



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

AGENDA

REGULAR MEETING OF THE CITY COUNCIL

AND / OR

WORK SESSION OF THE CITY COUNCIL

6:00 PM

JUNE 22, 2010

TOWN HALL

5300 BELT LINE ROAD, DALLAS, TX 75254

WORK SESSION

Item Discussion regarding proposed agreements to manage and
#WS1- operate Addison Airport.

REGULAR MEETING

Pledge of Allegiance

Item #R1- Consideration of Old Business

Introduction of Employees

Discussion of Events/Meetings

Item #R2 Presentation of the Government Finance Officers Association (GFOA) "Distinguished Budget Presentation Award" for the fiscal year beginning October 1, 2009.

Item #R3 Presentation of a conceptual design plan by TBG Partners landscape architects for the George H. W. Bush Elementary School landscaping, playgrounds, learning garden and the Redding Trail/Greenhill Trail extension.

Item #R4 Presentation and discussion by representatives of TIP Strategies regarding a preliminary economic development strategic plan.

Item #R5 PUBLIC HEARING regarding possible changes to the Town Charter as recommended by the Charter Review Commission.

Item #R6 Presentation, discussion and consideration of approval of a resolution authorizing the City Manager to enter into a Memorandum of Agreement for Wholesale Treated Water between the Town of Addison and the City of Dallas.

Attachment(s):

1. 2010 Memorandum of Understanding
2. 1982 Water Supply Contract

Recommendation:

Staff recommends approval.

Item #R7 Presentation, discussion and consideration of approval of (i) a Resolution approving an Agreement for the Operation and Management of Addison Airport between the Town and URS Engineering & Construction, Inc., formally,

Washington Group International, Inc., regarding the operation and management of Addison Airport, (ii) a Resolution approving an Agreement for the Professional Real Property Asset Management and Administrative Services of Addison Airport between the Town and SAMI Management, Inc., regarding real estate management and administrative services for Addison Airport, and (iii) a Resolution acknowledging and/or approving an agreement regarding the termination of the Agreement for the Operation and Management of Addison Airport between the Town and Washington Staubach Addison Airport Venture.

Recommendation:

Staff recommends Council authorize the City Manager to enter into contract with URS Engineering & Construction, Inc., for the operation and management of Addison Airport, and additionally with SAMI for the professional real property asset management and administrative services at Addison Airport. Final authorization and approval upon final review of the City Attorney, City Manager, and the ERC Review Board of URS Corporation.

Item #R8 Presentation, discussion and consideration of approval to authorize the City Manager to execute a Construction Contract with Austin Bridge & Road, L.P., in the amount of \$4,672,112.79 with contract duration of 250 calendar days for the construction of certain public infrastructure (including two vehicular bridges, a pedestrian bridge and other public infrastructure improvements) within that area of the Town generally known as Vitruvian Park (Vitruvian Park Public Infrastructure Phase 1D).

Attachment(s):

1. Bid Summary
2. Funding 1R1
3. Vitruvian Allocations

Recommendation:

Staff recommends approval.

Item #R9 - Presentation, discussion and consideration of approval of an Assignment and Construction Services Agreement between the Town of Addison and UDR, Inc., in the amount of \$222,479.00 for and regarding the management of the construction of certain public infrastructure (including two vehicular bridges, a pedestrian bridge and other public infrastructure improvements) within that area of the Town generally known as Vitruvian Park (Vitruvian Park Public Infrastructure Phase 1D).

Recommendation:

Staff recommends approval.

Item #R10 - Presentation, discussion and consideration of approval to authorize the City Manager to execute a Supplemental Agreement to the Agreement for Professional Services with Halff Associates, Inc., for an amount not to exceed \$52,000.00 for additional services related to the design of certain public infrastructure (including two (2) vehicular bridges, one (1) pedestrian bridge and other public infrastructure improvements) within that area of the Town generally known as Vitruvian Park (Vitruvian Park Public Infrastructure Phase 1D).

Attachment(s):

1. Supplemental Agreement from Halff Associates

Recommendation:

Staff recommends approval.

Item #R11 - Presentation, discussion and consideration of approval to authorize the City Manager to execute a Professional Services Agreement with Icon Consulting Engineers, Inc., for an amount not to exceed \$138,075.00 for the design of certain public infrastructure (including Bella Lane and other public infrastructure improvements) within that area of the Town generally known as Vitruvian Park (Vitruvian Park Public Infrastructure Phase 2).

Attachment(s):

1. Proposal from Icon Consulting Engineers, Inc.

Recommendation:

Staff recommends approval.

Item #R12 - Presentation, discussion and consideration of the approval of the Advance Funding Agreement for Project Using Funds Held in the State Highway 121 Subaccount for Traffic Signal improvements with the State of Texas, acting by and through the Texas Department of Transportation to provide funds in the amount of \$381,223.00 to the Traffic Signal Upgrade project (CSJ #918-45-667).

Attachment(s):

1. Advanced Funding Agreement

Recommendation:

Staff recommends approval.

Item #R13 - Presentation, discussion and consideration of approval authorizing the City Manager to complete a grant agreement for Distributed Renewable Energy Technology Program funding made available through the American

Recovery and Reinvestment Act of 2009 (ARRA), funded through the US Department of Energy (DOE), being allocated by the Texas Comptroller of Public Accounts, State Energy Conservation Office (SECO).

Attachment(s):

1. Distributed Renewable Energy Grant Study Agreement - RFA No. RE-AG1-2010

Recommendation:

Staff recommends Council authorize the City Manager to complete the grant agreement for the Distributed Renewable Energy Technology Program funding made available through the American Recovery and Reinvestment Act of 2009, funded through the US Department of Energy, being allocated by the State Energy Conservation office to fund a study in an amount not to exceed \$100,000, subject to the City Manager's and City Attorney's approval.

Adjourn Meeting

Posted:

Posted: 06/18/2010, Lea Dunn, 5:00PM

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: #R5

AGENDA CAPTION:

Presentation of the Government Finance Officers Association (GFOA) "Distinguished Budget Presentation Award" for the fiscal year beginning October 1, 2009.

FINANCIAL IMPACT:

There is no financial impact associated with this recognition.

BACKGROUND:

The Government Finance Officers Association (GFOA) created a Distinguished Budget Presentation Award in 1984 to encourage governments to prepare budget documents of the highest quality to meet the needs of decision-makers and citizens. In order to receive this award, a governmental unit must publish a budget document that meets program criteria as a policy document, as an operations guide, as a financial plan and as a communications device.

The Town of Addison has received the Distinguished Budget Presentation Award every year since 1987 and has received notice that the annual budget for the Fiscal Year beginning October 1, 2009 has also received this distinction.

There were several comments made by the GFOA reviewer that highlight the quality of the 2009 Budget document. The include:

- "This is the best budget document I have reviewed in terms of its communication and understandability."
- "This is probably the best budget presentation I've seen. It comes across as being very slick and professional... I hope to copy it some day."
- "The visualization extremely enhances the reader's comprehension of a moderately complex financial structure."

RECOMMENDATION:

COUNCIL GOALS:

Conduct the Business of the Town in a Fiscally Responsible Manner

ATTACHMENTS:

Description:

Type:

No Attachments Available

Council Agenda Item: #R6

AGENDA CAPTION:

Presentation of a conceptual design plan by TBG Partners landscape architects for the George H. W. Bush Elementary School landscaping, playgrounds, learning garden and the Redding Trail/Greenhill Trail extension.

FINANCIAL IMPACT:

N/A.

BACKGROUND:

N/A.

RECOMMENDATION:

N/A.

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

Type:

No Attachments Available

Council Agenda Item: #R7

AGENDA CAPTION:

Presentation and discussion by representatives of TIP Strategies regarding a preliminary economic development strategic plan.

FINANCIAL IMPACT:

N/A.

BACKGROUND:

TIP Strategies has been working on the Town's economic development strategic plan and will present their preliminary report to council for feed back before they create the final plan 30 to 45 days later.

RECOMMENDATION:

N/A.

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

Type:

No Attachments Available

Council Agenda Item: #R8

AGENDA CAPTION:

PUBLIC HEARING regarding possible changes to the Town Charter as recommended by the Charter Review Commission.

FINANCIAL IMPACT:

No financial impact.

BACKGROUND:

The Council will hold a public hearing on the Charter Review Commission's Final Report.

RECOMMENDATION:

N/A.

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

Type:

No Attachments Available

Council Agenda Item: #R9

AGENDA CAPTION:

Presentation, discussion and consideration of approval of a resolution authorizing the City Manager to enter into a Memorandum of Agreement for Wholesale Treated Water between the Town of Addison and the City of Dallas.

FINANCIAL IMPACT:

There is no direct financial impact associated with this item. The Town of Addison purchases water from Dallas Water Utilities. For the 2010 budget year, the Utility fund budget anticipates water purchases to total \$5,059,700.

BACKGROUND:

The Town of Addison is one of 23 governmental entities that obtain their treated water from the City of Dallas through the Dallas Water Utilities (DWU) department. Wholesale treated water rates are calculated pursuant to the rate-setting methodology established in the 1979 Memorandum of Agreement (1979 MOA), an agreement entered into by Dallas and its Wholesale Treated Water Customers to settle a wholesale treated water rate dispute. The 1979 MOA is attached to all wholesale treated water contracts as an exhibit. The Town of Addison has a 30-year water supply contract with Dallas that expires January 6, 2012. This MOA has served the rate-setting methodology process well over the past 30 years; however, the 1979 MOA expired on December 17, 2009.

The Town's chief financial officer, Randy Moravec, was one of several representatives of wholesale cities who actively negotiated a new agreement with DWU staff. The 2010 MOA improved upon the 1979 version by making the agreement more succinct, deleting unnecessary and excessive language, and adding definitions to terms used in the MOA and the water supply contracts. There was only one minor point of contention between DWU and the customer cities, and that was the allocation of reservoir costs. Under the 1979 MOA, reservoir costs were planned on an assumption that population and related water consumption would grow at an annual rate of 8.5 percent. The customer cities were concerned that this rate was inflated and would drive up the cost of water as Dallas looked to satisfy the *projected* demand by building

reservoirs farther from the service area. The customer cities argued that the actual rate of increase the past 20 years was around five percent. A consensus was finally reached that the 2010 MOA will recognize growth rates to be established based on 24-year regression models. With this methodology, the initial growth rate will be reduced to 4.5 percent.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

Provide Superior Public Safety, Customer Service, Social and Health Services to the Community, Take actions to make Addison a leader in sustainable development and operations that protect and enhance the Town's quality of life

ATTACHMENTS:

Description:

- [2010 Memorandum of Understanding](#)
- [1982 Water Supply Contract](#)

Type:

- Backup Material
- Backup Material

**Memorandum of Agreement (MOA)
for
Wholesale Treated Water**

Preamble: The 1979 MOA settled a rate dispute lawsuit between Dallas and its Wholesale Treated Water Customers regarding the wholesale treated water rate-setting methodology (“rate-setting methodology”), and as such has served the rate-setting methodology process well over the past 30 years. This amended agreement recognizes that changes to the rate-setting methodology have occurred over this timeframe, and incorporates consensus changes between Dallas and its Wholesale Treated Water Customers, and as such will serve to govern the rate-setting methodology for the next 30 years.

1. Purpose: Dallas is a regional water provider currently providing treated water service to Wholesale Treated Water Customers located within Dallas’ established service area in North Central Texas. The purpose of this agreement is to establish the rate-setting methodology and formalize the mutual expectations of Dallas and its Wholesale Treated Water Customers with respect to rate-setting methodology. This rate-setting methodology will provide the basis for determining wholesale treated water rates after its effective date.
2. Applicability: This agreement is subject to all applicable orders, laws and regulations of the City of Dallas, State of Texas and the United States. If any state or federal governmental agency having jurisdiction disapproves any material part of this agreement during the term, the agreement is subject to cancellation by any party and renegotiation by Dallas and its Wholesale Treated Water Customers.
3. Water System Policy: Dallas operates a water system to provide a regulatory compliant, safe and reliable water supply, adequate for the current water use and future growth of Dallas and its Wholesale Treated Water Customers, and to avoid subsidization of any class of customers.
4. Definitions: A glossary which defines applicable cost of service terms is located in Appendix A of this MOA. Cost of service terms may be added, or the definition of an existing term amended, from time to time, without the necessity of amending this MOA. Additions and amendments will be reflected in the appendices attached to the annual cost of service studies.
5. Responsibilities:
 - a. Dallas is responsible for planning, financing, constructing, operating and maintaining the water supply system to the extent permitted by available water revenues, for developing cost of service information to support wholesale rate changes, and for informing Wholesale Treated Water Customers of wholesale rate changes and other pertinent utility information.

- b. Wholesale Treated Water Customers are responsible for keeping Dallas informed concerning their projected water supply needs and operating requirements for planning, managing and maintaining their retail systems to promote water conservation and efficient system operation, and for paying adequate rates to Dallas to cover the costs incurred by Dallas in providing service to them.

6. Rate-Setting Methodology for Wholesale Treated Water:

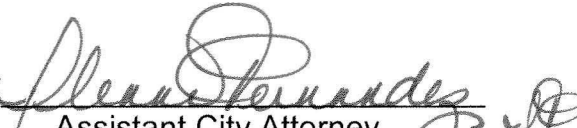
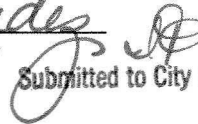
- a. Revenue requirements are to be determined on a utility basis, at original cost, including construction work in progress.
- b. Dallas is to receive a rate of return on rate base equal to embedded interest rate on water revenue bonds, commercial paper and other debt instruments plus 1.5 percent, which is agreed to be an adequate return to cover its costs and risks and as compensation for ownership and management responsibilities.
- c. All existing and future water supplies and associated facilities are to be included in a common water rate base. Wholesale Treated Water Customers, as a class, shall pay their proportionate share of costs for water supply, including that portion held for future use. For the 2010 cost of service study, wholesale treated water customers shall be allocated a percentage of total reservoir costs based on a 10-year future use percentage calculated using a 24-year linear regression. This percentage shall be increased or decreased in direct proportion to future changes in actual usage in conjunction with the cost of service studies. (Dallas will pay the balance of water supply costs which are not allocated to Wholesale Treated Water Customers under the cost of service allocation.) Allocation of costs other than water supply costs, including but not limited to operations and maintenance costs, shall be based on current use.
- d. Direct reuse of treated wastewater effluent is an Inside Dallas only cost and will be allocated to Inside Dallas customers only. Indirect reuse of treated wastewater effluent for lake augmentation will be included as a cost and as a benefit common-to-all.
- e. There will be a two part wholesale treated water rate (volume and demand), with allocation of costs in rate design so as to encourage conservation and efficient operation of the water systems of Dallas and its Wholesale Treated Water Customers.
- f. At the end of ten years from the Effective Date of the MOA, and each ten years thereafter, the City of Dallas or a majority of the Wholesale Treated Water Customers who are parties to this agreement may request a review of the above rate-setting methodology; and if so, the methodology shall be subject to renegotiation.

7. Wholesale Treated Water Rates: After the effective date of this MOA, Dallas will prepare a cost of service study to support wholesale treated water rates and allocations, and will submit it to the Wholesale Treated Water Customers to review and accept prior to submission to the Dallas City Council. Except as noted herein, the cost of service rate-setting principles will adhere to the 2009 cost of service study, including changes that have been identified and implemented since that date.
8. Effective Date: This MOA is effective as of December 17, 2009.
9. Term: The term of this MOA is thirty (30) years from its effective date, or until December 16, 2039, and for such additional periods as the parties may mutually agree upon.
10. Approved changes: Changes in the rate-setting methodology or other conditions may be made by mutual agreement of all parties at any time.
11. Individual contracts: This MOA is considered a replacement of and supersedes the 1979 MOA and shall automatically be incorporated and become a part of all existing wholesale treated water contracts without any further action or approval on the part of the City or of the Wholesale Treated Water Customers. Rate-setting methodology for individual contracts for wholesale treated water service between Dallas and its Wholesale Treated Water Customers will be consistent with this MOA. Dallas and its Wholesale Treated Water Customers will honor their existing water service contracts until such time as the contracts are amended or superseded by a new contract. Contracts for new Wholesale Treated Water Customers will be consistent with this MOA.
12. Recognition of MOA Participants: The MOA renegotiation process took place over many months during 2009 and 2010 and involved a number of meetings to discuss possible changes, revisions, and alternatives to the existing MOA. To that end, the City of Dallas would like to thank the individuals listed below for their outstanding input and contributions in the MOA update and renegotiation process, without whose help this revised document would not have been possible. Participants are listed in attached Appendix B.
13. Authorization to Act: By their signatures below, the representatives of Dallas and the Wholesale Treated Water Customers state that they are authorized to enter into this MOA. Dallas and the Wholesale Treated Water Customers will each provide documentation that this MOA has been authorized by its respective governing body.
14. Counterparts: This MOA may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

EXECUTED as of the 1st day of June, 2010, on behalf of Dallas by its City Manager, duly authorized by Resolution No. 10-1231, adopted on the 12th day of May, 2010 and approved as to form by its City Attorney.

APPROVED AS TO FORM:
THOMAS P. PERKINS, JR.
City Attorney

CITY OF DALLAS
MARY K. SUHM
City Manager

BY 
Assistant City Attorney

Submitted to City Attorney

BY 
Assistant City Manager

EXECUTED as of the _____ day of _____, 2010, on behalf of the Town of Addison by its City Manager, duly authorized by Resolution No. _____, adopted on the _____ day of _____, 2010, and approved as to form by its City Attorney.

TOWN OF ADDISON

By: _____
Ron Whitehead, City Manager

ATTEST:

APPROVED AS TO FORM:

By: _____
Lea Dunn, City Secretary

By: _____
John Hill, City Attorney

APPENDIX A GLOSSARY OF TERMS

Allocation - The apportioning of the common-to-all cost of service.

Common-To-All - Facilities, and their associated cost, that are dedicated to providing treated water service to both Dallas and Wholesale Treated Water Customers.

Construction Work in Progress (CWIP) - The utility's investment in facilities under construction but not yet dedicated to service.

Demand Costs - Costs associated with providing facilities to meet peak rates of use, or demand, placed on the system by the customers.

Depreciation - The wearing out or loss in service value of property used in utility operations.

Depreciation Rate - The rate of loss in service value, based on the expected service life of property.

Depreciation Reserve - The accumulated amount of the loss in service value of property.

Direct Reuse – The use of treated wastewater effluent from Dallas' wastewater treatment plants for non-drinking water purposes within the boundaries of the City of Dallas.

Embedded Interest Rate - Annual interest expense expressed as a percentage of average debt.

Indirect Reuse – The use of treated wastewater effluent from Dallas' wastewater treatment plants for raw water supply augmentation purposes.

Inside Dallas - The group of retail treated water service customers, comprised of residential, commercial and industrial customers served by Dallas Water Utilities.

Interest Expense - Payment made for the use of borrowed funds.

Materials & Supplies – Assets in inventory which are required to meet current obligations and service responsibilities of the utility.

Maximum Day Demand - The maximum demand placed on the system over a 24-hour period.

Maximum Hour Demand - The maximum demand placed on the system over a 60-minute period on the system's maximum day.

MGD - Million gallons per day flow rate.

Operating Expenses - Operation and maintenance charges incurred in operating a utility.

**APPENDIX A
GLOSSARY OF TERMS
(PAGE 2 OF 2)**

Original Cost - The amount of investment in facilities when first put into service.

Rate Base - Total investment dedicated to providing utility service.

Rate of Return - The percentage of return authorized to be earned on an investment (e.g. a rate base).

Reservoir Capacity - The amount of water available from a reservoir.

Reservoir Costs - Costs incurred in acquiring and maintaining an untreated water supply system.

ROFC - Rate of flow controller. A device limiting instantaneous flow rate to a specific amount. Instantaneous flow rate for rate setting purposes is a per day setting.

Standby Service - Connection to wholesale treated water customer which is not normally used, excluding bypass lines which are required by Dallas Water Utilities as a part of an active metering facility.

Test Period (or Test Year) - Selected to be representative of the period of time over which the new rates are expected to be in effect.

Treated Water - Raw water that has passed the purification process.

Unaccounted for Water - Water produced but not billed to customers that result from metering inaccuracies, system leakage, and miscellaneous unmetered uses.

Volume Costs - Costs that tend to vary directly with the amount of water produced and sold.

Water Supplies and Associated Facilities – Dallas' water supply system, including, but not limited to, all reservoirs, indirect reuse water, and all system infrastructure.

Wholesale Cost of Service - The sum total of: (1) operating expense, (2) depreciation expense, and (3) return on investment. Depreciation expense and rate of return are on the original cost of investment less accumulated depreciation, capitalized interest and contributed capital.

Wholesale Treated Water Customers – The group of water customers of the City of Dallas which currently have a wholesale treated water contract with Dallas.

Working Capital - Assets (funds) which are required to meet current obligations and service responsibilities of the utility.

APPENDIX B

MOA WORKING GROUP

Addison:	Randy Moravec Lauren Clark
Carrollton:	Bob Scott Lori Iwanicki David Gaines
Cedar Hill:	Ruth Antebi-Guten
The Colony:	Tod Maurina
Coppell:	Chad Beach Kim Tiehen
Dallas Fort Worth Airport:	Jerry Dennis
Dallas County W.C.&I.D. #6:	Robert Rodriguez Red Taylor William Freeman
Denton:	Tim Fisher
DeSoto:	Isom Cameron Tom Johnson
Duncanville:	Frank Trando Richard Summerlin Dennis Schwartz
Farmers Branch:	Charles Cox Mark Pavageaux
Flower Mound:	Chuck Springer Kenneth Parr
Glenn Heights:	Judy Bell
Grand Prairie:	Ron McCuller Doug Cuny
Grapevine:	Ramana Chinnakotla Kent Conkle
Irving:	Aimee Kaslik David Cardenas
Lewisville:	Carole Bassinger

Red Oak:

Charles Brewer

Richardson:

Kent Pfeil
Keith Dagen

University Park:

Kent Austin

Upper Trinity Regional Water District:

Tom Taylor
Larry Patterson

Dallas:

Jo M. (Jody) Puckett
Bobby Praytor
Charles Stringer
Terry Lowery
Denis Qualls
Jacqueline Culton
Tonia Barrix
Melissa Paschall-Thompson
Erica Robinson
Maria Salazar

WHOLESALE TREATED WATER CONTRACT

THE STATE OF TEXAS)
)
COUNTY OF DALLAS)

THIS Contract made and entered into this the 6th day of January, 1982, by and between the City of Dallas, Texas, hereinafter called Dallas, and the City of Addison, Texas, hereinafter called Customer.

WHEREAS, Customer is desirous of purchasing water from Dallas, and Dallas desires to make provisions for the delivery and sale of water to Customer as set forth herein under the terms and conditions herein stated; and

WHEREAS, both Dallas and Customer from time to time have need to request the other to furnish water and/or wastewater service to each other's customers along common boundary lines wherein only one city has facilities available;

NOW, THEREFORE, Dallas, and Customer in consideration of the terms, covenants, and conditions herein contained, hereby agree as follows:

W I T N E S S E T H:

1.0 WATER SALES:

1.1 Dallas agrees to deliver to Customer potable water in accordance with the specifications and restrictions in Section 3.0 hereof. Dallas agrees to provide potable water to meet volume and demand requirements of Customer as provided herein.

1.2 Delivery of potable water to meet the requirements of Customer is subject to and limited by available system supply and system

deliverability, as determined by the Director of Water Utilities of Dallas. Such delivery shall not be unreasonably withheld.

2.0 DEMAND; CHANGES IN DEMAND:

2.1 "Demand" means the maximum rate of flow mutually established by Customer and Dallas that may be taken by Customer within a water year.

2.2 "Water year" means the year beginning June 1 and ending May 31.

2.3 If Dallas fails to make available the currently established demand for seven or more consecutive days the demand charge for such days shall be calculated by using the maximum rate of delivery for such days times the current annual demand charge divided by 365 times the number of days of reduced flow.

2.4 If Dallas fails to make available the currently established demand for 30 or more consecutive days the demand charge for that water year shall be calculated by using the maximum rate of delivery for such days times the current annual demand charge.

2.5 Customer shall give reasonable notice to Dallas of anticipated changes in demand requirements. Such notice shall be given at least 6 months in advance if the requested change, when considered with other pending or contemporaneous requests, does not require construction of additional facilities. The Director of Water Utilities of Dallas may waive the 6 month notice requirement for good cause shown. If construction of additional facilities is required, such advance notice as will be necessary to allow for financing, design and construction of the needed facilities shall be given.

2.6 Customer agrees to pay the total annual demand charge for any increase in the agreed upon maximum demand during a water year; and for each water year to pay annual demand charges based on (1) the current water year demand or (2) the highest demand established during the five water years preceding, whichever is greater.

2.7 Customer agrees that Dallas' capability to provide increases in demand or volume is subject to available supply and deliverability, as determined by the Director of Water Utilities of Dallas.

3.0 DELIVERY POINT, ACCESS, ETC.:

3.1 Dallas agrees to deliver water contracted for by Customer at delivery point(s) as delineated in Exhibit B attached hereto and at such additional points as may be mutually agreed upon by both parties. The cost of all delivery facilities, whether delineated in Exhibit B hereof or mutually agreed upon at a later date, shall be borne by Customer, except that Dallas may elect to require oversizing of the delivery facilities for the benefit of Dallas or other parties. If Dallas elects to oversize delivery facilities, Dallas shall be responsible for oversizing costs to the extent of the difference between customers required delivery facilities and the oversize specified by Dallas. Unless otherwise mutually agreed to by Dallas and Customer, Customer shall be responsible for the design, contracting, construction and financing of facilities and acquisition of any right-of-way for delivery of the water from the Dallas system to the delivery point(s). Plans shall be submitted to Dallas for written approval and all designs, materials and specifications shall conform to Dallas requirements. Customer agrees that Dallas has the right to make periodic inspections during the construction phase of the delivery facilities. Final acceptance of completed delivery facilities is subject to the written approval of Dallas.

3.2 Unless otherwise agreed by both parties, Dallas shall construct and maintain meter vaults, meters, and all associated facilities, and obtain electric and telephone service in connection therewith, if needed. Customer agrees to reimburse Dallas for actual construction costs attributable to service of Customer, excluding costs of engineering, design, telemetry equipment, telephone and electric service.

3.3 Customer agrees that after final inspection and acceptance of delivery facilities, Customer will convey title of those facilities and rights-of-way in conjunction therewith to Dallas. Upon conveyance of title to delivery facilities by appropriate instrument(s) Dallas shall be responsible for operation and maintenance thereof.

3.4 Customer agrees to provide ingress and egress for Dallas employees and agents to all its premises inside Customer's boundaries to install, operate, inspect, test, and maintain facilities owned or maintained by Dallas within city limits of Customer.

3.5 Dallas agrees to provide ingress and egress for Customer's employees and agents to all premises inside Dallas' boundaries to install, operate, inspect, test, and maintain facilities, and read meters owned or maintained by Customer within Dallas.

3.6 It shall be the duty of either party to this contract to notify the other party in the event that the meter(s) is registering inaccurately or malfunctioning so that the meter(s) can be promptly repaired. Each meter will be operated and maintained so as to record with commercial accuracy. Dallas will notify customer prior to any meter tests. Either party has the right to request a meter be tested with the other party having the right to witness such test. If Customer requires an independent testing service be used,

Customer shall pay the cost of said testing service if the meter(s) is found to be accurate. If meter(s) is found inaccurate, Dallas shall pay the costs of said testing service.

4.0 BOOKS AND RECORDS:

Dallas agrees that Customer or its agent may have access to the books and records of Dallas Water Utilities at reasonable times. Customer agrees that Dallas or its agent may have access to the books and records of the Customer's Water Utilities at reasonable times.

5.0 ADDITIONAL SURFACE WATER SUPPLIES:

5.1 If Customer develops or acquires additional surface water supplies from any source other than Dallas, resulting in reduced demand from Dallas, then Dallas is released from the obligation to supply the demand amount mutually established under Section 2 hereof. In such event Dallas may adjust its supply obligation to levels commensurate with Customer's reduced demand.

5.2 If within the term of this contract Customer ceases to take water from Dallas because such other surface water supplies have been developed or acquired, Customer shall for five years or the balance of this contract, whichever is less, remain liable for demand charges at the billing level in effect at such cessation. This obligation, once established, shall serve as liquidated damages and is intended to compensate Dallas for the expenditures incurred on Customer's behalf for the cost of installation of supply, transmission, treatment, delivery and service facilities. It is agreed by the parties that such liquidated damages are a reasonable substitute for compensatory damages which are difficult or impossible to calculate herein. This obligation is intended by the parties not to be a penalty, but instead, a reasonable measure of damages.

6.0 RESALE:

Customer agrees not to sell water purchased from Dallas to any person or entity outside Customer's corporate boundaries (as may be adjusted from time to time) unless Customer has received prior written approval from the Director of Water Utilities of Dallas. In granting such authorization, Dallas may establish the terms and conditions of the conveyance of such water including, but not restricted to, the setting of monetary rates for sale of such water. "Convey" means sell, trade, donate, exchange, transfer title, or contract therefor.

7.0 RATES AND PAYMENT:

7.1 Rates charged Customer, including demand charges established herein, shall be established by ordinance of Dallas. The capital costs contributed by the Customer for delivery facilities and metering facilities shall be excluded from the rate base.

7.2 Customer understands that Dallas City Council has the right by ordinance to revise the rates charged, from time to time as needed, to cover all reasonable, actual and expected costs. Any revision of rates shall be pursuant to principles set forth in the Memorandum of Agreement attached hereto. Dallas shall give Customer a minimum of 6 months notice of intent to revise rates. Dallas will furnish Customer a draft copy of the Cost of Service Study for Proposed Rates thirty (30) days prior to Dallas submitting a rate increase request to its City Council.

7.3 Customer agrees to give Dallas a minimum of 30 days notice of intent to protest rates or any other condition of service.

7.4 Dallas agrees to render a statement of charges monthly. Payment is due upon receipt of statement. Customer agrees to pay promptly. Demand charge shall be billed monthly.

7.5 In the event a meter(s) is discovered malfunctioning, then the amount of water that has passed through the meter will be estimated for each day the meter has not functioned correctly. The last correctly measured monthly consumption will be used as a basis for mutually computing the amount of water delivered to the Customer during the time the meter has not been functioning correctly.

8.0 CURTAILMENT:

8.1 Customer agrees that if water supplies or services are curtailed within Dallas, Dallas may impose a like curtailment on deliveries to Customer. Customer will cooperate by imposing conservation measures upon its sales.

8.2 Dallas is required by federal contract to submit for approval a water conservation plan which incorporates loss reduction measures and demand management practices which insure that the available supply is used in an economically efficient and environmentally sensitive manner. Upon request, Customer will furnish a copy of its conservation plan.

8.3 To the extent Dallas imposes restrictions or grants privileges of general applicability to itself and customer cities, including rules relating to the curtailment of water delivery and availability, Dallas agrees to impose such restrictions and grant such privileges equitably and in a non-discriminatory fashion.

9.0 RIGHTS-OF-WAY AND STREET USE:

9.1 Customer agrees to furnish any rights-of-way necessary within or without Customer's boundaries for Dallas to make delivery of water as provided in Section 3 hereof, and to convey such right-of-way to Dallas as therein provided.

9.2 Customer agrees that with prior written approval of Customer, Dallas may use streets, alleys and public rights-of-way within Customer's boundaries for pipeline purposes to provide water to Customer or to other customers without charges or tolls provided that Dallas makes the necessary repairs to restore the streets, alleys or public rights-of-way used to their original condition.

9.3 Dallas agrees that, with prior written approval of Dallas, Customer may use Dallas streets, alleys and public rights-of-way, within Dallas boundaries for pipeline purposes to provide water to Customer without charges or tolls, provided Customer makes necessary repairs to restore the streets, alleys or public rights-of-way used to their original condition.

10.0 STANDARDS:

10.1 Customer shall protect Customer's storage and distribution system from cross connections under the specifications required by health standards of the State of Texas.

10.2 Customer agrees to provide air gaps for any ground storage and backflow preventers for any elevated storage.

10.3 Customer agrees to provide internal storage sufficient to meet its emergency needs and to maintain a reasonable load factor for deliveries from Dallas to Customer.

11.0 MEMORANDUM OF AGREEMENT:

The Memorandum of Agreement, attached hereto and marked Exhibit A, effective December 17, 1979, and executed by various Customer entities is incorporated herein, as if copied word for word and is made a part of this agreement. Any revision of the Memorandum of Agreement, according to its terms and not in conflict herewith,

shall automatically be incorporated and become a part of this contract.

12.0 FORCE MAJEURE, ETC.:

12.1 If, for any reason, not reasonably within the control of the party so claiming, either party hereto shall be rendered in whole or in part unable to carry out its obligations under this agreement, then that party's obligation shall be suspended during the continuance of the inability then claimed, but for no longer period. Such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

12.2 Dallas shall not be liable in damages for damage to Customer's water mains or water system resulting from the rate of flow or quantity of water delivered.

12.3 Customer hereby agrees to hold Dallas whole and harmless from any claims or damages arising as a result of the chemical or bacteriological content of water provided to the Customer, unless the damages resulting from the chemical or bacteriological content of the water are caused by the negligence of Dallas.

12.4 Customer agrees and is bound to hold Dallas whole and harmless from any act or omission of any representative, agent, customer, employee, and/or invitee of Customer.

12.5 Recognizing that Dallas' and Customer's undertakings as provided in this contract are obligations, the failure in the performance of which cannot be adequately compensated in money

Garages, Dallas and Customer agree that, in the event of any default, the other party shall have available to it the equitable remedy of specific performance in addition to other legal or equitable remedies which may be available to such party.

13.0 SPECIAL PROVISIONS:

Special provisions applicable to this contract are attached hereto and styled Exhibits B, C, and F. These Exhibits are incorporated herein, as if copied word for word. Exhibit B delineates the delivery facilities. Exhibit C contains provisions peculiarly applicable to the contract with Customer. Exhibit F provides conditions under which the contracting parties may provide reciprocal water and/or wastewater services to customers along their common boundaries and conditions under which the parties to this Contract may provide each other with temporary water and/or wastewater services.

14.0 TERM:

This contract shall remain in force and effect for a term of 30 years, from the date of execution of the contract.

15.0 VENUE:

The parties herein agree that this contract shall be enforceable in Dallas, Texas, and if legal action is necessary to enforce it, exclusive venue shall lie in Dallas County, Texas.

16.0 NO VERBAL AGREEMENT:

This contract contains all commitments and agreements of the parties hereto and no verbal or written commitments shall have any force or effect if not contained herein.

17.0 APPLICABLE LAWS:

This contract is made subject to all applicable laws of the State of Texas and the United States.

18.0 CONTRACT INTERPRETATION:

In interpreting the various provisions of this contract in a Court of Law, any said court having jurisdiction shall apply the laws of the State of Texas to interpret the terms and provisions of this contract.

19.0 CAPTIONS:

The captions to the various clauses of this contract are for informational purposes only and shall not alter the substance of the terms and conditions of this contract.

20.0 NOTICES:

Any notice required under this contract may be given to the respective parties at the following addresses by Certified Mail, postage prepaid:

Customer
City of Addison, Texas
Attn: City Manager
P. O. Box 144
Addison, Texas 75001

Dallas
City of Dallas, Texas
Attn: City Manager
City Hall
Dallas, Texas 75201

EXECUTED this the 6th day of January, 1982, by
the duly authorized officers of the City of Dallas, and the City of
Addison.

ATTEST:

CITY OF DALLAS
CITY MANAGER

Robert S. Sloan
for ROBERT S. SLOAN,
City Secretary

BY *Lee E. Holt*
Assistant City Manager

COUNTERSIGNED:

APPROVED AS TO FORM:
LEE E. HOLT, City Attorney

[Signature]
City Controller

BY *Michael Gray*
Assistant City Attorney

CITY OF ADDISON

ATTEST:

Jacqueline Sharp
City Secretary

BY *Jerry Redding*
Jerry Redding, Mayor *JR*

APPROVED AS TO FORM:

[Signature]
City Attorney

EXHIBIT A

MEMORANDUM OF AGREEMENT

1. Purpose: The purpose of this agreement is to settle current rate disputes, and to provide a basis for determining rates in the future.
2. Water System Policy: Dallas operates a water system to provide safe and reliable water supply, adequate for the current water use and future growth of Dallas and customer cities, and to avoid any substantial subsidization of any class of customers by any other class of customers.
3. Responsibilities:
 - a. Dallas is responsible for planning, financing, constructing and operating the water supply system to the extent permitted by available water revenues, for developing cost of service information to support rate changes, and for informing customer cities of changes and financial data.
 - b. Customer cities are responsible for keeping Dallas informed concerning their projected water supply needs and operating requirements, for planning and managing their system to promote water conservation and efficient system operation, and for paying rates adequate to cover costs incurred in providing service to them.
4. Rate Setting Principles (for wholesale treated water)
 - a. Revenue requirements are to be determined on utility basis, at original cost.
 - b. Dallas is to receive a rate of return on rate base equal to embedded interest rate plus 1.5%, which is agreed to be an adequate return to cover its costs and risks and as compensation for ownership and management responsibilities.
 - c. All existing and future reservoirs and associated facilities are to be included in common rate base. Customer cities as a class, shall pay their proportionate share of costs for reservoir storage, including that portion held for future use. Initially, customer cities shall cover 26% of total reservoir costs. This percentage shall be increased or decreased in direct proportion to future changes in actual usage in conjunction with periodic cost of service studies. (Dallas pays the balance.) Allocation of other costs is to be based on current use.
 - d. There will be a two part rate (volume and demand), with allocation of costs in rate design to encourage efficient operation of water system.
 - e. At the end of ten years, and each ten years thereafter, the City of Dallas or a majority of customer cities who are a party to this agreement may request a review of the above rate setting principles; and if so, the principles shall be subject to renegotiation.
5. Initial Rates and Rate Base Allocations: The initial rates accepted under this agreement are:

Rate of Flow Controller Cities - 10.42¢/1000 gal
and \$36,793/mgd

Flat Rate Cities - 43.04¢/1000 gal

Initial Rate Base Allocations shall be as follows:

Reservoirs	25.7%
Raw Water Transmission	19.4%
Purification Facilities	19.4%
Treated Water Transmission	19.4%
Distribution	2.3%
Other/Administration	14.4%

Dallas will prepare a cost of service study to support these rates and allocations, and will submit it to the customer cities to review and accept prior to submission to the Texas Water Commission.

6. Term: The term of this agreement is thirty years, and such additional periods as the parties may agree upon.
7. Approved changes: Changes in the rate setting principles or other conditions may be made by mutual agreement of all parties at any time. If any state or federal governmental agency having jurisdiction disapproves any material part of this agreement during the term, the agreement is subject to cancellation by any party.
8. Individual contracts for wholesale water service between Dallas and customer cities will be consistent with this Memorandum of Agreement. Dallas and customer cities will honor their existing water service contracts.
9. Individual Interest in Reservoir the City of Dallas will negotiate with such customer cities that desire to purchase an individual interest in the present Dallas reservoir system. This offer to negotiate shall not extend past 9/1/82.
10. Execution of this agreement by the undersigned indicate that such individuals will recommend to their respective city councils or governing boards settlement of the rate controversy on the basis set forth herein.

City of Addison

By: Charles M. [Signature]

City of Balch Springs

By: J. A. Koerner

Water Control and Improvement
District No. 6

By: Johnny M. [Signature]

City of Farmers Branch

By: _____

Flower Mound Municipal
Utility District #1

By: [Signature]

City of Grand Prairie

By: [Signature]

City of Carrollton

By: Bonnie Miller

City of Cedar Hill

By: W. W. Coft

City of Cockrell Hill

By: A. O. Sub

City of Coppell

By: Jana R. [Signature]

City of DeSoto

By: Dorothy Talley

As approved by Resolution 79-13 attached hereto.

City of Duncanville

By: M. M. [Signature]

City of Hutchins

By: Don [Signature]

City of Irving

By: Jack P. [Signature]

City of Lancaster

By: John R. Marshall City Mgr.

City of Richardson

By: Bill [Signature]

City of Seagoville

By: David B. Couch

City of Dallas

By: [Signature]

By: [Signature]

By: [Signature]

5445B/dld

Effective Date: The above Memorandum of Agreement was approved by the governing body of the parties executing same. The rates provided for therein were implemented by an ordinance passed by the Dallas City Council on December 12, 1979 and the complaints of all customers executing such agreement were dismissed by the Texas Water Commission on December 17, 1979. Such agreement therefore became effective on December 17, 1979.

EXHIBIT B

DELIVERY FACILITIES

- Description :
- A. Customer's primary delivery facility is a rate of flow controlled metering station located at 15100 Surveyor Boulevard, inside Addison's city limits. This metering station is equipped with a 12" Venturi meter and associated equipment, including telemetry equipment that is tied into Dallas' control station.
 - B. Customer has two standby services as follows:
 - 1. An 8" fire service meter located at the northeast corner of Addison and Beltline Roads inside customer's city limits. This service is fed by Dallas' 54" main located in Beltline Road right-of-way.
 - 2. A 6" fire service meter located at 4961 Westgrove Drive (northeast corner of Dallas Parkway and Westgrove), inside Dallas' city limits. This service is fed by Dallas' 16" main located in Dallas Parkway right-of-way.

Demand

- Capabilities:
- A. The 12" Venturi meter's maximum delivery capability is 4.0 MGD.
 - B. The 8" fire service meter's maximum delivery capability is 3.0 MGD.
 - C. The 6" fire service meter's maximum delivery capability is 2.5 MGD.

Payment : Customer shall pay Dallas the prevailing ordinance rate as a standby fee for the 6" and 8" meters. If the standby services should be activated the volume taken shall be billed in the following billing cycle.

Operation
and
Maintenance
of Standby
Meters

- :
- A. Dallas agrees that at least one time during the water year, both customer and Dallas will jointly operate the standby meters. Either customer or Dallas may establish the time and date for this operation.
 - B. Dallas agrees to instruct customer's personnel on operation of the standby meters and vault equipment. However, customer shall not operate the equipment without first notifying Dallas. If practical, Dallas may elect to be present at the time customer operates Dallas' equipment.
 - C. Only Dallas' personnel or agents will be permitted to perform tests and make repairs to the standby meters. Customer will be notified prior to Dallas' performing tests and repairs. Customers may witness such tests and repairs.

Anticipated
Future
Facilities

:

Addison has informed Dallas that Addison's peak demand may increase to 30 MGD in the future. At the effective date of this contract Dallas and Addison are in the process of evaluating Addison's future demands, and it is contemplated that a properly sized delivery facility will be constructed by Addison as a result of evaluating Engineering studies prepared for this purpose. Dallas' obligations to meet Addison's future demand are specified in paragraphs 1.1 and 1.2.

EXHIBIT C

SPECIAL CONTRACT CONDITIONS/AGREEMENTS

At the date of the initial contract no special conditions or agreements were required.

It is contemplated that if special conditions or agreements pertaining to this contract are required in the future, this present Exhibit C will be replaced.

EXHIBIT F

RECIPROCAL WATER AND/OR WASTEWATER SERVICE AGREEMENT

1. RECIPROCAL WATER AND/OR WASTEWATER SERVICE AGREEMENT FOR SINGLE FAMILY RESIDENCES OR DUPLEXES - WHEN SERVICING CITY HAS MAINS IN PLACE

Dallas and Addison hereby mutually agree, that when mains of the servicing city are currently in place, to provide water and/or wastewater service to customers along public streets, roadways, alleys and easements upon written request of either city to the other, provided that neither city will be required to provide such service to customers of the other city if doing so would result in a need for substantial construction or diminution of the level of service being provided to other customers of said city.

- A. Service will be provided to single family residences or duplexes situated on no more than one acre of land located immediately adjacent to the common boundary.
- B. The city providing the water and/or wastewater service contemplated hereunder shall charge the customer so served the same rates and associated charges as charged customers whose property lies within its own areas and boundaries.
- C. The customer being served will be required to pay a connection service charge to the city furnishing service. The connection service charge shall be the then current amount established by the servicing city's ordinances. If a service charge is not specified by the current ordinances for the size or type service to be provided, the service charge shall be the servicing city's actual cost for rendering the service.

2. RECIPROCAL WATER AND/OR WASTEWATER SERVICE AGREEMENT FOR: (1) SINGLE FAMILY RESIDENCES OR DUPLEXES WHERE MAINS ARE NOT IN PLACE, (2) COMMERCIAL AND INDUSTRIAL COMPLEXES, (3) RESIDENTIAL SUBDIVISIONS, APARTMENTS OR TOWNHOUSES AND OTHER MULTI-DWELLING RESIDENTIAL UNITS.

Dallas and Addison hereby mutually agree to provide temporary water and/or wastewater service to customers along public streets, roadways, alleys and easements upon written request of either city to the other, provided that neither city will be required to provide such service to customers of the other city if doing so would result in a need for substantial construction or diminution of the level of service being provided to other customers of said city.

The class of service contemplated by this paragraph 2 anticipates a temporary connection until such time as the city requesting service will have water and wastewater mains available. This category of service requires consideration on an individual case basis. Determination will be rendered upon written request being made by the city in which the potential customer is located. Nothing contained herein shall require that either city will be compelled to accept a customer classed under this paragraph 2 after a determination by the servicing city that service is not economical or otherwise not in the best interest of the servicing city.

- A. Service will be provided to the following type customers whose properties are located immediately adjacent to or in reasonable proximity of the common boundary:
- (1) Single family residences or duplexes where mains are not in place.
 - (2) Individual commercial and industrial properties containing no more than 200,000 square feet of building floor space, provided that commercial or industrial facilities in excess of 200,000 square feet consuming only nominal amounts of water or contributing only nominal amounts of wastewater may be considered as an exception to this provision.
 - (3) Specific residential subdivisions consisting of no more than 20 single family units and apartment complexes, townhouses or other types of multiple dwelling units consisting of no more than 35 single family units in the immediate area for which service is being requested.
- B. The city providing the water and/or wastewater service contemplated herein shall charge the customer so served one and one-half times the rates and associated charges charged customers whose property lies within its own areas and boundaries.
- C. As a precondition of receiving service, the customer being served may also be required to pay all or part of the costs determined to be necessary to extend service and to pay the normal service charges for the type service being offered. Applicability of costs of extending service shall be determined by the officials designated in paragraph 4.A. of this agreement. Normal service costs will be determined as contemplated by paragraph 1.C.

3. TEMPORARY RECIPROCAL SERVICES PROVIDED (1) DIRECTLY TO BORDERING CITIES AND (2) TO COMMERCIAL, INDUSTRIAL OR OTHER COMPLEXES NOT CONTEMPLATED BY PARAGRAPH 2.

When services are requested and it is determined by the city from which service is requested that the service is appropriate and can be offered without diminution of the level of service being provided to other customers of the servicing city, Dallas and Addison hereby mutually agree to provide temporary water and/or wastewater service on a reciprocal basis when (1) the service to be furnished is to be provided directly to the reciprocating city as the customer or, (2) the service to be furnished is for a commercial, industrial, or other customer not meeting the criteria for service consideration in paragraph 2.

The class of service contemplated by this paragraph 3 shall be offered at the option of the servicing city. Determination of service feasibility will be rendered upon written request being made by the city requiring service. Nothing contained herein shall require that either city will be compelled to offer service after a determination by the servicing city that service is not economical or otherwise not in the best interest of the servicing city.

Rates to be charged for this class of service shall be the rates established by ordinances of the servicing city.

The city requesting the service shall pay full cost of any extension, facilities or improvements required to make the service available. The amount of the charges shall be determined by the officials designated in paragraph 4.A. of this agreement.

4. GENERAL TERMS AND CONDITIONS

Service will be provided from mains in the public streets, roadways, alleys and easements existing along the common boundaries of Dallas and Addison under the following terms and conditions, which shall apply equally to either city:

- A. The city requiring services shall initiate the request for reciprocal services by forwarding a written request for service. The request shall be accompanied by a map which identifies the location of the proposed properties. Approval of requests for service shall be in writing and will be forwarded or approved by the following:

For the City of Dallas

Director, Dallas Water Utilities
City Hall
1500 Marilla
Dallas, Texas 75277

For the City of Addison

Director of Water Utilities
P. O. Box 144
Addison, Texas 75001

- B. Meter boxes, service lines, laterals and other facilities necessary to provide service shall, upon installation, become the property of the city furnishing service.
- C. The customer to be served will sign a contract with the city furnishing service, agreeing to abide by all the ordinances of that city which relate to the furnishing of said service.
- D. The city requesting service hereunder hereby grants to the city providing such service authorization to go upon the public streets, roadways, alleys and easements of the former city for the purpose of installing, maintaining and removing such facilities as are necessary to provide service.
- E. If at any time the city requesting service hereunder shall construct a main capable of providing water and/or wastewater service to any customer being served under the terms of this agreement, then upon request the city so providing the service shall terminate same, reserving the right to remove its meters and materials from the property previously served; provided, the customer shall have a reasonable time, not to exceed one month, to connect to the new service.
- F. In the cases where a customer receives water service from one city and wastewater service from the other, the city furnishing water service will provide the other city with monthly meter readings and water consumption information on such customers and will permit appropriate employees of the city furnishing wastewater service to read and examine the meters serving such customers to determine the accuracy of readings so furnished and to permit appropriate employees of the city furnishing wastewater service to examine water consumption records of such customers, provided that no meter shall be removed or adjusted except by the city furnishing water service.

5. CLAIMS OF LIABILITY

It is further mutually agreed by Dallas and Addison that insofar as the services contemplated hereunder are performed by either city within the jurisdiction of the other city and to that extent only, Dallas, and Addison hereby mutually agree that they will release, hold harmless and defend the other city from all claims of liability which result from damage to property (real or personal) or persons arising directly or indirectly from the performance of the services provided for hereunder.

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

SUPPLEMENTAL AGREEMENT NO. 2
TO TREATED WATER CONTRACT

THIS SUPPLEMENTAL AGREEMENT NO. 2 to that certain Contract, dated January 6, 1982 ("the Contract"), by and between the CITY OF DALLAS, TEXAS, a Texas municipal corporation, hereinafter called "Dallas", and the TOWN OF ADDISON, a Texas municipal corporation, hereinafter called "Addison", evidences the following:

1. The scope of services is hereby amended as follows:

N/A

2. The term of the Contract is revised as follows:

NO CHANGE

3. The Contract is further amended as follows:

Exhibit B to the Contract is hereby amended by deleting it and replacing it with the amended Exhibit B, attached to and made a part of this Supplemental Agreement, describing Addison's primary delivery points and standby facilities for receiving treated water from Dallas.

4. All other terms, provisions, conditions, and obligations of the Contract between Dallas and Addison shall remain in full force and effect, and said Contract, as same may have been previously amended, and this Supplemental Agreement No. 2 shall be construed together as a single contractual agreement.

EXECUTED this the 25th day of January, 1995, by Dallas, signing by and through its City Manager, duly authorized to execute same by Administrative Action No. ~~94-95-0503~~ 95-0503, approved on ~~1-25-95~~ 1-25-95, 1994, and by Addison, acting through its duly authorized officials.

APPROVED AS TO FORM:
SAM A. LINDSAY, City Attorney

CITY OF DALLAS
JOHN L. WARE, City Manager

BY Lawrence G. Salf
Assistant City Attorney
Submitted to City Attorney
LA

BY [Signature]
Assistant City Manager

APPROVED AS TO FORM:

TOWN OF ADDISON

BY [Signature]
Town Attorney

BY [Signature]
City Manager

EXHIBIT B

DELIVERY FACILITIES

Existing Facilities

1. Primary Delivery Facilities

- a. Addison receives treated water from Dallas through a Rate of Flow Controlled Metering Station located at 15130 Surveyor Boulevard, inside Addison's city limits. This metering station is equipped with a 12" venturi meter and associated equipment, including telemetry equipment that is connected to Dallas control center. The 12" venturi meter's maximum delivery capability is 4.0 MGD.
- b. Addison receives treated water from Dallas through a Rate of Flow Controlled Metering Station located at 5510 Celestial Road, inside Addison's city limits. This metering station is equipped with a 20" venturi meter and associated equipment, including telemetry equipment that is connected to Dallas control center. The 20" venturi meter's maximum delivery capability is 20.0 MGD.

2. Standby Delivery Facilities

- a. Addison can receive treated water during emergencies from Dallas through a Standby Metering Station located at the northeast corner of Addison Road and Belt Line Road, inside Addison's city limits. This metering station is equipped with an 8" FM (fire service) meter. The 8" FM meter's maximum delivery capability is 4.0 MGD.
- b. Addison can receive treated water during emergencies from Dallas through a Standby Metering Station located at the northeast corner of Dallas Parkway and Westgrove Road, inside Dallas' city limits. This metering station is equipped with a 6" FM (fire service) meter. The 6" FM meter's maximum delivery capability is 2.3 MGD.
- c. Addison can receive treated water during emergencies from Dallas through a Standby Metering Station located at 5510 Celestial Road in the street right-of-way, inside Addison's city limits. This metering station is equipped with a 10" Turbine meter. The 10" Turbine meter's maximum delivery capability is 6.3 MGD.
- d. Addison can receive treated water during emergencies from Dallas through a Standby Metering Station located near the southeast corner of Dallas Parkway and Belt Line Road, inside Addison's city limits. This metering

station is equipped with a 10" Turbine meter. The 10" Turbine meter's maximum delivery capability is 6.3 MGD.

Operation and Maintenance of Standby Meters

1. Only Dallas' personnel or agents will be permitted to perform tests and make repairs to the standby meters. Customer will be notified prior to Dallas' performing tests and repairs. Addison may witness such tests and repairs.
2. Addison shall pay Dallas the prevailing ordinance rate as a standby fee for the standby meters. If the standby services should be activated the volume taken shall be billed in the following billing cycle.

Anticipated Future Facilities

Additional delivery facilities are not anticipated within the near future.

extra

THE STATE OF TEXAS)
)
COUNTY OF DALLAS)

FIRST AMENDMENT TO A CONTRACT FOR THE SALE
OF TREATED WATER SERVICES

THIS FIRST AMENDMENT to that certain contract dated January 6, 1982, entitled Wholesale Treated Water Contract, (hereinafter called "the Original Contract"), by and between the CITY OF DALLAS and the TOWN OF ADDISON, a Texas municipal corporation.

W I T N E S S E T H :

1.

Provision 2.B. of EXHIBIT F of the Original Contract is hereby deleted and the following paragraph is substituted:

"B. The city providing the water and/or wastewater service contemplated hereunder shall charge the customer so served the same rates and associated charges as charged customers whose property lies within its own areas and boundaries."

2.

The third paragraph of Provision 3 of EXHIBIT F of the Original Contract is hereby deleted and the following paragraph is substituted:

"The city providing the water and/or wastewater service contemplated hereunder shall charge the customer so served the same rate and associated charges as charged customers whose property lies within its own areas and boundaries."

3.


All other terms, provisions, conditions, and obligations of the Original Contract between the CITY OF DALLAS and the TOWN OF ADDISON shall remain in full force and effect, and said Original Contract, as same may have previously been amended, and this First Amendment shall be construed together as a single agreement.

EXECUTED as of the 19th day of May, 1987, on behalf of the CITY OF DALLAS by its City Manager, duly authorized by City Council Resolution No. 87-1554, adopted on May 13, 1987, and approved as to form by its City Attorney; and on behalf of the


TOWN OF ADDISON by its duly appointed officials.

APPROVED AS TO FORM:
ANALESLIE MUNCY
City Attorney


BY 
Assistant City Attorney

Submitted to City Council


CITY OF DALLAS
RICHARD KNIGHT, JR.
City Manager

BY 
Assistant City Manager

APPROVED AS TO FORM:

BY 
City Attorney

TOWN OF ADDISON

BY 
City Manager

9777H

Council Agenda Item: #R10

AGENDA CAPTION:

Presentation, discussion and consideration of approval of (i) a Resolution approving an Agreement for the Operation and Management of Addison Airport between the Town and URS Engineering & Construction, Inc., formally, Washington Group International, Inc., regarding the operation and management of Addison Airport, (ii) a Resolution approving an Agreement for the Professional Real Property Asset Management and Administrative Services of Addison Airport between the Town and SAMI Management, Inc., regarding real estate management and administrative services for Addison Airport, and (iii) a Resolution acknowledging and/or approving an agreement regarding the termination of the Agreement for the Operation and Management of Addison Airport between the Town and Washington Staubach Addison Airport Venture.

FINANCIAL IMPACT:

N/A.

BACKGROUND:

The current management agreement for the operation and real estate functions for Addison Airport was awarded to Washington Staubach Addison Airport Venture in August of 2000 with an effective date of December 31, 2000 for a nine month period ending September 31, 2001 and continuing thereafter for a period of 5 years. At the end of the first five (5) years, staff exercised the option to not automatically renew, not because we were displeased with the services provided, but rather to take the opportunity to renegotiate many of the business points as well as the management fee for these services after having five years of experience in working together with the Operator.

Staff along with the assistance of former councilmember Jimmy Niemann has renegotiated two separate contracts, one for operations (URS) and one for real estate management (SAMI). Executive summaries for the existing contract and the new contracts are attached and will be presented to Council for discussion at a work session prior to being presented for Council

approval.

RECOMMENDATION:

Staff recommends Council authorize the City Manager to enter into contract with URS Engineering & Construction, Inc., for the operation and management of Addison Airport, and additionally with SAMI for the professional real property asset management and administrative services at Addison Airport. Final authorization and approval upon final review of the City Attorney, City Manager, and the ERC Review Board of URS Corporation.

COUNCIL GOALS:

Conduct the Business of the Town in a Fiscally Responsible Manner, Develop and utilize the Addison Airport as an engine to drive economic growth in the community

ATTACHMENTS:

Description:

Type:

No Attachments Available

Council Agenda Item: #R11

AGENDA CAPTION:

Presentation, discussion and consideration of approval to authorize the City Manager to execute a Construction Contract with Austin Bridge & Road, L.P., in the amount of \$4,672,112.79 with contract duration of 250 calendar days for the construction of certain public infrastructure (including two vehicular bridges, a pedestrian bridge and other public infrastructure improvements) within that area of the Town generally known as Vitruvian Park (Vitruvian Park Public Infrastructure Phase 1D).

FINANCIAL IMPACT:

Construction Contract Amount: \$4,672,112.79
Source of Funds: \$2,775,436.55 from General Obligation Bonds for Vitruvian Park \$700,000.00 from Dallas County \$1,196,676.24 from UDR, Inc.

Project Manager: Clay Barnett, P.E.

BACKGROUND:

On February 12, 2008, Council approved a Master Facilities Agreement with UDR, Inc. that provides for the Town to fund public improvements in the amount of \$39,879,336 with the First Funding being limited to \$23,290,007. This phase of construction, labeled Vitruvian Park Public Infrastructure, Phase 1D, includes the improvements for a vehicular bridge at Ponte, a vehicular bridge at Bella and a pedestrian bridge at the southern limits of the park. On February 9, 2010, Council authorized the First Amendment to the Master Facilities Agreement with UDR, Inc. that specified that \$3,630,056 of the funds is for the design and construction of Vitruvian Park Public Infrastructure, Phase 1D. The revised Exhibit C-1 approved by Council on February 9, 2010 is attached for reference. Of the \$3,630,056 specified by Council, \$445,700, including \$52,000 for Halff Associates, Inc. to be authorized by another item, has been committed to design fees. Additionally, \$186,884.51 will be allocated to inspection and testing services. Finally, \$222,034.94 is to be authorized by another item for construction management by URD, Inc.

The Town received bids on May 25, 2010. The lowest responsive

bid received was \$5,147,112.79 from Austin Bridge & Road, L.P. Included in this figure is the time component of the bid. For A+B Bidding the Time Bid along with the Base Bid are used to determine the low bidder, however only the Base Bid is awarded. The time is taken into account at the completion of the project. The contractor is either awarded or penalized \$2,500/day based on the number of days under or over the amount bid respectively. Attached is a summary of the bids received. Included in the award amount of \$4,672,112.79 is \$150,000.00 for potential change orders. The Commissioners Court of Dallas County, Texas led by Maurine Dickey of Commissioner District No. 1 has committed to contribute \$2,100,000.00 to the Vitruvian Park Project of which \$700,000.00 is for the construction of bridges and related items within the park. Court Order No. 2010 0139, which was approved on January 19, 2010, contains the commitment to fund these items. The execution of a Project Specific Agreement (PSA) with Dallas County was authorized by the Council on February 23, 2010.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

Promote Quality Transportation Services

ATTACHMENTS:

Description:

[Bid Summary](#)

[Funding 1R1](#)

[Vitruvian Allocations](#)

Type:

Backup Material

Backup Material

Backup Material

	Ed Bell Construction Co.	Earth Builders, L.P.	Rebcon, Inc.	Austin Bridge and Road, L.P.
Base Bid (A)	\$4,679,000.00	\$4,571,249.70	\$4,594,617.90	\$4,522,112.79
Time Bid (B) Days Bid x \$2,500	\$837,500.00	\$655,000.00	\$875,000.00	\$625,000.00
Total	\$5,516,500.00	\$5,226,249.70	\$5,469,617.90	\$5,147,112.79



SCALE: 1"=250'

Infrastructure Improvements

Phase 1A	\$ 428,228
Phase 1B	\$ 7,100,774
Phase 1C	\$ 9,204,467
Phase 1D	\$ 3,630,056
Phase 1E	\$ 1,451,699
Phase 2	\$ 1,474,783

TOTAL FUNDING \$23,290,007

- Phase 1A - Wastewater Improvements in Farmers Branch Creek
- Phase 1B - Paving, Drainage & Utility Improvements for Vitruvian Way
- Phase 1C - Park & Streetscape Improvements
- Phase 1D - Bridge Improvements
- Phase 1E - Vitruvian Way Realignment at Intersection of Spring Valley Road
- Phase 2 - Bella Lane from Vitruvian Way to Bridge

Phase 101:
392 Residential Units
16,000 sq ft Retail
\$67,750,000 Private Investment
Estimated Delivery January 2010

Phase 102:
352 Residential Units
10,500 sq ft Retail
17,600 sq ft Office
\$68,000,000 Private Investment
Estimated Delivery March 2012

Phase 201 (Based on 5-story Design):
422 Residential Units
\$70,000,000 Private Investment
Estimated Delivery June 2013

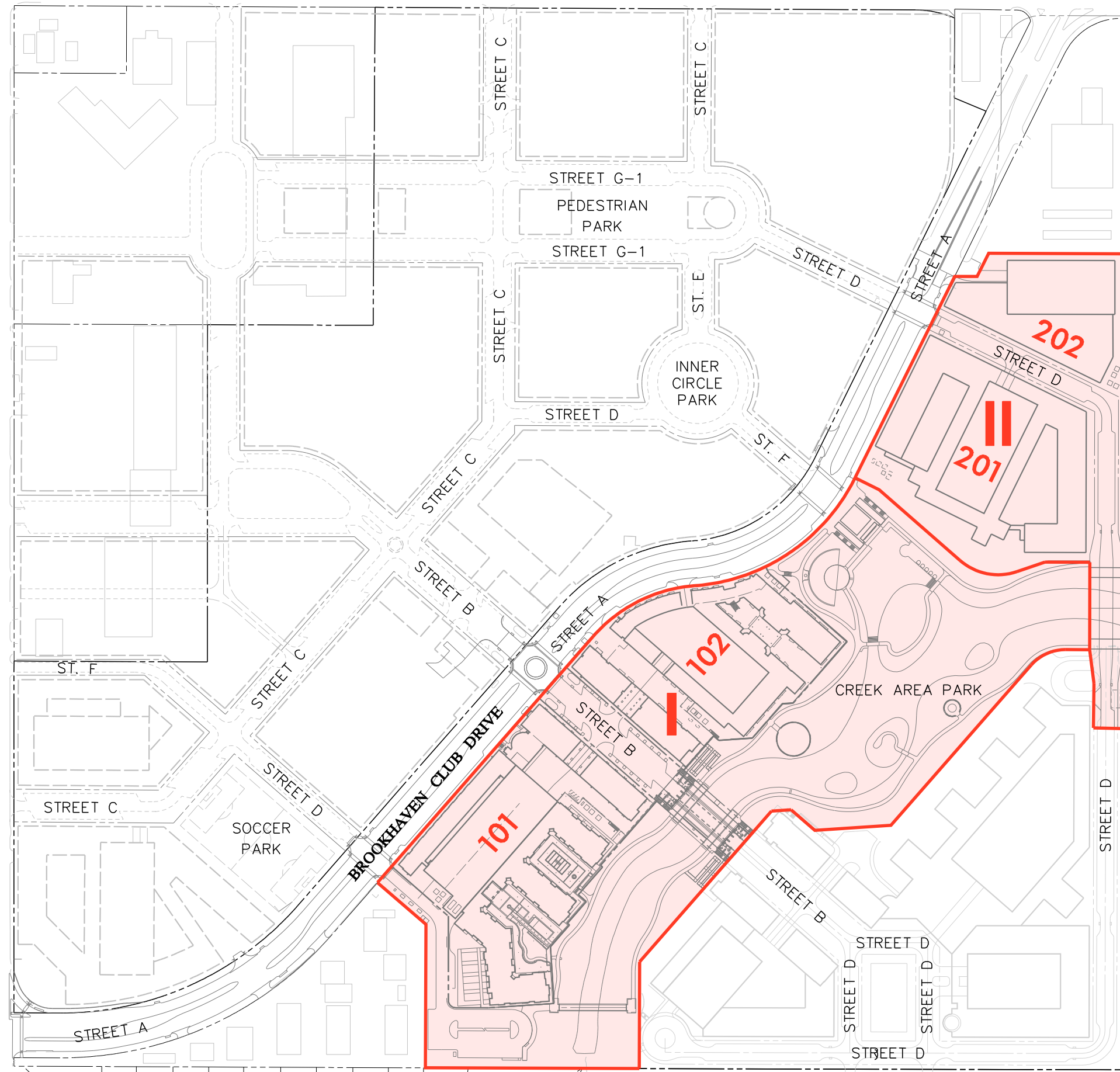
Phase 202: TBD
Total Private Development:
1166 Residential Units
26,500 sq ft Retail
17,600 sq ft Office
\$205,750,000 Private Investment

* Private Development Figures and Timing are Current Estimates and are Subject to Change Based on Design Refinement and/or Market Influence.

**REVISED
EXHIBIT "C-1"
FUNDING NO. 1**

02/05/10

MARSH LANE



Vitruvian Allocations - Funding No. 1 Revised as of February 2010

Infrastructure Improvements	Amount Allocated	Additional Funds*	Total	Amount Authorized	Amount Spent
Phase 1A - Utility improvements in creek	\$ 428,228	\$ -	\$ 428,228	\$ 428,228	\$ 428,228
Phase 1B - Paving and Utility improvements for Vitruvian Way	\$ 7,100,774	\$ 339,364	\$ 7,440,138	\$ 7,310,524	\$ 6,154,191
Phase 1C - Park & Streetscape Improvements	\$ 9,204,467	\$ 1,750,000	\$ 10,954,467	\$ 10,629,210	\$ 1,547,197
Phase 1D - Bridge Improvements	\$ 3,630,056	\$ 1,896,676	\$ 5,526,732	\$ 5,526,732	\$ 393,700
Phase 1E - Vitruvian Realignment at Spring Valley	\$ 1,451,699	\$ -	\$ 1,451,699	\$ 129,892	\$ 39,638
Phase 2 - Bella Lane	\$ 1,474,783	\$ -	\$ 1,474,783	\$ 138,075	\$ -
TOTAL	\$ 23,290,007	\$ 3,986,040	\$ 27,276,047	\$ 24,162,661	\$ 8,562,954

*Additional funds from AT&T (\$339,364), Dallas County (\$1,700,000), and UDR (\$1,946,676)

Council Agenda Item: #R13

AGENDA CAPTION:

Presentation, discussion and consideration of approval of an Assignment and Construction Services Agreement between the Town of Addison and UDR, Inc., in the amount of \$222,479.00 for and regarding the management of the construction of certain public infrastructure (including two vehicular bridges, a pedestrian bridge and other public infrastructure improvements) within that area of the Town generally known as Vitruvian Park (Vitruvian Park Public Infrastructure Phase 1D).

FINANCIAL IMPACT:

Funded established by Certificates of Obligation for Vitruvian Park (From the \$3,630,056.00 Allocated for Phase 1D by the Master Facilities Agreement, Revised Exhibit "C1"). The Project Manager is Clay Barnett, P.E.

BACKGROUND:

Included in the Master Facilities Agreement with UDR, Inc., which was approved by Council on October 9, 2007 and amended on February 9, 2010, was a provision to assign the construction management of the Vitruvian Park Infrastructure to UDR, Inc. The provision specifies that eight percent (8%) of the Town's portion of the construction cost was established for Construction Management Services. The Town's portion for Phase 1D is \$2,780,992.00. Eight percent (8%) of this figure is \$222,479.00. This provision was added to insure proper coordination between the contractor for the public infrastructure and the contractor for the private infrastructure, thus both parties will be responsible to UDR, Inc. for construction coordination. The objective was to insure that there are no delays to either party due to a lack of coordination and to insure that there is a single point of contact for all construction related activities.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

Promote Quality Transportation Services

ATTACHMENTS:

Description:

Type:

No Attachments Available

Council Agenda Item: #R14

AGENDA CAPTION:

Presentation, discussion and consideration of approval to authorize the City Manager to execute a Supplemental Agreement to the Agreement for Professional Services with Halff Associates, Inc., for an amount not to exceed \$52,000.00 for additional services related to the design of certain public infrastructure (including two (2) vehicular bridges, one (1) pedestrian bridge and other public infrastructure improvements) within that area of the Town generally known as Vitruvian Park (Vitruvian Park Public Infrastructure Phase 1D).

FINANCIAL IMPACT:

Funds established by Certificates of Obligation for Vitruvian Park (From the \$3,630,056.00 Allocated for Phase 1D by the Master Facilities Agreement, Revised Exhibit "C1"). The current design contract amount is \$370,000.00. The additional design costs are \$52,000.00. The Project Manager is Clay Barnett, P.E.

BACKGROUND:

The Agreement for Professional Services for the Vitruvian Park Phase 1 Infrastructure with Halff Associates, Inc. in the amount not to exceed \$370,000.00 was authorized by the City Council on February 23, 2010. This Supplemental Agreement includes the design of cantilever retaining walls along Bella Lane not anticipated in the original design contract. Additionally, the Supplemental Agreement includes other required construction related services such as Texas Department of Licensing and Regulation (TDLR) registration for Americans with Disabilities Act (ADA), processing change orders, reviewing shop drawings and responding to Requests for Information.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

Promote Quality Transportation Services

ATTACHMENTS:

Description:

[Supplemental Agreement from Halff Associates](#)

Type:

Backup Material



June 14, 2010
27379

Mr. Clay Barnett, P.E.
Town Engineer
Town of Addison
16801 Westgrove Drive
Addison, Texas 75001

RE: Supplementary Professional Services Fee Proposal
Additional Services for Vitruvian Park Bridges

Dear Mr. Barnett:

We are pleased to submit this proposal for Halff Associates (Halff) to provide additional design and construction administration services for the Vitruvian Park bridges. Since its inception in 1950, Halff has been committed to providing outstanding design services and professionalism to our clients. We are excited to continue being part of your team and thank you for the opportunity to submit this proposal.

Project Description

The Town of Addison (Town), in partnership with UDR Incorporated, will soon be constructing two vehicular bridges and one pedestrian bridge over Farmers Branch Creek as part of the Vitruvian Park development. The design of the three bridges was recently completed by Halff. During the course of our design, it was determined that additional retaining walls will be required along the Bella Lane right-of-way. These walls are anticipated to be concrete cantilever walls with a maximum height of approximately seven feet (7') and a combined length of roughly 110'.

Additional Services

Halff will provide the following additional design services:

- Design of cantilever retaining walls along Bella Lane right-of-way

Halff will also provide the following additional construction administration services for the bridges and retaining walls:

- TDLR Registration (as required)
- Contract Administration
 - Attend pre-construction meeting
 - Process Contractor change requests
- Submittal and Shop Drawing Review
 - Review contractor submittals and RFIs
 - Telephone consultation
 - Document submittals



Mr. Clay Barnett, P.E.
June 14, 2010
Page 2 of 3

- Construction Observation
 - Conduct site visits (12, two-man visits) to observe construction
 - Provide report of observations
 - Recommend approval or rejection of work and materials, when requested
 - Verify Contractor's monthly reports of construction progress
 - Document Contractor payment requests
 - Make recommendations to the Town regarding payments

Professional Services Fees

Halff will perform the services described as **Additional Services** above on an hourly basis at a rate of 2.3 x Payroll. We believe a budget of **\$52,000** is appropriate for these services and will not exceed that amount without prior written approval.

Execution

This document is intended to be supplementary to Exhibit A – Professional Services from Halff's Professional Design Services Fee Proposal dated February 16, 2010. In order to approve this proposal, simply provide the appropriate signatures in the spaces indicated below and return a copy of the signed document to Halff.

Schedule

Halff is ready to continue its construction administration effort immediately upon approval of this supplementary proposal.



Mr. Clay Barnett, P.E.
June 14, 2010
Page 3 of 3

Halff looks forward to the continued opportunity to serve the Town of Addison. We trust that this proposal is satisfactory in every respect and look forward to your positive response. If you need any further information or have any questions regarding this proposal, please do not hesitate to contact either Stan Caldwell or the undersigned.

Very truly yours,
HALFF ASSOCIATES, INC.

Eric S. Christiansen

Eric S. Christiansen, P.E.
Project Manager

APPROVED: TOWN OF ADDISON

Signature

Title

Printed Name

Date

ATTEST

Signature

Title

Printed Name

Date

Council Agenda Item: #R15

AGENDA CAPTION:

Presentation, discussion and consideration of approval to authorize the City Manager to execute a Professional Services Agreement with Icon Consulting Engineers, Inc., for an amount not to exceed \$138,075.00 for the design of certain public infrastructure (including Bella Lane and other public infrastructure improvements) within that area of the Town generally known as Vitruvian Park (Vitruvian Park Public Infrastructure Phase 2).

FINANCIAL IMPACT:

Funding established by Certificates of Obligation for Vitruvian Park (From the \$1,474,783.00 Allocated for Phase 2 by the Master Facilities Agreement, Revised Exhibit "C1"). The project manager is Clay Barnett, P.E.

BACKGROUND:

On February 12, 2008, Council approved a Master Facilities Agreement with UDR, Inc. that provides for the Town to fund public improvements in the amount of \$39,879,336.00 with the First Funding being limited to \$23,290,007.00. On February 9, 2010, Council authorized the First Amendment to the Master Facilities Agreement with UDR, Inc. that specified that \$1,474,783.00 of the funds is for the design and construction of Vitruvian Park Public Infrastructure, Phase 2.

Staff received the attached proposal from Icon Consulting Engineers, Inc. for the design of Bella Lane (Vitruvian Park Public Infrastructure, Phase 2). The proposed design fee is \$138,075.00 which is approximately twelve percent (12%) of the amount established for construction. Included in the \$138,075 is an estimated cost for construction phase services with a maximum amount of \$30,975. Staff will authorize the construction phase services as necessary.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

Promote Quality Transportation Services

ATTACHMENTS:

Description:

[Proposal from Icon Consulting Engineers, Inc.](#)

Type:

Backup Material

May 20, 2009

Ms. Nancy Cline, P.E.
Director of Public Works
Town of Addison
16801 Westgrove Drive
Addison, Texas 75001-9010

Re: Proposal for Professional Engineering, Surveying, Planning and Landscape Architecture Services to support Phase 2 Public Infrastructure Improvements at Vitruvian Park in the Town of Addison, Texas

Dear Ms. Cline:

Icon Consulting Engineers, Inc. appreciates the opportunity to submit this proposal to the Town of Addison for professional engineering, surveying, planning, landscape architecture and related services for the Vitruvian Park Phase 2 Public Infrastructure project.

We have prepared this proposal to facilitate the construction of Bella Lane from Vitruvian Way (formerly Brookhaven Club Drive), easterly to the current property line of the UDR tract, then southerly to the south side of Farmers Branch Creek, a total distance of approximately 1,200 feet. Design services to be provided for Bella Lane will include water, wastewater, storm drainage, paving, electric duct bank, miscellaneous conduits, landscaping and streetscape improvements. With this proposal, we are proposing to provide the following scope of services:

BASIC SCOPE OF SERVICES

1) Design Surveys

Icon will perform design surveys for the planning and design of public infrastructure improvements for Bella Lane. The route surveys for the construction of these road sections will encompass the full right-of-way width plus 50' on each side. Topographic surveys will also be provided for the proposed off-site sewer and duct bank improvements. Survey information provided will include all visible features and 1' contour elevations. A map of the results of the surveys will be prepared indicating the boundary and topographic information obtained.

2) Existing Underground Utilities Location

Icon will contact Texas One Call, or the appropriate utility locator companies, to field locate the existing underground utility lines along the proposed Bella Lane right-of-way. The location of the lines as marked will then be surveyed for design purposes.

3) Easement By Separate Instrument

The proposed work to be performed under this proposal may require the preparation of easements to be dedicated by separate instrument. For budget purposes, we have estimated two (2) easements. The following will be performed for each easement if required:

- A. Based upon the land title survey work previously performed, property descriptions and exhibits for the required easements will be prepared. The descriptions and exhibits will be prepared in accordance with the requirements of the appropriate agency.
- B. The descriptions will be submitted to the appropriate agency for preparation of the easement documents.
- C. The completed documents will be forwarded to the Town for review and signature.
- D. The signed documents will be submitted to the appropriate agency for approval and recording with the County.

4) Easement Abandonment/Vacation

This project may require the preparation of documents to abandon or vacate existing easements by separate instrument. The easements that may be required to be abandoned or vacated include water, wastewater, drainage, electric, telephone, cable, and possibly miscellaneous other franchise utilities. For budget purposes, we have estimated two (2) easements to be prepared. The following will be performed for each if required:

- A. Based upon the land title surveys previously performed for others, property descriptions and exhibits for the easements described above will be prepared. The property descriptions and exhibits will be prepared in accordance with the requirements of the appropriate agency.
- B. The descriptions and exhibits will be submitted to the appropriate agency for preparation of the abandonment or vacation document and recording with the County.

5) Preliminary Engineering

Preliminary engineering services will be performed as follows:

- A. Icon will attend meetings at the Town to ascertain development and design issues relating to the project site.
- B. Icon will meet with representatives of the franchise utility companies (electric, gas, telecommunications) regarding their ability to provide service, including the location of existing facilities, points of service to the properties, easement requirements, cost, and scheduling.

C. Icon will prepare a development schedule.

6) Water Plans

Icon will prepare Water Plans, including detailed design, drafting and specifications, for each of the following improvements in accordance with Town of Addison requirements. The plans will be reviewed with Town staff prior to submitting to the Town of Addison for processing. Icon will then provide all technical support necessary to facilitate acceptance of these plans by the Town of Addison. The plans will include the following:

- A. Water Plans: Plans will be prepared for a new 10" water line along Bella Lane. The new 10" line will extend from the intersection with Vitruvian Way to the proposed termination south of Farmers Branch Creek. Included will be water line facilities and crossings for future development phase connections, as well as any re-connections of existing services and water appurtenances that are currently in service.
- B. Water Profiles: Profiles for all 8" diameter and larger water lines will be prepared.
- C. Traffic Control and Phasing Plans: Traffic control and phasing plans along with necessary details will be prepared for the construction of the water lines.
- D. Erosion & Sediment Control Plan: The plan will be prepared in compliance with the Texas Pollutant Discharge Elimination System (TPDES) program administered by the Texas Commission on Environmental Quality (TCEQ). The plan will include erosion and sediment control measures for use during construction of the project.
- E. Construction details.

After reviewing the plans with Town staff, Icon will prepare the necessary applications and submit the Water Plans to the Town of Addison. We have included attending all required design coordination meetings with Town of Addison staff for the purpose of obtaining plan approval.

7) Wastewater Plans

Icon will prepare Wastewater Plans, including detailed design, drafting and specifications, for each of the following improvements in accordance with Town of Addison requirements. The plans will be reviewed with Town staff prior to submitting to the Town of Addison for processing. Icon will then provide all technical support necessary to facilitate acceptance of these plans by the Town of Addison. The plans will include the following:

- A. Wastewater Plan: A wastewater plan for proposed wastewater system improvements along Bella Lane will be prepared, as well as a new wastewater system to serve the future Phase Two building site (Lot 206). Temporary improvements including service connections and wastewater appurtenances will be also be designed as necessary to keep existing facilities in place during construction.

- B. Wastewater Profiles: Profiles for all wastewater lines will be prepared.
- C. Erosion & Sediment Control Plan: The plan will be prepared in compliance with the Texas Pollutant Discharge Elimination System (TPDES) program administered by the Texas Commission on Environmental Quality (TCEQ). The plan will include erosion and sediment control measures for use during construction of the project.
- D. Construction details.

After reviewing the plans with Town staff, Icon will prepare the necessary applications and submit the Wastewater Plans to the Town of Addison. We have included attending all required design coordination meetings with Town of Addison staff for the purpose of obtaining plan approval.

8) Storm Drainage System Plans

Icon will prepare Storm Drainage Plans, including detailed design, drafting and specifications, for each of the following improvements in accordance with Town of Addison requirements. The plans will be reviewed with Town staff prior to submitting to the Town of Addison for processing. Icon will then provide all technical support necessary to facilitate acceptance of these plans by the Town of Addison. The plans will include the following:

- A. Drainage Area Map and Computations: An overall site drainage area map with hydrology and hydraulic computations will be prepared. This information will be utilized solely for sizing of proposed drainage systems along proposed Bella Lane in this phase of construction.
- B. Storm Drain Plans: Storm drainage plans will be prepared for all proposed public drainage system improvements within Bella Lane right-of-way. Provisions will be included to address existing run-off as well as for proposed systems and future improvements for properties adjacent to Phase 2.
- C. Storm Drain Profiles: Profiles for all public storm drainage lines will be prepared.
- D. Traffic Control and Phasing Plans: Traffic control and phasing plans along with necessary details will be prepared for the construction of the storm drainage improvements included in this proposal.
- E. Erosion & Sediment Control Plan: The plan will be prepared in compliance with the Texas Pollutant Discharge Elimination System (TPDES) program administered by the Texas Commission on Environmental Quality (TCEQ). The plan will include erosion and sediment control measures for use during construction of the project.
- F. Construction details.

After reviewing the plans with Town staff, Icon will prepare the necessary applications and submit the Storm Drainage Plans to the Town of Addison. We have included attending all required design coordination meetings with Town of Addison staff for the purpose of obtaining plan approval.

9) Electric Duct Bank and Miscellaneous Conduit Plans

Icon will prepare plans for underground Electric Duct Bank system improvements and Miscellaneous Conduit Plans, including detailed design, drafting and specifications, for the following improvements in accordance with Oncor Electric Delivery standards and other franchise utility providers' requirements. The plans will be reviewed with Town of Addison staff prior to submitting to Oncor Electric and all other appropriate franchise utility providers for processing. Icon will then provide all technical support necessary to facilitate acceptance of these plans. The plans will include the following:

- A. Duct Bank Plans: Plans and details for the proposed underground electric duct bank system improvements and miscellaneous conduits duct bank system for installation of conduits for telecommunications, data, fiber optics, cable, irrigation, street lighting and other miscellaneous underground sleeving needs will be prepared for Bella Lane. The new duct bank system shall extend from the intersection of Bella Lane and Vitruvian Way, and continue to the south side of Farmers Branch Creek, a distance of approximately 1,200'.
- B. Duct Bank Profiles: Profiles for all underground electric duct bank system improvements and duct bank systems for the miscellaneous conduits will be prepared.
- C. Traffic Control and Phasing Plans: Traffic control and phasing plans along with necessary details will be prepared for the construction of the electric duct bank and miscellaneous conduit improvements along Bella Lane.
- D. Erosion & Sediment Control Plan: The plan will be prepared in compliance with the Texas Pollutant Discharge Elimination System (TPDES) program administered by the Texas Commission on Environmental Quality (TCEQ). The plan will include erosion and sediment control measures for use during construction of the project.
- E. Construction details.

After reviewing the plans with Town of Addison staff, Icon will prepare the necessary applications and submit the Electric Duct Bank Plans to Oncor Electric Delivery and the miscellaneous conduit plans to the appropriate franchise utility providers. We will coordinate and meet with Oncor Electric and other franchise utility providers' staff for the purpose of obtaining their approval. We have included attending all required design coordination meetings with Town of Addison staff for the purpose of obtaining plan approval.

10) Paving Plans

Icon will prepare Paving Plans, including detailed design, drafting and specifications, for each of the following improvements in accordance with Town of Addison requirements. The plans will be reviewed with Town staff prior to submitting to the Town of Addison for processing. Icon will then provide all technical support necessary to facilitate acceptance of these plans by the Town of Addison. The plans will include the following:

- A. Paving Plans: Plans for the construction of Bella Lane within the proposed Phase 2 development area (as shown on the attached Exhibit "A") will be prepared. Bella Lane will be designed as a 53' right-of-way with two lanes of traffic and parallel parking along both sides. The street section will be designed in general conformance with the details and sections included in the Planned Development conditions.
- B. Paving Profiles: Profiles for all paving improvements within Bella Lane right-of-way within the proposed Phase 2 development area (as shown on the attached Exhibit "A") will be prepared.
- C. Pavement Cross-Sections: Cross sections indicating existing and proposed elevations along all proposed street right-of-ways will be provided on maximum 100' intervals.
- D. Traffic Control and Phasing Plans: Traffic control and phasing plans along with necessary details will be prepared for the construction of the paving improvements included in this proposal.
- E. Erosion & Sediment Control Plan: The plan will be prepared in compliance with the Texas Pollutant Discharge Elimination System (TPDES) program administered by the Texas Commission on Environmental Quality (TCEQ). The plan will include erosion and sediment control measures for use during construction of the project.
- F. Construction details.

After reviewing the plans with Town of Addison staff, Icon will prepare the necessary applications and submit the Paving Plans to the Town. We have included attending all required design coordination meetings with Town of Addison staff for the purpose of obtaining plan approval.

11) Landscape/Streetscape Plans

Icon will prepare Landscape/Streetscape Plans, including detailed design, drafting and specifications, for the following improvements in accordance with Town of Addison requirements. Design shall be in general compliance with the Planned Development agreement and the conceptual design features previously presented to the Town of Addison. The plans will be reviewed with Town staff prior to submitting to the Town of Addison for processing. Icon will then provide all technical support necessary to facilitate acceptance of these plans by the Town of Addison. All plans shall be sealed by a licensed

landscape architect, irrigation designer and/or engineer. Drawings will be prepared to provide layout and construction details required to properly bid and install the following:

- A. Landscape Planting Plans including material locations, genus/species, quantity, spacing, size and varieties to be utilized on site. Details and enlargements will be prepared as necessary in order to clarify intent of layout.
- B. Irrigation Plans including location and model of all heads, valves, meters, etc. as well as size of all piping and sleeving. Details and enlargements will be prepared as necessary in order to clarify intent of layout.
- C. Drainage Plans pertaining to any planting beds or tree wells.
- D. Streetscape Plans including selection and locations of Street Furniture.
- E. Special Pavement Treatments specifying locations and providing details for brick paver areas, concrete stamping, coloring, etc. for streets and street intersections, sidewalks, cross walks, median noses, etc.

After reviewing the plans with Town of Addison staff, Icon will prepare the necessary applications and submit the Paving Plans to the Town. We have included attending all required design coordination meetings with Town of Addison staff for the purpose of obtaining plan approval.

12) Mechanical/Electrical Plans

Icon will retain Scarborough Engineering, Inc. for mechanical and electrical engineering services consisting of detailed design plans, details and specifications. All plans shall be sealed by the appropriate licensed engineer. Drawings will be prepared to provide layout and construction details required to properly bid and install the following:

- A. Street Lighting Plans including full lighting design services consisting of photo metrics, fixtures, electrical service, wiring, etc. for a complete functional street lighting system along the proposed Bella Lane alignment.
- B. Irrigation System Service including controller electrical service, wiring, etc. for a complete functional irrigation system.

After reviewing the plans with Town of Addison staff, Icon will prepare the necessary applications and submit the Mechanical/Electrical plans to the Town. We have included attending all required design coordination meetings with Town of Addison staff for the purpose of obtaining plan approval.

13) Texas Architectural Barriers Project Registration (TABPR)

The project will require plans to be reviewed in accordance with TABPR guidelines. Icon will submit the drawings for Bella Lane directly to a state licensed TABPR reviewer for review. The following will be performed:

- A. Prepare the TABPR application and obtain Town of Addison signatures for submittal.
- B. Submit the completed application, review fee, and construction drawings to the reviewer for review and approval.
- C. Coordinate with the reviewer to address comments. Once all comments have been cleared, the project will be registered with the Texas Department of Licensing and Regulations.
- D. Upon completion of construction, coordinate with the reviewer to have post construction audit performed.

14) Storm Water Pollution Prevention Plan

An Amendment to the Storm Water Pollution Prevention Plan (SWPPP) manual, previously prepared for Phase 1 construction activities, will be prepared in accordance with the Texas Pollutant Discharge Elimination System (TPDES) General Permit for Storm Water Discharges from Construction Activities. This program is administered by the Texas Commission on Environmental Quality (TCEQ).

The Amendment to the SWPPP manual will be prepared to cover the proposed phase 2 project area. It is assumed that there will be only one General Contractor with responsibility for the day-to-day operations. The General Contractor will be responsible for implementing the SWPPP and for conducting the periodic inspections for the work covered by their contracts as required by the regulations.

Preparation of the Addendum to the SWPPP manual will include the Notice of Intent's, Delegation Letters, Site Notices, MS4 Notifications and Notice of Termination's for both the Owner and the General Contractor. The Owner and General Contractor will have the responsibility to certify the SWPPP, sign and submit the NOI's and Delegation Letters and post the Site Notice and NOI's.

15) Construction Phase Services

Construction phase services will be performed for the following:

- A. Prepare bid proposal forms for Infrastructure Improvements relating to the Bella Lane road extension as shown in attached Exhibit "A". Included will be water, wastewater, storm drainage, electric duct bank, miscellaneous conduits, grading, paving, street

lighting, landscaping and streetscape improvements. It is anticipated that the infrastructure improvements will be bid as one bid package.

- B. Prepare bid proposal documents and submit to Town of Addison for distribution to contractors for each bid package.
- C. Attend the pre-bid meeting.
- D. Respond to contractor questions during the bidding process.
- E. Attend the pre-construction conference.
- F. Review request for information (RFI), shop drawings, material submittals, and change orders related to the work.
- G. Provide periodic on-site construction observation of the infrastructure improvements, park improvements and related work. For budgeting purposes, we have estimated fifteen (10) hours per week for sixteen (16) weeks.
- H. When the construction has been completed, perform a final review (in conjunction with Town of Addison staff) of the infrastructure improvements, park improvements and related work, and provide the contractors with a punch list.
- I. Once the punch list is completed, perform a final review of completed improvements in conjunction with Town of Addison staff to verify all punch list items have been completed.

16) Record Drawings

Upon completion of construction of the infrastructure improvements for the project, Icon will prepare one set of mylar record drawings and electronic files in CAD and PDF formats for the Town of Addison based on marked-up plans to be provided by each of the contractors.

COMPENSATION

Icon Consulting Engineers, Inc. proposes to provide the Basic Scope of Services as described above on a joint lump sum/hourly fee “not-to-exceed” basis as follows:

- 1) **Design Surveys** – Icon will perform the services as described for a lump sum fee of **\$8,650**.
- 2) **Existing Underground Utilities Location** - Icon will perform the services as described for a lump sum fee of **\$850**.

- 3) **Easement By Separate Instrument** – Icon will perform the services as described for a not-to-exceed fee of **\$1,700** based on a maximum of two easements at \$850 per each separate instrument document prepared.
- 4) **Easement Abandonment /Vacation** – Icon will perform the services as described for a not-to-exceed fee of **\$1,700** based on a maximum of two easements at \$850 per each separate instrument document prepared.
- 5) **Preliminary Engineering** - Icon will perform the services as described for a lump sum fee of **\$3,250**.
- 6) **Water Plans** - Icon will perform the services as described for a lump sum fee of **\$8,800**.
- 7) **Wastewater Plans** - Icon will perform the services as described for a lump sum fee of **\$7,400**.
- 8) **Storm Drainage System Plans** - Icon will perform the services as described for a lump sum fee of **\$9,750**.
- 9) **Electric Duct Bank and Misc. Conduit Plans** - Icon will perform the services as described for a lump sum fee of **\$11,650**.
- 10) **Paving Plans** - Icon will perform the services as described for a lump sum fee of **\$17,925**.
- 11) **Landscape/Streetscape Plans** – Services as described will be performed for a lump sum fee of **\$9,500**.
- 12) **Mechanical/Electrical Plans** – Services as described will be performed for a lump sum fee of **\$8,750**.
- 13) **Texas Architectural Barriers Project Registration (TABPR)** – Icon will perform the services as described for a lump sum fee of **\$3,500**.
- 14) **Storm Water Pollution Prevention Plan** – Icon will perform the services as described for a lump sum fee of **\$4,000**.
- 15) **Construction Phase Services** – Icon will perform the services as described on an hourly fee basis at our standard hourly rates with a not-to-exceed fee of **\$30,975**.
- 16) **Record Drawings** - Icon will perform the services as described on an hourly fee basis at our standard hourly rates with a not-to-exceed fee of **\$4,500**.

Please note that the above fees are based on a smooth project implementation and have assumed no major changes to the scope of services. Fees shown for the hourly basis elements are for budgeting purposes only and invoices will reflect the actual time incurred, up to the not-to-exceed fee shown. Should work outside the above scope of services be required, a separate

proposal will be submitted to the Town of Addison for approval prior to our beginning the additional services.

REIMBURSABLE EXPENSES

Reimbursable expenses consisting of in-house reproduction charges and auto travel will be billed as a direct expense at our attached established rates. Reimbursable expenses consisting of courier services and outside reproduction charges will be billed as a direct expense at cost plus fifteen (15%) percent. Plan submittal and review fees, permit, filing and other agency fees shall be the responsibility of others, and if paid by Icon, will be billed as a direct expense at cost plus ten (10%) percent. We have budgeted the amount of **\$5,175** for reimbursable expenses. This amount will not be exceeded without prior approval from the Town of Addison.

SPECIAL SERVICES

We have made our best effort to prepare a thorough and complete proposal to successfully complete this project. However, there may be additional or special services that we are not currently aware of that are required or that the Town of Addison may desire that we provide. These services may add time and cost to the ultimate schedule and budget for the project. Should such a situation occur, a separate proposal will be submitted to the Town of Addison for approval prior to our beginning these services. The following is a partial list of services not considered to be a part of the Basic Scope of Services outlined in this proposal, but are services that can be provided if requested by the Town of Addison:

- Design of off-site improvements not specifically included in the proposal.
- Hydraulic analysis of existing water and wastewater systems.
- Structural engineering design services.
- Geotechnical and environmental studies.
- Preparation of opinion of probable construction cost.
- Site graphics and Signage.
- Presentation models and professional renderings.
- Construction phase services, including, but not limited to, the following:
 - Construction staking.
 - Full-time resident project representative.
- Revisions required due to amendments/changes in regulatory criteria (i.e., zoning and subdivision ordinances, design criteria, results of legislation, court decisions, etc.) adopted after the date of the proposal, which becomes effective retroactive prior to the date of the proposal.

We at Icon Consulting Engineers, Inc. appreciate the opportunity to provide you with this proposal for professional engineering, surveying, planning, landscape architecture and related services for this project, and are very excited regarding the possibility of working with you.

Once again, thank you for this opportunity. Please do not hesitate to call if you have any questions or if we may provide additional information.

Sincerely,

Icon Consulting Engineers, Inc.



Bruce F. Dunne, P.E.
President

BFD/kcd
F:\5029-01\10-5-20 Vitruvian Proposal Phase 2.doc

Council Agenda Item: #R16

AGENDA CAPTION:

Presentation, discussion and consideration of the approval of the Advance Funding Agreement for Project Using Funds Held in the State Highway 121 Subaccount for Traffic Signal improvements with the State of Texas, acting by and through the Texas Department of Transportation to provide funds in the amount of \$381,223.00 to the Traffic Signal Upgrade project (CSJ #918-45-667).

FINANCIAL IMPACT:

The Town has previously budgeted to receive these funds. They were previously managed by TxDOT and will now be monitored by NCTCOG.

Project Manager: Nancy Straub Cline, P.E.

BACKGROUND:

The Town of Addison is in the final stages of completing the installation of an Advanced Traffic Management System (ATMS) which allows the Town to monitor and maintain the traffic signal system from the Town's Service Center on a day to day basis, improving traffic flow and minimizing congestion throughout the Town. The system also allows the Town to monitor the signals remotely, improving response time to service calls. Communications for the ATMS is provided through a high bandwidth broadband wireless radio network. In addition to the installation of the ATMS, many of the 34 signalized intersections in the town received new signal controllers, signal cabinets, video detection systems, and communications hardware. The Town also replaced the remaining incandescent traffic signal light bulbs (40 percent) with LED bulbs, resulting in reduced energy usage and cost savings. More than 65 percent of the funding for these projects is provided by Dallas County and grant monies allocated by NCTCOG. The attached Advanced Funding Agreement provides for funds for the project of \$381,223.00 in funds from the State Highway 121 Subaccount.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

Promote Quality Transportation Services

ATTACHMENTS:

Description:

[Advanced Funding Agreement](#)

Type:

Backup Material

June 7, 2010

CSJ: 0918-45-667
Traffic Control System
Dallas County

Ms. Nancy Cline, P.E.
Director of Public Works
Town of Addison
PO Box 9010
Addison, TX 75001-9010

Dear Ms. Cline:

We are forwarding two (2) original Advance Funding Agreements for Projects Using Funds Held in the State Highway 121 Subaccount for Furnishing and Installing Traffic Signal Equipment for Advanced Transportation Management System for your review and approval.

This is a separate agreement from the first Advance Funding Agreement in that the State reimbursed funds expended through invoice because federal funds were being disbursed. This agreement should fund the remainder of the project with Regional Transportation Revenue funds that you requested for this project with a check that will be provided to you for the \$381,223.00. Please note that this project will now be monitored by NCTCOG.

If you have any questions, please contact me at 214-320-6229.

Sincerely,

Melanie B. Young, P.E.
District Transportation Operations Engineer

Attachment

AMG
NCTCOG –Christie Jestis
CC:Young/Green
Saghian/Davis
TF

STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT
FOR PROJECT USING FUNDS HELD IN THE
STATE HIGHWAY 121 SUBACCOUNT—
Traffic Signal Improvements
For an Advanced Transportation Management System
Off-System Project**

THIS AGREEMENT (the Agreement) is between the State of Texas, acting by and through the Texas Department of Transportation (the State), and the Town of Addison (Local Government), collectively, the "Parties."

WITNESSETH

WHEREAS, the State has received money from the North Texas Tollway Authority for the right to develop, finance, design, construct, operate, and maintain the SH 121 toll project from Business SH 121 in Denton County to US 75 in Collin County ("SH 121 payments"); and

WHEREAS, pursuant to Transportation Code, 228.006 the State shall authorize the use of surplus revenue of a toll project for a transportation project, highway project, or air quality project within the district of the Texas Department of Transportation in which any part of the toll project is located; pursuant to Transportation Code, §228.012 the State has created a separate subaccount in the state highway fund to hold such money (SH 121 Subaccount), and the State shall hold such money in trust for the benefit of the region in which a project is located, and may assign the responsibility for allocating money in the subaccount to a metropolitan planning organization (MPO); and

WHEREAS, in Minute Order 110727, dated October 26, 2006, the Texas Transportation Commission (the "Commission") approved a memorandum of understanding (MOU) with the Regional Transportation Council (RTC), which is the transportation policy council of the North Central Texas Council of Governments (NCTCOG) and a federally designated MPO, concerning in part the administration, sharing, and use of surplus toll revenue in the region; under the MOU the RTC shall select projects to be financed using surplus revenue from a toll project, subject to Commission concurrence; and

WHEREAS, the Local Government has requested money from the SH 121 Subaccount for: traffic improvements in the Town of Addison (Project); the RTC has selected the Project to be funded from the SH 121 Subaccount; and the Commission concurred in the selection and authorized the expenditure of money Minute Order No. 111439, dated July 31, 2008;

WHEREAS, the Local Government is a political subdivision and governmental entity by statutory definition; and

WHEREAS, Government Code, Chapter 791, and Transportation Code, §201.209 authorize the State to contract with municipalities and political subdivisions to perform governmental functions and services; and

WHEREAS, NCTCOG and the RTC should have authority to assist the Local Government's implementation of financial reporting and environmental review related to a transportation project funded by the State using money from the SH 121 Subaccount.

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

Article 1. Time Period Covered

This Agreement becomes effective when signed by the last party whose signing makes the agreement fully executed, and the State and the Local Government will consider it to be in full force and effect until the Project described herein has been completed and accepted by all parties or unless terminated, as hereinafter provided.

Article 2. Project Funding

The State will pay money to the Local Government from the SH 121 Subaccount in the amounts specified in Attachment A, Payment Provision and Work Responsibilities. Except as provided in the next succeeding sentence, the payments will begin no later than upon the later of the following: (1) fifteen days after the Legislative Budget Board and the Governor each approve the expenditure, in accordance with Rider 25 of the Texas Department of Transportation bill pattern in Senate Bill 1, 80th Legislature; and (2) thirty days after execution of this Agreement. If Attachment A shows that the RTC has allocated payments to the Local Government for a certain expenditure (e.g. construction) for the Project in a certain fiscal year, then the State will make the payment from the SH 121 Subaccount to the Local Government for such expenditure no later than 30 days after the beginning of the designated Fiscal Year. A Fiscal Year begins on September 1 (for example, the 2009 Fiscal Year began September 1, 2008).

Article 3. Separate Account; Interest

All funds paid to the Local Government shall be deposited into a separate account, and interest earned on the funds shall be kept in the account. Interest earned may be used only for the purposes specified in Attachment A, Payment Provision and Work Responsibilities, and only after obtaining the written approval of the RTC. The Local Government's use of interest earned will not count towards the 20 percent local match requirement set forth in this Agreement.

Article 4. Shortfalls in Funding

The Local Government shall apply all funds to the scope of work of the Projects described in Attachment A, Payment Provisions and Work Responsibilities, and to none other. All cost overruns are the responsibility of the Local Government. However, should the funds be insufficient to complete the work contemplated by the Project, the Local Government may make further request to the RTC and the State for additional funds from the SH 121 Subaccount. Funds may be increased only through an amendment of this Agreement. If the SH 121 Subaccount does not contain sufficient funds to cover the balance necessary

to complete the Project, or if the RTC or the Commission decline the request for any other reason, then the Local Government shall be responsible for any shortfall.

Article 5. Return of Project Funding

The Local Government shall reimburse the State for any funds paid under this Agreement that are not expended in accordance with the requirements of this Agreement. Upon completion of the Project, the Local Government will issue a signed "Notification of Completion" document to the State acknowledging the Project's completion. If at Project's end, or upon termination of this Agreement, excess SH 121 Subaccount funds exist, including interest earned, such funds shall be returned to the State within 30 days. Except for funds the Local Government has already expended in accordance with the Agreement, the Local Government shall return to the State the funds paid under this Agreement together with any interest earned on the funds if the Project is not completed within 10 years of execution of the Agreement.

Article 6. Local Match

The Local Government shall be responsible for the required 20 percent local match as described in Attachment A, Payment Provisions and Work Responsibilities. The costs incurred by the Local Government prior to the execution of this Agreement will count towards the 20 percent local match requirement provided such costs are for RTC-approved phases as shown in Attachment A. At the end of each Fiscal Year the Local Government's cumulative expenditures of local match funds must be no less than 20 percent of the cumulative SH 121 Funds received by the Local Government up to that date under the Agreement, and must be for the uses approved for payments of SH 121 Funds up to that date as specified in Attachment A, Payment Provision and Work Responsibilities.

Article 7. Procurement and Contracting Process

The State may review the Local Government's procurement of professional services for engineering, surveying, and right of way acquisition, letting of construction contracts, and conduct of construction management and inspection. The Local Government shall certify compliance with state law and regulations, and with local laws, regulations, rules, policies, and procedures. The Local Government shall maintain a copy of the certification in the Project's files.

Article 8. Design Standards and Construction Specifications

The Local Government shall implement the Project using the Local Government's established design standards, construction specifications, procurement processes, and construction management and inspection procedures.

Article 9. Right of Way

Except for right of way owned by the State or to be acquired by the State according to the plans of the Project as approved by the State, the Local Government shall acquire all necessary right of way needed for the Project. Right of way acquisition is an eligible cost

for reimbursement provided such cost is an RTC-approved phase as shown in Attachment A.

Article 10. Utilities

The Local Government shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with State laws and regulations and local laws, regulations, rules, policies, and procedures applicable to the Local Government. The Local Government must obtain advance approval for any variance from established procedures. The RTC-approved costs for utilities as shown in Attachment A, if any, shall be used to adjust, remove, or relocate utility facilities only to the extent the utility has a property right as shown in a recorded deed or easement.

Article 11. Compliance with Laws; Environmental Review and Public Involvement

Each Party shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative bodies or tribunals affecting the performance of this Agreement as applicable to it. When required, the Local Government shall furnish the State with satisfactory proof of compliance. As provided in 43 T.A.C. Section 2.1(b)(3), the department's environmental review requirements do not apply to the Project because the department is funding the Project solely with money held in a project subaccount created under Transportation Code, Section 228.012. However, the local government shall ensure that the Project complies with all environmental review and public involvement requirements applicable to the Local Government under state and federal law in connection with the Project. The Local Government shall obtain the opinion of legal counsel showing the Local Government's environmental review and public involvement for the Project to comply with state law and regulations, and with local laws, regulations, rules, policies, and procedures applicable to the Local Government. The Local Government shall maintain a copy of the certification in the project files.

Article 12. Compliance with Texas Accessibility Standards and ADA

The Local Government shall ensure that the plans for and the construction of the Project is in compliance with the Texas Accessibility Standards (TAS) issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, Article 9102, Texas Civil Statutes. The TAS establishes minimum accessibility requirements to be consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336).

Article 13. Work Outside the Project Site

The Local Government shall provide both the necessary right of way and any other property interests needed for the Project.

Article 14. Insurance

If this agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be

maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

Article 15. Audit

Within 120 days of completion of the Project, the Local Government shall perform an audit of the costs of the Project. Any funds due to the State will be promptly paid by the Local Government.

Article 16. Maintenance

The Local Government shall be responsible for maintenance of the Project.

Article 17. Responsibilities of the Parties

- a. The State and the Local Government agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds, as well as the acts and deeds of its contractors, employees, representatives, and agents.
- b. To the extent permitted by law, the Local Government agrees to indemnify and save harmless the State, its agents and employees from all suits, actions or claims and from all liability and damages resulting from any and all injuries or damages sustained by any person or property in consequence of any neglect, error, or omission in the performance of the design, construction, maintenance or operation of the Project by the Local Government, its contractor(s), subcontractor(s), agents and employees, and from any claims or amounts arising or recovered under the "Workers' Compensation laws"; the Texas Tort Claims Act, Chapter 101, Texas Civil Practice and Remedies Code; or any other applicable laws or regulations, all as from time to time may be amended.
- c. The Parties expressly agree that the Project is not a joint venture or enterprise. However, if a court should find that the Parties are engaged in a joint venture or enterprise, then the Local Government, to the extent provided by law, agrees to pay any liability adjudicated against the State for acts and deeds of the Local Government, its employees or agents during the performance of the Project.
- d. To the extent provided by law, the Local Government shall also indemnify and save harmless the State from any and all expense, including, but not limited to, attorney's fees which may be incurred by the State in litigation or otherwise resisting said claim or liabilities which may be imposed on the State as a result of such activities by the Local Government, its agents, or employees.

Article 18. Notices

All notices to either party by the other required under this Agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid or sent by electronic mail, (electronic notice being permitted to the extent permitted by law but only after a separate written consent of the parties), addressed to such party at the following addresses:

Local Government:	State:
Town of Addison Attn: Public Works Director PO Box 9010 Addison, TX 75001-9010	Texas Department of Transportation Attn: District Engineer 4777 E. Highway 80 Mesquite, Texas 75150

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that such notices shall be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

Article 19. Right of Access

If the Local Government is the owner or otherwise controls access to any part of site of the Project, the Local Government shall permit the State or its authorized representative access to the site to perform any activities authorized in this Agreement.

Article 20. Project Documents

Upon completion or termination of this Agreement, all documents prepared by the State shall remain the property of the State. All data prepared under this Agreement by the Local Government shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State in the form of photocopy reproduction as required by the State. The originals shall remain the property of the Local Government. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

Article 21. Inspection of Books and Records

The Local Government shall keep a complete and accurate record to document the performance of the work on the Project and to expedite any audit that might be conducted. The Local Government shall maintain records sufficient to document that funds provided under the Agreement were expended only for eligible costs that were incurred in accordance with all applicable state and local laws, rules, policies, and procedures, and in accordance with all applicable provisions of this Agreement. The Local Government shall maintain all books, documents, papers, accounting records and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State for review and inspection during the contract period and for four (4) years from the date of completion of work defined under this Agreement or until any pending litigation or claims are resolved, whichever is later. Additionally, the State shall have access to all governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

Article 22. NCTCOG

Acceptance of funds directly under the Agreement or indirectly through a subcontract

under the Agreement acts as acceptance of the authority of NCTCOG and RTC to assist the Local Government's implementation of financial reporting and environmental review concerning the Project. The Local Government shall provide to NCTCOG on a monthly basis a report of expenses, including the Local Government's expenditure of local match funds. The report shall list separately the expenditures by Project's phase as shown in Attachment A, including but not limited to engineering, environmental review, right of way acquisition, and construction. The report shall also describe interest earned on money from the SH 121 Subaccount, including the interest rate, interest earned during the month, and cumulative interest earned. The report shall further describe the status of developing the Project. Not less than 60 days before the environmental review document is submitted to the governing body of the Local Government for final approval, the Local Government shall submit the document to NCTCOG for review and comment. NCTCOG may provide the Local Government technical assistance on the environmental review of the Project as mutually agreed between NCTCOG and the Local Government.

Article 23. State Auditor

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

Article 24. Amendments

By mutual written consent of the Parties, this contract may be amended prior to its expiration.

Article 25. Termination

The Agreement may be terminated in the following manner:

- by mutual written agreement and consent of both parties;
- by either party upon the failure of the other party to fulfill the obligations set forth herein, after a 45 day period to cure after receiving written notice of non-compliance;
- by the State if the Local Government does not let the construction contract for the Project within one year after the State first provides 121 Funds for construction as shown in Attachment A, Payment Provision and Work Responsibilities;
- by the State if the Local Government does not complete the Project within ten years after the effective date of the Agreement;

Article 26. Work by Debarred Person

The Local Government shall not contract with any person that is suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal agency or that is debarred or suspended by the State.

Article 27. Sole Agreement

The Agreement constitutes the sole and only agreement between the parties and

supersedes any prior understandings or written or oral agreements respecting the Agreement's subject matter.

Article 28. Successors and Assigns

The State and the Local Government each binds itself, its successors, executors, assigns, and administrators to the other party to this agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this agreement. The Local Government may assign its interests under the Agreement only with the written approval of the State.

Article 29. Remedies

The Agreement shall not be considered as specifying an exclusive remedy for a breach of the Agreement. All remedies existing at law or in equity are available to either Party and are cumulative.

Article 30. Legal Construction

If a provision of the Agreement shall be held invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provision, and the Agreement shall be construed as if it did not contain the invalid, illegal or unenforceable provision.

Article 31. Signatory Warranty

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party they represent.

IN WITNESS WHEREOF, THE STATE AND THE LOCAL GOVERNMENT have executed duplicate counterparts to effectuate this Agreement.

THE STATE OF TEXAS

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

By _____ Date _____
Janice Mullenix
Director, Contract Services Section, General Services Division

THE LOCAL GOVERNMENT

Town of Addison

By _____ Date _____
[NAME]
[TITLE]

ATTACHMENT A

Payment Provision and Work Responsibilities

For CSJ# 0918-45-667, the State will pay \$381,223.00 from the SH 121 Subaccount for the traffic signal improvements as shown in Attachment B within the Town of Addison.

In accordance with the allocation of funds approved by the RTC, and concurred with by the Texas Transportation Commission, the State will make the payments for the following work in the following Fiscal Years:

Fiscal Year	Expenditure					
	Preliminary Engineering		Right of Way Acquisition		Utilities	Construction
2010	\$0.00		\$0.00		\$0.00	\$381,223.00

The Local Government shall pay a required local match of \$76,244.60.

Upon completion of the Project, the Local Government will issue a signed "Notification of Completion" document to the State. The notice shall certify that the Project has been completed, all necessary inspections have been conducted, and the Project is open to traffic.

ATTACHMENT B

"Off State Highway System Intersections"

- 1) Beltline at Marsh
- 2) Beltline at Business
- 3) Beltline at Commercial
- 4) Beltline at Surveyor
- 5) Beltline at Runyon
- 6) Beltline at Midway
- 7) Beltline at Beltway
- 8) Beltline at Addison
- 9) Beltline at Quorum
- 10) Beltline at Spring Valley
- 11) Midway at Hornet
- 12) Midway at Proton
- 13) Midway at Lindberg
- 14) Midway at Dooley
- 15) Addison at Arapaho
- 16) Addison at Lindberg
- 17) Addison at Airport
- 18) Addison at Keller Springs
- 19) Addison at Westgrove
- 20) Addison at Sojourn
- 21) Quorum at Westgrove
- 22) Quorum at Keller Springs
- 23) Quorum at Airport
- 24) Quorum at Arapaho
- 25) Quorum at Edwin Lewis
- 26) Marsh at Realty (Arapaho)
- 27) Spring Valley at Greenhill
- 28) Arapaho at Edwin Lewis
- 29) Westgrove at Sojourn
- 30) Landmark Place at Landmark
- 31) Arapaho at Spectrum
- 32) Arapaho at Surveyor
- 33) Inwood at Landmark Place
- 34) Marsh at Target Driveway (South of Beltline)

Council Agenda Item: #R17

AGENDA CAPTION:

Presentation, discussion and consideration of approval authorizing the City Manager to complete a grant agreement for Distributed Renewable Energy Technology Program funding made available through the American Recovery and Reinvestment Act of 2009 (ARRA), funded through the US Department of Energy (DOE), being allocated by the Texas Comptroller of Public Accounts, State Energy Conservation Office (SECO).

FINANCIAL IMPACT:

The State Energy Conservation Office is proposing to provide grant funds to reimburse actual costs for a feasibility/environmental study not to exceed \$100,000. The Project Manager for the Elevated Storage Tank is Nancy S. Cline, P.E.

BACKGROUND:

The federal State Energy Program (SEP) provides federal grants to states and directs funding to state energy offices from technology programs in the U.S. Department of Energy's Office of Energy Efficiency and Renewable Energy. States use the grants to promote energy conservation and efficiency and reduce energy demand by developing and implementing comprehensive State energy conservation plans. Funds for Texas have been allocated through the Department of Energy to SECO. The Texas SEP contains several project components, one of which is the Distributed Renewable Energy Technology Program (Program). The purpose of the Program is to, among other things, increase the amount of installed renewable energy in Texas, to further develop Texas' renewable energy potential, and to advance the market for renewable technologies. Those technologies must abide by the SEP definition of renewable energy (non-depletable source of energy) and includes biomass, geothermal, solar, water (hydro) and wind.

Pursuant to the Program, the Comptroller published a Notice of Availability and Request for Applications for ARRA grant funding (RFA) to make competitive awards of grants. The Town of Addison has requested funds totaling \$472,400 for the installation of wind turbines in conjunction with the construction of the new elevated

storage tank. The Town of Addison is eligible to receive an award of ARRA grant funding as a result of the RFA process in order to complete the submittal of a feasibility study and environmental assessment. The environmental study will include FAA Clearance, an Avian Study, Fish and Wildlife clearance and clearance from the local utility. Once the requested materials are completed and submitted, the State Energy Conservation Office will complete the determination of funds that will be allocated to fund the proposed wind turbines. Once the study is completed and submitted, the State Energy Conservation Office will re-evaluate and determine the funds that may be allocated for the proposed wind turbines project.

A copy of the form of agreement regarding the grant from the Comptroller's office, entitled "Comptroller of Public Accounts Grant Agreement [ARRA]," is attached.

RECOMMENDATION:

Staff recommends Council authorize the City Manager to complete the grant agreement for the Distributed Renewable Energy Technology Program funding made available through the American Recovery and Reinvestment Act of 2009, funded through the US Department of Energy, being allocated by the State Energy Conservation office to fund a study in an amount not to exceed \$100,000, subject to the City Manager's and City Attorney's approval.

COUNCIL GOALS:

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

ATTACHMENTS:

Description:

[Distributed Renewable Energy Grant Study Agreement - RFA No. RE-AG1-2010](#)

Type:

Cover Memo

COMPTROLLER OF PUBLIC ACCOUNTS GRANT AGREEMENT [ARRA]

FOR

Distributed Renewable Energy Technology Program

STATE OF TEXAS

COUNTY OF TRAVIS

Recitals

Whereas, the United States Congress enacted and the President signed the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (2009) (ARRA) to promote economic recovery, investment and creation of new jobs and opportunities for all Americans including Texans in the form of stimulus grant funds for projects that meet the requirements of both ARRA and Comptroller's SECO programs, funded through the United States Department of Energy (DOE); and

Whereas, the Comptroller of Public Accounts (Comptroller) Stimulus Program (the "Program") has applied for and the Comptroller has been awarded ARRA funds to support the Comptroller's State Energy Program for energy efficiency, renewable energy, energy assurances and other initiatives, which are managed by the State Energy Conservation Office (SECO); and

Whereas, Chapters 403, 447, and 2305, Texas Government Code; 42 U.S.C. §§ 6321, *et seq.*, and the Act, P.L. 111-5, (2009), authorize the Comptroller and SECO to consider applications for and award ARRA stimulus funds to local governments, municipalities, and other governmental organizations to fund approved grant-funded projects and activities; and

Whereas, the Comptroller published a Notice of Availability and Request for Applications (RFA) for ARRA grant funding in order to make competitive awards of grants; and

Whereas, the Town of Addison is eligible to receive an award of ARRA grant funding as a result of the RFA process to be utilized for purposes authorized by ARRA; and

Whereas, the Comptroller wishes to award ARRA grant funding to the Town of Addison (Subrecipient) and the Comptroller and Subrecipient wish to enter into this Grant Agreement (the "Agreement"); and

Whereas, under this Agreement, Subrecipient shall fully comply with all terms, conditions, requirements, and other requirements of the Program and this Grant Agreement, including those set forth in the Attachments attached to and incorporated in this Agreement; and

Whereas, in consideration of Subrecipient's compliance with all eligibility and other requirements of the Program and this Agreement, Comptroller agrees to award ARRA funds to Subrecipient on a cost reimbursement basis in an amount not to exceed **\$100,000.00**; and

Whereas, the foregoing grant amount shall be utilized by Subrecipient solely for the purposes of the Program and Comptroller's requirements regarding same, in addition to requirements as may be provided by Comptroller throughout the term of this Agreement.

Now, therefore, in consideration of all of the foregoing, the parties hereby agree as follows:

I. Parties

This Agreement is made and entered into by the following parties:

Comptroller: **Comptroller of Public Accounts,
LBJ State Office Building
111 E. 17th Street
Austin, Texas 78774**

Subrecipient: **Town of Addison
16801 Westgrove
Addison, Texas 75001**

II. Authority

This Grant Agreement (Agreement) is entered into pursuant to Chapters 403, 447, and 2305, Texas Government Code; 42 U.S.C. §§6321, *et seq*, and the American Recovery and Reinvestment Act of 2009, P.L. 111-5 (2009) (ARRA). Funding of this grant is provided by the Comptroller of Public Accounts via the United States Department of Energy (DOE).

III. Services

Subrecipient shall utilize the grant funds solely for the purposes authorized by the Comptroller and the Program and shall maintain full compliance with all terms and conditions described in the Grant Application and all Attachments to this Agreement, in Section X, below which are attached hereto and incorporated herein for all purposes. In addition, Subrecipient shall fully comply with all special provisions of this Agreement and reporting requirements and with Comptroller directives throughout the term of this Agreement.

Subrecipient shall retain full control over the personnel, equipment, supplies, and other items Subrecipient selects as necessary to comply with the terms of this Grant and as described in Attachment A. This Agreement does not involve proprietary rights or intellectual property issues.

Subrecipient shall submit such records, information, and reports in such form and at such times as may be required by Comptroller; these reports shall include, but are not limited to, the reports specified in Attachments A and L

IV. Payments

Total payments to Subrecipient under this Agreement shall not exceed One Hundred Thousand Dollars and No Cents (\$100,000.00). Subrecipient's payments under this Agreement are limited to reimbursements of actual authorized costs incurred pursuant to the budget provided in Attachment B, which is attached to and incorporated into this Agreement for all purposes. No other amounts shall be paid. Each month, Subrecipient shall submit each request for payment by submitting a detailed invoice, listing expenses by budget categories to the Comptroller. Subrecipient shall submit invoices that are fully supported by receipts and such other documentation as may be required by Comptroller. Comptroller reserves the right, in its sole discretion, to withhold payment of invoices for which Subrecipient does not submit documentation acceptable to Comptroller. Subrecipient shall submit monthly invoices for services performed and costs incurred in the prior month.

Title to and control over equipment or license of any software so purchased for Subrecipient's performance under this Agreement shall remain with Subrecipient so long as it is being used for the purpose for which it was intended under the terms of this Agreement.

Comptroller reserves the right, in its sole discretion, to authorize revisions to budgeted amounts to provide for flexibility within budget categories. Comptroller must give prior approval of all such revisions through execution of a written amendment to this Agreement.

V. Inspection, Monitoring and Records

Subrecipient shall permit Comptroller to inspect and shall make available to Comptroller for inspection any and all pertinent records, files, information and other written material pertaining to the operation of programs and expenditure of funds under this Agreement. This information includes, but is not limited to, all information maintained by Subrecipient or any of its agents, employees or other parties. Subrecipient shall maintain, keep and preserve at its principal office all such records for a period of four (4) years and make the same available to Comptroller, other state or federal agencies for auditing or other purposes authorized by applicable federal or state law or guidelines. Comptroller may also carry out monitoring and evaluation activities to ensure Subrecipient's compliance with the Program that is the subject of this Agreement and to make available copies of all financial audits and related management letters of Subrecipient, if any, as required under any applicable federal or state law or guidelines. Subrecipient shall also comply with the inspection, monitoring and records requirements of this Agreement.

VI. Termination

Comptroller reserves the right, in its sole discretion, to terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice to Subrecipient.

Upon receipt of notice of termination from Comptroller, Subrecipient shall immediately cease to submit monthly statements or requests for reimbursement and shall cancel, withdraw or otherwise terminate any outstanding orders or commitments under this Agreement as of the effective date of such termination and shall otherwise cease to incur any costs; Comptroller shall have no liability whatsoever for any costs incurred after such termination date. Upon termination of this Agreement for any reason, all grant funds may be subject to refund and immediate return to Comptroller.

VII. Indemnification

TO THE EXTENT PERMITTED UNDER THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, SUBRECIPIENT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE COMPTROLLER, ITS OFFICERS, AND EMPLOYEES AND SUBRECIPIENTS, AND THE STATE OF TEXAS, ITS OFFICERS, AND EMPLOYEES AND SUBRECIPIENTS, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND COURT COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF SUBRECIPIENT, OR ANY AGENT, EMPLOYEE, SUBSUBRECIPIENT, OR SUPPLIER OF SUBRECIPIENT IN THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT. SUBRECIPIENT SHALL COORDINATE ITS DEFENSE WITH THE TEXAS ATTORNEY GENERAL AS REQUESTED BY COMPTROLLER.

THIS SECTION IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE SUBRECIPIENT TO INDEMNIFY OR HOLD HARMLESS THE COMPTROLLER OR THE STATE FROM ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF COMPTROLLER OR ITS EMPLOYEES.

VIII. Subcontracting

Subrecipient may subcontract or sub-grant for the purposes of this Agreement as specifically authorized by Comptroller pursuant to the terms and subject to compliance with the flow down provisions of Attachment I of this Agreement.

IX. Amendments

This Agreement may only be amended upon the written agreement of the parties by executing an amendment to this Agreement; however, Comptroller may unilaterally amend this Agreement as provided in Paragraph XVIII.

X. Incorporation of Attachments; Incorporation by Reference

This Agreement consists of all of the following documents which are attached to and incorporated in this Agreement for all purposes:

This Grant Agreement;	
The Comptroller's RFA; Official Questions & Answers;	
Attachment A:	Deliverables and Budget;
Attachment B:	Application;
Attachment C:	Attachment C: DOE Required Special Terms & Conditions;
Attachment C-1:	Assurance of Compliance with Nondiscrimination Laws-Subrecipient;
Attachment C-2:	Assurance of Compliance with Nondiscrimination Laws-Subcontractor
Attachment D:	Certification Regarding Debarment, Suspension, Eligibility;
Attachment E:	Certification Regarding Lobbying, Suspension;
Attachment F:	Lobbying Activities;
Attachment G:	National Policy Assurances to be Incorporated as Award Terms;
Attachment H:	Intellectual Property Provisions;
Attachment I:	Subcontracting Provision; Mandatory Flow Down Provisions;
Attachment J-1:	American Recover & Reinvestment Act – Subrecipient Affidavit;
Attachment J-2:	American Recovery & Reinvestment Act – Subrecipient's Contractor Affidavit
Attachment K:	Execution of Application; and
Attachment L:	Reporting Requirements

In the event of a conflict, the documents shall control in the following order of precedence:

- 1. This Grant Agreement and its Attachments**
- 2. Comptroller's RFA and Official Questions & Answers;**
- 3. Agreed Project Work Plan, if any; and**
- 4. The Subrecipient's Application**

All applicable rules, regulations and all other requirements imposed by law, including, but not limited to, those pertinent rules and regulations of Comptroller and the State of Texas, are incorporated into this Agreement by reference as if specifically written herein.

XI. Funding

Comptroller's performance of its obligations under this Agreement is contingent upon and subject to availability of and actual receipt by Comptroller of sufficient and adequate funds from the sources contemplated by this Agreement. This Agreement is subject to immediate cancellation or termination, without penalty to Comptroller, subject to the availability and receipt of these funds. In addition, Comptroller's authority and appropriations are subject to the actions of the Texas Legislature. If Comptroller becomes subject to a legislative change, revocation of statutory authority or lack of funds that would render the services to be provided under this Agreement impossible or unnecessary, Comptroller may terminate this Agreement without penalty to Comptroller or the State of Texas. In the event of a termination or cancellation under this

Paragraph, Comptroller shall not be required to give notice and shall not be liable for damages or losses caused or associated with such termination or cancellation.

XII. Term of Agreement

The term of this Agreement shall begin on the date executed by all parties and be effective until **August 31, 2010**, unless terminated earlier in accordance with other provisions of this Agreement. The Comptroller shall have the right, in its sole judgment and discretion, to renew this Agreement for one (1) additional one-year term. The provisions of the following shall survive the termination or expiration of this Agreement: Paragraphs V, VII, XV, XVI, XVII; Sections 20.2, 20.3, 20.6; Attachment C; and Attachment L.

XIII. Force Majeure

Except as otherwise provided, neither Subrecipient nor Comptroller shall be liable to the other for any delay in, or failure of performance of any requirement contained in this Agreement caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, terrorist attacks, fires, explosions, earthquakes, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing with proof of receipt within three (3) business days of the existence of such force majeure or otherwise waive this right as a defense.

XIV. Assignment

Subrecipient shall not transfer or assign any rights or duties under or any interest in this Agreement. Subrecipient shall not delegate its responsibilities or duties under the terms of this Agreement.

XV. Property Rights

The parties to this Agreement agree that this Grant does not involve proprietary rights or intellectual property rights issues.

No later than the first calendar day after the termination or expiration of this Agreement or at Comptroller's request, Subrecipient shall deliver to Comptroller all completed, or partially completed work and any and all documentation or other products and results of the Subrecipients Project(s). Failure to timely deliver such work and any and all documentation or other products and results of results of the Subrecipient's Project(s) shall be considered a material breach of this Agreement. Subrecipient shall not make or retain any copies of the work or any and all documentation or other products and results of the Subrecipient's Project(s) without the prior written consent of Comptroller, except to the extent necessary in the ordinary course of business.

In the event of any conflicting provisions between this Paragraph and Attachment H, Attachment H shall control.

XVI. Severability Clause

In the event that any provision of this Agreement is later determined to be invalid, void, or unenforceable, then the remaining provisions of this Agreement shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

XVII. Dispute Resolution Process

Chapter 2260 of the Texas Government Code (“Chapter 2260”) prescribes dispute resolution processes for certain breach of contract claims applicable to certain contracts for goods and services. As required by Chapter 2260, Comptroller has adopted rules under Chapter 2260, codified at 34 Texas Administrative Code §§1.360 – 1.387, and may adopt revisions to these rules throughout the term of this Agreement, including any extensions. Subrecipient shall comply with such rules.

The dispute resolution process provided for in Chapter 2260 of the Government Code shall be used, as further described herein, by Comptroller and Subrecipient to attempt to resolve any claim for breach of contract made by Subrecipient under this Agreement:

- (A) Subrecipient’s claim for breach of this Agreement that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, Subrecipient shall submit written notice, as required by Chapter 2260, to the Deputy Comptroller or his or her designee. Said notice shall also be given to all other representatives of Comptroller and Subrecipient otherwise entitled to notice under this Agreement. Compliance by Subrecipient with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.
- (B) The contested case process provided in Chapter 2260 is Subrecipient’s sole and exclusive process for seeking a remedy for an alleged breach of contract by Comptroller if the parties are unable to resolve their disputes under subparagraph (A) of this Section.
- (C) Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civ. Prac. and Rem. Code. Neither the execution of this Agreement by Comptroller nor any other conduct of any representative of Comptroller relating to this Agreement shall be considered a waiver of sovereign immunity to suit.

For all other specific breach of contract claims or disputes under this Agreement, the following shall apply: Should a dispute arise out of this Agreement, Comptroller and Subrecipient shall first attempt to resolve it through direct discussions in a spirit of mutual cooperation. If the parties’ attempts to resolve their disagreements through negotiations fail, the dispute will be mediated by a mutually acceptable third party to be chosen by Comptroller and Subrecipient within fifteen (15) days after written notice by one of them demanding mediation under this Section. Subrecipient and Comptroller shall pay all costs of the mediation equally. By mutual agreement, Comptroller and Subrecipient may use a non-binding form of dispute resolution other than mediation. The purpose of this Section is to reasonably ensure that Comptroller and Subrecipient shall in good faith utilize mediation or another non-binding dispute resolution process before pursuing litigation. Comptroller’s participation in or the results of any mediation or another non-binding dispute resolution process under this Section or the provisions of this Section shall not be construed as a waiver by Comptroller of (1) any rights, privileges, defenses, remedies or immunities available to Comptroller as an Comptroller of the State of Texas or otherwise available to Comptroller; (2) Comptroller’s termination rights; or (3) other termination provisions or expiration dates of this Agreement.

XVIII. Applicable Law and Conforming Amendments

Subrecipient shall comply with all state and federal laws, regulations, requirements and guidelines applicable to a Subrecipient providing services to the State of Texas, as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Agreement. Comptroller reserves the right, in its sole discretion, to unilaterally amend this Agreement prior to award and throughout the term of this Agreement to incorporate any modifications necessary for Comptroller’s or Subrecipient’s compliance with all applicable state and federal laws, regulations, requirements and guidelines. Other than this provision, this Agreement may only be amended by the written agreement of the parties.

XIX. ARRA Reporting Requirements

Subrecipient Reporting. The Prime Recipient shall require that the Subrecipient with whom it sub-contracts or sub-grants, submit monthly Use of Funds Reports containing the data elements described in Section 1512(c) of the Act in addition to other federal and state reporting. In compliance with this requirement, the Subrecipient shall provide the reports as set forth in Attachment L attached hereto and incorporated herein. These reports shall be due on or before the last day of each month, with the first report due to the Prime Recipient on or before the last day of each month of this Agreement. Failure to submit a Monthly Progress Report may be grounds for termination of the Agreement.

XX. Additional Provisions

20.1 Time Limits

Time is of the essence in the performance of this Agreement and accordingly all time limits shall be strictly construed and rigidly enforced.

20.2 No Waiver

This Agreement shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to Comptroller or the State of Texas or otherwise available to Comptroller. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities available to Comptroller under this Agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. Comptroller does not waive any privileges, rights, defenses, or immunities available to Comptroller or the State of Texas, or otherwise available to Comptroller, by entering into this Agreement or by its conduct prior to or subsequent to entering into this Agreement. **The modification of any privileges, rights, defenses, remedies, or immunities available to Comptroller must be in writing, must reference this section, and must be signed by Comptroller to be effective, and such modification of any privileges, rights, defenses, remedies, or immunities available to Comptroller shall not constitute waiver of any subsequent privileges, rights, defenses, remedies, or immunities under this Agreement or under applicable law.**

20.3 No Liability Upon Termination

If this Agreement is terminated for any reason, neither the Comptroller nor the State of Texas shall be liable for any damages, claims, losses, expenses, costs or any other amounts of any kind whatsoever arising from or related to any such termination.

20.4 Limitation on Authority; No Other Obligations

Subrecipient shall have no authority to act for or on behalf of Comptroller or the State of Texas except as expressly provided for in this Agreement; no other authority, power, use, or joint enterprise is granted or implied. Subrecipient may not incur any debts, obligations, expenses or liabilities of any kind on behalf of Comptroller.

20.5 No Other Benefits

Subrecipient shall have no exclusive rights or benefits other than those set forth herein.

20.6 Supporting Documents; Right to Audit; Independent Audits

Subrecipient shall maintain and retain supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable Comptroller and State of Texas requirements. Subrecipient shall maintain all such documents and other records relating to this Agreement and the State's property for a period of four (4) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Subrecipient shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all information related to the State's

property, such as work papers, reports, books, data, files, software, records, and other supporting documents pertaining to this Agreement, for purposes of inspecting, monitoring, auditing, or evaluating by Comptroller, the State of Texas or their authorized representatives. Subrecipient shall cooperate with auditors and other authorized Comptroller and State of Texas representatives and shall provide them with prompt access to all of such State's property as requested by Comptroller or the State of Texas. By example and not as exclusion to other breaches or failures, Subrecipient's failure to comply with this Section shall constitute a material breach of this Agreement and shall authorize Comptroller to immediately terminate this Agreement. Comptroller may require, at Subrecipient's sole cost and expense, independent audits by a qualified certified public accounting firm of Subrecipient's books and records or the State's property. The independent auditor shall provide Comptroller with a copy of such audit at the same time it is provided to Subrecipient. Comptroller retains the right to issue a request for proposals for the services of an independent certified public accounting firm under this Agreement. In addition to and without limitation on the other audit provisions of this Agreement, pursuant to Section 2262.003, Tex. Gov't Code, the state auditor may conduct an audit or investigation of the Subrecipient or any other entity or person receiving funds from the state directly under this Agreement or indirectly through a subcontract under this Agreement. The acceptance of funds by the Subrecipient or any other entity or person directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Subrecipient or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. This Agreement may be amended unilaterally by the Comptroller to comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.003. The Subrecipient understands that (1) the acceptance of funds under this Agreement acts as acceptance of the authority of the state auditor to conduct an audit or investigation in connection with those funds; (2) the Subrecipient further agrees to cooperate fully with the state auditor in the conduct of the audit or investigation, including providing all records requested; (3) the Subrecipient shall ensure that this paragraph concerning the authority to audit funds received indirectly by Subrecipients through the Subrecipient and the requirement to cooperate is included in any subcontract it awards; and (4) the state auditor shall at any time have access to and the right to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of the Subrecipient relating to this Agreement.

20.7 Davis Bacon Act

Subrecipient shall comply, as applicable, with the provisions of the Davis-Bacon Act, as amended (40 U.S.C. § 3142)

<http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t37t40+1723+1+++%28%29%20%20A> ;

The Contract Work Hours & Safety Standards Act (40 U.S.C. § 3702)

<http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t37t40+1765+1+++%28%29%20%20> :

The Copeland "Anti-Kickback" Act (18 U.S.C. § 874) <http://uscode.house.gov/uscode->

[cgi/fastweb.exe?getdoc+uscview+t17t20+514+0+++%28%29%20%20AND%20%28%2818%29%20ADJ%20USC%29%3ACITE%20AND%20%28USC%20w%2F10%20%28874%29%29%3ACITE%20%20%20%20%20%20%20%20%20](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t17t20+514+0+++%28%29%20%20AND%20%28%2818%29%20ADJ%20USC%29%3ACITE%20AND%20%28USC%20w%2F10%20%28874%29%29%3ACITE%20%20%20%20%20%20%20%20%20)

20.9 Buy American Act – ARRA 1606

Subrecipients shall comply with the Buy American Act as applicable under – 41. U.S.C. 10a-10d ARRA located at: http://www.acquisition.gov/FAR/current/html/subpart%2025_6.html

20.10 Federal Funding Accountability and Transparency Act (P.L. 109-282).

P.L. 109-282 requires a reduction in “wasteful and unnecessary spending” by the federal government, including spending on funds earmarked for special projects. The legislation requires the Office of Management and Budget (OMB) to establish a publicly available, online database containing information about entities that are awarded federal grants, loans, and contracts. Subrecipient shall comply with this provision as applicable. <http://www.pubklaw.com/legis/pl109-282.pdf>

20.11 Data Management

In compliance with OMB Circular A-123, it is essential for Subrecipients to apply appropriate internal controls to effectively manage the accuracy, integrity, timeliness, and appropriate privacy of all data submitted to <http://www.USAspending.gov>.

20.12 National Environmental Policy Act

The Subrecipient shall assume the environmental responsibilities for projects and in doing so shall comply with the provisions of the National Environmental Policy Act of 1969, as amended and the Council on Environmental Quality regulations contained in 40 C.F.R. parts 1500 through 1508. http://www.access.gpo.gov/nara/cfr/waisidx_07/40cfr1501_07.html ; (44 C.F.R. 10.1)

20.13 National Historic Preservation Act of 1966

Subrecipient shall comply with the National Historic Preservation Act of 1966 (§§16 U.S.C. 470 et seq) and shall not take any action that will affect any district, site, building, structure, or object that is included in the National Register without prior notification to and concurrence of the DOE and the State Historic Preservation Office (SHPO) which in Texas is the Texas Historical Commission. Subrecipient shall identify any property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and comply with or assist with the compliance of §16 U.S.C. 470f and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C.469a-1, et seq.). Compliance with Section 106 of the NHPA occurs only after Subrecipient has submitted adequate background documentation to the SHPO for its review, and the SHPO has provided written concurrence to the Subrecipient that it does not object to its Section 106 finding or determination. Subrecipient shall provide a copy of this concurrence to the Contracting Officer. <http://www.achp.gov/docs/nhpa%202008-final.pdf>

20.14 Solid Waste Disposal Act

Prior to the expenditure of Federal funds to store, process, or dispose of hazardous materials Subrecipient shall comply with the Solid Waste Disposal Act, Texas Health & Safety Code, Chapter 361, and Title 30, Texas Administrative Code Chapter 335 “Industrial Solid Waste and Municipal Hazardous Waste” administered by the Texas Commission on Environmental Quality. Sanitary or hazardous waste is defined in 40 CFR Part 260 and 30 TAC Chapter 335 to include, but not be limited to, old light bulbs, lead ballasts, piping, roofing material, discarded equipment, debris, and asbestos. Subrecipient shall obtain any required permit and retain all compliance documentation related to the project. <http://www.statutes.legis.state.tx.us/docs/HS/htm/HS.361.htm>

20.15 Report of Fraud, Waste and Abuse: Texas Government Code, Section 321.022

If the administrative head of a department or entity that is subject to audit by the Texas State Auditor has reasonable cause to believe that money received from the State by the Subrecipient or by a client or contractor of the Subrecipient may have been lost, misappropriated, or misused, or that other fraudulent or unlawful conduct has occurred in relation to the operation of the Subrecipient, the administrative head shall report the reason and basis for the belief to the Texas State Auditor. The Texas State Auditor may investigate the report or may monitor any investigation conducted by the Subrecipient. See <http://sao.fraud.state.tx.us/>

XXI. Signatories

The undersigned signatories represent and warrant that they have full authority to enter into this Agreement on behalf of the respective parties.

XXII. Merger

This Agreement contains the entire agreement between the parties relating to the rights granted and the obligations assumed in it. Any oral representations or modifications concerning this Agreement shall be of no force or effect unless contained in a subsequent writing, signed by both parties.

COMPTROLLER OF PUBLIC ACCOUNTS

**SUBRECIPIENT:
Town of Addison**

By: _____
Martin A. Hubert
Deputy Comptroller

By: _____
Ron Whitehead
City Manager

Date: _____

Date: _____

**ATTACHMENT A
DELIVERABLES AND BUDGET**

A. Subrecipient shall provide the following services during the period of this Agreement and all services reasonably related to them. The Comptroller may request additional records, information or reports related to the services hereinafter described and funded by the Comptroller pursuant to Attachment B. The minimum deliverables and milestones are summarized as follows:

Deliverables	Milestone/Timeline
1. Subrecipient shall conduct a feasibility study to collect data for analysis of siting locations for wind energy systems within the jurisdiction of the City.	6/15/2010 - 8/31/2010
2. Subrecipient shall collect information including, but not limited to literature surveys, inventories, audits, data analysis (including computer modeling) document preparation (such as conceptual design or feasibility studies, analytical energy supply and demand studies), and dissemination (including, but not limited to, documentation mailings, publication and distribution; and classroom training and informational programs), but not including site characterization or environmental monitoring.	6/15/2010 - 8/31/2010
3. Subrecipient shall conduct and submit an engineering design, siting study for turbine locations, documented permits, an environmental study that includes FAA clearance, an Avian Study, Fish and Wildlife clearance and clearances from the local utility.	6/15/2010 - 8/31/2010
4. Subrecipient shall prepare and submit a Monthly Progress Report in accordance with Attachment-L, ARRa Reporting Requirements as outlined in the Agreement.	On or by the last day of each month
5. Subrecipient shall prepare and submit a Final Project Report.	30 days prior to end of contract

B. Budget

Personnel¹	\$ 0.00
Subcontract	\$100,000.00
Total	\$100,000.00

¹ Nancy Cline, Director of Public works, shall be Project Director for this project and shall be responsible for the overall supervision and conduct of the project on behalf of Contractor. Any Change of Project Director shall be subject to the prior written approval of Agency.

CS# _____

CFDA Number 81.041

Federal Award Number: DE-EE0000116

ATTACHMENT B

APPLICATION

Subrecipient's proposal is hereby attached to and incorporated into this Attachment B of this Agreement for all purposes.

ATTACHMENT C

DOE SPECIAL TERMS AND CONDITIONS REQUIRED IN GRANT TO THE COMPTROLLER OF PUBLIC ACCOUNTS AND FLOW DOWN TO ARRA GRANTS AND COOPERATIVE AGREEMENTS

A. Site Visits. DOE's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. Subrecipients must provide, and must require Subcontractors to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

B. Decontamination and/or Decommissioning (D&D) Costs. Notwithstanding any other provisions of this Agreement, the DOE or the Recipient shall not be responsible for or have any obligation to the Subrecipient for (i) D&D of any of the Subrecipient's facilities, or (ii) any costs which may be incurred by the Subrecipient in connection with the D&D of any of its facilities due to the performance of the work under this Agreement, whether said work was performed prior to or subsequent to the effective date of the Agreement.

SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER ARRA (May 2009)

A. Flow Down Requirement. Subrecipient understands that Comptroller/Recipient is subject to the following provisions. Subrecipient shall cooperate with Comptroller/Recipient relevant to such compliance. Subrecipient must include these special terms and conditions in any subcontracts.

B. Segregation of Costs. Recipients must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects.

C. Prohibition on Use of Funds. None of the funds provided under this agreement derived from ARRA, may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

D. Access to Records. With respect to each financial assistance agreement awarded utilizing at least some of the funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the Comptroller General is authorized --

(1) to examine any records of the Subrecipient or Subrecipient Subcontractor any of its subcontractors or any State or local agency administering such contract that pertain to, and involve transactions that relate to, the grant or subcontract; and

(2) to interview any officer or employee of the Subrecipient or Subrecipient Subcontractor agency regarding such transactions.

E. Publication. An application may contain technical data and other data, including trade secrets and/or privileged or confidential information, which the Subrecipient or Subrecipient Subcontractor does not want disclosed to the public or used by the Government for any purpose other than the application. To protect such data, the Subrecipient or Subrecipient Subcontractor should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the application with the following Notice as well as referring to the Notice on each page to which the Notice applies:

Notice of Restriction on Disclosure and Use of Data

The data contained in pages ---- of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this Subrecipient or Subrecipient Subcontractor receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data here to the extent provided in the award. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the Subrecipient or Subrecipient Subcontractor.

Information about this agreement will be published on the Internet and linked to the website www.recovery.gov, maintained by the Accountability and Transparency Board. The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

F. Protecting State and Local Government and Contractor Whistleblowers. The requirements of Section 1553 of the Act are summarized below. They include, but are not limited to:

Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under the ARRA, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

- gross management of an agency contract or grant relating to covered funds;
- a gross waste of covered funds;
- a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- an abuse of authority related to the implementation or use of covered funds; or
- as violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Agency Action: Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

- Order the employer to take affirmative action to abate the reprisal.
- Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

Non-enforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any pre-dispute arbitration agreement. No pre-dispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under ARRA, shall

post notice of the rights and remedies as required therein. (Refer to section 1553 of ARRA, www.Recovery.gov, for specific requirements of this section and prescribed language for the notices.)

G. Reserved

H. False Claims Act. Recipient and Subrecipients shall promptly refer to the DOE or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, Subrecipient Subcontractor, subcontractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.

I. Information in Support of ARRA Reporting. Subrecipient may be required to submit backup documentation for expenditures of funds under the ARRA including such items as timecards and invoices. Subrecipient shall provide copies of backup documentation at the request of the Contracting Officer or designee.

J. Availability of Funds. Funds obligated to this award are available for reimbursement of costs as provided in Exhibit G.

L. Certifications. With respect to funds made available to State or local governments for infrastructure investments under ARRA, the Governor, mayor, or other chief executive, as appropriate, certified by acceptance of this award that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Recipient shall provide an additional certification that includes a description of the investment, the estimated total cost, and the amount of covered funds to be used for posting on the Internet. A State or local agency may not receive infrastructure investment funding from funds made available by the Act unless this certification is made and posted.

REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF ARRA

Recipients and their first-tier Subrecipients must maintain current registrations in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which they have active federal awards funded with ARRA funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration.

DOE ASSURANCE OF COMPLIANCE, NON DISCRIMINATION IN STATE ASSISTED PROGRAMS

Subrecipient agrees to comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), Section 16 of the Federal Energy Administration Act of 1974 (Pub. L. 93-275), Section 401 of the Energy Reorganization Act of 1974 (Pub. L. 93-438), Title IX of the Education Amendments of 1972, as amended (Pub. L. 92-318, Pub. L. 93-568, and Pub. L. 94-482), Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), the Age Discrimination Act of 1977 (Pub. L. 94-135), Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), the Department of Energy Organization Act of 1977 (Pub. L. 95-91), the Energy Conservation and Production Act of 1976, as amended, (Pub. L. 94-385) and Title 10 Code of Federal Regulations, Part 1040. In accordance with the above laws and regulations issued pursuant thereto, the Subrecipient agrees to assure that no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity in which the Subrecipient receives Federal assistance from the Department of Energy.

Applicability and Period of Obligation. In the case of any service, financial aid, covered employment, equipment, property, or structure provided, leased, or improved with Federal assistance funding extended to Subrecipient by the Department of Energy, this assurance obligates Subrecipient for the period during which the Federal assistance is extended. In the case of any transfer of such service, financial aid, equipment, property, or structure, this assurance obligates the transferee for the period during which Federal assistance is extended. If any personal property is so

provided, this assurance obligates Subrecipient for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates Subrecipient for the period during which the Federal assistance is extended to Subrecipient by the Department of Energy.

Employment Practices. Where a primary objective of the Federal assistance is to provide employment or where Subrecipient's employment practices affect the delivery of services in programs or activities resulting from Federal assistance extended by the Department of Energy, Subrecipient agrees not to discriminate on the ground of race, color, national origin, sex, and disability, in its employment practices. Such employment practices may include, but are not limited to, recruitment, advertising, hiring, layoff or termination, promotion, demotion, transfer, rates of pay, training and participation in upward mobility programs, or other forms of compensation and use of facilities.

Subrecipient Assurance. Subrecipient shall require any individual, organization, or other entity with which it subcontracts, subgrants, or subleases for the purpose of providing any service, financial aid, equipment, property, or structure to comply with laws cited above. To this end, Subrecipient shall be required to sign a written assurance form; however, the obligation of both recipient and Subrecipient to ensure compliance is not relieved by the collection or submission of written assurance forms.

Data Collection and Access to Records. Subrecipient agrees to compile and maintain information pertaining to programs or activities developed as a result of Subrecipient's receipt of Federal assistance from the Department of Energy. Such information shall include, but is not limited to the following: (1) the manner in which services are or will be provided and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination; (2) the population eligible to be serviced by race, color, national origin, sex, and disability; (3) data regarding covered employment, including use or planned use of bilingual public contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English; (4) the location of existing or proposed facilities connected with the program and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any person on the basis of prohibited discrimination; (5) the present or proposed membership by race, color, national origin, sex, and disability, in any planning or advisory body which is an integral part of the program; and (6) any additional written data determined by the Department of Energy to be relevant to the obligation to assure compliance by Subrecipients with laws cited in the first paragraph of this assurance.

Subrecipient agrees to submit requested data to the Department of Energy regarding programs and activities developed by the Subrecipient from the use of Federal funds extended by the Department of Energy. Facilities of Subrecipient (including the physical plants, buildings, or other structures) and all records, books, accounts, and other sources of information pertinent to Subrecipient's compliance with the civil rights laws shall be made available for inspection during normal business hours of request of an officer or employee of the Department of Energy specifically authorized to make such inspections. Instructions in this regard will be provided by the Director, Office of Civil Rights, U. S. Department of Energy.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts (excluding procurement contracts), property, discounts or other Federal assistance extended after the date hereto, to Subrecipients by the Department of Energy, including installment payments on account after such date of application for Federal assistance which are approved before such date. Subrecipient recognizes and agrees that such Federal assistance will be extended in reliance upon the representations and agreements made in this assurance and that the United State shall have the right to seek judicial enforcement of this assurance. This assurance is binding on Subrecipient, its successors, transferees, and assignees, as well as the person(s) whose signature appears below and who is authorized to sign this assurance on behalf of Subrecipient.

Subrecipient Certification. Subrecipient certifies that it has complied, or that, within 90 days of the date of the grant, it will comply with all applicable requirements of 10 C.F.R. § 1040.5 (a copy will be furnished to Subrecipient upon written request to DOE.)

RECOVER ACT TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND RECIPIENT RESPONSIBILITIES FOR INFORMING CONTRACTORS

(a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111--5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 "Uniform Administrative Requirements for Grants and Agreements" and OMB Circular A--102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and response of Recovery Act funds. OMB Circular A--102 is available at <http://www.whitehouse.gov/omb/circulars/a102/a102.html>.

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A--133, "Audits of States, Local Governments, and Non-Profit Organizations," recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF--SAC) required by OMB Circular A--133. OMB Circular A--133 is available at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF--SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF--SAC.

(c) Recipients agree to separately identify to each Contractor, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to Contractors shall distinguish the subawards of incremental Recovery Act funds from regular subawards under the existing program.

(d) Recipients agree to require their Contractors to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor Contractor expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

As the duly authorized representative of the Contractor, I hereby certify that Contractor will comply with the above requirements.

BORROWER/SUBRECIPIENT:

By: _____
Ron Whitehead
City Manager
Date: _____

ATTACHMENT C-1

DOE F 1600.5
(06-94)
All Other Editions Are ObsoleteOMB Control No.
1910-0400**U.S. DEPARTMENT OF ENERGY**
Assurance of Compliance
Nondiscrimination in State Assisted Programs
OMB Burden Disclosure Statement

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Office of Information Resources Management Policy, Plans, and Oversight, Records Management Division, HR-422-GTN, Paperwork Reduction Project (1910-0400), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585; and to the Office of Management and Budget (OMB), Paperwork Reduction Project (1910-0400), Washington, DC 20503.

Town of Addison (Hereinafter called the "Applicant") HEREBY AGREES to comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), Section 16 of the Federal Energy Administration Act of 1974 (Pub. L. 93-275), Section 401 of the Energy Reorganization Act of 1974 (Pub. L. 93-438), Title IX of the Education Amendments of 1972, as amended (Pub. L. 92-318, Pub. L. 93-568, and Pub. L. 94-482), Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), the Age Discrimination Act of 1977 (Pub. L. 94-135), Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), the Department of Energy Organization Act of 1977 (Pub. L. 95-91), the Energy Conservation and Production Act of 1976, as amended, (Pub. L. 94-385) and Title 10 Code of Federal Regulations, Part 1040. In accordance with the above laws and regulations issued pursuant thereto, the Applicant agrees to assure that no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity in which the Applicant receives Federal assistance from the Department of Energy.

Applicability and Period of Obligation

In the case of any service, financial aid, covered employment, equipment, property, or structure provided, leased, or improved with Federal assistance funding extended to the Applicant by the Department of Energy, this assurance obligates the Applicant for the period during which the Federal assistance is extended. In the case of any transfer of such service, financial aid, equipment, property, or structure, this assurance obligates the transferee for the period during which Federal assistance is extended. If any personal property is so provided, this assurance obligates the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the Applicant for the period during which the Federal assistance is extended to the Applicant by the Department of Energy.

Employment Practices

Where a primary objective of the Federal assistance is to provide employment or where the Applicant's employment practices affect the delivery of services in programs or activities resulting from Federal assistance extended by the Department of Energy, the Applicant agrees not to discriminate on the ground of race, color, national origin, sex, and disability, in its employment practices. Such employment practices may include, but are not limited to, recruitment, advertising, hiring, layoff or termination, promotion, demotion, transfer, rates of pay, training and participation in upward mobility programs, or other forms of compensation and use of facilities.

Subrecipient Assurance

The Applicant shall require any individual, organization, or other entity with which it subcontracts, subgrants, or subleases for the purpose of providing any service, financial aid, equipment, property, or structure to comply with laws cited above. To this end, the subrecipient shall be required to sign a written assurance form; however, the obligation of both recipient and subrecipient to ensure compliance is not relieved by the collection or submission of written assurance forms.

Data Collection and Access to Records

The Applicant agrees to compile and maintain information pertaining to programs or activities developed as a result of the Applicant's receipt of Federal assistance from the Department of Energy. Such information shall include, but is not limited to the following: (1) the manner in which services are or will be provided and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination; (2) the population eligible to be serviced by race, color, national origin, sex, and disability; (3) data regarding covered employment, including use or planned use of bilingual public contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English; (4) the location of existing or proposed facilities connected with the program and related information adequate for determining whether the location has or will have the effect of unnecessarily

denying access to any person on the basis of prohibited discrimination; (5) the present or proposed membership by race, color, national origin, sex, and disability, in any planning or advisory body which is an integral part of the program; and (6) any additional written data determined by the Department of Energy to be relevant to the obligation to assure compliance by recipients with laws cited in the first paragraph of this assurance.

The Applicant agrees to submit requested data to the Department of Energy regarding programs and activities developed by the Applicant from the use of Federal funds extended by the Department of Energy. Facilities of the Applicant (including the physical plants, buildings, or other structures) and all records, books, accounts, and other sources of information pertinent to the Applicant's compliance with the civil rights laws shall be made available for inspection during normal business hours of request of an officer or employee of the Department of Energy specifically authorized to make such inspections. Instructions in this regard will be provided by the Director, Office of Civil Rights, U. S. Department of Energy.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts (excluding procurement contracts), property, discounts or other Federal assistance extended after the date hereto, to the Applicants by the Department of Energy, including installment payments on account after such date of application for Federal assistance which are approved before such date. The Applicant recognizes and agrees that such Federal assistance will be extended in reliance upon the representations and agreements made in this assurance and that the United State shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, its successors, transferees, and assignees, as well as the person(s) whose signature appears below and who is authorized to sign this assurance on behalf of the Applicant.

Applicant Certification

The Applicant certifies that it has complied, or that, within 90 days of the date of the grant, it will comply with all applicable requirements of 10 C.F.R. § 1040.5 (a copy will be furnished to the Applicant upon written request to DOE.)

Designated Responsible Employee
Nancy Cline, Director of Public works
Name and Title (Printed or Typed)

(972) 450-2878
Telephone Number

Signature

Date

Contractor

Town of Addison
Name of Organization
16801 Westgrove Addison, Texas 75001
Address

(972) 450-2878
Telephone Number

Authorized Official:

Ron Whitehead, City Manager
Name and Title (Printed or Typed)

(972) 450-2878
Telephone Number

Signature

Date

ATTACHMENT C-2 Contract No. _____

DOE F 1600.5
(06-94)
All Other Editions Are Obsolete

OMB Control No.
1910-0400

U.S. DEPARTMENT OF ENERGY
Assurance of Compliance
Nondiscrimination in State Assisted Programs

OMB Burden Disclosure Statement

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Subrecipient Assurance

The Applicant shall require any individual, organization, or other entity with which it subcontracts, subgrants, or subleases for the purpose of providing any service, financial aid, equipment, property, or structure to comply with laws cited above. To this end, the subrecipient shall be required to sign a written assurance form; however, the obligation of both recipient and subrecipient to ensure compliance is not relieved by the collection or submission of written assurance forms.

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The Applicant agrees to compile and maintain information pertaining to programs or activities developed as a result of the Applicant's receipt of Federal assistance from the Department of Energy. Such information shall include, but is not limited to the following: (1) the manner in which services are or will be provided and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination; (2) the population eligible to be serviced by race, color, national origin, sex, and disability; (3) data regarding covered employment, including use or planned use of bilingual public contact

employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English; (4) the location of existing or proposed facilities connected with the program and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any person on the basis of prohibited discrimination; (5) the present or proposed membership by race, color, national origin, sex, and disability, in any planning or advisory body which is an integral part of the program; and (6) any additional written data determined by the Department of Energy to be relevant to the obligation to assure compliance by recipients with laws cited in the first paragraph of this assurance.

The Applicant agrees to submit requested data to the Department of Energy regarding programs and activities developed by the Applicant from the use of Federal funds extended by the Department of Energy. Facilities of the Applicant (including the physical plants, buildings, or other structures) and all records, books, accounts, and other sources of information pertinent to the Applicant's compliance with the civil rights laws shall be made available for inspection during normal business hours of request of an officer or employee of the Department of Energy specifically authorized to make such inspections. Instructions in this regard will be provided by the Director, Office of Civil Rights, U. S. Department of Energy.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts (excluding procurement contracts), property, discounts or other Federal assistance extended after the date hereto, to the Applicants by the Department of Energy, including installment payments on account after such date of application for Federal assistance which are approved before such date. The Applicant recognizes and agrees that such Federal assistance will be extended in reliance upon the representations and agreements made in this assurance and that the United State shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, its successors, transferees, and assignees, as well as the person(s) whose signature appears below and who is authorized to sign this assurance on behalf of the Applicant.

Applicant Certification

The Applicant certifies that it has complied, or that, within 90 days of the date of the grant, it will comply with all applicable requirements of 10 C.F.R. § 1040.5 (a copy will be furnished to the Applicant upon written request to DOE.)

Designated Responsible Employee

Name and Title (Printed or Typed)

Telephone Number

Signature

Date

Contractor

Name of Organization

Telephone Number

Address

Authorized Official:

Name and Title (Printed or Typed)

Telephone Number

Signature

Date

ATTACHMENT D
Certification Regarding Debarment, Suspension, Ineligibility,
and Voluntary Exclusion-Lower Tier Covered Transactions

Instructions for Certification

1. The prospective lower tier participant is required to sign the attached certification.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this application is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principle," "application," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the person to which this application is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this application that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this application that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
 - (1) The prospective lower tier participant certifies, by submission of this application, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
 - (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this application.

Town of Addison
Organization Name

Ron Whitehead, City Manager
Name and Title of Authorized Representative

Signature

Date

ATTACHMENT E
CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER
RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Energy determines to award the covered transaction, grant, or cooperative agreement.

LOBBYING

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

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this

transaction was made or entered into. Submission of this certification is a prerequisite

for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for

each such failure.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective

participant shall attach an explanation to this proposal.

3. DRUG-FREE WORKPLACE

This certification is required by the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D) and is implemented through additions to the Debarment and Suspension regulations, published in the Federal Register on January 31, 1989, and May 25, 1990.

***ALTERNATE I
(SUBRECIPIENTS OTHER THAN
INDIVIDUALS)***

- (1) The Subrecipient certifies that it will or will continue to provide a drug-free workplace by:
 - (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Subrecipient's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
 - (b) Establishing an ongoing drug-free awareness program to inform employees about:
 - (1) The dangers of drug abuse in the workplace;
 - (2) The Subrecipient's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
 - (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
 - (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer in writing, of

- his or her conviction for a violation of criminal drug statute occurring in the work-place not later than five calendar days after such conviction;
- (e) Notifying the agency, in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to energy grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
- (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:
 - (1) Taking appropriate actions against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act 9f 1973, as amended; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).
- (2) The Subrecipient may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance:
(Street address, city, county, state, zip code)

Check if there are workplaces on file that are not identified here.

ALTERNATE II (SUBRECIPIENTS WHO ARE INDIVIDUALS)

(1) The Subrecipient certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substances in conducting any activity with the grant.

(2) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

4. LOBBYING DISCLOSURE ACT OF 1995, SIMPSON-CRAIG AMENDMENT

Applicant organization which are described in section 501 (c)(4) of the Internal Revenue Code of 1986 and engage in lobbying activities after December 31, 1995, shall not be eligible for the receipt of Federal funds constituting an award, grant, or loan. Section 501(c)(4) of the Internal Revenue Code of 1986 covers:

Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated persons or person in a particular municipality, and the net earnings of which are devoted

exclusively to charitable, educational, or recreational purposes.

As set forth in the Lobbying Disclosure Act of 1995 (Public Law 104-65, December 19, 1995), as amended [“Simpson-Craig Amendment,” see Section 129 of The Balanced Budget Down payment Act, I (Public Law 104-99, January 26, 1996)], lobbying activities is defined broadly. (See section 3 of the Act.)

The undersigned certifies, to the best of his or her knowledge and belief, that: it IS NOT an organization described in section 501 (c)(4) of the Internal Revenue Code of 1986: OR that it IS an organization described in section 501 (c)(4) of the Internal Revenue Code of 1986, which, after December 31, 1995, HAS NOT engaged in any lobbying activities as defined in the Lobbying Disclosure Act of 1995, as amended.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

Town of Addison

Name of Applicant

Pre/Award Number and/or Project Name

Ron Whitehead, City Manager
Printed Name and Title of Authorized Representative

Signature

Date

**ATTACHMENT F
DISCLOSURE OF LOBBYING ACTIVITIES**

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

1. Type of Federal Action: _____ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: _____ a. bid/offer/application b. initial award c. post award	3. Report Type: _____ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: Name _____ Address _____ _____ Prime _____ Subawardee Tier, if known: _____		5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: _____
6. Federal Department/Agency: _____	7. Federal Program Name/Description CFDA Number, if applicable: _____	
8. Federal Action Number, If known: _____	9. Award Amount, if known: _____	
10.a. Name and Address of Lobbying Entity: (if individual, last name, first name, MI): (attach Continuation Sheet(s) SF-LLL-A, if necessary)	10.b. Individual Performing Services (including address if different from No. 10A) (last name, first name, MI): _____	
11. Amount of Payment (check all that apply): \$ _____ _____ actual _____ _____ planned	12. Form of Payment (check all that apply): a. cash b. in-kind; specify: nature _____ value _____	
13. Type of Payment (check all that apply): _____ a. retainer _____ c. commission _____ e. deferred _____ b. one-time fee _____ d. contingent fee _____ f. other; specify _____		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11: _____ 		
15. Continuation Sheet(s) SF-LLL-A attached: _____ Yes _____ No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annual and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure	Authorized Representative: <u>Ron Whitehead</u> Title: <u>City Manager</u> Signature: _____ Telephone: <u>(972) 450-2878</u> Date: _____	

ATTACHMENT G
National Policy Assurances to be Incorporated as Award Terms
(Version August 2008)

- To the extent that a term does not apply to a particular type of activity or award, it is self-deleting.
- The term “You” refers to Subrecipients and subcontractors of Subrecipients.
- The term “We” or “Us” refers to the Department of Energy and the Comptroller of Public Accounts.

To the extent that a term does not apply to a particular type of activity or award, it is self-deleting.

I. Nondiscrimination Policies

You must comply with applicable provisions of the following national policies prohibiting discrimination:

- 1 On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), as implemented by DOE regulations at 10 CFR part 1040;
- 2 On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), as implemented by DOE regulations at 10 CFR parts 1041 and 1042;
- 3 On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C.6101 et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90 and DOE regulations at 10 CFR part 1040;
- 4 On the basis of disability, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.794), as implemented by Department of Justice regulations at 28 CFR part 41 and DOE regulations at 10 CFR part 1041;
- 5 On the basis of race, color, national origin, religion, disability, familial status, and sex under Title VIII of the Civil Rights Act (42 U.S.C. 3601 et seq.) as implemented by the Department of Housing and Urban Development at 24 CFR part 100; and
- 6 On the basis of disability in the Architectural Barriers Act of 1968(42 U.S.C. 4151 et seq.) for the design, construction, and alteration of buildings and facilities financed with Federal funds.

II. Environmental Policies

You must:

- 1 Comply with applicable provisions of the Clean Air Act (42 U.S.C.740 I, et. seq.) and Clean Water Act (33 U.S.C. 1251, et. seq.), as implemented by Executive Order 11738 [3 CFR,1971-1975 Comp., p. 799] and Environmental Protection Agency rules at 40 CFR part 32, Subpart J.
- 2 Immediately identify to us, as the awarding agency, any potential impact that you find this award may have on:
 - a. The quality of the human environment, including wetlands, and provide any help we may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321 et. seq.) and assist us to prepare Environmental Impact Statements or other environmental documentation. In such cases, you may take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) or limit the choice of reasonable alternatives until we provide written notification of Federal compliance with NIEPA, as implemented by DOE at 10 CFR part 1021.
 - b. Flood-prone areas, and provide any help we may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et. seq.), which require flood insurance, when available, for Federally assisted construction or acquisition in flood-prone areas, as implemented by DOE at 10 CFR part 1022.
 - c. Use of land and water resources of coastal zones, and provide any help we may need to comply with the Coastal Zone Management Act of 1972(16 U.S.C. 1451, et. seq.).
 - d. Coastal barriers along the Atlantic and Gulf coasts and Great Lakes’ shores, and provide help we may need to comply with the Coastal Bathers Resource Act (16 U.S.C. 3501 et. seq.), concerning preservation of barrier resources.

e. Any existing or proposed component of the National Wild and Scenic Rivers system, and provide any help we may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.).

f. Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide any help we may need to comply with the Safe Drinking Water Act(42 U.S.C. 300h-3).

3 Comply with applicable provisions of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), as implemented by the Department of Housing and Urban Development at 24 CFR part 35. The requirements concern lead-based paint in housing owned by the Federal Government or receiving Federal assistance.

4 Comply with section 6002 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6962), and implementing regulations of the Environmental Protection Agency, 40 CFR Part 247, which require the purchase of recycled products by States or political subdivision of States.

III. Live Organisms

1 **Human research subjects.** You must protect the rights and welfare of individuals that participate as human subjects in research under this award in accordance with the Common Federal Policy for the Protection of Human Subjects (45 CFR part 46), as implemented by DOE at 10 CFR part 745.

2 **Animals and plants.**

a. You must comply with applicable provisions of Department of Agriculture rules at 9 CFR parts 1-4 that implement the Laboratory Animal Welfare Act of 1966(7 U.S.C. 2131-2156) and provide for humane transportation, handling, care, and treatment of animals used in research, experimentation, or testing under this award.

b. You must follow the guidelines in the National Academy of Sciences(NAS) Publication “Guide for the Care and Use of Laboratory Animals”(1996, which may be found currently at <http://www.nap.edu/readingroom/books/labrats/>) and comply with the Public Health Service Policy and Government principles Regarding the Care and use of animals (included as Appendix D to the NAS Guide).

c. You must immediately identify to us, as the awarding agency, any potential impact that you find this award may have on endangered species, as defined by the Endangered Species Act of 1973, as amended (“the Act,” 16 U.S.C. 1531-1543), and implementing regulations of the Departments of the Interior (50 CFR parts 10-24) and Commerce (50 CFR parts 217-227). You also must provide any help we may need to comply with 16 U.S.C. 1536(a)(2). This is not in lieu of responsibilities you have to comply with provisions of the Act that apply directly to you as a U.S. entity, independent of receiving this award.

IV. Other National Policies

1. **Debarment and suspension.** You must comply with requirements regarding debarment and suspension in Subpart C of 2 CFR parts 180 and 901.

2. **Drug-free workplace.** You must comply with drug-free workplace requirements in Subpart B of 10 CFR part 607, which implements sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).

3. **Lobbying.**

a. You must comply with the restrictions on lobbying in 31 U.S.C. 1352, as implemented by DOE at 10 CFR part 601, and submit all disclosures required by that statute and regulation.

b. If you are a nonprofit organization described in section 501(c)(4)of title 26, United States Code (the Internal Revenue Code of 1968),you may not engage in lobbying activities as defined in the Lobbying Disclosure Act of 1995 (2 U.S.C., Chapter 26). If we determine that you have engaged in lobbying activities, we will cease all payments to you under this and other awards and terminates the awards unilaterally for material failure to comply with the award terms and conditions. By submitting an application and accepting fluids under this agreement, you assure that you are not an organization described in section 501(c)(4) that has engaged in any lobbying activities described in the Lobbying Disclosure Act of 1995 (2 U.S.C. 1611).

c. You must comply with the prohibition in 18 U.S.C. 1913 on the use of Federal funds, absent express Congressional authorization, to pay directly or indirectly for any service, advertisement or other written matter, telephone communication, or other device intended to influence at any time a Member of Congress or official of any government concerning any legislation, law, policy, appropriation, or ratification.

4. **Officials not to benefit.** You must comply with the requirement that no member of Congress shall be admitted to any share or part of this agreement, or to any benefit arising from it, in accordance with 41U.S.C. 22.

5. **Hatch Act.** If applicable, you must comply with the provisions of the Hatch Act (5U.S.C. 1501-1508 and 7324-7326), as implemented by the Office of Personnel Management at 5 CFR part 151, which limits political activity of employees or officers of State or local governments whose employment is connected to an activity financed in whole or part with Federal funds.

6. **Native American graves protection and repatriation.** If you control or possess Native American remains and associated funerary objects, you must comply with the requirements of 43 CFR part 10, the Department of the Interior implementation of the Native

American Graves Protection and Repatriation Act of 1990 (25 U.S.C., chapter 32).

7. **Fly America Act.** You must comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118), commonly referred to as the “Fly America Act,” and implementing regulations at 41 CFR 301-10.131 through 301-10.143. The law and regulations require air transport of people or property to, from, between or within a country other than the United States, the cost of which is supported under this award, to be performed by or under a cost-sharing arrangement with a U.S. flag carrier, if service is available.

8. **Use of United States-flag vessels.**

a. Pursuant to Pub. L. 664 (43 U.S.C. 1241(b)), at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds under this award, and which may be transported by ocean vessel, must be transported on privately owned United States-flag commercial vessels, if available.

b. Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph 9.a of this section shall be furnished to both our award administrator (through you in the case of your contractor’s bill-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

9. **Research misconduct.** You must comply with the government-wide policy on research misconduct issued by the Office of Science and Technology Policy (available in the Federal Register at 65 FR 76260, December 6,2000, or on the Internet at www.ostp.gov), as implemented by DOE at 10 CFR part 733 and 10 CFR 600.31.

10. **Requirements for an Institution of Higher Education Concerning Military recruiters and Reserve Officers Training Corps (ROTC).**

a. As a condition for receiving funds under an award by the National Nuclear Security Administration of the Department of Energy, you agree that you are not an institution of higher education that has a policy or practice placing any of the restrictions specified in 10 U.S.C. 983. as implemented by 32 CFR part 216, on:

- i. Maintenance, establishment, or operation of Senior ROTC units, or student participation in those units; or
- ii. Military recruiters’ access to campuses, students on campuses, or information about students.

b. If you are determined, using the procedures in 32 CFR part 216, to be such an institution of higher education during the period of performance of this award, we:

- i. Will cease all payments to you of funds under this award and all other awards subject to the requirements in 32 CFR part 216; and
- ii. May suspend or terminate those awards unilaterally for material failure to comply with the award terms and conditions.

11. **Historic preservation.** You must identify to us any:

- a. Any property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and provide any help we may need, with respect to this award, to comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470, as implemented by the Advisory Council on Historic Preservation regulations at 36 CFR part 800 and Executive Order 11593, "Identification and Protection of Historic Properties," [3 CFR, 1971-1975 Comp., p. 559].
- b. Potential under this award for irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, and provide any help we may need, with respect to this award, to comply with the Archaeological and Historic Preservation Act of 1974 (16 U.S.C.469a-1, et seq.).

12. **Relocation and real property acquisition.** You must comply with applicable provisions of 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970(42 U.S.C. 4601, et seq.) and provides for fair and equitable treatment of persons displaced by federally assisted programs or persons whose property is acquired as a result of such programs.

13. **Confidentiality of patient records.** You must keep confidential any records that you maintain of the identity, diagnosis, prognosis, or treatment of any patient in connection with any program or activity relating to substance abuse education, prevention, training, treatment, or rehabilitation that is assisted directly or indirectly under this award, in accordance with 42 U.S.C. 290dd-2.

14. **Constitution Day.** You must comply with Public Law 108-447, Div. J, Title I, Sec. 111(36 U.S.C. 106 note), which requires each educational institution receiving Federal funds in a Federal fiscal year to hold an educational program on the United States Constitution on September 17th during that year for the students served by the educational institution.

15. **Trafficking in Persons**

a. Provisions applicable to a recipient that is a private entity.

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—

- i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
- ii. Procure a commercial sex act during the period of time that the award is in effect;

or

iii. Use forced labor in the performance of the award or subawards under the award.

2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —

- i. Is determined to have violated a prohibition in paragraph a. 1 of this award term;

or

- ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1. of this award term through conduct that is either—
 - A. Associated with performance under this award; or
 - B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (Non-procurement)," as implemented by our agency at 2 CFR part 901.

b. Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

1. Is determined to have violated an applicable prohibition in paragraph a. 1 of this award term; or

2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a. 1 of this award term through conduct that is either—

i. Associated with performance under this award; or

ii. Imputed to the subrecipient using the standards and due process for imputing the

conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Government wide Debarment and Suspension (Non-procurement),” as implemented by our agency at 2 CFR part 901.

c. Provisions applicable to any recipient.

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1. of this award term.
2. Our right to terminate unilaterally that is described in paragraph a.2 orb. of this section:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TWA), as amended (22 U.S.C. 7104(g)), and
 - ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
3. You must include the requirements of paragraph a. 1 of this award term in any subaward you make to a private entity.

d. Definitions. For purposes of this award term:

1. “Employee” means either:
 - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing **or** matching requirements.
2. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
3. “Private entity”:
 - i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
 - ii. Includes:
 - A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
 - B. A for-profit organization.
4. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TWA, as amended (22 U.S.C. 7102).

V. National Policy Requirements for Subawards.

Recipient responsibility. You must include in any subaward you make under this award the requirements of the national policy requirements in Sections I through IV of this document that apply, based on the type of subawardee organization and situation.

As the duly authorized representative of the Subrecipient, I hereby certify that Subrecipient will comply with the above requirements.

SUBRECIPIENT: Town of Addison

By: _____
Ron Whitehead, City Manager

Date: _____

As the duly authorized representative of the Subcontractor, I hereby certify that Subcontractor will comply with the above requirements.

ATTACHMENT H Intellectual Property Provisions

AUTHORIZATION AND CONSENT (41 CFR 9-9.102-1)

The Government hereby gives its authorization and consent (without prejudice to any rights of indemnification) for all use and manufacture, in the performance of this grant or any part hereof or any amendment hereto or any subcontract hereunder (including all lower-tier subcontracts hereunder), of any invention described in and covered by a patent of the United States.

- (a) embodied in the structure or composition of any article, the delivery of which is accepted by the Government under this grant, or
- (b) utilized in the machinery, tools, or methods, the use of which necessarily results from compliance by the Subrecipient or the using subcontractor with
 - (i) specifications or written provisions now or hereafter forming a part of this grant, or
 - (ii) specific written instructions given by the Contracting Officer directing the manner of performance.

The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clauses, if any, included in this grant or any subcontract hereunder (including all lower-tier subcontracts hereunder), and the Government assumes liability for all other infringement to the extent of the authorization and consent herein above granted.

PATENT INDEMNITY (41 CFR 9-9.103-1)

If the amount of this contract is in excess of \$10,000 the contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States letters patent (except U.S. letters patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the Government) arising out of the manufacture or delivery of supplies or out of construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work. The foregoing indemnity shall not apply unless the contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further, such indemnity shall not apply to: (a) an infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the contractor; (b) an infringement resulting from addition to or change in, such supplies or components furnished or construction work performed which addition or change was made subsequent to delivery or performance by the contractor; or (c) a claimed infringement which is settled without the consent of the contractor, unless required by final decree of a court of competent jurisdiction.

NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (41 CFR 9-9.104(b))

The provisions of this clause shall be applicable only if the amount of this grant exceeds \$10,000.

- (a) The Subrecipient shall report to the Contracting Officer, promptly and in reasonable written detail, each notice of claim of patent or copyright infringement based on the performance of this grant of which the Subrecipient has knowledge.
- (b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this grant or out of the use of any supplies furnished or work or services performed hereunder, the Subrecipient shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Subrecipient pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Subrecipient has agreed to indemnify the Government.
- (c) This clause shall be included in all contracts and subgrants under this grant.

REPORTING OF ROYALTIES (41 CFR 9-9.110)

If this grant is in an amount which exceeds \$10,000 and if any royalty payments are directly involved in the grant or are reflected in the grant price to the Government, the Subrecipient agrees to report in writing to the Patent Counsel (with notification by Patent

Counsel to the Contracting Officer) during the performance of this grant and prior to its completion of final settlement the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this grant together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as will permit the identification of the patents or other basis on which the royalties are to be paid. The approval of DOE of any individual payments or royalties shall not stop the Government at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payments are made.

RIGHTS IN TECHNICAL DATA (SHORT FORM)

(a) Definitions. The definitions of terms set forth in DEAR 927.401 apply to the extent these terms are used herein.

(b) Allocation of Rights.

(1) The Government shall have:

- (i) Unlimited rights in technical data first produced or specifically used in the performance of this grant;
- (ii) The right of the Contracting Officer or his representatives to inspect, at all reasonable times up to three years after final payment under this grant, all technical data first produced or specifically used in the grant (for which inspection the Subrecipient or its contractor or Subrecipient shall afford proper facilities to DOE); and
- (iii) The right to have any technical data first produced or specifically used in the performance of this grant delivered to the Government as the Contracting Officer may from time-to-time direct during the progress of the work, or in any event as the Contracting Officer shall direct upon completion or termination of this grant.

(2) The Subrecipient shall have:

The right to use for its private purposes, subject to patent, security or other provisions of this grant, technical data it first produces in the performance of this grant provided the date requirements of this grant have been met as of the date of the private use of such data. The Subrecipient agrees that to the extent it receives or is given access to proprietary data or other technical, business or financial data in the form of recorded information from DOE or a DOE contractor or subcontractor, the Subrecipient shall treat such data in accordance with any restrictive legend contained thereon, unless use is specially authorized by prior written approval of the Contracting Officer.

(c) Copyrighted Material.

(1) The Subrecipient agrees to, and does hereby grant to the Government, and to others acting on its behalf:

- (i) A royalty-free, nonexclusive, irrevocable, worldwide license for Governmental purposes to reproduce, distribute, display, and perform all copyrighted material first produced or composed in the performance of this grant by the Subrecipient, its employees or any individual or concern specifically employed or assigned to originate and prepare such material and to prepare derivative works based thereon; and
- (ii) A license as aforesaid under any and all copyrighted or copyrighted work not first produced or composed by the Subrecipient in the performance of this grant but which is incorporated in the material furnished under the grant, provided that such license shall be only to the extent the Subrecipient now has, or prior to completion or close-out of the grant, may acquire the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

(2) The Subrecipient agrees that it will not knowingly include any material copyrighted by others in any written or copyrighted material furnished or delivered under this grant without a license as provided for in subparagraph (c) (1) (ii) of this section, or without the consent of the copyright owner, unless it obtains specific written approval of the Contracting Officer for the inclusion of such copyrighted material.

RIGHTS TO PROPOSAL DATA (TECHNICAL) (48 CFR 52.227-23)

It is agreed that as a condition of award of this grant or modification and notwithstanding the conditions of any notice appearing on the proposal(s), the Government shall have the right to use, duplicate, and disclose and have others to do so for any purpose whatsoever, the technical data contained in the proposal(s) upon which the grant or modification is based.

Town of Addison
Organization Name

Ron Whitehead, City Manager
Name and Title of Authorized Representative

Signature

Date

ATTACHMENT I

SUBCONTRACTING PROVISIONS; MANDATORY FLOWDOWN PROVISION

Subrecipient, if subcontracting any of its performance hereunder, shall legally bind Subrecipients to perform and make such Subrecipients subject to all the duties, requirements, and obligations of Subrecipient under this Agreement. Subrecipient shall be jointly and severally liable for all performances under this Agreement, including, but not limited to, the performance of its Subrecipients to the extent permitted under the Constitution and laws of the State of Texas, as well as full compliance with all reporting requirements set forth in Attachment L of the Agreement.

Subrecipient represents and warrants that it has obtained all necessary permits, licenses, easements, waivers and permissions of whatsoever kind required for its performance and the performance of its Subrecipients under this Agreement. In no event shall any provision of this Paragraph, including, but not limited to, the requirement that Subrecipient obtain the prior approval of Agency on Subrecipient's proposed subcontracts, be construed as relieving Subrecipient of the responsibility for ensuring that all services rendered under any subcontracts comply with all the terms and provisions of this Agreement as if they were rendered by Subrecipient. Subrecipient shall, upon request, furnish Agency with copies of all proposed subcontracts and all proposed amendments, assignments, cancellations or terminations of said subcontracts no later than thirty (30) days prior to the proposed effective date of such contracts, amendments, assignments, cancellations or terminations; provided, however, that this thirty (30) day period may be shortened by written agreement of the parties. Upon request from the Comptroller, Subrecipient shall provide any and all documentation deemed necessary by the Comptroller to evidence Subcontractors compliance with all terms, conditions and performance pertaining to the Agreement and all applicable law.

As the duly authorized representative of the Subrecipient and the Subrecipient/Subrecipient, I hereby certify that Subrecipient and Subrecipient/Subrecipient will comply with the above requirements.

SUBRECIPIENT: Town of Addison

SUBSUBRECIPIENT

By: _____
Ron Whitehead
City Manager

Date: _____

ATTACHMENT J-1
AMERICAN RECOVERY & REINVESTMENT ACT--RECIPIENT AFFIDAVIT
This Affidavit must be signed and sworn (notarized)

I, _____, an authorized representative of: _____, a [person, sole proprietorship, partnership, corporation, limited liability company, nonprofit organization, governmental entity, political subdivision, or other entity] (circle one) that is receiving American Recovery and Reinvestment Act of 2009 (ARRA or the Act) funding, hereby swear and affirm that, to the best of my knowledge, internal controls, processes and procedures have been designed and implemented to help ensure that the recipient and its use of these funds complies with the following: applicable state law; federal law, including federal reporting requirements under Section 1512 of the Act, if applicable; rules; regulations; and other relevant guidance. I further swear and affirm that all of the statements made and information provided herein, including statements made and information provided in any attachments are true, complete, and correct, to the best of my knowledge.

I understand that I am receiving ARRA funding from _____, a [state agency, institution of higher education, governmental entity, political subdivision, or other entity] (circle one).

I understand that non-compliance with reporting requirements could be treated as a violation of the award agreement resulting in the withholding of funds, debarment, or award termination or suspension, as appropriate.

I understand that it is a federal crime under 18 U.S.C. Section 1001 to, in any matter within the jurisdiction of the executive branch of the U.S. Government, knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation, or to make or use any false writing or document knowing that it contains the same.

I understand that presenting a false or fraudulent claim, in whole or in part, or causing same, may subject me to civil penalties as provided for in 31 U.S.C. Section 3729.

I understand that it is a felony offense under Section 37.10, Texas Penal Code, to knowingly make a false entry in, or false alteration of, a governmental record, or to make, present, or use a governmental record with knowledge of its falsity, when the actor has the intent to harm or defraud another.

I understand that the offense of perjury, under Section 37.02, Texas Penal Code, is committed when a person, with intent to deceive and with knowledge of the statement's meaning, makes a false statement under oath or swears to the truth of a false statement previously made and the statement is required or authorized by law to be made under oath.

I understand my obligation to track all ARRA funds and that ARRA funds cannot be comingled with Non-ARRA funds. I also understand my obligation to immediately report any known or suspected waste, fraud, and abuse of funds received under the Act to the United States Government Accountability Office at (800) 424-5454 and the Texas State Auditor's Office at (800) 892-8348. I further understand that I will require all Subrecipients with whom I contract using funds made available under the Act to sign a similar affidavit swearing to all of the above. I hereby swear and affirm that I have read the entire affidavit, and I understand its contents.

Town of Addison

Recipient Name

Affiant Signature

Full Name

Title

Date

Sworn and subscribed before me by the said

(Printed Name of Recipient's Authorized Representative)

this _____ day of _____, 20____.

Notary Public, State of Texas

Notary's printed name: _____ **My commission expires:** _____ (Seal)

ATTACHMENT J-2
American Recovery & Reinvestment Act – Subrecipient’s Contractor Affidavit
This Affidavit must be signed and sworn (notarized)

I, _____, an authorized representative of: _____, a [person, sole proprietorship, partnership, corporation, limited liability company, nonprofit organization, governmental entity, political subdivision, or other entity] (circle one) that is receiving ARRA funding, hereby swear and affirm that, to the best of my knowledge, internal controls, processes and procedures have been designed and implemented to help ensure that the Subrecipient Subcontractor and its use of these funds complies with the following: applicable state law; federal law, including federal reporting requirements under Section 1512 of the Act, if applicable; rules; regulations; and other relevant guidance. I further swear and affirm that all of the statements made and information provided herein, including statements made and information provided in any exhibits are true, complete, and correct, to the best of my knowledge.

I understand that I am receiving ARRA funding from a governmental entity [city or county] through CPA, a Texas state agency. I understand that non-compliance with reporting requirements could be treated as a violation of the award agreement resulting in the withholding of funds, debarment, or award termination or suspension, as appropriate.

I understand that it is a federal crime under 18 U.S.C. Section 1001 to, in any matter within the jurisdiction of the executive branch of the U.S. Government, knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation, or to make or use any false writing or document knowing that it contains the same.

I understand that presenting a false or fraudulent claim, in whole or in part, or causing same, may subject me to civil penalties as provided for in 31 U.S.C. Section 3729.

I understand that it is a felony offense under Section 37.10, Texas Penal Code, to knowingly make a false entry in, or false alteration of, a governmental record, or to make, present, or use a governmental record with knowledge of its falsity, when the actor has the intent to harm or defraud another. I understand that the offense of perjury, under Section 37.02, Texas Penal Code, is committed when a person, with intent to deceive and with knowledge of the statement’s meaning, makes a false statement under oath or swears to the truth of a false statement previously made and the statement is required or authorized by law to be made under oath.

I understand my obligation to track all ARRA funds and that ARRA funds cannot be comingled with Non-ARRA funds. I also understand my obligation to immediately report any known or suspected waste, fraud, and abuse of funds received under the Act to the United States Government Accountability Office at (800) 424-5454 and the Texas State Auditor’s Office at (800) 892-8348. I further understand that I will require all subcontractors with whom I contract using funds made available under the Act to sign a similar affidavit swearing to all of the above. I hereby swear and affirm that I have read the entire affidavit, and I understand its contents.

Town of Addison
Recipient Name

Affiant Signature

Full Name

Title

Date

Sworn and subscribed before me by the said

(Printed Name of Recipient’s Authorized Representative)

this _____ day of _____, 20_____.

Notary Public, State of Texas

Notary’s printed name: _____ **My commission expires:** _____ **(Seal)**

ATTACHMENT K

Execution of Application

1. By signature hereon, Applicant represents and warrants that the provisions in this Execution of Application apply to Applicant and all of Applicant's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this RFA or any contract resulting from it.
2. By signature hereon, Applicant represents and warrants its intent to furnish the requested items at the prices quoted in its Proposal.
3. By signature hereon, Applicant represents and warrants that it has read and understood and shall comply with Comptroller's Anti-Fraud Policy, located on Comptroller's website at <http://www.window.state.tx.us/ssv/ethics.html>, as such Policy currently reads and as it is amended throughout the term of any resulting contract.
4. By signature hereon, Applicant represents and warrants that its prices include all costs of Applicant in providing the requested items that meet all specifications of this RFA, and that its prices will remain firm for acceptance for a minimum of ninety (90) days from deadline for submission of Proposal.
5. By signature hereon, Applicant represents and warrants that each employee, including 'replacement employees', will possess the qualifications, education, training, experience and certifications necessary to perform the services in the manner required by this RFA.
6. By signature hereon, Applicant represents and warrants that it has no actual or potential conflicts of interest in providing the requested items to Comptroller under the RFA and any resulting contract, if any, and that Applicant's provision of the requested items under the RFA and any resulting contract, if any, would not reasonably create an appearance of impropriety.
7. By signature hereon, pursuant to Section 2155.004(a), Texas Government Code, Applicant represents and warrants that it has not given, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with the submitted Proposal.
8. By signature hereon, Applicant represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Texas Tax Code. In addition, if Applicant is an individual not residing in Texas or a business entity not incorporated in or whose principal domicile is not in Texas, the following certification applies. Applicant represents and warrants that it holds a permit issued by Comptroller to collect or remit all state and local sales and use taxes that become due and owing as a result of the individual's or entity's business in Texas or represents and warrants that it does not sell tangible personal property or services that are subject to the state and local sales and use tax. Under Section 2155.004(a), Texas Government Code, a state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. Further, Applicant certifies that the individual or business entity named in this Proposal or any contract resulting from this RFA is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate. See Texas Government Code Section 2155.004(b).
9. By signature hereon, Applicant hereby represents and warrants that, pursuant to 15 U.S.C. Sec. 1, et seq. and Tex. Bus. & Comm. Code Sec. 15.01, et seq., neither Applicant nor the firm, corporation, partnership, or institution represented by Applicant, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the Proposal made to any competitor or any other person engaged in such line of business.
10. By signature hereon, Applicant represents and warrants that all statements and information prepared and submitted in response to this RFA are current, complete and accurate.
11. By signature hereon, Applicant represents and warrants that the individual signing this document and the documents made part of this RFA and Proposal is authorized to sign such documents on behalf of the company and to bind the company under any contract which may result from the submission of this Proposal.
12. By signature hereon, Applicant represents and warrants that if a Texas address is shown as the address of the Applicant, Applicant qualifies as a Texas Bidder as defined by 34 Texas Administrative Code §20.32(68).
13. Check below if preference claimed under 34 Texas Administrative Code §20.38:
 - Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
 - Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
 - Agricultural products grown in Texas

- Agricultural products offered by a Texas bidder
- Services offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
- Services offered by a Texas bidder that is not owned by a Texas resident service disabled veteran
- Texas Vegetation Native to the Region
- USA produced supplies, materials or equipment
- Products of persons with mental or physical disabilities
- Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel
- Energy Efficient Products
- Rubberized asphalt paving material
- Recycled motor oil and lubricants
- Products produced at facilities located on formerly contaminated property
- Products and services from economically depressed or blighted areas
- Vendors that meet or exceed air quality standards
- Recycled or Reused Computer Equipment of Other Manufacturers
- Foods of Higher Nutritional Value

14. By signature hereon, under Section 231.006, Texas Family Code, regarding child support, Applicant certifies that the individual or business named in the Proposal is not ineligible to receive the specified payment and acknowledges that the contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any Applicant subject to Section 231.006, Texas Family Code, must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the Proposal. This information must be provided prior to award. Enter the Name and Social Security Number for each person below:

Name:	SSN:
Name:	SSN:
Name:	SSN:

FEDERAL PRIVACY ACT NOTICE: This notice is given pursuant to the Federal Privacy Act. Disclosure of your Social Security Number (SSN) is required under Section 231.006(c) and Section 231.302(c)(2), Texas Family Code. The SSN will be used to identify persons that may owe child support. The SSN will be kept confidential to the fullest extent allowed under Section 231.302(e), Texas Family Code.

15. By signature hereon, Applicant represents and warrants that no relationship, whether by relative, business associate, capital funding contract or by any other such kinship exist between Applicant and an employee of any Comptroller component, and Applicant has not been an employee of any Comptroller component within the immediate twelve (12) months prior to Applicant's Proposal. By signature hereon, Applicant certifies that it is in compliance with Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency. All such disclosures will be subject to administrative review and approval prior to Comptroller entering into any contract with Applicant. Applicant acknowledges that any contract resulting from this RFA may be terminated at any time, and payments withheld, if this information is false.
16. By signature hereon, pursuant to Section 2155.004, Texas Government Code Applicant represents and warrants that neither it nor any person or entity which will participate financially in any contract resulting from this RFA has received compensation for participation in the preparation of specifications for this RFA.
17. By signature hereon, Applicant represents and warrants that all articles and services quoted in response to this RFA meet or exceed the safety standards established and promulgated under the *Federal Occupational Safety and Health Law* and its regulations in effect or proposed as of the date of this solicitation.
18. By signature hereon, Applicant represents and warrants its compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
19. By signature hereon, Applicant represents and warrants its compliance with the requirements of the Americans With Disabilities Act (ADA). Applicant further represents and warrants that it will comply with all applicable Texas Accessibility requirements.

20. By signature hereon, in accordance with Section 2155.4441, Texas Government Code, Applicant agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.
21. By signature hereon, Applicant represents and warrants that Comptroller's payments to Applicant and Applicant's receipt of appropriated or other funds under any contract resulting from this RFA are not prohibited by Section 556.005 or Section 556.008, Texas Government Code.
22. By signature hereon, Applicant represents and warrants that the offering entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity and that Applicant is in compliance with the State of Texas statutes and rules relating to procurement and that Applicant is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>.
23. Under Section 2155.006(b), Texas Government Code, a state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year period preceding the date of the bid or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005. Under Section 2155.006, Texas Government Code, Applicant certifies that the individual or business entity named in the Proposal is not ineligible to receive the specified contract and acknowledges that any contract resulting from this RFA may be terminated and payment withheld if this certification is inaccurate.
24. By signature hereon and by checking or initialing **either** Subsection (a) **or** Subsection (b), as applicable, Applicant represents and warrants the following:
- (a) __ Applicant represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Applicant or any of the individuals or entities included in Section 1 of this document that would or could impair Applicant's performance under any contract resulting from this RFA, relate to the solicited or similar goods or services, or otherwise be relevant to the agency's consideration of Applicant's Proposal. Applicant represents and warrants that it is not aware of any such court or governmental agency actions, proceedings or investigations, etc. against Applicant or any of these individuals or entities within the five (5) calendar years immediately preceding the submission of Applicant's Proposal in response to this RFA. In addition, Applicant represents and warrants that it shall notify Comptroller in writing within five (5) business days of any changes to the representations or warranties in this Subsection (a) and understands that failure to so timely update Comptroller shall constitute breach of contract and may result in immediate termination of the contract.
- (b) Applicant is unable to make the representation and warranty in Subsection (a) above and instead represents and warrants that it has included as a detailed attachment in its Proposal, which expressly references this Subsection (b), a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc., and specifically addresses whether any of such past, pending or threatened actions, proceedings or investigations, etc., would or could (1) impair Applicant's performance under any contract resulting from this RFA; (2) relate to the solicited or similar goods or services; or (3) be otherwise relevant to the agency's consideration of Applicant's Proposal. In addition, Applicant represents and warrants that it shall notify Comptroller in writing within five (5) business days of any changes to the representations or warranties in this Subsection (b) or attachments in response to Subsection (b) and understands that failure to so timely update Comptroller shall constitute breach of contract and may result in immediate termination of the contract.
- Applicant understands that a Proposal returned without the appropriate checked or initialed representation and warranty and the detailed attachment required in Subsection (b), when applicable, may be automatically disqualified.**

25. By signature hereon, Applicant represents and warrants that it has read and agrees to all terms and conditions of this RFA, unless Applicant specifically takes an exception and offers an alternative provision in Applicant's Proposal as provided in Exhibit C, Section 2 of this RFA.

Authorized signatory on behalf of Applicant must complete and sign the following:

_____ Authorized Signature	_____ Date Signed
_____ Ron Whitehead, City Manager	_____ Phone Number
_____ Town of Addison	_____ Phone Number
_____ Company Name	_____ Fax Number
_____ Federal Employer Identification Number	_____ E-Mail Address
_____ Physical Street Address	_____ City, State, Zip Code
_____ Mailing Address, if different	_____ City, State, Zip Code

ATTACHMENT L
ARRA REPORTING REQUIREMENTS

1. Subrecipient shall submit to the Comptroller the following reports:

A. INITIAL INFORMATION REPORT. The Subrecipient shall submit the following information upon the execution of the Grant Agreement and return this report when the executed Grant Agreement is submitted to the Agency:

I. Subrecipient Identification:

a. Subrecipient name: Provide the following information for the Subrecipient;

- (i) the official name of the Subrecipient as it appears on the Grant Agreement and DUNS #;
- (ii) the street address, city, and county of the official place of business;
- (iii) City, County, and U.S. Postal Zip Code + four digits;
- (iv) the URL designation or address of any official web site for the Subrecipient;
- (v) U.S. Congressional District;
- (vi) the state senatorial district;
- (vii) the state house district;
- (viii) a copy of the minutes or resolution by which the Subrecipient approved the Grant agreement and designated an authorized representative for the Subrecipient;
- (ix) the grant/award number assigned to the Subrecipient by the Agency;
- (x) the date the Grant Agreement was signed (mm/dd/yyyy); and
- (xi) the performance period established in the Grant Agreement during which sponsorship begins and ends.

b. Authorized Representative: Provide the following information for the person designated by the Subrecipient to represent the Subrecipient in the performance of the Grant Agreement:

- (i) the name of the authorized representative and official title, if any;
- (ii) the street address, city, and county of the primary business location;
- (iii) City, County, and U.S. Postal Zip Code + four digits;
- (iv) area code and telephone number; and
- (v) email address.

c. Key Personnel: Provide the following information for each employee or agent designated by the Subrecipient or the Authorized Representative that may assist or serve as a representative for the Subrecipient in the performance of the Grant Agreement:

- (i) the name of the key personnel and official title, if any;
- (ii) primary role served for the Subrecipient with respect to the Grant;
- (iii) the street address, city, and county of the primary business location;
- (iv) City, County, and U.S. Postal Zip Code + four digits;
- (v) area code and telephone number; and
- (vi) email address.

d. Five most highly compensated individuals: The information required in this subsection is ONLY required when the reporting entity (A) received 80 percent or more of its annual gross revenues in Federal awards the recipient in its preceding fiscal year, and (B) received \$ 25,000,000 or more in annual gross revenues from Federal awards; and (C) the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (*15 U.S.C. 78m(a), 78o(d)*) or section 6104 of the Internal Revenue Code of 1986 [26 USC §6104]. If this subsection is applicable, the report shall include:

- (i) the names and total compensation for the five most highly compensated officers of the entity;
- (ii) "Total compensation" means the cash and noncash dollar value earned by the executive during the subrecipient's past fiscal year of the following: Salary and bonus; Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R; Earnings for services under non-equity incentive plans. Does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees; Change in pension value. This is the change in present value of defined benefit and actuarial pension plans; Above-market earnings on deferred compensation which are not tax-qualified. Other compensation, for example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property if the value for the executive exceeds \$10,000.

II. Project Identification:

a. Project Name: Provide the brief descriptive title of the project or activity as identified in the Grant Agreement.

b. Primary Performance Location: Provide physical location of primary place of performance by:

- (i) street address,
- (ii) City, County, and U.S. Postal Zip Code + four digits
- (iii) U.S. Congressional District;
- (iv) the state senatorial district; and
- (v) the state house district;

c. Project Objective: A description of the overall purpose and expected outputs and outcomes or results of the Grant Agreement, including significant deliverables and, if appropriate, units of measure.

B. MONTHLY REPORT. On the last day of each calendar month, the Subrecipient shall submit an electronic performance report found at <https://fmx.cpa.state.tx.us/fmx/index.php> (click on SECO Stimulus Reporting Tool).

In order to access the reporting tool the Subrecipient must first receive a User ID from the SECO Stimulus Grant Manager. The web reporting tool will capture project status and Department of Energy and ARRA performance metrics, including jobs created and jobs retained.

All reporting must be completed through the web reporting system. In rare situations that the web reporting tool is not available or the subrecipient is unable to access the system, a faxed, scanned or emailed report will be acceptable upon notification and approval.

C. FINAL REPORT.

1. No later than 30 days following the grant ending date, the Subrecipient shall submit an electronic Final Report via the web reporting tool at <https://fmx.cpa.state.tx.us/fmx/index.php> (click on SECO Stimulus Reporting Tool) through the last day of the grant performance period. All reporting must be completed through the web reporting system. In rare situations that the web reporting tool is not available or the subrecipient is unable to access the system, a faxed, scanned or emailed report will be acceptable upon notification and approval.

2. Subrecipient is required to collect and report required project information from any of its vendors or subcontractors that are remitted any funds provided under this agreement.

3. Failure to comply with the requirements of this attachment may result in termination of the grant award and the Subrecipient being ineligible for future grants.

4. The form and substance of these reporting requirements may be amended by the Comptroller at any time.

As the duly authorized representative of the Subrecipient, I hereby certify that Subrecipient will comply with the above requirements.

Town of Addison
SUBRECIPIENT

By: _____
Ron Whitehead, City Manager

Date: _____