



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

REGULAR MEETING OF THE CITY COUNCIL

8:00 P.M.

OCTOBER 13, 2009

TOWN HALL

5300 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.

#2a - Approval of the Minutes for:

September 22, 2009, Regular City Council Meeting and Work Session

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.

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).

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

Attachment:

1. Council Agenda Item Overview

Administrative Recommendation:

Administration recommends approval.

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.

Attachments:

1. Council Agenda Item Overview
2. Investment Policy
3. Ordinance Amending Investment Policy

Administrative Recommendation:

Administration recommends approval.

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

Attachments:

1. Council Agenda Item Overview
2. Resolution
3. Exhibit A

Administrative Recommendation:

Administration recommends approval.

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.

Attachments:

1. Council Agenda Item Overview
2. Bill Dyer Memorandum
3. Resolution

Administrative Recommendation:

Administration recommends approval.

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

Attachments:

1. Council Agenda Item Overview
2. Addison FD Service Agreement
3. Addison PD Service Agreement
4. Carrollton Service Agreement-Maintenance Agreement

Administrative Recommendation:

Administration recommends approval.

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.

Attachments:

1. Docket Map
2. Staff report
3. Plans

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on September 24, 2009, voted to recommend approval of the request for final development plan approval, on application from United Dominion Realty, 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 enclosed public space shall be deleted.

Voting Aye: Doherty, Hewitt, Resnik, Wheeler, Wood
Voting Nay: None
Absent: DeFrancisco
One Seat vacant

Administrative Recommendation:

Administration recommends approval.

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.

Attachments:

1. Council Agenda Item Overview
2. Memorandum from Deputy Chief Chris Kellen, Metrocrest Medical Services Letter and Proposal
3. Metrocrest Medical Services Letter
4. Metrocrest Medical Services-Addison 2007-2009 Contract

Administrative Recommendation:

Administration recommends approval.

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.

Attachments:

1. Council Agenda Item Overview
2. Proposal

Administrative Recommendation:

Administration recommends approval.

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.

Attachments:

1. Council Agenda Item Overview
2. Form of Resolution
3. Notice of Intent Form

Administrative Recommendation:

Administration recommends approval.

Adjourn Meeting

Posted:
October 9, 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.**

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

September 22, 2009
6:00 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: Carolyn Sedwick with the City Manager's Office, John Lage with the Fire Department and Mike Jimenez with the Public Works Department.

Item #R2 - Consent Agenda.

#2a - Approval of the Minutes for:

Approval of the Minutes for:

September 7, 2009, Special Meeting and Work Session
September 8, 2009, Regular City Council Meeting and Work Session

Councilmember Braun moved to approve the Minutes for:

September 7, 2009, Special Meeting and Work Session
September 8, 2009, Regular City Council Meeting and Work Session

Councilmember Clemens seconded. Motion carried.

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

Item #R3 - **PUBLIC HEARING**, Presentation, discussion and consideration of approval of an ordinance of the Town of Addison, Texas, approving and adopting the annual budget for the fiscal year beginning October 1, 2009, and ending September 30, 2010; providing that said expenditures for said fiscal year shall be made in accordance with said budget; providing for a repeal clause.

Ron Whitehead made the presentation and led the discussion of approval of an ordinance of the Town of Addison, Texas, approving and adopting the annual budget for the fiscal year beginning October 1, 2009, and ending September 30, 2010; providing that said expenditures for said fiscal year shall be made in accordance with said budget; providing for a repeal clause.

Mayor Chow opened the meeting as a Public Hearing.

The following resident spoke:

Paul Hayes, 4100 Leadville Place

Mayor Chow closed the meeting as a Public Hearing.

Councilmember Mellow moved to approve Ordinance 009-033 of the Town of Addison, Texas, approving and adopting the annual budget for the fiscal year beginning October 1, 2009, and ending September 30, 2010; providing that said expenditures for said fiscal year shall be made in accordance with said budget; providing for a repeal clause.

Councilmember Braun seconded. Motion carried.

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

Item #R4 - Presentation, discussion and consideration of approval of an ordinance levying taxes for the Town of Addison, Texas, and fixing and adopting the tax rate on all taxable property for the fiscal year 2010 at a rate not to exceed \$0.5060 per one hundred dollars (\$100.00) valuation on all taxable property within the corporate limits of the Town of Addison as of January 1, 2009; providing for a penalty and interest for delinquent taxes; declaring an emergency and providing an effective date.

Councilmember Mellow moved to approve Ordinance 009-034 levying taxes for the Town of Addison, Texas, and fixing and adopting the tax rate on all taxable property for the fiscal year 2010 at a rate not to exceed \$0.4960 per one hundred dollars (\$100.00) valuation on all taxable property within the corporate limits of the Town of Addison as of January 1, 2009; providing for a penalty and interest for delinquent taxes; declaring an emergency and providing an effective date.

Councilmember Daseke seconded. Motion carried.

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

Mayor Chow left the meeting. Mayor Pro Tempore Mellow presided over the remainder of the Council Meeting.

Item #R5 - 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.)

Item #R5 was tabled and will be addressed during the next Council Meeting.

Item #R6 - Presentation, discussion and consideration of approval authorizing the City Manager to enter into an agreement with jimbockrause to produce the 2010 Addison calendar.

Councilmember Lay moved to authorize the City Manager to enter into an agreement with jimbockrause to produce the 2010 Addison calendar.

Councilmember Daseke seconded. Motion carried.

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

Item #R7 - Presentation, discussion and consideration of approval of award of a contract in the amount of \$40,315.04, to Sign Tech International, for the construction and installation of a way-finding sign package for Addison Circle.

Councilmember Daseke moved to approve the award of a contract in the amount of \$40,315.04, to Sign Tech International, for the construction and installation of a way-finding sign package for Addison Circle.

Councilmember Lay seconded. Motion carried.

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

Item #R8 - Presentation, discussion and consideration of approval of authorizing the City Manager to extend or accept the confirmation and extension of construction bids for the construction of certain public infrastructure (Ponte Avenue and Bella Lane Vehicular Bridges and pedestrian bridge) within that area of the Town generally known as Vitruvian Park (Vitruvian Park Public Infrastructure Phase 1D).

Tom Braun recused himself for Item #R8 and left Council Chambers. He did not participate in the discussion or vote.

Councilmember Daseke moved to authorize the City Manager to extend or accept the confirmation and extension of construction bids for the construction of certain public infrastructure (Ponte Avenue and Bella Lane Vehicular Bridges and pedestrian bridge) within that area of the Town generally known as Vitruvian Park (Vitruvian Park Public Infrastructure Phase 1D).

Councilmember Noble seconded. Motion carried.

Voting Aye: Clemens, Daseke, Lay, Mellow and Noble

Voting Nay: None

Absent: Chow

Abstaining: Braun

Councilmember Braun returned to Chambers.

Item #R9 - Presentation, discussion and consideration of approval of a contract for services with the Addison Arbor Foundation.

Councilmember Daseke moved to approve a contract for services with the Addison Arbor Foundation.

Councilmember Braun seconded. Motion carried.

Voting Aye: Braun, Clemens, Daseke, Lay, Mellow and Noble

Voting Nay: None

Absent: Chow

At 7:55 P.M., Mayor Pro Tempore Mellow announced that Council would convene into Executive Session to discuss the following Items:

Item #ES1 - Closed (Executive) session of the Addison City Council pursuant to Section 551.087, Texas Government Code, to deliberate the offer of a financial or other incentive to a business prospect that the City Council seeks to have locate, stay or expand in the territory of the Town of Addison and with which the City Council is conducting economic development negotiations.

The Council came out of Executive Session at 9:17 P.M.

Item #R10 - Consideration of action in connection with and/or regarding the offer of a financial or other incentive to a business prospect that the City Council seeks to have locate, stay or expand in the territory of the Town of Addison and with which the City Council is conducting economic development negotiations.

Councilmember Daseke moved to authorize the City Manager to continue negotiations in connection with and/or regarding the offer of a financial or other incentive to a business prospect that the City Council seeks to have locate, stay or expand in the

territory of the Town of Addison and with which the City Council is conducting economic development negotiations, subject to the City Attorney's review of all the documents.

Councilmember Lay seconded. Motion carried.

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

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

Mayor-Joe Chow

Attest:

City Secretary-Lea Dunn

Council Agenda Item: #2b

SUMMARY:

To consider approval of the contracts for services between the Town of Addison and the non-profit agencies funded from the General Fund and Hotel Fund budgets. The agencies and the amounts were approved by the City Council and included in the adopted FY 2010 budget.

FINANCIAL IMPACT:

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

	General Fund	Hotel Fund
Budgeted Amount:	<u>\$115,000</u>	<u>\$442,200</u>
Cost:	<u>\$115,000</u>	<u>\$442,200*</u>

BACKGROUND:

During the FY 2010 budget process, the City Council reviewed the following non-profit agencies and funding amounts for FY 2010. Attached are the contracts for the non-profits.

Non Profit Grant Requests for FY2010

General Fund		Hotel Fund	
Communities in Schools	\$40,000	Dance Council	\$7,200
Contact Crisis Line	\$5,000	Richardson Symphony Orchestra	\$30,000
Metrocrest Chamber of Commerce	\$10,000	Second Thought Theatre	\$15,000
Metrocrest Family Medical Clinic	\$3,000	Water Tower Theatre-Direct Funding	\$240,000
Metrocrest Social Services	\$25,000	WaterTower Thehatre-Matching Fundir	\$150,000
Senior Adult Services	\$17,000		
Special Care and Career Services	\$5,000		
The Family Place	\$10,000		
	TOTAL \$115,000		TOTAL \$442,200
TOTAL OF BOTH FUNDS	\$557,200		

RECOMMENDATION:

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

STATE OF TEXAS

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CONTRACT FOR SERVICES

COUNTY OF DALLAS

This Contract for Services ("Contract") is made and entered into as of the 1st day of October, 2009 by and between the Town of Addison, Texas (the "City"), and Communities In Schools Dallas Region, Inc. ("Communities In Schools").

WITNESSETH:

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

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

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

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

I. TERM

The term of this Contract shall be for a period of one year from the 1st day of October 2009 through the 30th day of September 2010, except as otherwise provided for herein.

II. SERVICES

Communities In Schools covenants and agrees that it shall:

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

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

(c) conduct off-campus "home visits" with interested parents to acquaint them with enhanced student and parenting skills;

(d) coordinate with Addison apartment managers to hold neighborhood meetings to acquaint parents with Communities In Schools and its opportunities;

(e) continue mobilization of the service component of Communities In Schools to the Janie Stark Elementary School students;

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

(g) provide an annual audit of financial condition to the City; and

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

III. COMPENSATION

For the operation and provision of the services, projects and programs of Communities In Schools as described herein, the City shall pay Communities In Schools the sum of Forty Thousand and No/100 Dollars (\$40,000.00). Such sum shall be paid on or before January 1, 2010, provided Communities In Schools is not then in default of this Contract.

IV. RESPONSIBILITY; INDEMNIFICATION

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

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

under this Contract; and/or (3) any other act or omission under or in performance of this Contract by Communities in Schools, or any owner, officer, director, manager, employee, agent, representative, consultant, contractor, subcontractor, licensee, invitee, patron, guest, customer, or concessionaire of or for Communities in Schools, or any other person or entity for whom Communities in Schools is legally responsible, and their respective owners, officers, directors, managers, employees, agents, representatives, consultants, contractors, subcontractors, licensees, , invitees, patrons, guests, customers, and concessionaires.

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

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

V. TERMINATION

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

VI. CONFLICT OF INTEREST

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

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

VII. ACCOUNTING

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

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

Communities In Schools shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the thirtieth (30th) day after the close of each quarter (beginning with the quarter ending December 31, 2009, with the last quarter ending September 30, 2010), Communities In Schools shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by Communities In Schools of the funds paid to Communities In Schools under this Contract; and (b) a year-to-date report of the expenditures made by Communities In Schools of the funds paid to Communities in Schools under this Contract (and if this Contract is terminated prior to its expiration, Communities In Schools shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, Communities In Schools shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of Communities In Schools' fiscal year, Communities In Schools shall provide the City with a financial statement signed by the Chairman of Communities In Schools' Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth Communities In Schools' income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

VIII. INDEPENDENT CONTRACTOR

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

IX. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT

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

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

X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

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

XI. NON-DISCRIMINATION

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

XII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS; RECITALS

Communities In Schools shall observe and abide by, and this Contract is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended. The above and foregoing recitals to this Contract are true and correct and incorporated herein and made a part hereof.

XIII. VENUE; GOVERNING LAW

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

XIV. COUNTERPARTS

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

XV. NO WAIVER; RIGHTS CUMULATIVE

The failure by either party to exercise any right or power, or option given to it by this Contract, or to insist upon strict compliance with the terms of this Contract, shall not constitute a waiver of the terms and conditions of this Contract with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict

compliance with all the terms hereof. The rights or remedies under this Contract are cumulative to any other rights or remedies, which may be granted by law.

XVI. NOTICES

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

The City's address:

Lea Dunn
Deputy City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

Communities In Schools Dallas Region,
Inc. address:

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

XVII. SEVERABILITY

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

XVIII. AUTHORITY TO EXECUTE CONTRACT

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

XIX. ENTIRE CONTRACT

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

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

TOWN OF ADDISON, TEXAS

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

By: _____
Ron Whitehead, City Manager

By: _____
Sandra Chavarria, President & CEO

ATTEST:

ATTEST:

By: _____
Lea Dunn, City Secretary

By: _____

(printed name)
Its: _____

STATE OF TEXAS

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CONTRACT FOR SERVICES

COUNTY OF DALLAS

This Contract for Services ("Contract") is made and entered into as of the 1st day of October, 2009 by and between the Town of Addison, Texas (the "City") and the Contact Crisis Line (the "Contact").

WITNESSETH:

WHEREAS, the Contact Crisis Line is a private, non-profit organization established under the laws of the State of Texas for the purpose of counseling, supporting, helping and being a vehicle of hope for men, women and children in the Dallas area who are struggling too deal with issues ranging from depression, loneliness, substance abuse, relationship issues, financial hardship and other problems; and

WHEREAS, the Contact Crisis Line provides emergency assistance and a connection to resources to thousands of persons in need and fielded nearly 40,000 calls from individuals suffering through a variety of crisis; and

WHEREAS, the Contact Crisis Line daily serves people from teens to seniors, facing daily challenges with the use of its 24-hour free confidential listening, comfort, and a connection to resources, education, and emergency assistance; and

WHEREAS, Contact USA has grown to more than sixty (60) centers in twenty-one (21) states and does not accept federal government funding of any kind but relies on the support of private individuals, corporations and foundations.

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

I. TERM

The term of this contract and agreement shall be for a period of one year from the 1st day of October, 2009 through the 30th day of September, 2010, except as otherwise provided for herein.

II. SERVICES

The Contact Crisis Line shall provide the following services to the City:

(a) Crisis Prevention and Resource Services: From the Susan and Ben Odom Call Center, more than 100 specially trained Crisis Line Specialists support callers 242 hours a day with crisis prevent services, as well as referring them to other community agencies if further assistance is needed during the City's 2009-2010 fiscal year.

(b) Emergency Aid Program: Provides free transportation for individuals in a potentially life-threatening situation to a safe place or an emergency unit at a hospital; DART bus and rail passes for critical transportation needs; and essential prescription funding for life-sustaining medications.

(c) Teen CONTACT: A program dedicated to teens by providing telephone crisis prevention services and distributing valuable resource information on teen-related issues to school counselors, youth groups, and parents. This outreach program actually takes services out of the call center and into classrooms, youth centers and churches, providing large and small group presentations in both English and Spanish.

(d) Community Engagement: The expansion of all of our programs to the Spanish-speaking community. Providing Spanish-speaking volunteers to staff two new phone lines and providing materials and presentations in Spanish.

(e) Submit detailed quarterly financial statements and program results to the City within thirty (30) days after the end of the preceding quarter listing the expenditures made by the Contact Crisis Line with the revenues received pursuant to this Contract.

III. COMPENSATION

For the operation and provision of the services, projects and programs of the Contact Crisis Line as described herein, the City shall pay the Contact Crisis Line the sum of Five Thousand and No/100 Dollars (\$5,000.00). Such sum shall be paid on or before January 1, 2010, provided Contact Crisis Line is not then in default of this Contract.

IV. INDEMNIFICATION

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

(b) ***INDEMNITY OWED BY CONTACT CRISIS LINE.*** Contact Crisis Line covenants and agrees to FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS the Town of Addison, Texas and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas, individually or collectively, in both their official and private capacities (the Town of Addison, Texas and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas each being an "Addison Person" and collectively the "Addison Persons"), from and against any and all costs, claims, liens, harm, damages, losses, expenses, fees, fines, penalties, proceedings, judgments, actions, demands, causes of action, liability, and suits, of any kind and nature whatsoever made upon any Contact Crisis like, whether directly or indirectly,

(the "Claims"), that arise out of, result from, or relate to: (1) the Services as defined in Section II of this Contract; (2) representations or warranties by Contact Crisis Line under this Contract; and/or (3) any other act or omission under or in performance of this Contract by Contact Crisis Line, or any owner, officer, director, manager, employee, agent, representative, consultant, contractor, subcontractor, licensee, invitee, patron, guest, customer, or concessionaire of or for Contact Crisis Line, or any other person or entity for whom Contact Crisis Line is legally responsible, and their respective owners, officers, directors, managers, employees, agents, representatives, consultants, contractors, subcontractors, licensees, , invitees, patrons, guests, customers, and concessionaires. **SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.**

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

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

V. TERMINATION

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

VI. CONFLICT OF INTEREST

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

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

VII. ACCOUNTING

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

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

Contact Crisis Line shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the thirtieth (30th) day after the close of each quarter (beginning with the quarter ending December 31, 2009, with the last quarter ending September 30, 2010), Contact Crisis Line provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by Contact of the funds paid to Contact under this Contract; and (b) a year-to-date report of the expenditures made by Contact of the funds paid to Contact under this Contract (and if this Contract is terminated prior to its expiration, Contact provides such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, Contact Crisis Line shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of Contact Crisis Line's fiscal year, Contact Crisis Line shall provide the City with a financial statement signed by the Chairman of Contact Crisis Line's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth Contact Crisis Line's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

VIII. INDEPENDENT CONTRACTOR

In performing services under this Contract, the relationship between the City and on Contact is that of independent contractor, and the City and Contact by the execution of this Contract do not change the independent status of Contact Crisis Line. Contact Crisis Line is an independent contractor, and no term or provision of this Contract or action by Contact Crisis Line in the performance of this Contract is intended nor shall be construed as making Contact Crisis the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship, or to allow the City to exercise discretion or control over the manner in which the Contact Crisis Line performs the services which are described in this Contract.

IX. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT

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

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

X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

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

XI. COPYRIGHT

Contact Crisis Line assumes full responsibility for complying with all United States laws and treaty terms pertaining to intellectual property issues and any applicable regulations, including but not limited to the assumption of all responsibilities for paying all royalties which are due for the use of domestic or foreign copyrighted works in Contact Crisis Line's performances, transmissions or broadcasts, and CONTACT CRISIS LINE, without limiting any other indemnity given by Contact Crisis Line as set forth herein, AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICIALS, OFFICERS, EMPLOYEES, AND AGENTS, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY LIABILITY, CLAIMS, OR DAMAGES (INCLUDING BUT NOT LIMITED TO COURT COSTS AND ATTORNEY'S FEES) GROWING OUT OF CONTACT CRISIS LINE'S INFRINGEMENT OR VIOLATION OF ANY STATUTE, TREATY TERM, OR REGULATION APPLICABLE TO INTELLECTUAL PROPERTY RIGHTS, INCLUDING BUT NOT LIMITED TO COPYRIGHTS.

XII. NON-DISCRIMINATION

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

XIII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS; RECITALS

Contact Crisis Line shall observe and abide by, and this Contract is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended. The above and foregoing recitals to this Contract are true and correct and incorporated herein and made a part hereof.

XIV. VENUE; GOVERNING LAW

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

XV. COUNTERPARTS

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

XVI. NO WAIVER; RIGHTS CUMULATIVE

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

XVII. NOTICES

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

The City's address:

Lea Dunn
Deputy City Manager
Town of Addison

Contact Crisis Line's address:

Benaye Y. Rodgers
President
P.O. Box 800742

5300 Belt Line Road
Dallas, Texas 75254

Richardson, Texas 75080

XVIII. SEVERABILITY

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

XIX. AUTHORITY TO EXECUTE CONTRACT

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

XX. ENTIRE AGREEMENT

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

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

TOWN OF ADDISON, TEXAS

CONTACT CRISIS LINE

By: _____
Ron Whitehead, City Manager

By: _____
Benaye Rodgers, Executive Director

ATTEST:

ATTEST:

By: _____
Lea Dunn, City Secretary

By: _____

STATE OF TEXAS

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CONTRACT FOR SERVICES

COUNTY OF DALLAS

This Contract for Services ("Contract") is made and entered into as of the 1st day of October, 2009 by and between the Town of Addison, Texas (the "City") and the Dance Council (the "Dance Council").

WITNESSETH:

WHEREAS, the Dance Council is a private, non-profit organization established under the laws of the State of Texas for the purpose of promoting and supporting dance in North Texas, including the Town of Addison, and providing artistic, educational, and cultural opportunities to people of all ages, races and abilities; and

WHEREAS, the Dance Council's productions and work attract tourists to and encourages tourism in the City, and the City has an interest in attracting such tourists and promoting tourism to the area in order to receive the economic benefits associated therewith; and

WHEREAS, it is the City's desire to encourage and promote the arts, including dance; and

WHEREAS, the City is authorized to expend revenues from its hotel occupancy tax for the encouragement, promotion, improvement, and application of the arts, including, without limitation, dance, and desires to encourage and promote the arts (including dance) through the execution of this Contract for Services.

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

I. TERM

The term of this contract and agreement shall be for a period of one year from the 1st day of October, 2009 through the 30th day of September, 2010, except as otherwise provided for herein.

II. SERVICES

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

(a) Provide participation in Addison Urbanato: A Kaleidoscope of Art, Music, Culture, and Fun in October 2009, with participation details to be determined with the Town of Addison during the City's 2009-2010 fiscal year.

(b) Provide a program entitled "Taste Dance: Addison Style". This program shall be a four part series of lecture/demonstrations on dance to be presented at the Conference and Theatre Centre for a Sunday afternoon festival in June 2010, on dates and at times to be decided. Dance

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

-Elledanceworks - Modern Dance

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

-Contemporary Ballet Dallas – Contemporary Ballet

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

-Legacy Tap Project - Tap

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

-North Texas Middle Eastern Dance Association - Bellydance

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

(c) The inclusion of the "Taste Dance: Addison Style" program on a series of postcards and the "Taste Dance: Addison Style" brochure. The Dance Council shall contact the City regarding the details of those postcards.

(d) The inclusion of the Addison logo on the Dance Council web site (www.thedancecouncil.org) or any other web site of the Dance Council. The Dance Council shall contact the City regarding the details of including the Addison logo on the web site.

(e) Provide a banner sign of the City at each Dance Council event which takes place in the City (with a banner sign to be provided by the City).

(f) Provide recognition from the stage at all Dance Council events (including Dance for the Planet, National Tap Dance Celebration, The Dallas Morning News Dance Festival, The Legacy Awards, and Taste Dance: Addison Style).

(g) Submit detailed quarterly financial statements and program results to the City within thirty (30) days after the end of the preceding quarter listing the expenditures made by the Dance Council with the revenues received pursuant to this Contract.

III. COMPENSATION

For the operation and provision of the services, projects and programs of the Dance Council as described herein, the City shall pay the Dance Council the sum of Seven Thousand Two Hundred and No/100 Dollars (\$7,200.00). Such sum shall be paid on or before April 9, 2010, provided Dance Council is not then in default of this Contract.

IV. INDEMNIFICATION

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

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

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

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

V. TERMINATION

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

VI. CONFLICT OF INTEREST

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

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

VII. ACCOUNTING

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

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

Dance Council shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the thirtieth (30th) day after the close of each quarter (beginning with the quarter ending December 31, 2009, with the last quarter ending September 30, 2010), Dance Council shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by Dance Council of the funds paid to Dance Council under this Contract; and (b) a year-to-date report of the expenditures made by Dance Council of the funds paid to Dance Council under this Contract (and if this Contract is terminated prior to its expiration, Dance Council shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, Dance Council shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of Dance Council's fiscal year, Dance Council shall provide the City with a financial statement signed by the Chairman of Dance Council's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth Dance Council's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

VIII. INDEPENDENT CONTRACTOR

In performing services under this Contract, the relationship between the City and Dance Council is that of independent contractor, and the City and Dance Council by the execution of this Contract do not change the independent status of Dance Council. The Dance Council In Schools is an independent contractor, and no term or provision of this Contract or action by Dance Council in the performance of this Contract is intended nor shall be construed as making Dance Council the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship, or to allow the City to exercise discretion or control over the manner in which the Dance Council performs the services which are described in this Contract.

IX. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT

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

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

X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

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

XI. COPYRIGHT

Dance Council assumes full responsibility for complying with all United States laws and treaty terms pertaining to intellectual property issues and any applicable regulations, including but not limited to the assumption of all responsibilities for paying all royalties which are due for the use of domestic or foreign copyrighted works in Dance Council's performances, transmissions or broadcasts, and DANCE COUNCIL, without limiting any other indemnity given by Dance Council as set forth herein, AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICIALS, OFFICERS, EMPLOYEES, AND AGENTS, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY LIABILITY, CLAIMS, OR DAMAGES (INCLUDING BUT NOT LIMITED TO COURT COSTS AND ATTORNEY'S FEES) GROWING OUT OF DANCE COUNCIL'S INFRINGEMENT OR VIOLATION OF ANY STATUTE, TREATY TERM, OR REGULATION APPLICABLE TO INTELLECTUAL PROPERTY RIGHTS, INCLUDING BUT NOT LIMITED TO COPYRIGHTS.

XII. NON-DISCRIMINATION

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

XIII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS; RECITALS

Dance Council shall observe and abide by, and this Contract is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended. The above and foregoing recitals to this Contract are true and correct and incorporated herein and made a part hereof.

XIV. VENUE; GOVERNING LAW

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

XV. COUNTERPARTS

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

XVI. NO WAIVER; RIGHTS CUMULATIVE

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

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

XVII. NOTICES

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

The City's address:

Lea Dunn
Deputy City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

Dance Council's address:

Pam Deslorieux
Executive Director
3530 Harry Hines Blvd.
Dallas, Texas 75219

XVIII. SEVERABILITY

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

XIX. AUTHORITY TO EXECUTE CONTRACT

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

XX. ENTIRE AGREEMENT

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

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

TOWN OF ADDISON, TEXAS

DANCE COUNCIL

By: _____
Ron Whitehead, City Manager

By: _____
Pam Deslorieux, Executive Director

ATTEST:

ATTEST:

By: _____
Lea Dunn, City Secretary

By: _____

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

CONTRACT FOR SERVICES

This Contract for Services ("Contract") is made and entered into as of the 1st day of October, 2009 by and between the Town of Addison, Texas (the "City") and the Metrocrest Chamber of Commerce (the "Chamber").

WITNESSETH:

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

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

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

I. TERM

The term of this Contract shall be for a period of one year from the 1st day of October 2009 through the 30th day of September 2010, except as otherwise provided for herein.

II. SERVICES

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

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

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

1. Familiarization tour of the Metrocrest for companies seeking expansion or relocation assistance.
2. Economic Development convention participation.
3. Existing business retention support through established Chamber programs.
4. Import/Export assistance to Metrocrest businesses in foreign markets.
5. Resource materials - publishing of new (updated) Economic Development resource materials.
6. Engagement in legislative affairs including:
 - (a) identification and publication of key legislative priorities

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

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

III. COMPENSATION

A. For the design, development and implementation of the programs enumerated in Section II above, the City shall pay to the Chamber the sum of Ten Thousand and No/100 Dollars (\$10,000.00). Such sum shall be paid on or before January 1, 2010, provided Provider is not then in default of this Contract.

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

IV. RESPONSIBILITY; INDEMNIFICATION

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

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

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

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

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

V. TERMINATION

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

VI. CONFLICT OF INTEREST

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

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

VII. ACCOUNTING

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

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

Chamber shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the thirtieth (30th) day after the close of each quarter (beginning with the quarter ending December 31, 2009, with the last quarter ending September 30, 2010), Chamber shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by Chamber of the funds paid to Chamber under this Contract; and (b) a year-to-date report of the expenditures made by Chamber of the funds paid to Chamber under this Contract (and if this Contract is terminated prior to its expiration, Chamber shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, Chamber shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of Chamber's fiscal year, Chamber shall provide the City with a financial statement signed by the Chairman of Chamber's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth Chamber's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

VIII. INDEPENDENT CONTRACTOR

In performing services under this Contract, the relationship between the City and Chamber is that of independent contractor, and the City and Chamber by the execution of this Contract do not

change the independent status of Chamber. The Chamber is an independent contractor, and no term or provision of this Contract or action by Chamber in the performance of this Contract is intended nor shall be construed as making Chamber the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship, or to allow the City to exercise discretion or control over the manner in which the Chamber performs the services which are described in this Contract.

IX. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT

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

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

X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

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

XI. NON-DISCRIMINATION

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

XII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS; RECITALS

Chamber shall observe and abide by, and this Contract is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended. The above and foregoing recitals to this Contract are true and correct and incorporated herein and made a part hereof.

XIII. VENUE; GOVERNING LAW

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

XIV. COUNTERPARTS

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

XV. NO WAIVER; RIGHTS CUMULATIVE

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

XVI. NOTICES

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

The City's address:

Lea Dunn
Deputy City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

Chamber's address:

Greg Vaughn
President
Metrocrest Chamber of Commerce
1204 Metrocrest Drive
Carrollton, Texas 75006

XVII. SEVERABILITY

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

XVIII. AUTHORITY TO EXECUTE CONTRACT

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

XIX. ENTIRE AGREEMENT

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

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

TOWN OF ADDISON, TEXAS

**METROCREST CHAMBER OF
COMMERCE**

By: _____
Ron Whitehead, City Manager

By: _____
Greg Vaughn, Executive Director

ATTEST:

ATTEST:

By: _____
Lea Dunn, City Secretary

By: _____

STATE OF TEXAS

§
§
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CONTRACT FOR SERVICES

COUNTY OF DALLAS

This Contract for Services ("Contract") is made and entered into as of the 1st day of October, 2009 by and between the Town of Addison, Texas (the "City"), and Metrocrest Family Medical Clinic ("Metrocrest Medical").

WITNESSETH:

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

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

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

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

I. TERM

The term of this Contract shall be for a period of one year from the 1st day of October, 2009 through the 30th day of September, 2010, except as otherwise provided for herein.

II. SERVICES

Metrocrest Family Medical Clinic covenants and agrees that it shall:

(a) Provide low cost treatment for minor medical problems, during normal operating hours of the clinic, for children and adults living in Addison;

(b) Provision of evening medical clinics, staffed by volunteer personnel, which provide medical attention to the residents of our service area who would otherwise not be able to receive treatment of episodic medical attention;

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

(b) Present a mid-year written report to the City on the progress and status of services provided by Metrocrest Medical and provide quarterly status reporting to the City in a mutually agreed upon form;

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

III. COMPENSATION

For the operation and provision of the services, projects and programs of Metrocrest Family Medical Clinic as described herein, the City shall pay Metrocrest Family Medical Clinic the sum of Three Thousand and No/100 Dollars (\$3,000.00). Such sum shall be paid on or before January 1, 2010, provided Metrocrest Family Medical Clinic is not then in default of this Contract.

IV. RESPONSIBILITY; INDEMNIFICATION

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

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

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

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

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

V. TERMINATION

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

VI. CONFLICT OF INTEREST

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

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

VII. ACCOUNTING

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

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

Metrocrest Family Medical Clinic shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the thirtieth (30th) day after the close of each quarter (beginning with the quarter ending December 31, 2009, with the last quarter ending September 30, 2010), Metrocrest Family Medical Clinic shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by Metrocrest Family Medical Clinic of the funds paid to Metrocrest Family Medical Clinic under this Contract; and (b) a year-to-date report of the expenditures made by Metrocrest Family Medical Clinic of the funds paid to Metrocrest Family Medical Clinic under this Contract (and if this Contract is terminated prior to its expiration, Metrocrest Family Medical Clinic shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, Metrocrest Family Medical Clinic shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of Metrocrest Family Medical Clinic's fiscal year, Metrocrest Family Medical Clinic shall provide the City with a financial statement signed by the Chairman of Metrocrest Family Medical Clinic's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth Metrocrest Family Medical Clinic's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

VIII. INDEPENDENT CONTRACTOR

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

IX. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT

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

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

X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

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

XI. NON-DISCRIMINATION

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

XII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS; RECITALS

Metrocrest Family Medical Clinic shall observe and abide by, and this Contract is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended. The above and foregoing recitals to this Contract are true and correct and incorporated herein and made a part hereof.

XIII. VENUE; GOVERNING LAW

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

XIV. COUNTERPARTS

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

XV. NO WAIVER; RIGHTS CUMULATIVE

The failure by either party to exercise any right or power, or option given to it by this Contract, or to insist upon strict compliance with the terms of this Contract, shall not constitute a waiver of the terms and conditions of this Contract with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict

compliance with all the terms hereof. The rights or remedies under this Contract are cumulative to any other rights or remedies, which may be granted by law.

XVI. NOTICES

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

The City's address:

Metrocrest Family Medical Clinic's address:

Lea Dunn
Deputy City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

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

XVII. SEVERABILITY

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

XVIII. AUTHORITY TO EXECUTE CONTRACT

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

XIX. ENTIRE CONTRACT

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

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

TOWN OF ADDISON, TEXAS

**METROCREST FAMILY MEDICAL
CLINIC, INC.**

By: _____
Ron Whitehead, City Manager

By: _____
Jane Wood Hawkins, Executive Director

ATTEST:

ATTEST:

By: _____
Lea Dunn, City Secretary

By: _____
Its: _____

STATE OF TEXAS

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§
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CONTRACT FOR SERVICES

COUNTY OF DALLAS

This Contract for Services ("Contract") is made and entered into as of the 1st day of October, 2009 by and between the Town of Addison, Texas (the "City") and Metrocrest Social Services ("Metrocrest").

WITNESSETH:

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

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

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

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

I. TERM

The term of this Contract shall be for a period of one year from the 1st day of October, 2009 through the 30th day of September, 2010, except as otherwise provided for herein.

II. SERVICES

Metrocrest covenants and agrees that it shall:

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

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

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

III. COMPENSATION

For the operation and provision of the services, projects and programs of Metrocrest as described herein, the City shall pay Metrocrest the sum of Twenty-five Thousand and No/100 Dollars (\$25,000.00). Such sum shall be paid on or before January 1, 2010, provided Metrocrest is not then in default of this Contract.

IV. INDEMNIFICATION

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

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

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

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

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

V. TERMINATION

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

VI. CONFLICT OF INTEREST

(a) No officer or employee of the City shall have any interest or receive any benefit, direct or indirect, in this Contract or the proceeds thereof. This prohibition is not intended and

should not be construed to preclude payment of expenses legitimately incurred by City officials in the conduct of the City's business. No officer or employee of Metrocrest shall have any financial interest, direct or indirect, in this Contract or the proceeds thereof.

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

VII. ACCOUNTING

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

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

Metrocrest shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the thirtieth (30th) day after the close of each quarter (beginning with the quarter ending December 31, 2009, with the last quarter ending September 30, 2010), Metrocrest shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by Metrocrest of the funds paid to Metrocrest under this Contract; and (b) a year-to-date report of the expenditures made by Metrocrest of the funds paid to Metrocrest under this Contract (and if this Contract is terminated prior to its expiration, Metrocrest shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, Metrocrest shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of Metrocrest's fiscal year, Metrocrest shall provide the City with a financial statement signed by the Chairman of Metrocrest's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth Metrocrest's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

VIII. INDEPENDENT CONTRACTOR

In performing services under this Contract, the relationship between the City and Metrocrest is that of independent contractor, and the City and Metrocrest by the execution of this Contract do not change the independent status of Metrocrest. Metrocrest is an independent contractor, and no term or provision of this Contract or action by Metrocrest in the performance of this Contract is

intended nor shall be construed as making Metrocrest the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship, or to allow the City to exercise discretion or control over the manner in which Communities in Schools performs the services which are described in this Contract.

IX. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT

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

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

X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

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

XI. NON-DISCRIMINATION

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

XII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS; RECITALS

Metrocrest shall observe and abide by, and this Contract is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended. The above and foregoing recitals to this Contract are true and correct and incorporated herein and made a part hereof.

XIII. VENUE; GOVERNING LAW

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

XIV. COUNTERPARTS

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

XV. NO WAIVER; RIGHTS CUMULATIVE

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

XVI. NOTICES

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

The City's address:

Lea Dun
Deputy City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

Metrocrest's address:

Bunny Summerlin
Executive Director
Metrocrest Social Services
1111 W. Beltline Rd., #100
Carrollton, Texas 75006

XVII. SEVERABILITY

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

XVIII. AUTHORITY TO EXECUTE CONTRACT

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

XIX. ENTIRE AGREEMENT

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

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

TOWN OF ADDISON, TEXAS

METROCREST SOCIAL SERVICES

By: _____
Ron Whitehead, City Manager

By: _____
Bunny Summerlin, Executive Director

ATTEST:

ATTEST:

By: _____
Lea Dunn, City Secretary

By: _____

(printed name)
Its: _____

STATE OF TEXAS

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CONTRACT FOR SERVICES

COUNTY OF DALLAS

This Contract for Services ("Contract")_ is made and entered into as of the 1st day of October, 2009 by and between the Town of Addison, Texas (the "City"), and the Richardson Symphony Orchestra (the "Orchestra").

WITNESSETH:

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

WHEREAS, the Orchestra's productions and work attract tourists to and encourages tourism in the City, and the City has an interest in attracting such tourists and promoting tourism to the area in order to receive the economic benefits associated therewith.; and

WHEREAS, it is the City's desire to encourage and promote the arts, including, without limitation, music; and

WHEREAS, the City is authorized to expend revenues from its hotel occupancy tax for the encouragement, promotion, improvement, and application of the arts, including, without limitation, music, and desires to encourage and promote the arts (including music) through the execution of this Contract for Services.

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

I. TERM

The term of this contract and agreement shall be for a period of one year from the 1st day of October, 2009 through the 30th day of September, 2010, except as otherwise provided for herein.

II. SERVICES

The Orchestra shall provide the following services:

(a) Provide participation in Addison Urbanato: A Kaleidoscope of Art, Music, Culture, and Fun in October 2009, with participation details to be determined with the Town of Addison during the City's 2009-2010 fiscal year.

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

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

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

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

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

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

III. COMPENSATION

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

IV. RESPONSIBILITY; INDEMNIFICATION

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

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

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

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

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

V. TERMINATION

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

VI. CONFLICT OF INTEREST

(a) No officer or employee of the City shall have any interest or receive any benefit, direct or indirect, in this Contract or the proceeds thereof. This prohibition is not intended and

should not be construed to preclude payment of expenses legitimately incurred by City officials in the conduct of the City's business.

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

VII. ACCOUNTING

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

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

Orchestra shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the thirtieth (30th) day after the close of each quarter (beginning with the quarter ending December 31, 2009, with the last quarter ending September 30, 2010), Orchestra shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by Orchestra of the funds paid to Orchestra under this Contract; and (b) a year-to-date report of the expenditures made by Orchestra of the funds paid to Orchestra under this Contract (and if this Contract is terminated prior to its expiration, Orchestra shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, Orchestra shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of Orchestra's fiscal year, Orchestra shall provide the City with a financial statement signed by the Chairman of Orchestra's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth Orchestra's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

VIII. INDEPENDENT CONTRACTOR

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

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

IX. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT

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

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

X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

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

XI. COPYRIGHT

Orchestra assumes full responsibility for complying with all United States laws and treaty terms pertaining to intellectual property issues and any applicable regulations, including but not limited to the assumption of all responsibilities for paying all royalties which are due for the use of domestic or foreign copyrighted works in Orchestra's performances, transmissions or broadcasts, and ORCHESTRA, without limiting any other indemnity given by Orchestra as set forth herein, AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICIALS, OFFICERS, EMPLOYEES, AND AGENTS, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY LIABILITY, CLAIMS, OR DAMAGES (INCLUDING BUT NOT LIMITED TO COURT COSTS AND ATTORNEY'S FEES) GROWING OUT OF DANCE ORCHESTRA'S OR VIOLATION OF ANY STATUTE, TREATY TERM, OR REGULATION APPLICABLE TO INTELLECTUAL PROPERTY RIGHTS, INCLUDING BUT NOT LIMITED TO COPYRIGHTS.

XII. NON-DISCRIMINATION

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

XIII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS; RECITALS

Orchestra shall observe and abide by, and this Contract is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended. The above and foregoing recitals to this Contract are true and correct and are incorporated herein and made a part hereof.

XIV. VENUE; GOVERNING LAW

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

XV. COUNTERPARTS

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

XVI. NO WAIVER; RIGHTS CUMULATIVE

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

XVII. NOTICES

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

The City's address:

Lea Dunn
Deputy City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

Orchestra's address:

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

XVIII. SEVERABILITY

The terms of this Contract are severable, and if any section, paragraph, clause, or other portion of this Contract shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Contract shall remain in full force and effect and the parties shall be

deemed to have contracted as if said section, paragraph, clause or portion had not been in the Contract initially.

XIX. AUTHORITY TO EXECUTE CONTRACT

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

XX. ENTIRE AGREEMENT

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

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

TOWN OF ADDISON, TEXAS

**RICHARDSON SYMPHONY
ORCHESTRA**

By: _____
Ron Whitehead, City Manager

By: _____
George Landis, Executive Director

ATTEST:

ATTEST:

By: _____
Lea Dunn, City Secretary

By: _____

STATE OF TEXAS

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CONTRACT FOR SERVICES

COUNTY OF DALLAS

This Contract for Services ("Contract") is made and entered into as of the 1st day of October, 2009 by and between the Town of Addison, Texas (the "City") and the Second Thought Theatre (the "Second Thought Theatre").

WITNESSETH:

WHEREAS, the Second Thought Theatre is a private, non-profit organization established under the laws of the State of Texas for the purpose of producing and presenting theatrical productions for North Texas, including the Town of Addison; and

WHEREAS, the Second Thought Theatre's theatrical productions keep with the highest national standards and enlighten and entertain their audiences at the same time; and

WHEREAS, it is the City's desire to encourage and promote the arts, including theatre and theatrical productions; and

WHEREAS, the City is authorized to expend revenues from its hotel occupancy tax for the encouragement, promotion, improvement, and promote the arts (including theatrical performances) through the execution of this Contract for Services.

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

I. TERM

The term of this contract and agreement shall be for a period of one year from the 1st day of October, 2009 through the 30th day of September, 2010, except as otherwise provided for herein.

II. SERVICES

The Second Thought Theatre shall provide the following services to the City:

(a) Presentation and performance of three main stage productions, with participation details to be determined with the Town of Addison during the City's 2009-2010 fiscal year.

(b) Presentation of a Reading Series designed to workshop and develop original works primarily by Texas playwrights.

(c) Participation in WaterTower Theatre's Out of the L Festival in March of 2010 and the Festival of Independent Theatres at the Bath House Cultural Center in July 2010.

(d) The inclusion of the Addison logo on any website that is owned, maintained, or controlled by the Second Thought Theatre. The Second Thought Theatre shall contact the City regarding the details of including the Addison logo on the web site.

(e) Provide a banner sign of the City at each second Thought Theatre event which takes place in the City (with a banner sign to be provided by the City).

(g) Submit detailed quarterly financial statements and program results to the City within thirty (30) days after the end of the preceding quarter listing the expenditures made by the Second Thought Theatre with the revenues received pursuant to this Contract.

III. COMPENSATION

For the operation and provision of the services, projects and programs of the Second Thought Theatre as described herein, the City shall pay the Second Thought Theatre the sum of Fifteen Thousand and No/100 Dollars (\$15,000.00). Such sum shall be paid on or before January 1, 2010, provided Second Thought Theatre is not then in default of this Contract.

IV. INDEMNIFICATION

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

(b) ***INDEMNITY OWED BY SECOND THOUGHT THEATRE.*** Second Thought Theatre covenants and agrees to **FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS** the Town of Addison, Texas and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas, individually or collectively, in both their official and private capacities (the Town of Addison, Texas and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas each being an "**Addison Person**" and collectively the "**Addison Persons**"), from and against any and all costs, claims, liens, harm, damages, losses, expenses, fees, fines, penalties, proceedings, judgments, actions, demands, causes of action, liability, and suits, of any kind and nature whatsoever made upon any Addison Person, whether directly or indirectly, (the "Claims"), that arise out of, result from, or relate to: (1) the Services as defined in Section II of this Contract; (2) representations or warranties by Second Thought Theatre under this Contract; and/or (3) any other act or omission under or in performance of this Contract by Second Thought Theatre, or any owner, officer, director, manager, employee, agent, representative, consultant, contractor, subcontractor, licensee, invitee, patron, guest, customer, or concessionaire of or for Second Thought Theatre, or any other person or entity for whom Second Thought Theatre is legally responsible, and their respective owners, officers, directors, managers, employees, agents, representatives,

consultants, contractors, subcontractors, licensees, , invitees, patrons, guests, customers, and concessionaires. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

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

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

V. TERMINATION

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

VI. CONFLICT OF INTEREST

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

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

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

VII. ACCOUNTING

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

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

Second Thought Theatre shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the thirtieth (30th) day after the close of each quarter (beginning with the quarter ending December 31, 2009, with the last quarter ending September 30, 2010), Second Thought Theatre shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by Second Thought Theatre of the funds paid to Second Thought Theatre under this Contract; and (b) a year-to-date report of the expenditures made by Second Thought Theatre of the funds paid to Second Thought Theatre under this Contract (and if this Contract is terminated prior to its expiration, Second Thought Theatre shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, Second Thought Theatre shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of Second Thought Theatre's fiscal year, Second Thought Theatre shall provide the City with a financial statement signed by the Chairman of Second Thought Theatre's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth Second Thought Theatre's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

VIII. INDEPENDENT CONTRACTOR

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

relationship, or to allow the City to exercise discretion or control over the manner in which the Second Thought Theatre performs the services which are described in this Contract.

IX. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT

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

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

X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

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

XI. COPYRIGHT

Second Thought Theatre assumes full responsibility for complying with all United States laws and treaty terms pertaining to intellectual property issues and any applicable regulations, including but not limited to the assumption of all responsibilities for paying all royalties which are due for the use of domestic or foreign copyrighted works in Second Thought Theatre's performances, transmissions or broadcasts, and Second Thought Theatre, without limiting any other indemnity given by Second Thought Theatre as set forth herein, AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICIALS, OFFICERS, EMPLOYEES, AND AGENTS, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY LIABILITY, CLAIMS, OR DAMAGES (INCLUDING BUT NOT LIMITED TO COURT COSTS AND ATTORNEY'S FEES) GROWING OUT OF SECOND THOUGHT THEATRE'S INFRINGEMENT OR VIOLATION OF ANY STATUTE, TREATY TERM, OR REGULATION APPLICABLE TO INTELLECTUAL PROPERTY RIGHTS, INCLUDING BUT NOT LIMITED TO COPYRIGHTS.

XII. NON-DISCRIMINATION

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

XIII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS; RECITALS

Second Thought Theatre shall observe and abide by, and this Contract is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist

or as they may be hereafter amended. The above and foregoing recitals to this Contract are true and correct and incorporated herein and made a part hereof.

XIV. VENUE; GOVERNING LAW

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

XV. COUNTERPARTS

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

XVI. NO WAIVER; RIGHTS CUMULATIVE

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

XVII. NOTICES

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

The City's address:

Lea Dunn
Deputy City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

Second Thought Theatre's address:

David Leggett
Board President
3532 McKinney Avenue, Box 452
Dallas, Texas 75204

XVIII. SEVERABILITY

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

XIX. AUTHORITY TO EXECUTE CONTRACT

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

XX. ENTIRE AGREEMENT

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

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

TOWN OF ADDISON, TEXAS

SECOND THOUGHT THEATRE

By: _____
Ron Whitehead, City Manager

By: _____
David Leggett, Board President

ATTEST:

ATTEST:

By: _____
Lea Dunn, City Secretary

By: _____

STATE OF TEXAS

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CONTRACT FOR SERVICES

COUNTY OF DALLAS

This Contract for Services ("Contract") is made and entered into as of the 1st day of October, 2009 by and between the Town of Addison, Texas (the "City") and Senior Adult Services of Addison, Carrollton, Coppell, and Farmers Branch ("Senior Adult Services").

WITNESSETH:

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

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

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

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

I. TERM

The term of this Contract shall be for a period of one year from October 1, 2009 through September 30, 2010, except as otherwise provided for herein.

II. SERVICES

Senior Adult Services covenants and agrees that it shall:

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

(6) Care Givers Support

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

III. COMPENSATION

For the operation and provision of the services, projects and programs of Senior Adult Services as described herein, the City shall pay Senior Adult Services the sum of Seventeen Thousand and No/100 Dollars (\$17,000.00). Such sum shall be paid on or before January 1, 2010, provided Senior Adult Services is not then in default of this Contract.

IV. INDEMNIFICATION

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

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

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

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

V. TERMINATION

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

VI. CONFLICT OF INTEREST

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

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

VII. ACCOUNTING

Prior to adopting its annual budget, Senior Adult Services shall submit for the City's review a budget showing the use of the City's funds provided pursuant to this Contract, and Senior Adult Services shall make such periodic reports to the City, as provided for herein, listing the expenditures

made by Senior Adult Services from the funds provided by the City. The approval of Senior Adult Services' annual budget creates a fiduciary duty in Senior Adult Services with respect to the funds provided by the City under this Contract.

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

Senior Adult Services shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the thirtieth (30th) day after the close of each quarter (beginning with the quarter ending December 31, 2009, with the last quarter ending September 30, 2010), Senior Adult Services shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by Senior Adult Services of the funds paid to Senior Adult Services under this Contract; and (b) a year-to-date report of the expenditures made by Senior Adult Services of the funds paid to Senior Adult Services under this Contract (and if this Contract is terminated prior to its expiration, Senior Adult Services shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, Senior Adult Services shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of Senior Adult Services' fiscal year, Senior Adult Services shall provide the City with a financial statement signed by the Chairman of Senior Adult Services' Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth Senior Adult Services' income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

VIII. INDEPENDENT CONTRACTOR

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

IX. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT

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

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

X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

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

XI. NON-DISCRIMINATION

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

XII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS; RECITALS

Senior Adult Services shall observe and abide by, and this Contract is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended. The above and foregoing recitals to this Contract are true and correct and incorporated herein and made a part hereof.

XIII. VENUE; GOVERNING LAW

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

XIV. COUNTERPARTS

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

XV. NO WAIVER; RIGHTS CUMULATIVE

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

XVI. NOTICES

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

The Town's address:

Lea Dunn
Deputy City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

Senior Adult Services' address:

Gregory Gerendas
Executive Director
Senior Adult Services
1111 W. Belt Line Rd., Suite #110
Carrollton, Texas 75006

XVII. SEVERABILITY

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

XVIII. AUTHORITY TO EXECUTE CONTRACT

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

XIX. ENTIRE CONTRACT

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

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

TOWN OF ADDISON, TEXAS

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

By: _____
Ron Whitehead, City Manager

By: _____
Gregory Gerendas, Executive Director

ATTEST:

ATTEST:

By: _____
Lea Dunn, City Secretary

By: _____

(printed name)

Its: _____

STATE OF TEXAS

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CONTRACT FOR SERVICES

COUNTY OF DALLAS

This Contract for Services ("Contract") is made and entered into as of the 1st day of October, 2009 by and between the Town of Addison, Texas (the "City") and Special Care and Career Services ("Provider").

WITNESSETH:

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

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

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

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

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

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

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

I. TERM

The term of this Contract shall be for a period of one year from the 1st day of October, 2009 through the 30th day of September, 2010, except as otherwise provided for herein.

II. SERVICES

Provider covenants and agrees that it shall:

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

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

(c) Use the funds paid to Senior Adult Services pursuant to this Contract for services provided to children and adults who receive services in Addison only; and

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

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

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

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

III. COMPENSATION

For the operation and provision of the services, projects and programs of Provider as described herein, the City shall pay Provider the sum of Five Thousand and No/100 Dollars (\$5,000.00). Such sum shall be paid on or before January 1, 2010, provided Provider is not then in default of this Contract.

IV. RESPONSIBILITY; INDEMNIFICATION

(a) SPECIAL CARE AND CAREER SERVICES AGREES TO ASSUME AND DOES HEREBY ASSUME ALL RESPONSIBILITY AND LIABILITY FOR DAMAGES OR INJURIES SUSTAINED BY PERSONS OR PROPERTY, WHETHER REAL OR ASSERTED,

BY OR FROM THE PERFORMANCE OF SERVICES PERFORMED AND TO BE PERFORMED HEREUNDER BY SPECIAL CARE AND CAREER SERVICES OR BY ITS OFFICIALS, OFFICERS, EMPLOYEES, OWNERS, MEMBERS, AGENTS, SERVANTS, INVITEES, GUESTS, VOLUNTEERS, CONTRACTORS, SUBCONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE.

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

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

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

V. TERMINATION

This Contract may be canceled and terminated by either party at any time and for any reason upon giving at least thirty (30) days written notice of such cancellation and termination to the other

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

VI. CONFLICT OF INTEREST

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

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

VII. ACCOUNTING

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

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

Provider shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the thirtieth (30th) day after the close of each quarter (beginning with the quarter ending December 31, 2009, with the last quarter ending September 30, 2010), Provider shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by Provider of the funds paid to Provider under this Contract; and (b) a year-to-date report of the

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

VIII. INDEPENDENT CONTRACTOR

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

IX. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT

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

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

X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

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

XI. NON-DISCRIMINATION

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

XII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS; RECITALS

Provider shall observe and abide by, and this Contract is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended. The above and foregoing recitals to this Contract are true and correct and incorporated herein and made a part hereof.

XIII. VENUE; GOVERNING LAW

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

XIV. COUNTERPARTS

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

XV. NO WAIVER; RIGHTS CUMULATIVE

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

XVI. NOTICES

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

The City's address:

Lea Dunn
Assistant City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

Special Care and Career Services' address:

Cathy Packard
Executive Director
Special Care & Career Services
4350 Sigma, Suite 100
Farmers Branch, Texas 75244

XVII. SEVERABILITY

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

XVIII. AUTHORITY TO EXECUTE CONTRACT

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

XIX. ENTIRE AGREEMENT

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

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

TOWN OF ADDISON, TEXAS

SPECIAL CARE AND CAREER SERVICES

By: _____
Ron Whitehead, City Manager

By: _____
Cathy Packard, Executive Director

ATTEST:

ATTEST:

By: _____
Lea Dunn, City Secretary

By: _____

(printed name)
Its: _____

STATE OF TEXAS

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CONTRACT FOR SERVICES

COUNTY OF DALLAS

This Contract for Services ("Contract") is made and entered into as of the 1st day of October, 2009 by and between the Town of Addison, Texas (the "City"), and The Family Place, Inc. ("The Family Place").

WITNESSETH:

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

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

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

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

I. TERM

The term of this Contract shall be for a period of one year from the 1st day of October, 2009 through the 30th day of September, 2010, except as otherwise provided for herein.

II. SERVICES

The Family Place covenants and agrees that it shall:

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

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

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

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

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

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

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

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

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

III. COMPENSATION

For the operation and provision of the services, projects and programs of The Family Place as described herein, the City shall pay The Family Place the sum of Ten Thousand and No/100 Dollars (\$10,000.00). Such sum shall be paid on or before January 1, 20010, provided The Family Place is not then in default of this Contract.

IV. RESPONSIBILITY; INDEMNIFICATION

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

EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE.

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

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

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

V. TERMINATION

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

this Contract by 365 (the "daily rate"), and then multiplying the daily rate by the number of days which would have remained in the term hereof but for the cancellation or termination. Upon payment or tender of such amount, all of the obligations of The Family Place and the City under this Contract shall be discharged and terminated (except as otherwise provided herein) and no action shall lie or accrue for additional benefit, consideration or value for or based upon the services performed under or pursuant to this Contract.

VI. CONFLICT OF INTEREST

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

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

VII. ACCOUNTING

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

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

The Family Place shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the thirtieth (30th) day after the close of each quarter (beginning with the quarter ending December 31, 2009, with the last quarter ending September 30, 2010), The Family Place shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by The Family Place of the funds paid to The Family Place under this Contract; and (b) a year-to-date report of the expenditures made by The Family Place of the funds paid to The Family Place under this Contract (and if this Contract is terminated prior to its expiration, The Family Place shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, The Family Place shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of The Family Place's fiscal year, The Family Place shall provide the City with

a financial statement signed by the Chairman of The Family Place's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth The Family Place's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

VIII. INDEPENDENT CONTRACTOR

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

IX. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT

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

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

X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPIRS

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

XI. NON-DISCRIMINATION

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

XII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS; RECITALS

The Family Place shall observe and abide by, and this Contract is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended. The above and foregoing recitals to this Contract are true and correct and incorporated herein and made a part hereof.

XIII. VENUE; GOVERNING LAW

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

XIV. COUNTERPARTS

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

XV. NO WAIVER; RIGHTS CUMULATIVE

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

XVI. NOTICES

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

The City's address:

Lea Dunn
Assistant City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

The Family Place's address:

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

XVII. SEVERABILITY

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

XVIII. AUTHORITY TO EXECUTE CONTRACT

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

XIX. ENTIRE CONTRACT

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

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

TOWN OF ADDISON, TEXAS

THE FAMILY PLACE, INC.

By: _____
Ron Whitehead, City Manager

By: _____
Paige Flink, Executive Director

ATTEST:

ATTEST:

By: _____
Lea Dunn, City Secretary

By: _____
Its: _____

STATE OF TEXAS

§
§
§

CONTRACT FOR SERVICES

COUNTY OF DALLAS

This Contract for Services ("Contract") is made and entered into as of the 1st day of October, 2009 by and between the Town of Addison, Texas (the "City") and the WaterTower Theatre Incorporated ("WTT"), a Texas non-profit corporation with its principal place of business in Addison, Dallas County, Texas.

WHEREAS, WTT is a Texas non-profit corporation which exists for the purpose of the development and advancement of theatre and drama in the City as well as to promote theatrical activities through numerous productions throughout the year; and

WHEREAS, WTT's productions and work attract tourists to and encourages tourism in the City, and the City has an interest in attracting such tourists and promoting tourism to the area in order to receive the economic benefits associated therewith; and

WHEREAS, it is the City's desire to encourage and promote the arts, including, without limitation, theatre; and

WHEREAS, the City is authorized to expend revenues from its hotel occupancy tax for the encouragement, promotion, improvement, and application of the arts, including, without limitation, theatre, and desires to encourage and promote the arts (including theatre) through the execution of this Contract for Services.

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

I. TERM

The term of this Contract shall be for a period of one year from the 1st day of October, 2009 through the 30th day of September, 2010, except as otherwise provided for herein.

II. SERVICES

WTT shall provide the following services:

(a) Provide participation in Addison Urbanto: A Kaleidoscoppoe of Art, Music, Culture, and Fun in October 2009, with participation details to be determined in partnership with the Town of Addison during FY 2009-2010.

(b) Presentation of a minimum of five (5) main stage productions, two (2) holiday productions, and The Out of the Loop Festival.

- (c) Recognition of the City in all playbills printed in connection with the productions.
- (d) Work with all hotels located in the City to generate awareness regarding the theatre.
- (e) Submit detailed quarterly financial statements and program results to the City within thirty (30) days after the end of the preceding quarter listing the expenditures made by WTT with the revenues received pursuant to this Contract.

III. COMPENSATION

The City agrees to pay WTT as base consideration the sum of Two Hundred Forty Thousand and No/100 Dollars (\$240,000.00) "Base Consideration" from its revenue derived from the City's hotel occupancy tax, provided that the minimum number of shows are actually presented and performed as set forth in this Contract. Payment of the Base Consideration to WTT will be made by the Town on or before January 1, 2010. In addition to the Base Consideration as provided above, the City agrees to pay to WTT "Matching Funds" in an amount up to One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00). A description of what constitutes Matching Funds and the process for the payment of such Funds is set forth in Exhibit A attached hereto and incorporated herein.

In the event the City terminates this Contract as provided for in Section V, the City shall not be liable to WTT for the payment of any portion of the unpaid funds. The City also reserves the right to pursue all legal remedies against WTT for funds previously paid to WTT in the event WTT defaults on any term of this Contract.

IV. INDEMNIFICATION

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

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

OF WTT OR OF ANY OF THE WTT PARTIES), INCLUDING DAMAGES CAUSED BY THE INDEMNITEE'S OWN NEGLIGENCE.

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

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

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

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

V. TERMINATION

(a) The City may terminate this Contract at any time if;

(1) WTT defaults on any provision of this Contract and fails to correct such default after thirty (30) days written notice of default from the City; or

(2) WTT fails to make any payment required under the Agreement For The Use of The Addison Theatre Centre within thirty (30) days after written notification of delinquency of payment by the City; or

(3) The City gives WTT at least sixty (60) days prior written notice; or

(4) WTT has offered, conferred, or agreed to confer any benefit upon a City employee or official that the City employee or official is prohibited by law from accepting; or

(5) If WTT should violate the provision in Section XII, Non-Discrimination and fails to correct the violations within thirty (30) days of written notice of the violation by the City.

VI. CONFLICT OF INTEREST

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

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

VII. ACCOUNTING

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

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

WTT shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the thirtieth (30th) day after the close of each quarter (beginning with the quarter ending December 31, 2009, with the last quarter ending September 30, 2010), WTT shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by WTT of the funds paid to WTT under this Contract; and (b) a year-to-date report of the expenditures made by WTT of the funds paid to WTT under this Contract (and if this Contract is terminated prior to its expiration, WTT shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, WTT shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of WTT's fiscal year, WTT shall provide the City with a financial statement signed by the Chairman of WTT's Board of Directors (or other person acceptable to the Town) and audited by an independent Certified Public Accountant, setting forth WTT's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

VIII. INDEPENDENT CONTRACTOR

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

IX. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT

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

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

X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

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

XI. COPYRIGHT

WTT assumes full responsibility for complying with all United States laws and treaty terms pertaining to intellectual property issues and any applicable regulations, including but not limited to the assumption of all responsibilities for paying all royalties which are due for the use of domestic or foreign copyrighted works in WTT's performances, transmissions or broadcasts, and WTT, without limiting any other indemnity given by WTT as set forth herein, AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICIALS, OFFICERS, EMPLOYEES, AND AGENTS, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY LIABILITY, CLAIMS, OR DAMAGES (INCLUDING BUT NOT LIMITED TO COURT COSTS AND ATTORNEY'S FEES) GROWING OUT OF WTT'S INFRINGEMENT OR VIOLATION OF ANY STATUTE, TREATY TERM, OR REGULATION APPLICABLE TO INTELLECTUAL PROPERTY RIGHTS, INCLUDING BUT NOT LIMITED TO COPYRIGHTS.

XII. NON-DISCRIMINATION

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

XIII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS; RECITALS

WTT shall observe and abide by, and this Contract is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended. The above and foregoing recitals to this Agreement are true and correct and incorporated herein and made a part hereof.

XIV. VENUE; GOVERNING LAW

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

XV. COUNTERPARTS

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

XVI. NO WAIVER; RIGHTS CUMULATIVE

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

XVII. NOTICES

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

The City's address:

Lea Dunn
Deputy City Manager
Town of Addison
5300 Belt Line Road

WTT's address:

Terry Martin
Artistic Director
WaterTower Theatre Incorporated
15650 Addison Road

XVIII. SEVERABILITY

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

XIX. AUTHORITY TO EXECUTE CONTRACT

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

XX. ENTIRE AGREEMENT

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

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

TOWN OF ADDISON, TEXAS

**WATERTOWER THEATRE
INCORPORATED**

By: _____
Ron Whitehead, City Manager

By: _____
Terry Martin, Artistic Director

ATTEST:

ATTEST:

By: _____
Lea Dunn, City Secretary

By: _____
Its _____

EXHIBIT "A"
TO
2009-2010 CONTRACT FOR SERVICES
BETWEEN THE TOWN OF ADDISON
AND WATERTOWER THEATRE INCORPORATED

DESCRIPTION OF "MATCHING FUNDS" AND PROCESS FOR
DISTRIBUTION OF MATCHING FUNDS
FOR WATERTOWER THEATRE INCORPORATED
FROM HOTEL/MOTEL TAX FUNDS

For each One Dollar of Theatre Funds (as defined herein) actually received by WTT, the City shall pay to WTT an equal amount ("Matching Funds") up to but not exceeding One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00). In order to receive Matching Funds, WTT shall provide to the City such proof of its receipt of Theatre Funds as the City shall reasonably require. WTT shall make application on or before the 15th day of each month for distribution of Matching Funds (beginning January 16, 2010) and the City shall pay such Matching Funds provided the City has received adequate proof, in the City's sole opinion, of the actual receipt of Theatre Funds by WTT as set forth in each application.

For purposes of this Agreement, the term "Theatre Funds" shall mean and include: (i) cash funds actually received by WTT during the term hereof from any gifts, grants, donations, or other cash contributions from any person or business entity (whether for-profit or non-profit), and (ii) that amount of funds determined by multiplying (a) the number of 2010 WTT season tickets sold by WTT on or before November 15, 2009, times (b) the average cost of a single season ticket, times (c) 25%. For purposes of this Agreement, the average cost of a single season ticket shall be \$100.00.

AGREEMENT FOR THE USE OF THE ADDISON THEATRE CENTRE

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

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

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

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

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

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

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

SECTION 1

PURPOSE; THEATRE CENTRE DEFINED

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

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

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

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

SECTION 2

LEASE OF THEATRE CENTRE

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

SECTION 3

TERM AND TERMINATION

(a) The term of this Agreement is for a period beginning on the 1st day of October 2009, and continuing until September 30, 2010, unless the term is extended or earlier cancelled, as provided herein.

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

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

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

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

(iv) WTT fails to comply with any term of the 2009-2010 Contract for Services between the Town of Addison and Water Tower Theatre Company within thirty (30) days after written notice of such failure to comply from the TOWN.

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

(d) This Agreement may be renewed and extended for a term of twelve (12) months beginning October 1, 2010, and ending September 30, 2011, and for like twelve (12) month periods thereafter upon the express written consent of the TOWN and WTT, given within ninety (90) days prior to October 1st each succeeding year.

SECTION 4

USE AND OCCUPANCY BY WTT

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

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

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

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

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

Performance Days	One hour prior to each performance through the intermission of that performance
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(ii) During WTT Non-Production/Presentation of Show Weeks:

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

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

patrons at the Theatre Centre to vacate the premises and contacting the emergency services of the Town of Addison.

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

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

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

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

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

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

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

(d) *Food and Beverage.* Food and beverages are prohibited within the main performance space at the Theatre Centre. The sole exception will be during non-performance times when bottled water with a lid may be brought into the main performance space. However, no liquid may be stored or consumed in the vicinity of any electronic equipment.

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

SECTION 5

USE AND OCCUPANCY BY THE TOWN

(a) *Scheduling Other Events.* Other than the dates and times when WTT has scheduled an event in accordance with Section 4, the TOWN has the unrestricted right to

schedule other events in the Theatre Centre and utilize the scenery in place on such dates and times. The TOWN and WTT agree to cooperate and assist the other in scheduling events in the Theatre Centre for dates not scheduled by WTT. However, such efforts by WTT are subject to the express terms of Section 20 of this Agreement, and WTT recognizes that only the TOWN has authority to book events. Any damage to the set resulting from an event booked into the Addison Theatre Centre (“ATC”) main space by the TOWN will be repaired at the TOWN’s expense.

(b) *Concessions.*

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

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

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

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

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

(1) Tickets Sold at the Box Office (in person or by telephone):

Computer Set-Up	\$75.00 for each Third Party Show
Ticket Sales Handling Fee (prior to the Third Party Show)	\$ 1.00 per Order (regardless of the number of tickets in an Order)

A reasonable credit card handling fee equal to three percent (3%) shall be charged for those tickets purchased with a credit card.

(2) Tickets Sold at the Box Office During Third Party Show:

First Performance	\$100.00 for the performance
Additional Performance	\$ 75.00 for each additional performance

(ii) In connection with each Third Party Show:

- (1) Blank ticket stock will be provided to WTT by the TOWN;
- (2) Third Party Show information shall be provided to WTT at least two (2) weeks prior to the first performance (to allow for set-up and ticket sales);
- (3) Ticket sales by WTT shall begin at least one (1) week prior to the first performance;
- (4) WTT personnel will carry out industry standard box office responsibilities;
- (5) The TOWN shall provide an employee or designated contract person to be present during a Third Party Show and to secure the Theatre Centre at the conclusion of a Third Party Show;
- (6) The organizer of the Third Party Show will be responsible for (x) house manager/ushers, (y) concessions/concessionaires, and (z) cleaning following a Show;
- (7) The TOWN shall seek to have the producer of the Third Party Show indemnify the Town and WTT for liability in connection with the Third Party Show.

SECTION 6

RENTAL

(a) WTT shall pay to the TOWN rent for its use of the office areas and other areas as reserved by WTT, according to the schedule of fees set forth in Exhibit B, attached hereto and made a part hereof. Payments for rent shall be made in twelve (12) equal installments, with each installment being due and payable on or before the 15th day of each month as payment for the immediately preceding month. The first such installment of rent is due and payable on or before November 15, 2009, and the last such installment is due and payable on or before October 15, 2010 (and the obligation of WTT to make the last installment shall survive the expiration of this Agreement). The rent paid by WTT may be adjusted from time to time to reflect a cancellation or addition of a show or event by WTT. The TOWN further reserves the right to adjust the rates of the fees set out on Exhibit B from time to time in accordance with changes in the costs associated with operating the facility, by providing WTT at least 45 days prior written notice of the change. The TOWN shall invoice WTT for all dates, times and spaces reserved by WTT, including the fees for use of Office Spaces, as defined in Section 4(a).

(b) WTT will not be required to pay the fee for a date, or time, or space cancelled if the space is cancelled more than forty-five (45) days prior to the scheduled date or time.

(c) Cancellation less than forty-five (45) days prior to the scheduled date or time will require full payment for committed space.

(d) WTT agrees to pay the TOWN a monthly fee for telephone service. This fee will be charged for standard monthly service and long distance charges. In addition, any changes to the phone system requested by WTT will be charged back to WTT at the prevailing rate.

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

SECTION 7

USE OF EQUIPMENT

The TOWN recognizes that there may be third party users of the Theatre Centre for the purposes of staging a theatrical performance and that they may request the use of TOWN-owned equipment. Any lease or other agreement with a third party user allowed to operate TOWN-owned equipment shall expressly provide that any damages to or loss of the equipment from a third party user shall be the responsibility of that third party, and deposits will be required in the discretion of the TOWN. Any damages to or loss of TOWN-owned equipment in the Theatre Centre during the conduct of WTT's performances, WTT Education Department programming or day-to-day use by WTT shall be the responsibility of WTT.

If WTT desires to use and operate TOWN-owned equipment including but not limited to lighting and sound systems, then WTT shall obtain approval on a per-show basis from the TOWN for the use by WTT's technicians. Use of automated lighting fixtures, sound and lighting control console, and wireless microphones must have prior written approval by ACTC Manager. The cost of repair for any damage to the equipment from use of the equipment by WTT or replacement of any lost equipment shall be the sole responsibility of WTT and shall be subject to offset against any funding or grant obligations of the TOWN to WTT. The TOWN shall not be responsible for consequential damages resulting from inability to use the equipment. WTT agrees that each person employed by WTT to provide services in the Theatre Centre will be required to conduct himself/herself in a professional manner, and WTT will cooperate with the TOWN to assure professional conduct is maintained at all times.

All details of the production/event must be provided in writing to the Manager at least one month prior to the first day of occupancy of the space. No equipment owned by the TOWN may be contracted or committed by WTT without the manager's approval. No services provided by Town employees may be contracted or committed by WTT without the Manager's written approval. In the event WTT is working in conjunction with an outside company as co-presenter

or producer, a written list of equipment needed must be submitted to the Manager one month prior to WTT signing a contract with the outside company.

SECTION 8

TOWN OF ADDISON TECHNICAL COORDINATOR

The TOWN employs an individual in the role of Technical Coordinator whose duties include protecting and maintaining the TOWN's investment in equipment and facilities at the Theatre Centre. In addition, the Technical Coordinator shall provide services relating to the technical nature of the facility and the presentation. Details of the services provided by the Technical Coordinator are available, in writing, from the Manager, upon request.

SECTION 9

UTILITIES

The TOWN shall provide for all water, air conditioning, heat, and electricity incurred in the Theatre Centre. WTT shall reimburse the Town for all costs associated with its telephone service. The TOWN shall not be liable to WTT in damages or otherwise for the quality, quantity, failure, availability, or disruption of water, air conditioning, heat, electricity, and other utilities furnished by the TOWN; provided that if WTT reasonably cancels any performance solely for and as the direct result of the TOWN's failure to provide any of the foregoing resources, and provided evidence of such cancellation by WTT and failure to provide such resources by the TOWN (which evidence shall be in form and content reasonably satisfactory to the TOWN) is promptly provided to the TOWN following such cancellation, WTT will have no obligation to pay the performance space rental fee amounts to the TOWN required pursuant to this Agreement in connection with the cancelled performance.

SECTION 10

MAINTENANCE SERVICES

(a) The TOWN shall provide:

(i) Routine janitorial service and maintain the interior of the Theatre Centre in a clean condition, by providing routine janitorial service one time per day as needed. WTT must leave the spaces in a reasonable condition following all productions/events, which includes but is not limited to: placing all lobby, green room and dressing room trash in garbage cans and walking the main space for playbills and trash left by patrons after every performance. The same definition of routine janitorial service applies to educational camps. Any services above routine will be billed to WTT at the prevailing rate.

(ii) Maintenance of the heating, ventilation and cooling system in the Theatre Centre.

(iii) Maintenance of the Theatre Centre grounds and structure in reasonably good condition and in compliance with applicable laws.

(b) The TOWN shall not be liable for repairs to any portion of the Theatre Centre until it receives written notice pursuant to the operating policies and procedures in Section 6(a), of the necessity for such repairs and, provided further, that such repairs are not necessitated by any act or omission of WTT, or any of WTT's agents, employees, contractors, invitees or patrons.

(c) WTT shall not cause or permit any waste, damage, or injury to the Theatre Centre. WTT shall, at its sole cost and expense, repair any damage or injury caused to the Theatre Centre by WTT, its employee's agents, invitees or patrons.

(d) WTT shall store its property and the personal property of the TOWN in a neat and orderly manner, and its operations in the Theatre Centre shall be carried out in accordance with the highest professional standards.

(e) WTT shall not store or maintain flammable or hazardous materials in the Theatre Centre in violation of the Fire Code or other applicable laws and codes.

(f) In the event the obligations of WTT set out in Sections (d) and (e), above, are not carried out in a timely manner, then the Town has the right, but not the obligation, to satisfy such requirements at the cost of WTT.

SECTION 11

OWNERSHIP OF PROPERTY

(a) The Theatre Centre and all improvements to the Theatre Centre are the property of the TOWN. All personal property owned by the TOWN and placed in the Theatre Centre remains the property of the TOWN.

(b) All personal property owned by WTT and placed in the Theatre Centre remains the property of WTT.

(c) All personal property owned by a sublease, contractor or concessionaire of the TOWN and placed in the Theatre Centre remains the property of the sublessee, contractor or concessionaire, respectively, unless otherwise provided in the sublease, concession contract, or contractor's contract.

(d) On or before July 1 of each year, during the existence or continuation of this agreement, WTT shall furnish to the TOWN a listing of all of the personal property of WTT located in the Theatre Centre.

(e) WTT shall not allow or permit any of the personal property of the TOWN to be loaned for use or operation by any third parties.

SECTION 12

ACKNOWLEDGEMENTS IN PRINTED MATERIALS

WTT agrees to prominently acknowledge the TOWN for its support of WTT in all appropriate printed materials. All public references to WTT will be characterized as “WTT at the Addison Theatre Centre” or some derivative of that indicating the WTT is at the ATC.

SECTION 13

INSURANCE

(a) WTT shall procure, pay for, and maintain the following insurance written by companies licensed in the State of Texas or meeting the surplus lines requirements of Texas law and acceptable to the City Manager. The insurance shall be evidenced by delivery of executed certificates of insurance and certified copies of the policies to the Manager. The insurance requirements shall remain in effect throughout the term of this Agreement. The City Manager reserves the right to modify the kinds of coverage and deductibles required and increase minimum limits of liability of the coverage whenever, in his discretion, it becomes necessary. Should such a modification be made by the TOWN, the TOWN will provide WTT written notice and 30 days to make the necessary modifications (or such longer period of time as WTT may require to make the necessary modifications, provided WTT shall at all times pursue such modifications with all due diligence and continuity).

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

(ii) *Commercial General Liability Insurance*, including Personal Injury Liability, Independent Contractor’s Liability, Premises Operation Liability, and Contractual Liability, covering, but not limited to, the liability assumed under the indemnification provisions of this Agreement, with limits of liability for bodily injury, death, and property damage of not less than \$1,000,000. Coverage must be on an “occurrence” basis, and the policy must include Broad Form Property Damage Coverage, with Fire and Extended Coverage Liability of not less than \$1,000,000 per occurrence.

(iii) *Comprehensive Automobile and Truck Liability Insurance* covering owned, hired and non-owned vehicles, with minimum limits of \$1,000,000, each occurrence, for bodily injury, death, and property damage, such insurance to include coverage for loading and unloading hazards.

(iv) \$2,000,000 combined single limits bodily injury and property damage liability insurance, including death, as an excess of all the primary coverages required above.

(b) Each liability insurance policy must include the following conditions by endorsement to the policy:

(i) The TOWN must be named as an additional insured.

(ii) Each policy must require that 60 days before the cancellation, nonrenewal, or any material change in coverage, a notice thereof shall be given to the TOWN by certified mail to: City Manager, Town of Addison, Box 9010, Addison, TX 75001-9010.

(iii) Companies issuing the insurance policies shall have no recourse against the TOWN for payment of any premiums, assessments, or any deductibles, all of which are at the sole risk of WTT.

(iv) The Term “Town” or “Town of Addison” includes all Authorities, Boards, Bureaus, Commissions, Divisions, Departments, and offices of the TOWN and the individual members, employees and agents of the TOWN including the TOWN’s Manager, while acting in their official capacities on behalf of the TOWN.

(v) The policy clause “Other Insurance” shall not apply to the TOWN where the TOWN is an additional named insured on the policy.

(c) Each party hereto hereby waives each and every claim which arises or may arise in its favor and against the other party hereto during the term of this lease or any extension or renewal thereof for any and all injuries (including death) and loss of, or damage to, any of its property which claim, loss or damage is covered by valid and collectible fire and extended coverage insurance policies, liability insurance policies, workers’ compensation policies, and any other insurance policies which may be in place from time to time, to the extent that such claim, loss or damage is recovered under said insurance policies. Said waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Agreement with respect to any loss, damage or injury (including death) to persons or to property. Inasmuch as the above mutual waivers will preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person), each party hereto hereby agrees immediately to give each insurance company which has issued to its policies of fire and extended coverage insurance, liability insurance, workers’ compensation insurance, or such other insurance, written notice of the terms of said mutual waivers, and to have said insurance policies properly endorsed, if necessary to prevent the invalidation of said insurance coverages by reason of said waivers.

(d) WTT shall use best efforts for security precautions necessary for the protection of its property. The TOWN shall be liable for any damage to or loss of WTT property used or stored on, in, or about the Theatre Centre, arising from negligence of the TOWN or its agents.

(e) Insurance required under this section must be furnished annually for the duration of this Agreement. Executed certificates of insurance must also be delivered annually.

(f) To the extent reasonably obtainable, the TOWN will secure fire and extended coverage insurance on the Theatre Centre with coverages and limits to be determined by the TOWN to insure the Theatre Centre with coverages and limits to be determined by the TOWN. In the event all or any portion of the Theatre Centre is damaged or destroyed by fire or other casualty, the TOWN shall, at its cost and expense, limited to a maximum expenditure of the amount of insurance proceeds, if any, available to the TOWN by reason of such fire or other casualty, restore, repair, replace and rebuild the Theatre Centre as nearly as possible to its value, condition and character immediately prior to such damage or destruction. Coverage provided in this subsection shall be for the benefit of the TOWN and shall not protect WTT for loss or damage of property owned by WTT.

SECTION 14

ABATEMENT OF NUISANCES; TOWN SPECIAL EVENTS

WTT shall promptly comply with all governmental orders and directives for the correction, prevention, and abatement of nuisances caused by WTT, its officers, agents, or employees, or invitees in or upon or connected with the Theatre Centre, and shall pay for the costs of compliance. The TOWN and WTT agree to cooperate with each other in the abatement of nuisances caused by noise associated with events scheduled in either the Conference or Theatre Centre. WTT hereby recognizes that the Town produces Special Events on scheduled dates through the year, which scheduled Special Events shall take priority over any other use, and notice of such Special Events will be made available to WTT (which notice may be made available by means or methods other than as set forth in Section 21 of this Agreement) at the earliest reasonable opportunity as determined by the TOWN.

SECTION 15

ALTERATIONS, ADDITIONS, AND IMPROVEMENTS

(a) To the extent reasonably necessary or desirable for WTT to use and occupy the Theatre Centre, upon prior written approval of the Manager, WTT may erect or install within the performance space any temporary alterations, additions, or equipment needed for a production which do not alter the structural integrity or basic configuration of the performance space. WTT must comply with all applicable governmental laws, statutes, ordinances, codes, and regulations regarding structures.

(b) All installations, alterations, additions and improvements made in, on, or to the Theatre Centre by WTT or the TOWN shall be deemed to be property of the TOWN and unless the TOWN directs otherwise, shall remain upon and be surrendered with the Theatre Centre as a part thereof in good order, condition and repair, ordinary wear and tear excepted, upon WTT's vacating or abandonment of the Theatre Centre. If the TOWN directs, WTT shall remove all or any portion of the improvements and WTT's property, on or immediately prior to the termination of WTT's right to possession. The Town may choose to reconfigure the theatre space at any time not reserved by WTT. The Town will return the seating to the previous configuration if requested by WTT.

SECTION 16

ASSUMPTION OF RESPONSIBILITY; INDEMNIFICATION

(a) WTT AGREES TO ASSUME AND DOES HEREBY ASSUME ALL RESPONSIBILITY AND LIABILITY FOR DAMAGES OR INJURIES SUSTAINED BY PERSONS OR PROPERTY, WHETHER REAL OR ASSERTED, BY OR FROM (I) THE PERFORMANCE OF SERVICES PERFORMED AND TO BE PERFORMED HEREUNDER, OR (II) THE OCCUPATION AND USE OF THE THEATRE CENTRE PURSUANT TO THIS AGREEMENT, BY WTT OR BY ANY OF ITS OWNERS, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, MEMBERS, AGENTS, SERVANTS, REPRESENTATIVES,

CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INVITEES, PATRONS, GUESTS, VOLUNTEERS, CUSTOMERS, AND CONCESSIONAIRES (IN THE CAPACITY AS OWNER, OFFICER, DIRECTOR, MANAGER, EMPLOYEE, MEMBER, AGENT, SERVANT, REPRESENTATIVE, CONSULTANT, CONTRACTOR, SUBCONTRACTOR, LICENSEE, INVITEE, PATRON, GUEST, VOLUNTEER, CUSTOMER, OR CONCESSIONAIRE OF OR FOR WTT), OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE.

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

WTT shall promptly advise the TOWN in writing of any claim or demand against any Addison Person or WTT related to or arising out of WTT's activities under this Agreement and shall see to the investigation and defense of such claim or demand at WTT's sole cost and

expense. The Addison Persons shall have the right, at the Addison Persons' option and at own expense, to participate in such defense without relieving WTT of any of its obligations hereunder.

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

SECTION 17

BONDS

Unless waived in writing by the City Manager, WTT agrees to cause its contractors to provide, before commencing any work or construction in its designated areas, a performance bond and labor and material payment bond for any improvements the construction of which could result in a third party filing or seeking to file a lien against the Theatre Centre, which is undertaken by WTT during the term of this Agreement in a sum equal to the full amount of the construction contract award, with the TOWN and WTT named as joint obligees.

SECTION 18

NON-DISCRIMINATION

During the term of this agreement, WTT shall not discriminate against any employee or applicant for employment because of race, age, color, sex or religion, ancestry, national origin, place of birth, or handicap. Should WTT violate the provisions of this section, or fail to comply with the requirements of the Americans with Disabilities Act, the TOWN may terminate this Agreement if WTT fails to correct the violations within 60 days of written notice of the violation by the TOWN.

SECTION 19

AUDITS

WTT shall have its financial statements audited on an annual basis by an independent auditing firm of certified public accountants and shall submit a copy of the auditor's report for the preceding fiscal year with its proposed annual operating budget to the City Manager. The TOWN reserves the right to require a special audit of WTT's books and records at any time either by the City Manager or by an outside independent auditor if such action is determined necessary by the Town Council. The TOWN shall pay all expense of the independent auditor related to the special audit. WTT shall make available to the TOWN or its agents all necessary books, records and other documents necessary to perform such audit.

SECTION 20

ASSIGNMENT; NO THIRD-PARTY BENEFIT

WTT shall not assign this Agreement, in whole or in part, without the prior written consent of the TOWN, which consent is in the sole and unrestricted discretion of the TOWN. Assignment of this Agreement shall not relieve WTT of its obligations under this Agreement. Approval of the TOWN to one assignment shall not constitute approval to any other or further assignment of this Agreement. WTT shall not sublease or sublet or permit the Theatre Centre, or any part thereof to be used by others.

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

SECTION 21

NOTICES

Any notice, payment, statement, or demand required or permitted to be given by either party to the other may be effected by personal delivery, actual receipt via regular mail, postage prepaid, return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section.

If intended for the TOWN, to:

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

If intended for WTT, to:

Terry Martin
Producing Artistic Director
WaterTower Theatre, Inc.
15650 Addison Road
Addison, TX 75001

SECTION 22

APPROVALS

(a) Whenever in this Agreement the approval of the TOWN is required for any purpose, WTT shall file the appropriate documents with the Addison Conference and Theatre Centre (“ACTC”) Manager with notice of action proposed to be taken, and the ACTC Manager agrees to notify WTT of the TOWN’s approval or disapproval within 60 days of the filing thereof.

(b) Approval shall be by the City Council of the TOWN where required by the Charter of the Town. The City Manager may delegate approval authority to the facilities manager or his authorized representatives where permitted by the Charter of the Town or ordinances, and notify WTT of such delegation.

SECTION 23

SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the TOWN and WTT and their respective successors and permitted assigns.

SECTION 24

APPLICABLE LAWS

This Agreement is made subject to the charter and ordinances of the TOWN, as amended, and all applicable laws and regulations of the State of Texas and the United States. The laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Agreement; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Agreement.

SECTION 25

INTELLECTUAL PROPERTY AND COPYRIGHT INDEMNIFICATION

WTT assumes full responsibility for complying with all United States laws and treaty terms pertaining to intellectual property issues and any applicable regulations, including but not limited to the assumption of all responsibilities for paying all royalties which are due for the use of domestic or foreign copyrighted works in WTT's performances, transmissions or broadcasts, and WTT agrees to defend, indemnify, and hold harmless the TOWN, its officers, employees, and agents, for any claims or damages (including but not limited to court costs and reasonable attorney's fees) growing out of WTT's infringement or violation of any statute, treaty term or regulation applicable to intellectual property rights, including but not limited to copyrights.

SECTION 26

NO PARTNERSHIP OR JOINT VENTURE

Nothing contained in this agreement shall be deemed to constitute the TOWN and WTT partners or joint venturers with each other.

SECTION 27

NO WAIVER

No waiver by the TOWN of any default or breach of any term, covenant, or condition of this Agreement by WTT shall be treated as a waiver of any subsequent default or breach of the same or any other term, covenant, or condition of this Agreement.

SECTION 28

FORCE MAJEURE

If the Theatre Centre or any portion of it shall be destroyed or damaged by fire or any other calamity so as to prevent the use of the premises for the purposes and during the periods specified in this Agreement, or the use of the Theatre Centre by WTT is prevented by act of God, strike or lockout against the TOWN, WTT or any third party, material or labor restrictions by any governmental authority, civil riot, flood or other cause beyond the control of the TOWN, then, depending on the extent of damage to the Theatre Centre, the TOWN shall notify WTT as soon as reasonably practical, that the parties shall be excused from performance of the Agreement for such period of time as is reasonably necessary to remedy the effects of the occurrence and, at the option of the TOWN, this Agreement shall terminate and the TOWN shall not be liable for any claim by WTT for damage or loss by reason of termination. If the performance of this agreement for the reasons identified above is prohibited for a period of 180 days or longer, then WTT shall have the right to terminate.

SECTION 29

VENUE

The obligations of the parties under this Agreement are performable in Dallas County, Texas, and if legal action is necessary to enforce them, exclusive venue shall lie in Dallas County, Texas.

SECTION 30

LEGAL CONSTRUCTION

In the case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable, it shall not affect any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

SECTION 31

SIGNAGE

WTT shall not place or permit to be placed on the exterior of the Theatre Centre, or the door, window or roof thereof, or on any display window space, or within five feet behind the storefront of the Theatre Centre, if visible from the common area, any sign, plaque, decoration, lettering, advertising matter or descriptive material without the TOWN's prior written approval. WTT may submit a written request for approval to project images and text onto the water tower. All signs, decorations, lettering, advertising matter or other items used by WTT and approved by the TOWN as aforesaid shall conform with the standards of design, motif, and decor from time to time established by the TOWN for the Theatre Centre. WTT shall furnish to the Manager of the Conference and Theatre Centre a written proposal describing any signage to be placed in the Theatre Centre. The Manager agrees to respond within fourteen (14) days in writing to the proposal.

SECTION 32

USE OF THE ROOF

WTT shall not attach to or construct on or penetrate the roof of the Theatre Centre without the prior written consent of the City Manager.

EXECUTED _____, but effective as of October 1, 2009 as approved by the parties hereto.

TOWN OF ADDISON, TEXAS

WATERTOWER THEATRE, INC.

By: _____
Ron Whitehead, City Manager

By: _____
Terry Martin, Producing Artistic Director

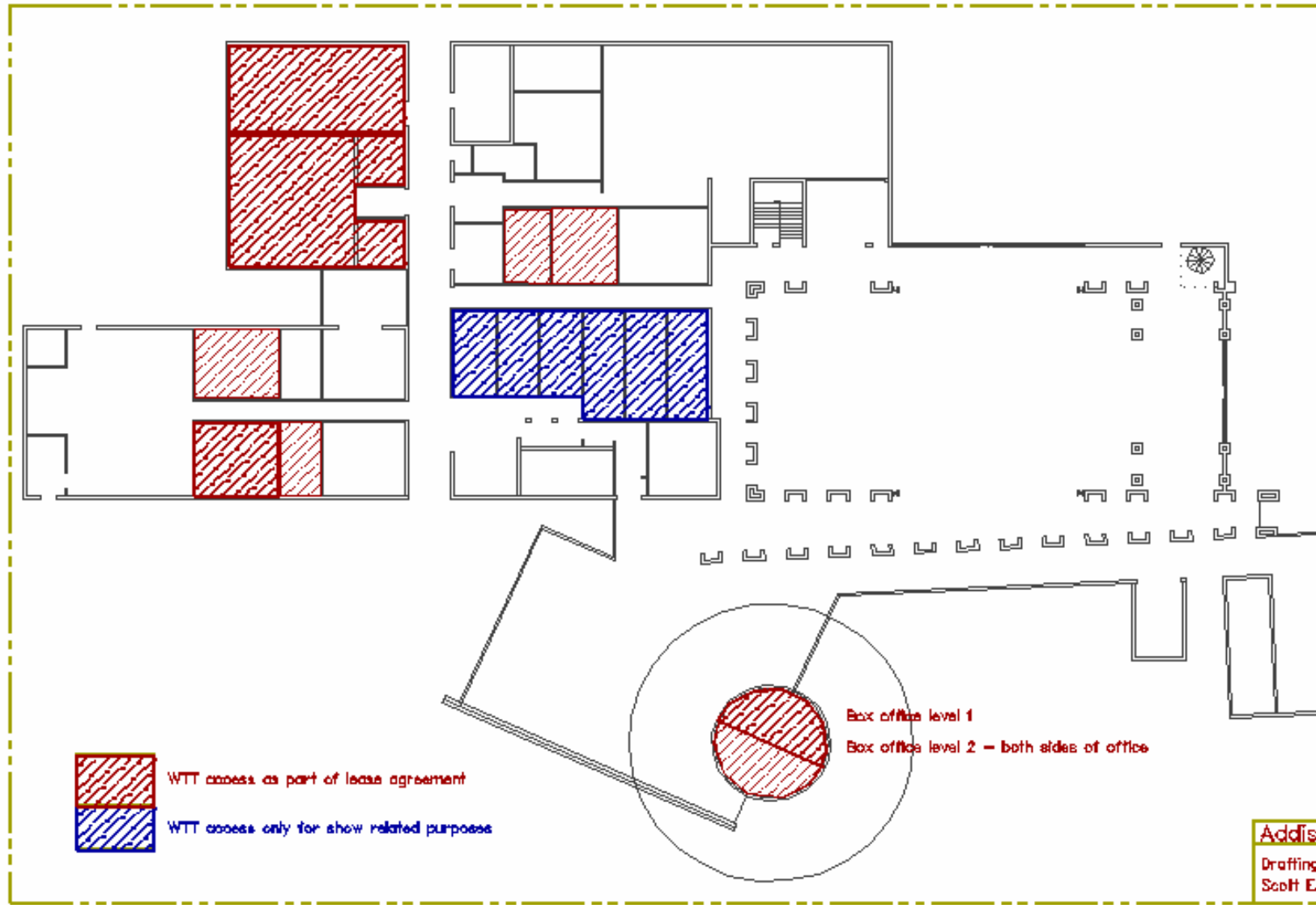
ATTEST:

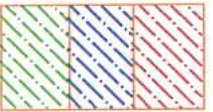
ATTEST:

By: _____
Lea Dunn, Town Secretary

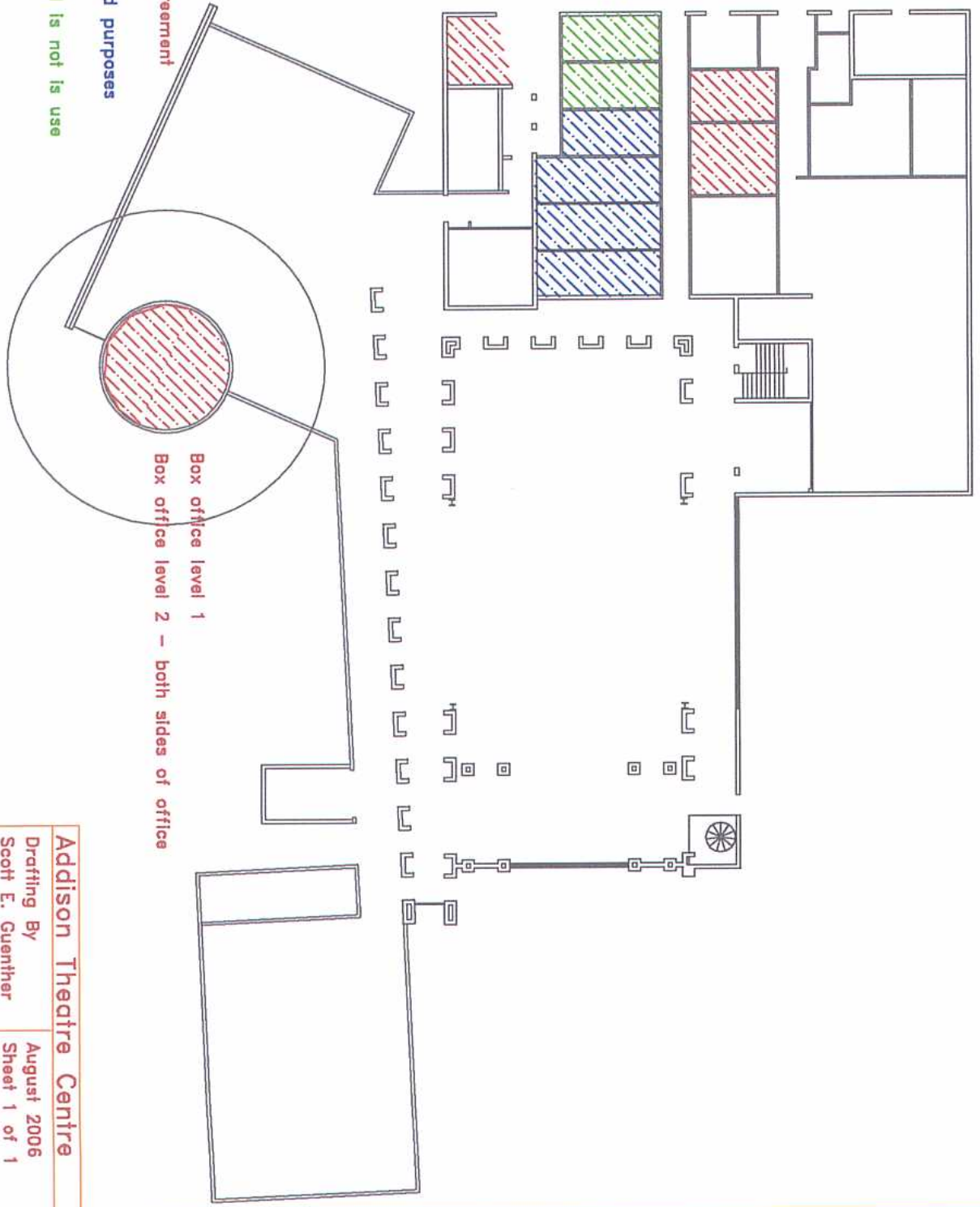
By: _____
Its:

EXHIBIT A ADDISON THEATRE CENTRE





WTT access as part of lease agreement
 WTT access only for show related purposes
 WTT access only if rehearsal hall is not in use



Box office level 1
 Box office level 2 – both sides of office

EXHIBIT B

RATE SHEET FOR WTT

(Revised October 1, 2006)

Theatre rental rates include use of the Main Space, Lobby, Box Office, Dressing Rooms, Green Room and Costume shop.

OFFICE SPACE AND FURNITURE RENTAL

\$701.00 per month

MAIN SPACE PERFORMANCE

Weekdays \$200.00 per 8 hour block
Weekends \$275.00 per 8 hour block

Performance blocks of time are defined as actual performances of the production

MAIN SPACE REHEARSAL

Weekdays \$150.00 per 8 hour block
Weekends \$200.00 per 8 hour block

Rehearsal blocks of time are defined as rehearsals conducted on the set of the production

MAIN SPACE PRODUCTION

Weekdays \$150.00 per 8 hour block
Weekends \$200.00 per 8 hour block

Production blocks of time are defined as set construction, reconfiguration of the space and light spot configuration

REHEARSAL SPACE

Weekdays \$ 75.00 per 8 hour block
Weekends \$100.00 per 8 hour block

EDUCATION MAIN SPACE RATES

Weekdays \$ 25.00 per hour for a minimum of 2 hours per day
Weekends \$ 35.00 per hour for a minimum of 2 hours per day

This price is good for Education classes only and only if WaterTower Theatre provides the Manager of the Addison Conference & Theatre Centre with a detailed scheduling request that includes times of use. Only upon submittal of the detailed schedule and subject to availability of the space and date requested, will these rates be valid. If no times are submitted with the dates, we shall assume that the request is for an eight-hour block and will be invoiced accordingly.

STONE COTTAGE

Weekdays \$ 75.00
Weekends \$100.00

September 2009

Monthly Planner

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2	3	4	5
6	7	8	9	10	11	12
ST - GREY GARDENS REHEARSAL						
13	14	15	16	17	18	19
MS - GREY GARDENS BUILD						
ST - GREY GARDENS REHEARSAL						
20	21	22	23	24	25	26
MS - GREY GARDENS BUILD						
ST - GREY GARDENS REHEARSAL						
27	28	29	30			
MS - GREY GARDENS TECH						

August						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

October						
S	M	T	W	T	F	S
						1 2 3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

October 2009

Monthly Planner

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday																																																																																				
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November 2009

Monthly Planner

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December 2009

Monthly Planner

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January 2010

Monthly Planner

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3	4	5	6	7	8	9
MS - LAUGHTER BUILD						X
ST - LAUGHTER REHEARSALS						X
10	11	12	13	14	15	16
MS - LAUGHTER TECH				X	MS - LAUGHTER PERFORMANCES	
17	18	19	20	21	22	23
MS - LAUGH...	MS - LAUGHTER PERFORMANCES					
24	25	26	27	28	29	30
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31						

December 09

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February 10

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28						

February 2010

Monthly Planner

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1	2	3	4	5	6
			MS - LAUGHTER PERFORMANCES			
7	8	9	10	11	12	13
MS - LAUGH...	MS - GALA PREP					MS - GALA
14	15	16	17	18	19	20
	MS - GALA S...	MS - LOOP PREP				ST - LOOP PREP
21	22	23	24	25	26	27
	ST - LOOP PREP					
	SC - LOOP PREP					
	MS - LOOP PREP					
28						

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March 2010

Monthly Planner

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1	2	3	4	5	6
	ST - LOOP PREP			ST - OUT OF THE LOOP		
	SC - LOOP PREP			SC - OUT OF THE LOOP		
	MS - LOOP PREP			MS - OUT OF THE LOOP		
7	8	9	10	11	12	13
ST - OUT OF THE LOOP						
SC - OUT OF THE LOOP						
MS - OUT OF THE LOOP						
14	15	16	17	18	19	20
ST - OUT OF THE LOOP						
SC - OUT OF THE LOOP						
MS - OUT OF THE LOOP	MS - DEAD BUILD					
	ST - DEAD REHEARSALS					
21	22	23	24	25	26	27
MS - DEAD BUILD						
ST - DEAD REHEARSALS						
28	29	30	31			
MS - DEAD TECH						

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April 2010

Monthly Planner

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				<i>Black Pearl!</i>																																																																																													

May 2010

Monthly Planner

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<div style="background-color: yellow; border: 1px solid black; padding: 2px; text-align: center;">MS - DEAD BUILD</div> <div style="background-color: lightblue; border: 1px solid black; padding: 2px; text-align: center;">ST - BLACK PEARL REHEARSALS</div>						
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<div style="background-color: yellow; border: 1px solid black; padding: 2px; text-align: center;">MS - BLACK PEARL TECH</div>				<div style="background-color: yellow; border: 1px solid black; padding: 2px; text-align: center;">MS - BLACK PEARL PERFORMANCES</div>		
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April						
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June						
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27	28	29	30			

June 2010

Monthly Planner

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
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			MS - BLACK PEARL PERFORMANCES			
6	7	8	9	10	11	12
MS - BLACK S...			MS - BLACK PEARL PERFORMANCES			
13	14	15	16	17	18	19
MS - BLACK S...	MS - STRIKE			Dance Xpress		
	ST - MONTY REHEARSALS					
20	21	22	23	24	25	26
Dance Xpress	ST - MONTY REHEARSALS					
27	28	29	30			
ST - MONTY REHEARSALS						

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July 2010

Monthly Planner

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August 2010

Monthly Planner

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Exhibit D

WTT Inventory of Furniture Rental Items

These items are owned by the Town and rented to WTT on a monthly basis as outlined within the Use Agreement.

Library

- 66" yellow table
- Green chairs

Terry's Office

- Above desk hutch
- Rug

James Office

- 2 pillows

Heidi's Office

- Mirror

Elizabeth's Office

- Black Desk and above desk hutch

AGREEMENT FOR THE USE OF THE ADDISON THEATRE CENTRE

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

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

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

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

WHEREAS, the TOWN and Second Thought Theatre intend that the Theatre Centre will provide performance space in the form of the Studio Theatre and Stone Cottage as outlined in the Calendar, as well as serve as an outstanding performance facility that will attract other prominent performing groups and individuals to Addison; and

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

NOW, THEREFORE, the TOWN and Second Thought Theatre agree as follows:

SECTION 1

PURPOSE; THEATRE CENTRE DEFINED

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

(b) As used in this Agreement “Theatre Centre” means the structure shown in Exhibit A. The areas indicated in Exhibit A shaded in blue denote the areas that are accessible to Second Thought Theatre.

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

any changes to such that might occur. The term “common areas” shall include but not be limited to parking area, walkways, green areas and landscaped areas. The TOWN and Second Thought Theatre agree to cooperate with the other in the event that the “common areas” are used for theatrical performances or events related to the conference center or any other event sponsored by the TOWN.

SECTION 2

LEASE OF THEATRE CENTRE

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

SECTION 3

TERM AND TERMINATION

(a) The term of this Agreement is for a period beginning on the 1st day of October 2009, and continuing until September 30, 2010, unless the term is extended or earlier cancelled, as provided herein.

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

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

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

(iii) The TOWN shall give Second Thought Theatre sixty (60) days written notice; or

(iv) Second Thought Theatre fails to comply with any term of the 2009-2010 Contract for Services between the Town of Addison and Water Tower Theatre Company within thirty (30) days after written notice of such failure to comply from the TOWN.

(v) Second Thought Theatre does not comply with any reasonable request made by the Manager regarding safety, security or other such issue as outlined in the

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

(d) This Agreement may be renewed and extended for a term of twelve (12) months beginning October 1, 2010, and ending September 30, 2011, and for like twelve (12) month periods thereafter upon the express written consent of the TOWN and Second Thought Theatre, given within ninety (90) days prior to October 1st each succeeding year.

SECTION 4

USE AND OCCUPANCY BY SECOND THOUGHT THEATRE

(a) *Office Areas.* During the term of this agreement, Second Thought Theatre shall have no use of any office space at the Theater Centre or in any other building or facility of the TOWN.

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

(c) *Box Office Ticket Sales will be the responsibility of Second Thought Theatre. The Addison Theatre Centre Box Office is not available to Second Thought Theatre. On site ticket sales will take place in the hallway or alcove outside the Studio Theatre at a designated table.*

No performances may take place in the facilities during Town Sponsored special events. Limited use of the facilities MAY be granted at the Managers discretion for rehearsals, builds and technical work. If permission is granted, a maximum of 7 parking passes will be issued to Second Thought Theatre allowing access to a designated parking area at the TOWN’s discretion.

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

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

It is expected that Second Thought Theatre will produce events, and, not be presenting events.

(d) *Food and Beverage.* Food and beverages are prohibited within all performance spaces at the Theatre Centre. The sole exception will be during non-performance times when

bottled water with a lid may be brought into the ~~main~~ performance spaces. However, no liquid may be stored or consumed in the vicinity of any electronic equipment.

(e) *Use of Dressing Rooms.* When the Studio Theatre Space is rented, during a non-special event time, dressing rooms 5-6 will be included as part of that rental.

SECTION 5

USE AND OCCUPANCY BY THE TOWN

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

(b) *Concessions.*

(i) Second Thought Theatre may sell concessions only during Second Thought Theatres performances and must comply with all Town of Addison Environmental Health Regulations. Alcoholic beverages may only be dispensed in compliance with the TABC (Texas Alcoholic Beverage Commission) and Town of Addison rules and regulations. Second Thought Theatre may sell pre packaged foods from their ticket table or other table outside the Studio Theatre space. All food and beverage must be consumed outside the Studio Theatre space.

(ii) The TOWN shall not be liable to Second Thought Theatre, its employees, agent’s patrons, or invitees for damages or otherwise for the quality, failure, unavailability, or disruption of any food or beverage or service thereof in connection with Second Thought Theatres performances.

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

SECTION 6

RENTAL

(a) Second Thought Theatre shall pay to the TOWN rent for its use areas as reserved by Second Thought Theatre, according to the schedule of fees set forth in Exhibit B, attached

hereto and made a part hereof. Payments for rent shall be made as invoiced during the months Second Thought Theatre is using the space. The rent paid by Second Thought Theatre may be adjusted from time to time to reflect a cancellation or addition of a show or event by Second Thought Theatre. The TOWN further reserves the right to adjust the rates of the fees set out on Exhibit B from time to time in accordance with changes in the costs associated with operating the facility, by providing Second Thought Theatre at least 45 days prior written notice of the change. The TOWN shall invoice Second Thought Theatre for all dates, times and spaces reserved by Second Thought Theatre.

(b) Second Thought Theatre will not be required to pay the fee for a date, or time, or space cancelled if the space is cancelled more than forty-five (45) days prior to the scheduled date or time.

(c) Cancellation less than forty-five (45) days prior to the scheduled date or time will require full payment for committed space.

SECTION 7

USE OF EQUIPMENT

Any damages to or loss of TOWN-owned equipment in the Theatre Centre during the conduct of Second Thought Theatre's performances, or day-to-day use by Second Thought Theatre shall be the responsibility of Second Thought Theatre.

If Second Thought Theatre desires to use and operate TOWN-owned equipment including but not limited to lighting and sound systems, then Second Thought Theatre shall obtain approval on a per-show basis from the TOWN for the use by Second Thought Theatre technicians. Use of automated lighting fixtures, sound and lighting control console, and wireless microphones must have prior written approval by ACTC Manager. The cost of repair for any damage to the equipment from use of the equipment by Second Thought Theatre or replacement of any lost equipment shall be the sole responsibility of Second Thought Theatre and shall be subject to offset against any funding or grant obligations of the TOWN to Second Thought Theatre. The TOWN shall not be responsible for consequential damages resulting from inability to use the equipment. Second Thought Theatre agrees that each person employed by Second Thought Theatre to provide services in the Theatre Centre will be required to conduct himself/herself in a professional manner, and Second Thought Theatre will cooperate with the TOWN to assure professional conduct is maintained at all times.

All details of the production/event must be provided in writing to the Manager at least one month prior to the first day of occupancy of the space. No equipment owned by the TOWN may be contracted or committed by Second Thought Theatre without the manager's approval. No services provided by Town employees may be contracted or committed by Second Thought Theatre without the Manager's written approval.

SECTION 8

TOWN OF ADDISON TECHNICAL COORDINATOR

The TOWN employs an individual in the role of Technical Coordinator whose duties include protecting and maintaining the TOWN's investment in equipment and facilities at the Theatre Centre. In addition, the Technical Coordinator shall provide services relating to the technical nature of the facility and the presentation. Details of the services provided by the Technical Coordinator are available, in writing, from the Manager, upon request.

SECTION 9

UTILITIES

The TOWN shall provide for all water, air conditioning, heat, and electricity incurred in the Theatre Centre. The TOWN shall not be liable to Second Thought Theatre in damages or otherwise for the quality, quantity, failure, availability, or disruption of water, air conditioning, heat, electricity, and other utilities furnished by the TOWN; provided that if Second Thought Theatre reasonably cancels any performance solely for and as the direct result of the TOWN's failure to provide any of the foregoing resources, and provided evidence of such cancellation by Second Thought Theatre and failure to provide such resources by the TOWN (which evidence shall be in form and content reasonably satisfactory to the TOWN) is promptly provided to the TOWN following such cancellation, Second Thought Theatre will have no obligation to pay the performance space rental fee amounts to the TOWN required pursuant to this Agreement in connection with the cancelled performance.

SECTION 10

MAINTENANCE SERVICES

(a) The TOWN shall provide:

(i) Routine janitorial service and maintain the interior of the Theatre Centre in a clean condition, by providing routine janitorial service one time per day as needed, Monday-Saturday. Second Thought Theatre must leave the spaces in a reasonable condition following all productions/events, which includes but is not limited to: placing all lobby, green room and dressing room trash in garbage cans and walking the space for playbills and trash left by patrons after every performance. Any services above routine will be billed to Second Thought Theatre at the prevailing rate.

(ii) Maintenance of the heating, ventilation and cooling system in the Theatre Centre.

(iii) Maintenance of the Theatre Centre grounds and structure in reasonably good condition and in compliance with applicable laws.

(b) The TOWN shall not be liable for repairs to any portion of the Theatre Centre until it receives written notice pursuant to the operating policies and procedures in Section 6(a), of the necessity for such repairs and, provided further, that such repairs are not necessitated by any act or omission of Second Thought Theatre, or any of Second Thought Theatre agents, employees, contractors, invitees or patrons.

(c) Second Thought Theatre shall not cause or permit any waste, damage, or injury to the Theatre Centre. Second Thought Theatre shall, at its sole cost and expense, repair any damage or injury caused to the Theatre Centre by Second Thought Theatre, its employee's agents, invitees or patrons.

(d) Second Thought Theatre shall store its approved property and the personal property of the TOWN in a neat and orderly manner, and its operations in the Theatre Centre shall be carried out in accordance with the highest professional standards.

(e) Second Thought Theatre shall not store or maintain flammable or hazardous materials in the Theatre Centre in violation of the Fire Code or other applicable laws and codes.

(f) In the event the obligations of Second Thought Theatre set out in Sections (d) and (e), above, are not carried out in a timely manner, then the Town has the right, but not the obligation, to satisfy such requirements at the cost of Second Thought Theatre.

SECTION 11

OWNERSHIP OF PROPERTY

(a) The Theatre Centre and all improvements to the Theatre Centre are the property of the TOWN. All personal property owned by the TOWN and placed in the Theatre Centre remains the property of the TOWN.

(b) All personal property owned by Second Thought Theatre and placed in the Theatre Centre remains the property of Second Thought Theatre.

(c) All personal property owned by a sublease, contractor or concessionaire of the TOWN and placed in the Theatre Centre remains the property of the sublessee, contractor or concessionaire, respectively, unless otherwise provided in the sublease, concession contract, or contractor's contract.

(d) On or before July 1 of each year, during the existence or continuation of this agreement, Second Thought Theatre shall furnish to the TOWN a listing of all of the personal property of Second Thought Theatre located in the Theatre Centre.

(e) Second Thought Theatre shall not allow or permit any of the personal property of the TOWN to be loaned for use or operation by any third parties.

SECTION 12

ACKNOWLEDGEMENTS IN PRINTED MATERIALS

Second Thought Theatre agrees to prominently acknowledge the TOWN for its support of Second Thought Theatre in all appropriate printed materials. All public references to Second Thought Theatre will be characterized as "Second Thought Theatre at the Addison Theatre Centre" or some derivative of that indicating the Second Thought Theatre is at the ATC.

SECTION 13

INSURANCE

(a) Second Thought Theatre shall procure, pay for, and maintain the following insurance written by companies licensed in the State of Texas or meeting the surplus lines requirements of Texas law and acceptable to the City Manager. The insurance shall be evidenced by delivery of executed certificates of insurance and certified copies of the policies to the Manager. The insurance requirements shall remain in effect throughout the term of this Agreement. The City Manager reserves the right to modify the kinds of coverage and deductibles required and increase minimum limits of liability of the coverage whenever, in his discretion, it becomes necessary. Should such a modification be made by the TOWN, the TOWN will provide Second Thought Theatre written notice and 30 days to make the necessary modifications (or such longer period of time as Second Thought Theatre may require to make the necessary modifications, provided Second Thought Theatre shall at all times pursue such modifications with all due diligence and continuity).

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

(ii) *Commercial General Liability Insurance*, including Personal Injury Liability, Independent Contractor's Liability, Premises Operation Liability, and Contractual Liability, covering, but not limited to, the liability assumed under the indemnification provisions of this Agreement, with limits of liability for bodily injury, death, and property damage of not less than \$1,000,000. Coverage must be on an "occurrence" basis, and the policy must include Broad Form Property Damage Coverage, with Fire and Extended Coverage Liability of not less than \$1,000,000 per occurrence.

(iii) *Comprehensive Automobile and Truck Liability Insurance* covering owned, hired and non-owned vehicles, with minimum limits of \$1,000,000, each occurrence, for bodily injury, death, and property damage, such insurance to include coverage for loading and unloading hazards.

(iv) \$2,000,000 combined single limits bodily injury and property damage liability insurance, including death, as an excess of all the primary coverages required above.

(b) Each liability insurance policy must include the following conditions by endorsement to the policy:

(i) The TOWN must be named as an additional insured.

(ii) Each policy must require that 60 days before the cancellation, nonrenewal, or any material change in coverage, a notice thereof shall be given to the TOWN by certified mail to: City Manager, Town of Addison, Box 9010, Addison, TX 75001-9010.

(iii) Companies issuing the insurance policies shall have no recourse against the TOWN for payment of any premiums, assessments, or any deductibles, all of which are at the sole risk of Second Thought Theatre.

(iv) The Term “Town” or “Town of Addison” includes all Authorities, Boards, Bureaus, Commissions, Divisions, Departments, and offices of the TOWN and the individual members, employees and agents of the TOWN including the TOWN’s Manager, while acting in their official capacities on behalf of the TOWN.

(v) The policy clause “Other Insurance” shall not apply to the TOWN where the TOWN is an additional named insured on the policy.

(c) Each party hereto hereby waives each and every claim which arises or may arise in its favor and against the other party hereto during the term of this lease or any extension or renewal thereof for any and all injuries (including death) and loss of, or damage to, any of its property which claim, loss or damage is covered by valid and collectible fire and extended coverage insurance policies, liability insurance policies, workers’ compensation policies, and any other insurance policies which may be in place from time to time, to the extent that such claim, loss or damage is recovered under said insurance policies. Said waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Agreement with respect to any loss, damage or injury (including death) to persons or to property. Inasmuch as the above mutual waivers will preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person), each party hereto hereby agrees immediately to give each insurance company which has issued to its policies of fire and extended coverage insurance, liability insurance, workers’ compensation insurance, or such other insurance, written notice of the terms of said mutual waivers, and to have said insurance policies properly endorsed, if necessary to prevent the invalidation of said insurance coverages by reason of said waivers.

(d) Second Thought Theatre shall use best efforts for security precautions necessary for the protection of its property. The TOWN shall be liable for any damage to or loss of Second Thought Theatre property used or stored on, in, or about the Theatre Centre, arising from negligence of the TOWN or its agents.

(e) Insurance required under this section must be furnished annually for the duration of this Agreement. Executed certificates of insurance must also be delivered annually.

(f) To the extent reasonably obtainable, the TOWN will secure fire and extended coverage insurance on the Theatre Centre with coverages and limits to be determined by the TOWN to insure the Theatre Centre with coverages and limits to be determined by the TOWN. In the event all or any portion of the Theatre Centre is damaged or destroyed by fire or other casualty, the TOWN shall, at its cost and expense, limited to a maximum expenditure of the amount of insurance proceeds, if any, available to the TOWN by reason of such fire or other casualty, restore, repair, replace and rebuild the Theatre Centre as nearly as possible to its value, condition and character immediately prior to such damage or destruction. Coverage provided in this subsection shall be for the benefit of the TOWN and shall not protect Second Thought Theatre for loss or damage of property owned by Second Thought Theatre.

SECTION 14

ABATEMENT OF NUISANCES; TOWN SPECIAL EVENTS

Second Thought Theatre shall promptly comply with all governmental orders and directives for the correction, prevention, and abatement of nuisances caused by Second Thought Theatre, its officers, agents, or employees, or invitees in or upon or connected with the Theatre Centre, and shall pay for the costs of compliance. The TOWN and Second Thought Theatre agree to cooperate with each other in the abatement of nuisances caused by noise associated with events scheduled in either the Conference or Theatre Centre. Second Thought Theatre hereby recognizes that the Town produces Special Events on scheduled dates through the year, which scheduled Special Events shall take priority over any other use, and notice of such Special Events will be made available to Second Thought Theatre (which notice may be made available by means or methods other than as set forth in Section 21 of this Agreement) at the earliest reasonable opportunity as determined by the TOWN.

SECTION 15

ALTERATIONS, ADDITIONS, AND IMPROVEMENTS

(a) To the extent reasonably necessary or desirable for Second Thought Theatre to use and occupy the Theatre Centre, upon prior written approval of the Manager, Second Thought Theatre may erect or install within the performance space any temporary alterations, additions, or equipment needed for a production which do not alter the structural integrity or basic configuration of the performance space. Second Thought Theatre must comply with all applicable governmental laws, statutes, ordinances, codes, and regulations regarding structures.

(b) All installations, alterations, additions and improvements made in, on, or to the Theatre Centre by Second Thought Theatre or the TOWN shall be deemed to be property of the TOWN and unless the TOWN directs otherwise, shall remain upon and be surrendered with the Theatre Centre as a part thereof in good order, condition and repair, ordinary wear and tear excepted, upon Second Thought Theatre's vacating or abandonment of the Theatre Centre. If the TOWN directs, Second Thought Theatre shall remove all or any portion of the improvements and Second Thought Theatre's property, on or immediately prior to the termination of Second Thought Theatre's right to possession. The Town may choose to reconfigure the theatre space at any time not reserved by Second Thought Theatre. The Town will return the seating to the previous configuration if requested by Second Thought Theatre.

SECTION 16

ASSUMPTION OF RESPONSIBILITY; INDEMNIFICATION

(a) Second Thought Theatre AGREES TO ASSUME AND DOES HEREBY ASSUME ALL RESPONSIBILITY AND LIABILITY FOR DAMAGES OR INJURIES SUSTAINED BY PERSONS OR PROPERTY, WHETHER REAL OR ASSERTED, BY OR FROM (I) THE PERFORMANCE OF SERVICES PERFORMED AND TO BE PERFORMED HEREUNDER, OR (II) THE OCCUPATION AND USE OF THE THEATRE CENTRE PURSUANT TO THIS AGREEMENT, BY SECOND THOUGHT THEATRE OR BY ANY OF ITS OWNERS, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, MEMBERS, AGENTS, SERVANTS, REPRESENTATIVES, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INVITEES, PATRONS, GUESTS, VOLUNTEERS, CUSTOMERS, AND

CONCESSIONAIRES (IN THE CAPACITY AS OWNER, OFFICER, DIRECTOR, MANAGER, EMPLOYEE, MEMBER, AGENT, SERVANT, REPRESENTATIVE, CONSULTANT, CONTRACTOR, SUBCONTRACTOR, LICENSEE, INVITEE, PATRON, GUEST, VOLUNTEER, CUSTOMER, OR CONCESSIONAIRE OF OR FOR SECOND THOUGHT THEATRE), OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE.

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

Second Thought Theatre shall promptly advise the TOWN in writing of any claim or demand against any Addison Person or Second Thought Theatre related to or arising out of Second Thought Theatre 's activities under this Agreement and shall see to the investigation and

defense of such claim or demand at Second Thought Theatre 's sole cost and expense. The Addison Persons shall have the right, at the Addison Persons' option and at own expense, to participate in such defense without relieving Second Thought Theatre of any of its obligations hereunder.

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

SECTION 17

BONDS

Unless waived in writing by the City Manager, Second Thought Theatre agrees to cause its contractors to provide, before commencing any work or construction in its designated areas, a performance bond and labor and material payment bond for any improvements the construction of which could result in a third party filing or seeking to file a lien against the Theatre Centre, which is undertaken by Second Thought Theatre during the term of this Agreement in a sum equal to the full amount of the construction contract award, with the TOWN and Second Thought Theatre named as joint obligees.

SECTION 18

NON-DISCRIMINATION

During the term of this agreement, Second Thought Theatre shall not discriminate against any employee or applicant for employment because of race, age, color, sex or religion, ancestry, national origin, place of birth, or handicap. Should Second Thought Theatre violate the provisions of this section, or fail to comply with the requirements of the Americans with Disabilities Act, the TOWN may terminate this Agreement if Second Thought Theatre fails to correct the violations within 60 days of written notice of the violation by the TOWN.

SECTION 19

AUDITS

Second Thought Theatre shall have its financial statements audited on an annual basis by an independent auditing firm of certified public accountants and shall submit a copy of the auditor's report for the preceding fiscal year with its proposed annual operating budget to the City Manager. The TOWN reserves the right to require a special audit of Second Thought Theatre's books and records at any time either by the City Manager or by an outside independent auditor if such action is determined necessary by the Town Council. The TOWN shall pay all expense of the independent auditor related to the special audit. Second Thought Theatre shall make available to the TOWN or its agents all necessary books, records and other documents necessary to perform such audit.

SECTION 20

ASSIGNMENT; NO THIRD-PARTY BENEFIT

Second Thought Theatre shall not assign this Agreement, in whole or in part, without the prior written consent of the TOWN, which consent is in the sole and unrestricted discretion of the TOWN. Assignment of this Agreement shall not relieve Second Thought Theatre of its obligations under this Agreement. Approval of the TOWN to one assignment shall not constitute approval to any other or further assignment of this Agreement. Second Thought Theatre shall not sublease or sublet or permit the Theatre Centre, or any part thereof to be used by others.

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

SECTION 21

NOTICES

Any notice, payment, statement, or demand required or permitted to be given by either party to the other may be effected by personal delivery, actual receipt via regular mail, postage prepaid, return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section.

If intended for the TOWN, to:

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

Second Thought Theatre’s address:

David Leggett
Board President
3532 McKinney Avenue, Box 452
Dallas, Texas 75204

SECTION 22

APPROVALS

(a) Whenever in this Agreement the approval of the TOWN is required for any purpose, Second Thought Theatre shall file the appropriate documents with the Addison Conference and Theatre Centre (“ACTC”) Manager with notice of action proposed to be taken, and the ACTC Manager agrees to notify Second Thought Theatre of the TOWN’s approval or disapproval within 60 days of the filing thereof.

(b) Approval shall be by the City Council of the TOWN where required by the Charter of the Town. The City Manager may delegate approval authority to the facilities manager or his authorized representatives where permitted by the Charter of the Town or ordinances, and notify Second Thought Theatre of such delegation.

SECTION 23

SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the TOWN and Second Thought Theatre and their respective successors and permitted assigns.

SECTION 24

APPLICABLE LAWS

This Agreement is made subject to the charter and ordinances of the TOWN, as amended, and all applicable laws and regulations of the State of Texas and the United States. The laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Agreement; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Agreement.

SECTION 25

INTELLECTUAL PROPERTY AND COPYRIGHT INDEMNIFICATION

Second Thought Theatre assumes full responsibility for complying with all United States laws and treaty terms pertaining to intellectual property issues and any applicable regulations, including but not limited to the assumption of all responsibilities for paying all royalties which are due for the use of domestic or foreign copyrighted works in Second Thought Theatre's performances, transmissions or broadcasts, and Second Thought Theatre agrees to defend, indemnify, and hold harmless the TOWN, its officers, employees, and agents, for any claims or damages (including but not limited to court costs and reasonable attorney's fees) growing out of Second Thought Theatre's infringement or violation of any statute, treaty term or regulation applicable to intellectual property rights, including but not limited to copyrights.

SECTION 26

NO PARTNERSHIP OR JOINT VENTURE

Nothing contained in this agreement shall be deemed to constitute the TOWN and Second Thought Theatre partners or joint venturers with each other.

SECTION 27

NO WAIVER

No waiver by the TOWN of any default or breach of any term, covenant, or condition of this Agreement by Second Thought Theatre shall be treated as a waiver of any subsequent default or breach of the same or any other term, covenant, or condition of this Agreement.

SECTION 28

FORCE MAJEURE

If the Theatre Centre or any portion of it shall be destroyed or damaged by fire or any other calamity so as to prevent the use of the premises for the purposes and during the periods specified in this Agreement, or the use of the Theatre Centre by Second Thought Theatre is prevented by act of God, strike or lockout against the TOWN, Second Thought Theatre or any third party, material or labor restrictions by any governmental authority, civil riot, flood or other cause beyond the control of the TOWN, then, depending on the extent of damage to the Theatre Centre, the TOWN shall notify Second Thought Theatre as soon as reasonably practical, that the parties shall be excused from performance of the Agreement for such period of time as is reasonably necessary to remedy the effects of the occurrence and, at the option of the TOWN, this Agreement shall terminate and the TOWN shall not be liable for any claim by Second Thought Theatre for damage or loss by reason of termination. If the performance of this agreement for the reasons identified above is prohibited for a period of 180 days or longer, then Second Thought Theatre shall have the right to terminate.

SECTION 29

VENUE

The obligations of the parties under this Agreement are performable in Dallas County, Texas, and if legal action is necessary to enforce them, exclusive venue shall lie in Dallas County, Texas.

SECTION 30

LEGAL CONSTRUCTION

In the case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable, it shall not affect any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

SECTION 31

SIGNAGE

Second Thought Theatre shall not place or permit to be placed on the exterior of the Theatre Centre, or the door, window or roof thereof, or on any display window space, or within five feet behind the storefront of the Theatre Centre, if visible from the common area, any sign, plaque, decoration, lettering, advertising matter or descriptive material without the TOWN's prior written approval. Second Thought Theatre may submit a written request for approval to project images and text onto the water tower. All signs, decorations, lettering, advertising matter or other items used by Second Thought Theatre and approved by the TOWN as aforesaid shall conform with the standards of design, motif, and decor from time to time established by the TOWN for the Theatre Centre. Second Thought Theatre shall furnish to the Manager of the Conference and Theatre Centre a written proposal describing any signage to be placed in the

Theatre Centre. The Manager agrees to respond within fourteen (14) days in writing to the proposal.

SECTION 32

USE OF THE ROOF

Second Thought Theatre shall not attach to or construct on or penetrate the roof of the Theatre Centre without the prior written consent of the City Manager.

EXECUTED _____, but effective as of October 1, 2008 as approved by the parties hereto.

TOWN OF ADDISON, TEXAS

SECOND THOUGHT THEATRE, INC.

By: _____
Ron Whitehead, City Manager

By: _____
David Leggett, Board President

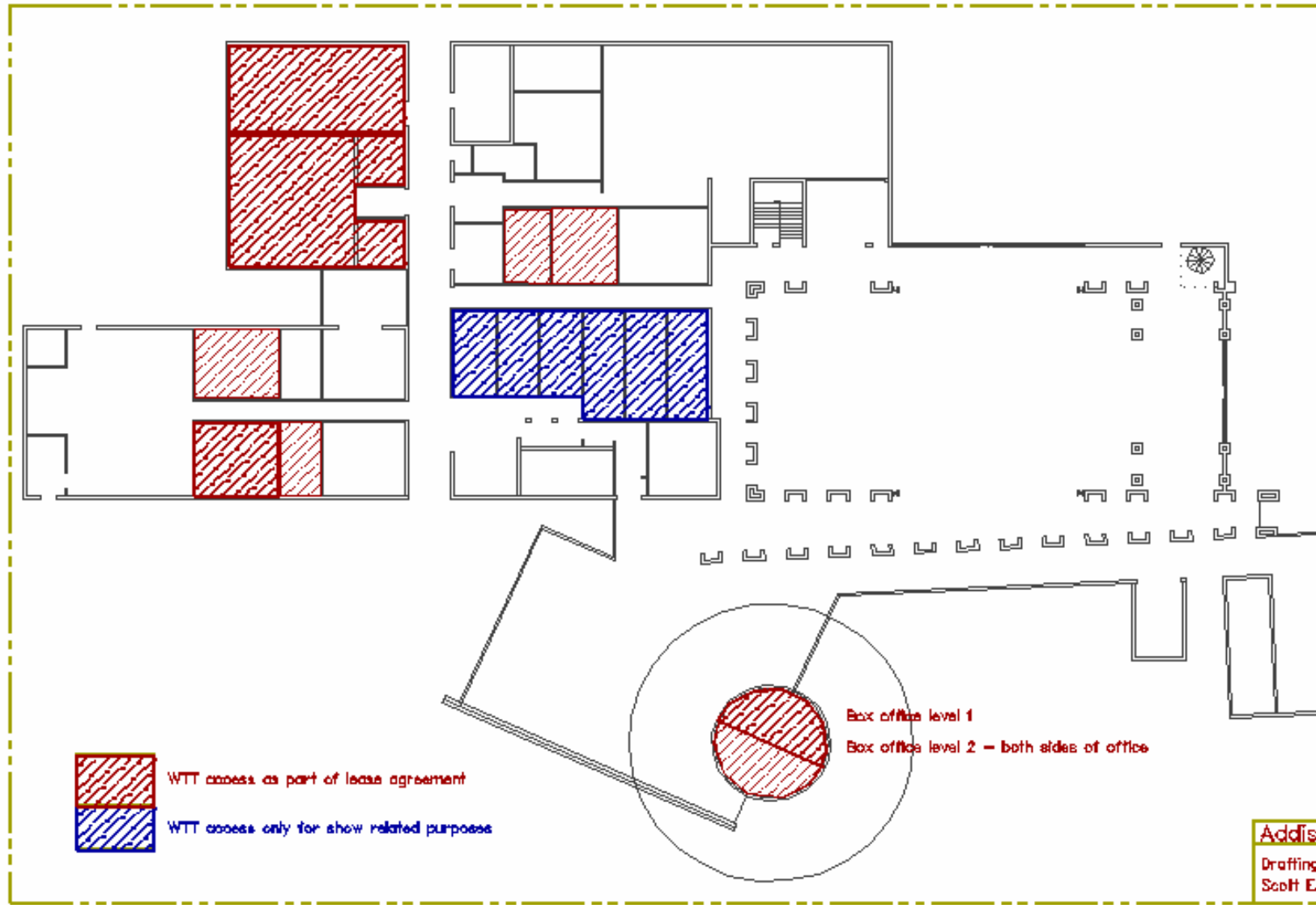
ATTEST:

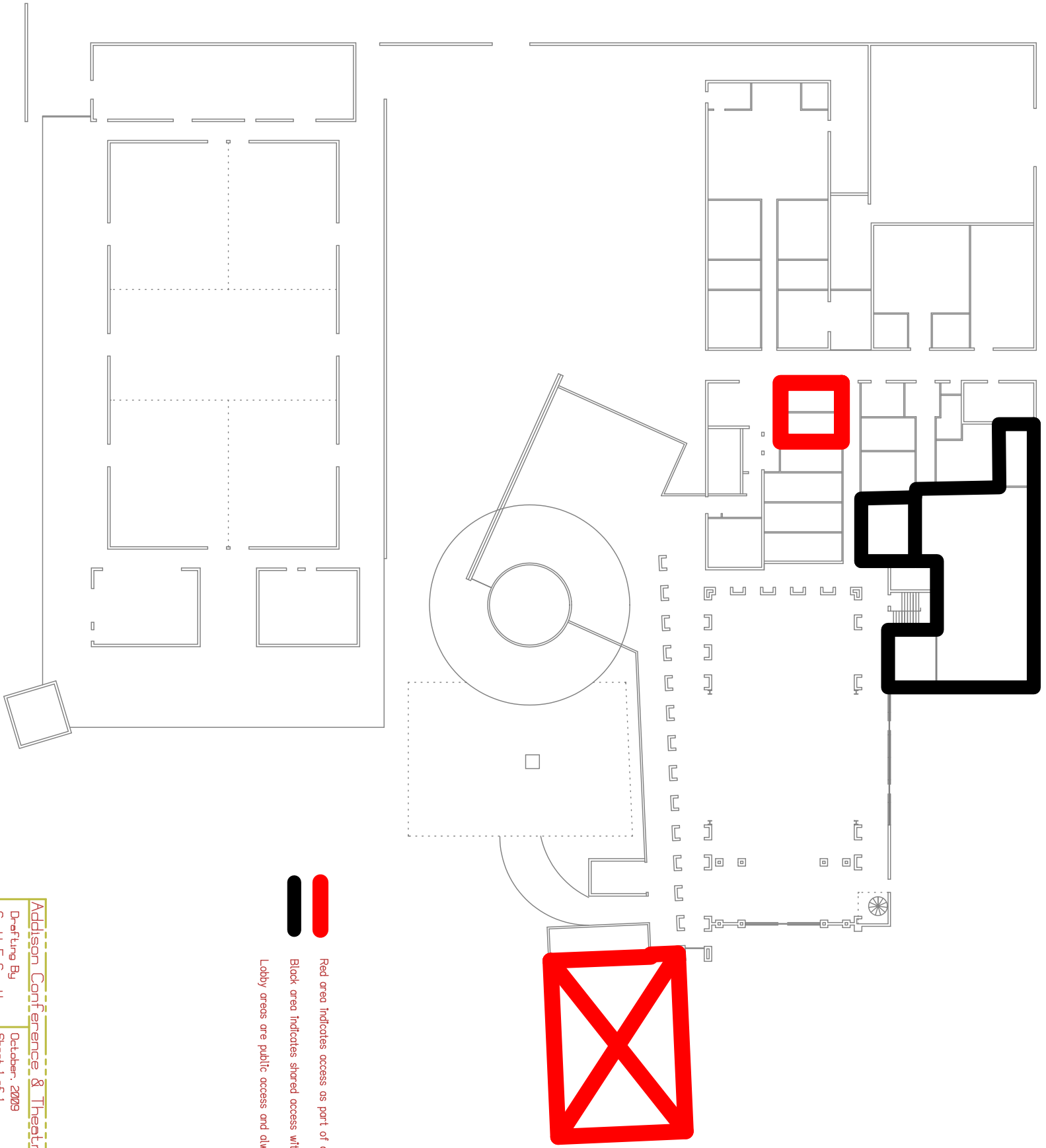
ATTEST:

By: _____
Lea Dunn, Town Secretary

By: _____
Its:

EXHIBIT A ADDISON THEATRE CENTRE





- Red area indicates access as part of contract
- Black area indicates shared access with WTT
- Lobby areas are public access and always shared

Addison Conference & Theatre Centre
 Drafting By
 Scott E. Guenther
 October, 2009
 Sheet 1 of 1

EXHIBIT B

**RATE SHEET FOR
SECOND THOUGHT THEATRE**

(Revised October 1, 2009)

**Theatre rental rates include use of the Studio Theatre, Shared Lobby, Dressing
Rooms 5 and 6 (with rental of the Studio Theatre),
Shared Green Room and Shared Shop.**

REHEARSAL SPACE

Weekdays	\$ 75.00
Weekends	\$100.00

STONE COTTAGE

Weekdays	\$ 75.00
Weekends	\$100.00

October 2009

October 2009							November 2009						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
4	5	6	7	8	9	10	1	2	3	4	5	6	7
11	12	13	14	15	16	17	8	9	10	11	12	13	14
18	19	20	21	22	23	24	15	16	17	18	19	20	21
25	26	27	28	29	30	31	22	23	24	25	26	27	28
							29	30					

Monday	Tuesday	Wednesday	Thursday	Friday	Sat/Sun
			October 1		2
5	6	7	8	9	10
12	13	14	15	16	17
19	20	21	22	23	24
26	27	28	29	30	31
Load in and Build Time 9am to 6pm only Dress Rehearsal, Preview and Shows 6pm to 11pm only					
10:00am Tech Time 10 out of 12					
6:00pm Performances					

November 2009

November 2009							December 2009						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
1	2	3	4	5	6	7	6	7	1	2	3	4	5
8	9	10	11	12	13	14	14	15	8	9	10	11	12
15	16	17	18	19	20	21	16	17	15	16	17	18	19
22	23	24	25	26	27	28	20	21	18	19	20	21	22
29	30						27	28	22	23	24	25	26
									29	30	31		

Monday	Tuesday	Wednesday	Thursday	Friday	Sat/Sun
					November 1
6:00pm Performance			6:00pm Performances	6:00pm Performances	6:00pm Performances
2	3	4	5	6	7
					6:00 Performance
					8
			6:00pm Performances	6:00pm Performances	6:00pm Performances
					14
					15
					Close and Strike Show
					21
					22
					28
					29
					30
					3

Rob Bourestom

February 2010

February 2010							March 2010						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
7	1	2	3	4	5	6	7	1	2	3	4	5	6
14	8	9	10	11	12	13	14	8	9	10	11	12	13
21	15	16	17	18	19	20	21	15	16	17	18	19	20
28	22	23	24	25	26	27	28	22	23	24	25	26	27
							29	29	30	31			

Monday	Tuesday	Wednesday	Thursday	Friday	Sat/Sun
February 1 9:00am Strike 9 am - 6pm only	2	3	4	5	6
8	9	10	11	12	13
15	16	17	18	19	20
22	23	24	25	26	27
			3:00pm Reading - Stone Cottage	3:00pm Reading - Studio Theatre	3:00pm Reading - Stone Cottage
					21
					28

March 2010

March 2010							April 2010						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
7	8	9	10	11	12	13	4	5	6	7	8	9	10
14	15	16	17	18	19	20	11	12	13	14	15	16	17
21	22	23	24	25	26	27	18	19	20	21	22	23	24
28	29	30	31				25	26	27	28	29	30	

Monday	Tuesday	Wednesday	Thursday	Friday	Sat/Sun
March 1	2	3	4	5	6
8	9	10	11	12	13
15	16	17	18	19	20
22	23	24	25	26	27
29	30	31			28
					21
					14
					7

April 2010

April 2010							May 2010						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
4	5	6	7	8	9	10	2	3	4	5	6	7	8
11	12	13	14	15	16	17	9	10	11	12	13	14	15
18	19	20	21	22	23	24	16	17	18	19	20	21	22
25	26	27	28	29	30		23	24	25	26	27	28	29
							30	31					

Monday	Tuesday	Wednesday	Thursday	Friday	Sat/Sun
			April 1		2
					3
					4
5	6	7	8	9	10
					11
					12
12	13	14	15	16	17
					18
					19
					20
					21
					22
					23
					24
					25
					26
					27
					28
					29
					30
					31

Load In and Build time 9am to 6pm only

Dress Rehearsal, Preview and Shows 6pm to 11pm only

6:00pm Performance

6:00pm Performance

6:00pm Performance

10:00am Tech time 10 out of 12

6:00pm Performance

May 2010

May 2010							June 2010						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
2	3	4	5	6	7	8	6	7	8	9	10	11	12
9	10	11	12	13	14	15	13	14	15	16	17	18	19
16	17	18	19	20	21	22	20	21	22	23	24	25	26
23	24	25	26	27	28	29	27	28	29	30			
30	31												

Monday	Tuesday	Wednesday	Thursday	Friday	Sat/Sun
					May 1
					6:00pm Performance
					6:00 Performance
					2
3	4	5	6:00pm Performance	6:00pm Performance	6:00pm Performance
					8
					6:00pm Performance
					Close and Strike show
					9
10	11	12	13	14	15
					16
					6:00pm Performance
					16
17	18	19	20	21	22
					23
					6:00pm Performance
					23
24	25	26	27	28	29
					30
					6:00pm Performance
					30
31					9

Rob Bourestom

June 2010

June 2010							July 2010						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
6	7	8	9	10	11	12	4	5	6	7	8	9	10
13	14	15	16	17	18	19	11	12	13	14	15	16	17
20	21	22	23	24	25	26	18	19	20	21	22	23	24
27	28	29	30				25	26	27	28	29	30	31

Monday	Tuesday	Wednesday	Thursday	Friday	Sat/Sun
	June 1	2	3	4	5
7	8	9	10	11	12
14	15	16	17	18	19
21	22	23	24	25	26
28	29	30			27

Rob Bourestom

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July 2010

July 2010							August 2010						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
4	5	6	7	8	9	10	1	2	3	4	5	6	7
11	12	13	14	15	16	17	8	9	10	11	12	13	14
18	19	20	21	22	23	24	15	16	17	18	19	20	21
25	26	27	28	29	30	31	22	23	24	25	26	27	28
							29	30	31				

Monday	Tuesday	Wednesday	Thursday	Friday	Sat/Sun
			July 1		2
5	6	7	8	9	10
12	13	14	15	16	17
19	20	21	22	23	24
26	27	28	29	30	31

Rob Bourston

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August 2010

August 2010							September 2010						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
1	2	3	4	5	6	7	5	6	7	8	9	10	11
8	9	10	11	12	13	14	12	13	14	15	16	17	18
15	16	17	18	19	20	21	19	20	21	22	23	24	25
22	23	24	25	26	27	28	26	27	28	29	30		
29	30	31											

Monday	Tuesday	Wednesday	Thursday	Friday	Sat/Sun
					August 1
2	3	4	5	6	7
9	10	11	12	13	14
16	17	18	19	20	21
23	24	25	26	27	28
30	31				22
					29

Rob Bourestom

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September 2010

September 2010							October 2010						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
5	6	7	8	9	10	11	3	4	5	6	7	8	9
12	13	14	15	16	17	18	10	11	12	13	14	15	16
19	20	21	22	23	24	25	17	18	19	20	21	22	23
26	27	28	29	30			24	25	26	27	28	29	30
							31						

Monday	Tuesday	Wednesday	Thursday	Friday	Sat/Sun
		September 1	2	3	4
6	7	8	9	10	11
13	14	15	16	17	18
20	21	22	23	24	25
27	28	29	30		26
					19
					12
					5

Rob Bourston

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ITEM #R3

There are no attachments for this Item.

Council Agenda Item: #R4

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

FINANCIAL IMPACT:

Budgeted Amount: \$50,000

Cost: \$50,000

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

RECOMMENDATION:

Staff recommends approval.



September 23, 2009

Lea Dunn
Town of Addison
Deputy City Manager
5300 Belt Line Road
PO Box 9010
Addison, TX 75001-9010

Dear Lea,

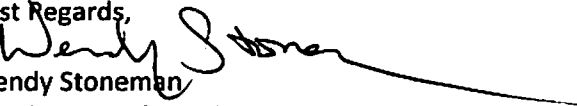
Cavanaugh Flight Museum is requesting \$ 50,000 to help with our marketing efforts for 2010. On September 21, 2009 we surpassed 2008's museum attendance record! In 2010 we will continue to increase our marketing efforts in various media outlets and special promotions to increase the exposure of the Cavanaugh Flight Museum in Addison, TX. Below is a list of our current advertising buys we have commitments with.

Dart Buses
Dallas Morning News (print and web)
Travel Host of Dallas
MAP, Dallas/Fort Worth
DFW Official Visitor Guide
Discover Plano
World Air Show News magazine
ICAS – International Council of Air Shows
AirVenture – Oshkosh WI
Sun-n-Fun, Lakeland FL

Cavanaugh Flight Museum has appreciated all your support in the past and any continued support you can provide us in the future.

If you need more details or any questions please don't hesitate to call me at 863-712-4068.

Best Regards,


Wendy Stoneman
Development & Marketing
Cavanaugh Flight Museum

**Cavanaugh Flight Museum
Advertising/Marketing Budget
Fiscal YR 2010**

Dallas Morning News Web Search Engine and Print ads	\$ 48,000
Titan Worldwide (Dart buses)	42,750
Travel Host of Dallas	6,720
MAP, Dallas/Fort Worth	2,000
Discover Plano	3,080
CFM Literature	35,000
Addison and North Dallas Media	15,264
World Air Show News magazine	9,360
ICAS – International Council of Air Shows- Las Vegas	3,000
AirVenture – Oshkosh WI	5,000
Sun-n-Fun, Lakeland FL	5,000
DFW Folder Display	8,400
East Texas Tourism Association	3,000
North Texas Commission	1,200
DFW Business Meeting and More Publication	8,020
Total Budget	\$ 195,794

Dated August 2009



2009 MARKETING APPRAISAL

Summary:

Despite the current economic downturn, the initial months of 2009 marked an impressive period of growth compared to previous years. In particular, the CFM's 2009 attendance ranked among the five best January-June periods in the museum's 16-year history. This positive data reflects the museum's increased visibility, due in large part to an improved, focused marketing strategy.

January-June 2009 Attendance:

- **January** (1,366) – **BEST since 2004**
- **February** (1,415) – **BEST since 2004**
- **March** (3,719) – **BEST since 1999**
- **April** (1,815) – **BEST since 2004**
- **May** (3,780) – **BEST since 2004**
- **June** (2,717) – **BEST since 2006***
 - **Six-Month** (14,812) – **BEST since 2002** (Only 1995, 2002, 1999, and 1994 were better in museum operational history.)
- **July** (2,820) – **BEST since 2007**
- **August** (2,250) – **BEST since 1997**

2009 vs. 2008 Attendance (% difference)

- **January 2009** (+30%)
- **February 2009** (+32%)
- **March 2009** (+32%)
- **April 2009** (+34%)
- **May 2009** (+32%)
- **June 2009** (+3%)*
 - **Six-Month 2009** (+28% improvement)
- **July 2009** (+29%)
- **August 2009** (+25%)

Projected ANNUAL 2009 Attendance: 29,823

- **BEST since 1999**

* June numbers may be reflective of change in marketing budget

Council Agenda Item: #R5

SUMMARY:

Council approval is requested of an ordinance that 1.) approves the Town's FY 2010 investment policy 2.) replaces the position of Director of Financial and Strategic Services with the Chief Financial Officer, 3.) amends Section 2-211 Selection of Broker/Dealers and Section 2-212 Selection of Depositories of the Town of Addison Code of Ordinances.

FINANCIAL IMPACT:

There is no financial impact associated with the approval of the investment policy. We have budgeted \$1,343,750 in interest earnings for the upcoming fiscal year.

BACKGROUND:

The Public Funds Investment Act (PFIA) requires the Council to annually review and approve an investment policy for the Town. The Town's investment advisor, First Southwest Asset Management (FSAM), has assisted staff with the development and review of the proposed investment policy for FY 2010.

For 2010, staff is recommending that the following changes be made to the policy.

- Replacement of the position of Director of Financial and Strategic Services with the Chief Financial Officer. There is also a change in the policy to allow the City Manager the ability to designate employees other than the Financial Services Manager as an investment officer. This addition gives staff the flexibility to continue treasury and investment functions when Department personnel changes.
- Revise the Town's policy to reflect that the selection of broker/dealers will be based on expected financial stability, experience in selling fixed income securities to other local governments as well as perceived ability to service the Town's account. All firms shall also be required to provide a detailed resume of the firm's primary sales representative, appropriate references and wiring instructions. This change is made to make the Town's policy clearer and more concise.
- Revise the Town's policy to indicate that when selecting depositories, the Town shall evaluate bank financial positions, including capital ratios, liquidity, profitability and asset growth. Information sources for financial data may include www.bankrate.com and the FDIC website at www.fdic.gov. The primary focus shall be on maintaining adequate levels of collateral to support deposit amounts. Previously the process of selecting depositories was cumbersome and in some cases staff had difficulty obtaining bank information in a timely fashion. These changes to the policy will alleviate this situation by providing a clear process for the evaluation bank financials.

RECOMMENDATION:

Staff recommends approval of the Town's FY 2010 investment policy.

TOWN OF ADDISON

INVESTMENT POLICY

For

FY 2009-10

Revised and Adopted:
October 13, 2009

**TOWN OF ADDISON, TEXAS
INVESTMENT POLICY**

I.

SCOPE

The Public Funds Investment Act, Chapter 2256, Texas Government Code, prescribes that each Town is to adopt rules governing its investment practices and to define the authority of the investment officer. The following Investment Policy addresses the methods, procedures, and practices which must be exercised to ensure effective and judicious fiscal management of the Town's funds. This Policy shall not apply to the selection, retention or other issues concerning the depositories of the Town's funds in demand and time deposits as provided under Chapter 105 of the Local Government Code.

This Policy shall apply to the investment and management of all funds of the Town under its control, other than those expressly excluded herein or by applicable law or valid agreement. This Policy shall not supersede the restrictions on investment and use applicable to any specific fund and, in the event of any conflict between this Policy and the requirements of any fund subject hereto, the specific requirement applicable to such fund shall be followed as well as all other provisions of this Policy other than those in conflict. The Employees Deferred Compensation Agency Fund is excluded from coverage under this Policy.

This Policy also requires the formal adoption of an "Investment Strategy Statement" that specifically addresses each of the Town's fund groups. Each Investment Strategy Statement will describe its objectives concerning:

- a) suitability of investment type,
- b) preservation and safety of principal,
- c) liquidity,
- d) marketability of each investment,
- e) diversification of the portfolio, and
- f) yield.

In order to make effective use of the Town's resources, all monies shall be pooled into one investment bank account, except for those monies required to be accounted for in other bank accounts as stipulated by applicable laws, bond covenants or contracts. The income derived from this pooled investment account shall be distributed in accordance with the Town's internal procedures.

II.

OBJECTIVES

The Town's principal investment objectives in order of priority are:

1. Conformance with all Federal regulations, State of Texas statutes and other legal requirements including the Town Charter and Town Ordinances, including this Policy.
2. Preservation of capital and the protection of investment principal.
3. Maintenance of sufficient liquidity to meet anticipated disbursement and cash flows.
4. Diversification to avoid incurring unreasonable risks regarding securities owned.
5. Attainment of a market rate of return equal to or higher than the performance measure established from time to time by the Chief Financial Officer of the Town which is commensurate with the acceptable risk and liquidity objectives of this Policy.

III.

DELEGATION OF AUTHORITY

The City Manager appoints the Chief Financial Officer (CFO) and their designee as the “Investment Officers” of the Town. Direct management responsibility for the investment program is delegated by the City Council to the Chief Financial Officer (hereinafter referred to as the “CFO”). The Investment Officers’ authority will at all times be limited by all applicable laws and regulations in effect from time to time and this Policy. The Investment Officers shall exercise the judgment and care, under prevailing circumstances, that a prudent person would exercise in the management of the person’s own affairs. Unless authorized by law, a person may not deposit, withdraw, transfer, or manage in any other manner the funds of the investing entity.

With written approval from the City Manager, the CFO may delegate any phase of the investment management program to any of the Investment Officers. Such approval shall state specifically the functions such person is authorized to perform or that the person is authorized to perform all activities of the CFO under this Policy. The CFO shall obtain and maintain, at the Town’s expense, fidelity bonds for himself and each of his designees in amounts determined adequate by the CFO (which shall not be less than five percent of the amounts subject to this Policy) for each fiscal year as shown by the approved budget. No person may engage in an investment transaction except as provided under the terms of this Policy and the internal procedures established by the CFO. A current list of persons authorized to transact investment business and wire funds on behalf of the Town shall be maintained by the CFO.

The CFO shall develop and maintain written administrative procedures for the operation of the investment program consistent with this Policy. The controls shall be designed to prevent, identify and control losses of public funds arising from deviation from this Policy, fraud, employee error, and misrepresentation by third parties, or imprudent actions by employees and officers of the Town.

In the discretion of the City Council and in any event upon the termination or reassignment of any Investment Officer authorized to conduct transactions for the Town pursuant to this Policy, the authority of such person shall be revoked and such revocation of authority shall be immediately communicated by the CFO orally and in writing to each and every depository, broker/dealer, investment advisor, custodian and other agency or entity with whom the Town has any existing or continuing relationship in the management of its investments.

The CFO and all Investment Officers shall attend at least one training session relating to the treasurer’s or officer’s responsibilities within twelve (12) months after taking office or assuming duties; and attend a training session not less than once every two years and receive not less than ten (10) hours of training. Such training from an independent source shall be approved or endorsed by the Government Finance Officers Association, Government Finance Officers Association of Texas, Government Treasurers Organization of Texas, Texas Municipal League, or the North Central Texas Council of Governments to include education in investment controls, security risks, strategy risks, market risks, and compliance with the Public Funds Investment Act.

IV.

INVESTMENT ADVISORS

The Town may, in the discretion of the CFO, and the approval of the City Council, appoint one or more Investment Advisors to assist the Town’s financial staff in the management of the Town’s funds. The Investment Advisor must be registered with the Securities and Exchange Commission under the Investment Advisors Act of 1940 and also be registered with the Texas State Securities Board as an Investment Advisor. To be eligible for consideration, an Investment Advisor shall demonstrate to the CFO knowledge of, and experience in, the management of public funds. The CFO will satisfy himself as to the Advisor’s qualifications by all appropriate means, including reference checks with the Advisor’s other clients, the State Securities Board and the Securities and Exchange Commission. An appointed Investment Advisor shall act solely in an advisor and administrative capacity, within the guidelines of this Investment Policy and without any discretionary authority to transact business on behalf of the Town.

Each Investment Advisor, appointed by the Town, shall agree that its investment advice shall at all times be given with the judgment and care, under circumstances then prevailing, which persons paid for their special prudence, discretion and intelligence, in such matters exercise in the management of their client’s affairs, not for speculation by the

client or production of fee income by the advisor or broker but for investment by the client with emphasis on the probable safety of the capital while considering the probable income to be derived.

Appointment of an Investment Advisor shall otherwise be according to the Town's normal purchasing procedures for selecting professional services. Any approved investment advisor may be terminated with the approval of the City Manager, if in the opinion of the CFO, the advisor has not performed adequately. The term of any Investment Advisor contract may not exceed two years. Any renewal or extension of the Investment Advisor contract must be made by the City Council by resolution.

V.

STANDARD OF CARE

As provided for in the Public Funds Investment Act, the standard of care for the Town's investments shall be that such "investments shall be made with judgment and care, under prevailing circumstances, that a person of prudence, discretion and intelligence would exercise in the management of the person's own affairs, not for speculation, but for investment, considering the probable safety of capital and the probable income to be derived."

The overall investment program shall be designed and managed with a degree of professionalism that is worthy of the public trust. The CFO and the Investment Officers shall recognize that the investment activities of the Town are a matter of public record.

The CFO and the Investment Officers, acting in accordance with written procedures and exercising the proper standard of care, shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided that this Policy and the CFO's procedures were followed. In determining whether the CFO or an Investment Officer has exercised the proper standard of care, all investments over which the individual had responsibility will be considered rather than a single investment.

VI.

AUTHORIZED SECURITIES INVESTMENTS

Subject to any limitations otherwise imposed by applicable law, regulations, bond indentures or other agreements, (including but not limited to Chapter 2256 Texas Government Code, the Public Funds Investment Act), the following securities and deposits are the only ones permitted as investments for the Town's funds:

- a. Direct obligations of the United States government with a maturity not to exceed five (5) years from the date of purchase; U.S. Treasury Bills, U.S. Treasury Notes, U.S. Treasury Bonds, and U.S. Treasury Strips (book entry U.S. Treasury securities whose coupon has been removed).
- b. Debentures or discount notes with a maturity not to exceed five (5) years from the date of purchase issued by, guaranteed by, or for which the credit of any of the following Federal Agencies and Instrumentalities is pledged for payment: Federal National Mortgage Association (FNMA), Federal Home Loan Bank (FHLB), Federal Farm Credit Bank (FFCB), and Federal Home Loan Mortgage Corporation (FHLMC). Principal-only and interest-only mortgage backed securities and collateralized mortgage obligations and real estate mortgage investment conduits are expressly prohibited.
- c. Bonds or other interest bearing obligations of which the principal and interest are guaranteed by the full faith and credit of the United States government with a stated maturity not to exceed five (5) years from the date of purchase. A security's "average life" does not constitute a stated maturity. Principal-only and interest-only mortgage backed securities and collateralized mortgage obligations and real estate mortgage investment conduits are expressly prohibited.
- d. Time Certificates of Deposit with a maturity not to exceed three (3) years from the date of purchase, insured by the Federal Deposit Insurance Corporation (FDIC) or its successor, in depository institutions that have a

main office or a branch office in the state of Texas which have been approved by the Town in accordance with Section XI of this Investment Policy.

In addition, separate CDs issued by depositories wherever located, bundled together into a single investment with the full amount of principle and interest of each CD federally insured may be purchased through a selected depository institution with its main office or branch office in Texas. This depository shall act as the custodian for the various certificates on behalf of the Town.

e. Prime commercial paper with an original maturity of one hundred eighty (180) days or less which at the time of purchase, is rated at least:

A-1 by Standard & Poors,
P-1 by Moodys or
F1 by Fitch

(1) At the time of purchase, the commercial paper must be rated by at least two (2) of the above stated ratings agencies at the above stated minimum credit rating.

(2) If more than two (2) of the above stated agencies rates an issuer, all the rating agencies must rate the issuer in accordance with the above stated minimum credit criteria.

(3) If the commercial paper issuer has senior debt* outstanding, the senior debt must be rated by each service that publishes a rating of the issue at least:

A-1 by Moodys,
A+ by Standard and Poor's and
A+ by Fitch.

*Senior Debt is defined as the most senior secured or unsecured debt of an issuer with an original maturity exceeding one year.

If the commercial paper issuer is given a "plus (+) rating", the maximum maturity of two hundred seventy (270) days or less will be allowed.

f. Eligible Bankers Acceptances with original maturities not exceeding one hundred eighty (180) days, issued on domestic banks operating under the banking laws of the United States, whose senior long term debt is rated, at the time of purchase, A-1 or higher by Moodys, A+ by Standard and Poors, or A+ by Fitch.

g. Repurchase agreements with a defined termination date of ninety (90) days or less on U.S. Treasury and Federal Agency securities listed in items "a" and "c" above, collateralized initially at a minimum market value of one hundred two (102) percent of the dollar value of the transaction, with the accrued interest accumulated on the collateral included in the calculation.

If the market value of the collateral falls below one hundred one (101) percent of the dollar value of the transaction, the collateral will be required to be brought up to the one hundred two (102) percent initial maintenance level. A Repurchase Agreement is defined as a simultaneous agreement to buy, hold for ninety (90) days or less, and then sell back an obligation described in item (g) above, the principal and interest of which are guaranteed by the United States.

Repurchase Agreements shall be entered into only with dealers who: 1) are recognized as primary reporting dealers with the Market Reports Division of the Federal Reserve Board of New York; and 2) have an executed, Town approved Master Repurchase Agreement. Collateral (purchased securities) shall be held by the Town's custodian bank as safekeeping agent and the market value of the collateral securities shall be marked-to-the market daily based on the bid price for the previous day as reported in the Wall Street Journal.

For the purpose of item “g” of this section, the term “collateral” shall mean “purchased securities” under the terms of the Town approved Master Repurchase Agreement. Collateral bearing no coupon will have a maturity not to exceed five (5) years. All other eligible collateral shall have a maturity limit of ten (10) years.

The term repurchase agreements include reverse repurchase agreements. The term of a reverse repurchase agreement shall not exceed ninety (90) days and any investments acquired with the proceeds from the reverse repurchase agreement shall not exceed the term of that agreement.

h. Money Market Funds meeting each of the following criteria:

- (1) Registered with and regulated by the Securities and Exchange Commission:
- (2) Has provided the Town with a prospectus and other information required by the Securities Exchange Act of 1934 or the Investment Company Act of 1940.
- (3) No commission fee shall be charged on purchases or sales of shares;
- (4) Have an objective of maintaining a constant daily net asset value of \$1.00 per share:
- (5) Limit assets of the fund to those securities listed in paragraphs “a”, “b”, “c” and “g” above; and
- (6) Have a maximum stated maturity of thirteen (13) months and dollar weighted average portfolio maturity of not more than ninety (90) days. A list of Town approved Money Market Funds shall be kept by the CFO.

i. State investment pools organized under the Interlocal Cooperation Act that meet the requirements of Chapter 2256 Texas Government Code and have been specifically approved by the CFO and authorized by the City Council.

j. Local investment pools organized under the Interlocal Cooperation Act that meet the requirements of Chapter 2256 Texas Government Code and have been specifically approved by the CFO and authorized by the City Council.

k. Direct obligations of the State of Texas or its agencies rated as to investment quality by a nationally recognized investment rating firm not less than A or its equivalent with a maturity not to exceed two (2) years from the date of purchase.

l. Other obligations, the principal of and interest on which are unconditionally guaranteed or insured by the State of Texas or the United States with a maturity not to exceed two (2) years from the date of purchase.

VII.

OTHER INVESTMENT GUIDELINES

The Town seeks active management of its portfolio assets. In the effort of meeting the objectives of this Policy, the Town may from time to time sell securities that it owns in order to better position its portfolio assets. Sales of securities prior to maturity, shall be documented and approved by the CFO before such a transaction is consummated. Sales of securities, yielding net proceeds less than ninety-eight (98) percent of the book value of the securities, must be approved in advance and in writing by both the City Manager and the CFO.

Each investment transaction must be based upon competitive quotations received from at least three (3) broker/dealers who have been approved by the Town in accordance with Texas law.

The purchase and sale of all securities shall be on a delivery-versus-payment or payment-versus-delivery basis (i.e. for securities purchases, monies will not be released by the Town’s safekeeping bank until securities are received at the Federal Reserve Bank for further credit to the Town’s safekeeping bank. In the case of securities sales, monies will

be received by the Town's safekeeping bank via the Federal Reserve Bank, as the securities are simultaneously released to the purchaser). In this manner, the Town will always have possession of either its securities or its monies.

An investment that requires a minimum credit rating does not qualify as an AUTHORIZED SECURITIES INVESTMENT during the period the investment does not have the minimum credit rating even if the investment had the appropriate rating at the time of purchase. The Investment Officers shall take all prudent measures that are consistent with this Policy to liquidate an investment that does not have the minimum rating.

VIII.

PORTFOLIO MATURITIES

Maturities shall be selected which provide for both stability of income and reasonable liquidity.

At all times, the Town shall maintain ten (10) percent of its total investment portfolio in instruments maturing in ninety (90) days or less. The weighted average maturity of all securities and certificates of deposit in the Town's total investment portfolio at any given time (not including cash or demand deposits) shall not exceed one and one-half (1½) years.

In the case of callable securities, the first "call" date may be used as the "maturity" date for investment purposes in this section if in the opinion of the CFO there is little doubt that the security will be called prior to maturity. At all times the stated final maturity shall be used in portfolio average life calculations and reported as outlined in this Policy.

Investment of bond proceeds shall be invested in the investment types listed in Section VI. "a", "b", "c", "h", "i", and "j" for a period of time not to exceed five (5) years. Additionally, bond proceeds may be invested in a repurchase agreement that exceeds ninety (90) days if reductions are allowed from the agreement without penalty for legitimate bond proceed expenditures and the final maturity is within the "temporary period" as defined by the Internal Revenue Service (this arrangement is commonly referred to as a "flexible repurchase agreement").

IX.

INVESTMENT LIMITS

It is the policy of the Town to avoid concentration of assets in a specific maturity, a specific issue, or a specific class of securities, with the exception of U.S. Treasury issues listed in Section VI "a." The asset allocation in the portfolio should, however, be flexible depending upon the outlook for the economy and the securities markets.

The Town will not exceed the following maximum limits as a percentage of the total portfolio for each of the categories listed below:

- 20 percent in Money Market Funds as outlined in Section VI "h"
- 30 percent in Certificates of Deposit
- 30 percent in Commercial Paper
- 30 percent in Bankers Acceptances
- 40 percent in Local Government Investment Pools as authorized in Section VI "h" and "j"
- 70 percent in State Government Investment Pools as authorized in Section VI "i"
- 70 percent in Instrumentality securities described in Section VI "b"

In addition to the limitations set forth above the Town's investment in any single money market fund shall never exceed ten (10) percent of the total assets of the money market fund.

The CFO and investment officers shall evaluate how each security purchased fits into the Town's overall investment strategy.

The amount of investments in U.S. Treasury and Agency Securities and Repurchase Agreements backed by those securities as defined in section VI(a), VI(c) and VI(g), shall at no time be less than thirty (30) percent of the total portfolio. There shall be no maximum limits on these investments.

Bond proceeds shall be exempt from the maximum limitation stated above for State Government Pools, but only for the period of time required to develop a comprehensive draw-down schedule for the project for which the proceeds are intended, the maximum being sixty (60) days, at which time the funds representing bond proceeds must be prudently diversified.

X.

SELECTION OF BROKER/DEALERS

The Town shall maintain a list of approved security broker/dealers maintaining minimum capital of \$10,000,000 and being in business for at least five years. These may include "primary" dealers or regional dealers that qualify under Securities and Exchange Commission (SEC) Rule 15C3-1 (uniform net capital rule). Securities may only be purchased from those authorized institutions and firms identified in the above list.

Broker/dealers and other financial institutions will be selected by the CFO on the basis of expected financial stability, experience in selling fixed income securities to other local governments as well as perceived ability to service the Town's account. Each broker/dealer authorized to conduct business with the Town, shall be required to submit a Broker/Dealer questionnaire as well as updated financial statements. In addition, all firms shall provide a detailed resume of the firm's primary sales representative, appropriate references and wiring instructions. The CFO shall maintain a file on each firm containing the most recent information.

The CFO shall review the quality of service and financial stability of each broker/dealer and financial institution approved under this Section at least annually. Any approved broker/dealer or financial institution may be removed from the list of approved broker/dealers with the approval of the CFO, if in the opinion of the CFO, the firm has not performed adequately or its financial condition is considered inadequate. The City Council shall, at least annually, review, revise, and adopt the list of qualified broker/dealers and financial institutions which are authorized to engage in investment transactions with the Town.

All business organizations eligible to transact investment business with the Town shall be presented a written copy of this Policy. The qualified representative of the business organization seeking to transact investment business with the Town shall execute a written instrument substantially to the effect that the qualified representative has:

- 1) received and thoroughly reviewed this Policy, and
- 2) acknowledged that the business organization has implemented reasonable procedures and controls in an effort to preclude imprudent investment activities with the Town.

The Town shall not enter into an investment transaction with a business organization prior to receiving the written instrument described above. In addition, each Investment Advisor appointed by the Town shall execute the written instrument described above.

If the Council has contracted with a Registered Investment Advisor for the management of its funds, the advisor shall be responsible for performing due diligence on and maintaining a list of broker/dealers with which it shall transact business on behalf of the Town. The advisor shall determine selection criteria. The advisor shall annually present a list of its authorized broker/dealers to the Town for review and likewise shall execute the aforementioned written instrument stating that the advisor has reviewed the Town's investment policy and has implemented reasonable procedures and controls in an effort to preclude imprudent investment activities with the Town. The advisor shall obtain and document competitive bids and offers on all transactions and present these to the Town as part of its standard trade documentation.

XI.

SELECTION OF DEPOSITORIES

Certificates of Deposit (CD) may be placed with banking institutions doing business in the state of Texas which offer competitive and documented interest rates, both at or above interest rates available on government securities to similar maturity dates. All deposits exceeding the current FDIC deposit insurance amount shall be fully collateralized in order to be eligible as Town investments.

In addition to maintaining proper collateral, bank financial positions shall be considered to best assure prudent investment. Relevant criteria shall include capital ratios, liquidity, profitability and asset growth. Information sources for financial data may include www.bankrate.com and the FDIC website at www.fdic.gov. Because the financial condition of banks may change rapidly, primary focus shall be on maintaining adequate levels of collateral to support deposit amounts. If the Town utilizes the services of an investment advisor, the advisor shall assist in the evaluation of both the financial institution and assigned collateral.

XII.

SAFEKEEPING AND CUSTODY

Investment securities purchased for the Town will be delivered by either book entry or physical delivery and shall be held in third-party safekeeping by a Federal Reserve Member financial institution designated as the Town's safekeeping and custodian bank. The Town may designate more than one (1) custodian bank. In no event will the Town's custodial or safekeeping institution also be a counterparty (broker or dealer) to the purchase or sale of those securities. The Town shall execute a written Safekeeping Agreement with each bank prior to utilizing the custodian's safekeeping services. Only a state or national bank located within the State of Texas, may be utilized as a custodian of securities pledged to secure certificates of deposit. The safekeeping agreement must provide that the safekeeping bank will immediately record the receipt of purchased or pledged securities in its books and promptly issue and deliver a signed safekeeping receipt showing the receipt and the identification of the security, as well as the Town's perfected interest.

The CFO shall maintain a list of designated custodian banks and a copy of the Safekeeping Agreement executed with each custodian bank.

The Town must approve release of securities, in writing, prior to their removal from the custodial account. A telephonic facsimile of a written authorization shall be sufficient if the custodian orally confirms receipt of the transmission and an exact copy of the document is retained in the Town's files.

All securities shall be confirmed in the name of the Town and delivered to an approved custodial bank or carried at a Federal Reserve Bank in the name of the Town. The Custodian shall not otherwise deposit purchased or pledged securities. All book entry securities, owned by the Town, shall be evidenced by a safekeeping receipt issued to the Town and signed by the appropriate officer at the custodian bank stating that the securities are held in the Federal Reserve system in a CUSTOMER ACCOUNT naming the Town as the "customer". In addition, the custodian bank will, when requested, furnish a copy of the delivery advice received by the custodian bank from the Federal Reserve Bank.

All certificated securities (those transferred by physical delivery) shall: 1) be held by an approved custodian bank or any correspondent bank in New York City approved by the CFO; and 2) the correspondent bank or the Town's safekeeping bank shall issue a safekeeping receipt to the Town evidencing that the securities are held by the correspondent bank for the Town.

The original safekeeping receipt for each transaction including purchased securities under a repurchase agreement and collateral securing deposits will be forwarded to the CFO or his designee and held in a secured file by the Town.

XIII.

RECORDKEEPING AND REPORTING

A record shall be maintained of all bids and offerings for securities transactions in order to ensure that the Town receives competitive pricing. All transactions shall be documented by the person authorizing the transaction in a form that shows that person's name, the party instructed to execute the transaction, the date, a description of the transaction and a brief statement of the reason(s) for the transaction.

Each depository institution of the Town's funds and purchased securities shall maintain separate, accurate and complete records relating to all deposits of the Town's funds, the securities pledged to secure such deposits and all transactions relating to the pledged securities. Each approved custodian shall maintain separate, accurate and complete records relating to all securities received on behalf of the Town, whether pledged, purchased or subject to repurchase agreement, as well as all transactions related to such securities. In addition, each depository shall file all reports required by the Texas State Depository Board. Each depository and custodian shall agree to make all the records described in this paragraph available to the CFO's designee and the Town's auditors at any reasonable time.

At least once each quarter, the CFO or investment officers shall verify that all securities owned by the Town or pledged to the Town are held in safekeeping in the Town's custodial bank with proper documentation. At least annually the Town's investment program, including the records of custodians and depositories, shall be audited by independent certified public accountants selected by the City Council. This annual audit shall include a compliance audit of the management controls on investments and adherence to the Town's Investment Policy and strategies.

All broker/dealers, custodians, depositories, and investment advisors shall maintain complete records of all transactions that they conducted on behalf of the Town and shall make those records available for inspection by the CFO or other representatives designated by the City Council or City Manager.

All sales of securities for less than the book value of the security shall be approved by the CFO and reported to the City Council at the next regular meeting. Sales of securities for less than ninety-eight (98) percent of the book value of the securities must be approved by both the City Manager and the CFO.

All contracted Investment Advisors shall report at least monthly on the straight-line book value, the market value of investment holdings, and total investment return and such other information required by the CFO. Unrealized profits or losses in the Town's investment portfolio will be disclosed but will not be used in the calculation of income earned for the month. Contracted Investment Advisors shall postmark their monthly reports to the CFO no later than fifteen (15) business days following the close of the reporting month.

An investment report shall be prepared by the CFO within forty five (45) days of the quarter end that:

- a) describes in detail the investment position of the Town,
- b) states the reporting period beginning book and market values, additions or changes to the book and market values during the period and ending book and market values for the period of each pooled fund group,
- c) states the reporting period beginning book and market value and ending book and market value for each investment security by asset type and fund type,
- d) states the maturity date of each investment security,
- e) states the fund for which each investment security was purchased,
- f) states fully accrued interest for the reporting period,
- g) states the compliance of the investment portfolio with the Town's Investment Policy, Investment Strategy Statement and the Public Funds Investment Act,
- h) summarizes quarterly transactions, including a detailed list of the gains and losses recognized, and
- i) explains the total investment return during the previous quarter and compares the portfolio's performance to other benchmarks of performance.

This report will be presented to the City Council and signed by all of the Town's Investment Officers. .

Market valuations of investments shall be provided by the Investment Advisor on a monthly basis. The Investment Advisor shall use independent market pricing sources including, but not limited to, Interactive Data Corporation (IDC) and Bloomberg, to monitor the market price of investments acquired with the Town's funds.

Within forty five (45) days after the end of the Town's fiscal year the CFO shall prepare, sign and deliver to the City Manager and the City Council an annual report on the Town's investment program and investment activity which has also been signed by each officer and employee of the Town authorized to conduct any of the Town's investment activity. The annual report shall include full year and separate monthly comparisons of investment return. Such annual report shall include an analysis of the compliance with this Policy as well as changes in applicable laws and regulations during the previous year and may include any other items of significance related to the investment program.

If the Town places funds in any investment other than registered investment pools or accounts offered by its depository bank, the above reports shall be formally reviewed at least annually by an independent auditor, and the result of the review shall be reported to the City Council.

XIV.

ETHICS AND CONFLICTS OF INTEREST

Officers and employees of the Town involved in the investment process shall refrain from personal business activity that involves any of the Town's approved custodians, depositories, broker/dealers, or investment advisors and shall refrain from investing in any security issue held by the Town. Employees and officers shall not utilize investment advice concerning specific securities or classes of securities obtained in the transaction of the Town's business for personal investment decisions, shall in all respects subordinate their personal investment transactions to those of the Town particularly with regard to the timing of purchases and sales and shall keep confidential all investment advice obtained on behalf of the Town, and all transactions contemplated and completed by the Town, except when disclosure is required by law.

All Investment Officers of the Town shall file with the Texas Ethics Commission and the City Council a statement disclosing any personal business relationship with business organization seeking to sell investments to the Town or any relationship within the second degree by affinity or consanguinity to an individual seeking to sell investments to the Town.

XV.

COLLATERAL REQUIREMENTS

Any deposits exceeding FDIC insurance limits shall be fully collateralized by securities listed in items "a" and "b" below, and the collateral shall be held by the Town's third party custodian bank.

- a. Direct obligations of the United States government; U.S. Treasury Bills, U.S. Treasury Notes, U.S. Treasury Bonds, and U.S. Treasury Strips (book entry U.S. Treasury securities whose coupon has been removed).
- b. Debentures or discount notes issued by, guaranteed by, or for which the credit of any of the following Federal Agencies and Instrumentalities is pledged for payment: Government National Mortgage Association (GNMA), Federal National Mortgage Association (FNMA), Federal Home Loan Bank (FHLB), Federal Farm Credit Bank (FFCB), and Federal Home Loan Mortgage Corporation (FHLMC). Principal-only and interest-only mortgage backed securities and collateralized mortgage obligations and real estate mortgage investment conduits are expressly prohibited.

Consistent with the requirements of State law, the Town requires all bank and savings bank deposits to be federally insured or collateralized with eligible securities. Financial institutions serving as Town depositories will be required to sign a Security Agreement with the Town and the Town's custodian. The agreement shall define the Town's rights to the collateral in case of default, bankruptcy, or closing and shall establish a perfected security interest in compliance with Federal and State regulations, including:

- a. the Agreement must be in writing;
- b. the Agreement has to be executed by the Depository and the Town contemporaneously with the acquisition of the asset;
- c. the Agreement must be approved by the Board of Directors or the loan committee of the Depository and a copy of the meeting minutes must be delivered to the Town;
- d. the Agreement must be part of the Depository's "official record" continuously since its execution.

XVI.
POLICY REVISIONS

The Investment Policy and Investment Strategy Statements will be reviewed at least annually by the CFO and the City Council and may be amended as conditions warrant by the City Council.

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING CHAPTER 2 (ADMINISTRATION), ARTICLE IV (FINANCE), DIVISION 3 (INVESTMENT POLICY) AS SET FORTH HEREIN; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, in accordance with State law the City Council of the Town of Addison, Texas (the “City”) has heretofore adopted an investment policy regarding the investment of its funds and funds under its control; and

WHEREAS, the said investment policy is set forth in Division 3, Article IV, Chapter 2 of the City’s Code of Ordinances; and

WHEREAS, the City Council has reviewed the said investment policy and desires to amend the same as set forth herein.

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

Section 1. Incorporation of Premises. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. Amendment. Chapter 2 (Administration) of the Code of Ordinances (the “Code”) of the Town of Addison, Texas (the “City”) is hereby amended in the following particulars, and all other chapters, articles, sections, subsections, paragraphs, phrases, and words are not amended but are ratified and confirmed:

A. Division 3 (Investment Policy) of Article IV (Finance) of Chapter 2 of the Code is amended as follows (additions are underlined; deletions are ~~struck-through~~):

Sec. 2-201. Revisions.

This division and investment strategy statements will be reviewed at least annually by the chief financial officer and the city council and may be amended as conditions warrant by the city council.

Sec. 2-202. Scope.

(a) The Public Funds Investment Act (V.T.C.A., Government Code ch. 2256) prescribes that each town is to adopt rules governing its investment practices and to define the authority of the investment officer. The following provisions of this division address the methods, procedures, and practices which must be exercised to ensure effective and judicious fiscal management of the town's funds. This division shall not

apply to the selection, retention or other issues concerning the depositories of the town's funds in demand and time deposits as provided under V.T.C.A., Local Government Code ch. 105.

(b) This division shall apply to the investment and management of all funds of the town under its control, other than those expressly excluded herein or by applicable law or valid agreement. This division shall not supersede the restrictions on investment and use applicable to any specific fund and, in the event of any conflict between this division and the requirements of any fund subject to this division, the specific requirement applicable to such fund shall be followed as well as all other provisions of this division other than those in conflict. The employees deferred compensation agency fund is excluded from coverage under this policy.

(c) This division also requires the formal adoption of an "investment strategy statement" that specifically addresses each of the town's fund groups. Each investment strategy statement will describe its objectives concerning:

- (1) Suitability of investment type;
- (2) Preservation and safety of principal;
- (3) Liquidity;
- (4) Marketability of each investment;
- (5) Diversification of the portfolio; and
- (6) Yield.

(d) In order to make effective use of the town's resources, all monies shall be pooled into one investment bank account, except for those monies required to be accounted for in other bank accounts as stipulated by applicable laws, bond covenants or contracts. The income derived from this pooled investment account shall be distributed in accordance with the town's internal procedures.

Sec. 2-203. Objectives.

The town's principal investment objectives in order of priority are:

- (1) Conformance with all federal regulations, state statutes and other legal requirements including the town Charter and town ordinances, including this division.
- (2) Preservation of capital and the protection of investment principal.
- (3) Maintenance of sufficient liquidity to meet anticipated disbursements and cash flows.

(4) Diversification to avoid incurring unreasonable risks regarding securities owned.

(5) Attainment of a market rate of return equal to or higher than the performance measure established from time to time by the chief financial officer of the town which is commensurate with the acceptable risk and liquidity objectives of this policy.

Sec. 2-204. Delegation of authority.

(a) The city manager appoints the chief financial officer and the chief financial officers' designee as the "investment officers" of the town. Direct management responsibility for the investment program is delegated by the city council to the chief financial officer (hereinafter referred to as the "CFO"). The investment officers' authority will at all times be limited by all applicable laws and regulations in effect from time to time and this policy. The investment officers shall exercise the judgment and care, under prevailing circumstances, that a prudent person would exercise in the management of the person's own affairs. Unless authorized by law, a person may not deposit, withdraw, transfer, or manage in any other manner the funds of the investing entity.

(b) With written approval from the city manager, the CFO may delegate any phase of the investment management program to any of the investment officers. Such approval shall state specifically the functions such person is authorized to perform or that the person is authorized to perform all activities of the CFO under this division. The CFO shall obtain and maintain, at the town's expense, fidelity bonds for the CFO and each of the CFO's designees in amounts determined adequate by the CFO (which shall not be less than five percent of the amounts subject to this policy) for each fiscal year as shown by the approved budget. No person may engage in an investment transaction except as provided under the terms of this division and the internal procedures established by the CFO. A current list of persons authorized to transact investment business and wire funds on behalf of the town shall be maintained by the CFO.

(c) The CFO shall develop and maintain written administrative procedures for the operation of the investment program consistent with this policy. The controls shall be designed to prevent, identify and control losses of public funds arising from deviation from this policy, fraud, employee error, misrepresentation by third parties, or imprudent actions by employees and officers of the town.

(d) In the discretion of the city council and in any event upon the termination or reassignment of any investment officer authorized to conduct transactions for the town pursuant to this division, the authority of such person shall be revoked and such revocation of authority shall be immediately communicated by the CFO orally and in writing to each and every depository, broker/dealer, investment advisor, custodian and other agency or entity with whom the town has any existing or continuing relationship in the management of its investments.

(e) The CFO and all investment officers shall attend at least one training session relating to the treasurer's or officer's responsibilities within twelve (12) months after taking office or assuming duties; and attend a training session not less than once every two years and receive not less than ten (10) hours of training. Such training from an independent source shall be approved or endorsed by either Government Finance Officers Association, Government Finance Officers Association of Texas, Government Treasurers Organization of Texas, Texas Municipal League, or the North Central Texas Council of Governments to include education in investment controls, security risks, strategy risks, market risks, and compliance with the Public Funds Investment Act (V.T.C.A., Government Code ch. 2256).

Sec. 2-205. Investment advisors.

(a) The town may, in the discretion of the CFO, and with the approval of the town council, appoint one or more investment advisors to assist the town's financial staff in the management of the town's funds. The investment advisor must be registered with the Securities and Exchange Commission under the Investment Advisors Act of 1940 and also be registered with the Texas state securities board as an investment advisor. To be eligible for consideration, an investment advisor shall demonstrate to the CFO knowledge of, and experience in, the management of public funds. The CFO will satisfy himself as to the advisor's qualifications by all appropriate means, including reference checks with the advisor's other clients, the state securities board and the Securities and Exchange Commission. An appointed investment advisor shall act solely in an advisory and administrative capacity, within the guidelines of this division, and without any discretionary authority to transact business on behalf of the town.

(b) Each investment advisor appointed by the town shall agree that its investment advice shall at all times be given with the judgment and care, under circumstances then prevailing, which persons paid for their special prudence, discretion and intelligence, in such matters exercise in the management of their client's affairs, not for speculation by the client or production of fee income by the advisor or broker, but for investment by the client with emphasis on the probable safety of the capital while considering the probable income to be derived.

(c) Appointment of an investment advisor shall otherwise be according to the town's normal purchasing procedures for selecting professional services. Any approved investment advisor may be terminated with the approval of the city manager if in the opinion of the CFO the advisor has not performed adequately. The term of any investment advisor contract may not exceed two years. Any renewal or extension of an investment advisor contract must be made by the city council by resolution.

Sec. 2-206. Standard of care.

(a) As provided for in the V.T.C.A., Government Code § 2256.006(a), the standard of care for the town's investments shall be that such "investments shall be made with judgment and care, under prevailing circumstances, that a person of prudence, discretion and intelligence would exercise in the management of the person's own affairs, not for

speculation, but for investment, considering the probable safety of capital and the probable income to be derived."

(b) The overall investment program shall be designed and managed with a degree of professionalism that is worthy of the public trust. The CFO and the investment officers shall recognize that the investment activities of the town are a matter of public record.

(c) The CFO and the investment officers, acting in accordance with written procedures and exercising the proper standard of care, shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided that this division and the CFO's procedures were followed. In determining whether the CFO or an investment officer has exercised the proper standard of care, all investments over which the individual had responsibility will be considered rather than a single investment.

Sec. 2-207. Authorized securities investments.

Subject to any limitations otherwise imposed by applicable law, regulations, bond indentures or other agreements, (including, but not limited to, V.T.C.A., Government Code ch. 2256), the following securities and deposits are the only ones permitted as investments for the town's funds:

(1) Direct obligations of the United States government with a maturity not to exceed five (5) years from the date of purchase; U.S. Treasury Bills, U.S. Treasury Notes, U.S. Treasury Bonds, and U.S. Treasury Strips (book entry U.S. Treasury securities whose coupon has been removed).

(2) Debentures or discount notes with a maturity not to exceed five (5) years from the date of purchase issued by, guaranteed by, or for which the credit of any of the following federal agencies and instrumentalities is pledged for payment: Federal National Mortgage Association (FNMA), Federal Home Loan Bank (FHLB), Federal Farm Credit Bank (FFCB), and Federal Home Loan Mortgage Corporation (FHLMC). Principal-only and interest-only mortgage backed securities and collateralized mortgage obligations and real estate mortgage investment conduits are expressly prohibited.

(3) Bonds or other interest bearing obligations of which the principal and interest are guaranteed by the full faith and credit of the United States government with a stated maturity not to exceed five years from the date of purchase. A security's "average life" does not constitute a stated maturity. Principal-only and interest-only mortgage backed securities and collateralized mortgage obligations and real estate mortgage investment conduits are expressly prohibited.

(4) Time certificates of deposit with a maturity not to exceed three (3) years from the date of purchase, insured by the Federal Deposit Insurance Corporation (FDIC) or its successor, in depository institutions that have a main office or a

branch office in the State of Texas which have been approved by the town in accordance with section XI of this investment policy.

In addition, separate CDs issued by depositories wherever located, bundled together into a single investment with the full amount of principle and interest of each CD federally insured may be purchased through a selected depository institution with its main office or branch office in Texas. This depository shall act as the custodian for the various certificates on behalf of the town.

(5) Prime commercial paper with an original maturity of one hundred eighty (180) days or less which at the time of purchase, is rated at least: A-1 by Standard & Poors, P-1 by Moodys, or F1 by Fitch.

a. At the time of purchase, the commercial paper must be rated by at least two (2) of the above stated ratings agencies at the above stated minimum credit rating.

b. If more than two (2) of the above stated agencies rates and issuer, all the rating agencies must rate the issuer in accordance with the above stated minimum credit criteria.

c. If the commercial paper issuer has senior debt* outstanding, the senior debt must be rated by each service that publishes a rating of the issue at least: A-1 by Moodys, A+ by Standard & Poors, and A+ by Fitch.

* Senior Debt is defined as the most senior secured or unsecured debt of an issuer with an original maturity exceeding one year.

If the commercial paper issuer is given a "plus (+) rating", the maximum maturity of two hundred seventy (270) days or less will be allowed.

(6) Eligible bankers acceptances with original maturities not exceeding one hundred eighty (180) days, issued on domestic banks operating under the banking laws of the United States, whose senior long term debt is rated, at the time of purchase, A-1 or higher by Moodys, A+ by Standard and Poors, or A+ by Fitch.

(7) Repurchase agreements with a defined termination date of ninety (90) days or less on U.S. Treasury and federal agency securities listed in subsections (1) and (3) of this section, collateralized initially at a minimum market value of one hundred two percent (102%) of the dollar value of the transaction, with the accrued interest accumulated on the collateral included in the calculation. If the market value of the collateral falls below one hundred one percent (101%) of the dollar value of the transaction, the collateral will be required to be brought up to the one hundred two percent (102%) initial maintenance level. A repurchase agreement is defined as a simultaneous agreement to buy, hold for ninety (90) days or less, and then sell back an obligation described in this subsection (7), the

principal and interest of which are guaranteed by the United States. Repurchase agreements shall be entered into only with dealers who:

- a. Are recognized as primary reporting dealers with the Market Reports Division of the Federal Reserve Board of New York; and
- b. Have an executed, town approved master repurchase agreement. Collateral (purchased securities) shall be held by the town's custodian bank as safekeeping agent, and the market value of the collateral securities shall be marked-to-the-market daily based on the bid price for the previous day as reported in the Wall Street Journal.

For the purpose of this subsection (7) the term "collateral" shall mean "purchased securities" under the terms of the town approved master repurchase agreement. Collateral bearing no coupon will have a maturity not to exceed five (5) years. All other eligible collateral shall have a maturity limit of ten (10) years. The term "repurchase agreements" includes reverse repurchase agreements. The term of a reverse repurchase agreement shall not exceed ninety (90) days and any investments acquired with the proceeds from the reverse repurchase agreement shall not exceed the term of that agreement.

(8) Money market funds meeting each of the following criteria:

- a. Registered with and regulated by the Securities and Exchange Commission;
- b. Has provided the town with a prospectus and other information required by the Securities Exchange Act of 1934 or the Investment Company Act of 1940;
- c. No commission fee shall be charged on purchases or sales of shares;
- d. Have an objective of maintaining a constant daily net asset value of \$1.00 per share;
- e. Limit assets of the fund to those securities listed in subsections (1), (2), (3) and (7) of this section; and
- f. Have a maximum stated maturity of thirteen (13) months and dollar-weighted average portfolio maturity of not more than ninety (90) days. A list of town-approved money market funds shall be kept by the CFO.

(9) State investment pools organized under the Interlocal Cooperation Act (V.T.C.A., Government Code ch. 791) that meet the requirements of V.T.C.A.,

Government Code ch. 2256, and have been specifically approved by the CFO and authorized by the city council.

(10) Local investment pools organized under the Interlocal Cooperation Act (V.T.C.A., Government Code ch. 791) that meet the requirements of V.T.C.A., Government Code ch. 2256, and have been specifically approved by the CFO and authorized by the city council.

(11) Direct obligations of the state or its agencies rated as to investment quality by a nationally recognized investment rating firm not less than A or its equivalent with a maturity not to exceed two (2) years from the date of purchase.

(12) Other obligations, the principal of and interest on which are unconditionally guaranteed or insured by the state or the United States with a maturity not to exceed two (2) years from the date of purchase.

Sec. 2-208. Other investment guidelines.

(a) The town seeks active management of its portfolio assets. In the effort of meeting the objectives of this policy, the town may, from time to time, sell securities that it owns in order to better position its portfolio assets. Sales of securities prior to maturity shall be documented and approved by the CFO before such a transaction is consummated. Sales of securities yielding net proceeds less than ninety-eight percent (98%) of the book value of the securities must be approved in advance and in writing by both the city manager and the CFO.

(b) Each investment transaction must be based upon competitive quotations received from at least three (3) broker/dealers who have been approved by the town in accordance with state law.

(c) The purchase and sale of all securities shall be on a delivery-versus-payment or payment-versus-delivery basis (i.e., for securities purchases, monies will not be released by the town's safekeeping bank until securities are received at the Federal Reserve Bank for further credit to the town's safekeeping bank. In the case of securities sales, monies will be received by the town's safekeeping bank via the Federal Reserve Bank as the securities are simultaneously released to the purchaser). In this manner, the town will always have possession of either its securities or its monies.

(d) An investment that requires a minimum credit rating does not qualify as an authorized securities investment during the period the investment does not have the minimum credit rating even if the investment had the appropriate rating at the time of purchase. The investment officers shall take all prudent measures that are consistent with this division to liquidate an investment that does not have the minimum rating.

Sec. 2-209. Portfolio maturities.

(a) Maturities shall be selected which provide for both stability of income and reasonable liquidity.

(b) At all times the town shall maintain ten percent (10%) of its total investment portfolio in instruments maturing in ninety (90) days or less. The weighted average maturity of all securities and certificates of deposit in the town's total investment portfolio at any given time (not including cash or demand deposits) shall not exceed one and one-half (1 ½) years.

(c) In the case of callable securities, the first "call" date may be used as the "maturity" date for investment purposes in this section if, in the opinion of the CFO, there is little doubt that the security will be called prior to maturity. At all times the stated final maturity shall be used in portfolio average life calculations and reported as outlined in this division.

(d) Investment of bond proceeds shall be invested in the investment types listed in section 2-207(1) through (3) and (8) through (10) of this Chapter 2 for a period of time not to exceed five (5) years. Additionally, bond proceeds may be invested in a repurchase agreement that exceeds ninety (90) days if reductions are allowed from the agreement without penalty for legitimate bond proceed expenditures and the final maturity is within the "temporary period" as defined by the Internal Revenue Service (this arrangement is commonly referred to as a "flexible repurchase agreement").

Sec. 2-210. Investment limits.

(a) It is the policy of the town to avoid concentration of assets in a specific maturity, a specific issue, or a specific class of securities, with the exception of U.S. Treasury issues listed in subsection 2-66(1). The asset allocation in the portfolio should, however, be flexible depending upon the outlook for the economy and the securities markets.

(b) The town will not exceed the following maximum limits as a percentage of the total portfolio for each of the categories listed below:

TABLE INSET:

Categories	Percentage
Money market funds as outlined in subsection 2-207(8)	20
Certificates of deposit	30
Commercial paper	30
Bankers' acceptances	30
Local government investment pools as authorized in subsection 2-207(8) and (10)	40

State government investment pools as authorized in subsection 2-207(9)	70
Instrumentality securities described in subsection 2-207(2)	70

(c) In addition to the limitations set forth above, the town's investment in any single money market fund shall never exceed ten percent (10%) of the total assets of the money market fund.

(d) The CFO and investment officers shall evaluate how each security purchased fits into the town's overall investment strategy.

(e) The amount of investments in U.S. Treasury and Agency Securities and Repurchase Agreements backed by those securities, as defined in subsections 2-66(1), (3) and (7), shall at no time be less than thirty percent (30%) of the total portfolio. There shall be no maximum limits on these investments.

(f) Bond proceeds shall be exempt from the maximum limitation stated above for state government investment pools, but only for the period of time required to develop a comprehensive draw-down schedule for the project for which the proceeds are intended, the maximum being sixty (60) days, at which time the funds representing bond proceeds must be prudently diversified

Sec. 2-211. Selection of brokers/dealers.

(a) The town shall maintain a list of approved security broker/dealers maintaining minimum capital of \$10,000,000 and being in business for at least five years. These may include "primary" dealers or regional dealers that qualify under Securities and Exchange Commission (SEC) Rule 15C3-1 (uniform net capital rule). Securities may only be purchased from those authorized institutions and firms identified in the above list.

(b) Broker/dealers and other financial institutions will be selected by the CFO on the basis of their expected financial stability, experience in selling fixed income securities to other local governments as well as perceived ability to service the town's account. Each broker/dealer authorized to conduct business with the town shall be required to submit to the town a broker/dealer questionnaire as well as updated financial statements. In addition, all firms shall provide a detailed resume of the firm's primary sales representative, appropriate references and wiring instructions. The CFO shall maintain a file on each firm containing the most recent information.

(c) The CFO shall review the quality of service and financial stability of each broker/dealer and financial institution approved under this section at least annually. Any approved broker/dealer or financial institution may be removed from the list of approved broker/dealers with the approval of the CFO if, in the opinion of the CFO, the firm has not performed adequately or its financial condition is considered inadequate. The city council shall, at least annually, review, revise and adopt the list of qualified broker/dealers and financial institutions which are authorized to engage in investment transactions with the town.

(d) All business organizations eligible to transact investment business with the town shall be presented a written copy of this policy. The qualified representative of the business organization seeking to transact investment business with the town shall execute a written instrument substantially to the effect that the qualified representative has:

(1) Received and thoroughly reviewed this policy, and

(2) Acknowledged that the business organization has implemented reasonable procedures and controls in an effort to preclude imprudent investment activities with the town.

(e) The town shall not enter into an investment transaction with a business organization prior to receiving the written instrument described above. In addition, each investment advisor appointed by the town shall execute the written instrument described above.

(f) If the council has contracted with a registered investment advisor for the management of its funds, the advisor shall be responsible for performing due diligence on and maintaining a list of broker/dealers with which it shall transact business on behalf of the town. The advisor shall determine selection criteria. The advisor shall annually present a list of its authorized broker/dealers to the town for review and likewise shall execute the aforementioned written instrument stating that the advisor has reviewed the town's investment policy and has implemented reasonable procedures and controls in an effort to preclude imprudent investment activities with the town. The advisor shall obtain and document competitive bids and offers on all transactions and present these to the town as part of its standard trade documentation.

Sec. 2-212. Selection of depositories.

(a) Certificates of Deposit (CD) may be placed with banking institutions doing business in the state of Texas which offer competitive and documented interest rates, both at or above interest rates available on government securities to similar maturity dates. All deposits exceeding the current FDIC deposit insurance amount shall be fully collateralized in order to be eligible as Town investments.

(b) In addition to maintaining proper collateral, bank financial positions shall be considered to best assure prudent investment. Relevant criteria shall include capital ratios, liquidity, profitability and asset growth. Information sources for financial data may include www.bankrate.com and the FDIC website at www.fdic.gov. Because the financial condition of banks may change rapidly, primary focus shall be on maintaining adequate levels of collateral to support deposit amounts. If the Town utilizes the services of an investment advisor, the advisor shall assist in the evaluation of both the financial institution and assigned collateral.

Sec. 2-213. Safekeeping and custody.

(a) Investment securities purchased for the town will be delivered by either book entry or physical delivery and shall be held in third-party safekeeping by a Federal Reserve member financial institution designated as the town's safekeeping and custodian bank. The town may designate more than one (1) custodian bank. In no event will the town's custodial or safekeeping institution also be a counterparty (broker or dealer) to the purchase or sale of those securities. The town shall execute a written safekeeping agreement with each bank prior to utilizing the custodian's safekeeping services. Only a state or national bank located within the state may be utilized as a custodian of securities pledged to secure certificates of deposit. The safekeeping agreement must provide that the safekeeping bank will immediately record the receipt of purchased or pledged securities in its books and promptly issue and deliver a signed safekeeping receipt showing the receipt and the identification of the security, as well as the town's perfected interest.

(b) The CFO shall maintain a list of designated custodian banks and a copy of the safekeeping agreement executed with each custodian bank.

(c) The town must approve release of securities, in writing, prior to their removal from the custodial account. A telephonic facsimile of a written authorization shall be sufficient if the custodian orally confirms receipt of the transmission and an exact copy of the document is retained in the town's files.

(d) All securities shall be confirmed in the name of the town and delivered to an approved custodial bank or carried at a Federal Reserve Bank in the name of the town. The custodian shall not otherwise deposit purchased or pledged securities. All book entry securities owned by the town shall be evidenced by a safekeeping receipt issued to the town and signed by the appropriate officer at the custodian bank stating that the securities are held in the Federal Reserve system in a customer account naming the town as the "customer." In addition, the custodian bank will, when requested, furnish a copy of the delivery advice received by the custodian bank from the Federal Reserve Bank.

(e) All certificated securities (those transferred by physical delivery) shall:

(1) Be held by an approved custodian bank or any correspondent bank in New York City approved by the CFO; and

(2) The correspondent bank or the town's safekeeping bank shall issue a safekeeping receipt to the town evidencing that the securities are held by the correspondent bank for the town.

(f) The original safekeeping receipt for each transaction including purchased securities under a repurchase agreement and collateral securing deposits will be forwarded to the CFO or his designee and held in a secured file by the town.

Sec. 2-214. Recordkeeping and reporting.

(a) A record shall be maintained of all bids and offerings for securities transactions in order to ensure that the town receives competitive pricing. All transactions shall be documented by the person authorizing the transaction in a form that shows that person's name, the party instructed to execute the transaction, the date, a description of the transaction and a brief statement of the reason for the transaction.

(b) Each depository institution of the town's funds and purchased securities shall maintain separate, accurate and complete records relating to all deposits of the town's funds, the securities pledged to secure such deposits and all transactions relating to the pledged securities. Each approved custodian shall maintain separate, accurate and complete records relating to all securities received on behalf of the town, whether pledged, purchased or subject to repurchase agreement, as well as all transactions related to such securities. In addition, each depository shall file all reports required by the Texas state depository board. Each depository and custodian shall agree to make all the records described in this subsection available to the CFO's designee and the town's auditors at any reasonable time.

(c) At least once each quarter, the CFO shall verify that all securities owned by the town or pledged to the town are held in safekeeping in the town's custodial bank with proper documentation. At least annually the town's investment program, including the records of custodians and depositories, shall be audited by independent certified public accountants selected by the city council. This annual audit shall include a compliance audit of the management controls on investments and adherence to the town's investment policy and strategies.

(d) All broker/dealers, custodians, depositories and investment advisors shall maintain complete records of all transactions that they conducted on behalf of the town and shall make those records available for inspection by the CFO or other representatives designated by the city council or city manager.

(e) All sales of securities for less than the book value of the security shall be approved by the CFO and reported to the city council at the next regular meeting. Sales of securities for less than ninety eight percent (98%) of the book value of the securities must be approved by both the city manager and the CFO.

(f) All contracted investment advisors shall report at least monthly on the straight-line book value, the market value of investment holdings, and total investment return and such other information required by the CFO. Unrealized profits or losses in the town's investment portfolio will be disclosed but will not be used in the calculation of income earned for the month. Contracted investment advisors shall postmark their monthly reports to the CFO no later than fifteen (15) business days following the close of the reporting month.

(g) An investment report shall be prepared by the CFO within forty-five (45) days of the quarter end that:

- (1) Describes in detail the investment position of the town;

- (2) States the reporting period beginning book and market values, additions or changes to the book and market values during the period and ending book and market values for the period of each pooled fund group;
- (3) States the reporting period beginning book and market value and ending book and market value for each investment security by asset type and fund type;
- (4) States the maturity date of each investment security;
- (5) States the fund for which each investment security was purchased;
- (6) States fully accrued interest for the reporting period;
- (7) States the compliance of the investment portfolio with the town's investment policy, investment strategy statement and the Public Funds Investment Act (V.T.C.A., Government Code ch. 2256);
- (8) Summarizes quarterly transactions, including a detailed list of the gains and losses recognized; and
- (9) Explains the total investment return during the previous quarter and compares the portfolio's performance to other benchmarks of performance.

This report will be presented to the city council and signed by all of the town's investment officers.

(h) Market valuations of investments shall be provided by the investment advisor on a monthly basis. The investment advisor shall use independent market pricing sources including, but not limited to, Interactive Data Corporation (IDC) and Bloomberg, to monitor the market price of investments acquired with the town's funds.

(i) Within forty-five (45) days after the end of the town's fiscal year, the CFO shall prepare, sign and deliver to the city manager and the city council an annual report on the town's investment program and investment activity which has also been signed by each officer and employee of the town authorized to conduct any of the town's investment activity. The annual report shall include full year and separate monthly comparisons of investment return. Such annual report shall include an analysis of the compliance with this article as well as changes in applicable laws and regulations during the previous year and may include any other items of significance related to the investment program.

(j) If the town places funds in any investment other than registered investment pools or accounts offered by its depository bank, the above reports shall be formally reviewed at least annually by an independent auditor, and the result of the review shall be reported to the city council.

Sec. 2-215. Ethics and conflicts of interest.

(a) Officers and employees of the town involved in the investment process shall refrain from personal business activity that involves any of the town's approved custodians, depositories, broker/dealers, or investment advisors and shall refrain from investing in any security issue held by the town. Employees and officers shall not utilize investment advice concerning specific securities or classes of securities obtained in the transaction of the town's business for personal investment decisions, shall, in all respects, subordinate their personal investment transactions to those of the town, particularly with regard to the timing of purchases and sales and shall keep confidential all investment advice obtained on behalf of the town and all transactions contemplated and completed by the town, except when disclosure is required by law.

(b) All investment officers of the town shall file with the Texas state ethics commission and the city council a statement disclosing any personal business relationship with a business organization seeking to sell investments to the town or any relationship within the second degree by affinity or consanguinity to an individual seeking to sell investments to the town.

Sec. 2-216. Collateral requirements.

Any deposits exceeding FDIC insurance limits shall be fully collateralized by securities listed in items "a" and "b" below, and the collateral shall be held by the Town's third party custodian bank.

a. Direct obligations of the United States Government; U.S. Treasury Bills, U.S. Treasury Notes, U.S. Treasury Bonds, and U.S. Treasury Strips (book entry U.S. Treasury securities whose coupon has been removed).

b. Debentures or discount notes issued by, guaranteed by, or for which the credit of any of the following Federal Agencies and Instrumentalities is pledged for payment: Government National Mortgage Association (GNMA), Federal National Mortgage Association (FNMA), Federal Home Loan Bank (FHLB), Federal Farm Credit Bank (FFCB), and Federal Home Loan Mortgage Corporation (FHLMC). Principal-only and interest-only mortgage backed securities and collateralized mortgage obligations and real estate mortgage investment conduits are expressly prohibited.

Consistent with the requirements of state law, the town requires all bank and savings bank deposits to be federally insured or collateralized with eligible securities. Financial institutions serving as town depositories will be required to sign a security agreement with the town and the town's custodian. The agreement shall define the town's rights to the collateral in case of default, bankruptcy, or closing and shall establish a perfected security interest in compliance with federal and state regulations, including:

a. The agreement must be in writing;

- b. The agreement has to be executed by the depository and the town contemporaneously with the acquisition of the asset;
- c. The agreement must be approved by the board of directors or the loan committee of the depository and a copy of the meeting minutes must be delivered to the town;
- d. The agreement must be part of the depository's "official record" continuously since its execution.

Sec. 2-217. Policy revisions.

The investment policy and investment strategy statements will be reviewed at least annually by the CFO and the city council and may be amended as conditions warrant by the city council.

Section 3. Savings. This Ordinance shall be cumulative of all other ordinances of the City affecting the City's investment policy or investment strategy and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance.

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 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, which remaining portions shall remain in full force and effect.

Section 4. Effective Date. This Ordinance shall become effective from and after its date of passage and approval as provided by law.

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

Joe Chow, Mayor

ATTEST:

By: _____
Lea Dunn, City Secretary

APPROVED AS TO FORM:

By: _____
John Hill, City Attorney

Council Agenda Item: #R6

SUMMARY:

Council approval is requested of a resolution that adopts the Town of Addison Investment Strategy for FY 2010.

FINANCIAL IMPACT:

There is no financial impact associated with the approval of the investment strategy.

BACKGROUND:

The Public Funds Investment Act (PFIA) requires the Council to annually review the Town's investment strategy. The Town's investment advisor, First Southwest Asset Management, has assisted staff with the development of the attached strategy. The investment strategy has been drafted to comply with all aspects of the PFIA.

For FY 2010, staff is not recommending any change to our investment strategy. The investment strategy has the following priorities (in order of importance):

- Understanding the suitability of the investment to the financial requirements of the Town
- Preservation and safety of principal
- Liquidity
- Marketability of the investment if the need arises to liquidate the investment prior to maturity
- Diversification of the investment portfolio
- Yield

RECOMMENDATION:

Staff recommends that Council adopt the resolution approving the Town's FY 2010 investment strategy.

EXHIBIT A

TOWN OF ADDISON

INVESTMENT STRATEGY STATEMENT

For

FY 2009-10

Adopted:
October 13, 2009

PREFACE

It is the policy of the Town of Addison that, giving due regard to the safety and risk of investment, all available funds shall be invested in conformance with State and Federal Regulations, applicable Bond Resolution requirements, and adopted Investment Policy.

In accordance with the Texas Public Funds Investment Act (Chapter 2256, Tex. Gov. Code), the City Council shall adopt Investment Strategy Statements that address the following priorities (in order of importance):

- Understanding the suitability of the investment to the financial requirements of the Town;
- Preservation and safety of principal;
- Liquidity;
- Marketability of the investment if the need arises to liquidate the investment prior to maturity;
- Diversification of the investment portfolio; and
- Yield

Effective investment strategy development coordinates the primary objectives of the Town's Investment Policy and cash management procedures with investment security risk/return analysis to enhance interest earnings and reduce investment risk. Aggressive cash management shall be utilized to increase the available "investment period" for all Town funds. Investment security maturity selections shall be based on cash flow requirements and market conditions to take advantage of interest earnings as viable and material revenue to all Town funds. The Town's portfolios shall be designed and managed in a manner responsive to the public trust and consistent with the Investment Policy.

INVESTMENT STRATEGY

In order to minimize risk of loss due to interest rate fluctuations, investment maturities will not exceed the anticipated cash flow requirements of the funds. Investment guidelines by fund-type are as follows:

Suitability – any investment eligible in the Investment Policy is suitable.

Safety of principal – all investments shall be of high quality securities with no perceived default risk. Market price fluctuations will, however, occur. By managing the weighted average days to maturity for the Operating fund portfolio to less than 270 days and restricting the maximum allowable maturity to five years, the price volatility of the overall portfolio will be minimized.

Liquidity – operating funds require the greatest short-term liquidity of any of the fund types. Short-term investment pools and money market mutual funds should provide daily liquidity and may be utilized as a competitive yield alternative to fixed maturity investments.

Marketability – securities with active and efficient secondary markets are necessary in the event of an unanticipated cash requirement. Historical market “spreads” between the bid and offer prices of a particular security-type of less than a quarter of a percentage point shall define an efficient secondary market.

Diversification – investment maturities should be staggered throughout the budget cycle to provide cash flow based on the anticipated operating needs of the Town. When conditions are favorable, market cycle risk will be reduced by diversifying the appropriate maturity structure out to three years. Adhering to the Investment Policy’s maximum investment-type limits (Section IX. INVESTMENT LIMITS) should restrict the exposure of the fund to any one-market sector.

Yield – attaining a competitive market yield for comparable security-types and portfolio restrictions is the desired objective. The yield of an equally weighted, rolling three-month Treasury bill portfolio should be the minimum yield objective. The Town's Chief Financial Officer ("CFO") may also compare the operating fund’s performance to other appropriate benchmarks.

The Investment Policy permits the Town to sell securities from time to time that it owns in order to better position its portfolio assets. Sales of securities prior to maturity shall be documented and approved by the CFO before such a transaction is consummated. Sales of securities, yielding net proceeds less than ninety-eight (98) percent of the book value of the securities, must be approved in advance and in writing by both the City Manager and the CFO.

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

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF
ADDISON, TEXAS ADOPTING AN INVESTMENT STRATEGY
FOR FY 2009-10.**

WHEREAS, the Public Funds Investment Act (PFIA) requires the Council to annually review the Town's investment strategy; and,

WHEREAS, the Town's investment advisor, First Southwest Asset Management, has assisted staff with the development of the attached strategy; and,

WHEREAS, the investment strategy has been drafted to comply with all aspects of the PFIA; and,

WHEREAS, for FY 2009-10, staff is not recommending any change in our investment strategy; and,

WHEREAS, the investment strategy has the following priorities (in order of importance);

- » Understanding the suitability of the investment to the financial requirements of the Town.
- » Preservation and safety of principal.
- » Liquidity
- » Marketability of the investment if the need arises to liquidate the investment prior to maturity.
- » Diversification of the investment portfolio.
- » Yield

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

THAT the City Council does hereby approve adopting an investment strategy for FY 2009-10.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this 13th day of October, 2009.

Joe Chow-Mayor

ATTEST:

Lea Dunn-City Secretary

Council Agenda Item: #R7

SUMMARY:

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.

BACKGROUND:

The Town has issued public and non-public aviation fuel permits or licenses in connection with the Airport's centralized bulk fuel facility. Public fuel permits are generally issued to the Airport's fix-based operators (the "FBOs") who are authorized under their permit to retail aviation fuel to the general aviation public. Non-public fuel permits restrict the license holder to fuel only the aircraft they own or lease (or otherwise have the legal capacity to transfer title of the aircraft) and any ground equipment used in connection with their aeronautical operations and for no other purpose.

Once the new Town-owned bulk fuel facility commenced operations in December 2007, it became apparent that non-public fueling operations were needed to help mitigate the Town's cost of operation while at the same time attract new or additional economic benefits to the Airport.

The proposed Resolution recognizes that non-public and public fueling operations are two unique classes of operations at the Airport and that non-public fueling operations derive certain economic benefits and advantages compared to the other. Therefore it is appropriate for each class to pay reasonable fees and to conform to appropriate standards relative to its class of use.

RECOMMENDATION:

Airport Management recommends the Town adopt the proposed Resolution to continue in effect the fuel flowage fee of twelve cents (\$.12) for each gallon of aviation fuel received by the holders of public fuel permits or licenses and to assess a fuel flowage fee of twenty cents (\$0.20) for each gallon of aviation fuel received by the holders of non-public fuel permits.

Attachments:

Bill Dyer – Memorandum
Resolution – Fuel Flowage Fee



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

Main: 972-392-4850
Direct: 972-392-4856
Fax: 972-788-9334
bill.dyer@addisonairport.net

- MEMORANDUM -

To: Mark Acevedo
From: Bill Dyer
CC: Joel Jenkinson
Date: October 7, 2009
Re: Recommendation to Modify Fuel Flowage Fee Structure for Addison Airport

Airport Management recommends the Town consider and consent to the modification of the Addison Airport Fuel Flowage Fee rate structure. Please find attached a proposed resolution (the "Resolution") to continue in effect the fuel flowage of twelve cents (\$.12) for each gallon of aviation fuel received by the holders of public fuel permits or licenses and to adjust the fuel flowage fee to twenty cents (\$.20) for each gallon of aviation fuel received by the holders of non-public fuel permits, and subsequently amending such permits or licenses as may be necessary to reflect such rates.

The City Attorney has approved the form of the Resolution for the Town's purposes.

Background Information:

The Town has issued public and non-public aviation fuel permits or licenses in connection with the Airport's centralized bulk fuel facility. Public fuel permits are generally issued to the Airport's fix-based operators (the "FBOs") who are authorized under their permit to retail aviation fuel to the general aviation public. Non-public fuel permits restrict the license holder to fuel only the aircraft they own or lease (or otherwise have the legal capacity to transfer title of the aircraft) and any ground equipment used in connection with their aeronautical operations and for no other purpose.

In 1994, the Town amended existing fuel flowage permits to establish the fuel flowage fee at the current rate of twelve cents (\$.12) for each gallon of aviation fuel received by any permit holder. During that time the fuelers owned, operated and maintained their underground storage tanks on ground-leased property. There was also only one non-public fueller, Cherry Air, who in April of this year, surrendered their permit to the Town. Once the new Town-owned bulk fuel facility commenced operations in December 2007,

it became apparent that non-public fueling operations were needed to help mitigate the Town's cost of operation while at the same time attract new or additional economic benefits to the Airport.

The proposed Resolution recognizes that non-public and public fueling operations are two unique classes of operations at the Airport and that non-public fueling operations derive certain economic benefits and advantages compared to the other. Therefore it is appropriate for each class to pay reasonable fees and to conform to appropriate standards relative to its class of use.

Recommendation:

Airport Management recommends the Town adopt the proposed Resolution wherein it states to continue in effect the fuel flowage fee of twelve cents (\$.12) for each gallon of aviation fuel received by the holders of public fuel permits or licenses and to assess a fuel flowage fee of twenty cents (\$.20) for each gallon of aviation fuel received by the holders of non-public fuel permits. These fees are regarded to be fair, reasonable and equitable; have been established with regard to the property and improvements used and the expenses of operation to the Town; comply with federal and state law; and any rules and regulations including without limitation FAA grants and assurances and, to the extent that it applies, the Texas Transportation Code.

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS, REGARDING THE AIRPORT FUEL FLOWAGE FEE, MODIFYING THE AMOUNT OF THE FUEL FLOWAGE FEE FOR NON-PUBLIC FUELERS AS SET FORTH HEREIN, AND PROVIDING FOR THE CONTINUATION OF THE FUEL FLOWAGE FEE FOR PUBLIC FUELERS AND SELF-SERVICE FUELERS; FINDING THAT THE FUEL FLOWAGE FEE AMOUNTS SET FORTH HEREIN ARE REASONABLE AND UNIFORM FOR THE SAME CLASS OF PRIVILEGE OR SERVICE AND ARE ESTABLISHED AND CONTINUED WITH DUE REGARD TO THE PROPERTY AND IMPROVEMENTS USED AND THE EXPENSES OF OPERATION TO THE CITY; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Addison, Texas (the “City”) is the owner of the Addison Airport (the “Airport”) located within the City; and

WHEREAS, the City has issued public/non-public and self-service aircraft fuel dispensing permits to dispense aviation fuel at Addison Airport, and has issued and may issue licenses to receive, store, or dispense fuel at Addison Airport, which permits and licenses require, among other things, the payment to the City of a fuel flowage fee for each gallon of aviation fuel received by the permittee or licensee at the Airport during the term thereof, and reserve the right in the City to increase or decrease the fuel flowage fee as the City may determine, in its sole discretion, is necessary; and

WHEREAS, the City has heretofore, by Resolution No. R94-079 of the City, amended existing fuel flowage permits to establish the fuel flowage fee in an amount equal to twelve cents (\$.012) for each gallon of aviation fuel received by permit holders, and reserved the right to increase or decrease the fuel flowage fee as, in its sole discretion, may be necessary; and

WHEREAS, the City is authorized pursuant to Section 22.014 of the Texas Transportation Code to adopt ordinances, resolutions, rules, and orders necessary to manage, govern, and use the Airport; and

WHEREAS, the City recognizes that there are different classes of fuelers, public fuelers, non-public fuelers and self-service fuelers, and in connection herewith the City has considered the differences between the classes and has given due consideration of all regulatory and legal requirements affecting the fuel flowage fees assessed for the different classes of fuelers, including the City’s obligation to make the Airport as self-sustaining as possible; and

WHEREAS, the City desires by this Resolution to continue in effect the fuel flowage fee of twelve cents (\$.12) for each gallon of aviation fuel received by the holders of public or self-service fuel permits or licenses, and to adjust the fuel flowage fee to twenty cents (\$.20) for

each gallon of aviation fuel received by the holders of non-public fuel permits or licenses, and thereby to amend such permits and licenses as may be necessary to reflect such rates.

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

Section 1. The City Council does hereby establish, for non-public fuelers (non-public operators) holding (or hereafter to hold) a fuel permit or license at the Airport, a fuel flowage fee in an amount equal to twenty cents (\$0.20) for each gallon of aviation fuel received by such permit holders and license holders, beginning November 1, 2009. The City Council does hereby affirm and confirm the continuation, for public fuelers (public fixed based operators) and self-service fuelers (if any) holding (or hereafter to hold) a fuel permit or license at the Airport, of a fuel flowage fee in an amount equal to twelve cents (\$0.12) for each gallon of aviation fuel received by such permit holders and license holders. Such permits and licenses (for public fuelers (public fixed based operators) and self-service fuelers (if any) and non-public fuelers (non-public operators)) shall be and are hereby amended as may be necessary to reflect such fuel flowage fee amounts.

The said fuel flowage fee amounts shall continue in full force and effect from and after November 1, 2009 until such time as such fuel flowage fee amounts may be amended or modified by the City as the City may, in its sole discretion, deem necessary or appropriate.

Section 2. The City has reserved and hereby reserves the right to increase or decrease the said fuel flowage fee amounts as the City may, in its sole discretion, deem necessary or appropriate.

Section 3. The City Council finds that the fuel flowage fee amounts established and/or continued and confirmed hereby are reasonable and uniform for the same class of privilege or service and are established and continued with due regard to the property and improvements used and the expenses of operation to the City.

Section 4. The sections, paragraphs, sentences, phrases, clauses and words of this Resolution are severable, and if any section, paragraph, sentence, phrase, clause or word in this Resolution Ordinance or application thereof to any person or circumstance is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portion of this Resolution, and the City Council hereby declares that it would have passed such remaining portion of this Resolution despite such invalidity, which remaining portion shall remain in full force and effect.

Section 5. The above and foregoing premises to this Resolution are true and correct and are incorporated herein and made a part hereof.

Section 6. This Resolution shall take effect from and after its date of passage and approval.

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

Joe Chow, Mayor

ATTEST:

By: _____
Lea Dunn, City Secretary

APPROVED AS TO FORM:

By: _____
John Hill, City Attorney

Council Agenda Item: #R8

SUMMARY:

Service agreements (3) between the City of Carrollton to provide ongoing maintenance and repair services for the Addison Simulcast Infrastructure and Dispatch Console System Equipment, Fire Department Radio Equipment (portables and mobile) and Police Department Radio Equipment (portables and mobiles).

FINANCIAL IMPACT:

Budgeted Amount: The Emergency Communications department budget includes funds to support these service agreements.

Cost:	<u>Infrastructure / Dispatch Console</u>	<u>\$4,563.73 monthly</u>	<u>\$54,764.80 annual</u>
	<u>Service Agreement Fire</u>	<u>\$ 451.00 monthly</u>	<u>\$ 5,016.00 annual</u>
	<u>Service Agreement Police</u>	<u>\$ 917.50 monthly</u>	<u>\$ 10,410.00 annual</u>
	Total		\$ 70,190.80 annual

BACKGROUND:

The Town entered into an interlocal agreement in 2001 for the purpose of sharing a radio system with City of Farmers Branch and City of Carrollton. In September of 2004, the agreement was amended to provide for maintenance of radio equipment not listed in the original document on a time and material basis. Entering into these agreements will renew the maintenance service previously held with the City of Carrollton and extends termination to September 30, 2010.

Attachment:

Service Agreement – Maintenance Plan Simulcast Site Infrastructure and Dispatch Console Systems

Service Agreement – Maintenance Plan Radio Equipment Fire Department

Service Agreement – Maintenance Plan Radio Equipment Police Department

RECOMMENDATION:

Staff recommends approval.

Service Agreement -Maintenance Plan Radio Equipment

Overview

The Town of Addison, Texas Fire Department (the "Town of Addison") desires for the City of Carrollton to provide ongoing maintenance and repair services for equipment detailed within this document and associated attachments (collectively, this "Agreement"). This Agreement outlines the maintenance of the equipment found in Attachment A.

In 2001 the cities of Addison, Farmers Branch and Carrollton entered into an interlocal agreement for the purpose of sharing a radio system. This agreement included provision for maintenance of equipment specified within the document. In September of 2004, the agreement was amended, with Resolution 2841, to provide for maintenance of radio equipment not listed in the original document on a time and material basis.

Services Provided

The City of Carrollton, Texas agrees to provide maintenance and repair services for the equipment listed in Attachment A to the Town of Addison,. Services will be provided in accordance with the following standards: (i) parts that are new or are warranted as "like new" will be used; (ii) the equipment will be serviced at levels set forth in manufacturer's product manuals; and (iii) routine service procedures prescribed by the equipment manufacturers for their products will be followed.

All equipment must be in working order on the effective date of this Agreement or when new equipment is added to this Agreement. The Town of Addison must provide the serial number and model number for each piece of equipment listed on Attachment A either prior to the effective date or prior to the time that equipment is added to this Agreement.

Repair of Equipment

Repair shall be defined as the best-effort required to restore to normal operating condition any equipment covered under this Agreement which is in disrepair (i.e., not functioning in a normal fashion) or has become defective through normal wear and usage ("Defective Equipment"). Repair shall consist of providing the labor and parts required to restore Defective Equipment to normal operation.

If equipment cannot, in the City of Carrollton's reasonable opinion, be properly or economically serviced for any reason including excessive wear, unavailability of parts, the state of technology, or the practical feasibility of providing repair services, the City of Carrollton may: (1) modify the scope of services related to such equipment; (2) remove such equipment from this Agreement; or (3) increase the price to service such equipment.

In no event shall the City of Carrollton be responsible for the cost to replace equipment that is obsolete or beyond economical repair.

Service Agreement -Maintenance Plan Radio Equipment

Service for Portable Equipment

All portable radio equipment shall be serviced at the City of Carrollton Communications facilities located at 1420 Hutton Drive, Carrollton, Texas during normal working hours (7:30 a.m. - 4:30 p.m., Mon-Fri, excluding City of Carrollton holidays), except those items designated as 7X24 services on Attachment A. All items designated as 7x24 on Attachment A will be serviced on a 7 days per week, 24 hours per day basis for Severity One failures. Severity One Failures are defined as complete failure or major impairment of any mission critical system. The Town of Addison is responsible for the delivery of defective portable equipment to the City of Carrollton facility and for pick up when repairs and service are completed.

Service for Vehicle Mounted Mobiles and Fixed Equipment

The Town of Addison will contact the City of Carrollton Help Desk at 972-466-3280 to request service on mobiles and fixed equipment. All mobiles and fixed equipment will be serviced during normal working hours (7:30 a.m. - 4:30 p.m., Mon-Fri, excluding City of Carrollton holidays), except those items designated as 7x24 services on Attachment A. All items designated as 7x24 on Attachment A will be serviced on a 7 days per week, 24 hours per day basis for Severity One Failures. "Severity One Failures" are defined as complete failure or major impairment of any mission critical system.

Excluded Services

The following services are excluded from the price of this Agreement, but can be performed on a time and materials basis (rates listed in Appendix A) if authorized by the Town of Addison:

- Repair or replacement of equipment that has become defective or damaged due to physical or chemical misuse or abuse from causes such as lightning, power surges, or liquids.
- Repair or replacement of antenna systems, which include antennas, coaxial feed line and coaxial connectors.
- Reprogramming of equipment, accessories, belt clips or battery chargers; custom or special products; modified units; or software.
- Service on any components that have been damaged through the negligence or misconduct of parties other than the City of Carrollton or its employees or agents.
- Repair of equipment that has been damaged as a result of the Town of Addison's failure to operate it in accordance with the operating instructions of the manufacturer or vendor. Costs incurred as a result of any required security escorts at Town of Addison facilities.

Assumptions

- Any additional services desired but excluded from contract can be performed on a time and materials basis upon mutual authorization from the parties at the rates provided in Attachment B.

Service Agreement -Maintenance Plan Radio Equipment

Force Majeure

Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

Neither party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) to the extent said failures or delays are proximately caused by causes beyond that party's reasonable control and occurring without its fault or negligence, including, without limitation, failure of suppliers, subcontractors, and carriers, or party to substantially meet its performance obligations under this Agreement, provided that, as a condition to the claim of no liability, the party experiencing the difficulty shall give the other prompt written notice, with full details following the occurrence of the cause relied upon. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

Term of Agreement

This Agreement shall begin on October 1, 2009 (the "Effective Date") and shall remain in effect from the Effective Date through October 1, 2010 (the "Initial Term"). Unless this Agreement is terminated prior to expiration of the Initial Term, this Agreement will automatically renew for successive one year terms (each, a "Renewal Term") unless and until terminated by the consent of the parties or as otherwise provided herein. Each subsequent Renewal Term will be subject to a cost escalation not to exceed 5%. Either party, upon thirty (30) days prior written notice to the other party, may cancel this Agreement. All payments will be made for work completed and materials provided up to the time of termination.

Town of Addison will be responsible for providing updates to Attachment A by September 30 of each additional year that service is expected (i.e., prior to the beginning of each Renewal Term).

Payments

City of Carrollton will invoice the Town of Addison on an annual basis, according to the prices stipulated in Attachment A for each piece of equipment, subject to the cost escalation described above.

Additional charges for services requested and authorized by the Town of Addison will be billed monthly. Severity One Failures not designated as a 24x7 service level on Attachment A that are responded to after normal business hours will be charged on a time and materials basis.

All payments are due within 30 days of the invoice date.



Where Connections Happen

**Service Agreement -Maintenance Plan
Radio Equipment**

Limited Warranty for Spare Parts Procured by the City of Carrollton on behalf of the Town of Addison:

To the maximum extent allowable, the City of Carrollton shall pass-through to the Town of Addison all manufacturers' warranties provided by third-party hardware vendors for equipment and materials furnished under this Agreement. The City of Carrollton shall provide all standard manufacturers' warranties, guarantees, and/or exchange policies for defective items, which are offered through the manufacturers themselves. The City of Carrollton makes no other warranties whatsoever, express or implied, with regard to the services, hardware and materials, in whole or in part. The City of Carrollton explicitly disclaims all warranties of merchantability and fitness for a particular purpose.

Limitation of Liability

EXCEPT FOR SERVICE FEES AND AMOUNTS EXPRESSLY DUE AND PAYABLE TO THE CITY OF CARROLLTON HEREUNDER, IN NO EVENT SHALL EITHER PARTY TO THIS AGREEMENT BE LIABLE TO THE OTHER PARTY HEREUNDER FOR ANY CLAIMS, PENALTIES OR DAMAGES, WHETHER IN CONTRACT, TORT, OR BY WAY OF INDEMNIFICATION, IN AN AMOUNT EXCEEDING SEVENTY FIVE PERCENT (75%) OF THE FULL PRICE OF THE ORDERED SERVICES UNDER THIS AGREEMENT. UNDER NO CIRCUMSTANCES WILL EITHER PARTY TO THIS AGREEMENT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED AND BASED ON ANY THEORY OF LIABILITY. THIS LIMITATION SHALL APPLY EVEN IF SUCH A PARTY HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT MAY ANY ACTION BE BROUGHT AGAINST EITHER PARTY ARISING OUT OF THIS AGREEMENT MORE THAN ONE YEAR AFTER THE CLAIM OR CAUSE OF ACTION ARISES, DETERMINED WITHOUT REGARD TO WHEN THE AGGRIEVED PARTY SHALL HAVE LEARNED OF THE INJURY OR LOSS.

Lon Fairless
City of Carrollton, IT Manager

Date

Addison FD

Date



Where Connections Happen

**Service Agreement -Maintenance Plan
Radio Equipment**

**Service Agreement -Maintenance Plan
Radio Equipment**

Attachment A -Equipment List

Fire Department Radio Equipment

Qty	Description	Users	Status	Use	Unit Price	Monthly Price	Price for Term	Service Level
13	XTL5000 Mobiles	Fire	Mobile	Field	\$ 8.50	\$ 110.50	\$ 1,326.00	8-5, M-F
33	XTS5000 Portables	Fire	Portable	Field	\$ 8.50	\$ 280.50	\$ 3366.00	8-5, M-F
1	MCS2000 Mobiles with decoders	Fire	Fixed	Fire Station	\$ 30.00	\$ 30.00	\$ 360.00	7X24
1	XTL5000 with decoder	Fire	Fixed	Fire Station	30.00	30.00	360.00	7 X 24
Total						\$ 450.00	\$ 5412.00	



Where Connections Happen

**Service Agreement -Maintenance Plan
Radio Equipment**

Attachment B – Time and Materials Rates

Business Hours (M-F 8am-5pm)

Install Tech rate - \$85.00/hr (1hr min)

Senior Tech rate - \$105.00/hr (1hr min)

After Hours

Install Tech rate - \$127.00/hr (1hr min)

Senior Tech rate - \$157.00/hr (1hr min)

Service Agreement -Maintenance Plan Radio Equipment

Overview

The Town of Addison, Texas Police Department (the “Town of Addison”) desires for the City of Carrollton to provide ongoing maintenance and repair services for equipment detailed within this document and associated attachments (collectively, this “Agreement”). This Agreement outlines the maintenance of the equipment found in Attachment A.

In 2001 the cities of Addison, Farmers Branch and Carrollton entered into an interlocal agreement for the purpose of sharing a radio system. This agreement included provision for maintenance of equipment specified within the document. In September of 2004, the agreement was amended, with Resolution 2841, to provide for maintenance of radio equipment not listed in the original document on a time and material basis.

Services Provided

The City of Carrollton, Texas agrees to provide maintenance and repair services for the equipment listed in Attachment A to the Town of Addison. Services will be provided in accordance with the following standards: (i) parts that are new or are warranted as "like new" will be used; (ii) the equipment will be serviced at levels set forth in manufacturer's product manuals; and (iii) routine service procedures prescribed by the equipment manufacturers for their products will be followed.

All equipment must be in working order on the effective date of this Agreement or when new equipment is added to this Agreement. The Town of Addison must provide the serial number and model number for each piece of equipment listed on Attachment A either prior to the effective date or prior to the time that equipment is added to this Agreement.

Repair of Equipment

Repair shall be defined as the best-effort required to restore to normal operating condition any equipment covered under this Agreement which is in disrepair (i.e., not functioning in a normal fashion) or has become defective through normal wear and usage ("Defective Equipment"). Repair shall consist of providing the labor and parts required to restore Defective Equipment to normal operation.

If equipment cannot, in the City of Carrollton's reasonable opinion, be properly or economically serviced for any reason including excessive wear, unavailability of parts, the state of technology, or the practical feasibility of providing repair services, the City of Carrollton may: (1) modify the scope of services related to such equipment; (2) remove such equipment from Agreement; or (3) increase the price to service such equipment.

In no event shall the City of Carrollton be responsible for the cost to replace equipment that is obsolete or beyond economical repair.

Service Agreement -Maintenance Plan Radio Equipment

Service for Portable Equipment

All portable radio equipment shall be serviced at the City of Carrollton Communications facilities located at 1420 Hutton Drive, Carrollton, Texas during normal working hours (7:30 a.m.- 4:30 p.m., Mon-Fri, excluding City of Carrollton holidays), except those items designated as 7X24 services on Attachment A. All items designated as 7x24 on Attachment A will be serviced on a 7 days per week, 24 hours per day basis for Severity One failures. Severity One Failures are defined as complete failure or major impairment of any mission critical system. The Town of Addison is responsible for the delivery of defective portable equipment to the City of Carrollton facility and for pick up when repairs and service are completed.

Service for Vehicle Mounted Mobiles and Fixed Equipment

The Town of Addison will contact the City of Carrollton Help Desk at 972-466-3280 to request service on mobiles and fixed equipment. All mobiles and fixed equipment will be serviced during normal working hours (7:30 a.m. - 4:30 p.m., Mon-Fri, excluding City of Carrollton holidays), except those items designated as 7x24 services on Attachment A. All items designated as 7x24 on Attachment A will be serviced on a 7 days per week, 24 hours per day basis for Severity One Failures. "Severity One Failures" are defined as complete failure or major impairment of any mission critical system.

Excluded Services

The following services are excluded from the price of this Agreement, but can be performed on a time and materials basis (rates listed in Appendix A) if authorized by the Town of Addison.

- Repair or replacement of equipment that has become defective or damaged due to physical or chemical misuse or abuse from causes such as lightning, power surges, or liquids.
- Repair or replacement of antenna systems, which include antennas, coaxial feed line and coaxial connectors.
- Reprogramming of equipment, accessories, belt clips or battery chargers; custom or special products; modified units; or software.
- Service on any components that have been damaged through the negligence or misconduct of parties other than the City of Carrollton or its employees or agents.
- Repair of equipment that has been damaged as a result of the Town of Addison's failure to operate it in accordance with the operating instructions of the manufacturer or vendor. Costs incurred as a result of any required security escorts at Town of Addison facilities.

Assumptions

- Any additional services desired but excluded from contract can be performed on a time and materials basis upon mutual authorization from the parties at the rates provided in Attachment B.

Service Agreement -Maintenance Plan Radio Equipment

Force Majeure

Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

Neither party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) to the extent said failures or delays are proximately caused by causes beyond that party's reasonable control and occurring without its fault or negligence, including, without limitation, failure of suppliers, subcontractors, and carriers, or party to substantially meet its performance obligations under this Agreement, provided that, as a condition to the claim of no liability, the party experiencing the difficulty shall give the other prompt written notice, with full details following the occurrence of the cause relied upon. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

Term of Agreement

This Agreement shall begin on October 1, 2009 (the "Effective Date") and shall remain in effect from the Effective Date through October 1, 2010 (the "Initial Term"). Unless this Agreement is terminated prior to expiration of the Initial Term, this Agreement will automatically renew for successive one year terms (each, a "Renewal Term") unless and until terminated by the consent of the parties or as otherwise provided herein. Each subsequent Renewal Term will be subject to a cost escalation not to exceed 5%. Either party, upon thirty (30) days prior written notice to the other party, may cancel this Agreement. All payments will be made for work completed and materials provided up to the time of termination.

The Town of Addison will be responsible for providing updates to Attachment A by September 30 of each additional year that service is expected (i.e., prior to the beginning of each Renewal Term).

Payments

City of Carrollton will invoice the Town of Addison on an annual basis, according to the prices stipulated in Attachment A for each piece of equipment, subject to the cost escalation described above.

Additional charges for services requested and authorized by the Town of Addison, will be billed monthly. Severity One Failure not designated as a 24x7 service level on Attachment A that are responded to after normal business hours will be charged on a time and materials basis.

All payments are due within 30 days of the invoice date.



Where Connections Happen

**Service Agreement -Maintenance Plan
Radio Equipment**

Limited Warranty for Spare Parts Procured by the City of Carrollton on behalf of the Town of Addison:

To the maximum extent allowable, the City of Carrollton shall pass-through to the Town of Addison all manufacturers' warranties provided by third-party hardware vendors for equipment and materials furnished under this Agreement. The City of Carrollton shall provide all standard manufacturers' warranties, guarantees, and/or exchange policies for defective items, which are offered through the manufacturers themselves. The City of Carrollton makes no other warranties whatsoever, express or implied, with regard to the services, hardware and materials, in whole or in part. The City of Carrollton explicitly disclaims all warranties of merchantability and fitness for a particular purpose.

Limitation of Liability

EXCEPT FOR SERVICE FEES AND AMOUNTS EXPRESSLY DUE AND PAYABLE TO THE CITY OF CARROLLTON HEREUNDER, IN NO EVENT SHALL EITHER PARTY TO THIS AGREEMENT BE LIABLE TO THE OTHER PARTY HEREUNDER FOR ANY CLAIMS, PENALTIES OR DAMAGES, WHETHER IN CONTRACT, TORT, OR BY WAY OF INDEMNIFICATION, IN AN AMOUNT EXCEEDING SEVENTY FIVE PERCENT (75%) OF THE FULL PRICE OF THE ORDERED SERVICES UNDER THIS AGREEMENT. UNDER NO CIRCUMSTANCES WILL EITHER PARTY TO THIS AGREEMENT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED AND BASED ON ANY THEORY OF LIABILITY. THIS LIMITATION SHALL APPLY EVEN IF SUCH A PARTY HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT MAY ANY ACTION BE BROUGHT AGAINST EITHER PARTY ARISING OUT OF THIS AGREEMENT MORE THAN ONE YEAR AFTER THE CLAIM OR CAUSE OF ACTION ARISES, DETERMINED WITHOUT REGARD TO WHEN THE AGGRIEVED PARTY SHALL HAVE LEARNED OF THE INJURY OR LOSS.

Lon Fairless
City of Carrollton, IT Manager

Date

Addison PD

Date



Where Connections Happen

**Service Agreement -Maintenance Plan
Radio Equipment**

**Service Agreement -Maintenance Plan
Radio Equipment**

Attachment A -Equipment List

Police Department Radio Equipment

Qty	Description	Users	Status	Use	Unit Price	Monthly Price	Price for Term	Service Level
19	MCS2000	Police	Mobile	Field	\$ 8.50	\$ 161.50	\$ 1,938.00	8-5, M-F
80	**MTS2000 Portables	Police	Portable	Field	\$ 8.50	\$ 680.00	\$ 6120.00	8-5, M-F
5	ASTRO Spectra Mobile	Police	Mobile	Field	\$ 9.50	\$ 47.50	\$ 570.00	8-5, M-F
3	XTL5000	Police	Mobile	Field	10.50	\$ 31.50	\$ 378.00	8-5, M-F
Total							\$9006.00	

**MTS2000 portables radios will only be covered from October 1, 2009-June 30, 2010 due to cancellation of support by Motorola



Where Connections Happen

**Service Agreement -Maintenance Plan
Radio Equipment**

Attachment B – Time and Materials Rates

Business Hours (M-F 8am-5pm)

Install Tech rate - \$85.00/hr (1hr min)

Senior Tech rate - \$105.00/hr (1hr min)

After Hours

Install Tech rate - \$127.00/hr (1hr min)

Senior Tech rate - \$157.00/hr (1hr min)

Service Agreement - Maintenance Plan Simulcast Site Infrastructure and Dispatch Console Systems

Overview

The Town of Addison, Texas (“Town of Addison”) desires for the City of Carrollton, Texas (the “City of Carrollton”) (each, a “Party,” and, collectively, the “Parties”) to provide ongoing maintenance and repair services for equipment detailed within this document and associated attachments (collectively, this “Agreement”). This Agreement further defines the scope summary found in Attachment C of the Supplemental Metrocrest Radio System Inter-local Agreement, executed by and between the Parties on September 9, 2003 (the “Interlocal Agreement”). Nothing in this Agreement shall be construed or be deemed to modify, alter, amend or change any term or condition of the Interlocal Agreement or supplements thereto between the City of Carrollton and Town of Addison. This Agreement outlines the maintenance of the Addison Simulcast Infrastructure and Dispatch Console System Equipment, as described in Appendix A, and which is attached hereto and incorporated by reference herein as if restarted in full.

Services Provided

The City of Carrollton, Texas agrees to provide maintenance and repair services for the equipment listed in Appendix A to the Town of Addison. Services will be provided in accordance with the following standards: (i) parts that are new or are warranted as “like new” will be used; (ii) the equipment will be serviced at levels set forth in manufacturer’s product manuals; and (iii) routine service procedures prescribed by the equipment manufacturers for their products will be followed.

All equipment must be in working order on the effective date of this Agreement or when new equipment is added to this Agreement. The Town of Addison must provide the serial number and model number for each piece of equipment listed on Appendix A either prior to the Effective Date, as defined herein, or prior to the time that equipment is added to this Agreement.

Repair of Equipment

Repair, for purposes of this Agreement, shall mean the best-effort required to restore to normal operating condition any equipment covered under this Agreement which is in disrepair (i.e., not functioning in a normal fashion) or has become defective through normal wear and usage (“Defective Equipment”). Repair shall consist of the labor and parts required to restore Defective Equipment to normal operation.

If Defective Equipment cannot, in the City of Carrollton’s reasonable opinion, be properly or economically serviced for any reason including excessive wear, unavailability of parts, the state of technology, or the practical feasibility of providing repair services, the City of Carrollton may: (1) modify the scope of services related to such Defective Equipment; (2) remove such Defective Equipment from this Agreement; or (3) increase the price to service such Defective Equipment.

Service Agreement - Maintenance Plan Simulcast Site Infrastructure and Dispatch Console Systems

In no event shall the City of Carrollton be responsible for the cost to replace equipment that is obsolete or beyond economical repair.

Field Replaceable Units (FRU's)

For purposes of this Agreement, "FRU's" are readily accessible, essential spare cards or equipment owned by the customer [???Town of Addison ???] and used in an effort to restore the system to proper operation in the least amount of time.

Equipment components which are determined to be in failure shall be replaced wherever possible with FRU's in an attempt to restore the system to proper operation. The FRU which was determined to be in failure would then be repaired and returned to the FRU inventory. The exact quantity of spare equipment and FRU's inventory should be determined by facility location and equipment usage, type, quantities, and priorities. The Town of Addison is solely responsible for the costs to acquire all FRU's and spare equipment. The City of Carrollton is responsible for the costs to repair such FRU's and spare equipment in accordance with the terms of this agreement.

Service for Fixed Equipment

Town of Addison staff will contact the City of Carrollton Help Desk at 972-466-3280 to request service on fixed equipment. All fixed equipment will be serviced during normal working hours, except those items designated as 7x24 services on Appendix A. All items designated as 7x24 on Appendix A will be serviced on a 7 days per week, 24 hours per day basis for Severity One failures (as defined on Page 4, below).

Preventive Maintenance

Routine preventive maintenance inspections on equipment covered under this Agreement will be performed one time per calendar quarter. A full system preventive maintenance inspection will be provided once annually. Specific preventative maintenance schedules shall be negotiated by the Parties to ensure that they occur at mutually agreed times.

Routine Preventive Maintenance inspection will include, but is not limited to:

- Transmitter power output
- Reflected power
- Frequency
- Modulation level
- Coded Squelch frequency and modulation level
- Receiver sensitivity
- Console audio levels
- HVAC performance

A Full System Preventive Maintenance inspection will include, but is not limited to:

- Transmitter power output

Service Agreement - Maintenance Plan Simulcast Site Infrastructure and Dispatch Console Systems

- Reflected power
- Frequency
- Modulation level
- Coded Squelch frequency and modulation level
- Receiver sensitivity
- Power supply voltages
- HVAC operation/cleaning/service
- Simulcast alignment
- GPS Operation
- Coax Line Sweeps and visual inspection of cable and connectors
- Console audio levels and inspection

Response and Restoration Times

Maintenance personnel shall respond to and restore reported failures of fixed equipment according to the chart below. Restoration of failed equipment may be met with the use of temporary or permanent repairs or temporary or permanent replacement equipment and is subject to the local availability of a FRU or spare unit or sub assembly. The City of Carrollton shall not be responsible should the restore times not be met due to lack of functioning FRU's or the inability to obtain repair parts from the manufacturer(s) within the restoral time window.

For the purposes of this agreement **Response Time or "respond"** shall be defined as the time from which the City of Carrollton or its authorized representative receives the notification and the time in which a service technician arrives on site and begins diagnostic procedures, by any means available on the equipment identified to be in disrepair or defective.

For the purposes of this agreement **Restoration Times or "restore"** shall be defined as the maximum maintenance downtime incurred as part of restoring the system to at least partially mission capable status.

Service Agreement - Maintenance Plan Simulcast Site Infrastructure and Dispatch Console Systems

SEVERITY RESPONSE AND RESTORAL REQUIREMENTS

SEVERITY	RESPONSE TIME	RESTORE TIME
Severity One: Complete system inoperative, Console system inoperative, , both HVAC Units inoperative	2 Hours	4 Hours
Severity Two: 20% or more of the transmitter stations inoperable, single console inoperable	4 Hours	12 Hours
Severity Three: Non-Emergency requests or minor system faults	72 Hours	120 Hours

Excluded Services

The following services are excluded from this Agreement:

- Repair or replacement of equipment that has become defective or damaged due to physical or chemical misuse or abuse from causes such as lightning, power surges, or liquids.
- Repair or replacement of antenna systems, which include antennas, coaxial feed line and coaxial connectors.
- Service does not include custom or special products; modified units; or software.
- Service on any components that have been damaged through the negligence or misconduct of parties other than the City of Carrollton or its employees or agents.
- Repair of equipment that has been damaged as a result of the Town of Addison’s failure to operate it in accordance with the operating instructions of the manufacturer or vendor.
- Costs incurred as a result of any required security escorts at Town of Addison facilities.

Force Majeure

Neither Party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to acts of God, government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the Party whose performance is affected.

Neither Party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) to the extent said

Service Agreement - Maintenance Plan Simulcast Site Infrastructure and Dispatch Console Systems

failures or delays are proximately caused by causes beyond that Party's reasonable control and occurring without its fault or negligence, including, without limitation, failure of suppliers, subcontractors, and carriers, or party to substantially meet its performance obligations under this Agreement, provided that, as a condition to the claim of no liability, the Party experiencing the difficulty shall give the other Party prompt written notice, with full details following the occurrence of the cause relied upon. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

Term of Agreement

This Agreement shall begin on October 1, 2009 (the "Effective Date") and shall remain in effect from the Effective Date through October 1, 2010 (the "Initial Term"), unless terminated prior to such date.

Either Party, upon thirty (30) days prior written notice to the other Party, may cancel this Agreement.

Unless this Agreement is terminated prior to expiration of the Initial Term, this Agreement will automatically renew for successive one-year terms (each, a "Renewal Term") unless and until terminated by the mutual consent of the Parties, or by either Party upon thirty (30) days prior written notice to the other Party. Each subsequent Renewal Term will be subject to a cost escalation not to exceed 5% (the "Cost Escalation").

All payments will be made for work completed and materials provided up to the time of termination.

Payments

On or before the Effective Date, the Town of Addison shall pay the City of Carrollton for services provided under this agreement as follows:

- For the maintenance period October 1, 2009 – September 30, 2010 **\$54,764.80**

The City of Carrollton will invoice the Town of Addison on an annual basis in advance of each Renewal Term in an amount equal to the above invoice price plus to the Cost Escalation described above.

Additional charges, for services requested and authorized by the Town Addison, will be billed monthly [NOTE: WHAT ARE THE RATES FOR THESE CHARGES? Time/materials?}. All payments are due within 30 days of the invoice date.



Where Connections Happen

Service Agreement - Maintenance Plan Simulcast Site Infrastructure and Dispatch Console Systems

Limited Warranty for Spare Parts Procured by the City of Carrollton on behalf of the Town of Addison:

To the maximum extent allowable, the City of Carrollton shall pass-through to the Town of Addison all manufacturers' warranties provided by third-party hardware vendors for equipment and materials furnished under this Agreement. The City of Carrollton shall provide all standard manufacturers' warranties, guarantees, and/or exchange policies for defective items, which are offered through the manufacturers themselves. The City of Carrollton makes no other warranties whatsoever, express or implied, with regard to the services, hardware and materials, in whole or in part. The City of Carrollton explicitly disclaims all warranties of merchantability and fitness for a particular purpose.

Limitation of Liability

EXCEPT FOR SERVICE FEES AND AMOUNTS EXPRESSLY DUE AND PAYABLE TO THE CITY OF CARROLLTON HEREUNDER, IN NO EVENT SHALL EITHER PARTY TO THIS AGREEMENT BE LIABLE TO THE OTHER PARTY HEREUNDER FOR ANY CLAIMS, PENALTIES OR DAMAGES, WHETHER IN CONTRACT, TORT, OR BY WAY OF INDEMNIFICATION, IN AN AMOUNT EXCEEDING SEVENTY FIVE PERCENT (75%) OF THE FULL PRICE OF THE ORDERED SERVICES UNDER THIS AGREEMENT. UNDER NO CIRCUMSTANCES WILL EITHER PARTY TO THIS AGREEMENT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED AND BASED ON ANY THEORY OF LIABILITY. THIS LIMITATION SHALL APPLY EVEN IF SUCH A PARTY HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT MAY ANY ACTION BE BROUGHT AGAINST EITHER PARTY ARISING OUT OF THIS AGREEMENT MORE THAN ONE YEAR AFTER THE CLAIM OR CAUSE OF ACTION ARISES, DETERMINED WITHOUT REGARD TO WHEN THE AGGRIEVED PARTY SHALL HAVE LEARNED OF THE INJURY OR LOSS.

Town of Addison

THE CITY OF CARROLLTON

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



Where Connections Happen

**Service Agreement - Maintenance Plan
Simulcast Site Infrastructure and Dispatch Console Systems**

Appendix A – Equipment List

1. Site Infrastructure Equipment Spectrum Center

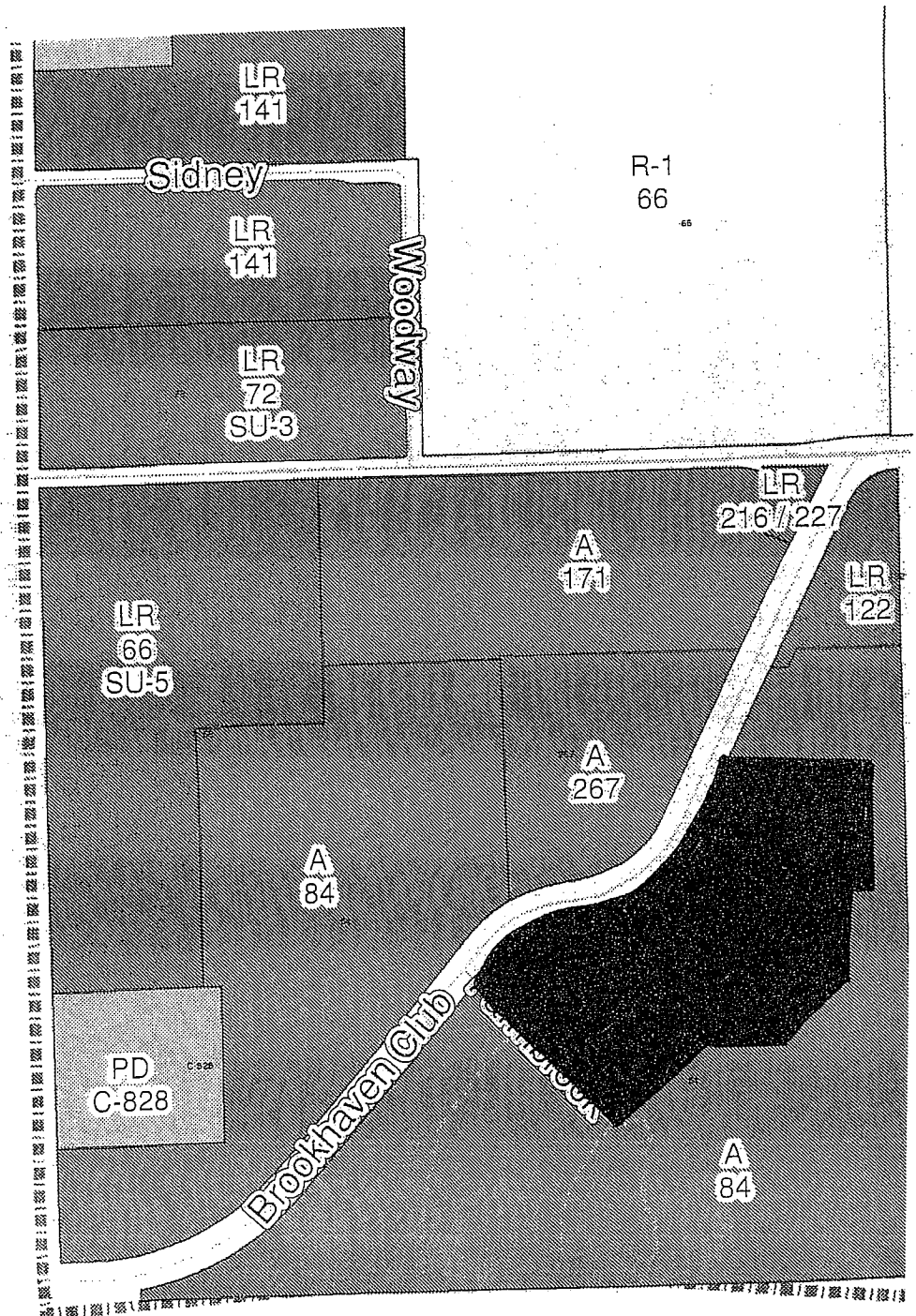
Qty	Description	Days/Hours of Service
9	Quantar 800 MHz Trunked Simulcast Repeaters	7X24
1	10 Channel Transmitter Combiner System	7X24
1	Receiver Multi-Coupler System	7X24
1	MTC 3600 Local Site Controller with redundant power supplies	7X24
1	GPS Receiver with 1 standby receiver, 2 each 4 output port 1 PPS distribution amplifier	7X24
1	Channel Bank with 3 digital simulcast modem cards, 1 digital service unit card, 1 dual WAN card	7X24
1	9 KVA UPS Power System	7X24
1	Transtector Surge Suppression Device	7X24
2	Marviar HVAC Units (Redundant Systems)	7x24
1	NetBotz Monitoring System	5x8
1	Cisco 1760 Router	5x8
1	Cisco 2950-12 Switch	5x8

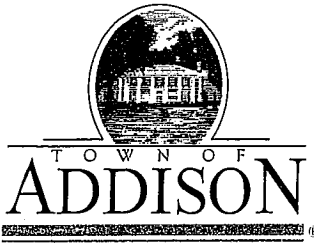
Appendix A – Equipment List**2. Dispatch Console Equipment**

Qty	Description	Days/Hours of Service
5	Centracom Gold Elite CRT Console Operator Positions with Central Electronics Bank (CEB)	7x24
2	Cisco 1760 Routers	7X24
2	Cisco 24 Port Switch	7X24

1586-Z

PUBLIC HEARING Case 1586-Z/Vitruvian Park, Phase 1-B. Requesting 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.





DEVELOPMENT SERVICES

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

16801 Westgrove

Post Office Box 9010 Addison, Texas 75001-9010

September 17, 2009

STAFF REPORT

RE: Case 1586-Z/Vitruvian Park, Phase 1-B

LOCATION: 3.64 acres located at 3900 Brookhaven Club Drive

REQUEST: Approval of an ordinance approving final development plans for a multi-family project in a Planned Development District (007-034)

APPLICANT: UDR, Inc., represented by Mr. Matthew Brendel

DISCUSSION:

Background. This is the second building in Phase I of a multi-phase development. In 2007, this entire 99-acre neighborhood, which is bordered by Spring Valley Road on the north, The City of Farmers Branch on the east, Farmers Branch and Brookhaven College on the south, and Marsh Lane on the west, was rezoned from the A (Apartment) and PD-CC (Planned Development – Condominium Conversion) zoning district to a Planned Development District through Ordinance 007-034 (October 9, 2007).

The Planned Development district zoning approved development standards and a concept plan, and provided that prior to the issuance of a building permit for any project within the PD district, a development plan for the project must be approved by the Planning and Zoning and the City Council.

The first development plan for Phase 1-A was approved by the City Council on June 10, 2008 through Ordinance 008-022. It is currently under construction, and UDR has some units ready for leasing. This is the second development plan to be filed in PD district 007-034.

Proposed Plan. The proposed project is for 355 multi-family units, 17,600 square feet of office space, and 10,540 square feet of amenity or retail space. The project will contain a 5-story residential building with three sections that extend out to the creek, and a 7-story mixed use building bordering Ponte Avenue, which will run diagonally through the project and extend toward Brookhaven College. The project is a mirror-image of Phase 1-A, except it will feature a ground floor of retail, or amenity use, with one floor of office space above that. Phase 1-A featured the retail space on the ground floor, but there was no office space above. It will follow the same orientation as Phase 1-A and most of the residential units will be oriented so that they will have views of the creek. The Town and UDR are partnering on a project to improve the creek with a 12-acre public park, and that project should begin within the next year.

STAFF REVIEW

When reviewing the development plan for Phase I-A, the staff worked through the review by comparing the project to the standards from Ordinance 007-034 – the master development ordinance for the neighborhood. The staff cited the ordinance section-by-section and then noted how the project matched up against the standards after each section. Our feedback from the Commission and Council was positive, so that review method will be duplicated for this second phase. The discussion of the project will be in **bold print**.

Uses.

- a. Authorized Uses; Prohibited Uses. Only those uses identified herein as permitted uses, special uses, or accessory uses are authorized uses (subject to the terms, conditions and provisions of this Ordinance) within the Property. All other uses are expressly prohibited.
- b. Permitted Uses. The following uses of land are authorized as permitted uses within the Property. Uses are further classified according to general categories of land uses. To the extent expressly authorized by these PD District regulations, a general use category (e.g., “retail”) may be identified on the Concept Plan or, except for residential uses, on a development plan. Upon approval of the Concept Plan or a development plan which includes a general use category, any use appearing or classified under such general use category in the use list set forth below, is authorized in accordance with the Concept Plan or development plan, as the case may be, any conditions attached thereto, and all other provisions of this Ordinance, the Zoning Ordinance, and any other ordinance, law, rule, regulation, code, and standard applicable thereto:
 1. *Residential.* Residential uses within the Property are limited to the following:
 - Townhouse
 - Condominium
 - Multifamily
 2. *Retail.* Retail uses within the Property are limited to the following (all uses listed below are for retail use only (whether or not so specified), and are subject to the General Conditions set forth in subsection e. of this Section 5):
 - Antique shop
 - Aquarium

Art gallery
 ATM facilities
 Bakery, retail sales only
 Bank
 Barber and beauty shop
 Bicycle sales and service
 Book or stationery store
 Business support services
 Camera shop
 Candy, cigars and tobaccos, retail sales only
 Caterer and wedding service (office only)
 Cleaning, dyeing and laundry pick-up station for receiving and delivery of articles to be cleaned, dyed and laundered, but no actual cleaning, dying, or laundering work is to be done on the premises
 Coffee shop (no seating on premises)
 Convenience store
 Cosmetic and beauty supplies
 Dance studios
 Department store
 Donut and pastry shop, no seating on premises
 Drug store, retail sales only
 Electrical goods and fixtures for consumer use
 Electronics store
 Film developing and printing
 Financial services
 Fix-it shops, bicycle repair, saw filing and lawn mower sharpening, retail sales only
 Florist, retail sales only
 Furniture sales, repairs and upholstery
 Gallery, for the display and sale of artworks
 Grocery store, retail sales only
 Hardware, sporting goods, toys, paints, wallpaper, clothing, retail sales only
 Health club, private and public
 Household and office furniture, furnishings and appliances, retail sales or rental only
 Jewelry, optical goods, photographic supplies, retail sales only
 Laundromat, equipped with automatic washing machines of the type customarily found in a home and where the customers may personally supervise the washing and handling of their laundry
 Magazine store
 Meat market, retail sales only
 Medical and dental clinics
 Movie DVD and VHS rental and sales
 Optician and optical store
 Pet and pet supplies
 Photographer or artist studio
 Pizza delivery shop, no seating on premises
 Piano and musical instruments
 Plumbing shop, without warehouse facilities (to include storage for ordinary repairs, but not storage for materials for contracting work)
 Printing and copy shop, retail sales only
 Professional offices for architect, attorney, engineer and real estate
 Public garage, parking, no repairs
 Retail Store
 Seamstress, dressmaker, or tailor
 Shoe repair shop, retail sales only

Sporting goods, toy & hobby store
Studio for the display and sale of glass, china, art objects, cloth and draperies
Studios, dance, music, drama, martial arts
Tailors
Telephone stores
Title companies
Travel services
Wearing apparel, including clothing, shoes, hats, millinery and accessories

3. *Office.* (Defined under article XXX of the Zoning Ordinance)
 4. *Home office.* For the purposes of this PD District, "home office" means and includes office uses that are performed in a residential dwelling unit or in an office attached to a residential dwelling unit, that do not involve any structural change to the building or premises in which the use is conducted. A home office use, which is located on the ground floor of a building may include the employment of not more than three employees, including the person who is the primary resident of the residential dwelling unit where the home office use is conducted. A home office use which is located on any floor of a building other than the ground floor may not include the employment of any employee other than a person who is a primary resident of the residential dwelling unit where the home office use is conducted.
 5. *Civic.* (Defined under article XXX of the Zoning Ordinance)
 6. *Mixed use (with residential).* (Defined under article XXX of the Zoning Ordinance)
 7. *Mixed use (with nonresidential).* (Defined under article XXX of the Zoning Ordinance)
- c. Special Uses. A use listed below in this subsection may be permitted within the Property provided the same is first authorized by the approval of a special use permit in accordance with and subject to Article XX, Special Uses, of the City's Zoning Ordinance (and as the same may be modified or superseded):
1. Hotel.
 2. Cleaning, dyeing and laundry pick-up station, with cleaning, dyeing and/or laundry work done on the premises.
 3. Library, for loan of books and other materials typically performed by a public library.
 4. Public safety facilities.
 5. Restaurant.
 6. Retirement home.
 7. Sale of alcohol for on-premises consumption.
 8. Transit facilities.
- d. Accessory Uses. The following are permitted as accessory uses within the Property:
1. Community, social, hobby, or laundry facilities, for use by occupants of a residential development within the Property which are customary to residential developments.
 2. Recreation space and facilities.
 3. Parking and parking structures.
 4. Other uses customarily incidental and subordinate to permitted uses and any special uses.

The applicant is proposing multi family, office, and retail uses. The leasing center was contained in Phase IA, so there is not a leasing center in this phase. The proposed uses meet the standards contained in the ordinance.

- e. General Conditions. Development, occupancy, and use of the Property shall comply with the following conditions, as applicable:
1. *Retail use.* A retail use may be operated or conducted only in accordance with the following:
 - (a) Except as provided in subsection (b) below (regarding kiosks), a retail use is permitted only in connection with and as a part of a "mixed use (with residential)," as the same is defined in Article XXX of the Zoning Ordinance.
 - (b) Notwithstanding subsection (a) above (regarding a mixed use (with residential)), a retail use may be provided or conducted from and within a portable kiosk. For purposes hereof, "kiosk" means a small, free-standing one-story building or structure having a maximum floor area of 500 square feet which is portable in nature, is not permanent, and can be easily and readily moved from location to location. If a portable kiosk is to be occupied, it shall have a minimum floor area of 25 square feet. A portable kiosk for the purpose of providing or conducting a retail use is permitted anywhere within the Property.
 - (c) Except as the same may be provided or conducted from a portable kiosk, free-standing retail is prohibited. For purposes hereof, "free-standing retail" means the use or occupancy of a free-standing building for a retail use.

Retail space will be on the first floor of Building A of this project, and office uses will be on the second floor of Building A. Building A is a mixed use building and all proposed uses meet the standards of the ordinance.

6. Development Standards.

- a. For purposes of determining parking and open space compliance, the entire Property shall be considered as one lot. For example, retail parking in one phase of development, such as parking in a parking structure, may be applied to the required parking in another phase of retail development. Notwithstanding the consideration of the entire Property as one lot for parking and open space compliance purposes, parking for each development or phase of a development within the Property must be sufficient (and satisfy all of the standards set forth herein) for the development or phase thereof.
- b. Development, occupancy, and use of the Property shall comply with the development standards set forth in the following Table A:

TABLE A: DEVELOPMENT STANDARDS	
<p><u>Street Build-to Line</u></p> <p>All primary buildings, structures, walls, fences, and other improvements shall be constructed, located, placed, and erected along and contiguous to the applicable build-to line; provided, however, that not more than 30 percent of any street frontage may vary from the build-to line, except in that portion of the Property identified on the Concept Plan as "Subarea 1" not more than 50 percent of any street frontage may vary</p>	<p><i>Street build-to lines within the Property are as follows (streets are as shown or identified on the Concept Plan):</i></p> <ul style="list-style-type: none"> • 9 feet along A streets (as shown on the attached Exhibit "C" to this Ordinance No. 007-034) • No less than 6 feet, no more than 9 feet along B streets (as shown on the attached Exhibit "C" to this Ordinance No. 007-

from the build-to line. The build-to line shall be measured from the closest right-of-way line of the adjacent street.	034) <ul style="list-style-type: none"> • No less than 6 feet, no more than 9 feet along all C streets (as shown on the attached Exhibit "C" to this Ordinance No. 007-034) • 4 feet along all D streets (as shown on the attached Exhibit "C" to this Ordinance No. 007-034) • No less than 6 feet, no more than 9 feet along all E streets (as shown on the attached Exhibit "C" to this Ordinance No. 007-034) 												
<u>Side Yard Setback</u>	None, except as required by the City's Fire Code (and as the same may be amended or superseded from time to time)												
<u>Rear Yard Setback</u>	None, except as required by the City's Fire Code (and as the same may be amended or superseded from time to time)												
<u>Maximum height of building</u>	No maximum height; except the portion of any building or other structure which is located within 100 feet of the property line of a lot or other parcel of land which is zoned for single family or apartment use or which is otherwise used or occupied for a residential use shall not exceed 60 feet in height. All heights are subject to FAA approval.												
<u>Minimum lot area</u>	No minimum lot area												
<u>Minimum lot width</u>	No minimum lot width												
<u>Minimum lot depth</u>	No minimum lot depth												
<u>Minimum area per Residential dwelling unit</u>	<table border="1"> <tr> <td>Efficiency</td> <td>450 sq. ft.</td> </tr> <tr> <td>One- Bedroom</td> <td>600 sq. ft.</td> </tr> <tr> <td>Two-Bedroom</td> <td>850 sq. ft.</td> </tr> <tr> <td>Three-Bedroom</td> <td>1,000 sq. ft.</td> </tr> <tr> <td>Townhouse</td> <td>1,600 sq. ft.</td> </tr> <tr> <td>Office uses</td> <td>500,000 sq. ft.</td> </tr> </table>	Efficiency	450 sq. ft.	One- Bedroom	600 sq. ft.	Two-Bedroom	850 sq. ft.	Three-Bedroom	1,000 sq. ft.	Townhouse	1,600 sq. ft.	Office uses	500,000 sq. ft.
Efficiency	450 sq. ft.												
One- Bedroom	600 sq. ft.												
Two-Bedroom	850 sq. ft.												
Three-Bedroom	1,000 sq. ft.												
Townhouse	1,600 sq. ft.												
Office uses	500,000 sq. ft.												
<u>Maximum nonresidential square footage</u>	Retail, restaurant and personal service uses 500,000 sq. ft.												
<u>Maximum lot coverage</u>	95%												

Setbacks for Street A (Brookhaven Club Drive) and Street B (Ponte Avenue) meet the standards.

Side and rear yard setbacks meet the standards.

All units proposed meet the standard for minimum area per residential dwelling unit.

These buildings are further than 100 feet from any property line of a lot or other parcel of land which is zoned for single family or apartment use or which is otherwise used or occupied for a residential use, so these buildings are not

height restricted. Height is 107.3 feet, at the tallest point, which meets the standard.

- c. Miscellaneous development standards:
1. Lot coverage:
 - (a) The area of a porch or arcade fronting a public street is not included in the calculation of lot coverage.
 - (b) The area of an above-grade parking structure is included in the calculations of lot coverage.
 2. Height: Architectural features including, but not limited to, turrets, spires and towers may exceed maximum height of building provided that any such structure is no more than 15 feet higher than the maximum permitted height and has a floorplate which is ten percent, or less, of the ground floor area of the building of which it is a part.
 3. Setbacks:
 - (a) *Overhangs and fireplaces.* The minimum setback requirements shall apply in all cases, except that fireplaces, eaves, bays, balconies and fireproof stairways may extend up to a maximum of five feet into the required setbacks.
 - (b) *Patios.* Patios may be constructed within the required setback zones.

The project contains a tower, which is allowed under Section 2 above. Proposed project meets all other standards.

7. Open Space.

- a. Two acres for every 1,000 residents shall be dedicated for public open space use by the project applicant up to the point that dedication has been provided for 2,250 residents. After sufficient open space has been dedicated to meet the requirement for 2,250 residents, 1 1/2 acres of open space for each 1,000 residents shall be dedicated for public use by the project applicant. For purposes of this section, the number of residents expected to reside in the Property (or applicable portion thereof) shall be determined by estimating the number of dwelling units authorized for a proposed project, multiplied by a factor of 1.5 persons per dwelling unit.
- b. Land proposed to be dedicated as public open space shall be clearly shown on the Concept Plan and final development plan submittals.
- c. Land to be dedicated for public open space shall be approved initially by the planning and zoning commission and thereafter shall be submitted to the city council for consideration of acceptance of the proposed dedication. No dedication shall be deemed approved without express action of the city council in the form of a written "acceptance of dedication." Failure of the city council to execute an acceptance of dedication shall be deemed to be a refusal of the proposed dedication.
- d. In its approval of any development plan, the Town may impose such conditions as deemed necessary to assure that the intent and purpose of this section is satisfied.

The applicant dedicated 8.30 acres of open space to the Town through a final plat. Based on the standard of 1.5 persons per multi-family unit, the 355-unit project would bring 532 persons to the development. Under that standard, the

development would be required to dedicate approximately 1 acre. Therefore, the project exceeds the standard for open space dedication.

8. Parking.

- a. *Generally.* Off-street parking must be provided for the appropriate building use classification according to the following ratios:
 - 1. *General retail.* (1/250 s.f.) One space per each 250 square feet of gross floor area.
 - 2. *Furniture store.* (1/1,000 s.f.) One space per each 1,000 square feet of gross floor area.
 - 3. *Medical or dental clinics.* (1/200 s.f.) One space per each 200 square feet of gross floor area.
 - 4. *Bank or savings and loans.* (1/300 s.f.) One space per each 300 square feet of gross floor area.
 - 5. *Office.* (1/300 s.f.) One space per each 300 square feet of gross floor area.
An office building or group of buildings, which shall total 50,000 square feet or more: (1/300 s.f.). One space per 300 square feet of gross leaseable area.
 - 6. *Health club or studio for dance, music, drama, health and reducing.* (1/100 s.f.) One space per each 100 square feet of gross floor area.
 - 7. *Residential.* One space/bedroom to a maximum of two spaces/unit.
 - 8. *Hotel.* One space/hotel room plus one parking space per every 300 square feet of gross floor area of conference/banquet facilities.
 - 9. *Civic.* To be determined by parking demand analysis study for proposed use and approved by the town's director of development services.
 - 10. *Mixed use.* Number of spaces resulting from application of ratios provided above for respective uses in the development.
- b. *Shared parking.* Uses may join in establishing shared parking areas if it can be demonstrated that the parking for two or more specific uses occurs at alternating time periods. Required parking shall be determined based on parking demand for the peak parking period as determined by a parking analysis study approved by the town's director of development services.
- c. *Below-grade parking.* Off-street below-grade parking is permitted to the lot lines, but must be designed to allow planting of landscape.
- d. *Parking garages.* Parking garage ramps shall not be expressed on the facades of parking structures fronting, or visible from public streets. Steel parking garages and steel guard cables on the garage facades are prohibited. The maximum length of an exposed parking structure along a street is 200 feet.
- e. *Bicycle parking.* Bicycle parking shall be provided for all multi-family and commercial uses.

The proposed project will require parking as follows:

Number of Residential units:	355
Parking required at ratio of 1/bedroom	462
Parking Provided:	547

Square footage of retail/amenity space:	10,540 s.f.
Parking required at ratio of 1/200:	52
Parking Provided:	48

Square footage of office space:	17,600 s.f.
Parking required at ration of 1/300:	58
Parking Provided:	60
Total parking required for project:	576
Total parking provided:	655

The parking provided for the project exceeds the parking requirement by 79 spaces.

9. Streets. All streets and blocks in the Property shall conform to the provisions of this section.
- Street standards.* Standards for streets within the Property shall be as set forth in Exhibit "D," which is attached to this Ordinance, No. 007-034 and made a part hereof by reference. The Town's Master Thoroughfare Plan is amended to conform to Exhibit "D" for streets within this planned development district.
 - Street type and pattern.* The location of streets on the master thoroughfare plan is approximate. Precise location of streets shall be determined in conjunction with the approved Concept Plan and the approval of development plans.
 - Block length.* The length of a block shall not be less than 200 feet, nor more than 750 feet.

The project meets all standards for streets and block length.

10. Exterior Appearance.
- Materials:*
 - At least 80 percent of the exterior cladding of all exterior walls fronting or visible from public streets (including above grade parking structures) shall be masonry construction. For purposes of this planned development district, "masonry construction" includes, but is not limited to brick, stone, cultured stone, glazing and plate glass, and split face concrete masonry units. An applicant, however may submit a design for construction of parking structures that employs alternative construction materials for exterior cladding with an application for a development plan. The alternative may be approved by the city upon determination that such construction will result in an appearance that is compatible with surrounding buildings and the overall character of the district.
 - At least 60 percent of exterior cladding of all walls not fronting on, or not visible from, public ways (including above grade parking structures) may be constructed of noncombustible materials including exterior stucco and fibrous cementitious material (e.g. hardi-material) construction.
 - The exterior cladding (excluding glass) of all buildings, (including above grade parking structures) shall be composed of not more than three materials (excluding roofs).
 - The following materials are prohibited as primary cladding materials:
 - Aluminum siding or cladding
 - Wood roof shingles
 - Unfinished concrete block (architecturally finished concrete block is permitted as a cladding material).

5. The following materials are prohibited as primary roofing materials:
 - Wood roof shingle
 - Composite shingles with less than a 50-year life
6. Balcony and patio railings and fences shall be constructed of wrought iron or metal. Wood fences and railings and chain-link fencing are prohibited.

The buildings proposed are predominantly brick and burnished concrete masonry units, with stucco trim. The buildings meet the standards for materials.

- b. *Windows:*
 1. Where a retail use occupies the first floor, at least 70 percent of the first floor exterior wall facing a thoroughfare, street, boulevard or parking plaza shall be transparent glazing.
 2. The exterior wall surface of all buildings above the first floor shall not be more than 50 percent glass.
 3. Glass is to be clear or tinted, not reflective.

The buildings proposed meet all standards for windows.

- c. *Walls.* Walls attached to buildings shall be developed as architectural extensions of the building, constructed of the same material and in the same style.

The buildings proposed meet all standards for walls.

- d. *Color.* The dominant color of all buildings (including above-grade parking structures) shall be muted shades of color. Black and stark white shall not be used except as accent color. There are no restrictions on accent colors which comprise less than 1.0% of the building face, except that fluorescent colors are prohibited.

The buildings proposed meet all standards for color.

11. Landscaping. Landscaping within the Property shall comply with the provisions in this section and with the standards contained in Article XXI, landscaping regulations of the Zoning Ordinance. Where conflicts exist between this section and the landscaping regulations, requirements in this section shall control.

- a. Streetscape Zone. In the district, all streetscape elements, including street trees, lighting and other furnishings must be provided in the right-of-way, exclusive of driveways and access ways at points of ingress and egress to and from each lot.
 1. Street Trees – Street trees shall be provided in accordance with the following:
 - (a) Each street (except treeless mews streets) shall have street trees planted at uniform spacing, commencing no closer than 40 feet from the face of curb of intersecting streets.
 - (b) Typically, street trees shall be planted as shown on Exhibit "D".
 - (c) Street trees shall be large shade species having a minimum of four (4) caliper

inches, selected in accordance with the Town's landscape regulations.

2. Street Lighting – Street lighting shall be provided in accordance with the following :
 - (a) Each street shall have street lamps uniformly spaced between trees as shown on Exhibit "D(b) On A and B streets (as shown on the attached Exhibit "D"), locate street lamps at intervals no greater than 200 feet.
 - (c) Street lamps shall be selected in accordance with Exhibit "E", attached to this Ordinance No. 007-034 showing acceptable selections.
3. Street Furnishings – Street furnishings shall be provided in accordance with the following:
 - (a) Street furnishings shall include, but not be limited to, benches, trash receptacles, and bicycle racks.
 - (b) Street furnishings shall be located at the discretion of the developer, subject to the approval of the town's Director of Parks and Recreation.
 - (c) Street furnishings shall be selected in accordance with Exhibit "E", attached to this Ordinance No. 007-034, showing acceptable selections.
4. Landscaping for Non-residential ground floor frontages. Non-Residential ground floor frontages may pave the area between the building face and sidewalk.
5. Landscaping for Residential ground floor frontages. Residential ground floor frontages shall be required to landscape the entire area between the edge of sidewalk and the primary building façade, excluding access to sidewalks, stairs, stoops, porches and patios. This area must be irrigated, and may be landscaped with ground cover, low shrubs, and ornamental trees.

The landscaping along both streets will be designed and installed by the Town. Slade Strickland notes that the landscaping plan needs to be provided. In addition, there are sidewalk connections shown from the east side of the Phase I-B building, and those need to match the rock-salt concrete finish proposed for the park trail.

- b. Private Open Space. Private open space, which is owned and maintained by the developer, shall be landscaped and irrigated. The landscaping plan for the private open space shall be approved by the Town as a part of the development plan approval for each development.

The only private open space shown on the project appears to be the courtyards between the arms of the building that extend out toward the creek. A planting and landscaping plan for the courtyard spaces needs to be provided prior to the issuance of a building permit.

- c. Parking Lot Screening. Screening must be provided for all surface parking lots within the Property from all adjacent streets. The screening must extend along the entire street frontage of each surface parking lot, exclusive of (i) driveways and access ways at points of ingress and egress to and from the site, and (ii) visibility triangles. Screening shall be provided in accordance with the standards contained in Article XXI, Landscaping Regulations.

There are no parking lots on this project.

12. Sustainability.

All land contained within this Planned Development District shall be developed, and all buildings within this Planned Development District shall be constructed with the goal of providing a sustainable neighborhood. All developments shall conform to the requirements of the Brookhaven Neighborhood Sustainability Program, which is attached as Exhibit "F", attached to this Ordinance No. 007-034, and incorporated herein for all purposes.

The applicant agreed, through the Brookhaven Sustainability Program, to provide trash rooms, with capacity for trash and recycling bins, in all buildings. Those have been provided. Applicant also committed to use daylight wherever possible, and appears to have met that guideline. In addition, applicant is specifying R-13 insulation in walls in line with IECC 2006 standard, has designed building truss space to be filled with noncombustible insulations, has used R-410a in all HVAC equipment, and has oriented buildings, where possible, to orient longer faces of buildings to face Northwest, northeast, and southwest.

13. Screening:

- a. Mechanical equipment shall be screened from view from all public roadways and located to minimize noise intrusion off each lot. The required screening must be composed of the same exterior materials as the buildings on the lot, or through the use of masonry walls, ornamental fence (80 percent opaque), evergreen landscape material, or combination thereof.
- b. Loading, service, and trash storage areas shall be screened from all public roadways. Refuse containers must be placed on a designed, reinforced concrete pad, including drive approach. The required screening must be composed of the same exterior materials as the buildings on the lot, or through the use of masonry walls, ornamental fence (80 percent opaque), evergreen landscape material, or combination thereof.
- c. All roof-mounted mechanical elements must be screened from view from the public right-of-way and neighboring properties. Screening must be architecturally compatible with the building design.

Staff cannot determine whether screening is adequate at this time because equipment has not been designed and located. However, staff will check building permit plans to see that all mechanical equipment is screened.

14. Flexible Standards. It is intended that all of the standards set forth in Sections 5-13 herein shall be flexible in order to encourage development within the Property. The planning and zoning commission and the city council may approve waivers to any standards set forth herein as part of the development plan provided any such waiver does not authorize a use not authorized in this planned development district, and does increase the allowable intensity or density of any land use.

Applicant is not requesting any waivers to the design standards of the ordinance. However, there are a couple of issues on the plans that have to be addressed.

The Fire Prevention Chief has worked diligently with the applicant to arrive at solutions that allow this building to fit neatly into this very tight site and still have a direct relationship with the park. In addition, the Fire Prevention Chief and

Building Official have agreed with the architect that the height of the building can be determined from the average grade plain, rather than the adjacent grade. The discussion is complicated, but the agreement was that there did not have to be a fire lane between the building and the park, as long as the structure did not exceed five stories above adjacent grade. The memos from both Gordon Robbins and Lynn Chandler are attached, along with a letter from the applicant explaining the average grade plain.

On sheet A321 (east elevation of Building B) a 6th story structure is shown. The staff discussed those 6th story structures with the architect, and the staff was assured that those would not contain air-conditioned space, but would be a cabana that was not enclosed or air-conditioned. The staff will require those be re-drawn for the building permit set of plans.

In addition, the Fire Prevention chief notes that on sheet A102 the partial fire lane shown between Building A and Building B needs to be extended out to Vitruvian Way (currently Brookhaven Club Drive).

These items are required by the Fire and Building Codes, and the applicant is required to comply with them. However, the staff would like for the applicant to revise the zoning plans so that there is not any confusion down the line about what was approved.

In addition, on the site plan, there is an area shown between the pool and the park property that appears to be fenced. The staff asked the architect about it, and he said it shouldn't be on the plans. It will need to be deleted from the building permit set.

RECOMMENDATION:

As was noted earlier in the report, this is the second phase of a multi-phase project. The applicant and the staff worked for many months crafting the standards in the master Planned Development for this new neighborhood. Therefore, the staff would expect that the project meets the standards which were agreed to up-front by the applicant.

The review of this second phase is easier for the staff and the applicant because we all learned some lessons on the first phase. The Town has been very pleased with how the first phase is progressing, and expects that the second phase will make a nice compliment to the first, and will be a huge step toward a wonderful new neighborhood for the Town.

Staff recommends approval 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.

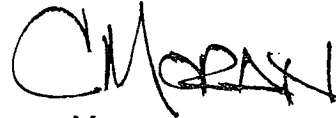
Landscaping planting plans for the private open space contained in the courtyard areas shall be submitted.

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.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C Moran', with a stylized flourish at the end.

Carmen Moran
Director of Development Services

Case 1586-Z/Vitruvian Park Phase I-B
October 5, 2009

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on September 24, 2009, voted to recommend approval of the request for final development plan approval, on application from United Dominion Realty, 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.

Voting Aye: Doherty, Hewitt, Resnik, Wheeler, Wood

Voting Nay: None

Absent: DeFrancisco

One Seat vacant

Memorandum

Date: September 15, 2009
To: Carmen Moran, Director of Development Services
From: Slade Strickland, Director of Parks and Recreation
Subject: **Case 1586-Z/Vitruvian Park Phase I-B**

1. Provide a streetscape plan that that complies with the Vitruvian District streetscape standards.
2. All sidewalk connections from the east side of the Phase I-B building need to match the rock salt concrete finish proposed for the park trail.

Carmen Moran

From: Gordon Robbins
Sent: Monday, September 14, 2009 11:30 AM
To: Carmen Moran
Subject: FD comments - Vitruvian Park, Phase 1-B Case # 1585-Z

Carmen:

After reviewing the submittal I have these comments:

- 1) On sheet A102 the partial fire lane shown between Building A (high-rise) and Building B (wood frame) needs to be extended out to Vitruvian Way.

- 2) On sheet A321 (east elevation of Bldg B) a 6th story structure is shown. I believe these are represented as a mezzanine for the 5th floor unit, but they have a separate stairway and constitute a 6th level of the building. During my initial discussions with the Vitruvian development team I approved a variance in the fire lane based on their assurance that the wood-frame building would be no more than 5-stories above grade. As these additions constitute a 6th story, I will be compelled to require a third point of fire lane access if they remain. I've been in contact with Stuart Roosth of Looney-Ricks-Kiss and he has agreed that these will be changed to a non-air conditioned space - essentially a covered patio area. This will be an acceptable compromise if approved by UDR.

Please contact me if I can provide additional information.

Gordon C. Robbins | Deputy Fire Chief | Fire Marshal
Town of Addison | 4798 Airport Pkwy | Addison TX 75001
ofc 972.450.7220 | fax 972.450.7208 | grobbins@addisontx.gov

To: Carmen Moran, Director Development Services

From: Lynn Chandler, Building Official

Date: September 15, 2009

Subject: Case # 1586-Z Vitruvian Park

I have received a letter from Paige C. Close who is with LRK stating that the Type III-A portion of the building complies with the maximum story height above the average grade plane as defined in the 2006 International Building Code. It is important that the developer understand that the end product shall comply with this requirement. I have included a copy of the letter.

There will also be an additional 3 HR fire-wall required in the Type III-A construction due to the size of the building. In addition the developer will be required to comply with any and all requirements for Fire Department access as defined and or required by Chief Robbins. I am specifically referring to the conditioned space shown above the fifth floor on the east elevation on sheet A321.

Looney Ricks Kiss Architects, Inc.

5646 Milion Street
Suite 240
Dallas, TX 75206

September 8, 2009

Mr. Lynn Chandler
Building Official Town of Addison, TX
16801 Westgrove Dr.
Addison, TX 76001-9010



RE: Vitruvian Park Block 102 Type IIIA Building B

Dear Mr. Chandler:

I am providing this letter at your request to explain the method that LRK has used to establish the grade plane at Building B of Vitruvian Park Block 102, and how this method complies with the definition of Grade Plane found in section 502.1 of the 2006 IBC. In addition, this letter explains how LRK is using the grade plane calculation to prove that the lower level of Building B complies with the definition of basement found in section 502.1 of the 2006 IBC. This letter also addresses the concerns that Chief Robbins expressed during our meeting on August 17, 2009.

By definition, a Grade Plane is a reference plane representing the average of the finished ground levels adjoining the building at exterior walls. When the finished ground level slopes away from the building (as in our case), the reference plane is established by the lowest points within the area between the building and the lot line or, where the lot line is more than six feet from the building, between the building and a point six feet from the building. We have used C301 from the Civil Engineer's drawing set to establish the grade elevations around the building. Based on earlier conversations with you at meetings between LRK and the Town of Addison, it was determined that for this particular building, calculating the grade plane by using the grade elevation at the four corners of the building would not be satisfactory. Therefore we have calculated the grade plane using a weighted average method, measuring the elevation as it transitions around the perimeter of the building typically in six inch increments. These calculations are provided on Attachment A. In addition we have provided a site plan to locate the changes in the grade elevation (Attachment B).

There are two conditions that must be met for the lower level to meet the definition of a basement.

- (1) The floor above the basement must be no more than six feet above the grade plane.
- (2) The floor above the basement must be twelve feet or less above the finished ground level at any point.

As described above, the grade plane has been calculated by multiplying the exterior wall length by the adjacent grade in increments based upon the finished grade in six inch increments. We have added those figures together and divided by the building perimeter dimension establishing a grade plane of 564.04' above sea level.

The story above grade plane has several different finish elevations. These transitions typically take place in six inch increments. To establish the "finish floor elevation" for this story, we averaged the finished floor elevation based on the length of the finish floors intersection with the perimeter wall. This calculation is also included in attachment A. There is not a definition for finish floor elevation in the 2006 IBC. Taking a weighted average for the finish floor elevation for the floor above grade plane is the fairest way that we are aware of to establish this elevation. The average finish floor of the floor above the grade plane is 569.51' above sea level or 5'-5 3/4" above the grade plane satisfying item (1) above.

The highest finished surface of the floor above the grade plane is 570.00' above sea level. The lowest grade within six feet of the perimeter of the building is 558.52' above sea level located at the southeast corner of the building at the property line, placing the finished surface 11'-5 3/4" above the lowest adjacent grade satisfying item (2) above.

During the August 17th meeting, Chief Robbins brought up two points in regard to the current building layout and site plan. Chief Robbins informed LRK that the fire lane on the Plaza must have access to Vitruvian Way. Since the meeting on the 17th, UDR has instructed LRK to extend the fire lane on the Plaza between buildings A and B to Vitruvian Way. UDR has asked that no programmed spaces on the Plaza be eliminated. The primary programmed spaces are a move-in lane adjacent to Bldg B, and holding areas for trash containers to be used at limited times for scheduled trash pick-up. Areas can be designated for these activities without blocking or reducing the fire lane. Please note that due to City requests that we limit this drive to egress only the width of the drive apron is limited to 22 feet.

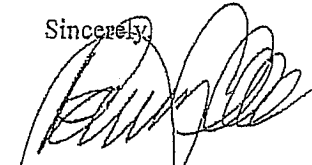
Chief Robbins also informed LRK that his understanding of the agreement between UDR and the Fire Department is that no portion of the Type IIIA building will be more than five stories above the adjacent grade without regard to the grade plane. If that is understood, the upper level of the eight A5 loft units that face the creek are six floors above the adjacent grade. LRK understood the 5 levels to be counted above the grade plane as defined by code. Based on our conversations with Chief Robbins, The Town of Addison Fire Department may not be opposed to replacing the enclosed conditioned loft level at the A5 loft units with limited area private rooftop decks that are substantially open to light and air.

UDR has instructed LRK to revise the A5 loft units to eliminate the closed conditioned spaces at the upper level and has requested that we investigate building private rooftop amenity spaces in their place. These amenity spaces will be partially roofed and the stairs to the roof will be roofed and enclosed. There will be no enclosed conditioned amenity space at the top of the stairs. The only enclosed conditioned space at the top of the stairs will be a landing for the stair.

We will provide revised drawings to reflect these changes in our next submission to the City.

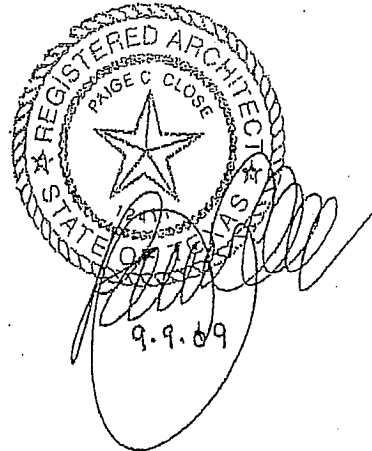
Thank you for your time and attention. Please let me know if you require additional information.

Sincerely,



Paige C. Close, AIA
Principal

Attachments



Attachment A

Grade Plane calculations with firewall				Finish floor calculations with firewall			
BUILDING PERIMETER LENGTHS AND CALCULATIONS OF GRADE PLANE				BUILDING PERIMETER LENGTHS AND CALCULATIONS OF FINISH FLOOR ELEVATION			
note: perimeter information is from highest to lowest graded areas.				note: perimeter information is from highest to lowest graded areas.			
PERIMETER IN FEET	ADJACENT GRADE ELEVATIONS AT BLDG. PERIMETER	(PERIMETER) X (GRADE ELEVATION)	WALL LENGTH ABOVE AND BELOW GRADE PLANE	PERIMETER IN FEET	FINISH FLOOR ELEVATION AT BLDG PERIMETER	(PERIMETER) X (ADJACENT FINISH FLOOR)	AVERAGE FIN. FLR. ABOVE AND BELOW GRADE
252.00	569.75	143,577.00		252.00	570.00	143,640.00	
70.00	569.75	39,882.50		70.00	570.00	39,900.00	
53.00	569.25	30,170.25		53.00	569.50	30,183.50	
53.00	568.75	30,143.75		53.00	569.00	30,157.00	
24.00	568.30	13,639.20		24.00	568.50	13,644.00	
50.00	568.25	28,412.50		50.00	568.50	28,425.00	
50.00	568.00	28,400.00		50.00	568.00	28,400.00	
26.00	567.50	14,755.00		26.00	568.50	14,781.00	
26.00	567.25	14,748.50		26.00	570.00	14,820.00	
68.00	568.00	38,624.00		68.00	570.00	38,760.00	
			WALL LENGTH ABOVE GRADE PLANE: 672.00				AVERAGE FINISH FLOOR ABOVE GRADE PLANE: 569.51
42.00	558.62	23,462.04		42.00	559.22	23,487.24	
10.00	558.62	5,586.20		10.00	559.22	5,592.20	
41.00	558.62	22,903.42		41.00	559.22	22,928.02	
10.00	558.62	5,586.20		10.00	559.22	5,592.20	
50.00	558.62	27,931.00		50.00	559.22	27,961.00	
110.00	558.62	61,448.20		110.00	559.22	61,514.20	
33.00	558.62	18,494.46		33.00	559.22	18,454.26	
23.00	558.62	12,848.26		23.00	559.22	12,862.06	
147.00	558.62	82,117.14		147.00	559.22	82,205.34	
45.00	558.62	25,137.90		45.00	559.22	25,164.90	
14.00	558.62	7,820.68		14.00	559.22	7,829.08	
86.00	558.62	48,041.32		86.00	559.22	48,092.92	
1,283.00		723,669.52		1,283.00		341,683.42	
			WALL LENGTH BELOW GRADE PLANE: 611.00				AVERAGE FINISH FLOOR BELOW GRADE PLANE: 559.22
			GRADE PLANE				
			564.04				
GRADE PLANE IS EQUAL TO THE SUM OF THE (PERIMETER IN FEET) X (GRADE ELEVATION) DIVIDED BY THE BUILDING PERIMETER.				AVERAGE FINISH FLOORS ARE EQUAL TO THE SUM OF THE (PERIMETER IN FEET) X (ADJACENT FINISH FLOOR) DIVIDED BY THE BUILDING PERIMETER ASSOCIATED WITH THE LEVEL.			

BUILDING AREA CALCULATIONS ALLOWABLE AND ACTUAL

ALLOWABLE BUILDING AREA CALCULATION		ALLOWABLE AND ACTUAL	
ALLOWABLE AREA FROM TABLE 503	per floor	24,000.00	
ALLOWABLE AREA INCREASE FOR FIRE SPRINKLERS PER 506.3	200% of 24,000	48,000.00	
ALLOWABLE AREA INCREASE FOR FRONTAGE INCREASE PER 506.2	(1283/2105.46-.25)*1	8,640.00	
AREA MODIFICATION PER SECTION 506.1	(24,000+(24,000*200%)+1-24,000*0.36)	80,640.00	TOTAL PER FLOOR
ALLOWABLE AREA PER BUILDING PER SECTION 506.4	80,640.00	x3	241,920.00
BUILDING LEVELS			TOTAL ALLOWABLE BUILDING AREA
Basement	26,050.00		
1st	51,756.00		
2nd	47,557.00		
3rd	53,532.00		
4th	55,664.00		
5th	29,754.00		
Area w/out Basement	232,263.00		-9,657.00 BELOW ALLOWABLE AREA

Council Agenda Item: #R10

SUMMARY:

The Fire Department's pre hospital emergency medical care is required by the Texas Department of State Health Services to be performed under the supervision of a medical control director. The State also requires continuing education and a quality assurance/quality improvement program for EMS personnel. The Addison Fire Department maintains such a medical control contract. The proposed contract would be effective from October 2009 through September 2014. We hereby request to accept the proposed medical control contract subject to final review by the City Attorney as outlined in the attached contract.

FINANCIAL IMPACT:

Budgeted Amount: \$27,500.00

Cost: \$26,400.00

BACKGROUND:

The Town's existing Emergency Medical Service (EMS) medical control/continuing education contract expires at the end of September 2009. The medical control contract is a highly specialized service which has been tailored to best meet the needs of our department. A RFP was advertised for two weeks in the Dallas Morning News, uploaded on www.demandstar.com , www.bidsync.com and posted on Addison's website which resulted in one bid which was from Metrocrest Medical Services Inc (MMS), our current medical provider.

The Fire Department has received excellent service from MMS in the past. They have provided a complete system of medical direction, quality continuing education and oversight of our EMS component. Their pre hospital emergency medical protocols are the most extensive in the Dallas/Fort Worth area. As a result, we are able to deliver a higher level of emergency treatment than surrounding services. They have met all the requirements to fulfill the needs of the fire department. The Town would like to continue its contract with MMS.

This contract would cover five years as follows:

October 2009 through September 2011	\$26,400.00
October 2011 through September 2012	\$27,720.00
October 2012 through September 2013	\$29,160.00
October 2013 through September 2014	\$30,540.00

RECOMMENDATION:

The Addison Fire Department recommends the award of a contract, subject to final review by the Town Attorney, to Metrocrest Medical Services in an amount of \$26,400.00 for pre hospital emergency medical control/continuing education purposes.

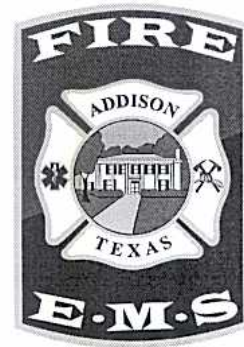
MEMORANDUM

TO: Mayor and City Council
Town of Addison

FROM: Chris W. Kellen
Deputy Chief – EMS/Training/EMC

DATE: October 2, 2009

SUBJECT: Medical Control/Continuing Education Contract



Background

The Texas Department of State Health Services (TDSHS) requires providers of pre hospital emergency medical services to operate under the direction of a medical control director/physician for all aspects of EMS operations. The fire department solicited bids for a contract to allow EMS personnel to operate under a medical control/physician license, a provision for new personnel training, continuing education, oversight and record keeping.

A single bid was received from Metrocrest Medical Services Inc. (MMS), the current provider for those services. There are only a few medical control providers in our area that offer the required medical direction and only MMS offers monthly in-house continuing education. Furthermore, MMS offers the most comprehensive medical protocols in the area which allows our paramedics more flexibility and a higher level of service. Addison enjoys a positive and professional working relationship with MMS, and all of our needs are consistently met by their staff.

This contract covers three aspects of pre hospital emergency medical care including medical control, new personnel training and continuing education. First, medical control covers the supervision of pre hospital emergency medical service providers by a licensed physician including on-line (direct voice contact) and off-line (written protocols and procedural review) services.

The second aspect covers the training of new personnel. In order for a paramedic to operate under the medical director's license, he/she must be trained, tested and evaluated in the policies, procedures and protocols that will be utilized. Every new employee must be proficient with these protocols before the medical director releases them for actual field assignment.

The third aspect is continuing education. Treatment protocols for various injuries and medical conditions are always changing. In order to keep pace with these changes, continuing education is provided. Continuing education is also required by the State of Texas for all pre hospital emergency medical personnel. This medical control contract

provides the necessary continuing education requirements as specified by the State of Texas.

Contract

This contract will be in effect for a period of five years ending September 30, 2014. The current cost of this contract is \$26,400.00 which would remain the same until October of 2011. The five year costs are as follows:

October 2009 through September 2010 \$26,400.00
October 2010 through September 2011 \$26,400.00
October 2011 through September 2012 \$27,720.00
October 2012 through September 2013 \$29,160.00
October 2013 through September 2014 \$30,540.00

Recommendation

Based on the information provided, the Addison Fire Department, subject to final approval by the City Attorney, recommends the Town Council enter into a contract with Metrocrest Medical Services in the amount of \$26,400.00 for pre hospital emergency medical control services and continuing education training.

Should you have any questions about this recommendation or contract, please contact me at your convenience.

Attachment



September 8th, 2009

Purchasing Coordinator
Town of Addison
P.O. Box 9010
Addison, Texas 75254

Subject: Bid No: 09-21

Dear Sir or Madam:

Enclosed you will find the proposal, from Metrocrest Medical Services (MMS), to provide Medical Direction and Continuing Education to Town of Addison Fire Department. This proposal is based on information provided by Medical Control and Continuing Education. We appreciate the opportunity to propose these services.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Cothes', written over a horizontal line.

Chris Cothes
Medical Control System Manager

Enclosures

***Town of Addison
Request for Proposal for
Medical Control and Continuing Education
Bid 09-21***

*Metrocrest Medical Services, Inc.
1925 E. Beltline Road, Suite 319.
Carrollton, Texas 75006
(972) 972-416-1200
Fax (972) 416-1227*

*For Information call:
Chris Cothes, Medical Control System Manager
(972) 416-1200*

Prepared September 8th, 2009

Introduction

Metrocrest Medical Services, a 501-(c)(3) nonprofit corporation, was founded in 1988 through the concern of interested parties to provide a well organized, well run medical control and continuing education program for North Texas area fire based paramedic services. These services have proliferated as a result of the rapid population growth in this geographic area. Metrocrest Medical Services currently provide Medical control and continuing education to Addison Fire Department, Aubrey Fire EMS Rescue, Bryan Fire Department, Coppell Fire Department, Little Elm Fire Department, and The Colony Fire Department.

Metrocrest Medical Services provides a complete system for EMS agencies Medical Control needs. We provide all of the necessary components for an agency to be compliant with the requirements for Medical Direction as specified in TSBME Rules, Chapter 197, which include:

- (1) Credentialing of EMS personnel to operate in an EMS system;
- (2) Establish and monitor compliance with field performance guidelines for EMS personnel;
- (3) Establish and monitor compliance with training guidelines;
- (4) Create protocols for pre-hospital care and medical aspects of patient triage, transport, transfer, dispatch, extrication, rescue, and communication by EMS;
- (5) Direct an effective system audit and quality assurance program;
- (6) Determine standards and objectives for all medically related aspects of operation of the EMS;
- (7) Function as the primary liaison between the EMS administration and the local medical community;
- (8) Develop a letter or agreement or contract between the medical director(s) and the EMS administration outlining the specific responsibilities and authority of each. The agreement should describe the process or procedure by which a medical director may withdraw responsibility for EMS personnel for noncompliance with the Emergency Medical Service Act, the Health and Safety Code, Chapter 773, the rules adopted in this chapter, and/or accepted medical standards;
- (9) Take or recommend appropriate remedial or corrective measures for EMS personnel, in conjunction with local EMS administration, which may include, but are not limited to,

counseling, retraining, testing, probation, and/or field preceptorship;

(10) Suspend a certified EMS individual from medical care duties for due cause pending review and evaluation;

(11) Establish the circumstances under which a patient might not be transported;

(12) Establish the circumstances under which a patient may be transported against his or her will in accordance with state law, including approval of appropriate procedures, forms, and a review process;

(13) Establish criteria for selection of a patient's destination; and

(14) Develop and implement a comprehensive mechanism for management of patient care incidents, including patient complaints, allegations of substandard care, and deviations from established protocols and patient care standards.

Metrocrest Medical Services, Inc. (MMS), will provide the Town of Addison with On/Off-Line Medical Control and Continuing Education services. These services will include:

1. The MMS Medical Director, Suresh Chavda M.D., will provide the medical oversight to the Town of Addison. Dr. Chavda will serve as both on and off line medical director. The Dr. Chavda will also be available for additional emergency medical services support to the Addison Fire Department upon request.
2. Full access to all the resources of MMS, including the Medical Director, Medical Control System Manager and Continuing Education Program Manager. All of these individuals will provide services to the Addison Fire Department upon request.
3. Medical control administration and clinical personnel will include personnel needed to manage the medical control activities on a daily basis, provide QA/QI, instruct continuing education classes, and provide field training and evaluation.
4. Off-line medical control inclusion of:
 - a. Authorization to provide care at both the BLS and ALS levels to all Addison Fire Department personnel.
 - b. Medical oversight required for emergency medical dispatching (EMD) as request or if implemented.
 - c. A quality improvement program.

- d. Advanced patient treatment protocols.
 - e. Policies addressing medical issues, as required by state rules.
5. On-line medical control through the emergency department physicians at Baylor Medical Center of Carrollton.
6. Continuing education (CE) courses provided to the Addison Fire Department personnel. CE will include:
- a. Three (3) four (4) hours continuing education classes per month, to be conducted at Addison Fire station 1 at time and date to be determined by both parties.
 - b. Provide 2 year continuing education schedule to department that shall provide for necessary hours to enable all Addison Fire Department EMS personnel under MMS medical direction to recertify state and national registry requirements.
 - c. Provide required continuing education hours necessary to maintain State and National Registry of EMT's certifications.
 - d. Development of CE modules utilizing data from the QI program.
 - e. The provision of on site classes for all personnel.
 - f. Tracking and maintaining all CE records.
 - g. Skill practice during the CE classes.

Scope of Services

Establish standard of care.

MMS has clearly defined and proven system standards for patient care issues. These standards are articulated through the protocols, the medical control policies, and the standards, which support the Quality Improvement program. These standards are taught to all system participants. The standards are then continuously maintained through the direct involvement of the Medical Control Officers (MCO) performing chart evaluations, tape reviews, and field training and evaluations.

Continued enhancement of the system standard of care by incorporating advancements, which become known and available from time to time, or to correct defects in the system standard of care

discovered as a result of the quality improvement program.

The MMS standards, including the protocols, medical control policies, and measurement standards for the evaluation tools, are continuously reassessed and modified as needed. At a minimum, these components are reviewed and revised annually by the QI committee, as described in the Quality Improvement program description. Independent of these annual reviews, MMS continuously uses the data provided by the QI program to modify our training, focus our continuing education efforts, revise applicable protocols and policies, and generally refine the standards and operations of the system.

Develop local medical control standards and requirements (written and practical performance criteria which may include tests) for EMS personnel providing care under the Medical Director's authority in accordance with the then current system standard of care. Personnel subject to this requirement shall include:

- a. Persons receiving requests for Ambulance services (dispatchers)*
- b. First responders*
- c. Ambulance personnel; and*
- d. On-line medical control physicians.*

The MMS system of standards and requirements for the practice of EMS dispatchers, first responders, EMS personnel, and on-line medical control physicians is articulated in the Medical Control Policies and the QI program description and components. These items, are included in this proposal, respectively, describe in detail how care is provided under the medical director's authority not only in accordance with the current system standard of care, but also in compliance with the EMS medical director's rules promulgated by the Texas State Board of Medical Examiners. Texas State Board of Medical Examiners (TSBME) rule number 197, included in this proposal, outlines the specific responsibilities and requirements of EMS medical directors. For example, TSBME requires EMS medical directors to establish a system to identify and remediate substandard performance by EMS personnel. The evaluation tools used to measure performance within the MMS system are described in detail within the QI program. The system for remediation of individual EMS providers who fall below the MMS standards and/or requirements is described in detail in policy 2009-011 (Corrective Actions). In summary, our system for remediation consists of the following components:

- a. One or more evaluation tools indicate that an individual may be functioning below expectations. At this point, MMS views the situation as "we *think*" we have an educational need.
- b. The Medical Control Officer (MCO) assigned to that individual, the Medical Control System (MCS) Manager and Medical Director, then performs a "focus study". The MCO uses all available information and evaluation tools needed to retrospectively evaluate the practice of this individual and the situation in question. This phase should confirm or refute the hypothesis that the individual is functioning or did function below expectations. At this point, should this study confirm the substandard performance, MMS views the situation as "we *know* we have an educational need". If the study shows

that the provider is acting within our standards, s/he is informed that her/his practice is satisfactory.

If the performance deficiency is classified as a “major” by MMS policy (represents an imminent threat to the public or to the system), the individual is temporarily suspended from practice at this juncture, and remains suspended until a full investigation is completed and the lesson plan is developed.

c. The MCO, MCS Manager and Medical Directors will specifically define the problem. Using the “who, what, when, where, why?” approach, the MCO defines exactly what behavior or performance aspect was below expectations and why the individual may have performed that way. This evaluation is done both retrospectively *and* concurrently, through intensive reviews of existing data and focused field evaluations and/or testing of the individual.

d. The MCO, MCS Manager, and Medical Directors then develop a lesson plan they believe will address the underlying reason for the performance deficiency.

If the performance deficiency is classified as a “major” by MMS policy (represents an imminent threat to the public or to the system), this lesson plan must be reviewed and approved by the QI Manager committee. The makeup and activities of this committee are described in the QI program.

e. The lesson plan is then put into action by the MCO. In the case of a “major” deficiency, this lesson plan may include temporary reassignment of authorization at a lower level (i.e., a paramedic may be authorized to function only at the Limited Paramedic level).

f. After completion of the lesson plan, the individual is then reevaluated using focused application of the normal QI evaluation tools.

g. Repeat occurrences of performance deficiencies after formal remediation will result in an upgrade in the level of infraction, as described in the policy.

The MMS deeply held philosophy regarding performance standards and remediation is that virtually any problem with an EMS provider can be corrected through **education and training**. It is our belief *and our experience* that EMS personnel will perform at or above the Medical Director’s expectations if the medical control system will:

a. *Clarify expectations.* Standards must be clearly articulated, overtly reviewed with the personnel, and readily available in the system. Additionally, the system standards must be valid, meaningful, and measurable.

b. *Teach them what you want them to do and the way you want them to do it.*

It is not enough to simply publish the protocols and policies; medical control must actively, effectively, and continuously teach these expectations to the providers. This is accomplished in part through continuous system presence of the medical control personnel (particularly the MCO).

- c. *Address problems with education rather than punitive actions.* If an individual does not seem to “get it”, this is primarily the responsibility of medical control. EMS personnel fundamentally want to do their best!

The MMS system of clear, readily available standards, valid evaluation, and focused remediation has worked well. MMS recognizes the importance of each individual EMS provider functioning within the system. Therefore, MMS goes to great lengths to retain and improve each and every provider in the system.

MCS policies cover the approval, testing, and authorization of EMS personnel.

MMS has a formalized and extensively tested system for the approval, orientation, and authorization of personnel within the MCS. This process is described in Medical Control Policy number 2009-018 (Authorization to Provide out of Hospital Care). The requirements for Medical Director Authorization are applicable to EMS dispatchers (includes those who take requests for EMS response) and all field personnel, both in the First Responder role and the ambulance staff. In synopsis, this system is comprised of:

- a. Notification to MMS by the employer of the hire of an individual who will function in the MCS. This notification must also include a copy of any applicable required certifications and the completion of the personnel data form. The new person is then authorized at a “limited” practice level until a medical control orientation course is successfully completed. “Limited” practice in the MMS MCS means that the individual can only perform those skills recognized by Texas DSHS for that level of certification and generally has fewer standing orders in a given protocol than an individual functioning at “Full” authorization.
- b. Attendance by the new employee to the MMS New Employee Training and Testing Course (NETTC) within 120 days of activation. This course provides the new personnel with orientation in the MMS protocols, medical control policies, and training in the new medical skills for that person’s certification level.
- c. Successful testing on four components within a limited period after completion of NETTC. The tested components include:
 - 1. Practical exams covering all new skills authorized by MMS for each certification level (such as surgical airway, intraosseous access, etc.)
 - 2. Written exam on the medical control policies
 - 3. Written exam on the medical protocols.
 - 4. “Mega code” testing incorporating the MMS protocols and specialty

skills.

Continued authorization to practice in the MCS is contingent upon the following criteria:

- a. Successful completion of at least 66% of applicable MMS MCS continuing education (CE) offerings.
- b. Participation as directed by their service and/or MMS in the Quality Improvement program.
- c. Maintenance of current appropriate Texas DSHS certifications utilizing one of the current recognized recertification options available.
- d. Successful completion (for paramedics) of an ACLS review course every two- (2) years (this is usually accomplished through CE, but only after initial AHA certification).

MMS also has extensive retraining and re-testing procedures in place for individuals who fail to meet one of these requirements initially. In general, they involve the following process:

- a. Should an individual fail any of the initial testing components, s/he will retest that component within 14 days. Individualized instruction to prepare the individual is available at no charge through their Medical Control Officer. The individual continues to practice at their initial authorization level in a “limited” role.
- b. Should an individual fail any of the components a second time, they are required to receive individualized instruction from an MCO before testing the component again (within 14 days of the failure). The individual must then retake the component within 14 days of receiving the instruction. The individual continues to practice at their initial authorization level in a “limited” role.
- c. Should an individual fail any of the components a third time, their authorization to practice will be affected. They can retake the component as many times as they wish (with certain restrictions on time between attempts) until they pass it, up to 28 days from the third failure.

The procedure for authorization and evaluation of on-line medical control physicians is articulated in Medical Control Policy 2009-006 (Medical Control Site Assignment) and the QI program description. Briefly, the initial and continued authorization of on-line medical control physicians consists of:

- a. Initial authorization by the Medical Director to provide on-line direction to MMS EMS units

- b. Individuals are issued protocols and medical control policies
- c. Attendance at MCS updates provided by the Medical Director and the MCS Manager (or designee)
- d. Evaluation through the QI program, with participation in any educational offerings deemed appropriate by the Medical Director

The MMS MCS treats on-line medical control physicians like any other personnel functioning in the system. Medical control physicians are subject to individualized QI comments.

As previously discussed, MMS has a formalized system governing the provision of on-line medical control. The specific details of this system are articulated in Medical Control Policies 2009-005, 2009-006, 2009-007, and 2009-008. In general, the requirements for on-line medical control include:

- a. Specific authorization of the facilities and the physicians who may participate in on-line medical control.
- b. Initial training of both the ED nursing staff and the physicians in the MMS medical control system and medical control policies.

Develop standards for ambulance and on-board equipment used in the delivery of First Response services and Emergency Ambulances services within the service area.

The MMS equipment/supply list for both BLS and ALS providers (first responder and transport) is a part of the medical protocols.

The standards for equipment and supply are regularly reviewed and (if needed) revised by the Manager QI Committee. This allows those personnel who are most directly impacted by this issue to give input into the MCS system. The committee evaluates the equipment/supply standards using both their real experiences from functioning in the system, the real data from the QI program on the types of patients seen by the system and the therapies utilized within the system, and current relevant research from the emergency medicine literature.

Monitor all aspects of system performance including clinical quality of care.

The MMS Quality Improvement program uses a variety of tools to monitor and evaluate the medical performance of the system. These evaluation tools include:

- a. Chart evaluations. Charts are evaluated (using a peer-based evaluation process backed up by medical control review) for both documentation and protocol performance. Charts are evaluated using set standards, which all personnel are oriented. A percentage of evaluated charts are returned to the EMS personnel who authored them for review.

- b. Field Evaluations. Field evaluations (FE's) are performed by trained evaluators (MCO's), utilizing set standards and objective criteria. FE's are reviewed immediately with the personnel being evaluated.
- c. Incidents. Any "incident" occurrence, whether identified by medical control personnel, EMS personnel, hospital staff, or a customer (via a "request for investigation") is viewed as a system assessment tool. Incidents can point out system or individual educational needs, the need to revise a protocol, policy, or procedure, or some other basic QI issues.
- d. Tests/Examinations. Written evaluation tools, such as protocol exams, the stated CE evaluation tool, and post-quizzes from CE, are also used to assess both individuals and the system as a whole.

Proposed Cost of Services

The costs for services provided by MMS are divided into two categories:

Medical Control:

This includes the services of Medical Directors, Medical Control Manager and Officers, support staff and all non-personnel expenses.

	<u>Per Month</u>	<u>Per Year</u>
10/2009-09/2010	\$1300.00	\$15,600.00
10/2010-09/2011	\$1300.00	\$15,600.00
10/2011-09/2012	\$1365.00	\$16,380.00
10/2012-09/2013	\$1435.00	\$17,220.00
10/2013-09/2014	\$1500.00	\$18,000.00

Continuing Education:

This includes CE coordination, CE instructors, CE development, skill practice, CE data entry, CE record storage, and CE reports, as needed. The cost is based on (3) three (4) four-hour CE classes each month conducted at Addison Fire Station 1.

	<u>Per Month</u>	<u>Per Year</u>
10/2009-09/2010	\$900.00	\$10,800.00
10/2010-09/2011	\$900.00	\$10,800.00
10/2011-09/2012	\$945.00	\$11,300.00
10/2012-09/2013	\$995.00	\$11,940.00
10/2013-09/2014	\$1045.00	\$12,500.00

	<u>Per Month</u>	<u>Per Year</u>	
Total:			
	10/2009-09/2010	\$2,200.00	\$26,400.00
	10/2010-09/2011	\$2,200.00	\$26,400.00
	10/2011-09/2012	\$2,310.00	\$27,720.00
	10/2012-09/2013	\$2,430.00	\$29,160.00
	10/2013-09/2014	\$2,545.00	\$30,540.00

Sincerely,

Chris Cothes
Medical Control System Manager



Metrocrest Medical Services, Inc.

July 2, 2007

Cowles & Thompson, P.C.
901 Main Street, Suite 4000
Dallas, Texas 75202-3793
Attention: Jason Mathis

Mr. Mathis;

This letter represents the acknowledgement by Metrocrest Medical Services, Inc. to extend the Medical Control and Continuing Education contract for the Town of Addison Fire Department through September 30th, 2009. All language and agreements will remain unchanged with the current contract that expires September 30th, 2007. The fees for the 2 year extension will be \$2200.00 per month for each year requested by this letter.

If you need any additional information or have any questions please contact me at 214-662-9217.

Regards,

A handwritten signature in black ink, appearing to read "C. Cothes", with the text "NREMT-P" written in small capital letters to the right of the signature.

Chris Cothes
Medical Control Manager

- D. The City and MMS agree that MMS's Medical Control policy and procedures manual, including any additions or deletions during the Contract period, shall be incorporated as a part of this Contract. MMS shall give prompt notice of any such additions or deletions to the City.
- E. The City agrees that any use of MMS materials (i.e. Policies & Procedures, Protocols, evaluation forms, etc.) outside of its normal intended use will require permission from MMS prior to use. Outside the normal intended use includes, but is not limited to, use of materials as examples of continuous quality improvement used by the City for proposals, information reports, etc.
- F. To the extent permitted by law, a MMS documentation, Policies & Procedures, Protocols, and other materials used by the City remain the property of MMS, and must be returned should the contractual relationship between MMS and the City terminate. Completed run forms with quality improvement evaluations attached are exempt from being returned. The City agrees that any part which is kept by the City is considered part of the quality improvement process, (and is marked and identified by MMS as being part of the quality improvement process and confidential), and must remain confidential to the extent by law (including, without limitation, the Texas Public Information Act, Chapter 552, Tex. Gov. Code).

II. MEDICAL CONTROL

- A. MMS will provide Medical Control through a Medical Director and Emergency Department physicians, who are licensed to practice medicine in the State of Texas.
- B. The City recognizes that the Texas State Board of Medical Examiners EMS Chapter 197 (22 Texas Administrative Code 197), as amended and any other laws or regulations relating to the services provided by MMS hereunder (which laws and regulations are incorporated herein and made a part hereof for all purposes), shall govern the obligations of the Medical Director and MMS in regard to services provided, which includes, but is not limited to, the MMS Medical Control System authorization of all EMS personnel within the City.
- C. The Medical Director will provide pre hospital protocols, including standing orders for treatment of patients by the EMS personnel under his/her medical direction.
- D. MMS will make available an on-line Medical Control source, which will be available 24 hours a day, 7 days a week to provide medical direction and consultation to the City's EMS personnel.
- E. The City agrees to participate in, and follow the recommendations of, MMS's Quality Improvement (QI) Program.
- F. MMS will provide U.S. Drug Enforcement Agency authorization to purchase controlled substances for the use by the City's EMS personnel.

- G. The City agrees to appoint one supervisor to represent the City for the Quality Improvement Manager committee. This appointment is subject to approval of MMS.

III. New Personnel

- A. The City agrees to report newly certified and/or new EMS personnel to MMS prior to permitting them to provide out of hospital care. The City also agrees to send one copy of each new EMS personnel's Texas Department of Health's EMS certification and, for paramedic-level personnel, a "current" (dated within 2 years of submission) Advanced Cardiac Life Support course completion card to MMS in order to receive authorization to provide patient care in the MMS Medical Control System. New EMS personnel who do not have a "current" ACLS course completion card will have six months in which the next scheduled MMS ACLS course occurs to send a copy of the ACLS completion card. All new EMS personnel will be issued a Medical Control number after MMS receives proper notification of new EMS personnel. The City agrees that personnel hired cannot provide patient care under the authority of the MMS Medical Control System until a Medical Control number has been issued.
- B. New personnel will be required to successfully complete the MMS New Employee Training and Testing Course (NETTC) which will train and test skills and introduce policies and procedures utilized in the MMS Medical Control System. The new personnel will take a written exam covering the protocols applicable to the personnel's certification within the time frame established by the Medical Control policies. Successful completion of this exam will result in full protocol privileges up to the personnel's State certification level. The fees for the attendance for the NETTC training are included in the Contract fees for up to a maximum of (6) six personnel per Contract year. For any additional personnel to attend NETTC training over the maximum number of (6) personnel, MMS's current NETTC class fee will be charged
- C. If the City does not require the need of (6) personnel to attend NETTC, the City may substitute the balance of non-utilized NETTC positions in any other specialized training class that MMS offers. These may include RSI, FTO, ACLS, PALS, PHTLS, or PEPP.
- D. Individuals not completing the MMS NETTC class after being hired may be subject to having their medical control authorization revoked, at the discretion of the Medical Director.

IV. CONTINUING EDUCATION

- A. Personnel receiving Medical Control under this Contract shall comply with the MMS CE requirements. MMS will provide Continuing Education ("CE") hours, which are approved by the Texas Department of Health for credit towards re-certification of the City's EMS personnel. The CE will also meet the educational needs of the City's EMS personnel as determined by the QI program. All EMS personnel CE records will be maintained by MMS.
- B. CE will be provided by MMS approved CE Instructors, under the direction of the MMS MCS ("Medical Control System") Manager, a Certified Course Coordinator, and the MMS Medical

Director. CE evaluation forms will be available at all CE offerings to give EMS personnel the opportunity to provide MMS with feedback concerning the instructor and class. The EMS Chief may request in writing to restrict or eliminate participation of C.E. instructor(s)

- C. The CE provided by MMS will consist of lecture and practice on skills applicable to the C.E. module and appropriate to the EMS personnel's certification level.
- D. Mandatory attendance by the City's EMS personnel is required and is covered in the appropriate policy.
- E. Missed CE can be made up (within 30 days of the missed CE offering) by successfully completing the CE makeup packet (provided by MMS's CE Coordinator) and passing the written exam covering the material. The appropriate amount of CE credit will be awarded upon successful completion of the makeup packet.
- F. MMS is not responsible for fees required for the EMS personnel's re-certification (for the written CE evaluation, and/or any other fees). State fees will be the sole responsibility of the EMS personnel, City, or both (as defined by the City's own policies/procedures).
- G. MMS may, at its discretion, evaluate EMS personnel during emergency runs and may credit the personnel CE credit hours for those runs. Continuing education credit hours will be awarded based upon TDH rules in effect at the time of EMS personnel evaluation.
- H. Additional CE credit hours may be certified through MMS by attending outside courses or seminars approved in advance by MMS if required verification and/or course information is provided to MMS.
- I. MMS will provide the City, upon request, with a regular report indicating individuals who are nearing their re-certification date. However, the information will be based upon data received from the City and MMS will not be responsible for errors in any such information submitted to MMS by the City. The City further understands the ultimate responsibility of EMS certification rests with the individual EMS personnel.
- J. The City will be responsible for notifying the MMS CE Coordinator of the need for CE reports, which will allow the City to complete the appropriate State required paperwork that City's EMS personnel need to re-certify. The responsibility for re-certification of the City's EMS personnel rests with the City.
- K. MMS will keep track of all CE hours accrued through MMS CE classes. MMS will also keep records of re-certification dates of all personnel. Responsibility for timely re-certification of the City's EMS personnel rests entirely with the City and the individual.
- L. MMS will provide all personnel who successfully complete the Advanced Cardiac Life Support course with an American Heart Association completion card at no additional cost.

V. COSTS

A The costs for Medical Control and Continuing Education per month during this Contract period will be:

Period	Medical Control	Continuing Education	Total Per Month
10/07-9/08	\$1300.00	\$900.00	\$2200.00
10/08-9/09	\$1300.00	\$900.00	\$2200.00

Payment may be made on an annual, semiannual, quarterly, or monthly basis at the City’s election. Payment shall be made on or in advance with the first payment due October 1, 2007. The obligation of the City to make any such payments is subject to the annual appropriation of funds by the City, in the City’s sole discretion, to make such payments.

B. Three (3) 4-hour Continuing Education (CE) programs will be scheduled and provided per month during the term of this Contract. The cost for providing continuing education classes to the City is based upon \$65.00 per class hour for up to ten students. The City agrees to pay MMS \$30.00 per class for the each additional group of ten students or fraction thereof in any class. For example, a CE class of 35 or 40 would cost the City an additional \$90.00 per class hour. Charges for additional instructions are payable in arrears Net 15 following receipt of invoice from MMS.

C. If, during this Contract, any EMS personnel need additional CE hours or training as determined by the QI Program or at he request of the City, the City must pay a fee to MMS of \$70.00 (plus \$25.00 per hour for each additional instructor for specialty classes) per training hour (for up to 10 students in one class) or \$87.00 (for 11-20 students in one class) provided by MMS to make up the deficiency. However, deficient training hours may also be made up through other sources of certified CE instruction which is *pre-approved* by MMS. MMS will offer the necessary training to keep all EMS personnel current in their CE requirements.

D. Any increase in cost of providing services hereunder occasioned by changes in applicable laws or regulations from or after the date hereof shall be paid by the City. The fees to be paid hereunder pertain to the scope of services to be provided hereunder, to-wit, Medical Control of a transport service and continuing education classes. Supplemental services, as defined below, fall outside the scope of services of this Contract, and are charged and to be paid as follows:

Medical Director	\$125.00 per hour
Other MMS personnel	\$ 65.00 per hour

Supplemental services are defined as:

1. Pre scheduled standby events at which Medical Control personnel are requested to be present by the City or required to be present by law;
2. Consultations with the City, or on behalf of the City, beyond the normal and customary scope of medical control;
3. Appearances and presentation on behalf of the City, beyond the normal and customary scope of medical control; and
4. The commitment of man-hours by MMS in excess of 120% of those occasioned by providing normal and customary medical control (the "Standard") to the City. For purposes hereof, the standard is determined to be 37 hours per month.

VI. INDEMNIFICATION

MMS shall defend, indemnify and hold harmless the Town of Addison, Texas its officials, officers, employees and agents against and from any and all liability, actions, causes of action, lawsuits, judgments, claims, damages, costs or fees, including attorney's fees and costs of defense, for personal injury, property damage or destruction (including without limitation loss of use of property not otherwise physically injured), breach of contract, or other harm for which recovery of damages or equitable relief (including, without limitation, injunction relief) is sought, suffered by any person or organization that may arise out of any act or omission of the contractor, its officers, employees and agents under or in connection with this Contract.

VII. INSURANCE

In connection with this Contract, MMS shall provide and maintain in full force and effect during the term of this Contract following types of insurance coverage with limits of not less than those set fort below:

- A. Professional Liability Insurance: Liability limits of \$1,000,000 each occurrence and \$3,000,000 aggregate (and such coverage shall be extended for a two year period of time following the termination of this Contract) covering the rendering of or failure to render education, training, certification, and/or recertification (and including, without limitation, any refusal to grant

certification or recertification) of any emergency medical personnel including, without limitation, paramedics; and

- B. Commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 each occurrence, which shall include coverages for bodily injury (including, without limitation, death) and property damage, and particularly for liability arising from premises operations, independent contractors, products/completed operations, personal injury, advertising injury, and contractual liability (including without limitation, the liability assumed under the indemnity provisions of this Contract). If such CGL insurance contains a general aggregate limit, it shall apply separately to the work under this Contract; and
- C. Workers compensation insurance in the amounts required by law.

These policies shall be endorsed to provide the following, as applicable: (i) in all liability policies, name the Town of Addison, Texas its officials, officers, agents, and employees as additional insured; (ii) in all liability policies, provide that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of activities conducted hereunder, and that insurance applies separately to each insured against whom claim is made of suit is brought; and (iii) a waiver of subrogation in favor of the Town of Addison, its officials, officers, agents, and employees must be included in all such policies. All insurance policies shall be issued by an insurance company with an A.M. Best's rating of not less than A- and authorized to do business in Texas and in the standard form approved by the Texas Department of Insurance, and shall be endorsed to provide for a least 30 days advance written notice to the Town of Addison of a material change in or cancellation of a policy. Certificates of insurance, satisfactory to the City, evidencing all coverage above, shall be furnished to the City prior to execution of this Contract, with complete copies of policies furnished to the City upon request. The City reserves the right to review and revise from time to time.

VIII. LENGTH/TERMINATION OF CONTRACT

- A. Subject to the annual appropriation of funds by the City for the payment of this Contract, the term of this Contract shall commence on October 1, 2007 and shall remain in effect until September 30, 2009, or such time as this Contract is terminated as provided herein.
- B. After the period of time set forth in paragraph VII.A., this Contract may be extended for two (2) successive periods of one (1) year, provided that both parties agree in writing to such extensions. The fees during such extensions are subject to negotiations between both parties.
- C. This Contract may be terminated for any reason or for no reason by either party and at the sole discretion of that party by giving written notice of such termination to the other party. The Contract shall terminate ninety (90) days after such notice has been received. MMS shall refund a portion of the fees on a pro-rata basis calculated from the termination date.

- D. Should MMS fail to provide the contracted services to the City for a period of 60 days (excluding any scheduled period of inactivity), this Contract will be considered in default and may be terminated immediately by the City.
- E. MMS shall not, and shall have no power or authority to, assign, transfer, pledge, sublet or otherwise convey (together, "Assignment") any or all of its right, duties, or obligations under this Contract without the prior written consent of the City.

In the event of

- (i) any such Assignment in violation of such prohibition, or
- (ii) the institution against MMS of bankruptcy, insolvency, reorganization, arrangement, debt adjustment, liquidation or receivership proceedings in which it is alleged that MMS is insolvent to unable to meet its debts as they mature, or
- (iii) the filing of a petition under any section or chapter of the National Bankruptcy Act, as amended, or under any similar law or statute of the United States or any state thereof by MMS or any guarantor of MMS' obligations, or adjudication as a bankrupt or insolvent in proceedings filed against MMS or such guarantor, or
- (iv) the appointment of a receiver or trustee for all or substantially all of the assets of MMS or any guarantor of MMS' obligations,

The same shall be an event of default under this Contract and the City shall the right to terminate this Contract immediately.

- F. Should payment by the City to MMS fall behind 60 days from date due, this Contract will be considered in default and may be terminated immediately by MMS.
- G. Except as otherwise provided herein, whenever this Contract requires or permits any consent, approval, notice, request, or demand from one party to the other, the consent, approval, notice, request or demand must be in writing to be effective and shall be deemed to have been given when personally delivered to the party to be notified or on the second business day after it is enclosed in an envelope, addressed to the party to be notified at the address set forth below (or at such address as may have been designated by written notice), properly stamped, sealed, and deposited in the United States mail, certified mail, return receipt requested. The address of each party for purposes hereof is as follows:

MMS: Metrocrest Medical Services, Inc.
Attn.: Director of Operations
1925 E. Beltline Rd. #319
Carrollton, Texas 75006

City: Town of Addison
Attn.: Chief Chris Kellen
PO Box 9010
Addison, TX 75001-9010

In the event of any action under this Contract, venue for all cases of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall 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 interpretation, validity and enforcement of this Contract.

If any clause, paragraph, section 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.

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 not in full force and effect.

EXECUTED this the _____ day of _____, 2007.

Town of Addison:

Signature

Printed name and Title

Metrocrest Medical Services, Inc.

Chris Cothes
Medical Control Manager

ATTACHMENT A

The following reports shall be submitted to MMS:

- A. A monthly activity report in written format, (format provided by MMS), with the following information:
 - 1. Number, type of calls and disposition.
 - 2. Number of BLS and ALS incidents.
 - 3. Other information determined necessary by the City or MMS.

- B. A copy of each Incident Report shall be forwarded to MMS for review. To be included must be all incident reports where there is no patient transported or found to exist. This form must include type, date, time and personnel responding to incident.

- C. A copy of each person's current ACLS completion card or training roster and EMS certification for every EMS personnel working in the MMS Medical Control System for the city of Addison's Fire Department.

- D. Monthly Controlled Substance Safe logs, Controlled Substance Use forms, apparatus narcotic accountability logs for each vehicle carrying morphine sulfate, midazolam/or valium, and DEA 222 forms. MMS must receive original, not copy of form.

- E. A current personnel roster, including the following information:
 - 1. Personnel names
 - 2. TDH certification level and expiration date of certification
 - 3. Station or post assignment
 - 4. Shift assignment

The City will also provide MMS with a revised Personnel Data Form whenever changes are made to field/dispatch staff.

- F. Information on all EMS personnel, to include:
 - 1. Name
 - 2. Addison Fire Department identification number
 - 3. Date of birth
 - 4. Correct address
 - 5. Correct phone number

ATTACHMENT B

- A. The City agrees that all vehicles used to transport the sick and injured will at all times while being used to provide out of hospital patient care, meet current Texas Department of Health standards including equipment and staffing, as well as the equipment and supplies listed in the MMS protocols carried on that particular vehicle.
- B. The City shall allow and make available at any time, vehicles or equipment for review and inspection by MMS, including non-transport vehicles.
- C. The City shall allow observation of performance, evaluation and participation during runs, or other on-site visits as deemed necessary by MMS staff and/or by the Medical Director.
- D. The City will notify MMS in writing when, and the results of, TDH vehicle inspections.

ATTACHMENT C

**Texas State Board of Medical Examiners
EMS
Chapter 197**

Emergency Medical Service
197.1-197.6

The following rules are promulgated under the authority of Article 4495b, V.A.C.S.

197.1. Purpose. The purpose of this chapter is to facilitate the most appropriate utilization of the skills of physicians who delegate health care tasks to qualified emergency medical service (EMS) technicians. Such delegation shall be consistent with the patient's health and welfare and shall be undertaken pursuant to supervisory guidelines which take into account the skill, training, and experience of both physicians and EMS technicians. This chapter addresses the qualifications, responsibilities, and authority of physicians who provide medical directions and/or supervision of prehospital care by EMS personnel; the qualifications, authority, and responsibilities of physicians who serve as medical directors (off-line); the relationship of EMS providers to the off-line medical director; components of on-line medical direction (direct medical control), including the qualifications and responsibilities of physicians who provide on-line medical direction and the relationship of prehospital providers to those physicians; and, the responsibility of EMS personnel to private and intervener physicians. This chapter is not intended and shall not be construed to restrict a physician from delegating administrative and technical or clinical tasks not involving the exercise of independent medical judgment to those specially trained individuals instructed and directed by a licensed physician who accepts responsibility for the acts of such allied health personnel. Likewise, nothing in this chapter shall be construed to prohibit a physician from instructing a technician, assistant, or other employee, who is not among the classes of EMS technicians, as defined in section 197.2 of this title (relating to Definitions), to perform delegated tasks so long as the physician retains supervision and control of the technician, assistant, or employee. Nothing in this chapter shall be construed to relieve the supervising physician of the professional or legal responsibility for the care and treatment of his or her patients. A physician who, after agreeing to supervise EMS personnel, fails to do so adequately and properly, may be subject to disciplinary action pursuant to the Medical Practice Act. Implementation of this chapter will enhance the ability of EMS systems to assure adequate medical direction of all advanced prehospital providers and many basic level providers, as well as compliance by personnel and facilities with minimum criteria to implement medical direction of prehospital services. A medical director shall not be held responsible for noncompliance with this chapter if the EMS administration fails to provide the necessary administrative support to permit compliance with the provisions of chapter.

197.2. Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Advanced life support -Emergency prehospital care that involves invasive medical procedures. The provision of advanced life support shall be under the medical directions and/or supervision and control of a licensed physician.

Basic life support -Emergency prehospital care that involves noninvasive medical procedures. The provision of basic life support may be under the medical direction and/or supervision and control of a licensed physician.

Board - The Texas State Board of Medical Examiners.

Delegated practice - Permission given by a physician either in person or by treatment protocols or standing orders to a specific EMT-I or EMT-P to perform invasive procedures.

Direct medical control - Provision by a physician designated by the EMS system of immediate medical direction to prehospital providers in out of hospital locations either at the scene or via radio or telephonic communication. This relationship may also be referred to as on-line medical direction.

Emergency medical services personnel -

(A) Emergency care attendant (ECA) - An individual certified by the Texas Department of Health as able to provide emergency prehospital care in the form of initial aid that promotes comfort and avoids aggravation of an injury or illness;

(B) Emergency medical technician (EMT) - An individual certified by the Texas Department of Health as able to provide emergency prehospital care that is necessary for basic life support;

(C) Emergency medical technician-intermediate (EMT-I) - An individual certified by the Texas Department of Health as able to provide emergency prehospital care by initiating certain procedures, including intravenous therapy and endotracheal or esophageal intubation, under medical supervision; and

(D) Emergency medical technician-paramedic (EMT-P) - An individual certified by the Texas Department of Health as able to provide emergency prehospital care under medical supervision in the form of advanced life support, which may include initiation of intravenous therapy, endotracheal or esophageal intubation or both, electrical cardiac defibrillation or cardioversion, drug therapy, and other procedures.

Emergency medical services system (EMSS) - All components needed to provide comprehensive prehospital and hospital emergency care including, but not limited to, a medical director, transport vehicles, trained personnel, access and dispatch, communications, and receiving medical facilities.

Intervenor physician - A physician licensed by the board, who, without having established a prior physician/patient relationship with the emergency patient, accepts responsibility for the prehospital care, and can provide proof of a current medical license.

Medical Director - A physician responsible for all aspects of the operation of an EMS system concerning provision of medical care. This relationship may also be referred to as off-line medical direction.

Prehospital providers - All personnel providing emergency medical care in a location remote from facilities that are capable of providing definitive medical care.

Protocols - Guidelines for EMS practice that are used in a variety of situations within the EMS system.

Standing delegation orders - Strictly defined written orders for actions, techniques, or drug administration that may be implemented when communication has not been or cannot be established with the physician providing on-line medical direction.

197.3. Off-Line Medical Director.

- (a) An off-line medical director shall be:
 - (1) a physician licensed to practice in Texas;
 - (2) familiar with the design and operation of EMS systems;
 - (3) experienced in prehospital emergency care of acutely ill or injured patients;
 - (4) actively involved in:
 - (A) the emergency management of acutely ill and/or injured patients;
 - (B) the training and/or continuing education of EMS personnel, under his or her direct supervision, at their respective levels of certification;
 - (C) the medical audit, review, and critique of the performance of EMS personnel at all levels of certification;
 - (D) the administrative and legislative environments affecting regional and/or state prehospital EMS organization;
 - (5) knowledgeable about local multi-casualty plans;
 - (6) familiar with dispatch and communications operations of prehospital emergency units; and
 - (7) knowledgeable about laws and regulations affecting local, regional, and state EMS operation.
- (b) The medical director shall:
 - (1) approve the level of prehospital care which may be rendered locally by each of the EMS personnel employed by and/or volunteering with the EMS under the medical director's supervision, regardless of the level of state certification, before the certificant is permitted to provide such care to the public;
 - (2) establish and monitor compliance with field performance guidelines for EMS personnel;
 - (3) establish and monitor compliance with training guidelines which meet or exceed the minimum standards set forth in Texas Department of Health EMS certification regulations;
 - (4) develop, implement, and revise protocols and/or standing delegation orders, if appropriate, governing prehospital care and medical aspects of patient triage, transport, transfer, dispatch, extrication, rescue, and radio-telephone-telemetry communication by the EMS;
 - (5) direct an effective system audit and quality assurance program;
 - (6) make formal recommendations on medically related aspects of operation of the

- EMS including the inspection, evaluation, and approval of the system's performance specification;
- (7) function as the primary liaison between the EMS administration and the local medical community, ascertaining and being responsive to the needs of each;
 - (8) develop a letter of agreement between the medical director(s) and the EMS administration outlining the specific responsibilities and authority of each. The agreement should describe the process or procedure by which a medical director may withdraw responsibility for EMS personnel for noncompliance with the Emergency Medical Service Act, Health and Safety Code, Chapter 773, the rules adopted in this chapter, and/or accepted medical standards;
 - (9) take or recommend appropriate remedial or corrective measures for EMS personnel, in conjunction with local EMS administration, which may include but are not limited to counseling, retraining, testing, probation, and/or field preceptorship;
 - (10) suspend a certified EMS individual from medical care duties for due cause pending review and evaluation;
 - (11) establish the circumstances under which a patient might not be transported;
 - (12) establish the circumstances under which a patient may be transported against his or her will in accordance with state law, including approval of appropriate procedures, forms, and a review process;
 - (13) establish criteria for selection of a patient's destination; and
 - (14) develop and implement a comprehensive mechanism for management of patient care incidents, including patient complaints, allegations of substandard care, and deviations from established protocols and patient care standards.

197.4. On-Line Medical Direction.

- (a) All prehospital providers above the certification level of EMT shall be assigned to a specific on-line communication resource by a predetermined policy.
- (b) Specific local protocols shall define the circumstances under which on-line medical direction is required.
- (c) A physician providing or delegating on-line medical direction shall be appropriately trained in the use of prehospital protocols, and shall be familiar with the capabilities of the prehospital providers, as well as local EMS operational policies and regional critical care referral protocols.
- (d) A physician providing or delegating on-line medical direction shall have demonstrated personal expertise in the prehospital care of critically ill and injured patients.
- (e) A physician providing or delegating on-line medical direction for particular patients assumes responsibility for the appropriateness of prehospital care provided under his or her direction by EMS personnel.

197.5. Authority for Control of Medical Services at the Scene of a Medical Emergency.

- (a) Control at the scene of a medical emergency scene shall be the responsibility of the individual in attendance who is most appropriately trained and knowledgeable in providing prehospital emergency stabilization and transport.
- (b) When an advanced life support (ALS) team, under medical direction, is requested and dispatched to the scene of an emergency, a physician/patient relationship is thereby established between the patient and the physician designated by the EMS system providing medical direction (either off-line or on-line).
- (c) The prehospital provider on the scene is responsible for the management of the patient and acts as the agent of the physician providing medical direction.
- (d) If the patient's private physician is present and assumes responsibility for the patient's care, the prehospital provider should defer to the orders of said physician unless those orders conflict with established protocols. The patient's private physician shall document his or her orders in a manner acceptable to the EMS system.
- (e) The physician providing on-line medical direction shall be notified of the participation of the patient's private physician.
- (f) If the medical orders of the patient's private physician conflict with the system protocols, the private physician shall be placed in communication with the physician providing on-line medical direction. If the private physician and the on-line medical director cannot agree on treatment, the private physician must either continue to provide direct care to the patient to the hospital or must defer all remaining care to the on-line medical director.
- (g) The system's medical director or on-line medical control shall assume responsibility for directing the activities of prehospital providers at any time the patient's private physician is not in attendance.
- (h) If an intervenor physician is present at the scene and has been satisfactorily identified as a licensed physician and has expressed his or her willingness to assume responsibility for care of the patient, the on-line physician should be contacted. The on-line physician is ultimately responsible for the care of the patient unless and/or until the intervenor physician appropriately assumes the responsibility for the patient.
- (i) The on-line physician has the option of managing the case exclusively, working with the intervenor physician, or allowing the intervenor physician to assume complete responsibility for the patient.
- (j) If there is any disagreement between the intervenor physician and the on-line physician, the prehospital provider shall be responsible to the on-line physician and shall place the

intervenor physician in contact with the on-line physician.

(k) If the intervenor physician is authorized to assume responsibility, all orders to the prehospital provider by the intervenor physician shall also be repeated to medical control for record keeping purposes.

(l) The intervenor physician must document his or her intervention in a manner acceptable to the local EMS.

(m) The decision of the intervenor physician not to accompany the patient to the hospital shall be made with the approval of the on-line physician.

(n) Nothing in this section implies that the prehospital provider can be required to deviate from system protocols.

197.6. Authority to Conduct Research and/or Educational Studies.

(a) The medical director has the authority to design research projects and educational studies. Such studies should be approved by:

(1) EMS administrative officials/ and

(2) an independent review panel if the project/study may have a differential impact on patient care.

(b) The results of the study should be made available through publications to the EMS community.

Effective January 2, 1991

Council Agenda Item: #R11

SUMMARY:

This item is for the 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.

FINANCIAL IMPACT:

Original Cost:	\$550,000.00
Additional Professional Services:	\$ 56,155.00

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

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

BACKGROUND:

The Texas Commission in Environmental Quality (TCEQ) has recommended that the Town pursue construction of additional elevated storage in order to provide 100 gallons of elevated storage per connection. A letter to the Town of Addison from TCEQ, dated January 7, 2006, indicated that the Town had reached 94.5% of its elevated storage capacity. Freese and Nichols, Inc. was retained in 2006 by the Town of Addison to perform a Water Distribution Study. The 2006 study determined that additional elevated storage was needed. At the November 27, 2007 Council meeting, Council approved a contract with Freese & Nichols, Inc. to perform preliminary engineering for the elevated storage tank (EST). With the high visibility of the proposed location of the new tower (Surveyor and Belt Line) and its proximity to the planned Arapaho Rd. trail extension to the utility easement, the new water tower offers and opportunity to provide an iconic statement for the community.

On November 11, 2008, Council approved a professional design services contract with Freese & Nichols for \$550,000 for the design and general construction representation services. It included a hemisphere painted carbon steel bowl on a 46 ft diameter concrete pedestal, a stainless steel veneer at bottom of pedestal, 15 solar wind turbines mounted on top of the tank bowl, and ground floor storage with roll-up door. The original contract also includes assistance from Freese & Nichols in evaluating and recommending the placement of a demonstration wind turbine on the ground level near the EST that would allow the Town to evaluate the advantages of including additional wind turbines at the top of the EST.

The proposed contract amendment will include the design of an approximately 1200 square foot learning center room in the pedestal of the elevated tank. The elevated tank will have the space in the pedestal dedicated to an educational classroom, restrooms, and the piping for the operation of the elevated storage tank. The learning center design will include an enclosed room for data displays, restrooms (water supply and sanitary sewer service), access doors, an HVAC system, ADA accessibility to the room, room interior and exterior walls and ceiling coatings/texturing, room interior floor coating / covering.

The proposed contract also includes design of the chlorine analyzer and placement of a wind measurement system on the existing elevated storage tank. The professional services for the audio visual improvements are not included and are anticipated to be included in a future agenda item regarding proposed wind turbines.

The amount for the design contract for the learning center design is \$56,155.00.

RECOMMENDATION:

Staff recommends that Council authorize the City Manager to enter into a supplemental agreement to the Engineering Services Agreement with Freese & Nichols, Inc., in the amount not to exceed \$56,155.00, for additional design services on the proposed 1.5 Million Gallon Elevated Storage Tank.



Freese

and

Nichols, Inc.

Engineers

Environmental Scientists

Architects

4055 International Plaza, Suite 200

Fort Worth, Texas 76109

817 735-7300

817 735-7491 fax

www.freese.com

October 7, 2009

Ms. Nancy Cline, P.E.
Director of Public Works
Town of Addison
16801 Westgrove Drive
Addison, Texas 75001

Re: 1.5 MG Elevated Storage Tank
Engineering Contract Amendment #2 Proposal

Dear Ms. Cline:

We are pleased to submit our revised proposal for the additional services related to the referenced project. The Amendment #2 form and scope of services are attached for your consideration. Based upon recent correspondence with you, we have revised our proposal for the following items:

1. The design will maximize the amount of pedestal floor space that will be used for the technology center. Our preliminary estimate of the available space for the learning center is approximately 75% of the pedestal floor space, or 1,200 sf. This estimate will be further refined once the concept development is underway and we are able to more precisely determine the technology center and tank operations layouts.
2. We have updated our estimate of the anticipated construction cost for the technology center. This cost is not part of our fee proposal, but is included for your reference. Based upon an approximate 1,200 technology center space, we anticipate the construction cost as follows:

Shell finishout, HVAC, roof, walls, restrooms, plumbing –	\$180,000
Audio/Visual Equipment & Commissioning -	<u>\$ 45,600</u>
Total Tech Center Construction Cost Estimate -	\$225,600
3. Our fee includes subcontracting the architectural and MEP services associated with the design of the technology center to WRA Architects, Inc. for a fee of \$18,000. We have included some effort to attend meetings with WRA and Town staff during the concept phase and for milestone meetings. We have removed the A/V command center design.
4. We have only included the labor and materials associated with installing an anemometer at the existing tank site. We have removed the labor and effort associated with installing an anemometer at the proposed tank site.
5. These changes have reduced the contract total from \$112,000 to \$67,115.

We have provided a breakdown of our proposed fee for Amendment #2 below:

Technology Center - Concept Plan Development, Design, and General Construction Representation for a technology center within the pedestal of the elevated storage tank (construction not included in fee proposal). The Technology Center will be an approximately 1,200 square foot enclosed space within the elevated storage tank pedestal, with a data display/audio visual control command center. Featuring several large screen displays, this command center will be used both for staff monitoring of the tank and wind energy production and for educational tours to learn about the tank and wind energy production, including real time data displays. The space will have heating and air conditioning (powered by the onsite wind turbines) and will have restroom facilities.

The following is a breakdown of the proposed fees:

Architectural, Mechanical, Electrical, Civil Design Concept	\$18,000
Development & General Construction Representation	
FNI Meeting Attendance & Coordination on Technology Center	\$9,975

Chlorine Analyzer - Design and General Construction Representation for a chlorine analyzer (construction not included in fee proposal). The analyzer equipment will continuously and automatically monitor the level of chlorine residual in the water in the elevated storage tank. SCADA display of this information will allow the staff to efficiently monitor the water quality within the tank, and react before chlorine levels become a concern. Staff can also view the chlorine levels locally within the elevated tank pedestal. This chlorine analyzer is a component of the water quality effort currently underway by the staff.

The following is a breakdown of the proposed fees:

Chlorine Analyzer Design -	\$5,300
General Construction Representation -	\$550

Wind Measurement System - Procurement, Installation, and Commissioning of a wind measurement system. The wind measurement system will be installed atop the existing elevated storage tank only. The system will provide real-time measurement, logging and analysis of the wind velocities, directions, and trending to provide an accurate assessment of the anticipated wind energy generation. The measurement system will assist with the final determination of the wind turbine design and long term monitoring of wind energy generation with the local wind patterns. This data will also be valuable for future wind energy installations within the Town of Addison.

The following is a breakdown of the proposed fees:

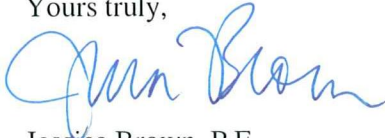
Equipment Procurement, Installation, and Commissioning -	\$22,330
--	----------

Ms. Nancy Cline, P.E.
September 15, 2009
Page 3 of 3

Based upon the above summary, the total net fee proposal is **\$56,155**.

We appreciate the opportunity to be of service to the Town of Addison. Please call if you have any questions or comments.

Yours truly,

A handwritten signature in blue ink, appearing to read "Jessica Brown". The signature is fluid and cursive, with the first name "Jessica" and the last name "Brown" clearly distinguishable.

Jessica Brown, P.E.
Freese and Nichols, Inc.

Attachment A
Scope of Added Services

Design an approximately 1,120 square foot “technology center” room inside the pedestal of the proposed elevated water storage tank. Include the following items:

1. One kickoff meeting with the Town to discuss the layout and requirements for the room and storage.
2. Enclosed room for data displays, with approximately 10' walls and waterproof ceiling inside the pedestal.
3. Room will be partitioned from the proposed pedestal storage space, and will be coordinated with the required tank piping.
4. Rest rooms for public use and plumbing.
5. Connection of the restroom toilets and drains to the existing sanitary sewer line in Surveyor Blvd.
6. Water supply and meter for the restrooms. A line will also be extended to the outdoor educational area for the proposed drinking water fountain.
7. Access doors with access control as required.
8. HVAC system for the room.
9. ADA accessibility to the room.
10. Electrical and controls design for lighting, HVAC, wall plugs, and data display units.
11. Room interior and exterior wall and ceiling coatings and texturing as required.
12. Room interior floor coating or covering as required.
13. Chlorine Analyzer.
14. Fire Hydrant on site as required by the Fire Department.
15. Attend one each 60%, and 90% design submittal review meetings with the Town.
16. Answer technical questions and prepare addenda as necessary during the advertisement phase.
17. Answer technical questions and review contractor's technical submittals during the construction phase.
18. Prepare change orders in accordance with the terms of the Agreement for Professional Services.
19. Prepare record drawings in accordance with the terms of the Agreement for Professional Services.

Provide anemometer/wind measurement services. See Attachment B for detailed scope.



ATTACHMENT B SCOPE OF SERVICES ANEMOMETERS & WIND MEASUREMENT

Recommendation for Wind Measurement System

To measure the wind speed on the existing Addison Water Tower, SWG Energy is recommending and will install the Wind Measurement System manufactured by SecondWind on location. This system provides integrated wind measurement whose components are custom designed to work together to provide a complete wind measurement system. This integrated package provides a technological advantage over matched components produced by separate manufacturers. SecondWind has over 28 years of experience in the wind industry as a wind measurement technology company and the SecondWind System is a standard in the wind farm assessment industry.

Wind Measurement Plan

Wind measurement collection should be an integral on-going part of any wind energy system. It is used to collect decision-making data as it relates to the wind energy potential on the site. It should continue as an on-going part of the wind energy system after the wind energy system is installed to accurately provide wind data at the wind production site.

Goals of the Addison Wind Measurement Plan

1. Install and collect wind speed data from the top of the existing Addison Water Tower from 2009 to the time when the new Water Tower Construction is installed in 2011. At a similar height to the new Water Tower, this will provide valuable wind data. The installation on the existing water tower eliminates the need for a meteorological tower at the new site and reduces the cost for the Town of Addison.
2. In 2011, the wind measurement system will be moved and installed to the top of the new Addison Water Tower.

SecondWind Wind Measurement System and Components

The Wind Measurement System Description

- SecondWind Nomad 2 Wind Data Logger
- SecondWind C3C Anemometer – MIT Calibrated
- SecondWind PV 1 Wind Vane
- SkyServe Satellite Wind Data and Monitoring Service
- SecondWind Nomad 2 Desktop Software

The SWI Nomad 2 Data Logger is the heart of the data collection system, which continually collects the wind monitoring data from the wind energy system. The SWI C3C Anemometer is a three-cup device whose role in the system is to capture the wind, measure its speed and communicate that data to the data logger. The SWI PV1 Wind Vane adds the wind direction technology with 360 degree rotation to enable the system to capture the directional changes of the wind and communicate it to the data logger. SkyServe Satellite Wind Data Management Service delivers the data via satellite directly to the client's desktop, laptop or PDA device.



The Wind Measurement System Components Description

1. SecondWind Nomad 2 Wind Data Logger

SecondWind Nomad 2 Data Logger is at the heart of SecondWind's wind resource assessment systems. Designed with SecondWind's principles of flexibility, simplicity, and economy, the Nomad 2 offers advanced functionality and simplified installation while reducing system costs. Nomad 2 Data Logger consists of a built-in charger/regulator unit, built-in LCD screen, keypad, 12 counter and 8 analog sensor inputs, lightning protection, lockable steel enclosure. Also 4 alkaline batteries, 4 multi-cable grips, serial cable, users manual, Nomad Desktop software and a 32 MB Compact Flash card.

Rationale for System Selection

More sensor choices. Nomad 2 works with all market-leading sensors.

More sensor inputs. The Nomad 2 wind data logger allows you to connect up to 12 anemometers or other frequency or solid state-devices. Another 8 analog inputs connect directly to wind vanes, thermistors, or transducers.

Field friendly. Nomad 2 incorporates features such as clear, bright readout even in low temperatures and high sunshine, and an easy to maintain shelter box design.

Smart power management. Nomad 2 manages transducer power and sensor excitation to get the most out of your batteries – or will run continuously with an optional solar package.

2. SecondWind C3 Anemometer MIT Calibrated

SecondWind Model C3C Anemometer has been calibrated at the highly respected Massachusetts Institute of Technology's Wright Brothers wind tunnel. The C3C Anemometer is an improved version of the popular three-cup design used in wind assessments for decades, manufactured to precise industry standards, The rotor is made of tough polycarbonate for exceptional durability and reliability. The sensor base is also made of rugged polycarbonate, making it more resistant to damage during installation.

Manufactured by SecondWind with exceptional quality control—all units are tested mechanically and electronically before shipping. The C3C is made entirely of Lexan, a strong plastic that makes the SecondWind anemometer less likely to break during installation. Its distinctive blue vinyl boot shields wiring for long-term performance. Additionally, it is manufactured to meet new standards and is RoHS-compliant— no toxic metals. All models are individually laser-engraved with serial number and date code, simplifying tracking and data analysis.

3. SecondWind PV 1 Wind Vane

After more than 28 years of leadership in wind vane design and installation, SecondWind's Model PV-1 answers the call for a more accurate, reliable, easy-to-use measurement device. The PV-1 is a continuous-rotation potentiometric wind direction vane. It is ideal for applications including wind resource assessment, meteorological studies, and environmental monitoring. The mechanical range is a full 360 degrees with continuous rotation, and the instrument is compatible with all Nomad data loggers from SecondWind and similar data logging devices. You get all the features you expect in an affordable, high-performance wind vane: simple construction,

stable/smooth response to wind change and perfect balance. The standard vane used in the wind energy industry. Stainless steel and thermoplastic construction for corrosion resistance. The technology PV-1 was developed by SecondWind in response to customers in the field. Earlier technology too often fell short in its ability to accurately capture data in every direction and in cold, icy environments.

4. SkyServe Satellite Wind Data and Monitoring Service

Satellite modems use the Iridium Satellite System, a mobile satellite voice and data network with complete coverage of the earth, including Polar Regions using a constellation of 66 low earth-orbiting satellites.

SkyServe Satellite Features

- You can receive data via Globalstar satellite every 10 minutes, using SkyServe for weather forecasting as well as prospecting.
- More reliable than cellular networks. Cellular service is spotty or unavailable. Even when voice service works, many cell providers can't meet the demands of continuous data feeds.
- More reliable than other satellite services. Second Wind's SkyServe data collection plus Globalstar's CDMA technology equals higher data recovery for you.
- GPS location and time accuracy. SkyServe adds a time and location stamp to all data as it's recorded, eliminating the inaccuracy or guesswork that can accompany remote data without GPS information.
- See the data from anywhere, anytime.

5. SecondWind Nomad 2 Desktop Software

Nomad 2 Desktop Software allows you to have complete communications with the data logger. It enables you to completely manage the data logger and your communications system from any location. You can download and upload data daily, remotely change settings on the data logger, check the storage capacity of the 32MB Flash Card, the status of the batteries and more.

Nomad 2 Desktop Software will generate all the reports you need in graph and report.

Wind Rose Graph

Power Curve Graph

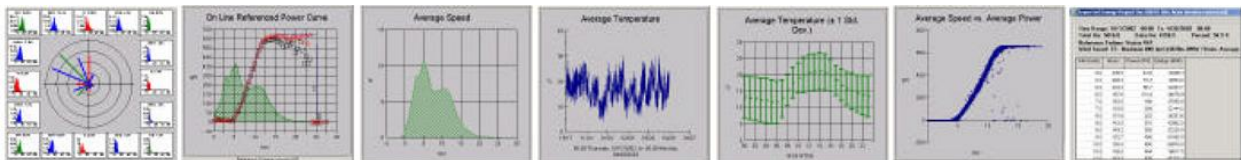
Distribution Graph

Time Series Graph

Diurnal Graph

X-Y Graph

Expected Energy Report



The Existing Water Tower - Wind Measurement System Cost

This provides the cost of installing the wind measurement system, described in detail above, on the top of the existing Addison Water Tower in late 2009 in order to start collecting 2 years of wind data at the same height as the new Water Tower. When the new Water Tower construction is completed in June 2011, the wind measurement system will then be moved to the new Water Tower where it will be a permanent component of the wind energy system.

Due to the fact that there will be ten or more 3.5 KW CleanField Energy wind turbines installed around the complete perimeter of the tank, the engineers at SecondWind recommended that there be a minimum of two Anemometers and two Wind Vanes to capture wind data at multiple positions on the top of the Water Tower.

Cost of System Installed and Commissioned \$20,300.00

Council Agenda Item: #R12

SUMMARY:

This item is for consideration and approval authorizing a resolution for the City Manager to pursue all Energy Efficiency and Conservation Block Grant (EECBG) funding made available through the American Recovery and Reinvestment Act (ARRA) and being allocated by the State Energy Conservation office.

FINANCIAL IMPACT:

The state estimates that the Town of Addison is eligible for \$50,000.

BACKGROUND:

The American Recovery and Reinvestment Act (ARRA) is providing more than \$45 million to the Texas State Energy Conservation office (SECO), a part of the Comptroller's office, for the Energy Efficiency and Conservation Block Grant (EECBG) program. This money will be available to small cities (less than 30,000 population) and counties that did not receive a direct allocation from the U.S. Department of Energy (DOE) under this program.

In an effort to ensure that the 1,127 cities and 244 counties in Texas that are not receiving direct dollars from DOE are able to benefit from this funding, the money will be redistributed based on a population formula. As a result, it is currently anticipated that Addison may be eligible for \$50,000.

The EECBG program, authorized in Title V, Subtitle E of the Energy Independence and Security Act of 2007 and signed into Public Law (PL 110-140) on Dec. 19, 2007, will be funded for the first time under ARRA. The purpose of the program is to provide funds to units of local and state government, Indian tribes and territories to develop and implement projects to improve energy efficiency and reduce energy use and fossil fuel emissions in their communities.

A comprehensive list of the 1,127 cities and 244 counties that are eligible for these funds is found at www.seco.cpa.state.tx.us/arra/eecbg/index.pho. In the event that there are eligible communities that choose not to accept the funds, SECO will reallocate those dollars to the participating cities and counties. The Town's potential grant will be outlined in a letter that will arrive when the application is sent to us.

In order to be eligible for the Block Grant program, the Town should submit the Notice of Intent form within 45 days that was received with the September 22nd letter from SECO and will be returned this week. Also, the attached Council resolution is due within 60 days.

RECOMMENDATION:

Staff recommends Council approve the resolution authorizing the City Manager to pursue all EECBG funding made available through ARRA and being allocated by the State Energy Conservation office.

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS PROVIDING THAT THE CITY PURSUE ALL ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT FUNDING MADE AVAILABLE THROUGH THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 AND ALLOCATED BY THE STATE ENERGY CONSERVATION OFFICE, TO BE USED BY THE CITY IN REACHING ITS ENERGY EFFICIENCY GOALS; PROVIDING THAT THE CITY CONTINUE ITS COMMITMENT TOWARD ENERGY EFFICIENCY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Congress passed the American Recovery and Reinvestment Act (ARRA) of 2009 and the President signed the same into law on February 17th, 2009, to stimulate the economy and create jobs; and

WHEREAS, ARRA included \$3.2 billion in funding for the Energy Efficiency and Conservation Block Grants (EECBG) Program authorized in Title V, Subtitle E of the Energy Independence and Security Act (EISA) and signed into law on December 19, 2007; and

WHEREAS, the purpose of the EECBG program is to: 1) reduce fossil fuel emissions in a manner that is environmentally sustainable, and to the maximum extent practicable, maximizes benefits for local and regional communities; 2) reduce the total energy use of eligible entities; and 3) improve the energy efficiency in the building sector, the transportation sector and other appropriate sectors; and

WHEREAS, the Town of Addison, Texas (the “City”) is a city with limited financial resources and desires to support the development of energy efficiency programs; and

WHEREAS, the City accepts its allocation and may also accept additional funds that may become available at a later date; and

WHEREAS, the City has developed or is interested in developing a EECBG project, which is sustainable and has measurable energy savings, job creation and economic stimulus effects into the City; and

WHEREAS; the City is determined to support energy efficiency projects that leverage federal funds with other public and private resources, including coordinated efforts involving other Federal programs targeting community development; and

WHEREAS, the City intends to comply with all agreed upon contractual requirements of ARRA, the EECBG program and other federal and state law,

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

Section 1. That the City, through the City Manager, pursue all EECBG funding made available through ARRA and being allocated by the State Energy Conservation Office to be used to assist in reaching the City's goals of energy efficiency.

Section 2. That the City continue its commitment toward energy efficiency.

Section 3. This Resolution shall take effect 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

Energy Efficiency and Conservation Block Grant (EECBG) Notification of Intent

To: Texas Comptroller of Public Accounts
SECO Stimulus
111 E. 17th Street, Room #801-A
Austin, Texas 78711-1440

From: City/County (*circle one*) of _____

Address: _____

Date: _____

(Check here) The City/County (*circle one*) of _____ intends to *accept* the Energy Efficiency and Conservation Block Grant (EECBG) Program allocation under the American Recovery and Reinvestment Act (ARRA). These funds will be used to stimulate the economy, create or retain jobs and to develop and implement projects that will improve energy efficiency and reduce energy use and fossil fuel emissions in our community.

(Please check)

- We have read the list of preliminary reporting requirements, and understand that upon acceptance we must comply with all reporting requirements under the ARRA in addition to other state and federal requirements.
- We understand that this form must be returned to SECO within 45 days, at which point we will receive a follow up packet with the application.
- We further understand that we must pass an official resolution accepting the funds within 60 days.

And

- We will provide a detailed plan and budget of the project(s) and/or program(s) we will implement and complete in an application that SECO will send within 90 days.

Our designated EECBG contact person is (please print):

Name: _____ Title: _____

Address: _____

Telephone: _____ Fax: _____

Email: _____

_____ (Check here) The City/County of _____ intends to *decline* the allocation for the Energy Efficiency and Conservation Block Grant (EECBG) Program allocation under the ARRA and acknowledge these funds will cease to be available in the future.

Please attach a separate sheet and explain why you are not accepting the allocation.

Signature _____ Date _____
(Authorized Official or his/her designee)

GIVEN under my hand and seal of office this _____ day of _____, _____.

(Notary Seal)

Notary Public, State of _____

My commission expires _____