



Post Office Box 9010 Addison, Texas  
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## **AGENDA**

### **REGULAR MEETING OF THE CITY COUNCIL**

**AND / OR**

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

**6:00 PM**

**MARCH 23, 2010**

**TOWN HALL**

**5300 BELT LINE ROAD, DALLAS, TX 75254**

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### **WORK SESSION**

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Item Discussion and update regarding the Town's  
#WS1 - Stormwater Management Program.

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Item Discussion and presentation regarding an online  
#WS2 - survey that was conducted for the  
<http://www.addisongreen.info> web site at the end of  
a six-month pilot period.

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### **REGULAR MEETING**

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**Pledge of Allegiance**

Item            Consideration of Old Business.  
#R1-

Introduction of Employees  
Discussion of Upcoming Events

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Item            Consent Agenda.  
#R2-

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#2a-            Approval of Minutes for:

03/03/2010 Special Meeting and Work Session  
03/09/2010 Regular City Council Meeting

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#2b-            Approval of renewal of an existing contract with the  
Noofangle Media for maintaining and hosting the  
www.addisongreen.info website, a Sustainability  
Community Portal for residents and businesses.

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#2c-            Approval of a resolution that authorizes the Town to  
designate representatives that can transact  
business with the TexPool local government  
investment pool.

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#2d-            Approval of award of bid to Groves Electrical  
Service, Inc., for an electrical service upgrade at the  
Police Station located at 4799 Airport Parkway.

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Item            Appointment of a Planning and Zoning  
#R3 -            Commissioner.

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Item  
#R4 - Approval to seek a no match Department of Justice grant to purchase automatic license plate readers.

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Item  
#R5 - Presentation, discussion and consideration of approval of a contract with GetTix.NET to provide an online ticketing program.

Attachment(s):

1. Contract

Recommendation:

Staff recommends that the Council authorize the City Manager to enter into a contract with GetTix.NET to design and host an online ticketing portal to assist Addison, subject to the City Attorney's final approval.

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Item  
#R6 - Presentation, discussion and consideration of approval to authorize the City Manager to enter into a contract with Interprise/Southwest Interior and Space Design, Inc., in the amount not to exceed \$81,460.00 for planning and design services to Village on the Parkway, 5100 Belt Line Road, Suite 400, for the Addison Visitor Information Center and related premises.

Attachment(s):

1. Contract

Recommendation:

Staff recommends awarding the contract to Interprise/Southwest Interior and Space Design, Inc.

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Item #R7 - Approval of a resolution endorsing certain legislative changes relating to the Sunset review of the Texas Public Utility Commission and the special purpose review of the Electric Reliability Council of Texas.

Attachment(s):

1. Sunset Review Cover Memo
2. Sunset Review Resolution

Recommendation:

It is recommended council adopt the attached resolution.

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Item #R8 - Discussion and consideration of an Ordinance declaring unopposed candidates for election to the office of Council member in the May 8, 2010 election be declared elected to office, canceling the May 8, 2010 election, and providing for other matters relating thereto.

La discusión y consideración de una ordenanza que declara a los candidatos sin oposición para la elección de la oficina de miembro del Consejo en la elección del 8 de mayo de 2010, son declarados elegidos a la oficina, cancelando la elección del 8 de mayo de 2010 y proporcionando para otras cuestiones relativas a los mismos.

Attachment(s):

1. City Secretary Certification
2. Letter to Dallas County, Canceling Election
3. Ordinance

4. Ordinance in Spanish

Recommendation:

Staff recommends approval of the attached ordinance calling for cancellation of the Municipal Election scheduled for May 8, 2010, and declaring that Kimberly Lay, Roger S. Mellow and Neil Resnik have been elected to the office of Council member, each for a two-year term.

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Adjourn Meeting

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Posted:  
03/19/2010, 5:00PM Lea Dunn - City Secretary

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

# Council Agenda Item: #WS1

**AGENDA CAPTION:**

Discussion and update regarding the Town's Stormwater Management Program.

**FINANCIAL IMPACT:**

N/A.

**BACKGROUND:**

N/A.

**RECOMMENDATION:**

N/A.

**COUNCIL GOALS:**

N/A

**ATTACHMENTS:**

Description:

No Attachments Available

Type:

## Council Agenda Item: #WS2

**AGENDA CAPTION:**

Discussion and presentation regarding an online survey that was conducted for the <http://www.addisongreen.info> web site at the end of a six-month pilot period.

**FINANCIAL IMPACT:**

N/A

**BACKGROUND:**

N/A

**RECOMMENDATION:**

**COUNCIL GOALS:**

N/A

**ATTACHMENTS:**

Description:

Type:

No Attachments Available

## Council Agenda Item: #R 2a

**AGENDA CAPTION:**

Approval of Minutes for:

03/03/2010 Special Meeting and Work Session 03/09/2010  
Regular City Council Meeting

**FINANCIAL IMPACT:**

N/A.

**BACKGROUND:**

N/A.

**RECOMMENDATION:**

Staff recommends approval.

**COUNCIL GOALS:**

N/A

**ATTACHMENTS:**

Description:

[03/03/2010 Minutes](#)

[03/09/2010 Minutes](#)

Type:

Backup Material

Cover Memo



**OFFICIAL ACTIONS OF SPECIAL MEETING AND WORK SESSION  
OF THE CITY COUNCIL**

March 3, 2010  
3:00 P.M.  
Addison Service Center  
16801 Westgrove  
Addison, TX 75001

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

Absent: None

Item #W1 - Discussion regarding the Town of Addison's Current and 2010-2011 Budgets.

Ron Whitehead led the discussion regarding the Town of Addison's Current and 2010-2011 Budgets.

There was no action taken.

At 8:25 P.M., Mayor Chow announced that Council would convene into Executive Session to discuss the following Item:

Item #ES1 - Closed (Executive) session of the Addison City Council pursuant to Section 551.087, Texas Government Code, to discuss or deliberate commercial or financial information that the City Council has received from, and/or to deliberate the offer of a financial or other incentive to, a business prospect or business prospects that the City Council seeks to have locate, stay or expand in or near 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 8:56 P.M.

Item #S1 - Consideration of any action regarding commercial or financial information that the City Council has received from, and/or action regarding the offer of a financial or other incentive to, a business prospect or business prospects 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 approve action as discussed regarding commercial or financial information that the City Council has received from, and/or action regarding the offer of a financial or other incentive to, a business prospect or business prospects 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 City Attorney and City Manager approval.

Councilmember Lay seconded. Motion carried.

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

Voting Nay: None

Absent: None

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

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Mayor-Joe Chow

Attest:

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City Secretary-Lea Dunn

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

March 9, 2010

7:30 PM - Town Hall

5300 Belt Line Road, Dallas, TX 75254

Posted 03/05/2010, 5:00PM Lea Dunn - City Secretary

Council Members Present:

Braun, Chow, Clemens, Daseke, Lay, Mellow, Noble

Absent:

None

**REGULAR MEETING**

Item #R1 - Consideration of Old Business

The following employees were introduced:

Diana George with the Visitor Services Department and Joel Sales with the Fire Department.

There was no action taken.

Item #R2 - Consent Agenda

#2a - Approval of Minutes for: 02/23/2010 Minutes for Regular City Council Meeting and Work Session.

A motion to Approve was made by Councilmember Tom Braun.

The motion was seconded by Councilmember Blake Clemens.

The motion result was: Passed

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

Voting Nay: None

#2b - Approval of an annual renewable contract to TruGreen LandCare totaling \$109,201.78 for mowing services. The contract term may be extended for four additional twelve-month periods, under the same terms and conditions, provided the extensions are acceptable to the Town and the contractor. Twelve (12) bids were received, which are summarized on the attached bid tabulation.

A motion to Approve was made by Councilmember Tom Braun.

The motion was seconded by Councilmember Blake Clemens.

The motion result was: Passed

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

Voting Nay: None

Item #R3 - Appointment of a Member to the Planning and Zoning Commission.

This Item will be moved to a future Council Meeting.

There was no action taken.

Item #R4 - PUBLIC HEARING Case 1593-SUP/Cantina Laredo. Presentation, discussion and consideration of approval of an ordinance amending an existing Special Use Permit for a restaurant and an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 4546 Belt Line Road, on application from Cantina Laredo, represented by Mr. Rocky Vanover.

COMMISSION FINDINGS: The Addison Planning and Zoning Commission, meeting in regular session on February 25, 2010, voted to recommend approval of the amendment to an existing Special Use Permit for a restaurant, and an amendment to an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption, subject to no conditions.

Voting Aye: DeFrancisco, Doherty, Hewitt, Oliver, Wheeler Voting Nay: None Absent: Wood One seat vacant

Mayor Chow opened the meeting as a public hearing. No one spoke. Mayor Chow closed the meeting as a public hearing.

A motion to Approve was made by Councilmember Don Daseke.

The motion was seconded by Councilmember Kimberly Lay.

The motion result was: Passed

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

Voting Nay: None

Item #R5 - PUBLIC HEARING Case 1594-Z/Town of Addison. Presentation, discussion and approval of an ordinance amending the Addison Code of Ordinances by amending Appendix A – Zoning, thereof, the same being the Comprehensive Zoning Ordinance of the Town, by amending various sections thereof to require a Special Use Permit for a portable school building; amending Article IV, R-1 Single Family Dwelling District Regulations of Appendix A - Zoning to provide that a portable school building is subject to the Special Use Permit provisions of Article XX of Appendix A – Zoning; amending Article XX, Special Uses, Section 1 to add portable school building as being subject to a Special Use Permit; amending Article XXX, Definitions, or Appendix A – Zoning by adding thereto a definition of portable school building and of school facility, on application from the Town of Addison, represented by Carmen Moran.

COMMISSION FINDINGS: The Addison Planning and Zoning Commission, meeting in regular session on February 25, 2010, voted to recommend approval of an ordinance amending Appendix A, the Addison Zoning Ordinance, Article VI, R-1 Single Family Dwelling District Regulations, Article XX, Special Uses, Section 1, Article XXX, Definitions, in order to require a Special Use Permit for a portable school building in an

R-1, R-2, and R-3 zoning district.

Voting Aye: DeFrancisco, Doherty, Hewitt, Oliver, Wheeler, Voting Nay: None Absent: Wood, one seat vacant.

Mayor Chow opened the meeting as a public hearing. No one spoke. Mayor Chow closed the meeting as a public hearing.

This Item was approved subject to the addition of a provision to review the Special Use Permit every eighteen (18) months.

A motion to Approve w/ Conditions was made by Councilmember Tom Braun.

The motion was seconded by Councilmember Don Daseke.

The motion result was: Passed

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

Voting Nay: None

Attest:

\_\_\_\_\_  
Mayor-Joe Chow

\_\_\_\_\_  
City Secretary-Lea Dunn

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

### **AGENDA CAPTION:**

Approval of renewal of an existing contract with the Noofangle Media for maintaining and hosting the [www.addisongreen.info](http://www.addisongreen.info) website, a Sustainability Community Portal for residents and businesses.

### **FINANCIAL IMPACT:**

Budgeted Amount: **Not budgeted**

Cost: Total cost - \$18,000 over 6 months

### **BACKGROUND:**

Noofangle Media content solutions are full featured websites, updated continuously with original content, that focus on the most popular and relevant topics of the day. They integrate these solutions quickly and seamlessly into the websites of their local publishing and broadcast partners. With their solutions, Addison will be able to quickly grow its online audiences with quality content upon which they can rely.

In addition, Noofangle Media works with leading journalists and photographers to develop their syndication opportunities and create content packages that are needed in the rapidly expanding online marketplace. They're journalists, too, so they understand the challenges and opportunities presented by this fast-evolving environment.

In recent years, Noofangle Media has been successfully helping different organizations like ABC and Disney to produce, promote and maintain a strong Green/Sustainability portal presence. Their proposal for Addison is to create a portal that will:

- Be a place for communicating with residents, businesses and employees the city's green initiatives, projects, news and accomplishments
- Educate citizens, businesses and city employees on best green practices
- Support citizens, businesses and city employees as they try to become greener in their own lives
- Offer access to local green resources and events
- Provide tools to track progress in greening the workplace and home life
- Facilitate workshops and guest speakers
- Participate in local events to build awareness

The proposed Town of Addison Green Portal will include the following elements:

- Environment dashboard module: Displays current air quality and any current restrictions (watering, burn bans, etc.)

- Addison section: Environmental news, events calendar, city initiatives, progress reports, information on municipal buildings and operations, air quality issues, energy, city vehicles, recycling, etc.

- What You Need To Know track for residents; What You Need To Know track for businesses; (optional What You Need To Know track for city employees)

- Subject categories with threading to relevant city information . Database of articles

- Photo slideshows

- Video features

- Downloads (reports, forms, etc.)

- Social network components TBD (Facebook, Twitter, etc.)

The proposed Green Portal content categories are:

- PEOPLE/PROJECTS

- Profiles of residents, business leaders and developments or other projects that exhibit green characteristics

- HOME/GARDEN

- Urban gardening and how to green your residence; recycling how-to guide



- ENERGY

- Sources for renewable energy, plus energy-saving tips and projects

- TRANSPORTATION

- Getting around town in greener fashion; biking, mass transit and other options

- BUSINESS

- Stories that showcase green practices of local businesses; separate portal door for businesses to understand Addison's environmental policies and requirements

- FAMILY/KIDS/FUN

- Activities you can participate in; what schools are doing to green their students

- COMMUNITY

- Tracking organizations' and civic groups' environmental activities

- FOOD/HEALTH

- Finding organic food sources; information on environment's impact on health

- EARTH/NATURE

- A guide to urban wildlife and plant life; Protecting and using city parks and natural resources

- SHOP

- Green products to help residents and businesses cut their carbon footprint and reduce costs

The deliverables under this contract are:

- Addison Branded Green Community Portal

- 8 -10 Addison specific pieces per month

- Site and content updated daily

- Point contact for all residents, businesses and employees

- Event support

- Public relations support

**RECOMMENDATION:**

We do believe that high quality, professional content is the best long term vehicle for creating value online. Staff recommends that the Council authorize the City Manager to renew his existing contract with Noofangle Media for professional services in the amount of \$18,000.

**COUNCIL GOALS:**

Take actions to make Addison a leader in sustainable development and operations that protect and enhance the Town's quality of life

**ATTACHMENTS:**

Description:

[Contract](#)

Type:

Backup Material

# Addison Green Portal Agreement

For the Development, Management and Hosting of a Green Web Portal for the Town of Addison

**PARTIES:**

Town of Addison, Texas ("Addison")  
5300 Belt Line Road  
Dallas, TX 75254-7606  
972-450-7001

Noofangle Media, Inc. ("Noofangle")  
5005 Addison Circle  
Addison, TX 75001  
214-466-8491

**Date:**

7/20/2009

**Order ID:**

GRN-AD001

**Scope:**

Development, management, and hosting of a green web portal

**Description of Services:**

Noofangle will work jointly with the Town of Addison to design a web portal for its citizens, businesses and employees. Noofangle will then develop the Website, host the Website and regularly publish new articles on a variety of environment topics. The scope of this contract will be for the initial development of the site and ongoing support for 6 months.

**Recurring Services Monthly**

| Line | Code    | Description   | Qty | Unit Price   | Extended        |
|------|---------|---|-----|--------------|-----------------|
| 1    | DVLP    | Design and Development of the Addison Green Website   | 1   | \$10,000     | \$10,000        |
| 2    | PUBLISH | Monthly management, editorial, publishing and hosting | 6   | \$3,000      | \$18,000        |
|      |         |   |     | Subtotal     | \$28,000        |
|      |         |   |     | <b>Total</b> | <b>\$28,000</b> |

**Terms & Conditions**

**Term:** 09/01//2009 – 03/01/2010

**Effective Date:** 08/01/2009

**Billing Period:** Monthly

**Payment Terms:** \$10,000 on acceptance of contract, \$3,000 per month on the 1<sup>st</sup> of each month, with the first payment to be made on September 1, 2009.

This Addison Green Portal Agreement (this "Agreement") constitutes a binding agreement between the parties for the development of the Addison Green Portal entered into between Noofangle Media, Inc. ("Noofangle") and the Town of Addison, Texas ("Addison"). By signature of this document, Addison is authorizing Noofangle to build and establish the services specified and ordered in this Order and Addison agrees to pay the associated fees as detailed in this Agreement.

**Signatures**

Noofangle Media, Inc.

The Town of Addison

Mitch Rosenbleeth

Name Printed

Name Printed

Co-Founder and CEO

Title

Title

12/19/2007

Date

Date

## 1. GENERAL

1.1. Noofangle is in the business of offering Internet services relating to, among other things, the publishing of sites on the World Wide Web portion of the Internet, and Noofangle is willing to provide services to Addison on the terms and subject to the conditions set forth below; and

1.2. Addison desires to engage Noofangle, and Noofangle desires to be engaged by Addison, to provide Internet services on the terms and subject to the conditions set forth below.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Noofangle and Addison hereby agree as follows:

## 2. TERM and TERMINATION

This Agreement shall be effective when signed by both Parties (the "Effective Date") and thereafter shall remain in effect for six (6) months, unless earlier terminated as otherwise provided in this Agreement (the "Initial Term"). Either Party may terminate this agreement, with or without cause, at any time during the Initial Term by giving written notice of termination to the other Party. Unless otherwise terminated by either Party during or at the end of the Initial Term, this Agreement shall renew for additional periods of six (6) months (the "Extended Terms"). The Initial Term and all successive Extended Terms are the "Term" of this Agreement. Upon termination, Noofangle shall return all Addison Intellectual Property and shall cooperate and assist in the transfer of all web hosting and management responsibilities to another provider. If this Agreement is terminated during the Initial Term, Addison shall compensate Noofangle on a pro-rated basis, based on the amount of work actually performed, approved and accepted by Addison up to the date of termination.

Notwithstanding the foregoing, this Agreement and the term hereof are subject to the annual appropriation and budgeting of funds by Addison, in its sole and absolute discretion, to make any payments set forth herein. In the event Addison does not appropriate and budget any such funds, this Agreement shall end, without notice, on the last day of the annual budget period for which funds were appropriated and budgeted by Addison.

## 3. SERVICES

3.1. **Development and Publishing Services**  
Noofangle agrees to work with Addison to jointly design a Green Living Website specifically for Addison (the "Website") targeted to the residents, businesses and employees of Addison. Noofangle will provide the creative design resources and web development capabilities needed to provide all development and production capabilities needed to build the Website ("Deliverables"). Addison will provide design input into the process and will maintain the rights to approval on the design of the Website. Deliverables shall be submitted to Addison for approval by or before September 1, 2009, or any other date mutually agreed by the parties.

Once the Website is operational, Noofangle will work with its network of writers and editors to update the site with relevant and topical environmental content each week. The Website content will be a combination of green living articles currently in the inventory of Noofangle as well as original stories on topics relevant to Addison. Addison will maintain the right to approve all content on the Website and any content deemed unacceptable by Addison will be removed immediately by Noofangle upon notification from Addison.

Noofangle will be responsible for all technical and infrastructure services required to host and manage the Addison Green Portal.

Except as expressly provided in this Agreement, Addison agrees that Noofangle is responsible only for developing and publishing the Website, and Noofangle is not responsible for providing any other services or tasks not specifically set forth in DESCRIPTION OF SERVICES.

To the extent that Addison wishes to receive from Noofangle, and Noofangle wishes to provide to Addison, services other than the Development and Publishing Services (collectively the "Additional Services"), such Additional Services and the arrangements for their provision shall be set forth in a separate addendum to this Agreement which is duly executed by the Parties (the "Services Addendum"), and the Services Addendum shall be incorporated into, and become a part of this Agreement. (The Development and Publishing Services and the Additional Services will hereinafter be referred to collectively as the "Services").

### 3.2. Availability of Website

Unless otherwise expressly indicated on DESCRIPTION OF SERVICES hereto, the Website shall be accessible to third Parties via the World Wide Web portion of the Internet twenty-four (24) hours a day, seven (7) days a week, except for scheduled maintenance and required repairs, and except for any loss or interruption due to causes beyond the control of Noofangle or which are not reasonably foreseeable by Noofangle, including, but not limited to, interruption or failure of telecommunication or digital transmission links and Internet slow-downs or failures.

### 3.3. Development and Publishing Services Fees

Addison shall pay Noofangle all fees for the Development and Publishing Services in accordance with the applicable fee and payment schedule set forth in DESCRIPTION OF SERVICES. Noofangle expressly reserves the right to change its rates charged hereunder for the Services during any renewal term.

### 3.4. Additional Services Fees

Unless otherwise agreed in writing, Addison shall pay to Noofangle all fees for Additional Services on a time and materials basis as invoiced by Noofangle.

## 4. Warranties

### 4.1. Noofangle Warranties

Noofangle represents and warrants that:

1. Noofangle has the power and authority to enter into and perform its obligations under this Agreement;
2. Noofangle's services under this Agreement shall be performed in a good and workmanlike manner;
3. Noofangle shall not, in connection with the Web Site, Deliverables, or any related materials or Services provided under this Agreement, infringe or violate any rights of third Parties; including, without limitation, rights of publicity, rights of privacy, patents, copyrights, trademarks, trade secrets, and/or licenses;
4. Noofangle shall obtain and at all times during the term of this Agreement, maintain insurance in an amount to cover reasonable expenses related to any claims

### 4.2. Addison Warranties

Addison represents and warrants that it has the power and authority to enter into and perform its obligations under this Agreement;

## 5. Intellectual Property

All materials, products, and modifications developed or prepared by Noofangle under this Agreement, including without limitation the Website, the Addison Content, domains, forms, trade dress, look and feel of the Website, images viewable on the Internet, any HTML elements relating thereto, and software, including the Deliverables and any updates thereto, are the property of Addison (the "Addison Intellectual Property") and all right, title and interest therein shall vest in Addison and shall be deemed to be a "work made for hire" under United States copyright law (17 U.S.C. § 101 et seq.) and made in the course of this

Agreement. To the extent that title to any such Addison Intellectual Property may not, by operation of law, vest in Addison or such works may not be considered to be work made for hire, all right, title and interest therein are hereby irrevocably assigned to Addison. All such materials shall belong exclusively to Addison with Addison having the right to obtain and to hold in its own name, copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. Noofangle agrees to give Addison and any person designated by Addison, any reasonable assistance required to perfect and enforce the rights defined in this Section.

Notwithstanding the above, Addison hereby grants to Noofangle a worldwide, royalty-free, revocable license to use Addison Intellectual Property on other sites and media, subject to approval of Addison, with such approval not be unreasonably withheld.

In instances where Noofangle develops content, such as articles and images, on its own and not specifically for Addison, but for use on or in connection with the Website (the "Noofangle IP"), Noofangle shall retain all Intellectual Property rights in such Noofangle IP, except that Noofangle hereby grants a worldwide, royalty-free, revocable license to Addison to use such Noofangle IP on or in connection with the Website.

In some instances, Noofangle will develop and provide articles and images specifically for Addison (the "Addison Content"). Such Addison Content shall be clearly identified as such to distinguish it from Noofangle IP.

#### NOOFANGLE INDEMNITY OBLIGATION

**Noofangle covenants, agrees to, and shall DEFEND (with counsel reasonably acceptable to Addison), INDEMNIFY, AND HOLD HARMLESS the Town of Addison, Texas and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas, individually or collectively, in both their official and private capacities (the Town of Addison, Texas, and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas each being an "Addison Person" and collectively the "Addison Persons"), from and against any and all claims, liabilities, judgments, lawsuits, demands, harm, losses, damages, proceedings, suits, actions, causes of action, liens, fees, fines, penalties, expenses, or costs, of any kind and nature whatsoever made upon or incurred by the Town of Addison, Texas and/or any other Addison Person, whether directly or indirectly, (the "Claims"), that arise out of, result from, or relate to: (i) the Website and all content and Intellectual Property developed by Noofangle, its owners, directors, officers, shareholders, managers, partners, employees, agents, consultants, contractors, subcontractors, invitees, patrons, guests, customers, licensees, sublicensees, or any other person or entity for whom Noofangle is legally responsible, and their respective owners, directors, officers, shareholders, owners, directors, officers, shareholders, managers, partners, employees, agents, consultants, contractors, subcontractors, invitees, patrons, guests, customers, licensees, sublicensees (collectively, "Noofangle Persons"), (ii) any representations and/or warranties by Noofangle under this Agreement, and/or (iii) any act or omission under, in performance of, or in connection with this Agreement by Noofangle or by any of the Noofangle Persons. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND. However, Noofangle's liability under this clause shall be reduced by that portion of the total amount of the Claims (excluding defense fees and costs) equal to the Addison Person or Persons' proportionate share of the negligence, or conduct that would give rise to strict liability of**

**any kind, that caused the loss. Likewise, Noofangle'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, or conduct that would give rise to strict liability of any kind, that caused the loss.**

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

#### 6. Limitation of Liability

EXCEPT WITH RESPECT TO LIABILITY ARISING FROM NOOFANGLE'S INDEMNIFICATION OBLIGATIONS HEREUNDER, GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR ABANDONMENT OF ITS OBLIGATIONS HEREUNDER (THE "EXCEPTIONS"), NEITHER PARTY HERETO SHALL BE LIABLE TO THE OTHER FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES (EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS. IN ANY EVENT, THE LIABILITY OF ADDISON HEREUNDER SHALL NOT EXCEED THE FEES, IF ANY, DUE AND OWING TO NOOFANGLE HEREUNDER.

#### 7. Amendment

No amendment, waiver, or modification of this Agreement or any provision of this Agreement shall be valid unless in writing, stating with specificity the particular amendment or modification to be made, and duly executed by the Noofangle and Addison.

#### 8. Enforceability

If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, administrative agency or as a result of future legislative action, such holding or action shall be strictly construed and the unenforceable provision shall be deemed severable from the remainder of the Agreement to the extent permitted by law, and the validity or effect of any other provision of this Agreement shall remain binding with the same effect as though the void parts were deleted.

#### 11. Miscellaneous

11.1 Inasmuch as this Agreement is intended to secure the specialized services of Noofangle, Noofangle shall not and shall have no power or authority to assign, transfer, delegate or otherwise transfer any interest or duty herein without the prior written consent of Addison and any such assignment, transfer, delegation or transfer without Addison's prior written consent shall be considered null and void.

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

11.3 Notices. Any notices to be provided to a party in connection with this Agreement shall be deemed provided when delivered to the party entitled to receive such notice at the address for such party as listed above.

11.4 Privacy. All records and all other information, written or oral, provided to or obtained by Noofangle pursuant to or in connection with this Agreement, are confidential, and shall not be given, transmitted to, or otherwise made available by or on behalf of Noofangle to any person (including, without limitation, any individual) or business entity of any kind whatsoever (including, without limitation, any corporation, partnership, limited liability company, and sole proprietorship) without

the prior written approval of Addison. This obligation shall survive the expiration or termination of this Agreement. Noofangle further agrees that upon request by Addison, or upon the termination or expiration of this Agreement, Noofangle will immediately provide and/or return to Addison any and all records and all other information which may have been provided to or prepared by or for Noofangle, or which is in Noofangle's possession or under Noofangle's control. In the event of Noofangle breach or threatened breach of this provision, Addison shall be entitled to an injunction or restraining order obtained from any court having appropriate jurisdiction restraining Noofangle from any unauthorized use or disclosure of such information, but such injunction or restraining order shall not limit Addison's right to seek any other remedy available to Addison, whether at law or in equity or otherwise, in connection with such breach or threatened breach.

11.5 INSURANCE: At all times in connection with this Agreement, Noofangle shall purchase and maintain in a company or companies lawfully authorized to do business in Texas such insurance coverages as set forth below:

(a) Commercial general liability insurance for all of its operations at minimum combined limits of \$1,000,000 per occurrence and \$2,000,000 general aggregate. Coverage must be amended to provide for an each-project aggregate limit of insurance.

(b) Professional liability (Errors & Omissions) – with a per loss limit policy period aggregate limit of not less than \$1,000,000 per occurrence. Said insurance shall provide coverage for claims arising out of Noofangle's errors, omissions, wrongful acts, negligence, misstatement, or breach of duty in the rendering, or failure to render, the services for which it was contracted.

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

1. The Town of Addison, Texas shall be named as an additional insured with respect to all liability policies.
2. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions applicable to the claims of the Town of Addison.
3. A waiver of subrogation in favor of the Town of Addison, Texas, its officers, employees, and agents shall be contained in each policy required herein.
4. All insurance policies shall be endorsed to require the insurer to immediately notify the Town of Addison, Texas of any change in the insurance coverage that would bring such coverage below the minimum amounts required by this Section.
5. All insurance policies shall be endorsed to the effect that the Town of Addison, Texas will receive at least sixty (60) days' notice prior to cancellation or non-renewal of the insurance.
6. All insurance policies, which name the Town of Addison, Texas as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
7. Required limits may be satisfied by any combination of primary and umbrella liability insurances.
8. Developer may maintain reasonable and customary deductibles.
9. Insurance must be purchased from insurers that are financially acceptable to the Town and licensed to do business in the State of Texas.

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

prepared and executed by the insurance company or its authorized agent, delivered to Noofangle and the Town prior to the commencement of any Work under the Construction Contract, and shall :

1. List each insurance coverage described and required herein. Such certificates will also include a copy of the endorsements necessary to meet the requirements and instructions contained herein.
2. Specifically set forth the notice-of-cancellation or termination provisions to the Town of Addison.

Upon request, Noofangle shall furnish the Town of Addison with complete copies of all insurance policies certified to be true and correct by the insurance carrier.

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

### **AGENDA CAPTION:**

Approval of a resolution that authorizes the Town to designate representatives that can transact business with the TexPool local government investment pool.

### **FINANCIAL IMPACT:**

There is no financial impact associated with this item.

### **BACKGROUND:**

In addition to investing in individual securities, the Town also invests a portion of our investment portfolio in a local government investment pool known as TexPool. The pool invests primarily in short-term securities maturing in less than 7 days, and Town funds are available at any time without penalty. As such, TexPool offers the Town a competitive short-term investment yield with the added flexibility of immediate funds availability.

Due to the departure of the Strategic Services Manager, the list of authorized representatives with TexPool needs to be amended to delete the Strategic Services Manager and add the Financial Services Manager.

The Financial Services Manager is an authorized investment officer of the Town pursuant to the investment policy that was adopted by Council on September 23, 2008. To make these changes, TexPool requires that the City Council approve a resolution. The Chief Financial Officer is also retained as an authorized representative that can conduct transactions with TexPool. The Chief Financial Officer and Financial Services Manager are also



currently authorized to conduct transactions with the Town's other investment pool known as TexSTAR.

**RECOMMENDATION:**

Staff recommends approval of the resolution that authorizes the Town to designate representatives that can transact business with the TexPool local government investment pool.

**COUNCIL GOALS:**

Conduct the Business of the Town in a Fiscally Responsible Manner

**ATTACHMENTS:**

Description:

[Resolution](#)

Type:

Resolution Letter



# RESOLUTION AMENDING AUTHORIZED REPRESENTATIVES

WHEREAS, The Town of Addison - 77333  
(Participant Name & Location Number)

("Participant") is a local government of the State of Texas and is empowered to delegate to a public funds investment pool the authority to invest funds and to act as custodian of investments purchased with local investment funds; and

WHEREAS, it is in the best interest of the Participant to invest local funds in investments that provide for the preservation and safety of principal, liquidity, and yield consistent with the Public Funds Investment Act; and

WHEREAS, the Texas Local Government Investment Pool ("TexPool/ Texpool Prime"), a public funds investment pool, were created on behalf of entities whose investment objective in order of priority are preservation and safety of principal, liquidity, and yield consistent with the Public Funds Investment Act.

NOW THEREFORE, be it resolved as follows:

- A. That the individuals, whose signatures appear in this Resolution, are Authorized Representatives of the Participant and are each hereby authorized to transmit funds for investment in TexPool / TexPool Prime and are each further authorized to withdraw funds from time to time, to issue letters of instruction, and to take all other actions deemed necessary or appropriate for the investment of local funds.
- B. That an Authorized Representative of the Participant may be deleted by a written instrument signed by all remaining Authorized Representatives provided that the deleted Authorized Representative (1) is assigned job duties that no longer require access to the Participant's TexPool / TexPool Prime account or (2) is no longer employed by the Participant; and
- C. That the Participant may by Amending Resolution signed by the Participant add an Authorized Representative provided the additional Authorized Representative is an officer, employee, or agent of the Participant;

List the Authorized Representatives of the Participant. Any new individuals will be issued personal identification numbers to transact business with TexPool Participant Services.

1. Name Marisa Perry Title Financial Services Manager  
 Signature [Handwritten Signature] Phone Number 972-450-7064

ORIGINALS REQUIRED

TEX - REP

2. Name Randy Moravec Title Chief Financial Officer  
 Signature [Signature] Phone Number 972.450.1050  
 3. Name \_\_\_\_\_ Title \_\_\_\_\_  
 Signature \_\_\_\_\_ Phone Number \_\_\_\_\_  
 4. Name \_\_\_\_\_ Title \_\_\_\_\_  
 Signature \_\_\_\_\_ Phone Number \_\_\_\_\_

List the name of the Authorized Representative listed above that will have primary responsibility for performing transactions and receiving confirmations and monthly statements under the Participation Agreement.

Name Marisa Perry  
 Email mperry@addisontx.gov Fax Number 972.450.1096

In addition and at the option of the Participant, one additional Authorized Representative can be designated to perform only inquiry of selected information. This limited representative cannot perform transactions. If the Participant desires to designate a representative with inquiry rights only, complete the following information.

5. Name \_\_\_\_\_ Title \_\_\_\_\_

D. That this Resolution and its authorization shall continue in full force and effect until amended or revoked by the Participant, and until TexPool Participant Services receives a copy of any such amendment or revocation. This Resolution is hereby introduced and adopted by the Participant at its regular/special meeting held on the 23rd day March, 2009.

NAME OF PARTICIPANT: Town of Addison, 71333

BY: [Signature]  
 Signature  
Randy Moravec Joe Chow  
 Printed Name  
Chief Financial Officer Mayor  
 Title

ATTEST:  
 Signature  
Loel Dunn  
 Printed Name  
Deputy City Manager / City Secretary  
 Title

**This document supersedes all prior Authorized Representative designations.**

ORIGINALS REQUIRED

## **Council Agenda Item: #R 2d**

### **AGENDA CAPTION:**

Approval of award of bid to Groves Electrical Service, Inc., for an electrical service upgrade at the Police Station located at 4799 Airport Parkway.

### **FINANCIAL IMPACT:**

Cost: \$35,439.00 Funds are available in the Police department's operating budget.

### **BACKGROUND:**

In 1999 when the emergency generator and transfer switch circuits were modified to change the police station's stand-by emergency power abilities from partial building power to full power through out the building, the Oncor electric service feeds were reconfigured. The capacity of these feeds was modified to allow compatibility with the new emergency power equipment. In the years since 1999, the electrical needs at the police station have increased and the emergency power equipment and the Oncor feeds need to be upgraded to accommodate the current needs, as well as to allow for expansion in the future. The proposed service upgrade will increase the emergency power and service feed capacity by 60%. In addition, upgraded generator circuits will be installed to allow future additional capacity with the installation of a larger generator. General Services solicited bids from (4) four electrical contractors and the low responsible bid received was from Groves Electrical Service, Inc., in the amount of \$35,439.00.

### **RECOMMENDATION:**

Groves Electric has done previous work for the Town and

has always provided excellent services and successful results. Staff recommends awarding the bid to Groves in the amount of \$35,439.00.

**COUNCIL GOALS:**

Provide Superior Public Safety, Customer Service, Social and Health Services to the Community

**ATTACHMENTS:**

Description:

Type:

No Attachments Available

## Council Agenda Item: #R3

**AGENDA CAPTION:**

Appointment of a Planning and Zoning Commissioner.

**FINANCIAL IMPACT:**

No budget impact.

**BACKGROUND:**

Commissioner Resnik resigned to run for City Council. Commissioner Resnik was appointed by Councilmember Lay.

**RECOMMENDATION:**

**COUNCIL GOALS:**

N/A

**ATTACHMENTS:**

Description:

Type:

No Attachments Available

## **Council Agenda Item: #R4**

### **AGENDA CAPTION:**

Approval to seek a no match Department of Justice grant to purchase automatic license plate readers.

### **FINANCIAL IMPACT:**

Initial Cost: None

Subsequent Cost: Annual maintenance costs after first year is estimated between \$1,500.00 and \$2,000.00, which can be absorbed in the police operational budget.

### **BACKGROUND:**

The Town is eligible for a Department of Justice no match technology grant up to \$80,000.00. An awarded grant can be used to purchase, train and install a license plate recognition system. This technology employs cameras and computer software to discern the letters and numbers of vehicle license plates and then compares them with “hot plates” contained in state and federal databases. Cameras mounted on marked police vehicles will automatically read license plates numbers as an officer is on routine patrol and then compares them to known stolen vehicles, stolen license plates, wanted persons and vehicles related to Amber and Senior alerts. Automatic license plate reader systems act as “force multipliers”. This technology is designed to alert officers to potential signs of danger, such as stolen vehicles and wanted persons. Data collected by this technology will provide valuable intelligence and investigative data, which can be used in the development

of suspects and placing suspects and vehicles near crime scenes.

It will cost approximately \$ 12,500.00 per vehicle to equip with system. The grant is capped at \$80,000.00 and the awarded funds can be used for equipment purchase, officer training and installation costs.

**RECOMMENDATION:**

Staff recommends approval.

**COUNCIL GOALS:**

Provide Superior Public Safety, Customer Service, Social and Health Services to the Community

**ATTACHMENTS:**

Description:

Type:

No Attachments Available



## Council Agenda Item: #R5

### AGENDA CAPTION:

Presentation, discussion and consideration of approval of a contract with GetTix.NET to provide an online ticketing program.

### FINANCIAL IMPACT:

Budgeted Amount: **Not budgeted**

Cost: Total cost - \$500 one time setup charge

### BACKGROUND:

GetTix.NET services provide transformational solutions for clients to maximize revenues through all available channels. GetTix.NET services are designed to increase their customers' market knowledge by harnessing the entire value of their ticketing solution.

As Addison started looking into GetTix.NET for its ticketing partner the ability for cost savings became measurable on many levels, starting from the most obvious, there is **absolutely no outlay of cash** for any equipment needed on site or at the box office. The equipment provided by GetTix.NET (see attached contract) will provide Addison with accurate numbers as to tickets sold both prior to the event as well as the day of event, real time... any time! No more guessing how many hard tickets are sold at secondary locations, how many times the gate attendees forgot to click folks in AND out, and most importantly, Addison will continue to build an advance sales history with the customers.

## Other realized cost savings:

- Free ticketing through all ticketing distribution points including potential Outlets, Call Center and the Internet. Addison may no longer have to discount its Outlet Ticket Sales.

- Ability to capture customer profiles via database management. To date there has not been a viable database to utilize through all aspects of our marketing strategies.

- Ability to manage ticketing solutions, programs, promotions real time, anytime.

- Ability to strengthen our sponsors through verifiable ticketing programs

- Time management at the gates

- Support at the Box Office

- Anticipated Revenue generated from potential ticketing sales

### **RECOMMENDATION:**

Staff recommends that the Council authorize the City Manager to enter into a contract with GetTix.NET to design and host an online ticketing portal to assist Addison, subject to the City Attorney's final approval.

### **COUNCIL GOALS:**

Conduct the Business of the Town in a Fiscally

# Responsible Manner, Continue to Attract Visitors, Provide Quality Leisure Opportunities

## ATTACHMENTS:

Description:

[Contract](#)

Type:

Backup Material



## USER AGREEMENT

**AGREEMENT** made this the 26th day of January 2010 between Global Entertainment Ticketing, a Nevada Corporation (“GetTix.Net”) with its principle address located at 1600 North Desert Drive, Suite 301, Tempe, AZ 85281 and The Town of Addison (“User”).

**EVENT:** Various

**VENUE:** Town of Addison

**DATE:** Various

**MAILING ADDRESS:** 16801 Westgrove Drive, Addison, TX 75001

**WHEREAS**, GetTix.Net and User, desire to enter into a contractual relationship whereby GetTix.Net will provide certain services to User.

**THEREFORE**, for and in consideration of the mutual covenants herein contained, the parties hereby agree as follows:

- 1. AGENCY:** User hereby retains and authorizes GetTix.Net to act as its exclusive service provider for the sales of tickets (outlets, telephone, GetTix.Net Internet website, and the Box Office) made available to the public. If consignment tickets are to be issued to a non GetTix.Net outlet, User shall be charged the service charge on each ticket sold by non GetTix.Net outlet.
- 2. PRICES:** a) User shall establish the face price of all tickets sold though GetTix.Net.  
b) GetTix.Net shall establish the per ticket customer convenience charges, handling charges and per order charges.
- 3. FEES:** See Addendum A.
- 4. EQUIPMENT:** User shall provide high-speed Internet access in the box office for use by GetTix.Net.
- 5. TERM:** The term of the agreement shall be for five (5) years from date of contract.
- 6. SETTLEMENT:** Settlement will occur within seven (7) business days of the final performance unless other arrangements have been made. Cash requirements must be made five (5) business days in advance of said performance.

**7. UNCLAIMED WILL CALL:** Any unclaimed will call left on the system will be returned prior to settlement unless the event is sold out. If unclaimed will call is left on the system and settlement has occurred and a charge back is initiated by the consumer, the amount of the charge back plus fees will be invoiced to User.

**8. TICKET COUNTS:** Ticket counts will be emailed to User nightly. Only authorized representatives may obtain these counts and those persons must be made known prior to obtaining ticket count.

**9. ADVERTISING:** User shall prominently include GetTix.Net logo, web address and central telephone number in all advertising or other promotional material, which the User creates, causes to be produced, controls, or recommends relating to any Event (“User Material”). User warrants that the User Material will not infringe on any third party’s rights and that it will be in compliance with all applicable laws, regulations, ordinances, rules and legal orders. GetTix.Net may at its discretion, but with no obligations to do so, promote, advertise and/or publicize the events. If the price of the tickets is stated in any form of advertising the service charges must be included or a line stating that service charges will apply is required.

**10. SALES TAX:** All tickets sold through the GetTix.Net system are subject to applicable sales tax, which GetTix.Net must collect. This tax must be included in the stated price and User is responsible for payment of all taxes. If User is a non-profit organization exempt from sales tax, a sales tax exemption certificate must be provided to GetTix.Net at the acceptance of this agreement.

**11. EVENT CHANGE:** If the date of the event is changed, refunds shall be made through the rescheduled show date of thirty (30) days whichever is shorter. The refunded tickets may be then resold for the new performance date.

**12. NO PARTNERSHIP; INDEMNITY:** This agreement shall not be constructed to create a partnership between User and GetTix.Net. GetTix.Net shall not be liable nor responsible for any liabilities incurred by User. User shall defend, indemnify and hold harmless GetTix.Net and its affiliates from all fines, suits, proceedings, claim, demands or action of any kind or nature, or from any third party whomsoever, arising or growing out of, or otherwise connected with, the User’s business or User’s breach of this agreement.

**13. INDEPENDENT CONTRACTOR:** In providing services pursuant to this agreement, GetTix.Net shall be considered an independent contractor.

**14. ENTIRETY AND MODIFICATION:** This agreement sets forth the entire understanding of the parties and supersedes all prior agreement and understandings, if any, and may be modified on written memorandum executed by authorized representatives of both parties acknowledged by their signatures.

**15. GOVERNING LAW:** This agreement is being executed and delivered and is intended to be performed in the State of Arizona and, notwithstanding its choice of law provisions, the laws of such state shall govern the validity, constructions, enforcement, and interpretation of this agreement.

**16. BINDING EFFECT:** This agreement shall inure to the benefit of, and be binding upon the assigns, successors in interest, of each of the parties hereto.

**17. SEVERABILITY:** In the event that any provisions hereof are determined to be illegal or unenforceable, such determination shall not affect the validity or enforceability of the remaining provisions hereof, all of which shall remain in full force effect.

**18. COUNTERPARTS:** This agreement may be executed in counterparts, each of which is deemed an original, but all of which constitute one and the same instrument. Signatures by facsimile shall have the same binding effect as an original signature.

**IN WHITNESS WHEREOF,** the parties hereto have executed this agreement to be effective the day and year first above written.

**PARTIES' AGREEMENT:**

GLOBAL ENTERTAINMENT  
TICKETING, a Nevada corporation

TOWN OF ADDISON

Signature: \_\_\_\_\_

\_\_\_\_\_

Printed: Barry Kohlus

\_\_\_\_\_

Title: Senior Vice President

\_\_\_\_\_

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

\_\_\_\_\_

## ADDENDUM A

User Agreement  
January 25, 2010  
Between the Town of Addison  
and  
Global Entertainment Ticketing

### COSTS INCURRED BY USER

|                               |                       |
|-------------------------------|-----------------------|
| Installation of hardware      | N/C                   |
| • Access Control equipment    |                       |
| ○ 1 Server                    |                       |
| ○ 12 Scanners                 |                       |
| ○ 6 Cradle/Charger            |                       |
| ○ 2 Access Points             |                       |
| • Box Office equipment        |                       |
| ○ 2 PC's                      |                       |
| ○ 2 Monitors                  |                       |
| ○ 1 Boca Printer              |                       |
| ○ 1 Credit Card Swipe         |                       |
| Required equipment purchases  | N/C                   |
| Hardware rental fees          | N/C                   |
| Set-up charge                 | \$500.00 one time fee |
| Outlet ticketing              | N/C                   |
| Telephone ticketing           | N/C                   |
| Internet ticketing            | N/C                   |
| Ticket print fee              | N/C                   |
| Complimentary print fee       | \$0.05/ticket         |
| Consignment                   | \$0.10/ticket         |
| Credit card processing        | 3%                    |
| Ticket commission             | 0%                    |
| Season ticketing              | N/A                   |
| Box Office fee                | \$0.10/ticket         |
| Ticket software license fees  | N/C                   |
| Reporting and accounting      | N/C                   |
| Training                      | N/C                   |
| Staffing                      | N/A                   |
| Custom reporting/applications | Negotiable            |

## **COSTS INCURRED BY CONSUMER**

|                 | <u>Ticket Price</u> | <u>S/C</u> | <u>Rebate</u> |
|-----------------|---------------------|------------|---------------|
| Service charges | Less than \$9.99    | \$1.00     | N/A           |
|                 | \$10.00 to \$19.99  | \$1.50     | N/A           |
|                 | \$20.00 to \$29.99  | \$3.00     | \$1.00        |
|                 | \$30.00 to \$39.99  | \$4.00     | \$1.75        |
|                 | \$40.00 to \$49.99  | \$5.25     | \$2.50        |
|                 | \$50 and above      | Negotiable |               |

Internet / Telephone transaction fee                      \$3.50 per order  
Print at home order fee                                         \$2.00 per order

*Transaction fees are per order, not per ticket*

## **FACILITY FEE**

If a facility fee is charged by the venue, that fee will be in addition to the customer convenience fee charged by GetTix.Net.

## **REVENUE SHARE**

GetTix.Net will pay a revenue share to User at time of settlement. See above fee schedule for revenue share information. Revenue share applies only to full fee tickets. No revenue share will be paid on consignment tickets if no fees are attached.

## **SETTLEMENT**

Settlement generally will take place within seven (7) business days of the event. No deposits will be paid on settlement in advance of show.

Any cash payment needed at time of settlement must be requested no less than five (5) business days in advance of show.

One check will be provided at time of settlement. If any additional checks are needed, a notice of not less than five (5) business days will be required.

## **CONNECTIVITY**

High-speed Internet access must be provided on-site to GetTix.Net at no charge in order to operate box office.

## **SHIPPING OF TICKETS**

GetTix.Net shall ship tickets to User's fan clubs, promoters, artists, radio stations, etc. All tickets will be shipped regular mail, within 48 hours of requests unless otherwise specified. Overnight shipping is available as long as User's Federal Express/UPS account number is provided for the shipment.



**INTERNET PRE-SALE**

Upon request by User, GetTix.Net shall setup password-protected pre-sales. The full service charge will apply on all tickets sold. User shall include the service charge when posting price of pre-sale tickets.

**ADVERTISING**

All media and print advertising must include the following information:  
GetTix.Net Internet web site, Phone Number and Outlets.

\_\_\_\_\_  
Name: Barry Kohlus  
GetTix.Net

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name:  
Town of Addison

\_\_\_\_\_  
Date

## Council Agenda Item: #R6

### AGENDA CAPTION:

Presentation, discussion and consideration of approval to authorize the City Manager to enter into a contract with Interprise/Southwest Interior and Space Design, Inc., in the amount not to exceed \$81,460.00 for planning and design services to Village on the Parkway, 5100 Belt Line Road, Suite 400, for the Addison Visitor Information Center and related premises.

### FINANCIAL IMPACT:

This item is included in the 2009-2010 Budget.

### BACKGROUND:

Staff issued an RFQ for design and architectural services for renovation of space that will be occupied by the Addison Visitor Information Center and related premises. Staff received responses from 12 firms. A panel of staff members carefully evaluated the information from each firm and chose Interprise as the firm best qualified to complete this project.

### RECOMMENDATION:

Staff recommends awarding the contract to Interprise/Southwest Interior and Space Design, Inc.

### COUNCIL GOALS:

Conduct the Business of the Town in a Fiscally Responsible Manner, Continue to Attract Visitors, Pursue the Finest Educational Offerings for the Community, Provide Quality Leisure Opportunities, Work to instill a "Sense of Community" in Addison's residents

### ATTACHMENTS:

Description:

[Contract](#)

Type:

Cover Memo

**INTERPRISE**  
The Design Resource

PROJECT PROPOSAL

D906-093 R3

March 16, 2010



Phase I-Feasibility Study

for

TOWN OF ADDISON

Visitor Information Center and Craft Guild

Addison, Texas

Prepared for :

Greg Layman  
City Manager's Office  
Town of Addison

Approved by :

Katherine C. Berg  
President  
INTERPRISE Design

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**INTERPRISE** – The Design Resource

5080 Spectrum Drive, Suite 115E, Addison, TX 75001-6403

(972) 385-3991 [www.INTERPRISEdesign.com](http://www.INTERPRISEdesign.com)

## INTRODUCTION

**INTERPRISE/ SOUTHWEST INTERIOR & SPACE DESIGN INC.**, a Texas corporation ("**INTERPRISE**"), is pleased to submit this Project Proposal and proposed Agreement for services between the **Town of Addison, Texas** ("**CLIENT**") and **INTERPRISE** to be provided in connection with the planning, design and renovation of a certain facility located at Village on the Parkway, 5100 Belt Line Road, Dallas, Texas 75254 (herein (the "Offices")) (the planning and design and renovation of the Offices being referred to herein as the "Project").

## PROJECT DESCRIPTION

- It is the **CLIENT'S** desire to develop a Visitor Information Center, Meeting Space and relocate The Craft Guild to this new facility.
- The new location's original purpose was a Movie Theater. The usage will change with the new occupants.
- The purpose of this exercise is to determine a cost estimate of relocating The Craft Guild and preliminary design of the Visitor Information Center and Meeting Space at this new location prior to preparing a full set of Construction Documents.
- A Texas corporation ("Architect"), to be determined and approved at a later date, will provide architectural services on the Project. Architect will perform site visits, attend meetings, and will address exterior work, code issues, any civil/structural issues, and prepare a design intent document concerning their areas of expertise mentioned for budget preparation.
- A licensed engineering firm to be determined and approved at a later date will provide mechanical, electrical, and plumbing ("MEP") services on the Project. The engineer will perform site visits and field inspection of existing systems, attend meetings, and prepare a design intent document concerning their areas of expertise mentioned for budget preparation.
- **INTERPRISE** will enter into a contract with each of Architect and Engineer to provide services to **INTERPRISE** in connection with **INTERPRISE's** services to **CLIENT** under this Agreement.
- It is anticipated that **CLIENT** will enter into a lease of the Facility in the very near future.
- Per information from **CLIENT**, **INTERPRISE** is to assume that CAD files are NOT available for this Project.
- The schedule for the Project is yet to be determined.
- At the completion of this contract **INTERPRISE** will issue a full report summarizing the Space Programming Report, the field verification along with as-built documentation, an ADA/TAS survey report, proposed space modification, design intent, and estimated costs for the Project construction (the "Feasibility Report").
- Once the Feasibility Report has been reviewed and approved by **CLIENT**, **INTERPRISE** will then be able to submit a proposal for implementing the design; thus Construction Documents.

Based on the above, **INTERPRISE** shall furnish professional services fully described in this Agreement.

## **SCOPE OF SERVICES; STANDARD OF CARE; INTERPRISE REPRESENTATION AND WARRANTIES**

"Basic Services" shall include the services to be performed hereunder for **CLIENT** by **INTERPRISE** other than Chargeable Revisions, Optional Services, etc. (defined within) and any services provided more than Thirty (30) days after the Date of Substantial Completion.

All work and services provided by **INTERPRISE** shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project.

**INTERPRISE's** services shall be performed in a manner consistent with professional skill and care in accordance with the professional standards of interior design prevailing in the Dallas-Fort Worth metroplex area. **INTERPRISE** shall perform its services in accordance and shall comply with all applicable laws, regulations, codes, orders, rules, and standards.

**INTERPRISE** represents and warrants that (i) **INTERPRISE** is and shall be at all times in connection with this Agreement authorized to practice as an interior design professional in the State of Texas and that any necessary licenses, registrations, permits or other authorization to provide the services set forth herein have been acquired and are in existence as required by law, rule or regulation, and (ii) any and all of **INTERPRISE's** contractors, subcontractors, and consultants working on or in connection with the Project, including those providing professional services such as architectural and engineering services, will be at all times in connection with this Agreement authorized to practice and provide their respective work and services in the State of Texas, including holding any licenses, permits or other authorization required to practice and provide the same.

Notwithstanding anything herein to the contrary, (i) **INTERPRISE** and **CLIENT** agree and acknowledge that **CLIENT** is entering into this Agreement in reliance on **INTERPRISE's** professional abilities with respect to performing the services and work set forth herein, and (ii) **INTERPRISE** shall be liable to **CLIENT** for any and all damages, injuries, liability, or other harm of whatever nature to the extent caused by or resulting from any act or omission of **INTERPRISE**, or **INTERPRISE's** owners, directors, partners, officers, managers, employees, agents, contractors, subcontractors, consultants, or any person or entity acting by, through or under **INTERPRISE**, in the provision of its services under this Agreement.

Neither **CLIENT's** review, approval or acceptance of, nor payment for any of the work or services provided by **INTERPRISE** hereunder, shall operate as or be construed to operate as a waiver of any rights or remedies of **CLIENT** under or in connection with this Agreement or as a release of the responsibility and liability of **INTERPRISE** for the accuracy and competency of the same, nor shall such review, approval, acceptance, or payment be deemed to be a release of the responsibility and liability of **INTERPRISE** for the accuracy and/or competency of their work and services, it being understood that **CLIENT** at all times is relying on **INTERPRISE's** skill and knowledge in preparing and providing its work and services.

Notwithstanding **CLIENT's** approval of any plans, recommendations, reports, designs, drawings, or other documents or work prepared by or for, or other services of, **INTERPRISE**, **INTERPRISE** warrants and represents that such plans, recommendations, reports, designs, drawings, or other documents and work and services shall, to the best of **INTERPRISE's** ability and in accordance with the standard of care set forth herein, and in accordance with **CLIENT's** direction communicated to **INTERPRISE**, (i) be sufficient and adequate for the Project, (ii) be

free from material error, and (iii) comply with all applicable laws, codes, rules, orders, standards, and regulations, including, without limitation, the Americans with Disabilities Act of 1990 ([42 U.S.C. §§ 12101 et seq.](#), as amended or superseded) ("ADA") and the Texas Architectural Barriers Act (Chapter 469, Tex. Gov. Code, as amended or superseded) ("TABAA") (collectively, "Applicable Laws") in effect while this Agreement is in effect, and any subsequent interpretations of which **INTERPRISE** knows or should have known during the term of this Agreement.

**CLIENT** understands and agrees that it is **CLIENT**'s responsibility to provide **INTERPRISE** with information sufficient (to the extent **CLIENT** has such information) to enable **INTERPRISE** to provide its work and services, and to do so in a timely manner.

## **PROGRAM DEVELOPMENT**

### **A. Project Orientation**

**INTERPRISE** will schedule and conduct a meeting with the designated representative(s) of **INTERPRISE** and **CLIENT** to establish the formal goals, objectives and scope of the Project. **INTERPRISE** will discuss the factors, which will contribute to and support the success of the Project, including present and future organization, business plan, identity, spatial organization, technological impact, alternative options, budget, schedule, billing and payment procedures, and any other parameters pertinent to the Project.

### **B. Schedule Development**

**INTERPRISE** will prepare a schedule of activities indicating Project tasks to be performed, their duration, and completion dates. **INTERPRISE** will also indicate critical dates that must be met to ensure the expected completion date of this contract. This schedule will make assumptions regarding the amount of time that will be allocated for review and approval of Project information, and will be finalized only after **CLIENT**'s review and approval.

### **C. Information Gathering**

**INTERPRISE** will conduct interviews with key individuals to determine the following:

- Short-term and long-term personnel growth projections
- Departmental functions
- Work flow and material/information circulation
- Lines of communication
- Inter- and intra-departmental relationships
- Individual and departmental proximity and adjacency requirements
- Common and support area requirements

**INTERPRISE** will work with **CLIENT** to mutually determine the number and identities of individuals to be interviewed. Interviews will include certain questions to be included in a questionnaire to be submitted to those interviewed, and **INTERPRISE** will work with **CLIENT** to mutually determine the method for reviewing information.

**D. Site Inspection**

**INTERPRISE** will take an initial tour and inspect the current Offices and related facilities in order to document the existing equipment and furniture that may be under consideration for reuse on this Project and to facilitate **INTERPRISE** in providing its services set forth in this Agreement.

*(Note: A complete detailed inventory may be prepared as an Optional Service.)*

**E. Space Programming Report**

**INTERPRISE** will analyze all preliminary data and prepare a Programming Report ("Programming Report") which will convert all personnel, office and work areas, exhibition space, ancillary and support areas, equipment requirements and circulation into a report summarizing the square footage, planning and design requirements for the Offices facility.

The Programming Report will indicate the useable square footage requirements broken down by various departments or groups within the Conference Center and Craft Guild and the total square footage requirement for the Project. The Programming Report will also include individual attributes and any information pertinent to the planning and design of this facility.

## **FIELD VERIFICATION & AS-BUILT DOCUMENTATION**

**A. Field Verification**

**INTERPRISE** and its contractors and consultants (including the Architect and Engineer) will visit the site to verify existing conditions for space planning and preparation of the Design Intent Documents. This will include locating all partitions, doors, millwork, electrical and telephone outlets, ceiling grid and lights and any other conditions that would affect pricing and construction of the Project.

**INTERPRISE** will oversee the Architect and Engineer in their respective assessment of the current state of the Offices, code compliance for life safety/ ADA issues/ TABA issues/ and other issues regarding other Applicable Laws; civil, mechanical, electrical and plumbing conditions; and structural systems. The Architect and Engineer's assessment will be summarized and included in **INTERPRISE**'s Study.

**B. TAS/ ADA Survey**

**INTERPRISE** along with the Architect will visit the site and inspect for compliant and non-compliant TAS/ ADA issues. This includes exterior accessible routes, building entrances, doors and hardware and restrooms. Findings will be addressed in Design Intent Documents used for pricing.

**C. As-Built Plan**

Based on its site inspection and field verification and other work, **INTERPRISE** will input all information in CAD format and will prepare 1/8" scale as-built plans of the Offices indicating partitions, millwork and door locations of existing built-out space at the Facility.

## CONCEPT PLANNING / SPACE PLANNING

### A. Planning Orientation

Based on approval of the space Programming Report and utilizing all program information, **INTERPRISE** will schedule and conduct a meeting with the designated representative(s) of each of **INTERPRISE** and the **CLIENT** to discuss planning concepts and strategies as they relate to the Offices facility and the Project.

### B. Space Plans

**INTERPRISE** will prepare, on accurate building core plans, space plans indicating the distribution of visitor information center, studios and exhibition space, workstations, conference rooms, and all other support areas within the space (the "Space Plans").

1/8" = 1'-0" scale Space Plans will be presented to **CLIENT** for information, review, evaluation and approval. The Space Planning phase fee includes one (1) revision not to exceed 50% of the entire space.

## DESIGN DEVELOPMENT

### A. Design Orientation

**INTERPRISE** will conduct a design orientation meeting with the designated representative(s) of **INTERPRISE** and **CLIENT** to review and establish the final design scope of the Project, including design concept, public image, budget expenditures, furniture and furnishings.

### B. Schematic Design

Based upon the final refined space plans, **INTERPRISE** will develop up to two (2) conceptual design ideas for the Offices to include: three-dimensional architectural elements; lighting; finishes and materials; color palettes; and furniture and equipment options.

A series of illustrations depicting the feeling and image of the space will be presented for review and approval including, as appropriate: detailed floor plan(s); reflected ceiling plan(s) illustrating lighting systems; sketches and elevations; samples of finishes; and photographs of preliminary furniture selections.



**C. Design Intent Documents**

Upon approval of the Schematic Design, **INTERPRISE** will produce Design Intent Documents (the "Design Intent Documents") to generate budget pricing. The documents will supplement the approved Space Plan and Schematic Design by adding standard notes to identify demolition, new construction, basic millwork, standard finishes, basic electrical, telephone, HVAC and lighting to the extent they can be determined at this phase of the planning. Any TAS/ADA issues and exterior modifications will also be addressed at this time.

The approved schematic design will be used for budget pricing along with Design Intent Documents from consultants of **INTERPRISE**

**D. Preliminary Cost Estimate**

Based upon the Schematic Design and Design Intent Documents, **INTERPRISE**, with the assistance of a general contractor, will prepare a preliminary cost estimate for the Project. The preliminary cost estimate will include costs relative to construction, millwork, architectural finishes, furniture and furnishings.

**BASIC SERVICES FEE, OTHER FEES AND REIMBURSEMENTS**

A. For the aforementioned services, **CLIENT** agrees to pay **INTERPRISE** the following fees. **INTERPRISE** shall invoice monthly for progress payments.

| <b>PHASE I</b>                           | <b>TOTAL FEE</b>   |
|--|--------------------|
| Program Development                      | \$5,700.00         |
| Field Verification/ As-Built Plan        | \$17,000.00        |
| <u>Concept Planning / Space Planning</u> | <u>\$14,750.00</u> |
| <b>Subtotal INTERPRISE Fees</b>          | <b>\$37,450.00</b> |
| Architectural Fees                       | \$21,725.00        |
| <u>MEP Engineering Fees</u>              | <u>\$11,660.00</u> |
| <b>TOTAL FEES*</b>                       | <b>\$70,835.00</b> |

**\*Notes:**

B. All payments of fees, including the **INTERPRISE** fees, Architectural fees, and MEP engineering fees, shall be made to **INTERPRISE**.

Regarding payment of fees, **INTERPRISE** shall submit to **CLIENT** an invoice or billing statement for all work performed hereunder in form and substance satisfactory to **CLIENT**. All invoices or billing statements shall include a statement of services rendered and the amount owed in connection therewith, an itemized statement of reimbursable costs and expenses incurred, and the sum of all prior payments for the scope of services set forth herein. **INTERPRISE** shall not be entitled to any compensation for any services or work not actually performed or for any lost or anticipated profits as a result of any abandonment or suspension of work by the **CLIENT**, or the termination of this Agreement.

Notwithstanding, this Agreement and the term hereof are subject to the annual appropriation and budgeting of funds by Addison, in its sole and absolute discretion, to make any payments set forth herein. In the event Addison does not appropriate and budget any such funds, this Agreement shall end, without notice, on the last day of the annual budget period for which funds were appropriated and budgeted by Addison.

Services requested by **CLIENT** more than Thirty (30) days after the Date of Substantial Completion shall constitute an Additional Service.

C. In the event the area of the Project is changed, the Basic Services Fee shall be adjusted by the appropriate ratio for each Phase of work. In the event the area of the Project decreases, the fee adjustments will exclude any work completed prior to **INTERPRISE** being advised of the change.

- D. Fees for Chargeable Revisions, Additional Coordination, Project Management, Out of Sequence and Optional Services shall be in addition to the amount set forth above and shall be based on the time spent by **INTERPRISE** personnel in accordance with hourly rate schedules set forth in Attachment A. Attachment B, being a Work Authorization, shall be used when requesting these services.
- E. If and to the extent that the work and services of **INTERPRISE** pursuant to this Agreement has not been completed within 12 months following the contract commencement, through no fault of **INTERPRISE**, compensation for any Basic Services required for any period of time extending beyond the said 12 month period shall be reasonably adjusted by mutual agreement of **INTERPRISE** and the **CLIENT**.
- F. If scheduling limitations require performance, or if any of the work and services of **INTERPRISE** to be accomplished is requested and approved to be performed on an overtime basis, **CLIENT** agrees to pay **INTERPRISE** an additional fee based on increased personnel cost not to exceed 1.5 times the personnel rates in effect plus meal allowances.
- CLIENT** agrees to pay the amount set forth in the **INTERPRISE** invoice submitted to **CLIENT** in accordance with the terms of this Agreement within thirty (30) days after the date the **CLIENT** receives the same. An interest charge at the rate set forth in Chapter 2251, Tex. Gov. Code will be charged on any portion of the account which remains unpaid for more than Thirty (30) days after the date on invoice in accordance with this Agreement as received by the **CLIENT**, commencing with the thirty-first (31st) day.
- G. Any provision hereof to the contrary notwithstanding, **CLIENT** shall not be obligated to make payment to **INTERPRISE** of any amount disputed hereunder, but shall be obligated to give prompt written notice identifying with specificity the failure or default claimed by **CLIENT**, if:
1. **INTERPRISE** is in default of any of its obligations under this Agreement or any documents in connection with the Project (and payment may be withheld to the extent of any such default);
  2. Any part of such payment is attributable to any services of **INTERPRISE** which are not performed in accordance with this Agreement; or
  3. **INTERPRISE** has failed to make payment promptly to consultants or other third parties used by **INTERPRISE** in connection with **INTERPRISE**'s services hereunder for which the **CLIENT** has made payment to **INTERPRISE**.

## REIMBURSABLE EXPENSES

**CLIENT** agrees to reimburse **INTERPRISE** for out-of-pocket expenses at the actual cost of such expenses incurred by **INTERPRISE**. In order to be eligible for reimbursement, all such expenses shall be itemized by supplier in each monthly invoice submitted to the **CLIENT** as set forth in this Agreement, accompanied by receipts and other evidence substantiating such costs and the payment therefore by **INTERPRISE**. Reimbursable Expenses are in addition to compensation for Basic and Other Fees (listed above) and include actual expenditures made by **INTERPRISE** and **INTERPRISEs** employees and consultants in connection with the Project. Reimbursable Expenses include, but are not limited to:

- Transportation (auto rental, taxi, bus, airfare), room and board and other expenses incurred in connection with necessary out-of-town (outside of Dallas County, Texas) travel pre-authorized by **CLIENT**
- Use of a privately owned vehicle (reimbursed @ Fifty-three Cents (\$0.53) per mile) for travel outside of Dallas County, Texas
- Cost of reproductions, computer plots, shop supplies, messengers, facsimiles
- Postage and costs for delivery by a third-party of drawings, schedules, specifications and other documents
- Fees paid for securing approval of authorities having jurisdiction over the Project (local, state and Federal officials)
- Photographic production processes
- Renderings, models and mock-ups
- Any additional insurance coverage or limits, including professional liability insurance requested by **CLIENT** in excess of that normally carried by **INTERPRISE** (this shall not apply to any insurance required to be carried pursuant to or in connection with this Agreement by Architect or JJA).

Other than for services already included in the Basic Service Fee above, **CLIENT** agrees to pay **INTERPRISEs** direct costs incurred by **INTERPRISE** for any additional consultants invoiced through **INTERPRISEs** billing system, as such additional consultants may be requested in writing by **CLIENT**.

## CHARGEABLE REVISIONS

The following shall constitute a Chargeable Revision and will not be performed without proper written authorization from **CLIENT**.

- Making revisions to drawings, schedules, specifications or other documents, or providing re-selection of finishes and/or other materials when such revisions are inconsistent with written approvals or instructions previously given.
- Preparing drawings, schedules, specifications and supporting data and providing other services in connection with Change Orders or bulletins resulting from: (1) revisions or new interpretation of codes, laws or regulations, or (2) from an adjusted Project budget, provided such Change Orders or bulletins are required by causes not solely within the control of **INTERPRISE**. **INTERPRISE** shall render interpretations necessary for the proper execution of the Work upon written request of either **CLIENT** or contractor for clarification of the Construction Documents, which shall not constitute a Chargeable Revision.

- Chargeable Revisions shall be billed at **INTERPRISE's** hourly rate schedule as set forth in Attachment A and shall not be performed without proper written authorization from **CLIENT**.
- In the event **CLIENT** authorizes work which is subsequently canceled by **CLIENT** or its representative prior to the drawing's issuance, **CLIENT** will pay **INTERPRISE** a fee based on **INTERPRISE's** time spent to date collecting data and/or preparing documents.

## **OUT OF SEQUENCE SERVICES**

If **INTERPRISE** is directed, with **CLIENT's** written approval, to prepare documents out of sequence from the schedule previously established, then extra work (if any) incurred for this process will constitute Chargeable Revisions; if **CLIENT** requests documents to be prepared out of sequence from the schedule previously established, **INTERPRISE** shall provide **CLIENT** with an estimate of extra work which **INTERPRISE** anticipates will be required.

## **OPTIONAL SERVICES**

The following services are not included in Basic Services and shall be billed in addition to Basic Services on an hourly basis in accordance with **INTERPRISE's** personnel hourly rate schedule in effect at the time the services are provided (see Attachment A). Optional Services will not be performed without proper written authorization from **CLIENT**.

- **Core Plan Development** - If accurate architectural drawings are not available, **INTERPRISE** will develop a building "core" plan which will include the location of all base building elements such as elevators, mechanical shafts, fire stairs, washrooms, columns and curtain wall configurations for the floor(s) intended for occupancy. This plan will be a computer (CAD)-generated drawing printed at 1/8"= 1'-0" scale.
- **Future Scope of Work** - **INTERPRISE** will provide services relative to future facilities, systems, furniture, furnishings and equipment that are not intended to be completed or procured prior to the Date of Substantial Completion.
- **Cost Analysis** - A preliminary cost estimate is a part of Design Development. As an optional service, **INTERPRISE** will provide services for financial feasibility or other special studies. **INTERPRISE** will provide services for detailed estimates of actual Project cost, analysis of owning and operating costs, or detailed surveys or inventories of material, equipment and labor.
- **Furniture Inventory** - **INTERPRISE** will document all existing furniture and develop an inventory to be used in placing furniture in a new facility.
- **Private Office Design** - **INTERPRISE** will provide interior design services for individual private offices above the scope of the design standards included in design presentation.
- **Custom Furniture Design** - **INTERPRISE** will provide design drawings and millwork details for all custom furnishings and casegoods.
- **Graphics** - **INTERPRISE** will design and/or specify a graphics program for the new location, including but not limited to, logo design, stationary, business cards, promotional material, etc.
- **Signage** - **INTERPRISE** will produce a design recommendations and specifications for interior or exterior sign systems. This may include wall signage, placement of the logo for corporate identification, departmental signage or directory signage as required.

- **Plant Program and Distribution Plan** - **INTERPRISE** will prepare specifications, placement drawings or assist in the bidding or direct purchase of office greenery required.
- **Accessory & Artwork Selection** - **INTERPRISE** will develop an accessory and art program or complement the existing program to include selection of accessories, art, type of framing, placement and inventory of such items.
- **Move-In Tagging** - **INTERPRISE** will assist in placing the contractor's labels on existing furniture and equipment that will be relocated. Labels will be identified with room numbers and inventory designations to assist the mover in final placement. Labeling of individual's moving cartons should be done by the individual.
- **Dispute Management** - **INTERPRISE** will assist **CLIENT** in settling disputes with contractors or suppliers during construction of the punch list phase where contractor's or supplier's non-conformance and malfeasance are at issue. **INTERPRISE** will assist **CLIENT** in preparing to serve or serving as an expert witness in connection with any public hearing, arbitration proceeding or legal proceeding to which **INTERPRISE** is not a party.
- **Follow-Up** - **INTERPRISE** will prepare a set of reproducible "as-built" record drawings, schedules, or specifications showing significant changes made during construction based on marked-up prints, drawings and other data. **INTERPRISE** will provide assistance in the utilization of any equipment or system such as: the initial start-up testing, adjusting and balancing; preparation of operation and maintenance manuals; training personnel for operation and maintenance; and consultation during operation. **INTERPRISE** will provide services, as requested by **CLIENT** beyond Thirty (30) days from the Date of Substantial Completion.
- **Facilities Management** - **INTERPRISE** will assist in planning and implementing ongoing changes to the premises by maintaining and periodically updating reproducible record drawings, schedules and specifications.
- **Construction Management** - **INTERPRISE** will provide services for bidding or negotiating construction contracts and subcontracts in cooperation with the construction manager or separate consultants retained by **CLIENT**. **INTERPRISE** will review and approve all contractors' request for payment submittals. **INTERPRISE** will develop and maintain a master job schedule.
- **Instructions to Bidders** - **INTERPRISE** will provide a set of information to instruct bidders on procedures and guidelines of building operations and methods of coordination with building owners and developers.

- **Miscellaneous Services** - **INTERPRISE** will provide or coordinate the following services:
  - Model Construction
  - Fenderings
  - Furniture Mock-Ups
  - Still Photography
  - Consultants - lighting, laboratory, materials handling, record retention, acoustical, electrical, mechanical or structural
  - Consultation - concerning replacement of Work damaged by fire or other causes, and providing services as may be required in connection with the replacement of such Work

**FEE SUMMARY & CONTRACT ACCEPTANCE FORM**

March 16, 2010  
Proposal D906-093 R3

**FEE SUMMARY**

For execution of the services described in this proposal D906-093 R3 dated March 16, 2010 and associated Attachments, **INTERPRISE** will charge fees according to the summary on page 7:

|   |                    |
|---|--------------------|
| Total Design fees                         | \$70,835.00        |
| Reimbursable Items (estimated 15% of fee) | \$10,625.00        |
| <b>Estimated total billing *</b>          | <b>\$81,460.00</b> |

\*(excluding Chargeable Revisions and any Additional Services)

**Contract Term**

Unless otherwise noted, this agreement will commence upon signed approval by **CLIENT** and will, subject to the earlier termination of this Agreement, remain in effect for Twelve (12) months after date of acceptance.

A signature below will acknowledge acceptance of all of the terms and provisions of this proposal and authorization to proceed. Please transmit the signed page to **INTERPRISE** at fax number 972.960.2519 for the attention of Kaye McCallum.


Very truly yours,

**INTERPRISE**

**TOWN OF ADDISON**

Accepted and Agreed to this \_\_\_\_\_ day

of \_\_\_\_\_, 20\_\_\_\_

By: 

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

Katherine C. Berg  
President

***The terms, conditions and fees as described in this proposal become invalid if not signed by CLIENT within sixty (60) days***



## STANDARD TERMS AND CONDITIONS

March 16, 2010  
Proposal D906-093 R3

### Ownership and Use of Documents

CAD Files, Drawings, Plans, Schedules and Specifications prepared by or for **INTERPRISE** pursuant to this Agreement belong to, and remain the joint property of, the **CLIENT** and **INTERPRISE**, and may be used by **CLIENT** as it determines for its exclusive reuse at any time without further compensation and without any restrictions, subject to the following sentence. **CLIENT** agrees that it will not use the CAD Files, Drawings, Plans Schedules and Recommendations prepared by or for **INTERPRISE** on other sites, other projects, or for the completion of the Project unless **CLIENT** removes the name of **INTERPRISE** and any of **INTERPRISE**'s consultants from such works made for hire. **INTERPRISE** and its consultants shall not be liable for **CLIENT**'s use of the documents other than in connection with the Project. **INTERPRISE** shall be permitted to retain copies, including reproducible copies and/or computer disks, of CAD Files, Drawings, Schedules and Specifications for information and reference.

### Entire Agreement

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

### Termination

- A. **CLIENT** may terminate this Agreement at any time and for any reason (or for no reason) upon giving **INTERPRISE** at least thirty (30)-days advance written notice of such termination. Upon receipt of the termination notice, **INTERPRISE** will stop work as specified in the notice in an orderly and expeditious manner, place no further subcontracts or orders in connection with this Agreement (except as necessary to complete the continuing portion of the Agreement, if any), terminate all subcontracts to the extent they relate to terminated work, and deliver to the **CLIENT** all CAD files, drawings, plans, schedules and specifications, whether completed or in progress. The **CLIENT** will pay **INTERPRISE** for its services provided through the effective date of termination in accordance with this Agreement, together with all Reimbursable Expenses then due.
- B. If either party (the "defaulting party") defaults in the performance of or violates any material term or provision of this Agreement (a "default"), the other party (the "non-defaulting party") shall have the right to terminate this Agreement upon giving to the defaulting party written notice of such default (specifying the default in such notice) at least five (5) business days' prior to such termination; provided, however, that such right of termination shall not be exercised by the non-defaulting party unless and until a default remains uncured by the defaulting party for the said five (5) business day period, but if the default cannot with diligence be cured within said five (5) business day period, if within such five (5) business day period the defaulting party provides the non-defaulting party written notice of the curative measures which it proposes to undertake, and proceeds promptly to initiate such measures to cure such default, and thereafter prosecutes the curing of such default with diligence and continuity, the time within which such default may be cured shall be extended for such period as may be necessary to complete the curing of such default with diligence and continuity, not to exceed ten (10) business days following the receipt of the said notice. If the default is not cured within the said period of time (as applicable) to the satisfaction of the non-defaulting party, this Agreement shall terminate upon the expiration of the said period of time.
- C. Notwithstanding anything to the contrary in this Agreement, should this Agreement be terminated for any reason prior to the completion of **INTERPRISE**'s work and services hereunder, **CLIENT** shall pay **INTERPRISE** for the services and work of **INTERPRISE** provided through the date of termination and in accordance with this Agreement. **CLIENT** shall also reimburse **INTERPRISE** in accordance with this Agreement for all Reimbursable Expenses incurred by **INTERPRISE** up to and including the date of termination less any amounts previously paid **INTERPRISE** thereunder. All such payments shall be made in accordance with the provisions of this Agreement.

### Responsibilities for Construction Costs

**INTERPRISE** has no control over the cost of labor, materials, furniture, furnishings, equipment or specialty items; base building conditions; contractor's methods of determining bid prices; competitive bidding, market or negotiating conditions; failures by subcontractors to properly perform under their contracts; delays in delivery of furnishings, furniture, equipment or specialty items; or the condition in which such furnishings, furniture, equipment or specialty items are delivered.

Accordingly, **INTERPRISE** cannot and does not make any warranty or representation with respect to the foregoing matters, and such matters shall not constitute grounds for withholding or delaying any payment due **INTERPRISE** pursuant to this Agreement. **CLIENT** should be particularly aware bids or negotiated prices may vary from the Project budget proposed, established or approved and **INTERPRISE** cannot and does not, therefore, warrant or represent that the Project budget will not be exceeded. Finally, **INTERPRISE**

## STANDARD TERMS AND CONDITIONS

March 16, 2010  
Proposal D906-093 R3

shall not be responsible for any malfeasance, neglect or failure of any contractor or subcontractor that is not a contractor or subcontractor of **INTERPRISE**

### The **CLIENT**'s Responsibilities

- **CLIENT** shall provide full information regarding requirements for the Project to the extent such information is readily available to **CLIENT**.
- If **CLIENT** provides a budget for the Project, it shall include contingencies for bidding, changes in the Work, and other costs that are the responsibility of **CLIENT** under this Agreement.
- **CLIENT** shall designate, when necessary, a representative authorized to act in **CLIENT**'s behalf with respect to the Project. **CLIENT** or such authorized representative shall examine the documents submitted by **INTERPRISE** and shall render decisions promptly, to avoid unreasonable delay in the progress of **INTERPRISE**'s services.
- The drawings, specifications, services, information, surveys and reports provided by **CLIENT** pertaining to the Project shall be furnished at **CLIENT**'s expense, and **INTERPRISE** shall be entitled to rely on the accuracy and completeness thereof. **INTERPRISE** shall provide prompt written notice to the **CLIENT** if **INTERPRISE** becomes aware of any errors, omissions or inconsistencies in the same.
- If either **CLIENT** or **INTERPRISE** observes or otherwise becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents, prompt written notice thereof shall be given to the other party.
- **CLIENT** shall furnish the required information and services and shall render decisions as expeditiously as necessary for the orderly progress of **INTERPRISE**'s services and of the Work.
- **CLIENT** shall provide suitable space for the receipt, inspection and storage of materials and equipment.
- If Bidding or Negotiating has not commenced within Three (3) months after **INTERPRISE** submits the proposed Construction Documents to **CLIENT**, any Project budget shall be reasonably adjusted to reflect any change in the general level of prices which may have occurred in the interiors industry between the date of submission of the Construction Documents to **CLIENT** and the date on which proposals are sought.

### Disputes

Any claim, dispute or other matter in question arising out of or related to this Agreement may shall (except for failure to pay undisputed amounts due hereunder) be submitted to nonbinding mediation prior to litigation. A request for mediation shall be filed in writing with the other party to this Agreement. If nonbinding mediation is agreed upon by the parties, the parties shall share the costs of the mediation equally.

### Texas Law Applies; Venue

The Agreement shall be construed under and governed by the laws of the State of Texas, without regard to choice of law rules, and all obligations of the parties created by this Agreement are performable in Dallas County, Texas. Venue for any action under this Amendment shall lie exclusively in Dallas County, Texas.

Texas law requires registered Interior Designers to provide all **CLIENT**'s with the following written statement:

*"The Texas Board of Architectural Examiners (P.O. Box 12337, Austin, TX 78711-2337 or 333 Guadalupe, Suite 2-350, Austin, TX 78701-3942, 512-305-8900, [www.tbae.state.tx.us](http://www.tbae.state.tx.us)) has jurisdiction over complaints regarding the professional practices of persons registered as Interior Designers in Texas."*

### Access to Work

**INTERPRISE** shall at all times have reasonable access to the Work wherever it is in preparation or progress.

### Confidentiality

**INTERPRISE** shall maintain the confidentiality of information specifically designated as confidential by the **CLIENT**, unless withholding such information would violate the law or prevent **INTERPRISE** from establishing a claim or defense in an adjudicatory proceeding. **INTERPRISE** shall require of **INTERPRISE**'s consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the **CLIENT**.

## STANDARD TERMS AND CONDITIONS

March 16, 2010  
Proposal D906-093 R3

### Insurance

In connection with this Agreement and at all time relevant hereto or in connection herewith, **INTERPRISE** shall acquire and maintain in a company or companies lawfully authorized to do business in Texas at least the following insurance:

- (A) Workers' Compensation insurance at statutory limits under the laws of Texas, including Employers' Liability coverage at minimum limits of \$1,000,000 each occurrence each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease aggregate;
- (B) Commercial General Liability insurance, with combined single limits of not less than \$1,000,000 per-occurrence and \$1,000,000 general aggregate for bodily injury and property damage; \$1,000,000 for personal injury; and a \$1,000,000 annual aggregate for Products/ Completed Operations. Coverage must include Contractual Liability and Products/ Completed Operations (and if such commercial general liability insurance contains a general aggregate limit, it shall apply separately to the Services under this Agreement);
- (C) Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including Owned, Non-Owned and Hired Car Coverage. This coverage must be written on a standard and approved ISO form;
- (D) Professional Liability Insurance to protect from liability arising out of the performance of professional services under this Agreement. Such coverage shall be in the sum of not less than One Million and No/ 100 Dollars (\$1,000,000.00) per claim and Two Million and No/ 100 Dollars (\$2,000,000.00) aggregate. This coverage must be maintained for at least two (2) years after the Project contemplated herein is completed. If coverage is written on a claims-made basis, the retroactive date must not be later than the inception date of this Agreement.

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

All such policies of insurance shall (a) be issued by insurance companies reasonably acceptable to **CLIENT** and such companies shall be licensed and admitted to do business by the Texas Department of Insurance, (b) all liability policies shall contain no cross liability exclusions or insured versus insured restrictions, (c) except for professional liability insurance and workers compensation insurance, shall name the Town of Addison, Texas as an additional insured, (d) 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, (e) be endorsed to require the insurer to immediately notify the Town of Addison of any material change in the insurance coverage (f) contain a waiver of subrogation endorsement in favor of the Town of Addison, Texas, and (g) provide for at least thirty (30) days written notice to the Town of Addison, Texas prior to cancellation, non-renewal or material modification of such insurance. **INTERPRISE** may maintain reasonable and customary deductibles.

Certificates of insurance (together with the declaration page of such policies, along with all endorsements (including, without limitation, the endorsement naming the Town of Addison, Texas as an additional insured), satisfactory to **CLIENT**, evidencing all coverage above, shall be promptly delivered to Town prior to **INTERPRISE** beginning any work hereunder, and the same shall be updated as may be appropriate, with complete copies of such policies furnished to the **CLIENT** upon request.

### **INDEMNITY OWED BY INTERPRISE**

**INTERPRISE** 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 (each 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 and work of **INTERPRISE** under or in connection with this Agreement; (2) representations or warranties by **INTERPRISE** under this Agreement; and/or (3) any other act or omission under or in performance of this Agreement by **INTERPRISE**, or any owner, officer, director, manager, employee, agent,

## STANDARD TERMS AND CONDITIONS

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representative, consultant, contractor, subcontractor, licensee, concessionaire, or invitee of **INTERPRISE**, or any other person or entity for whom **INTERPRISE** is legally responsible, and their respective owners, officers, managers, employees, directors, agents, and representatives. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND. However, **INTERPRISE**'s liability under this clause shall be reduced by that portion of the total amount of the Claims (excluding defense fees and costs) equal to the Addison Person or Persons' proportionate share of the negligence, or conduct that would give rise to strict liability of any kind, that caused the loss. Likewise, **INTERPRISE** shall be obligated to defend Addison Person or Persons, but **INTERPRISE**'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, or conduct that would give rise to strict liability of any kind, that caused the loss.

**INTERPRISE** and CLIENT shall each promptly advise the other in writing of any claim or demand against any Addison Person or **INTERPRISE** related to or arising out of **INTERPRISE**'s activities under this Agreement, and **INTERPRISE** shall see to the investigation and defense of such claim or demand at **INTERPRISE**'s sole cost and expense, subject to reimbursement of any portion of the defense costs and attorneys' fees attributable to Addison Person's or Persons' proportionate share of the negligence, gross negligence, or conduct that would give rise to strict liability, that caused the loss. The Addison Persons shall have the right, at the Addison Persons' option and at own expense, to participate in such defense without relieving **INTERPRISE** of any of its obligations hereunder, provided that the Addison Persons shall have no right to settle any Claim in any manner that would adversely affect **INTERPRISE** without **INTERPRISE**'s prior written consent. This defense, indemnity, and hold harmless obligation shall survive the termination or expiration of this Agreement.

### Definitions

Except as otherwise expressly provided, terms in this Agreement shall have the same meaning as those in AIA Document A201, General Conditions of the Contract for Construction, and in AIA Document A271, General Conditions of the Contract for Furniture, Furnishings and Equipment, as appropriate, current as of the date of this Agreement. **[NOTE identify which definition ]**

### Authorized Signatories

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement 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.

### Assignment

**INTERPRISE** shall have no power to and shall not assign, sublet, subcontract, transfer, or otherwise convey its interest, rights, duties, or responsibilities under this Agreement, in whole or in part, without the prior written consent of the **CLIENT**, and any such assignment, subletting, subcontracting, transfer or other conveyance without **CLIENT**'s prior written consent, shall be deemed a material breach of this Agreement and the **CLIENT** shall have the right to terminate this Agreement immediately and without further notice.

### Severability

In any clause, paragraph, section or portion of this Agreement shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Agreement shall remain in full force and effect. In lieu of any such illegal, unlawful, unconstitutional, or void provision, the parties agree to seek to reasonably negotiate to add as a part of this Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

## STANDARD TERMS AND CONDITIONS

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### **Rights and Remedies Cumulative; Non-Waiver**

It is not a waiver of or consent to a breach, failure to perform, or default of this Agreement if the non-defaulting party fails to declare promptly a default or delays in taking any action. Pursuit of any rights or remedies set forth in this Agreement does not preclude pursuit of any other rights or remedies in this Agreement or available or provided by law, in equity, or otherwise.

### **Notice**

Where the terms of this Agreement require that notice be provided or given (except where oral notice is permitted), such notice shall be in writing and shall be (i) delivered personally, (ii) sent by United States certified mail, postage prepaid, return receipt requested, or (iii) placed in the custody of Federal Express Corporation or other nationally recognized carrier to be delivered overnight. Notice shall be deemed given to received by the party to whom it is directed (i) upon being hand-delivered, (ii) twenty-four (24) hours after deposit if sent by Federal Express or other nationally recognized carrier to be delivered overnight, or (iii) seventy-two hours following the deposit of the notice in the mail if sent by United States certified mail, postage pre-paid, return receipt requested. Addresses for notice under this Agreement are as follows:

#### To INTERPRISE:

**INTERPRISE** Design  
5080 Spectrum Drive, Suite 115E  
Addison, TX 75001-6403  
Attn: Katherine C. Berg, President

#### To CLIENT:

Town of Addison, Texas  
5300 Belt Line Road  
Dallas, Texas 75254  
Attn: City Manager

The above addresses may be changed by giving notice of such change in the manner herein provided for giving notice. Unless and until such written notice is received the last addresses and addressee stated by written notice, or provided herein if no written notice of change has been sent or received, shall be deemed to continue in effect for all purposes hereunder.

### **No Third Party Beneficiaries**

This Agreement and all of its terms and provisions are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

**Hourly Rate Schedule**

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| <u>EXPERIENCE LEVEL</u>               | <u>RATE</u> |
|---------------------------------------|-------------|
| Principal                             | \$150.00    |
| Department Director / Senior Director | \$135.00    |
| Director                              | \$120.00    |
| Manager                               | \$100.00    |
| Assistant Manager                     | \$ 90.00    |
| Coordinator                           | \$ 85.00    |
| Designer                              | \$ 65.00    |

# WORK AUTHORIZATION

Project No:

Re:

Date:

W.A.# :

Building Name:

To:

Confirming your verbal / written authorization to perform the following work:

| Description: | Unit / Type | Quantity | Cost |
|--------------|-------------|----------|------|
|--------------|-------------|----------|------|

|                                 |    |
|---------------------------------|----|
| Authorized Cost Estimate:       | \$ |
| Reimbursable Estimate:          | \$ |
| Total Authorized Cost Estimate: | \$ |

Remarks:

Approved By: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 For: \_\_\_\_\_  
 Date: \_\_\_\_\_

Return signed W.A. to: \_\_\_\_\_  
**INTERPRISE**  
 (972) 385-3991  
 Fax (972) 960-2519

## Council Agenda Item: #R7

### AGENDA CAPTION:

Approval of a resolution endorsing certain legislative changes relating to the Sunset review of the Texas Public Utility Commission and the special purpose review of the Electric Reliability Council of Texas.

### FINANCIAL IMPACT:

There is no direct financial impact associated with the passing of the resolution.

### BACKGROUND:

The Cities Aggregation Power Project (CAPP), of which the Town is a member, is asking its members to bring resolutions to their governing bodies that support CAPP's proposals to the Sunset Review Commission to modify the structure of the Public Utilities Commission and the Electric Reliability Council of Texas to make the Texas electric power market more competitive, thereby reducing the cost of electricity to Texas consumers. As part of this item is a memorandum explaining the various proposals.

### RECOMMENDATION:

It is recommended council adopt the attached resolution.

### COUNCIL GOALS:

Conduct the Business of the Town in a Fiscally Responsible Manner, Provide For A Diversified Business Climate, Take actions to make Addison a leader in sustainable development and operations that protect and enhance the Town's quality of life

### ATTACHMENTS:

Description:

- [Sunset Review Cover Memo](#)
- [Sunset Review Resolution](#)

Type:

- Cover Memo
- Resolution Letter



## MEMORANDUM REGARDING THE RESOLUTION ENDORING CAPP'S 2010 SUNSET ADVOCACY

### Background

The Town of Addison is one of the founding members of the Cities Aggregation Power Project, Inc. ("CAPP"). CAPP is a consortium of over 100 governmental entities, primarily cities, that aggregates the power load of the entities to obtain competitive pricing of electric power. Due to its involvement with the power market, CAPP has become aware of problems with Texas' deregulated market that keep the market from being truly competitive and offering consumers the opportunity to realize savings in their electric purchases. Despite the reduction in natural gas prices the past year, Texas consumers in the deregulated market pay more for electricity than almost anywhere else in the country. In fact, even the lowest residential electric rates in deregulated areas of Texas typically exceed rates paid by **all residents** of neighboring states, such as those in Oklahoma and Louisiana.

The CAPP Board of Directors recently voted to authorize certain legislative efforts pertaining to the Sunset Commission's review of the Public Utility Commission ("PUC") and the Electric Reliability Council of Texas ("ERCOT"). The Sunset agency's recommendations pertaining to both organizations are expected to form the basis of bills during the 82<sup>nd</sup> Legislative Session in 2011. As such, CAPP will recommend legislative action related to the Sunset Commission's examination of both the PUC and ERCOT. In addition, CAPP will offer all resolutions of its members during Sunset hearings to apprise lawmakers of CAPP Cities' perspective on how to make the electric market more competitive and beneficial to consumers.

CAPP's recommendations are intended to improve competition in the electric market place by making the PUC and ERCOT more accountable to consumers, by limiting the market power exercised by generators, and by creating competitive options for all customers. CAPP's recommendations reflect the organization's desire for a truly competitive electric market where consumers can realize savings compared to the existing deregulated market. Such a market — one where power remains affordable and reliable — will mean more economic development for Texas cities and a better standard of living for their citizens. The following changes are proposed by the CAPP Board:

- All generators, regardless of size, should explicitly be barred from the unlawful exercise of market power.

*Current PUC rules protect relatively small generation companies from prosecution for anti-competitive behavior. But generators that control a small portion of the wholesale electricity market can sometimes have a big impact on prices. For instance, a relatively small operator in Texas temporarily drove up overall spot market prices in 2007 by engaging in an energy bidding practice that the Wall Street Journal said was "reminiscent of one that played a role in the meltdown of California's electricity market."*

- Entities such as municipalities, commercial customers or retail electric providers harmed by wholesale market abuse should be given explicit standing to participate in market power abuse enforcement actions brought by the PUC.  
*In 2007, the Texas Public Utility Commission initiated an enforcement proceeding against TXU for allegedly engaging in anti-competitive behavior. PUC staff found that improper actions by TXU during a short interval in 2005 had increased overall wholesale energy costs by more than \$50 million. However, Retail Electric Providers, municipalities and others harmed by these higher costs were barred from participating in the enforcement proceeding. Such entities can contribute resources and expertise to the often overburdened PUC investigatory staff.*
- Fines should be assessed for market abuses in such a way that the PUC can order full restitution to the market, market participants, or parties injured by the violation.  
*In the above case, TXU's improper behavior was found by the PUC staff to have caused more than \$50 million in harm to the wholesale energy market. However, the PUC fined the company only \$15 million — an amount not even equal to the extra revenue the PUC said TXU generated from its anti-competitive activities.*
- Activities defined as market abuse by the Federal Energy Regulatory Commission should be prohibited.  
*According to a 2007 Wall Street Journal report, a generation company operating in Texas has freely engaged in an activity that appears to be very similar to energy bidding practices associated with Enron behavior in California. However, the activities are not expressly prohibited in Texas and as a consequence of the company's actions, it can collect \$157,000 an hour to run its plant — or more than 10 times the amount it would collect under more typical circumstances, according to the newspaper. The FERC, with authority over most wholesale electricity markets in the U.S., has the ability to recognize, define and prohibit market power abuse. Texas should prohibit the type of market abuse that occurs elsewhere in the country, as prescribed by the FERC.*
- The statutory purpose of the PUC should be modified to ensure that the agency harmonizes its pursuit of competition with the protection of electric consumers.  
*Leaders at the Texas Public Utility Commission are some of state government's most enthusiastic advocates for electric competition. However, in their zeal to promote the Texas deregulation law, leaders at the PUC have overlooked the higher electric prices paid by Texans relative to electric prices elsewhere. A slight adjustment of the Public Utility Regulatory Act would direct the agency to maintain its focus on consumer protection, even while it continues promoting electric competition.*
- As a condition of conducting business in Texas, Retail Electric Providers (“REPs”) should be required to include among their offers one standard electricity package that has PUC-approved terms and conditions. Such standard offer products will ensure that REPs compete based on price, not on customer confusion.  
*Comparing electric deals can be difficult. A quick review of the Power To Choose website reveals a bewildering array of offers, each with difficult-to-comprehend fine*

*print. Because the details of each offer vary, it is nearly impossible for consumers to make apples-to-apples comparisons when they shop for electricity. Requiring REPs to include among their offers a standard deal established by the Public Utility Commission would reduce confusion among residential electricity consumers. REPs would have the freedom to price such standard deals in any way they see fit.*

- The number of consumer representatives on the 15-member ERCOT board should be increased from the current three members, to six.  
*The ERCOT board sets many important rules for the Texas wholesale electricity market. The board is comprised of men and women who represent electric generation companies, retail electric providers and others with a financial stake in the market. However, end-use consumers — that is, those who ultimately pay all costs associated with the market — have been historically under-represented. As a consequence, consumers have been unable to block or mitigate potentially expensive initiatives that may benefit those with a financial interest in higher electric prices, but which do not hold any clear benefit for end-use consumers.*
- The Office of the Comptroller should be assigned a seat on the ERCOT board and on appropriate budget oversight panels within ERCOT. The Comptroller's office should be given access to all ERCOT contracting material and be charged with conducting a bi-annual performance review of ERCOT.  
*Mismanagement at ERCOT has led to cost overruns and even criminal convictions by top officials there. In 2003, for instance, the PUC directed ERCOT to begin making important changes to its management system for the wholesale electricity market. These changes were estimated to cost no more than \$76.3 million and were expected to be in place by Oct. 1, 2006. Unfortunately, the project's costs have increased by at least 800 percent, and it is now four years behind schedule. Comptroller oversight would help discourage such costly missteps in the future.*
- The PUC should be required to provide prior approval of all debt financing by ERCOT.  
*Debt service costs at ERCOT has increased by more than 400 percent since the 2003 fiscal year. The organization also has increased its use of debt to finance capital projects in recent years, including at least one recent capital project that is 100 percent financed with debt. More PUC oversight is required to ensure that the organization does not meet its annual budget targets through the inappropriate use of debt to shift costs into the future.*

### **Recommendation**

It is recommended that the city council approve the attached resolution, which will be presented with resolutions from CAPP's other member cities to the Sunset Commission as evidence of the high degree of support that exists for CAPP's remedies to Texas' deregulated electric power market.

**TOWN OF ADDISON, TEXAS**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE TOWN OF ADDISON TEXAS, ENDORSING CERTAIN LEGISLATIVE CHANGES RELATING TO THE SUNSET REVIEW OF THE TEXAS PUBLIC UTILITY COMMISSION AND THE SPECIAL PURPOSE REVIEW OF THE ELECTRIC RELIABILITY COUNCIL OF TEXAS; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Addison, Texas (“City”) is a member of Cities Aggregation Power Project, Inc. (“CAPP”), a non-profit organization created by cities throughout Texas to secure affordable energy for its members in the deregulated electric market; and

**WHEREAS**, affordable and reliable power means economic development for our cities and a better standard of living for our citizens; and

**WHEREAS**, by deregulating the retail electric market, Senate Bill 7 of 1999 (“SB 7”) was intended to allow competitive forces to drive down the price of electricity; and

**WHEREAS**, CAPP’s eight-year experience with the deregulated market, including negotiating power contracts with several different retail electric providers, indicates that the Texas electric retail market has failed to develop into a truly competitive market as envisioned by the Texas Legislature; and

**WHEREAS**, competition has failed to develop in the deregulated electric market because certain power generation companies own or control enough generation capacity to exercise market power to the detriment of customers and non-affiliated retail electric providers; and

**WHEREAS**, alleged market power abuse inquiries conducted by the Public Utility Commission (“PUC”) are hampered by the lack of adequate resources because the parties hurt by such activity, like cities, are not allowed to participate in the investigations; and

**WHEREAS**, the managers at the Electric Reliability Council of Texas (ERCOT) have failed to adequately manage expenses and operations, with the most obvious example of such failure being ERCOT’s implementation of a nodal market — a project now four years behind schedule and expected to cost at least eight times original estimates; and

**WHEREAS**, the Sunset Advisory Commission is expected to recommend legislative reforms for the PUC and ERCOT; and

**WHEREAS**, the City supports all such legislative reforms that promote a truly healthy electric market where competition can flourish and consumers can save money; and

**WHEREAS**, the City endorses efforts proposed by CAPP that enhance electric competition, implement the original intent of SB 7, and reduce costs to the City and its residents.

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

Section 1. The City urges reforming the PUC and ERCOT in such a way as to enhance competition in the deregulated market, to promote consumer protection and to encourage the sale of affordable electricity. Specifically, the City urges the Texas Legislature, as it considers changes recommended by the Sunset Advisory Commission, to adopt reforms consistent with the following:

- All generators, regardless of size, should explicitly be barred from the unlawful exercise of market power.
- Entities such as municipalities, commercial customers or retail electric providers harmed by wholesale market abuse should be given explicit standing to participate in market power abuse enforcement actions brought by the PUC.
- Fines should be assessed for market abuses in such a way that the PUC can order full restitution to the market, market participants, or parties injured by the violation.
- Activities defined as market abuse by the Federal Energy Regulatory Commission should be prohibited.
- The statutory purpose of the PUC should be modified to require it to harmonize its pursuit of competition with the protection of consumers of electricity.
- As a condition of conducting business within Texas, competitive Retail Electric Providers (REPs) should be required to include among their offers one standard electricity package that has PUC-approved terms and conditions.
- The number of consumer representatives on the ERCOT board should be increased from the current three members, to six.
- The Office of the Comptroller should be assigned a seat on the board as well as on appropriate budget oversight panels within ERCOT. The Comptroller's office should be given access to all ERCOT contracting material and be charged with conducting a bi-annual performance review of ERCOT.
- The PUC should be required to pre-approve all debt financing by ERCOT.

Section 2. A copy of this Resolution shall be sent to the elected lawmakers representing the City's interests in the Texas House and Senate and to the legal counsel of CAPP.

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 on this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by a vote of \_\_\_\_\_ ayes and \_\_\_\_\_ nays at a regular meeting of the City Council.

\_\_\_\_\_  
Joe Chow, Mayor

ATTEST:

By: \_\_\_\_\_  
Lea Dunn, City Secretary

## **Council Agenda Item: #R8**

### **AGENDA CAPTION:**

Discussion and consideration of an Ordinance declaring unopposed candidates for election to the office of Council member in the May 8, 2010 election be declared elected to office, canceling the May 8, 2010 election, and providing for other matters relating thereto.

La discusión y consideración de una ordenanza que declara a los candidatos sin oposición para la elección de la oficina de miembro del Consejo en la elección del 8 de mayo de 2010, son declarados elegidos a la oficina, cancelando la elección del 8 de mayo de 2010 y proporcionando para otras cuestiones relativas a los mismos.

### **FINANCIAL IMPACT:**

There will be no Dallas County election charges for 2010.

### **BACKGROUND:**

There are three open positions for the office of Council member. There are three unopposed candidates. Under the Election Code, the Council can cancel the election if it chooses and declare the candidates elected.

In order to cancel the election, the City Secretary is required to certify that all candidates are unopposed for election to the office (that is, if the election were held, only the votes cast for that candidate in the election for that office may be counted).

The Certification is attached. The proposed ordinance canceling the election and declaring the unopposed candidates elected is also attached.

**RECOMMENDATION:**

Staff recommends approval of the attached ordinance calling for cancellation of the Municipal Election scheduled for May 8, 2010, and declaring that Kimberly Lay, Roger S. Mellow and Neil Resnik have been elected to the office of Council member, each for a two-year term.

**COUNCIL GOALS:**

N/A

**ATTACHMENTS:**

Description:

- [City Secretary Certification](#)
- [Letter to Dallas County, Canceling Election](#)
- [Ordinance](#)
- [Ordinance in Spanish](#)

Type:

- Backup Material
- Backup Material
- Ordinance
- Ordinance



## **CERTIFICATION OF UNOPPOSED CANDIDATES**

Certification of Unopposed Candidates  
By the City Secretary

I, Lea Dunn, certify that I am the City Secretary of the Town of Addison, Texas (the "City"), and the authority responsible for preparing the ballot for the May 8, 2010 general City election. The said election was ordered and called for the purpose of electing three (3) persons to the office of Council member of the City. I further certify that, with respect to the said election, only three (3) persons (those listed below) are candidates for the office of Council member, that no person has made a declaration of write-in candidacy (and no candidate's name is to be placed on a list of write-in candidates for any office), that only one candidate's name is to be placed on the ballot for each office as described herein, and that all of the following candidates are unopposed for election to that office:

|                 |                |
|-----------------|----------------|
| Kimberly Lay    | Council member |
| Roger S. Mellow | Council member |
| Neil Resnik     | Council member |

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Lea Dunn, City Secretary  
Town of Addison, Texas

Dated this the 17th day of March, 2010.

March 24, 2010

Bruce Sherbet  
Elections Administrator  
Dallas County Elections Department  
2377 N. Stemmons Freeway, Suite 820  
Dallas, TX 75207

Dear Mr. Sherbet:

Subchapter C, Chapter 2, of the Election Code, provides that in the event all candidates for office are unopposed, the City Council of the Town of Addison, Texas is authorized to declare all unopposed candidates elected to office and cancel the election.

Please be advised that since all of the candidates in the Town of Addison May 8, 2010 Municipal Election are unopposed (as set forth below), the election has been cancelled as set forth in Ordinance No. 010-008 of the City.

All of the following candidates are unopposed and have been declared elected to office by the City Council's adoption of Ordinance No. 010-008, and will be issued certificates of election following the time the election would have been canvassed.

|                 |                |
|-----------------|----------------|
| Kimberly Lay    | Council member |
| Roger S. Mellow | Council member |
| Neil Resnik     | Council member |

We have enclosed a copy of Ordinance No. 010-008 for your records. We would appreciate it if you would please advise us at your earliest opportunity as to what action may need to be taken by your office regarding the cancellation of the City's election.

Sincerely,

Lea Dunn  
City Secretary

Enclosure

**TOWN OF ADDISON, TEXAS**

**ORDINANCE NO. 010-008**

**AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS, DECLARING UNOPPOSED CANDIDATES FOR ELECTION TO THE OFFICE OF COUNCIL MEMBER IN THE MAY 8, 2010 GENERAL CITY ELECTION ELECTED TO OFFICE; PROVIDING THAT SUCH CANDIDATES SHALL BE ISSUED A CERTIFICATE OF ELECTION IN THE SAME MANNER AND AT THE SAME TIME AS A CANDIDATE ELECTED AT THE ELECTION, AND THAT SUCH CANDIDATES MUST QUALIFY FOR OFFICE IN THE SAME MANNER AS A CANDIDATE ELECTED AT THE ELECTION; CANCELING THE MAY 8, 2010 GENERAL CITY ELECTION; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, City Council of the Town of Addison, Texas (the "City") heretofore called and ordered a general election to be held on May 8, 2010 for the purpose of electing three Council members to two (2) year terms each; and

**WHEREAS**, the filing deadlines for placement on the ballot and declaration of write in candidacy have passed, and only three (3) persons filed as a candidate for election to the office of Council member; and

**WHEREAS**, in accordance with Section 2.052 of the Texas Election Code, the City Secretary (being the authority responsible for having the official ballot prepared) has certified in writing that each of the candidates is unopposed for election to the office of Council member; and

**WHEREAS**, the City Council has received the said certification from the City Secretary (a true and correct copy of which is attached hereto as Exhibit A) and, pursuant to Section 2.053 of the Texas Election Code, the City Council is authorized to declare, by ordinance, each unopposed candidate elected to the office of Council member; and

**WHEREAS**, the said Section 2.053 further provides in subsection (b) thereof, that, if such a declaration is made, the election is not held.

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

Section 1. The following candidates for election to the office of Council member, who are unopposed in the May 8, 2010 general City election, are declared

elected to the office of Council member of the Town of Addison, Texas (each for a two (2) year term):

|                 |                |
|-----------------|----------------|
| Kimberly Lay    | Council member |
| Roger S. Mellow | Council member |
| Neil Resnik     | Council member |

A certificate of election shall be issued to each of the said candidates following the time the election would have been canvassed had the election been held and in the same manner as a candidate elected at the election had the election been held. Each of the said candidates must qualify for office in the same manner as provided for a candidate elected at the election, following the time the election would have been canvassed had the election been held.

Section 2. The May 8, 2010 general City election is canceled, and the City Secretary is directed to cause a copy of this Ordinance to be posted on election day at each polling place that would have been used in the election.

Section 3. It is declared to be the intent of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance is declared invalid by the judgment or decree of a court of competent jurisdiction, the invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this Ordinance since the City Council would have enacted them without the invalid portion.

Section 4. This Ordinance shall be cumulative of all other ordinances of the City 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 5. This Ordinance shall take effect upon its final passage, and it is so ordained.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this the \_\_\_\_ day of March, 2010.

\_\_\_\_\_  
Mayor – Joe Chow

ATTEST:

\_\_\_\_\_  
City Secretary – Lea Dunn

PUBLISHED:\_\_\_\_\_

## La Ciudad de Addison, Texas

### Ordenanza No. 010-008

**UNA ORDENANZA DE LA CIUDAD DE ADDISON, TEXAS, DECLARANDO A LOS CANDIDATOS SIN OPOSICIÓN A LA ELECCIÓN EL DIA 8 DE MAYO DE 2010 A LA OFICINA DEL MIEMBRO DEL CONSEJO EN LA ELECCIÓN GENERAL DE LA CIUDAD ELIGIÓ A LA OFICINA; PROPORCIONANDO QUE PUBLICARÁN TALES CANDIDATOS UN CERTIFICADO DE ELECCIÓN DE MANERA SEMEJANTE Y AL MISMO TIEMPO QUE UN CANDIDATO ELEGIDO EN LA ELECCIÓN, Y QUE TALES CANDIDATOS DEBEN CALIFICAR PARA LA OFICINA DE MANERA SEMEJANTE COMO CANDIDATO ELIGIÓ EN LA ELECCIÓN; CANCELACIÓN DE LA ELECCIÓN GENERAL DE LA CIUDAD EL DIA 8 DE MAYO DE 2010; ABASTECIMIENTO DE UNA CLÁUSULA DEL SEPARACIÓN; ABASTECIMIENTO DE UNA CLÁUSULA DE LOS AHORROS; Y PROPORCIONANDO UNA FECHA EFICAZ.**

**CONSIDERANDO**, el Ayuntamiento de la ciudad de Addison, Texas (la "ciudad ") ahora llamó y pidió una elección general para ser celebrada el 8 de mayo de 2010 con el fin de elegir tres (3) miembros del Consejo a dos (2) años de términos cada uno; y

**CONSIDERANDO**, los plazos de limadura para la colocación en la balota y declaración de escriba en candidatura han pasado, y solamente tres (3) personas han archivado como candidato a la elección a la oficina del miembro del Consejo; y

**CONSIDERANDO**, de acuerdo con la Sección 2.052 del Código de Elección de Texas, la secretaria de la ciudad (siendo la autoridad responsable de preparar la balota oficial) ha certificado por escrito que cada uno de los candidatos esta sin oposición para la elección a la oficina del miembro del Consejo; y

**CONSIDERANDO**, el Ayuntamiento ha recibido la certificación dicha de la Secretaria de la Ciudad (una copia verdadera acompaña esta ordenanza, ahora llamó Objeto Expuesto A) y, conforme a la Sección 2.053 del Código de Elección de Texas, el Ayuntamiento está autorizado para declarar, por la ordenanza, a cada candidato sin oposición, elegido a la oficina del miembro del Consejo; y

**CONSIDERANDO**, el mencionado Sección 2.053 establece además en la subsección (b) que si se hace tal declaración, la elección no se lleva a cabo.

**AHORA, POR LO TANTO, SEA ORDENADO POR EL AYUNTAMIENTO DE LA CIUDAD DE ADDISON, TEXAS:**

Sección 1. . Los siguientes candidatos para la elección a la oficina del miembro del Consejo, que sin oposición en la elección de 8 de mayo 2010 de la ciudad en general, se declaran elegidos a la oficina del miembro del Consejo de la Ciudad de Addison, Texas (cada uno con término de dos (2) años):

|                 |                     |
|-----------------|---------------------|
| Kimberly Lay    | Miembra del Consejo |
| Roger S. Mellow | Miembro del Consejo |
| Neil Resnik     | Miembro del Consejo |

Un certificado de elección será publicado a cada uno de los candidatos dichos después del tiempo que la elección habría sido solicitado votos la elección había sido sostenida y de manera semejante como habían elegido a un candidato elegido en la elección la elección. Cada uno de los candidatos dichos debe calificar para la oficina de manera semejante en la manera prevista para un candidato elegido en la elección, después del tiempo que la elección habría sido solicitado votos la elección había sido sostenida.

Sección 2. La elección general de la ciudad el día 8 de mayo de 2010 está cancelada, y ordenan a la secretaria de la ciudad hacer una copia de esta ordenanza ser publicado el día de elección en cada lugar de votación que habría sido utilizado en la elección.

Sección 3. Se declara que la intención del Ayuntamiento, que las frases, las cláusulas, las oraciones, los párrafos, y las secciones de esta ordenanza son separables, y si cualquier frase, cláusula, oración, párrafo, o sección de esta ordenanza es declarado inválido por la sentencia o decreto de una corte de jurisdicción competente, la invalidez no afectará a ninguna de las frases, cláusulas, oraciones, párrafos, o secciones de esta ordenanza ya que el Ayuntamiento las habría aprobado sin la porción inválida.

Sección 4. Esta Ordenanza será acumulativa de todas las otras ordenanzas de la Ciudad y no derogará ninguna de las provisiones de esas ordenanzas, excepto en aquellos casos donde están las provisiones de esas ordenanzas en conflicto directo con las provisiones de esta ordenanza.

Sección 5. Esta Ordenanza tomara efecto sobre su paso final, y es así ordenado.

**PASADO Y APROBADO** por de la ciudad de Addison, Texas el \_\_\_\_\_  
**de Marzo de 2010.**

\_\_\_\_\_  
Alcalde, Joe Chow

TESTIGOS:

\_\_\_\_\_  
Lea Dunn, Secretaria de la Ciudad

PUBLICADO: \_\_\_\_\_