be used for administration of the Program.

6. TERM

This Agreement shall be effective from October 1, 2009 through September 30, 2010 ("Term"), unless otherwise stated in this Agreement.

7. TERMINATION

- A. Without Cause: This Agreement may be terminated in writing, without cause, by either party upon thirty (30) calendar days prior written notice to the other party.
- B. With Cause: Either party may terminate the Agreement immediately, in whole or in part, at its sole discretion, by written notice to the other party, for the following reasons:
- 1) Lack of, or reduction in, funding or resources;
 - 2) Non-performance;
 - 3) The improper, misuse or inept use of funds or resources directly related to this Agreement;
 - 4) The submission of data, statements and/or reports that is incorrect, incomplete and/or false in any way.
- C. In the event of any such termination, County shall refund to Town a pro-ratable portion of Town's lump sum payment made to County hereunder in accordance with the following formula: $\text{Amount of Town's Payment} \times \text{Number of Months Remaining in Fiscal Year (excluding the month of termination)} \div 12$.

8. RESPONSIBILITY

County and Town agree that each shall be responsible for its own negligent acts or omissions or other tortious conduct in the course of performance of this Agreement, without waiving any governmental immunity available to County or Town or their respective officials, officers, employees, or agents under Texas or other law and without waiving any available defenses under Texas or other law. Nothing in this paragraph shall be construed to create or grant any rights, contractual or otherwise, in or to any third persons or entities.

9. INSURANCE

Town and County agree that they will, at all times during the Term of this Agreement, maintain in full force and effect insurance or self-insurance to the extent permitted by applicable laws. Town and County will be responsible for their respective costs of such insurance, any and all deductible amounts in any policy and any denials of coverage made by their respective insurers.

10. ACCESS TO RECORDS RELEVANT TO PROGRAM

Town and County agree to provide to the other upon request, copies of the books and records relating to the Program. Town and County further agree to give Town and County health officials access to all Program activities. Both Town and County agree to adhere to all applicable confidentiality provisions, including those relating to Human Immunodeficiency Virus (HIV) and Sexually Transmitted Disease (STD) information, as mandated by federal and State law, as well as by DSHS.

11. NOTICE

Any notice to be given under this Agreement shall be deemed to have been given if reduced to writing and delivered in person by a reputable courier service or mailed by Registered Mail, postage pre-paid, to the party who is to receive such notice, demand or request at the addresses set forth below. Such notice, demand or request shall be deemed to have been given, if by courier, at the time of delivery, or if by mail, three (3) business days subsequent to the deposit of the notice in the United States mail in accordance herewith. The names and addresses of the parties' hereto to whom notice is to be sent are as follows:

Zachary Thompson, Director
Dallas County Health & Human Services
2377 N. Stemmons Freeway, LB 12
Dallas, TX 75207-2710

Carmen Moran, Town Secretary
Town of Addison
PO. Box 9010
Addison, TX 75001-9010
(972) 450-2881

12. IMMUNITY

This Agreement is expressly made subject to County's and Town's Governmental Immunity, including, without limitation, Title 5 of the Texas Civil Practices and Remedies Code, and all

applicable federal and state laws. The parties expressly agree that no provision of this Agreement is in any way intended to constitute a waiver of any immunities from suit or from liability, or a waiver of any tort limitation, that Town or County has by operation of law or otherwise. Nothing in this Agreement is intended to benefit any third party beneficiary.

13. COMPLIANCE WITH LAWS AND VENUE

In providing services required by this Agreement, Town and County must observe and comply with all licenses, legal certifications, or inspections required for the services, facilities, equipment, or materials, and all applicable federal, State, and local statutes, ordinances, rules, and regulations. Texas law shall govern this Agreement and exclusive venue shall lie in Dallas County, Texas.

14. AMENDMENTS AND CHANGES IN THE LAW

No modification, amendment, novation, renewal or other alteration of this Agreement shall be effective unless mutually agreed upon in writing and executed by the parties hereto. Any alteration, addition or deletion to the terms of this Agreement which are required by changes in federal or State law are automatically incorporated herein without written amendment to this Agreement and shall be effective on the date designated by said law.

15. ENTIRE AGREEMENT

This Agreement, including all Exhibits and attachments, constitutes the entire agreement between the parties hereto and supersedes any other agreements concerning the subject matter of this transaction, whether oral or written.

16. BINDING EFFECT

This Agreement and the respective rights and obligations of the parties hereto shall inure to the benefit and be binding upon the successors and assigns of the parties hereto, as well as the parties themselves.

17. GOVERNMENT FUNDED PROJECT

If this Agreement is funded in part by either the State of Texas or the federal government, County and Town agree to timely comply without additional cost or expense to the other party, unless otherwise specified herein, to any statute, rule, regulation, grant, contract provision or other State or federal law, rule, regulation, or other similar restriction that imposes additional or greater requirements than stated herein and that is directly applicable to the services rendered under the terms of this Agreement.

18. DEFAULT/CUMULATIVE RIGHTS/MITIGATION

In the event of a default by either party, it is not a waiver of default if the non-defaulting party fails to immediately declare a default or delays in taking any action. The rights and remedies provided by this Agreement are cumulative, and either party's use of any right or remedy will not preclude or

waive its right to use any other remedy. These rights and remedies are in addition to any other rights the parties may have by law, statute, ordinance or otherwise. Both parties have a duty to mitigate damages.

19. FISCAL FUNDING CLAUSE

Notwithstanding any provisions contained herein, the obligations of County and Town under this Agreement are expressly contingent upon the availability of funding for each item and obligation contained herein for the Term of the Agreement and any extensions thereto. Town and County shall have no right of action against the other party in the event the other party is unable to fulfill its obligations under this Agreement as a result of lack of sufficient funding for any item or obligation from any source utilized to fund this Agreement or failure to budget or authorize funding for this Agreement during the current or future Agreement Terms. In the event that County or Town is unable to fulfill its obligations under this Agreement as a result of lack of sufficient funding, or if funds become unavailable, each party, at its sole discretion, may provide funds from a separate source or may terminate this Agreement by written notice to the other party at the earliest possible time.

20. COUNTERPARTS, NUMBER/GENDER AND HEADINGS

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Words of any gender used in this Agreement shall be held and construed to include any other gender. Any words in the singular shall include the plural and vice versa, unless the context clearly requires otherwise. Headings herein are for the convenience of reference only and shall not be considered in any interpretation of this Agreement.

21. PREVENTION OF FRAUD AND ABUSE

Town and County shall establish, maintain and utilize internal management procedures sufficient to provide for the proper, effective management of all activities funded under this Agreement. Any known or suspected incident of fraud or program abuse involving County or Town's employees or agents shall be reported immediately for appropriate action. Moreover, Town and County warrant to be not listed on a local, county, State or federal consolidated list of debarred, suspended and ineligible contractors and grantees. Town and County agree that every person who, as part of their employment, receives, disburses, handles or has access to funds collected pursuant to this Agreement does not participate in accounting or operating functions that would permit them to conceal accounting records and the misuse of said funds. Each party shall, upon notice by the other party, refund their respective expenditures that are contrary to this Agreement.

22. AGENCY / INDEPENDENT CONTRACTOR

County and Town agree that the terms and conditions of this Agreement do not constitute the creation of a separate legal entity or the creation of legal responsibilities of either party other than under the terms of this Agreement. County and Town are and shall be acting as independent contractors under this Agreement; accordingly, nothing contained in this Agreement shall be

construed as establishing a master/servant, employer/employee, partnership, joint venture, or joint enterprise relationship between County and Town. Town and County are responsible for their own acts, forbearance, negligence and deeds, and for those of their respective officials, agents or employees in conjunction with the performance of work covered under this Agreement.

23. SEVERABILITY

If any provision of this Agreement is construed to be illegal or invalid, this will not affect the legality or validity of any of the other provisions in this Agreement. The illegal or invalid provision will be deemed stricken and deleted, but all other provisions shall continue and be given effect as if the illegal or invalid provisions had never been incorporated.

24. SIGNATORY WARRANTY

Each person signing and executing this Agreement does hereby warrant and represent that such person has been duly authorized to execute this Agreement on behalf of Town or County, as the case may be.

[SIGNATURE PAGE SHALL FOLLOW]

Executed this _____ day of _____ 2009.

COUNTY:

TOWN:

By: Jim Foster
Dallas County Judge

By: _____
Town Manager/Mayor

Recommended:

Attested:

By: Zachary Thompson
Director, DCHHS

By: Lea Dunn
Town Secretary

Approved as to Form*:

Approved as to Form:

By: Bob Schell
Chief, Civil Division
Assistant District Attorney

By: _____
Town Attorney

*By law, the District Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval by their own respective attorney(s).

FY'2010 FEE SCHEDULE

EXHIBIT A

SEXUALLY TRANSMITTED

Treatment	\$20 - \$45 (Sliding Scale)
Blood Drawing	\$5
Cryotherapy	\$15
Chemical Lesion Reduction	\$45
Medical Records Copies	\$5 each

TUBERCULOSIS

TB Testing-Level I (Office Visit)	\$30
TB Testing-Level II (QuantiFeron)	\$50
Chest X-Ray Copies	\$5

LABORATORY

Wet Prep	\$6 each
Gram Stain	\$6 each
GC Culture	\$14 each
RPR	\$11 each
GEN Probe GC Screen	\$47 each
GEN Probe CT Screen	\$47 each
HIV Test	\$15 each
HIV Test - Rapid	\$20 each
Salmonella/Shigella	\$16 each
TB Culture & Concentration	\$25 each
TB Identification	\$15 each
TB Susceptibility	\$31 each
TB Acid Fast Stain	\$ 8 each

NURSING SERVICE

Hepatitis A Havrix	\$50/Injection
Hepatitis B Vaccine	\$165/Series
Twinrix	\$65/Injection
HDCV (IM) Rabies	\$555/Series
HDCV (ID) Rabies	\$270/Series
Pneumococcal	\$50/Injection
Adacel (Pertusis)	\$55/injection
Hepatitis C Screening	\$35/Test
Japanese Encephalitis	\$345/Series
Meningococcal Vaccine	\$120/Injection
Typhoid (Polysaccharide)	\$65/Injection
Typhoid (Oral)	\$50/box
Varivax	\$100/Injection
Yellow Fever Vaccine	\$90/Injection
Boostrix Vaccine	\$45/Injection
HIB	\$45/injection

Rabies Administrative Fee/ Serves State Vaccine	\$25
Foreign Travel Office Visit Fee	\$25

ENVIRONMENTAL HEALTH

Septic Tank Inspection	#\$310/Commercial/Business #\$260/Residential
Septic Tank Re-inspection	\$35/Residential \$85/Commercial
Food Establishment Inspection	\$150/yr./establishment
Half-Way Houses & Boarding Homes, Residential	\$75/plus \$25 for each additional unit on site
Mosquito Spraying for Non- contracting cities	\$185/ per hour
Water Sample	\$50
Mosquito Testing	\$35
Food Mgr. Cert. Program	\$100/per person
Food Mgr. Cert. Retesting	\$50/per person

Note: 1) # Indicates \$10 charge for State fee

CRIMINAL TESTING

Blood Draws	\$38
Buccal Swabs	\$38

Comprehensive TB Testing & Evaluation (Incl. Chest X-ray)	\$80
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MTD Testing for TB	\$40/ each
Pregnancy Test	\$20 each
Urinalysis	\$15 each
Dark Field	\$16 each
Chancroid Culture	\$10 each
Herpes Culture	\$38 each
Herpes Type 1 & 2 Serology	\$50 each
Group A Strep	\$14 each
Urine Screen:	
Neisseria Gonorrhoeae	\$47 each
Chlamydia Trachomatis	\$47 each
Lead Screen	\$10 each
Staphylococcus/Aureus Culture	\$17 each

Influenza Vaccine	\$20/Injection
MMR	\$70/Injection
TD	\$40/Injection
IPV	\$45/Injection

Menactra	\$115/Injection
Zostavax (Shingles)	\$165.00/Injection
Gardasil (HPV)	\$145.00/Injection

Immunization/VFC Program:	
DPT,DT,Hib,	\$5/Per child
Well Baby	\$5/Visit
Diabetic Testing	\$5/Test

Records:	
Immunization Record	\$5 each
Foreign Travel Yellow Card	\$5 each

Day Care Center Inspections	\$2/per authorized child
Temporary Food Permit	\$75/plus \$10 per day
Funeral Home Inspection	\$200
FHA, VA, Conventional Loans	\$125/Licensed \$150/Unlicensed
Annual Group Home Inspection	\$50
Food Handler Class	\$15/per person
Sub-division Plat Approval	\$200/Residential \$150/Commercial
Animal Control/Quarantine	\$7/per day
Animal Control/Vicious Animal	\$12/per day
Food Manager Re-certification	\$50/Test
W/Multiple Test Sites	

January, 2008 thru December, 2008

<i>Municipality</i>	<i>Tuberculosis</i>	<i>Sexually Transmitted Diseases</i>	<i>Laboratory</i>	<i>Communicable Disease</i>
<i>Addison</i>	311	77	367	190
<i>Balch Springs</i>	139	160	856	285
<i>Carrollton</i>	1136	324	2034	884
<i>Cedar Hill</i>	199	311	201	491
<i>Cockrell Hill</i>	255	1157	14	320
<i>Coppell</i>	465	20	42	422
<i>Dallas</i>	34686	13771	57347	38847
<i>Desoto</i>	662	473	283	1120
<i>Duncanville</i>	718	240	576	855
<i>Farmers Branch</i>	329	91	500	790
<i>Garland</i>	4484	897	7238	2889
<i>Glenn Heights</i>	296	62	85	53
<i>Grand Prairie</i>	1685	588	2561	1821
<i>Highland Park</i>	0	0	1	292
<i>Hutchins</i>	104	40	197	56
<i>Irving</i>	3369	1150	6924	2642
<i>Lancaster</i>	246	483	495	759
<i>Mesquite</i>	831	746	3067	1594
<i>Richardson</i>	954	197	987	1628
<i>Rowlett</i>	362	94	242	571
<i>Sachse</i>	177	23	30	197
<i>Seagoville</i>	69	41	353	203
<i>Sunnyvale</i>	16	0	11	226
<i>University Park</i>	13	0	0	241
<i>Wilmer</i>	150	59	1408	19
<i>Out of County</i>	1142	1545	111180	8390
Total	52798	22549	196999	65785

**DALLAS COUNTY HEALTH & HUMAN SERVICES
FY '10**

EXHIBIT C

Municipality	TB Clinic	STD Clinic	Public Health Lab	Communicable Disease Control	FY '10 Contract Total
Addison	4,374	3,776	2,229	1,492	5,751
Balch Springs	2,036	8,771	5,198	2,238	9,377
Carrollton	20,317	14,923	12,352	6,943	23,823
Cedar Hill	15,540	14,070	1,221	3,856	2,498
Cockrell Hill	7,478	0	85	2,513	2,301
Coppell	2,963	1,888	255	3,314	3,131
Dallas	723,756	790,788	348,248	305,113	1,754,252
Desoto	19,974	20,770	1,719	8,797	17,620
Duncanville	12,879	12,608	3,498	6,715	11,273
Farmers Branch	6,752	6,456	3,036	6,205	6,856
Garland	95,052	47,022	43,954	22,691	80,156
Glenn Heights	847	3,106	516	416	574
Grand Prairie	32,168	28,323	15,552	14,303	38,854
Highland Park	0	0	6	2,293	132
Hutchins	826	2,680	1,196	440	3,149
Irving	70,221	60,909	42,047	20,751	81,906
Lancaster	12,053	25,338	3,006	5,961	12,106
Mesquite	21,002	33,561	18,625	12,520	31,608
Richardson	21,788	11,573	5,994	12,787	23,756
Rowlett	8,364	4,690	1,470	4,485	4,925
Sachse	2,459	1,827	182	1,547	362
Seagoville	1,774	3,106	2,144	1,594	6,440
Sunnyvale	181	183	67	1,775	99
University Park	161	0	0	1,893	48
Wilmer	2,983	2,010	8,550	149	2,597
Out of County	19,490	77,964	675,156	65,897	77,142
	\$1,105,436	\$1,176,345	\$1,196,304	\$516,690	\$2,200,736

FY'10 CONTRACT COSTS

MUNICIPALITIES

CONTRACT COST

	ADDISON	\$5,751
	BALCH SPRINGS	\$9,377
	CARROLLTON	\$23,823
	CEDAR HILL	\$2,498
	COCKRELL HILL	\$2,301
	COPPELL	\$3,131
*	DALLAS	\$1,754,252
*	DESOTO	\$17,620
*	DUNCANVILLE	\$11,273
	FARMERS BRANCH	\$6,856
*	GARLAND	\$80,156
	GLENN HEIGHTS	\$574
	GRAND PRAIRIE	\$38,854
	HIGHLAND PARK	\$132
	HUTCHINS	\$3,149
	IRVING	\$81,906
	LANCASTER	\$12,106
*	MESQUITE	\$31,608
*	RICHARDSON	\$23,756
	ROWLETT	\$4,925
	SACHSE	\$362
*	SEAGOVILLE	\$6,440
	SUNNYVALE	\$99
	UNIVERSITY PARK	\$48
*	WILMER	\$2,597
*	UNINCORPORATED	\$77,142
	TOTAL	\$2,200,736

Council Agenda Item: #R8

SUMMARY:

Staff is requesting approval of the 2008 National Electrical Code.

FINANCIAL IMPACT:

N/A

BACKGROUND:

A new edition of the National Electrical Code is published every three years and the Town has always been progressive and proactive in adopting the latest edition of the code to provide the community the highest degree of safety available. The new edition of the code usually includes changes in the language to clarify code requirements and changes to increase code requirements due to injuries or loss of life or property.

RECOMMENDATION:

Staff recommends approval.

TOWN OF ADDISON, TEXAS

ORDINANCE NO.

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS, AMENDING CHAPTER 18, ARTICLE IV, SECTION 18-246 (RELATING TO THE NATIONAL ELECTRICAL CODE) OF THE CODE OF ORDINANCES OF THE TOWN OF ADDISON, TEXAS, TO PROVIDE MINIMUM STANDARDS TO SAFEGUARD LIFE OR LIMB, PROPERTY, AND PUBLIC WELFARE BY REGULATING THE DESIGN, CONSTRUCTION, QUALITY OF MATERIALS, USE AND OCCUPANCY, LOCATION AND MAINTENANCE OF BUILDINGS AND STRUCTURES. PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

SECTION 1. That the Code of Ordinances of the Town of Addison be amended by changing Sec. 18-246 to read as follows:

Sec. 18-246. Adopted.

(a) The rules and regulations of the International Fire Protection Association embodied in the National Electrical Code, 2008 edition, are hereby adopted as the rules and regulations to govern and be observed and followed in all the construction, installation, repair, alteration, operation and maintenance of electrical wiring, apparatus and fixtures in the town.

(b) The National Electrical Code, 2008 edition (a copy of which authenticated by the signature of the mayor and city secretary, and made a public record by ordinance, is on file in the city secretary's office) is hereby adopted as the National Electrical Code of the town as fully as if copied at length in this article, but with the changes therein and additions in this article.

SECTION 2. Savings. All other ordinances and parts of ordinances in conflict with this ordinance shall be, and the same is hereby repealed, but the repeal of such ordinances or parts of ordinances shall not affect any right, property or claim which was or is vested in the Town of Addison, Texas, or any

OFFICE OF THE CITY SECRETARY

ORDINANCE NO. _____

act done, or right accruing or accrued, or established, or any suit, action or proceeding had or commenced before the time when this ordinance shall take effect. Nor shall said repeals, amendments or changes effect any offense committed, or any penalty or forfeiture incurred, or any suit or prosecution pending at the time when this ordinance shall take effect under any of the ordinances or sections thereof so repealed.

SECTION 3. Severability. In the event that any section, paragraph, subdivision, clause, phrase, or provision of this ordinance or the National Electrical Code, 2008 Edition, or revisions thereof, adopted herein shall be adjudged invalid or held unconstitutional, the same shall not affect the validity of this ordinance or of the National Electrical Code, 2008 Edition, or revisions thereof as a whole or any part of provision other than the part so decided to be invalid or unconstitutional.

SECTION 4. Penalty. Any person, firm or corporation violating any provision of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined an amount not to exceed five hundred dollars (\$500.00) and each and every day that the prohibited condition remains shall constitute a separate offense.

SECTION 5. Effective Date. That this ordinance shall become effective from and after its adoption.

DULY PASSED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS, this the _____ day of _____, 2009.

Mayor-Joe Chow

ATTEST:

City Secretary-Lea Dunn

OFFICE OF THE CITY SECRETARY

ORDINANCE NO. _____

Council Agenda Item: #R9

SUMMARY:

Staff is requesting approval of an Ordinance amending the 2006 International Codes to appoint the Board of Zoning Adjustment as the Building/Fire Code Board of Appeals.

FINANCIAL IMPACT:

N/A

BACKGROUND:

In Addison, the Board of Zoning Adjustment hears variances to the zoning ordinance. The Building/Fire Code Board of Appeals hears appeals and rules on interpretations to the Building and Fire Code. Typically, the Board of Zoning Adjustment hears less than one case a year, and the Building/Fire Code Board of Appeals hears less than one case every five years.

In many cities, the Board of Zoning Adjustment hears appeals to all codes that deal with land use and construction. The Addison Board of Zoning Adjustment has recently undergone a DVD training session that dealt with the rules and procedures for hearing cases, so the staff feels that it is sufficiently trained to hear appeals to a variety of codes. The staff thought that since Addison has so few cases, it makes sense to maintain only one Board and let it hear all variance and appeals cases.

Therefore, the staff recommends dissolving the Building and Fire Code Board of Appeals, which currently has no active members, and directing all variances and appeals to the Board of Zoning Adjustment. In order to accomplish that change, the International Codes which govern construction must be amended to direct all appeals and requests for interpretation to the Board of Zoning Adjustment.

RECOMMENDATION:

Staff recommends approval of an ordinance amending the 2006 International Codes to appoint the Board of Zoning Adjustment as the Building/Fire Code Board of Appeals.

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING VARIOUS PROVISIONS OF THE CODE OF ORDINANCES OF THE TOWN, INCLUDING SECTION 18-54 (RELATING TO THE INTERNATIONAL BUILDING CODE), SECTION 18-124 (RELATING TO THE INTERNATIONAL PROPERTY MAINTENANCE CODE), SECTION 18-165 (RELATING TO THE ICC ELECTRICAL CODE), SECTION 18-313 (RELATING TO THE INTERNATIONAL MAINTENANCE CODE), SECTION 18-363 (RELATING TO THE INTERNATIONAL PLUMBING CODE, THE INTERNATIONAL FUEL GAS CODE, AND THE INTERNATIONAL PRIVATE SEWAGE DISPOSAL CODE), SECTION 18-425 (RELATING TO THE INTERNATIONAL RESIDENTIAL CODE), SECTION 18-614 (RELATING TO FENCES), SECTION 18-652 (RELATING TO SATELLITE EARTH STATIONS), SECTION 18-725 (RELATING TO SWIMMING POOLS AND SPAS), AND SECTION 18-730 (RELATING TO SOLAR ENERGY SYSTEMS), AND ADDING TO THE SAID CODE OF ORDINANCES SECTION 38-52.1 (RELATING TO THE INTERNATIONAL FIRE CODE), AND PROVIDING BY SUCH AMENDMENTS AND ADDITION FOR THE ESTABLISHMENT AND/OR APPOINTMENT OF A BOARD OF APPEALS COMPRISED OF THE TOWN'S ZONING BOARD OF ADJUSTMENT IN CONNECTION WITH SUCH CODES AND OTHER ORDINANCE PROVISIONS; PROVIDING FOR THE AUTHORITY OF, THE APPEAL PROCESSES OF, AND OTHER MATTERS RELATED TO, SUCH BOARDS OF APPEALS; PROVIDING FOR OTHER AMENDMENTS RELATED TO SUCH CODES AS SET FORTH HEREIN; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

Section 1. Amendment. The Code of Ordinances (the "Code") of the Town of Addison, Texas is hereby amended as follows:

A. Section 18-54 of the Code is amended in its entirety to read as follows:

Sec. 18-54. Board of Appeals.

The International Building Code is amended by amending Section 112 thereof in its entirety to read as follows:

SECTION 112
BOARD OF APPEALS

112.1. General. There is hereby created a board of appeals (the “board of appeals”), consisting of the members of the board of adjustment appointed by the city council pursuant to Appendix A, Article XXIV of the Code of Ordinances of the Town of Addison. Accordingly, the number of members of the board of appeals shall be equal to the number of members of the said board of adjustment, and alternate members of the said board of adjustment shall be alternate members of the board of appeals who may serve in the absence of one or more regular members when requested to do so by the City Manager or the City Manager’s designee, including the director of development services of the Town.

Appointment to (including the filling of a vacancy), removal from, and the terms (including term limits) of the members of the board of appeals shall be the same as for members of the board of adjustment. Four (4) members of the board of appeals (including, in the absence of one or more regular members, alternate members) shall constitute a quorum for the conduct of business of the board of appeals, and any action of the board of appeals shall require at least four (4) affirmative votes to be adopted or passed.

112.2 Limitations on authority. The board of appeals shall have no authority to waive requirements of this code.

112.3 Powers of the board of appeals. The board of appeals has all of the following powers and authority:

112.3.1 To hear and decide appeals of orders, decisions or determinations made by the building official to the application and interpretation of the code.

112.3.2 To hear requests for the use of a material or method of construction not prescribed by the code and to authorize the use when, in the board of appeals’ judgement, the material or method of construction is at least equivalent to that prescribed.

112.3.3 To hear complaints from the building official arising against any person, firm, or corporation licensed by the Town under or related to chapter 18 of the Code of Ordinances of the Town, and shall have the power after hearing, to revoke or suspend said license for the following reasons:

(a) Chronic violation of the code;

- (b) Misrepresentation of material facts in obtaining said license or renewal thereof;
- (c) Chronic failure to secure permits, inspections, or approvals as required by the code; or
- (d) Use of said license to obtain a permit for another person, firm or corporation.

112.3.4 Rules and procedures. The board of appeals is authorized to establish policies and procedures necessary to carry out its duties.

112.3.5 Chairperson. The board of appeals shall annually select one of its members to serve as chairperson.

112.3.6 Disqualification of member. A member of the of board of appeals shall not hear an appeal in which that member has a personal interest, professional or financial interest or in any other instance which would be in violation of law.

112.3.7 Secretary. The City Manager or the City Manager's designee, including the director of development services, shall designate a qualified clerk to serve as secretary to the board of appeals. The secretary shall file a detailed record of all proceedings in the office of the City Secretary.

112.4 Appeal process.

112.4.1 Application. The application for appeal shall be filed on a form obtained from the building official within 20 days after the notice was served.

112.4.2 Notice of meeting. The board of appeals shall meet upon notice from the chairperson or the City Manager or the City Manager's designee, including the director of development services.

112.4.3 Open hearing. Except as allowed by State law, all meetings of the board of appeals and hearings before the board of appeals shall be open to the public. At a hearing of the board of appeals pursuant to this appeal process, the appellant, the appellant's representative, the building official and any person whose interests are affected shall be given an opportunity to be heard.

112.4.4 Procedure. The board of appeals shall adopt and make available to the public through the secretary procedures under which a hearing will be conducted. The procedures shall not require compliance with strict rules of evidence, but shall provide that only relevant information be received.

112.4.5 Postponed hearing. A hearing by the board of appeals shall not be conducted when a quorum of the board of appeals is not present to hear the appeal.

112.4.6 Board decision. Any action to shall reverse a decision of the building official shall require the number of votes of the board of appeals as set forth in Section 112.1, above.

112.4.7 Resolution. The decision of the board of appeals shall be by resolution or by motion recorded in the minutes of the board of appeals. Certified copies of the same shall be furnished to the appellant and to the building official.

112.4.8 Administration. The building official shall take immediate action in accordance with the decision of the board of appeals.

B. Section 18-124 of the Code is amended in its entirety to read as follows:

Sec. 18-124. Building/Fire Code Board of Appeals.

The International Property Maintenance Code is amended by amending Section 111 thereof in its entirety to read as follows:

SECTION 111
MEANS OF APPEAL

Section 111.1 Application for Appeal. Any person directly affected by a decision of the code official or a notice or order issued under this code shall have the right to appeal to the board of appeals, provided that a written application for appeal is filed within 20 days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or the requirements of this code are adequately satisfied by other means.

Section 111.2 Board of Appeals. The board of appeals, being denominated as the Building/Fire Code Board of Appeals, shall consist of the members of the board of adjustment appointed by the city council pursuant to Appendix A, Article XXIV of the Code of Ordinances of the Town of Addison. The provisions applicable to the board of appeals as set forth and described in Section 112 of the International Building Code adopted by the town, including, without limitation, general provisions, limitations of power, powers of the board, and appeal process, shall be applicable to and govern appeals and the said board of appeals for purposes of this code.

C. Section 18-165 of the Code is amended in its entirety to read as follows:

Sec. 18-165. Building/Fire Code Board of Appeals.

The ICC Electrical Code is amended by amending Chapter 11 thereof in its entirety to read as follows:

Chapter 11. Building/Fire Code Board of Appeals. For purposes of this code, appeals shall be to the board of appeals, being denominated as the Building/Fire Code Board of Appeals, which shall consist of the members of the board of adjustment appointed by the city council pursuant to Appendix A, Article XXIV of the Code of Ordinances of the Town of Addison. The provisions applicable to the board of appeals as set forth and described in Section 112 of the International Building Code adopted by the town, including, without limitation, general provisions, limitations of power, powers of the board, and appeal process, shall be applicable to and govern appeals and the said board of appeals for purposes of this code.

D. Section 18-313 of the Code is amended in its entirety to read as follows:

Sec. 18-313. Building/Fire Code Board of Appeals.

The International Mechanical Code is amended by amending Section 109 thereof in its entirety to read as follows:

Section 109. Building/Fire Code Board of Appeals. For purposes of this code, appeals shall be to the board of appeals, being denominated as the Building/Fire Code Board of Appeals, which shall consist of the members of the board of adjustment appointed by the city council pursuant to Appendix A, Article XXIV of the Code of Ordinances of the Town of Addison. The provisions applicable to the board of appeals as set forth and described in Section 112 of the International Building Code adopted by the town, including, without limitation, general provisions, limitations of power, powers of the board, and appeal process, shall be applicable to and govern appeals and the said board of appeals for purposes of this code.

E. Section 18-363 of the Code is amended in its entirety to read as follows:

Sec. 18-363. Building/Fire Code Board of Appeals.

The International Plumbing Code, International Fuel Gas Code and International Private Sewage Disposal Code are amended by amending Section 109 in each of the said codes in its entirety to read as follows:

Section 109. Building/Fire Code Board of Appeals. For purposes of this code, appeals shall be to the board of appeals, being denominated as the Building/Fire Code Board of Appeals, which shall consist of the members of the board of adjustment appointed by the city council pursuant to Appendix A, Article XXIV of the Code of Ordinances of the Town of Addison. The provisions applicable to the board of appeals as set forth and described in Section 112 of the International

Building Code adopted by the town, including, without limitation, general provisions, limitations of power, powers of the board, and appeal process, shall be applicable to and govern appeals and the said board of appeals for purposes of this code.

F. Section 18-425 of the Code is amended in its entirety to read as follows:

Sec. 18-425. Building/Fire Code Board of Appeals.

The International Residential Code is amended by amending Section R112 in its entirety as follows, and by amending Section 112.2 thereof by adding Section 112.2.1 and Section 112.2.2 as set forth below:

R112. Building/Fire Code Board of Appeals. For purposes of this code, appeals shall be to the board of appeals, being denominated as the Building/Fire Code Board of Appeals, which shall consist of the members of the board of adjustment appointed by the city council pursuant to Appendix A, Article XXIV of the Code of Ordinances of the Town of Addison. The provisions applicable to the board of appeals as set forth and described in Section 112 of the International Building Code adopted by the town, including, without limitation, general provisions, limitations of power, powers of the board, and appeal process, shall be applicable to and govern appeals and the said board of appeals for purposes of this code.

112.2.1 Determination of substantial improvement in areas prone to flooding. When the building official provides a finding required in Section R105.3.1.1, the board of appeals shall determine whether the value of the proposed work constitutes a substantial improvement. A substantial improvement means any repair, reconstruction, rehabilitation, addition or improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the building or structure before the improvement or repair is started. If the building or structure has sustained substantial damage, all repairs are considered substantial improvement regardless of the actual repair work performed. The term does not include:

1. Improvements of a building or structure required to correct existing health, sanitary or safety code violations identified by the building official and which are the minimum necessary to assure safe living conditions; or
2. Any alteration of an historic building or structure, provided that the alteration will not preclude the continued designation as an historic building or structure. For the purpose of this exclusion, an historic building is:
 - 2.1. Listed or preliminarily determined to be eligible for listing in the National Register of Historic Places; or

2.2. Determined by the Secretary of the U.S. Department of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined to qualify as an historic district; or

2.3. Designated as historic under a state or local historic preservation program that is approved by the Department of Interior.

112.2.2 Criteria for issuance of a variance for areas prone to flooding. A variance shall only be issued upon:

1. A showing of good and sufficient cause that the unique characteristics of the size, configuration or topography of the site render the elevation standards in Section R324 inappropriate.

2. A determination that failure to grant the variance would result in exceptional hardship by rendering the lot undevelopable.

3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

4. A determination that the variance is the minimum necessary to afford relief, considering the flood hazard.

5. Submission to the applicant of written notice specifying the difference between the design flood elevation and the elevation to which the building is to be built, stating that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced floor elevation, and stating that construction below the design flood elevation increases risks to life and property.

G. Section 18-614 of the Code is amended in its entirety to read as follows:

Sec. 18-614. Building/Fire Code Board of Appeals.

In order to determine the suitability of alternate materials and methods of construction, and to provide for reasonable interpretation of and exceptions to, the provisions of this article, there shall be and is hereby created a board of appeals. The said board of appeals, being denominated as the Building/Fire Code Board of Appeals, shall consist of the members of the board of adjustment appointed by the city council pursuant to Appendix A, Article XXIV of the Code of Ordinances of the Town of Addison. The provisions applicable to the board of appeals as set forth and described in Section 112 of the International Building Code adopted by the town, including, without limitation, general provisions, powers of the board, and appeal process, but save and except Section 112.2 of

the said International Building Code, shall be applicable to and govern appeals and the said board of appeals for purposes of this article.

H. Section 18-653 of the Code is amended in its entirety to read as follows:

Sec. 18-653. Building/Fire Code Board of Appeals.

Any person aggrieved by the application of this article may appeal its effect to a board of appeals, being denominated as the Building/Fire Code Board of Appeals, which shall consist of the members of the board of adjustment appointed by the city council pursuant to Appendix A, Article XXIV of the Code of Ordinances of the Town of Addison. The provisions applicable to the board of appeals as set forth and described in Section 112 of the International Building Code adopted by the town, including, without limitation, general provisions, powers of the board, and appeal process, but save and except Section 112.2 of the said International Building Code, shall be applicable to and govern appeals and the said board of appeals for purposes of this article.

Upon a clear and convincing showing by an appellant that the regulations set forth in this article either prohibit or unreasonably limit reception by the satellite earth station of satellite delivered signals, the board of appeals may grant an exception from the terms of this article and authorize the issuance of a building permit so as to avoid unnecessary hardship and so that the spirit of this article shall be observed and substantial justice done.

I. Section 18-725 of the Code is amended in its entirety to read as follows:

Sec. 18-725. Building/Fire Code Board of Appeals.

For purposes of this article, appeals shall be to the board of appeals, being denominated as the Building/Fire Code Board of Appeals, which shall consist of the members of the board of adjustment appointed by the city council pursuant to Appendix A, Article XXIV of the Code of Ordinances of the Town of Addison. The provisions applicable to the board of appeals as set forth and described in Section 112 of the International Building Code adopted by the town, including, without limitation, general provisions, limitations of power, powers of the board, and appeal process, shall be applicable to and govern appeals and the said board of appeals for purposes of this article.

J. Section 18-730 of the Code is amended in its entirety to read as follows:

Sec. 18-730. Building/Fire Code Board of Appeals.

Any person aggrieved by the application of this article may appeal its effect to a board of appeals, being denominated as the Building/Fire Code Board of Appeals, which shall consist of the members of the board of adjustment appointed by the city council pursuant to Appendix A, Article XXIV of the Code of Ordinances of the Town of Addison. The provisions applicable to the board of appeals as set forth and described in Section 112 of the International Building Code adopted by the town, including, without limitation,

general provisions, powers of the board, and appeal process, but save and except Section 112.2 of the said International Building Code, shall be applicable to and govern appeals and the said board of appeals for purposes of this article.

Upon a clear and convincing showing by an appellant that the regulations set forth in this article either prohibit or unreasonably limit the use of ground-mounted or roof-mounted solar energy systems, the board of appeals may grant an exception from the terms of this article and authorize the issuance of a building permit so as to avoid unnecessary hardship and so that the spirit of this article shall be observed and substantial justice done.

K. Section 38-31 of the Code is amended (additions are underlined; deletions are ~~struck through~~), and a new and Section 38-52.1 is added to the Code, to read as follows:

Sec. 38-31. Adoption.

There is hereby adopted by the Town of Addison, for the purpose of prescribing regulations governing the safety of life and property from fire and related conditions, that certain code known as the International Fire Code (for purposes of this Chapter 38, “code”), including ~~all~~ appendices B, C, D, E, F, and G thereto, in particular the 2006 edition thereof, published by the International Code Council, Inc., hereinafter known as the “Fire Code” or the “Code”, and the whole thereof except for such portions as are modified herein, and the same are incorporated as fully as if set out at length herein. From the date on which this ordinance shall take effect, the provisions herein shall be controlling within the corporate limits of the Town of Addison, Texas.

Sec. 38-52.1. Building/Fire Code Board of Appeals.

The Fire Code is amended by amending Section 108 in its entirety to read as follows:

Section 108. Building/Fire Code Board of Appeals. For purposes of this code, appeals shall be to the board of appeals, being denominated as the Building/Fire Code Board of Appeals, which shall consist of the members of the board of adjustment appointed by the city council pursuant to Appendix A, Article XXIV of the Code of Ordinances of the Town of Addison. The provisions applicable to the board of appeals as set forth and described in Section 112 of the International Building Code adopted by the town, including, without limitation, general provisions, limitations of power, powers of the board, and appeal process, shall be applicable to and govern appeals and the said board of appeals for purposes of this code.

Section 2. Savings. All other ordinances and parts of ordinances of the Town of Addison in conflict with this Ordinance shall be, and the same are hereby repealed, but the repeal of such ordinances or parts of ordinances shall not affect any right, property or claim which was or is vested in the Town of Addison, Texas, or any act done, or right accruing or accrued, or established, or any suit, action or proceeding had or commenced before the time when this Ordinance shall take effect; nor shall said repeals, amendments or changes affect any offense committed, or any penalty or forfeiture incurred, or any suit or prosecution pending at the time

when this Ordinance shall take effect under any of the ordinances or sections thereof so repealed, and for such purposes such ordinances or parts of ordinances shall remain in effect.

Section 3. Severability. The sections, paragraphs, sentences, phrases, clauses and words of this Ordinance are severable, and if any section, paragraph, sentence, phrase, clause or word in this Ordinance or application thereof to any person or circumstance is held invalid, void, illegal or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares that it would have passed such remaining portions of this Ordinance despite such invalidity, voidness, illegality or unconstitutionality, which remaining portions shall remain in full force and effect.

Section 4. Effective Date. This Ordinance shall take effect immediately upon passage and approval and it is so ordained.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this the _____ day of _____, 2009.

Joe Chow-Mayor

ATTEST:

Lea Dunn-City Secretary

APPROVED AS TO FORM:

John Hill-City Attorney

Council Agenda Item #R10

There are no attachments for this Item.