



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

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## AGENDA

### REGULAR MEETING OF THE CITY COUNCIL

AND / OR

### WORK SESSION OF THE CITY COUNCIL

6:00 PM

MARCH 22, 2011

TOWN HALL

**ADDISON TOWN HALL, 5300 BELT LINE, DALLAS, TX 75254**

### **WORK SESSION**

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Item            Discussion regarding the Council Liaison process.  
#WS1 -

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Item            Discussion regarding the City Council Master Calendar and  
#WS2 -        FY 2012 Budget Schedule

Attachment(s):

1. City Council Master Calendar
  2. FY 2012 Budget Calendar
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**REGULAR MEETING**

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## **Pledge of Allegiance**

Item #R1- Consideration of Old Business

Introduction of Employees

Discussion of Events/Meetings

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Item #R2- Consent Agenda.

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#2a- Approval of Minutes for the March 8, 2011 Work and Regular Council Meeting.

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#2b- Approval of an Encroachment On Easement Agreement between the Town of Addison and Oncor Electric Delivery Company to construct a twelve foot wide improved hike and bike trail within the 60 foot wide Oncor electric transmission easement on the west side of the Greenhill School property.

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#2c- Approval of an ordinance amending Chapter 62 Signs of the Code of Ordinances by amending Section 62-98 Fee as set forth in the Ordinance.

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#2d- Approval of an ordinance amending Chapter 78 (Traffic and Vehicles), Article III (Vehicle Operation), Division 2 (Speed and Related Restrictions) of the Code of Ordinances by adding a new section thereto that gives the City Manager, the City Manager's designee or the Director of Public Works the authority to reduce the speed limit of a road, street, highway or alley within the Town during periods of maintenance, repair or construction of said road, street, highway or alley.

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#2e- Approval authorizing the City Manager to enter into a

contract with Divcon EMS, to upgrade the main control panel for the energy management system (EMS) at the Athletic Club facility in the amount of \$29,678.

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Item #R3 Discussion and consideration of the appointment of a member to the Addison Planning and Zoning Commission.

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Item #R4 Presentation, discussion and consideration of approval of the City Council Subcommittee on Marketing and Public Communications Final Report.

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Item #R5 **PUBLIC HEARING.** Presentation, discussion and consideration of approval of an ordinance of the Town establishing standards of care for youth recreation programs conducted by the Town for elementary age children ages 5 through 13; providing for compliance with Section 42.041(b)(14) of the Texas Human Resources Code.

Attachment(s):

1. Standards of Care Ordinance

Recommendation:

Staff recommends approval.

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Item #R6 Presentation, discussion and consideration of approval of an Ordinance amending Chapter 18 (Buildings and Building Regulations) of the Code of Ordinances by amending various sections thereof regarding:

1. the International Building Code, and adopting the International Building Code, 2009 Edition (and certain

appendices thereto) and making such other changes and providing for other provisions regarding and relating to the International Building Code as set forth in the Ordinance, including continuing in effect certain provisions of the International Building Code, 2006 Edition regarding automatic fire extinguishing systems.

2. the International Residential Code, and adopting the 2009 International Residential Code, 2009 Edition (and certain appendices thereto) and making such other changes and providing for other provisions regarding and relating to the International Residential Code as set forth in the Ordinance, including continuing in effect certain provisions of the International Residential Code, 2006 Edition regarding automatic fire extinguishing systems.

3. the International Energy Conservation Code, and adopting the International Energy Conservation Code, 2009 Edition and making other changes and providing for other provisions regarding and relating to the International Energy Conservation Code as set forth in the Ordinance.

4. the International Property Maintenance Code, and adopting the International Property Maintenance Code, 2009 Edition and making other changes and providing for other provisions regarding and relating to the International Property Maintenance Code as set forth in the Ordinance.

5. the International Code Council Electrical Code, 2006 Edition and making other changes and providing for other provisions regarding and relating to the International Code Council Electrical Code as set forth in the Ordinance.

6. the International Plumbing Code, and adopting the International Plumbing Code, 2009 Edition and making



other changes and providing for other provisions regarding and relating to the International Plumbing Code as set forth in the Ordinance.

7. the International Mechanical Code, and adopting the International Mechanical Code, 2009 Edition and making other changes and providing for other provisions regarding and relating to the International Mechanical Code as set forth in the Ordinance.

8. the Building/ Fire Code Board of Appeals in Sections 18-614 (Relating to Fences), 18-652 (Relating to Satellite Dishes), 18-725 (Relating to Swimming Pools), and 18-730 (Relating to Solar Energy Systems) and making other changes and providing for other provisions regarding and relating to the Building/Fire Code Board of Appeals as set forth in the Ordinance.

Attachment(s):

1. 2009 IBC Memo
2. 2009 IBC ORD
3. 2009 IRC Memo
4. 2009 IRC ORD
5. 2009 IPMC Memo
6. 2009 IPMC ORD
7. 2009 Amendments to 2006 ICCEC Memo
8. 2009 Amendments to 2006 ICCEC ORD
9. 2009 IPC Memo
10. 2009 IPC ORD

11. 2009 IMC Memo
12. 2009 IMC ORD
13. 2009 BOARD OF APPEALS Memo
14. 2009 BOARD OF APPEALS ORD

Recommendation:

Staff recommends approval

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Item #R7 Presentation, discussion and consideration of approval of an Ordinance amending Chapter 38 (Fire Prevention and Protection) of the Code of Ordinances by amending various sections thereof regarding the International Fire Code, and adopting the International Fire Code, 2009 Edition (and all appendices thereto) and making such other changes and providing for other provisions regarding and relating to the International Fire Code as set forth in the Ordinance, including continuing in effect certain provisions of the International Fire Code, 2006 Edition regarding automatic fire extinguishing systems.

Attachment(s):

1. Proposed Fire Code Adoption Ordinance

Recommendation:

Staff recommends approval.

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Item #R8 Presentation, discussion and consideration of approval to authorize the City Manager to execute a Construction Contract with CPS Civil, LLC in the amount of \$862,824.60 with contract duration of 175 calendar days for the construction of certain public infrastructure (including streets and water lines, 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. Bid Tab for Phase 2
2. Cost Analysis for Phase 2

Recommendation:

Staff recommends approval.

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Item #R9 - Presentation, discussion and consideration of approval to authorize the City Manager to execute a Supplemental Agreement to the Agreement for Professional Services with Kleinfelder, Inc. for an amount not to exceed \$42,457.00 for additional services related to the Construction Inspection and Materials Testing of certain public infrastructure (including park, streetscape and other public infrastructure improvements) within that area of the Town generally known as Vitruvian Park (Vitruvian Park Public Infrastructure, Phase 2).

Recommendation:

Staff recommends approval.

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Item #R10 - 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 \$69,026.00, for and regarding the management of the construction of certain public infrastructure (including streets, water and sanitary sewer lines, 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. Construction Management Agreement - Vitruvian Park Phase II

Recommendation:

Staff recommends approval.

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Item #ES1 - Closed (executive) session of the City Council pursuant to Section 551.071, Texas Government Code, to conduct a private consultation with its attorney(s) to seek the advice of its attorney(s) about pending litigation, to wit: *In re Great Escape Aviation, Inc.*, Case No. 10-35871-hdh-11, U.S. Bankruptcy Court, Northern District of Texas.

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Item #R11 - Consideration of any action regarding pending litigation, to wit: *In re Great Escape Aviation, Inc.*, Case No. 10-35871-hdh-11, U.S. Bankruptcy Court, Northern District of Texas.

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Adjourn Meeting

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Posted:

03/18/2011, 5PM, Lea Dunn

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

## Council Agenda Item: #WS1

**AGENDA CAPTION:**

Discussion regarding the Council Liaison process.

**FINANCIAL IMPACT:**

N/A

**BACKGROUND:**

N/A

**RECOMMENDATION:**

N/A

**COUNCIL GOALS:**

N/A

**ATTACHMENTS:**

Description:

Type:

No Attachments Available

## Council Agenda Item: #WS2

**AGENDA CAPTION:**

Discussion regarding the City Council Master Calendar and FY 2012 Budget Schedule

**FINANCIAL IMPACT:**

N/A

**BACKGROUND:**

N/A

**RECOMMENDATION:**

N/A

**COUNCIL GOALS:**

N/A

**ATTACHMENTS:**

Description:

- [City Council Master Calendar](#)
- [FY 2012 Budget Calendar](#)

Type:

Cover Memo  
Cover Memo

# February 2011

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
		1	2	3 NFL Charity Bowling Tournament	4	5
6 Biggest "Big Game" Watching Party in North Texas	7	8 Council Meeting	9	10	11	12
13	14	15	16	17	18	19
20	21	22 Council Meeting	23	24	25	26
27	28 Town Initiatives Work Shop					

# March 2011

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
		1	2	3 Out of the Loop Fringe Festival	4 Out of the Loop Fringe Festival	5 Out of the Loop Fringe Festival
6 Out of the Loop Fringe Festival	7 Out of the Loop Fringe Festival	8 Council Meeting Out of the Loop Fringe Festival	9 Out of the Loop Fringe Festival	10 Out of the Loop Fringe Festival	11 Out of the Loop Fringe Festival	12 Out of the Loop Fringe Festival
13 Out of the Loop Fringe Festival	14	15	16	17	18	19
20	21	22 Council Meeting	23	24	25	26
27	28 Town Initiatives Work Shop	29	30	31		



# April 2011

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
					1	2 Walk MS
3	4	5	6	7	8	9
10	11	12 Council Meeting	13	14	15	16 Wellness Expo
17 Wellness Expo	18	19	20	21	22	23 Budget Review with Council and Council Candidates
24	25 Town Initiatives Work Shop	26 Council Meeting	27	28	29	30

# May 2011

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
1	2	3	4	5	6	7 Community Garage Sale
8	9	10 Council Meeting	11	12	13	14 Election
15	16	17	18	19	20 Taste Addison	21 Taste Addison
22 Taste Addison	23	24 Council Meeting Canvass Election	25	26 Council Budget Work Session	27	28
29	30 Town Offices Closed – Memorial Day	31				

# June 2011

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
			1	2	3	4 Strategic Planning Work Session Symphonic Saturdays
5	6	7	8	9	10	11 Symphonic Saturdays
12	13	14 Council Meeting NonProfit Budgets Public Hearings FY2012 Budget	15	16	17	18 Symphonic Saturdays
19	20	21	22	23	24	25 Strategic Planning Work Session Symphonic Saturdays
26	27 Town Initiatives Work Shop	28 Council Meeting Budget Public Hearing and Work Session	29	30		

# July 2011

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
					1	2
3 Kaboom Town	4 Town Offices Closed – Independence Day	5	6	7	8	9 July Jazz
10	11 Budget Work Session	12 Council Meeting Budget Work Session	13	14	15	16 July Jazz
17	18	19	20	21	22	23 July Jazz
24	25	26	27	28	29	30 July Jazz
31						

# August 2011

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
	1	2	3	4	5	6 Summer Salsa
7	8	9 Council Meeting General Fund Hotel Fund	10	11	12	13 Summer Salsa
14	15	16	17	18	19	20 Summer Salsa
21	22 Town Initiatives Work Shop	23 Council Meeting Airport Fund Utility Fund	24	25	26	27 Final Council Budget Work Session Summer Salsa
28	29	30	31			

# September 2011

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
				1	2	3
4	5 Town Offices Closed – Labor Day	6	7	8	9	10
11	12	13 Council Meeting Public Hearing on Budget	14	15 Oktoberfest	16 Oktoberfest	17 Oktoberfest ----- 5K & One Mile Fun Run
18 Oktoberfest	19	20 Council Meeting Adoption of budget and tax rate	21	22	23	24
25	26 Town Initiatives Work Shop	27 Council Meeting	28	29	30	



# October 2011

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
						1 Community Garage Sale ----- Mary Kay 5K
2	3	4	5 Shakespeare Dallas	6 Shakespeare Dallas	7 Shakespeare Dallas	8 Shakespeare Dallas
9 Shakespeare Dallas	10	11 Council Meeting TML CONFERENCE -- HOUSTON	12 Shakespeare Dallas TML CONFERENCE -- HOUSTON	13 Shakespeare Dallas TML CONFERENCE -- HOUSTON	14 Shakespeare Dallas TML CONFERENCE -- HOUSTON	15 Shakespeare Dallas ----- Wellness Expo
16 Shakespeare Dallas ----- Wellness Expo	17	18	19	20	21	22 WorldFest
23 WorldFest	24 Town Initiatives Work Shop	25 Council Meeting	26	27	28	29
30	31					

# November 2011

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
		1	2	3	4 Bookworm Bash	5 Bookworm Bash
6	7	8 Council Meeting	9	10	11	12 Arbor Day
13	14	15	16	17	18	19
20	21	22 Council Meeting	23	24 Town Offices Closed - Thanksgiving	25 Town Offices Closed - Thanksgiving	26
27	28 Town Initiatives Work Shop	29	30			



# December 2011

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
				1	2	3
<b>Dates to be determined:</b> Holiday Open House Service Appreciation Event ABA Holiday Party						
4	5	6	7	8	9	10
11	12	13 Council Meeting	14	15	16	17
18	19	20	21	22	23 Town Offices Closed - Christmas	24
25	26 Town Offices Closed - Christmas	27	28	29	30	31

# November 2010

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
	1	2	3	4 Council Meeting Rick Robinson	5	6
7	8	9 Council Meeting	10 Council Meeting Jonathan Schick Canvass Election	11	12	13
14	15	16	17	18	19	20
21	22 Town Initiatives Work Shop	23 Council Meeting	24	25 Thanksgiving - Observance - Town Offices Closed	26 Thanksgiving - Observance - Town Offices Closed	27
28	29	30				

# December 2010

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
			1	2	3	4
5 Holiday Open House	6	7	8	9 ABA Holiday Party	10	11
12	13	14 Council Meeting	15	16	17	18
19	20	21	22	23	24 Christmas Observance -- Town Offices Closed	25
26	27 Christmas Observance -- Town Offices Closed	28	29	30	31 Town Offices Closed Observe New Year's Day	

# Draft FY 2012 Budget Process Calendar

Legend:

**Bold Items** – Regular Council meetings

*Italicized Items* – Special Council meetings/workshops

**Red Items** – State or city charter mandated meetings and publications

- *Saturday, April 23 – Budget review with Council and Council candidates*
- **Tuesday, May 24 – Council meeting**
  - ✓ Canvass Election
  - ✓ Swearing in of new Council
- Wednesday, May 18 – Budget process kickoff
  - ✓ Budget instructions delivered to departments
- *Thursday, May 26 – Budget work session with Council*
- *Saturday, June 4 – Strategic planning work session with Council*
- Friday, June 10 – Deadline for department budget submittal to Financial & Strategic Services
- **Tuesday, June 14 – Council meeting**
  - ✓ Non-profit organization budget presentations
  - ✓ Public Hearing on the FY2012 Budget
- Monday and Tuesday, June 20 and June 21 – Department meetings with city manager
- *Saturday, June 25 – Strategic planning work session with Council, Department budget presentations to Council*
- **Tuesday, June 28 – Council meeting**
  - ✓ Public Hearing on the FY2012 Budget
- *Monday, July 11 – Budget work session with Council*
- **Tuesday, July 12 – Council meeting**
  - ✓ Budget discussion as needed
- **Friday, July 22 – Certified ad valorem tax appraisal released**
- Tuesday, July 26 – FY 2012 budget update with executive team
- **Friday, July 29 – City manager’s budget due to city secretary**
- **Friday, August 5 – Publish effective tax rate**
- **Tuesday, August 9 – Council meeting**
  - ✓ **Council vote of record on proposed tax rate (if needed)**

# Draft FY 2012 Budget Process Calendar

Legend:

**Bold Items** – Regular Council meetings

*Italicized Items* – Special Council meetings/workshops

**Red Items** – State or city charter mandated meetings and publications

- ✓ City manager's General Fund presentation
- ✓ City manager's Hotel Fund presentation
- **Friday, August 12 – Publish notice of public hearings on proposed tax rate (if needed)**
- **Tuesday, August 23 – Council meeting**
  - ✓ **First public hearing on proposed tax rate (if needed)**
  - ✓ City manager's Airport Fund presentation
  - ✓ City manager's Utility Fund presentation
  - ✓ Presentation of FY 2011 budget amendments
- **Friday, August 26 – Publish notice of public hearing on budget**
- *Saturday, August 27 – Final Council Budget Work Session*
- **Tuesday, September 13 – Council meeting**
  - ✓ **Second public hearing on proposed tax rate (if needed)**
  - ✓ **Public hearing on budget**
- **Friday, September 16 – Publish notice of vote on tax rate (if needed)**
- *Tuesday, September 20 – Council meeting*
  - ✓ **Adoption of budget, tax rate and related items**

## Council Agenda Item: #R 2a

**AGENDA CAPTION:**

Approval of Minutes for the March 8, 2011 Work and Regular Council Meeting.

**FINANCIAL IMPACT:**

N/A

**BACKGROUND:**

N/A

**RECOMMENDATION:**

N/A

**COUNCIL GOALS:**

N/A

**ATTACHMENTS:**

Description:

[March 8 Combined Council Meeting Minutes](#)

Type:

Cover Memo

# OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL WORK SESSION

March 8, 2011

6:00 PM - Town Hall

Addison Town Hall, 5300 Belt Line, Dallas, TX 75254

Upstairs Conference Room

Council Members Present:

Arfsten, Chow, Clemens, Lay, Mellow, Noble, Resnik

Absent:

None

## **Work Session**

Item #WS1 - Presentation and discussion of an amendment to the Code of Ordinances, Article XXI - Landscape Regulations requiring a tree pruning permit for commercial properties, as well as, to establish a pre-qualification standard for landscape and tree care companies that perform tree pruning on commercial properties in Addison.

Slade Strickland reviewed a proposed ordinance which would regulate tree pruning in Addison.

There was no action taken.

Item #WS2 - Presentation and discussion of management comment letter from the Town's independent auditors, Weaver and Tidwell, and the Fiscal Year 2010 Comprehensive Annual Financial Report.

Jerry Gaither, with Weaver and Tidwell, reviewed the results of the Town's annual financial audit.

There was no action taken.

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Mayor-Joe Chow

Attest:

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City Secretary-Lea Dunn

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

March 8, 2011

6:00 PM - Town Hall

Addison Town Hall, 5300 Belt Line, Dallas, TX 75254

3/4/2011, 5PM, Lea Dunn

Council Members Present:

Arfsten, Chow, Clemens, Lay, Mellow, Noble, Resnik

Absent:

None

**REGULAR MEETING**

Item #R1 - Consideration of Old Business

The following visitors were introduced: Ronnie Lee, IT Department; Jonathan Crist, Fire Department; Michele Hilgart, City Manager's Office.



There was no action taken.

Item #R2 - Consent Agenda

#2a - Approval of Minutes for the February 22, 2011 Work and Regular Council Meeting.

A motion to Approve was made by Councilmember Neil Resnik.

The motion was seconded by Councilmember Blake Clemens.

The motion result was: Passed

Voting Aye: Arfsten, Chow, Clemens, Lay, Mellow, Noble, Resnik

Voting Nay: None

#2b - Approval of a license agreement between the Town of Addison and Addison Arbor (formerly Office in the Park) to allow Addison residents use of the two existing tennis courts, restroom and storage facility and putting green in the office park site (generally located along the west side of Midway Road approximately one-fourth of a mile south of the intersection of Midway Road and Beltway Drive), subject to final review and approval of the City Manager and City Attorney.

Item pulled for clarification and then passed, with the condition of an increase of term from one year to five, and subject to final review of the City Manager and City Attorney.

A motion to Approve w/ Conditions was made by Councilmember Neil Resnik.

The motion was seconded by Councilmember Blake Clemens.

The motion result was: Passed

Voting Aye: Arfsten, Chow, Clemens, Lay, Mellow, Noble, Resnik

Voting Nay: None

#2c - Approval to authorize the City Manager to release the Fiscal Year 2010 Comprehensive Annual Financial Report.

Council authorized the City Manager to release the FY 2010 Comprehensive Annual Financial Report.

A motion to Approve was made by Councilmember Neil Resnik.  
The motion was seconded by Councilmember Blake Clemens.  
The motion result was: Passed  
Voting Aye: Arfsten, Chow, Clemens, Lay, Mellow, Noble, Resnik  
Voting Nay: None

Item #R3 - Presentation by Stephen L. Mansfield, President and CEO of Methodist Health System, Michael Schaefer, CFO, Methodist Health System and Chris Shoup, President, Methodist Hospital for Surgery in Addison thanking the Town of Addison for its support of the Surgery Hospital project.

Presentation by Methodist Health System thanking the Town of Addison for its support of the Surgery Hospital project.

There was no action taken.

Item #R4 - Discussion and consideration of the appointment of members to the Addison Planning and Zoning Commission.

Councilmember Resnik nominated Linda Groce for appointment to the Planning and Zoning Commission.

Councilmember Lay deferred nomination of appointment until the March 22 Council Meeting.

A motion to Approve was made by Councilmember Neil Resnik.  
The motion was seconded by Councilmember Kimberly Lay.  
The motion result was: Passed  
Voting Aye: Arfsten, Chow, Clemens, Lay, Mellow, Noble, Resnik  
Voting Nay: None

Item #R5 - PUBLIC HEARING Case 1623-SUP/7-Eleven Convenience Store #34676. Public hearing, discussion and consideration of approval of an ordinance approving a change to an

existing planned development zoning district, being Planned Development District 001-002 that zoned the property generally located at 4900 Belt Line Road, in order to allow the sale of beer and wine for off-premises consumption upon the issuance of a Special Use Permit, and approving a Special Use Permit for the sale of beer and wine for off-premises consumption only for that said property, located in a Planned Development District located at 4900 Belt Line Road, Suite 125, on application from 7-Eleven Convenience Stores, represented by Ms. Christina Tanner of Gardere and Wynne. COMMISSION FINDINGS: The Addison Planning and Zoning Commission, meeting in regular session on February 24, 2011, voted to recommend approval of the amendment to a Planned Development zoning district, being Planned Development District 001-002, in order to allow the sale of beer and wine for off-premises consumption, and approval of a Special Use Permit for the sale of beer and wine for off-premises consumption only, subject to no conditions. Voting Aye: Doherty, Oliver, Wheeler, Wood Voting Nay: none Absent: none

Ordinance 011-016 was approved.

A motion to Approve was made by Councilmember Bruce Arfsten. The motion was seconded by Councilmember Neil Resnik. The motion result was: Passed  
Voting Aye: Arfsten, Chow, Clemens, Lay, Mellow, Noble, Resnik  
Voting Nay: None

Item #R6 - PUBLIC HEARING Case 1624-SUP/Sam's Club #6376. Public hearing, discussion and consideration of approval of an ordinance approving a change to an existing planned development zoning district, being Planned Development District 091-066 that zoned the property generally located at 4150 Belt Line Road, in order to allow the sale of beer and wine for off-premises consumption upon the issuance of a Special Use Permit, and approving a Special Use Permit for the sale of beer and wine for off-premises consumption only for that said property, located in a Planned Development District

located at 4150 Belt Line Road, on application from Sam's Club #6376, represented by Ms. Kimberly Frost of Jack Martin and Associates. COMMISSION FINDINGS: The Addison Planning and Zoning Commission, meeting in regular session on February 24, 2011, voted to recommend approval of the amendment to a Planned Development zoning district, being Planned Development District 091-066, in order to allow the sale of beer and wine for off-premises consumption, and approval of a Special Use Permit for the sale of beer and wine for off-premises consumption only, subject to no conditions. Voting Aye: Doherty, Oliver, Wheeler, Wood Voting Nay: none Absent: none

Ordinance 011-017 was approved.

A motion to Approve was made by Councilmember Neil Resnik.

The motion was seconded by Councilmember Bianca Noble.

The motion result was: Passed

Voting Aye: Arfsten, Chow, Clemens, Lay, Mellow, Noble, Resnik

Voting Nay: None

Item #R7 - PUBLIC HEARING Case 1625-SUP/Canary Café by Gorji. Public hearing, discussion and consideration of approval of an ordinance approving a change to an existing planned development zoning district, being Planned Development District 002-001 that zoned the property generally located at 5100 Belt Line Road, in order to allow the sale of beer and wine for off-premises consumption upon the issuance of a Special Use Permit, and approving a Special Use Permit for the sale of beer and wine for off-premises consumption only for that said property, located in a Planned Development District located at 5100 Belt Line Road, Suite 402, on application from Canary Café by Gorji, represented by Mr. Mansoor Gorji. COMMISSION FINDINGS: The Addison Planning and Zoning Commission, meeting in regular session on February 24, 2011, voted to recommend approval of the amendment to a Planned Development zoning district, being Planned Development District 002-001, in order to allow the

sale of beer and wine for off-premises consumption, and approval of a Special Use Permit for the sale of beer and wine for off-premises consumption only, subject to no conditions. Voting Aye: Doherty, Oliver, Wheeler, Wood Voting Nay: none Absent: none

Ordinance 011-018 was approved.

A motion to Approve was made by Councilmember Kimberly Lay.

The motion was seconded by Councilmember Blake Clemens.

The motion result was: Passed

Voting Aye: Arfsten, Chow, Clemens, Lay, Mellow, Noble, Resnik

Voting Nay: None

Item #R8 - PUBLIC HEARING Case 1626-SUP/Mercy Wine Bar.

Public hearing, discussion and consideration of approval of an ordinance approving a Special Use Permit for the sale of beer and wine for off-premises consumption only, for that property located in a Planned Development District (002-001), located at 5100 Belt Line Road, Suite 544, on application from Mercy Wine Bar, represented by Ms. Judi Burnett. COMMISSION FINDINGS: The Addison Planning and Zoning Commission, meeting in regular session on February 24, 2011, voted to recommend approval of a Special Use Permit for the sale of beer and wine for off-premises consumption only, subject to no conditions. Voting Aye: Doherty, Oliver, Wheeler, Wood Voting Nay: none Absent: none

Ordinance 011-019 was approved.

A motion to Approve was made by Councilmember Blake Clemens.

The motion was seconded by Councilmember Kimberly Lay.

The motion result was: Passed

Voting Aye: Arfsten, Chow, Clemens, Lay, Mellow, Noble, Resnik

Voting Nay: None

Item #R9 - FINAL PLAT/Lots 7R & 8R, Block 8231, Addison Office

Condos, Discussion and consideration of approval of a final plat located on two lots of .415 acres in a Commercial-1 zoning district, addressed as 16420 Addison Road, on application from 16420 Addison Road, Ltd., represented by Mr. Mike Boswell. COMMISSION FINDINGS: The Addison Planning and Zoning Commission, meeting in regular session on February 24, 2011, voted to recommend approval of the final plat for Lots 7R 7 8R, Block 8231, Addison Office Condos, subject to the following condition: 1. The Field notes need to be changed to an Owner's Certificate per the Town of Addison Subdivision Ordinance. Voting Aye: Doherty, Oliver, Wheeler, Wood Voting Nay: none Absent: none

Item R9 was approved, subject to no conditions.

A motion to Approve was made by Councilmember Roger Mellow. The motion was seconded by Councilmember Blake Clemens. The motion result was: Passed  
Voting Aye: Arfsten, Chow, Clemens, Lay, Mellow, Noble, Resnik  
Voting Nay: None

Item #R10 - VACATION OF A FINAL PLAT/Millcreek Apartments, Discussion and consideration of approval of a vacation of a final plat located on 23.6738 acres in a Planned Development District (007-034) on the southeast side of Vitruvian Way, east of Marsh Lane, on application from UDR, represented by Mr. Bruce Dunne of Icon Consulting Engineers, Inc. COMMISSION FINDINGS: The Addison Planning and Zoning Commission, meeting in regular session on February 24, 2011, voted to recommend approval of the vacation of the final plat for Millcreek Apartments, subject to no conditions. Voting Aye: Doherty, Oliver, Wheeler, Wood Voting Nay: none Absent: none

Item R10 was approved, subject to no conditions.

A motion to Approve was made by Councilmember Neil Resnik. The motion was seconded by Councilmember Bruce Arfsten.

The motion result was: Passed

Voting Aye: Arfsten, Chow, Clemens, Lay, Mellow, Noble, Resnik

Voting Nay: None

Item #R11 - FINAL PLAT/Vitruvian Park Addition, Lot 3, Block B, Discussion and consideration of approval of a final plat located on one lot of 5.4611 acres in a Planned Development District (007-034), on the southeast side of Vitruvian Way, approximately 700 feet south of Spring Valley Road, on application from UDR, represented by Mr. Bruce Dunne of Icon Consulting Engineers, Inc. COMMISSION FINDINGS: The Addison Planning and Zoning Commission, meeting in regular session on February 24, 2011, voted to recommend approval of the final plat for Vitruvian park Addition, Lot 3, Block B, subject to the following conditions: 1. The Master Facilities Agreement for Vitruvian Park specifies that the sidewalk easement along Street C (Bella Lane) is to be 9'. The plat currently specifies 6'. Revise to 9' as required by the Master Facilities Agreement. 2. The label for "Lot 1, Block B" near the southwest corner of the property appears to be incorrect. Please verify. 3. Specify how the S.W.B.T. Easement recorded in Vol. 75184, Pg. 1602 is to be abandoned. 4. Recommend removing the vacated easements. 5. Recommend removing the reference to the Mill Creek plat in the Owner's Certificate if it is vacated. 6. Remove the temporary Oncor Easement from the face of the plat. Provide a separate instrument agreement for the easement. 7. Remove "Not Platted, Future Lot 1, Block C, Vitruvian Park Addition" from the area north of the platted area. 8. Show the POINT OF COMMENCING for Tract 1 on the face of the plat. 9. Place the bearing from the POINT OF COMMENCING to the POINT OF BEGINNING on the face of the plat. 10. Place a "passing" call in Call 1 of Tract 1 and reference the Property recorded in CC Inst No. 200600407616. Show distances on the face of the plat. 11. Place the curve & line numbers in the table in the order they appear in the Owner's Certificate prior to all other needed data. 12. Reverse the bearing of what is currently Curve C2 to flow in the direction of the Owner's Certificate. 13. The bearing on Call 6 of Tract 2 does not

match the bearing on the face of the plat. Verify & correct. 14. Provide a closure sheet. Voting Aye: Doherty, Oliver, Wheeler, Wood Voting Nay: none Absent: none

Item R11 was approved, subject to the following conditions:

1. The Master Facilities Agreement for Vitruvian Parks specifies that the sidewalk easement along Street C (Bella Lane) is to be 9'. The plat currently specifies 6'. Revise to 9' as required by the Master Facilities Agreement.

2. The label for "Lot 1, Block B" near the southwest corner of the property appears to be incorrect. Please verify.

3. Specify how the S.W.B.T. Easement recorded in Vol. 75184, Pg. 1602 is to be abandoned.

4. Recommend removing the vacated easements.

5. Recommend removing the reference to the Mill Creek plat in the Owner's Certificate if it is vacated.

6. Remove the temporary Oncor Easement from the face of the plat. Provide a separate instrument agreement for the easement.

7. Remove "Not Platted, Future Lot 1, Block C, Vitruvian Park Addition" from the area north of the platted area.

8. Show the POINT OF COMMENCING for Tract 1 on the face of the plat.

9. Place the bearing from the POINT OF COMMENCING to the POINT OF BEGINNING on the face of the plat.

10. Place a "passing" call in Call 1 of Tract 1 and reference the



Property recorded in CC Inst No. 200600407616. Show distances on the face of the plat.

11. Place the curve & line numbers in the table in the order they appear in the Owner's Certificate prior to all other needed data.

12. Reverse the bearing of what is currently Curve C2 to flow in the direction of the Owner's Certificate.

13. The bearing on Call 6 of Tract 2 does not match the bearing on the face of the plat. Verify & correct.

14. Provide a closure sheet.

A motion to Approve w/ Conditions was made by Councilmember Bruce Arfsten.

The motion was seconded by Councilmember Neil Resnik.

The motion result was: Passed

Voting Aye: Arfsten, Chow, Clemens, Lay, Mellow, Noble, Resnik

Voting Nay: None

Item #R12 - 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 \$84,914, for and regarding the management of the construction of certain public infrastructure (including streets, water and sanitary sewer lines, and other public infrastructure improvements) within that area of the Town generally known as Vitruvian Park (Vitruvian Park Public Infrastructure Phase 1E).

Clay Barnett, Town Engineer, reviewed the item.

A motion to Approve was made by Councilmember Blake Clemens.

The motion was seconded by Councilmember Kimberly Lay.

The motion result was: Passed

Voting Aye: Arfsten, Chow, Clemens, Lay, Mellow, Noble, Resnik  
Voting Nay: None

Item #R13 - Consideration of authorizing the City Manager to enter into a Construction and Utility Adjustment Agreement between the Town of Addison and Southwestern Bell Telephone Company, d/b/a AT&T Texas to implement the construction of the duct bank and the relocation of AT&T Facilities for the Vitruvian Park Public Infrastructure, Phase IE project (a portion of the Spring Valley Road/Vitruvian Way Extension project).

Clay Barnett, Town Engineer, reviewed the item.

A motion to Approve was made by Councilmember Blake Clemens.  
The motion was seconded by Councilmember Bruce Arfsten.

The motion result was: Passed

Voting Aye: Arfsten, Chow, Clemens, Lay, Mellow, Noble, Resnik  
Voting Nay: None

Item #R14 - Presentation, discussion and consideration of approval to authorize the City Manager to execute Change Order No. 5 with North Texas Contracting, Inc., in the amount of \$57,262.73 and an extension of five (5) calendar days for the construction of certain public infrastructure (including park, streetscape and other public infrastructure improvements) within that area of the Town generally known as Vitruvian Park (Vitruvian Park Public Infrastructure Phase 1C).

Clay Barnett, Town Engineer, reviewed the item.

A motion to Approve was made by Councilmember Kimberly Lay.  
The motion was seconded by Councilmember Blake Clemens.

The motion result was: Passed

Voting Aye: Arfsten, Chow, Clemens, Lay, Mellow, Noble, Resnik  
Voting Nay: None

Item #R15 - Presentation, discussion and consideration of approval to authorize the City Manager to execute Change Order No. 1.1 with North Texas Contracting, Inc., in the amount of \$26,388.00 and an extension of six (6) calendar days for the construction of Spring Valley Road (a portion of the Spring Valley Road/Vitruvian Way Extension project).

Nancy Cline, Director of Public Works, reviewed the item.

A motion to Approve was made by Councilmember Neil Resnik.

The motion was seconded by Councilmember Bruce Arfsten.

The motion result was: Passed

Voting Aye: Arfsten, Chow, Clemens, Lay, Mellow, Noble, Resnik

Voting Nay: None

Item #R16 - Presentation, discussion and consideration of approval to authorize the City Manager to execute Change Order No. 2.1 with North Texas Contracting, Inc., in the amount of \$60,851.50 and an extension of fourteen (14) calendar days for the construction of certain public infrastructure (including streets and water lines, and other public infrastructure improvements) within that area of the Town generally known as Vitruvian Park (Vitruvian Park Public Infrastructure Phase 1E) (a portion of the Spring Valley Road/Vitruvian Way Extension project).

Clay Barnett, Town Engineer, reviewed the item.

A motion to Approve was made by Councilmember Blake Clemens.

The motion was seconded by Councilmember Bruce Arfsten.

The motion result was: Passed

Voting Aye: Arfsten, Chow, Clemens, Lay, Mellow, Noble, Resnik

Voting Nay: None

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Mayor-Joe Chow

Attest:

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City Secretary-Lea Dunn

## Council Agenda Item: #R 2b

### **AGENDA CAPTION:**

Approval of an Encroachment On Easement Agreement between the Town of Addison and Oncor Electric Delivery Company to construct a twelve foot wide improved hike and bike trail within the 60 foot wide Oncor electric transmission easement on the west side of the Greenhill School property.

### **FINANCIAL IMPACT:**

There is no fee for the agreement.

### **BACKGROUND:**

This is the final easement agreement associated with the construction of the Redding Trail Extension that will connect the existing Redding Trail section at the northwest corner of the Greenhill School, south to Spring Valley Road and the new George H.W. Bush Elementary School site. The Town entered into an agreement with Greenhill School earlier this year, which allows the Town to construct the trail on Greenhill's property. Since Oncor has an existing 60 foot wide electric transmission easement on Greenhill's property, it is necessary for the Town to also enter into an agreement with Oncor to use their easement.

The city attorney has reviewed and approved the agreement.

### **RECOMMENDATION:**

Staff recommends approval.

### **COUNCIL GOALS:**

Provide Quality Leisure Opportunities, Work to instill a "Sense of Community" in Addison's residents

### **ATTACHMENTS:**

Description:

- [Oncor Encroachment On Easement Agreement](#)
- [Site Plan](#)

Type:

- Cover Memo
- Cover Memo

**ENCROACHMENT ON EASEMENT**  
Town of Addison – Redding Hike & Bike Trail

WHEREAS, **Oncor Electric Delivery Company LLC** (“**Oncor**”), is the owner of an easement in Dallas County, Texas, which is recorded in Volume 70110, Page 1195 of the Deed Records of Dallas County, Texas (“**Easement**”); and

WHEREAS, the Town of Addison, Texas (“**User**”) desires permission to construct, operate, and maintain a twelve foot (12’) wide improved hike and bike trail and related Oncor-approved landscaping, signage, and facilities (“**Encroaching Facility**”) within the area or boundaries of the Easement (“**Easement Area**”), which Encroaching Facility may be made accessible to and used by members of the public.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Oncor and User do hereby agree as follows:

1. **Location of Encroaching Facility.** User may locate the Encroaching Facility in the Easement Area, but only as described and shown on the attached drawing marked **Exhibit "A"** and incorporated herein. User may not relocate the Encroaching Facility within the Easement Area without the consent and approval of Oncor, which consent and approval shall be at Oncor’s sole discretion. User acknowledges and agrees that Oncor holds easement rights on the Easement Area; therefore, User shall obtain whatever rights and permission, other than Oncor’s that are necessary. At the conclusion of any construction, User shall remove all debris and other materials from the Easement Area

2. **Restrictions on Use of Easement Area.** User shall use only so much of the Easement Area as may be necessary to construct, maintain, use, and repair the Encroaching Facility. User shall, at its own cost and expense, comply with all applicable laws, including but not limited to existing zoning ordinances, governmental rules and regulations enacted or promulgated by any governmental authority and shall promptly execute and fulfill all orders and requirements imposed by such governmental authorities for the correction, prevention and abatement of nuisances in or upon or connected with said Encroaching Facility.

User shall not place trash dumpsters, toxic substances or flammable material in the Easement Area. Further, if the Easement Area has electric transmission or distribution facilities located thereon, User shall not place upon the Easement Area any improvements, including but not limited to, buildings, light standards, fences (excluding barriers installed around transmission towers, if applicable), shrubs, trees or signs unless approved in advance in writing by Oncor. Additional general construction limitations on encroachments are described and listed in **Exhibit "B"**, attached hereto and by reference made a part hereof.

3. **Maintenance of Encroaching Facility.** User, at User’s sole expense, shall maintain and operate the Encroaching Facility. Oncor will not be responsible for any costs of construction, reconstruction, operation, maintenance or removal of User’s Encroaching Facility.

4. **Risk and Liability.** User accepts the existing condition or location, or existing state of maintenance, repair or operation of the Easement Area, and assumes all risks and liability resulting or arising from or relating to User's use thereof. It is further agreed that Oncor shall not be liable for any damage to the Encroaching Facility as a result of Oncor's use or enjoyment of its Easement, except for damage caused by Oncor's gross negligence or willful misconduct. Any Oncor property damaged or destroyed by User or its agents, employees, invitees, contractors or subcontractors shall be repaired or replaced by Oncor at User's expense and payment is due upon User's receipt of an invoice from Oncor.

5. **Indemnification.** User agrees to defend, indemnify and hold harmless Oncor, its officers, agents and employees (collectively, "Oncor Persons") from and against any and all claims, demands, causes of action, loss, damage, liabilities, costs and expenses (including attorney's fees and court costs) of any and every kind or character, known or unknown, fixed or contingent (collectively, "claims"), for personal injury (including death), property damage or other harm for which recovery of damages is sought or suffered by any person or persons, including claims based on strict liability, arising out of or in connection with User's actions or omissions or the actions or omissions of its officers, agents, associates, employees, contractors or subcontractors or the actions or omissions of any other person entering onto the Easement Area or the Encroaching Facility for the purpose of using the Encroaching Facility for the purpose for which it is intended, **including the negligent actions or omissions of Oncor**, when such actions or omissions relate to User's use of the Easement Area; however, User's liability under this clause shall be reduced by that portion of the total amount of the claims (excluding defense fees and costs) equal to the Oncor Persons' proportionate share of the negligence, gross negligence, or conduct that would give rise to strict liability of any kind, that caused the loss. Likewise, User's liability for Oncor Persons' defense costs shall be reduced by that portion of the defense costs equal to Oncor Persons' proportionate share of the negligence, gross negligence, or conduct that would give rise to strict liability of any kind, that caused the loss.

User's obligation to defend, indemnify and hold harmless is limited by, subject to, and provided without waiving any defense, immunity (including, without limitation, sovereign immunity and governmental immunity for User, and official, qualified and absolute immunity for any User official, officer, employee or agent) or any other limitation to which User or any elected official, any officer, employee or agent of User is or may be entitled. Such agreement to defend, indemnify and hold harmless shall not expand or increase, and shall not be construed to expand or increase, the total liability of User (or of any elected official, any officer, employee or agent of User) for any claims to an amount in excess of, and such total liability shall not exceed the monetary limitations for municipalities set forth in, section 101.023 of the Texas Tort Claims Act, Chapter 101, Tex. Civ. Prac. & Rem. Code (and any successor statute thereto). In no event shall there be any obligation of User hereunder to defend, indemnify or hold harmless any Oncor Persons for punitive or exemplary damages of any kind or nature whatsoever.

6. **High Voltage Restrictions.** Use of draglines or other boom-type equipment in connection with any work to be performed on the Easement Area by User, its employees, agents, invitees, contractors or subcontractors must comply with Chapter 752, Texas Health and Safety Code, the National Electric Safety Code and any other applicable safety or clearance requirements. Notwithstanding anything to the contrary herein, in no event shall any equipment be within fifteen (15) feet of the Oncor power lines situated on the aforesaid property. User must notify the **Dallas Transmission Office at 972-721-6387** at least 48 hours prior to the beginning of any work on the Easement Area.

7. **Removal by Oncor.** If at any time in the future, the Encroaching Facility (or portion thereof), in the sole judgment of Oncor, interferes with Oncor's use or enjoyment of its

easement rights, Oncor will notify User in writing of the specific interference and User shall have a period of 30 days from the date of receipt of the notice to adjust the Encroaching Facility in order to remove the interference. If, during that period of time, User fails or is unable to remove the interference, Oncor shall notify User in writing that within 90 days following receipt of the notice the Encroaching Facility (or portion thereof) must be removed at User's sole cost. If at the end of the 90 day period the Encroaching Facility (or portion thereof) has not been removed, Oncor may remove it, at User's expense. Oncor will not be responsible nor will compensation be paid for damages incurred by such removal, including, but not limited to, damages for loss of use of the Encroaching Facility (or portion thereof) or business interruption. However, in an emergency, Oncor shall have the right to immediately remove the Encroaching Facility (or portion thereof). If the Encroaching Facility (or portion thereof) is removed, Oncor will not unreasonably withhold consent for User to relocate the Encroaching Facility (or portion thereof) within the Easement Area.

8. **Default and Termination; Recitals.** It is understood and agreed that, in case of default by User or its agents in any of the terms and conditions herein stated and such default continues for a period of ten (10) days after Oncor notifies User of such default in writing (but if such default cannot with diligence be cured within the said ten (10) day period, the period of time to cure the default shall be extended for such period as may be necessary to complete the curing of such default with diligence and continuity, not to exceed 30 days), Oncor may at its election forthwith terminate this agreement and upon such termination all of User's rights hereunder shall cease and come to an end. This agreement shall also terminate upon the User's abandonment of the Encroaching Facility.

The above and foregoing recitals and premises to this agreement are incorporated herein and made a part of this agreement for all purposes.

This agreement shall extend to and be binding upon Oncor and User and their respective successors and assigns, and is not to be interpreted as a waiver of any rights held by Oncor under its Easement.

Executed this \_\_\_\_ day of \_\_\_\_\_, 2011.

**Oncor Electric Delivery Company LLC**

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

Jill L. Alvarez  
Attorney-In-Fact

**Town of Addison**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_



STATE OF TEXAS                   §  
   §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, as the \_\_\_\_\_ of \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed, in the capacity therein stated and he/she is authorized to do so.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 2011.

\_\_\_\_\_  
Notary Public in and for the State of Texas

STATE OF TEXAS                   §  
   §  
COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, on this day personally appeared Jill L. Alvarez, as the Attorney-In-Fact of **Oncor Electric Delivery Company LLC**, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and he is authorized to do so.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 2011.

\_\_\_\_\_  
Notary Public in and for the State of Texas

**CONSTRUCTION LIMITATIONS ON**  
**Oncor ELECTRIC DELIVERY COMPANY RIGHT OF WAY**

**EXHIBIT "B"**

1. You are notified, and should advise your employees, representatives, agents, and contractors, who enter the property that they will be working in the vicinity of high voltage electrical facilities and should take proper precautions, included but not limited to the following stipulations and in compliance, at all times, with Chapter 752, V.T.C.A., Health & Safety Code.
2. Blasting is not to be permitted on Oncor right-of-way or under Oncor lines.
3. Construction on electric transmission line easements acquired by Oncor after January 1,2003 shall comply with the requirements of Public Utility Commission Substantive Rules §25.101, as amended from time to time.
4. Grading will be done in order to leave the right-of-way as near as possible to present condition. Spoil dirt will be removed from the right-of-way and no trash is to be left on right-of-way. Slopes shall be graded so that trucks can go down the right-of-way when required and such that the slopes can be mechanically maintained.
5. Equipment and materials will not be stored on the right-of-way during construction without written approval of the Supervisor of Regional Transmission.
6. Street or road crossings are to be based on drawings submitted. Any change in alignment or elevation will be resubmitted for approval.
7. No signs, lights or guard lights will be permitted on the right-of-way.
8. Equipment shall not be placed within fifteen (15) feet of the power lines.
9. Any pre-approved fencing will not exceed eight (8) feet in height, and if metal in nature, will be grounded, at ten (10) feet intervals, with an appropriate driven ground. Gates should be at least sixteen (16) feet in width to allow Oncor access to the right-of-way.
10. No dumpsters will be allowed on Oncor right-of-way or fee owned property.

11. Draglines will not be used under the line or on Oncor right-of-way.
12. The existing grade shall not be disturbed, excavated or filled within 25 feet of the nearest edge of any tower.
13. Right-of-way will be protected from washing and erosion by Oncor approved method before any permits are granted. No discharging of water will be allowed within any portion of the right of way.
14. No obstruction shall be installed on the right-of-way that would interfere with access to Oncor structures or prevent mechanical maintenance.
15. Before any work is done under Oncor lines or by Oncor structures notify the Region Transmission Department, 972-721-6387.
16. No hazardous materials will be stored on the right of way.
17. For purposes of this document, "Hazardous Materials" means and includes those substances, including, without limitation, asbestos-containing material containing more than one percent (1%) asbestos by weight, or the group of organic compounds known as polychlorinated biphenyls, flammable explosives, radioactive materials, chemicals known to cause cancer or reproductive toxicity and includes any items included in the definition of hazardous or toxic waste, materials or substances under any Hazardous Material Law. "Hazardous Material Laws" collectively means and includes any present and future local, state and federal law relating to the environment and environmental conditions including, without limitation, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. §6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act of 1980, ("CERCLA"), 42 U.S.C. §§9601-9657, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), the Hazardous Material Transportation Act, 49 U.S.C. §6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. §1251, et seq., the Clean Air Act, 42 U.S.C. §741 et seq., the Clean Water Act, 33 U.S.C. §7401 et seq., the Toxic Substances Control Act, 15 U.S.C. §§2601-2629, the Safe Drinking Water Act, 42 U.S.C. §§300f-330j, and all the regulations, orders, and decrees now or hereafter promulgated thereunder.

18. Brush and cut timber will not be piled or stacked on Oncor right-of-way or will not be burned upon or in close proximity to the conductors or towers.
19. No structures or obstructions, such as buildings, garages, barns, sheds, guard houses, etc., will be permitted on the right-of-way.
20. Landscaping on Oncor right-of-way is permitted when Oncor approves landscaping plans in writing. No lighting or sprinkler systems are allowed on the right-of-way.





FLAGSTONE



INTEGRAL COLORED CONCRETE 1



INTEGRAL COLORED CONCRETE 2



TRAIL OVERLOOK



GARDEN WATER PUMP



FEATURE ROCK



GARDEN PLANTER



GARDEN PLANTER



'ARCATA' BENCH



'CHASE PARK' LITTER RECEPTACLE



SOLAR LIGHTING



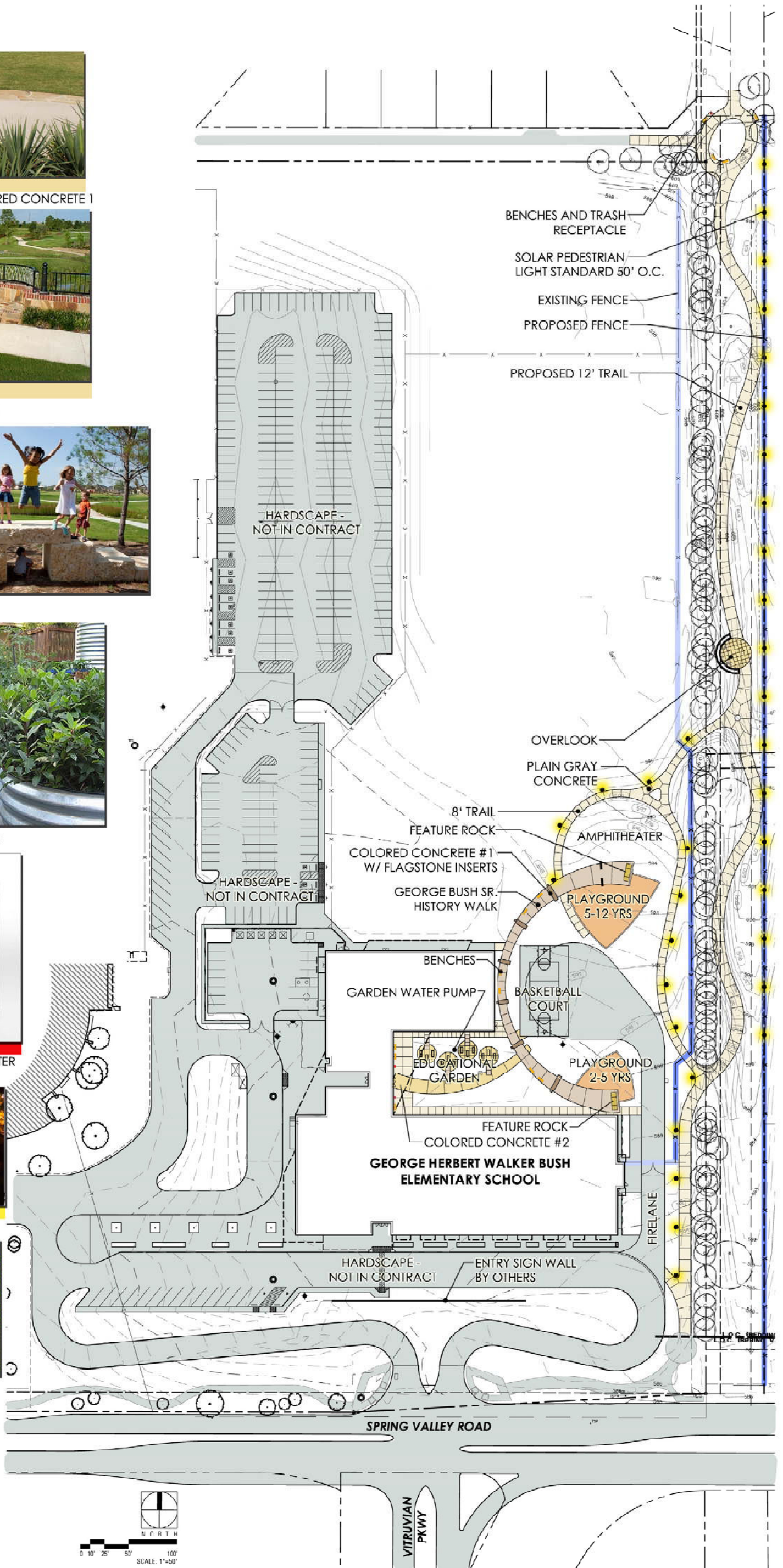
SOLAR LIGHTING



AMPHITHEATER



BLACK VINYL COATED FENCE



# George H.W. Bush School and Redding Trail

Hardscape Materials





## Council Agenda Item: #R 2c

**AGENDA CAPTION:**

Approval of an ordinance amending Chapter 62 Signs of the Code of Ordinances by amending Section 62-98 Fee as set forth in the Ordinance.

**FINANCIAL IMPACT:**

NA

**BACKGROUND:**

An increase in contractor fees was recommended by the Finance Department for FY 11.

**RECOMMENDATION:**

Staff recommends approval.

**COUNCIL GOALS:**

Conduct the Business of the Town in a Fiscally Responsible Manner

**ATTACHMENTS:**

Description:

[Sign Contractor License Fee](#)

Type:

Ordinance

**TOWN OF ADDISON, TEXAS**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING CHAPTER 62, SIGNS, OF THE CODE OF ORDINANCES OF THE TOWN BY (1) AMENDING SECTION 62-57 (FEES); PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY NOT TO EXCEED THE SUM OF FIVE HUNDRED DOLLARS FOR ANY OFFENSE, AND A SEPARATE OFFENSE SHALL BE DEEMED COMMITTED EACH DAY DURING OR ON WHICH A VIOLATION OCCURS OR CONTINUES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Addison, Texas (the “City”) desires to amend certain provisions of Chapter 62 of the City’s Code of Ordinances relating to and regarding signs within the City; and

**WHEREAS**, the amendments set forth in this Ordinance to Chapter 62 are pursuant to investigation and analysis by the City, and are with a view of and to further the purposes and objectives set forth in Section 62-2 of the Code, including to promote the health, safety, welfare, convenience and enjoyment of the public, including among other things to promote the efficient transfer of information in sign messages and to protect the public welfare and to enhance the appearance and economic value of the landscape, and such amendments are to facilitate the avoidance of visual clutter that is potentially harmful to traffic and pedestrian safety, property values, business opportunities, and community appearance, and are to comply with applicable State law; and

**WHEREAS**, the City is authorized to provide for regulation of signs pursuant to State law, including, among others, Section 51.001, Tex. Loc. Gov. Code (authorizing a municipality to adopt an ordinance, rule or police regulation that is for the good government, peace, or order of the municipality or for the trade and commerce of the municipality) and Section 216.901 Tex. Loc. Gov. Code (authorizing a home rule municipality to license, regulate, control or prohibit the erection of signs or billboards), and pursuant to its authority as a home rule city under Article 11, Section 5 of the Texas Constitution and its Home Rule Charter; and

**WHEREAS**, the adoption of this Ordinance and the amendments set forth herein are for and in the best interests of the health, safety and welfare of the City and its citizens.

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

Section 1. Incorporation of Recitals. The above and foregoing recitals and premises to this Ordinance are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. Amendment. The Code of Ordinances of the Town of Addison, Texas (the “City”) is hereby amended by amending certain sections and provisions of Chapter 62, Signs, thereof as set forth in Exhibit A attached hereto and incorporated herein for all purposes, and all other chapters, articles, sections, subsections, sentences, phrases and words of the said Code of Ordinances are not amended hereby.

Section 3. Savings; Repealer. This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance. Provided, however, that the repeal of such ordinances or parts of such ordinances, and the amendments and changes made by this Ordinance, shall not affect any right, property or claim which was or is vested in the City, or any act done, or right accruing or accrued, or established, or any suit, action or proceeding had or commenced before the time when this Ordinance shall take effect; nor shall said repeals, amendments or changes affect any offense committed, or any penalty or forfeiture incurred, or any suit or prosecution pending at the time when this Ordinance shall take effect under any of the ordinances or sections thereof so repealed, amended or changed; and to that extent and for that purpose the provisions of such ordinances or parts of such ordinances shall be deemed to remain and continue in full force and effect.

Section 4. Penalty. It shall be unlawful for any person, firm, corporation, or other business entity to violate any provision of this Ordinance, and any person, firm, corporation, or other business entity violating or failing to comply with any provision hereof shall be fined, upon conviction, in an amount of not more than Five Hundred and No/100 Dollars (\$500.00), and a separate offense shall be deemed committed each day during or on which a violation or failure occurs or continues.

Section 5. Severability. The provisions of this Ordinance are severable, and if any section or provision of this Ordinance or the application of any section or provision to any person, firm, corporation, entity, situation or circumstance is for any reason adjudged invalid or held unconstitutional by a court of competent jurisdiction, the same shall not affect the validity of any other section or provision of this Ordinance or the application of any other section or provision to any other person, firm, corporation, entity, situation or circumstance, and the City Council declares that it would have adopted the valid portions of this Ordinance adopted herein without the invalid or unconstitutional parts and to this end the provisions of this Ordinance adopted herein shall remain in full force and effect.

Section 5. Effective Date. This Ordinance shall become effective from and after its passage and approval and its publication as may be required by law (including, without limitation, the City Charter and the ordinances of the City).

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

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



ATTEST:

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
John Hill, City Attorney

**EXHIBIT A**  
**TO ORDINANCE NO. \_\_\_\_\_**

Chapter 62, Signs, of the Code of Ordinances (the “Code”) of the Town of Addison, Texas is hereby amended by amending various sections of the said Code as set forth below and as follows:

- A. Section 62-57 ((a) of the Code is amended to read as follows:
  - (a) Every applicant, before being granted a permit under this division, shall pay to the town the applicable fee set out in this section. The fee for a permit to erect, alter, replace or relocate a sign shall be \$75.00 for each sign. No refunds for a sign permit be granted after such fees have been tendered.

## Council Agenda Item: #R 2d

**AGENDA CAPTION:**

Approval of an ordinance amending Chapter 78 (Traffic and Vehicles), Article III (Vehicle Operation), Division 2 (Speed and Related Restrictions) of the Code of Ordinances by adding a new section thereto that gives the City Manager, the City Manager's designee or the Director of Public Works the authority to reduce the speed limit of a road, street, highway or alley within the Town during periods of maintenance, repair or construction of said road, street, highway or alley.

**FINANCIAL IMPACT:**

n/a

**BACKGROUND:**

The Town does not currently have a provision for placing and enforcing a temporary reduction in the speed limit during maintenance or construction of its roadways. The proposed revision to the ordinance is similar to that utilized by several neighboring cities and would allow the temporary placement and enforcement of lower speed limit signage due to construction.

**RECOMMENDATION:**

Staff recommends approval.

**COUNCIL GOALS:**

N/A

**ATTACHMENTS:**

Description:

Type:

No Attachments Available

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

### **AGENDA CAPTION:**

Approval authorizing the City Manager to enter into a contract with Divcon EMS, to upgrade the main control panel for the energy management system (EMS) at the Athletic Club facility in the amount of \$29,678.

### **FINANCIAL IMPACT:**

Cost: \$29,678

Funds are budgeted and available in the Recreation department budget.

### **BACKGROUND:**

Staff is requesting to upgrade the main control panel for the energy management system (EMS) at the athletic club. The EMS system manages and controls the heating, cooling and ventilating (HVAC) system at the athletic club. The current system was installed in 1997. The control panel is now obsolete and no longer serviceable. Divcon EMS is the contractor that installed the current system and the only regional contractor for Delta brand control products. The Town of Addison has used Divcon EMS and the Delta brand products since 1997 and has been satisfied with the level of service they have provided.

### **RECOMMENDATION:**

Staff recommends approval.

### **COUNCIL GOALS:**

Conduct the Business of the Town in a Fiscally Responsible Manner

### **ATTACHMENTS:**

Description:

Type:

No Attachments Available

## **Council Agenda Item: #R3**

**AGENDA CAPTION:**

Discussion and consideration of the appointment of a member to the Addison Planning and Zoning Commission.

**FINANCIAL IMPACT:**

NA

**BACKGROUND:**

Commissioner Bruce Arfsten was recently appointed to the City Council. Commissioner Arfsten was appointed by Councilmember Kimberly Lay.

**RECOMMENDATION:**

**COUNCIL GOALS:**

N/A

**ATTACHMENTS:**

Description:

Type:

No Attachments Available

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

**AGENDA CAPTION:**

Presentation, discussion and consideration of approval of the City Council Subcommittee on Marketing and Public Communications Final Report.

**FINANCIAL IMPACT:**

N/A

**BACKGROUND:**

Background to be provided by the committee.

**RECOMMENDATION:**

NA

**COUNCIL GOALS:**

Continue to Attract Visitors

**ATTACHMENTS:**

Description:

Type:

No Attachments Available

## **Council Agenda Item: #R5**

### **AGENDA CAPTION:**

**PUBLIC HEARING.** Presentation, discussion and consideration of approval of an ordinance of the Town establishing standards of care for youth recreation programs conducted by the Town for elementary age children ages 5 through 13; providing for compliance with Section 42.041(b)(14) of the Texas Human Resources Code.

### **FINANCIAL IMPACT:**

NA

### **BACKGROUND:**

Council approval is requested of an ordinance to adopt Standards of Care for all youth programs for children ages 5 through 13 including, but not limited to the Summer Camp Program and the Spring Break Program at the Addison Athletic Club.

Attached is a proposed ordinance that is intended to provide minimum standards for youth programs as required by Section 42.041 of the Texas Human Resources Code. The Standards of Care attached as Exhibit A, cover guidelines for operating youth programs by the Town of Addison Parks and Recreation Department.

The Standards of Care document was originally developed for the Summer Camp Program as it continues to grow and be successful, but this will be a document used to ensure all youth programs are operated professionally and meet the requirements of the Texas Human Resources Code. The document provides minimum standards for operating youth programs such as hiring of program staff, enrollment guidelines, discipline, health and safety. The document also addresses programming and providing activities that promote emotional, social, and mental growth.

In addition to meeting the requirements of the Human Resources Code, staff finds the Standards of Care document to be a useful tool to provide quality recreation programs to the youth and families of the Town.

The standards have been reviewed and approved by the city attorney.

**RECOMMENDATION:**

Staff recommends approval.

**COUNCIL GOALS:**

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

**ATTACHMENTS:**

Description:

[Standards of Care Ordinance](#)

Type:

Cover Memo



**TOWN OF ADDISON, TEXAS**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS ESTABLISHING STANDARDS OF CARE FOR YOUTH RECREATION PROGRAMS CONDUCTED BY THE CITY FOR ELEMENTARY AGE CHILDREN AGES 5 THROUGH 13; PROVIDING FOR COMPLIANCE WITH STATE LAW; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Addison, Texas (the “City”) is a home rule municipality pursuant to article 11, section 5 of the Texas Constitution and its Home Rule Charter; and

**WHEREAS**, the City operates recreation programs for children, including elementary age children (ages 5 through 13); and

**WHEREAS**, Section 42.041 of the Texas Human Resources Code provides that no person may operate a child-care facility or a child-placing agency without a license issued by the Texas Department of Family and Protective Services, but provides an exception from that requirement in Section 42.041(b)(14) of the said Code for an elementary-age (ages 5 through 13) recreation program operated by a municipality, provided the governing body of the municipality annually adopts standards of care by ordinance after a public hearing for such programs;

**WHEREAS**, in accordance with Section 42.041(b)(14) of the Human Resources Code, the City Council conducted a public hearing regarding the adoption of standards of care for its recreation programs for elementary age children (ages 5 through 13) as set forth herein, and the City Council desires by this Ordinance to adopt such standards of care.

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

Section 1. The standards of care set forth in Exhibit A attached hereto and made a part of this Ordinance for all purposes (the “Standards of Care”) are hereby adopted as the standards of care for all elementary age (ages 5 through 13) recreation programs operated by the Town of Addison, Texas (collectively “Programs” and each a “Program”), including, without limitation, any summer camp program or any spring break program.

Section 2. All Programs are to be operated by the City’s Department of Parks and Recreation (“Department”). The Director of the Department, or the Director’s designee, (individually or collectively, the “Director”), shall administer the Programs in accordance with the Standards of Care. The Director may adopt rules in writing relating to the operation of Programs, which rules may be more restrictive than the Standards of

Care. The Programs shall be operated in accordance with the Standards of Care (or, in the event the Director adopts rules that are more restrictive than the Standards of Care, in accordance with such rules).

Section 3. The Director of Parks and Recreation (“Director”) for the Town of Addison, Texas (“City”), or the Director’s designee, shall provide the Standards of Care to the parents of each Program participant (and, in the event the Director adopts rules that are more restrictive than the Standards of Care, shall provide such rules to the parents of each Program participant). Further, the Director, or the Director’s designee, shall inform the parents of each Program participant that the Program is not licensed by the State of Texas.

Section 4. The Program shall not be advertised as a child-care facility.

Section 5. The Director is authorized to take any and all steps, if any, as may be necessary to confirm the Program’s exemption from State law as set forth in Section 42.041 of the Texas Human Resources Code.

Section 6. The above and foregoing recitals and premises to this Ordinance are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 7. This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance.

Section 8. The provisions of this Ordinance are severable, and if any section or provision of this Ordinance or the application of any section or provision to any person, firm, corporation, entity, situation or circumstance is for any reason adjudged invalid or held unconstitutional by a court of competent jurisdiction, the same shall not affect the validity of any other section or provision of this Ordinance or the application of any other section or provision to any other person, firm, corporation, entity, situation or circumstance, and the City Council declares that it would have adopted the valid portions of this Ordinance adopted herein without the invalid or unconstitutional parts and to this end the provisions of this Ordinance adopted herein shall remain in full force and effect.

Section 9. This Ordinance shall take effect upon its passage and approval.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this the \_\_\_\_ day of \_\_\_\_\_, 2011.

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

**ATTEST:**

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

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
John Hill, City Attorney

**EXHIBIT A  
TO ORDINANCE NO. \_\_\_\_\_**

**STANDARDS OF CARE  
FOR ELEMENTARY AGE (5 – 13) RECREATION PROGRAMS**

The following Standards of Care are adopted in compliance with Section 42.041(b)(14) of the Texas Human Resources Code. The Standards of Care herein set forth herein are intended to be minimum standards applicable to all elementary age (ages 5 through 13) recreation Programs operated by the Town of Addison Parks and Recreation Department, including, without limitation, any summer camp program and any spring break program. The Programs are not licensed by the State of Texas, and shall not be advertised as a child-care facility.

**GENERAL ADMINISTRATION**

1. Organization.
  - A. The governing body of the Youth Programs is the City Council of the Town of Addison, Texas.
  - B. Implementation of the Youth Programs Standards of Care is the responsibility of the Parks and Recreation Department Director or his or her designee and Department employees.
  - C. These Standards of Care will apply to all Programs, including, without limitation, the Summer Camp Program and Spring Break Program.
  - D. Each Program Site will have available for public and staff review a current copy of the Standards of Care.
  - E. Parents of participants will be provided a current copy of the Standards of Care during the registration process for a Program. Further, a copy of the Standards of Care shall be placed online on the City's primary website.
  - F. Criminal background checks will be conducted on prospective Program employees. If results of a criminal background check indicate that a prospective Program employee has been arrested, charged with, or convicted of any of the following offenses, the prospective Program employee will not be considered for employment:
    - (1) a felony or a misdemeanor classified as an offense against a person or family member;
    - (2) a felony or misdemeanor classified as public indecency;
    - (3) any offense for which a person is required to register as a sex

offender under Chapter 62, Texas Code of Criminal Procedure;

- (4) a felony or misdemeanor violation of any law intended to control the possession or distribution of any controlled substance;
- (5) any offense involving moral turpitude;
- (6) any offense that would, in the Director's sole opinion, potentially put youth participants or the City at risk.

2. Definitions. For purposes of these Standards of Care, the following words shall have the respective meanings ascribed to them:

- A. *City* means the Town of Addison, Texas.
- B. *City Council* means the City Council of the City.
- C. *Department* means the Parks and Recreation Department of the City.
- D. *Director* means the Parks and Recreation Department Director of the City or his or her designee.
- E. *Employee(s)* means people who have been hired to work for the Town of Addison and have been assigned responsibility for managing, administering, or implementing some portion of a Program.
- F. *Parent(s)* means one or both parent(s) or adults who have legal custody and authority to enroll their child(ren) in a Program.
- G. *Participant* means a youth whose parent(s) have completed all required registration procedures and determined to be eligible for a Program.
- H. *Programs* means all (and *Program* means any of the) elementary age (ages 5 through 13) recreation programs operated by the Department, including, without limitation, the City Summer Camp Program (*Summer Camp Program*) and the City Spring Break Camp Program (*Spring Break Program*).
- I. *Program Coordinator or Coordinator* means a full-time Department employee who is a recreation coordinator and has been assigned administrative responsibility for the Programs.
- J. *Program Manual* means a notebook of policies, procedures, required forms, and organizational and programming information relevant to each Program.
- K. *Program Site* means area and facilities where a Program is held, consisting

of the Addison Athletic Club, 3900 Beltway Drive, Addison, Texas 75001.

- L. *Program Summer Camp Counselor* or *Counselor* means a Department part-time or seasonal Employee who has been assigned responsibility by the Recreation Manager to implement the City's Summer Camp Program.
- M. *Recreation Manager* means a full-time Department employee and who oversees the Program Coordinator and the operation of all Programs.

3. Inspections/Monitoring/Enforcement.

- A. A written inspection report will be prepared by the Program Coordinator each month to confirm the Standards of Care are being adhered to.
  - (1) Each monthly inspection report will be sent by the Program Coordinator to the Recreation Manager for review and kept on record in accordance with the City's records retention policy.
  - (2) The Recreation Manager will review the report and establish deadlines and criteria for compliance with the Standards of Care where failure to comply is determined.
- B. The Recreation Manager will make visual inspections of the Programs based on the following schedule:
  - (1) The Summer Camp Program will be inspected a minimum of two times during the Summer Camp Program's schedule.
  - (2) The Spring Break Camp Program will be inspected at least once during the Spring Break Camp Program schedule.
  - (3) Each other Program will be inspected at least once each week during the schedule for the Program.
- C. Complaints regarding enforcement of the Standards of Care will be directed to the Coordinator. The Coordinator will be responsible to take the necessary steps to address any complaints and to resolve the problem(s), if any. Complaints regarding enforcement of the Standards of Care and their resolution will be recorded in writing by the Coordinator. All complaints regarding enforcement of the Standards of Care where a deficiency is determined will be forwarded to the Recreation Manager, with the complaint and the resolution noted.

4. Enrollment. Before a child can be enrolled in a Program, the parents must sign registration forms that contain the following information about the child:

- A. name, address, home telephone number;

- B. name and address of parent(s) and telephone number(s) during Program hours;
  - C. the names and telephone numbers of people to whom the child can be released;
  - D. a statement of the child's physical health, including a physician's signed statement and current immunization (shot) records, detailing any special problems or needs of the child;
  - E. proof of residency within the City when appropriate; and
  - F. a fully executed liability waiver and release.
5. Suspected Abuse.

Program employees will report suspected child abuse or neglect in accordance with the Texas Family Code. In the case where an Employee is involved in an incident with a child that could be construed as child abuse, the incident must be reported immediately to the Recreation Manager. The Recreation Manager will then immediately notify the Director, the City Police Department, and any other agency as may be appropriate.

Texas state law requires the Employees of the Programs to report any suspected abuse or neglect of a child to the Texas Department of Protective and Regulatory Services or a law enforcement agency. Failure to report suspected abuse is punishable by fines up to \$1,000 and/or confinement up to 180 days. Confidential reports may be made by calling 1-800-252-5400.

## **STAFFING - RESPONSIBILITIES AND TRAINING**

- 1. Program Coordinator Qualifications.
  - A. The Coordinator will be a full-time, professional Employee of the Department.
  - B. The Coordinator must be at least 21 years old
  - C. The Coordinator must have received a bachelor's degree from an accredited college or university. Acceptable degrees include:
    - (1) Recreation Administration or General Recreation;
    - (2) Physical Education; and
    - (3) Any other comparable degree plan or experience that would lend itself to working in a public recreation environment.

- D. The Coordinator must have at least two years experience planning and implementing recreational activities.
  - E. The Coordinator must pass a background investigation, including, including testing for alcohol and illegal and unauthorized drugs.
  - F. The Coordinator must have successfully completed a course in first aid and cardio pulmonary resuscitation (CPR) based on either American Heart Association or American Red Cross standards.
2. Coordinator's Responsibilities.
- A. The Coordinator is responsible to administer the Programs' daily operations in compliance with the adopted Standards of Care.
  - B. The Coordinator is responsible to recommend for hire, supervise, and evaluate Program seasonal Employees.
  - C. The Coordinator is responsible to plan, implement, and evaluate Programs.
3. Program Summer Camp Counselor Qualifications.
- A. Counselors will be part-time or seasonal Employees of the Department.
  - B. Counselors working with children must be age 18 or older.
  - C. Counselors must be able to consistently exhibit competency, good judgment, and self-control when working with children.
  - D. Counselors must relate to children with courtesy, respect, tolerance, and patience.
  - E. Counselors must have successfully completed a course in first aid and CPR based on either American Heart Association or American Red Cross standards.
  - F. Counselors must pass a background investigation, including testing for alcohol and illegal and unauthorized drugs.
4. Counselor Responsibilities.
- A. Counselors will be responsible to provide Program participants with an environment in which they can feel safe, can enjoy wholesome recreation activities, and can participate in appropriate social opportunities with their peers.
  - B. Counselors will be responsible to know and follow all City, Department,



and Program standards, policies, and procedures that apply to the Program.

- C. Counselors must ensure that Program participants are released only to a parent or an adult designated by the parent. The Program Site will have a copy of the approved plan to verify the identity of a person authorized to pick up a Program participant if that person is not known to the Counselor.

5. Training/Orientation.

- A. The Department is responsible for providing training and orientation to Program Employees working with children and for specific job responsibilities. The Coordinator will provide each Counselor with a Program manual specific to the applicable Program.
- B. Program Employees must be familiar with the Standards of Care for Program operation as adopted by the City Council.
- C. Program Employees must be familiar with the Program's policies, including discipline, guidance, and release of Program participants as outlined in the Program Manual.
- D. Program Employees will be trained in appropriate procedures to handle emergencies.
- E. Program Employees will be trained in areas including City, Department, and Program policies and procedures, provision of recreation activities, safety issues, and organization goals.
- F. Program Employees will be required to sign an acknowledgement that they received the required training.

**OPERATIONS**

1. Staff-Participant Ratio.

- A. The standard ratio of Program Participants to Employees will be 15 to 1. In the event an Employee assigned to a Program is unable to report to the Program Site, a replacement will be assigned.
- B. Each Participant shall have a Program Employee who is responsible for the Participant and who is aware of the Participant's habits, interests, and any special problems as identified by the Participant's parent(s) during the registration process.

2. Discipline.

- A. Program Employees will implement discipline and guidance in a

consistent manner based on the best interests of Program Participants.

- B. There must be no cruel, harsh or corporal punishment or treatment used a method of discipline.
- C. Program Employees may use brief, supervised separation from the group if necessary.
- D. As necessary, Program Employees will initiate discipline reports to the parent(s) of Participants. Parents will be asked to sign discipline reports to indicate they have been advised about specific problems or incidents.
- E. A sufficient number and/or severe nature of discipline reports as detailed in the Program Manual may result in a Participant being suspended or removed from the Program or all Programs.
- F. In instances where there is a danger to Participants or Employees, offending Participants will be removed from the Program Site as soon as possible.

3. Programming.

- A. Program Employees will attempt to provide activities for each Program group according to the Participants' ages, interests, and abilities. The activities must be appropriate to Participants' health, safety, and well-being. The activities also must be flexible and promote the Participants' emotional, social, and mental growth.
- B. Program Employees will attempt to provide indoor and outdoor time periods that include:
  - (1) alternating active and passive activities;
  - (2) opportunity for individual and group activities, and
  - (3) outdoor time each day weather permits.
- C. Program Employees will be attentive and considerate of Participants' safety on field trips and during any transportation provided by the Program.
  - (1) During trips, Program Employees supervising Participants must have immediate access to emergency medical forms and emergency contact information for each Participant.
  - (2) Program Employees must have a written list of the Participants in the Program group and must check the roll frequently.

- (3) Program employees must have first aid supplies and a guide to first aid and emergency care available on field trips.

4. Communication.

- A. The Program Site will have a cell phone to allow the Program Employees to be contacted by Department recreation Employees and vice versa.
- B. The Coordinator will post the following telephone numbers adjacent to a telephone accessible to all Program Employees:
  - (1) City ambulance or emergency medical services;
  - (2) City Police Department
  - (3) City Fire Department
  - (4) The Addison Athletic Club front desk; and
  - (5) Numbers at which parents may be reached.

5. Transportation.

- A. Before a Participant may be transported to and from City-sponsored activities, a transportation form, completed by the parent of the Participant, must be filed with the Coordinator.
- B. First aid supplies and a first aid and emergency care guide will be available in all Program vehicles that transport children.
- C. Program Employees will carry a cell phone at all times.

**FACILITY STANDARDS**

1. Safety.

- A. Program Employees will inspect Program Sites daily to detect sanitation and safety concerns that might affect the health and safety of the Participants.
- B. Buildings, grounds, and equipment on the Program Site will be inspected, cleaned, repaired, and maintained to protect the health of the Participants.
- C. Program equipment and supplies must be safe for the Participants' use.
- D. Program Employees must have first aid supplies readily available at the Program Site, during transportation to an off-site activity, and for the

duration of any off-site activity.

2. Fire.

- A. In case of fire, danger of fire, explosion, or other emergency, Program Employees' first priority is to evacuate the participants to a designated safe area.
- B. The Program Site will have an annual fire inspection by the local Fire Marshal, and the resulting report will detail any safety concerns observed. The report will be forwarded to the Recreation Manager who will review and establish deadlines and criteria for compliance if any deficiencies or concerns are determined to exist.
- C. The Program Site must have at least one fire extinguisher readily available to all Program employees. All Program Employees will be trained in the proper use of fire extinguishers.
- D. Fire drills will be initiated at Program Sites based on the following schedule:
  - (1) Summer Camp Program: A fire drill twice during the session.
  - (2) Spring Break Camp Program: A fire drill once during the session.
  - (3) Other Programs: A fire drill at least once during the session.

3. Health.

- A. Illness or Injury.
  - (1) A Participant who is considered to be a health or safety concern to other Participants or Employees will not be admitted to a Program.
  - (2) Illnesses and injuries will be handled in a manner to protect the health of all Participants and Employees.
  - (3) Program Employees will follow plans to provide emergency care for injured Participants with symptoms of an acute illness as specified in the Program Manual.
  - (4) Program Employees will follow the recommendation of the Texas Department of Health concerning the admission or readmission of any Participant after a communicable disease.
- B. Program Employees will not administer medication to Participants.
- C. Toilet Facilities.
  - (1) The Program Site will have inside toilets located and equipped so

Participants can use them independently and Program Employees can supervise as needed.

- (2) An appropriate and adequate number of lavatories will be provided.

D. Sanitation.

- (1) The Program facilities will have adequate light, ventilation, and heat.
- (2) The Program will have an adequate supply of water meeting the standards of the Texas Department of Health for drinking water and ensure that it will be supplied to the participants in a safe and sanitary manner.
- (3) Program Employees will see that garbage is removed from buildings daily.

## **Council Agenda Item: #R6**

### **AGENDA CAPTION:**

Presentation, discussion and consideration of approval of an Ordinance amending Chapter 18 (Buildings and Building Regulations) of the Code of Ordinances by amending various sections thereof regarding:

1. the International Building Code, and adopting the International Building Code, 2009 Edition (and certain appendices thereto) and making such other changes and providing for other provisions regarding and relating to the International Building Code as set forth in the Ordinance, including continuing in effect certain provisions of the International Building Code, 2006 Edition regarding automatic fire extinguishing systems.
2. the International Residential Code, and adopting the 2009 International Residential Code, 2009 Edition (and certain appendices thereto) and making such other changes and providing for other provisions regarding and relating to the International Residential Code as set forth in the Ordinance, including continuing in effect certain provisions of the International Residential Code, 2006 Edition regarding automatic fire extinguishing systems.
3. the International Energy Conservation Code, and adopting the International Energy Conservation Code, 2009 Edition and making other changes and providing for other provisions regarding and relating to the International Energy Conservation Code as set forth in the Ordinance.
4. the International Property Maintenance Code, and adopting the International Property Maintenance Code, 2009 Edition and making other changes and providing for other provisions regarding and relating to the International Property Maintenance Code as set forth in the Ordinance.
5. the International Code Council Electrical Code, 2006 Edition and making other changes and providing for other provisions regarding and relating to the International Code Council Electrical

Code as set forth in the Ordinance.

6. the International Plumbing Code, and adopting the International Plumbing Code, 2009 Edition and making other changes and providing for other provisions regarding and relating to the International Plumbing Code as set forth in the Ordinance.

7. the International Mechanical Code, and adopting the International Mechanical Code, 2009 Edition and making other changes and providing for other provisions regarding and relating to the International Mechanical Code as set forth in the Ordinance.

8. the Building/ Fire Code Board of Appeals in Sections 18-614 (Relating to Fences), 18-652 (Relating to Satellite Dishes), 18-725 (Relating to Swimming Pools), and 18-730 (Relating to Solar Energy Systems) and making other changes and providing for other provisions regarding and relating to the Building/Fire Code Board of Appeals as set forth in the Ordinance.

**FINANCIAL IMPACT:**

N/A

**BACKGROUND:**

The Town of Addison has always promoted life safety for its citizens and visitors. The latest International Codes offer improved life safety requirements and new methods of construction.

**RECOMMENDATION:**

Staff recommends approval

**COUNCIL GOALS:**

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

**ATTACHMENTS:**

Description:

- [2009 IBC Memo](#)
- [2009 IBC ORD](#)
- [2009 IRC Memo](#)
- [2009 IRC ORD](#)
- [2009 IPMC Memo](#)

Type:

- Cover Memo
- Cover Memo
- Cover Memo
- Ordinance
- Cover Memo

<input type="checkbox"/> <a href="#">2009 IPMC ORD</a>	Ordinance
<input type="checkbox"/> <a href="#">2009 Amendments to 2006 ICCEC Memo</a>	Cover Memo
<input type="checkbox"/> <a href="#">2009 Amendments to 2006 ICCEC ORD</a>	Ordinance
<input type="checkbox"/> <a href="#">2009 IPC Memo</a>	Cover Memo
<input type="checkbox"/> <a href="#">2009 IPC ORD</a>	Ordinance
<input type="checkbox"/> <a href="#">2009 IMC Memo</a>	Cover Memo
<input type="checkbox"/> <a href="#">2009 IMC ORD</a>	Ordinance
<input type="checkbox"/> <a href="#">2009 BOARD OF APPEALS Memo</a>	Cover Memo
<input type="checkbox"/> <a href="#">2009 BOARD OF APPEALS ORD</a>	Ordinance



To: Carmen Moran, Director Development Services

From: Lynn Chandler, Building Official

Date: December 21, 2010

Subject: 2009 IBC

The following changes were made to the 2009 IBC ordinance:

Sec. 18-4. Licensing Required. Increased building contractor license from \$50.00 to \$75.00.

Sec. 18-31. Adopted. Changed text to read 2009 codes.

Sec. 18-53. Certificate of Occupancy. Changed text to read Section 111.

Sec 18-54. Board of Appeals. Change text to read Section 113.

Sec. 18-55. Violation Penalties. Change text to read subsection 114.4.

Sec. 18-55.1. High Rise Building. The definition of a high rise was added in the 2009 IBC so section was rewritten to reflect previous requirement.

Sec. 18-55.2. Reserved. This amendment is no longer required because this section was rewritten in the 2009 IBC and the definition defines what a high-rise building is.

Sec. 18-59. Unity Agreement. Text change to read subsection 705.

Sec. 18-62 Alternative protection, Sec. 18-63. Automatic fire-extinguishing system, Sec. 18-63.1. NFPA 13 sprinkler systems, and Sec. 18-53.2 Sprinkler systems monitoring alarms were changed to correspond to amendments to the fire code.

Sec. 18-63.5 High-rise buildings. Changed section to read section 907.2.13.

Sec. 18-67. Corridor construction. Changed text to read section 1018.1.

Sec. 18-67.1. Smokeproof enclosures. Change text to read section 1022.9.

Sec. 18-67.2 Luminous egress path markings. Amendment recommended by NCTCOG to correspond with other sections of the code that 55' be considered a high-rise.

Sec. 18-68. Design. Change text to read section 1101.2..

Sec. 18-72. This amendment was deleted because the 2009 IBC has a new section on the use and installation of EIFS.

Sec. 18-72.1. Partitions. This amendment was added to be consistent with Section 18-368 of the plumbing code which is an existing amendment that was recommended by NCTCOG.

Sec. 18-73.2. Swimming pool enclosures and safety devices. Amendment recommended by NCTCOG to comply with state law also.

Sec. 18-79. Amendments to the International Energy Conservation Code. Amendment recommended by NCTCOG to satisfy the "not less restrictive" requirement when adopting subsequent editions of energy codes in accordance with Texas SB 5, 77<sup>th</sup> Legislature.

**AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING CHAPTER 18, BUILDING AND BUILDING REGULATIONS, OF THE CODE OF ORDINANCES OF THE TOWN BY AMENDING VARIOUS PROVISIONS OF ARTICLE I (IN GENERAL) AND ARTICLE II (BUILDING CODE) THEREOF, INCLUDING: SECTIONS 18-4 (LICENSING REQUIRED), 18-31 (ADOPTED) (AND ADOPTING THE INTERNATIONAL BUILDING CODE, 2009 EDITION, INCLUDING CERTAIN APPENDICES THERETO), 18-53 (CERTIFICATE OF OCCUPANCY), 18-54 (BOARD OF APPEALS), 18-55 (VIOLATION PENALTIES), 18-55.1 (HIGHRISE BUILDINGS), 18-59 (UNITY AGREEMENTS), SECTION 18-62 (ALTERNATIVE PROTECTION), 18-63 (AUTOMATIC FIRE-EXTINGUISHING SYSTEMS), 63.1 (NFPA 13 SPRINKLER SYSTEMS), 18-63.2 (SPRINKLER SYSTEMS MONITORING ALARMS), 18-63.5 (HIGH-RISE BUILDINGS), 18-67 (CORRIDOR CONSTRUCTION), SECTION 18-67.1 (SMOKEPROOF ENCLOSURE), 18-68 (DESIGN), AND SECTION 18-79 (AMENDMENTS TO THE INTERNATIONAL ENERGY CONSERVATION CODE); ADDING TO THE CODE OF ORDINANCES SECTIONS 18-67.2 (LUMINOUS EGRESS PATH MARKINGS), 18-73.1 (PARTITIONS), AND 18-73.2 (SWIMMING POOL ENCLOSURES AND SAFETY DEVICES); AND DELETING IN THEIR ENTIRETY FROM THE CODE OF ORDINANCES SECTIONS 18-55.2 (APPLICABILITY) AND 18-72 (EXTERIOR INSULATION AND FINISH SYSTEMS (EIFS)); PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY NOT TO EXCEED THE SUM OF FIVE HUNDRED DOLLARS (500.00) FOR EACH OFFENSE AND A SEPARATE OFFENSE SHALL BE DEEMED COMMITTED EACH DAY DURING OR ON WHICH A VIOLATION OCCURS OR CONTINUES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the amendments set forth in this Ordinance to Chapter 18 are pursuant to investigation and analysis by the City, and are with a view of and to further the purposes and objectives set forth in Section 18-31 of the Code, including promote the health, safety, welfare, convenience and enjoyment of the public, including to protect welfare, and are to comply with applicable State law; and

**WHEREAS**, among other things, this Ordinance continues in effect the provisions of chapter 9 of the International Building Code, 2006 Edition for the purposes of the application, interpretation, and/or enforcement of Section 18-429 of the Code of Ordinances (together with any other provisions of the International Building Code (including, without limitation, any appendices) that are deemed by the Building Official of the Town of Addison to be necessary for

or useful to the application, interpretation, and/or enforcement of the said Section 18-429), and the City Council hereby finds that the requirements included in and provisions of the said chapter 9 and other provisions of the International Building Code, 2006 Edition have been in effect prior to January 1, 2009, and that the continuation of those requirements and provisions by this Ordinance is not and does not constitute the enactment of an ordinance, bylaw, order, building code, or rule requiring the installation of a multipurpose residential fire sprinkler system or any other protection system in a new or existing one- or two-family dwelling after January 1, 2009; and

**WHEREAS**, the adoption of this Ordinance and the amendments set forth herein are for and in the best interests of the health, safety and welfare of the City and its citizens.

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

Section 1. Incorporation of Recitals. The above and foregoing recitals and premises to this Ordinance are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. Amendment. The Code of Ordinances of the Town of Addison, Texas (the “City”) is hereby amended by amending certain sections and provisions of Chapter 18, Building and Building Regulations, thereof as set forth in Exhibit A attached hereto and incorporated herein for all purposes, and all other chapters, articles, sections, subsections, sentences, phrases and words of the said Code of Ordinances are not amended hereby.

Section 3. Savings; Repealer. This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance. Provided, however, that the repeal of such ordinances or parts of such ordinances, and the amendments and changes made by this Ordinance, shall not affect any right, property or claim which was or is vested in the City, or any act done, or right accruing or accrued, or established, or any suit, action or proceeding had or commenced before the time when this Ordinance shall take effect; nor shall said repeals, amendments or changes affect any offense committed, or any penalty or forfeiture incurred, or any suit or prosecution pending at the time when this Ordinance shall take effect under any of the ordinances or sections thereof so repealed, amended or changed; and to that extent and for that purpose the provisions of such ordinances or parts of such ordinances shall be deemed to remain and continue in full force and effect.

Section 4. Penalty. It shall be unlawful for any person, firm, corporation, or other business entity to violate any provision of this Ordinance, and any person, firm, corporation, or other business entity violating or failing to comply with any provision hereof shall be fined, upon conviction, in an amount of not more than Five Hundred and No/100 Dollars (\$500.00), and a separate offense shall be deemed committed each day during or on which a violation or failure occurs or continues.

Section 5. Severability. The provisions of this Ordinance are severable, and if any section or provision of this Ordinance or the application of any section or provision to any person, firm, corporation, entity, situation or circumstance is for any reason adjudged invalid or held unconstitutional by a court of competent jurisdiction, the same shall not affect the validity of any other section or provision of this Ordinance or the application of any other section or provision to any other person, firm, corporation, entity, situation or circumstance, and the City Council declares that it would have adopted the valid portions of this Ordinance adopted herein without the invalid or unconstitutional parts and to this end the provisions of this Ordinance adopted herein shall remain in full force and effect.

Section 6. Effective Date. This Ordinance shall become effective from and after its passage and approval and its publication as may be required by law (including, without limitation, the City Charter and the ordinances of the City).

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this.

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

ATTEST:

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
John Hill, City Attorney

**EXHIBIT A**  
**TO ORDINANCE NO. \_\_\_\_\_**

Chapter 18, Buildings and Building Regulations, of the Code of Ordinances (the "Code") of the Town of Addison, Texas is hereby amended in various sections of Article I (In General) and Article II (Building Code) thereof as set forth below and follows:

**ARTICLE I. IN GENERAL**

1. Section 18-4 of the Code is amended to read as follows:

Sec. 18-4. Licensing required.

(a) No person shall engage in the business of construction, or make any repairs, alterations or changes to an existing building unless that person is licensed as a building contractor by the town. However, no license is required for work that is not required to be permitted.

(b) There will be a fee of seventy-five dollars (\$75.00 ) for a building contractor's license.

(c) The building contractor's license shall be valid for one (1) year from the date of registration.

(d) The building contractor shall be subjected to the requirements and penalties of the Code of Ordinances of the Town of Addison.

Exception: Home owners are not required to be licensed as building contractors to perform work in their own hom

e.

2. Section 18-31 of the Code is amended to read as follows;

Sec. 18-31. Adopted.

For the purpose of providing minimum standards to safeguard life or limb, health, property and public welfare by regulating and controlling the design, construction, quality of materials used, use and occupancy, location and maintenance of all buildings and structures within the city and certain equipment specifically regulated herein, the International Building Code, 2009 Edition, the and the International Energy Conservation Code, 2009 Edition, (copies of which, authenticated by the signature of the mayor and the city secretary, and made a public record by ordinance, is on file in the city secretary's office), are hereby adopted as the building code of the city as fully as if copied at length in this article, but with the changes therein and additions thereto to provided in this article. Also, adopted are Appendices E, F, G, I and J of the 2009 Edition of the International Building Code.

3. Section 18-53 of the Code is amended to read as follows:

Sec. 18-53. Certificate of Occupancy.

The International Building Code is amended by changing section 111 to read as follows:

- 111.1 Use or Occupancy. No building, structure or land may be occupied or used until a certificate of occupancy has been issued by the building official as provided herein. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this code or other ordinances of the jurisdiction. Individual dwelling units are exempt from the requirements of this section.
- 111.2 Change in Use. A certificate of occupancy shall be obtained for a building, structure, or land where there is a change in uses as found in the zoning ordinance of the Town of Addison, where there is a change in occupancy classification as found in the International Building Code, or where there is a change in owner, tenants or occupants of the building, individual lease space, individual suite, structure, or land.
- 111.3 Certificate Issued. After all necessary inspections are conducted by the building inspection division and the fire department, and when it is determined that the building, individual lease space, individual suite, structure, or land complies with all applicable provisions of the ordinances of the Town of Addison, the building official shall issue a certificate of occupancy which may contain the following:
1. The address of the building, structure or land.
  2. The name of the tenant or occupant who is occupying or using the building, individual lease space, individual suite, structure or land.
  3. A statement concerning the approved use of the building, structure or land.
  4. The maximum allowed occupancy load for assembly uses.
  5. Other information deemed necessary by the building official.
- 111.4 Posting. The certificate of occupancy shall be posted in a conspicuous place on the premises and shall not be removed except by the building official.
- 111.5 Revocation. The building official may revoke a certificate of occupancy when it is determined that it was issued in error or on the basis of incorrect information, or in the event of an unapproved additional use or occupancy or unapproved change in use or occupancy of the building, individual lease space, individual suite, structure, or land.
- 111.6 Temporary Certificate. If the building official finds that no substantial hazard will result from the occupancy of any building or portion thereof before the same is completed, he may issue a temporary certificate for the use of a portion or portions of a building or structure prior to the completion of the entire building or structure.

111.7 Fee. The fee for each certificate of occupancy will be in the following amounts:

Number of Square Feet In a Building	Certificate of Occupancy Fee
0-5000 square feet	\$50.00
5001-25,000 square feet	\$100.00
25001-50,000 square feet	\$150.00
50001-75,000 square feet	\$200.00
75001-100,000 square feet	\$250.00
100,001-125,000 square feet	\$300.00
125,001-150,000 square feet	\$350.00
150,001-175,000 square feet	\$400.00
175,001-200,000 square feet	\$450.00
200,001-225,000 square feet	\$500.00
225,001-250,000 square feet	\$550.00
250,001-275,000 square feet	\$600.00
275,001-300,000 square feet	\$650.00
300,001-325,000 square feet	\$700.00
325,001-350,000 square feet	\$750.00
350,001-375,000 square feet	\$800.00
375,001-400,000 square feet	\$850.00
400,001-425,000 square feet	\$900.00
425,001-450,000 square feet	\$950.00
450,001-475,000 square feet	\$1000.00
475,001-500,000 square feet	\$1050.00
Over 500,000 square feet	\$1100.00

4. Section 18-54 of the Code is amended to read as follows:

Sec. 18-54 Board of appeals

The International Building Code is amended by amending Section 113 thereof in its entirety to read as follows:

#### SECTION 113 BOARD OF APPEALS

*113.1 . General.* There is hereby created a board of appeals (the “board of appeals”), consisting of the members of the board of adjustment appointed by the city council pursuant to Appendix A, Article XXIV of the Code of Ordinances of the Town of Addison. Accordingly, the number of members of the board of appeals shall be equal to the number of members of the said board of adjustment,



and alternate members of the said board of adjustment shall be alternate members of the board of appeals who may serve in the absence of one or more regular members when requested to do so by the City Manager or the City Manager's designee, including the director of development services of the Town.

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

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

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

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

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

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

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

corporation.

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

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

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

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

*113.4 Appeal process.*

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

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

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

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

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

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

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

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

5. Section 18-56 of the Code is amended as follows:

Sec. 18-55. Violation penalties.

The International Building Code is amended by adding a second paragraph to subsection 114.4 to read as follows:

“Any person, firm or corporation violating any of the provisions of this code shall be subject to a fine, upon conviction in the municipal court, in any sum not to exceed five hundred dollars (\$500.00), and each and every day of continuance thereof shall constitute a distinct and separate offense. The owner or owners of any building or structure failing to comply with any provisions of this code, and the owner or owners of any premises wherein a violation of the provisions of this code occurs, and any architect, engineer, designer, builder, contractor, agent, person, firm or corporation employed therewith and who has assisted in the commission of any such violation, shall be guilty of a separate offense.”

6 Section 18-55.1 of the Code is amended as follows:

Sec. 18-55.1. High rise buildings.

The International Building Code is amended by changing the definition of a High rise building in Section 202 to read as follows:

High rise building. A building having any floor for human occupancy located more than 55 feet (16,764 mm) above the lowest level of fire department vehicle access.

- (a) Any and all references in the Code to high-rise buildings or portions thereof shall be assumed to have this meaning regardless of any other height specified.

7. Section 18-55.2 of the Code is deleted in its entirety:

Sec. 55.2 Reserved

8. Section 18-59 of the Code is amended as follows:

Sec. 18-59. Unity agreements.

The International Building Code is amended by adding subsection 705.12 to read as follows:

705.12 . Unity agreements.

(a) The building official may authorize the dissolution of common boundary lines between two (2) or more lots for purposes of this code if a written agreement is executed in accordance with this section on a form provided by the city.

(b) The agreement must:

1. Contain legal descriptions of the properties sharing the common boundary lines;
2. Set forth adequate consideration between the parties;
3. State that all parties agree that the properties sharing the common boundary lines may be collectively treated as one lot for the limited purpose of meeting requirements of this code;
4. State that the dissolution of the common boundary lines described in the agreement is only for the limited purpose of meeting requirements of this code, and that actual lines of property ownership are not affected;
5. State that the agreement constitutes a covenant running with the land with respect to all properties sharing the common boundary lines;
6. State that all parties agree to defend, indemnify and hold harmless the Town of Addison from and against all claims or liabilities arising out of or in connection with the agreement;

7. State that the agreement will be governed by the laws of the State of Texas;
8. State that the agreement may only be amended or terminated in accordance with subsection (d) of this section;
9. Be approved by the building official and be proved as to form by the city attorney; and
10. Be signed by all owners of the properties sharing the common boundary lines;
11. Be signed by all lienholders, other than taxing entities, that have either an interest in the properties sharing the common boundary lines or an improvement on those properties; and
12. Be filed and made a part of the deed records of the county or counties in which the properties are located.

(c) An agreement is not effective until a true and correct copy of the approved agreement is filed in the deed records in accordance with subsection (b) and two (2) file-marked copies of the agreement are filed with the building official.

(d) An agreement may only be amended or terminated by written instrument that is executed in accordance with this subsection on a form provided by the city. The instrument must be:

1. Signed by an owner of property sharing the common boundary lines or by a lienholder, other than a taxing entity, that has either an interest in a property sharing the common boundary lines or an improvement on such a property;
2. Proved by the building official;
3. Approved as to form by the city attorney; and
4. Filed and made a part of the deed records of the county or counties in which the properties are located.

(e) The building official shall approve an instrument amending or terminating an agreement if all properties governed by the agreement fully comply with this code. The amending or terminating instrument is not effective until it is filed in the deed records in

accordance with subsection (d) and two (2) file-marked copies are filed with the building official.

9. Section 18-62 of the Code is amended as follows:

Sec. 18-62. Alternative protection.

The international Building Code is amended by changing 903.1.1 to read as follows:  
903.2.1 Alternative protection: Alternative automatic fire-extinguishing systems complying with Section 904 may be permitted as approved by the Fire Prevention Chief only in addition to automatic fire sprinkler protection. In no case shall fire sprinkler protection be removed or omitted based on the presence of alternative-extinguishing systems.

10. Section 18-63 of the Code is amended as follows:

Sec. 18-63. Automatic fire-extinguishing systems.

The International Building Code is amended by changing subsection 903.2 to read as follows:

903.2 Sprinklers required. An approved automatic fire sprinkler system shall be installed as follows:

- (1) In all buildings of any area, size or occupancy built, added to or moved into the Town of Addison after December 8, 1992. In the case of an addition to an existing structure or space an approved automatic fire sprinkler system shall be installed in the addition and the existing structure or space . Unless otherwise required in the code, the following exceptions apply:

*Exception 1:* Detached Group U occupancies that do not exceed 500 square feet in area and are located six feet from any other building.

*Exception 2:* Open parking garages of noncombustible construction that have no other types of occupancies located above the garage.

*Exception 3:* Existing, unsprinklered, single family detached dwellings which are added to for the purpose of increasing livable area.

*Exception 4:* Covered walkways or open canopies above fuel dispensing pumps, bus stops or other similar structures intended only for the temporary protection of persons from inclement weather but not including covered patios attached to buildings.

*Exception 5:* Group S-2 occupancies used only for the storage or parking of aircraft. (NOTE: Aircraft hangars are subject to the provisions of NFPA 409.)

- (2) In any existing building of any size, area or occupancy (remodeled or reconstructed after the effective date of this ordinance) where the remodel or reconstruction involves greater than %50 of the square footage of the structure or costs in excess of %50 of the dollar value of the structure as assessed by the Dallas County Appraisal District.
- (3) In the attic of any building required to have a fire sprinkler system.  
Exception: Attics of single family residences on fee simple lots.
- (4) In the occupancies and location as set forth in this section.

For provisions on special hazards and hazardous materials, see the fire code.

11. Section 18-63.1 of the Code is amended as follows:

Sec. 18-63.1 NFPA 13 Sprinkler systems.

The International Building Code is amended by changing subsection 903.3.1.1 to read as follows:

903.3.1.1 NFPA-13 sprinkler systems. Where the provisions of this ordinance require that a building or portion thereof be equipped with an automatic fire sprinkler system, sprinklers shall be installed in accordance with NFPA-13 with any such additions or modifications as may be required by the Fire Prevention Chief

12. Section 18-63.2 of the Code is amended as follows:

Sec. 18-63.2 Sprinkler systems monitoring alarms.

The International Building Code is amended by changing subsection 903.4 to read as follows:

903.4 Sprinkler system monitoring and alarms. All valves controlling the water supply and all water flow alarm switches on fire sprinkler systems shall be electronically supervised and monitored by an approved fire alarm monitoring agency, regardless of the number of sprinkler heads served.

Exception: Fire sprinkler valve and alarm monitoring for single family residences on fee simple lots shall be at the discretion of the property owner.

13. Section 18-63.5 of the Code is amended as follows:

Sec. 18-63.5 High-rise buildings.

The International building code is amended by changing 75 feet to read 55 feet and 22 860 mm to read 16 764 mm in section 907.2.13.

14. Section 18-67 of the Code is amended as follows:

Sec. 18-67. Corridor Construction.

The International Building Code is amended by adding Exception 5 to subsection 1018.1 to read as follows:

5. Nonrated construction within a single tenant space in the following circumstances:

- (i) Smoke detectors are installed along the path of travel per manufacturer's instructions, but in no case more than sixty (60) feet.
- (ii) The actuation of the smoke detectors provides an alarm audible within the space.
- (iii) The smoke alarms are connected to the building's fire alarm system where such a system is provided.

15. Section 18-67.1 of the Code is amended as follows:

Sec. 18-67.1 Smokeproof enclosures and pressurized stairways.

The International Building Code is amended by changing 75 feet to read 55 feet and 22 860 mm to read 16 674 mm in section 1022.9 .

16. A new Section 18-67.2 as added to the Code to read as follows:

Sec.18-67.2 Luminous egress path markings.

The Intarnational Building Code is amended by changing 75 feet to read 55 feet and 22 860 mm to read 16 674 mm in section 1024.1.

17. Section 18-68 of the Code is amended to read as follows:

Sec. 18-68. Design.



The International Building Code is amended by adding an exception to Section 1101.2 to read as follows:

Exception: Buildings regulated under State Law and built in accordance with State certified plans, including any differences and variances or waivers granted by the State, shall be deemed in compliance with the requirements of this chapter.

18. Section 18-72 of the Code is deleted in its entirety.

Sec. 18-72. Reserved.

19. Section 18-73.1 is added to the Code to read as follows:

Sec. 18-73.1 Partitions

The International Building Code is amended by deleting Sections 2903.1 and 2903.2.

20. Section 18-73.2 is added to the Code to read as follows:

Sec. 18-73.2 Swimming pool enclosures and safety devices.

The International Building Code is amended by changing section 3109.1 to read as follows;

3109.1 General. Swimming pools shall comply with the requirements of this section and other applicable sections of this code as well as also complying with applicable state laws and Section 18-681 of the Code of Ordinances.

21. Section 18-79 of the Code is amended to read as follows:

Sec.18-79.Amendments to the International Energy Conservation Code.

The International Energy Conservation Code is amended to read as follows:

Amend Section 101.4.2 Historic Buildings to read as follows:

101.4.2 Historic Buildings. Any building or structure that is listed in the State or National

Register of Historic Places; designated as a historic property under local or state designation law or survey; certified as a contributing resource with a National Register listed or locally designated historic district; or with an opinion or certification that the property is eligible to be listed on the National or State Registers of Historic Places either individually or as a contributing building to a historic district by the State Historic Preservation Officer of the Keeper of the National Register of Historic Places, shall comply with all the provisions of this code.

Exception: Whenever a provision or provisions shall invalidate or jeopardize the historical designation or listing, that provision or provisions may be exempted.

Amend Section 103.1.1 Above code programs to read as follows:

103.1.1 Alternative compliance. A building certified by a national, state, or local accredited energy efficiency program determined by the Energy Systems Laboratory to be in compliance with the energy efficiency requirements of this section may, at the option of the Code Official, be considered in compliance. The United States Environmental Protection Agency's Energy Star Program certification of energy code equivalency shall be considered in compliance.

Amend SECTION 202 GENERAL DEFINITIONS by adding the following definition:

GLAZING AREA. Total area of the glazed fenestration measured using the rough opening and including sash, curbing or other framing elements that enclose the conditioned space. Glazing area includes the area of the glazed fenestration assemblies in walls bounding conditioned basements. For doors where daylight opening is less than 50 percent of the door area, that glazing area is the daylight opening area. For all other doors, the glazing area is the rough opening area for the door including the door and the frame.

Amend Section 401.2 Compliance, Item #1 to read as follows:

1. Sections 402.1 through 402.3, 403.2.1 and 404.1 (prescriptive) and the use of Tables 402.1.1 and 402.1.3 are limited to a maximum glazing area of 15% window area to floor area or ratio; or

2. (language unchanged)

Amend Section 402 by adding Section 402.2.12 to read as follows:

402.2.12 Insulation installed in walls. Insulation installed in walls shall be totally surrounded by an enclosure on all sides consisting of framing lumber, gypsum, sheathing, wood structural panel sheathing or other equivalent material approved by the building official.

Amend Section 405.4.1 by adding a sentence to the end of the paragraph to read as follows:

RemRate™, Energy Gauge™, and IC3 are deemed acceptable performance programs.

DULY PASSED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS,  
this the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY SECRETARY

OFFICE OF THE CITY SECRETARY

ORDINANCE NO.

To: Carmen Moran, Director Development Services

From: Lynn Chandler, Building Official

Date: December 21, 2010

Subject: 2009 IRC

The following changes were made to the 2009 IRC ordinance:

Sec. 18-401. Adopted. Text changed to read 2009 IRC.

Sec. 18-425. Building/Fire Code Board of Appeals. Text changed to read Section 113.

Sec. 18-426. Violation Penalties. Changed text to read subsection 114.4.

Sec. 18-427. Exterior walls. Changed text to read exception 3.

Sec. 18-428. Unity Agreements. Text changed to read Exception 6 to section R302.1.

Sec. 18-428.1 Other Penetrations. NCTCOG recommended change to correct text.

Sec. 18-430. Disposal of Construction Waste. Text changed to read R324 and R324.1.

Sec. 18-431. Excavation, Construction or Demolition at night prohibited. Text changed to read R325 and R325.1.

Sec. 18-432. Stormwater Runoff. Text changed to read R326 and R326.1.

Sec. 18-433. Building Security. Text changed to read R327 and R327.1.

Sec. 18-434. Airport Noise. Text changed to read R328 and R328.1.

Sec. 18-435. Exterior Plaster. Text changed to read R703.6.6.

Sec. 18-436. Exterior insulation and finish system (EIFS). Text changed to read subsection R703.9.5 and subsection 1408.6.

Sec.18-437. Administrative Approval. Changed subsection to read P3114.9.

Sec. 18-438. Location of Clear Space. Changed subsection to read E3405.4.

Sec. 18-439. Minimum Size of Conductors. Changed subsection to read E3406.3.

Sec. 18-440. Service Disconnect Location. Changed subsection to read E3601.6.2.

Sec. 18-441. Amendments to Chapter 11 Energy Efficiency. Amendment recommended by NCTCOG to satisfy the “not less restrictive” requirement when adopting subsequent editions of energy codes in accordance with Texas SB 5, 77<sup>th</sup> Legislature.

**AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING CHAPTER 18 (BUILDING AND BUILDING REGULATIONS) OF THE CODE OF ORDINANCES OF THE TOWN BY AMENDING VARIOUS PROVISIONS OF ARTICLE VII (HOUSING CODE) THERE OF, INCLUDING: 18-401 (ADOPTED) , AND ADOPTING THE INTERNATIONAL RESIDENTIAL CODE, 2009 EDITION, INCLUDING CERTAIN APPENDICIES THERETO (BUT CONTINUING IN EFFECT PORTIONS OF THE INTERNATIONAL RESIDENTIAL CODE, 2006, 18-425 (BUILDING/FIRE CODE BOARD OF APPEALS), 18-426 (VIOLATION PENALTIES), 18-427 (EXTERIOR WALLS), 18-428 (UNITY AGREEMENTS), 18-430 (DISPOSAL OF CONSTRUCTION WASTE), 18-431 (EXCAVATION, CONSTRUCTION AND DEMOLITION PROHIBITED AT NIGHT), 18-432 (STORMWATER RUNOFF), 18-433 (BUILDING SECURITY), 18-434 (AIRPORT NOISE), 18-435 (EXTERIOR PLASTER), 18-436 (EXTERIOR INSULATION AND FINISH SYSTEM (EIFS)), 18-437 (ADMINISTRATIVE APPROVAL), 18-438 (LOCATION OF CLEAR SPACE), 18-439 (MINIMUMSIZE OF CONDUCTORS), 18-440 (SERVICE DISCONNECT LOCATION), AND 18-441 (AMENDMENTS TO CHAPTER 11 ENERGY EFFIENCY); ADDING A NEW SECTION 18-428.1 (OTHER PENETRATIONS); PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY NOT TO EXCEED THE SUM OF FIVE HUNDRED DOLLARS (500.00) FOR EACH OFFENSE AND A SEPARATE OFFENSE SHALL BE DEEMED COMMITTED EACH DAY DURING OR ON WHICH A VIOLATION OCCURS OR CONTINUES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the amendments set forth in this Ordinance to Chapter 18 of the Code of Ordinances of the Town of Addison (the “City”) are pursuant to investigation and analysis by the City, and are with a view of and to further the purposes and objectives set forth in Section 18-31 of the Code, including to promote the health, safety, welfare, convenience and enjoyment of the public, including to protect the public welfare, and are to comply with applicable State law; and

**WHEREAS**, among other things, this Ordinance continues in effect the provisions of the International Residential Code, 2006 Edition for the purposes of the amendment thereto set forth in Section 18-429 of the Code of Ordinances, and the City Council hereby finds that the requirements included in and provisions of the said Section 18-429 have been in effect prior to January 1, 2009, and that the continuation of those requirements and provisions by this Ordinance is not and does not constitute the enactment of an ordinance, bylaw, order. Building code, or rule requiring the installation of a multipurpose residential fire sprinkler system or any other fire sprinkler protection system in a new or existing one- or two-family dwelling after January 1, 2009; and

**WHEARAS**, the adoption of this Ordinance and the amendments set forth herein are for the best

interests of the health, safety and welfare of the City and its citizens.

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

Section 1. Incorporation of Recitals. The above and foregoing recitals and premises to this Ordinance are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. Amendment. The Code of Ordinances of the Town of Addison, Texas (the “City”) is hereby amended by amending certain sections and provisions of Chapter 18, Building and Building Regulations, thereof as set forth in Exhibit A attached hereto and incorporated herein for all purposes, and all other chapters, articles, sections, subsections, sentences, phrases and words of the said Code of Ordinances are not amended hereby.

Section 3. Savings; Repealer. This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance. Provided, however, that the repeal of such ordinances or parts of such ordinances, and the amendments and changes made by this Ordinance, shall not affect any right, property or claim which was or is vested in the City, or any act done, or right accruing or accrued, or established, or any suit, action or proceeding had or commenced before the time when this Ordinance shall take effect; nor shall said repeals, amendments or changes affect any offense committed, or any penalty or forfeiture incurred, or any suit or prosecution pending at the time when this Ordinance shall take effect under any of the ordinances or sections thereof so repealed, amended or changed; and to that extent and for that purpose the provisions of such ordinances or parts of such ordinances shall be deemed to remain and continue in full force and effect.

Section 4. Penalty. It shall be unlawful for any person, firm, corporation, or other business entity to violate any provision of this Ordinance, and any person, firm, corporation, or other business entity violating or failing to comply with any provision hereof shall be fined, upon conviction, in an amount of not more than Five Hundred and No/100 Dollars (\$500.00), and a separate offense shall be deemed committed each day during or on which a violation or failure occurs or continues.

Section 5. Severability. The provisions of this Ordinance are severable, and if any section or provision of this Ordinance or the application of any section or provision to any person, firm, corporation, entity, situation or circumstance is for any reason adjudged invalid or held unconstitutional by a court of competent jurisdiction, the same shall not affect the validity of any other section or provision of this Ordinance or the application of any other section or provision to any other person, firm, corporation, entity, situation or circumstance, and the City Council declares that it would have adopted the valid portions of this Ordinance adopted herein without the invalid or unconstitutional parts and to this end the provisions of this Ordinance adopted herein shall remain in full force and effect.

Section 6. Effective Date. This Ordinance shall become effective from and after its passage and approval and its publication as may be required by law (including, without limitation, the City Charter and the ordinances of the City).

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this.

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

ATTEST:

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
John Hill, City Attorney

**EXHIBIT A**  
**TO ORDINANCE NO. \_\_\_\_\_**

Chapter 18, Building and Building Regulations, of the Code of Ordinances (the “Code”) of the Town of Addison, Texas is hereby amended by amending various sections of the said Code as set forth below and as follows (additions are underlined; deletions are):

1. Section 18-401 of the Code is amended to read as follows:

Sec. 18-401. Adopted.

For the purpose of providing minimum standards to safeguard life or limb, health, property and public welfare by regulating and controlling the design, construction, quality of materials used, use and occupancy, location and maintenance of all buildings and structures within the city and certain equipment specifically regulated herein, the International Residential Code, 2009 Edition (for purposes of this Article, the “2009 **International Residential Code**,” a copy of which, authenticated by the signature of the mayor and the city secretary, and made a public record by ordinance, is on file in the city secretary’s office), is hereby adopted as the building code of the city as fully as if copied at length in this



article, but with the changes therein and additions thereto to provided in this article. Also, adopted are Appendices **E, F, G, H, I, J and K** of the 2009 the International Residential Code.

Notwithstanding the adoption of the 2009 International Residential Code, Section R325 of the International Residential Code, 2006 Edition (for purposes of this Article, the “International Residential Code”), as added by Section 18-429, below, and any provisions of the International Residential Code (including, without limitation, any appendices) that are deemed by the Building Official of the Town of Addison to be necessary for or useful to application, interpretation, and/or enforcement of the said Section 325, are continued in full force and effect. To the extent of any conflict between the provisions of the International Residential Code as continued hereby and the provisions of the 2009 International Residential Code, the provisions of the International Residential Code shall control.

Sections */these are sections of the 2009 International Residential Code that may conflict with Section 325 of the 2006 International Residential Code/* of the 2009 International Residential Code are not adopted hereby and are excluded from the adoption of the 2009 International Residential Code.

2. All references to the “International Residential Code” included in Sections 18-412 through 18-428, and in Section 18-430 through 18-441, are amended to read “2009 International Residential Code”.

3. Section 18-425 of the Code is amended to read as follows;

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

The International Residential Code is amended by amending Section R112 in its entirety as follows, and by amending Section 113.2 thereof by adding Section 113.2.1 and Section 113.2.2 as set forth below:

*R112. Building/Fire Code Board of Appeals.* For purposes of this code, appeals shall be to the board of appeals, being denominated as the Building/Fire Code Board of Appeals, which shall consist of the members of the board of adjustment appointed by the city council pursuant to Appendix A, Article XXIV of the Code of Ordinances of the Town of Addison. The provisions applicable to the board of appeals as set forth and described in Section 113 of the International Building Code adopted by the town, including, without limitation, general provisions, limitations of power, powers of the board, and appeal process, shall be applicable to and govern appeals and the said board of appeals for purposes of this code.

*113.2.1 Determination of substantial improvement in areas prone to flooding.* When the building official provides a finding required in Section R105.3.1.1, the board of appeals shall determine whether the value of the proposed work

constitutes a substantial improvement. A substantial improvement means any repair, reconstruction, rehabilitation, addition or improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the building or structure before the improvement or repair is started. If the building or structure has sustained substantial damage, all repairs are considered substantial improvement regardless of the actual repair work performed. The term does not include:

1. Improvements of a building or structure required to correct existing health, sanitary or safety code violations identified by the building official and which are the minimum necessary to assure safe living conditions; or
2. Any alteration of an historic building or structure, provided that the alteration will not preclude the continued designation as an historic building or structure. For the purpose of this exclusion, an historic building is:
  - 2.1. Listed or preliminarily determined to be eligible for listing in the National Register of Historic Places; or
  - 2.2. Determined by the Secretary of the U.S. Department of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined to qualify as an historic district; or
  - 2.3. Designated as historic under a state or local historic preservation program that is approved by the Department of Interior.

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

1. A showing of good and sufficient cause that the unique characteristics of the size, configuration or topography of the site render the elevation standards in Section R322 inappropriate.
2. A determination that failure to grant the variance would result in exceptional hardship by rendering the lot undevelopable.
3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

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

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

4. Section 18-426 of the Code is amended to read as follows:

Sec. 18-426. Violation penalties.

The International Residential Code is amended by changing subsection R113.4 to read as follows:

R113.4 Violation penalties. See subsection 114.4 of the International Building Code.

5. Section 18-427 of the Code is amended to read as follows;

Sec. 18-427. Exterior Walls.

The International Residential Code is amended by changing exception 3 in subsection R302.1 to read as follows;

Exception 3. Tool and storage sheds, play houses and similar structures where the floor area does not exceed 200 square feet are not required to provide wall protection based on location on the lot. Projections beyond the exterior wall shall not extend over the lot line.

6. Section 18-428 of the Code is amended to Read as follows:

Sec. 18-428. Unity Agreements.

The International Residential code is amended by adding Exception 6 to Section R302.1 to read as follows:

Exception 6 Unity agreement. See Section 705.15 of the International Building Code.

7. A new Section 18-428.1 is added to the Code to read as follows:

**Sec. 18-428.1 Other penetrations.**

**The International Building Code is amended by changing Section R302.5.3 to read as follows:**

**R302.5.3 Other penetrations. Penetrations through the separation required in Section R302, shall be protected as required by Section R302.11, Item 11.**

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8. Section 18-430 of the Code is amended to read as follows:

**Sec. 18-430. Disposal of Construction Waste.**

The International Residential Code is amended by adding Section R324 to read as follows:

SECTION R324

DISPOSAL OF CONSTRUCTION WASTE

R324.1 General. See Section 3313 of the International Building Code.

9. Section 18-431 of the Code is amended to read as follows:

**Sec. 18-431. Excavation, Construction or Demolition at night prohibited.**

The International Residential Code is amended by adding Section R325 to read as follows:

SECTION R325

EXCAVATION, CONSTRUCTION OR DEMOLITION AT NIGHT PROHIBITED

R325.1 General. See Section 3314 of the International Building Code.

10. Section 18-432 of the Code is amended to read as follows:

**Sec. 18-432. Stormwater Runoff.**

The International Residential Code is amended by adding Section R326 to read as follows:

SECTION R326  
STORMWATER RUNOFF

R326.1 General. See Section 3315 of the International Building Code.

11. Section 18-433 of the Code is amended to read as follows:

Sec. 18-433. Building Security.

The International Residential Code is amended by adding Section R327 to read as follows:

SECTION R327  
BUILDING SECURITY

R327.1 General. See Chapter 36 of the International Building Code.

12. Section 18-434 of the Code is amended as follows:

Sec. 18-434. Airport Noise.

The International Residential Code is amended by adding Section R328 to read as follows:

SECTION R328  
AIRPORT NOISE

R328.1 General. See Chapter 37 of the International Building Code.

13. Section 18-435 of the Code is amended to read as follows:

Sec. 18-435. Exterior Plaster.

The International Residential Code is amended by adding subsection R703.6.6 to read as follows:

R703.6.6 3/8" One-coat stucco system. See subsection 2512.10 of the International Building Code.

14. Section 18-436 of the Code is amended to read as follows:

Sec. 18-436. Exterior insulation and finish system (EIFS).

The International Residential Code is amended by adding subsection R703.9.5 to read as follows:

R703.9.5 Requirements: In addition to the above requirements the exterior insulation and finish system shall comply with subsection 1408.6 of the International Building Code.

15. Section 18-437 of the Code is amended to read as follows:

Sec. 18-437. Administrative approval.

The International Residential Code is amended by adding subsection P3114.9 to read as follows:

P3114.9 Administrative approval. The administration shall have final approval of all location of air admittance valves.

16. Section 18-438 of the Code is amended to read as follows:

Sec. 18-438. Location of clear spaces.

The International Residential Code is amended by adding a sentence to subsection E3405.4 to read as follows:

Overcurrent devices shall be permitted in clothes closets if the working clearances required in subsection E3305.2 are maintained.

17. Section 18-439 of the Code is amended to read as follows:

Sec. 18-439. Minimum size of conductors.

The International Residential Code is amended by changing the first sentence of subsection E3406.3 to read as follows:

The minimum size of conductors for feeders and branch circuits shall be No. 14 copper and aluminum conductors shall be No. 8 or larger and shall not be used on branch circuits.

18. Section 18-440 of the Code is amended to read as follows:

Sec. 18-440. Service disconnect location.

The International Residential Code is amended by adding sentences to subsection E3601.6.2 to read as follows:

Unfused service entrance conductors entering buildings shall be enclosed in rigid metal conduit, wireways, auxiliary gutters, or as busways. Unfused service conductors extending within the building above the third floor shall be enclosed in at least two inches of concrete, except in meter rooms.

Section 18-441 of the Code is amended to read as follows:

Sec. 18-441. Amendments to Chapter 11 Energy Efficiency.

The International Residential Building Code is amended by changing Section N1101.2.1, N1102.1 and N1102.2.12 to read as follows:

N1101.2.1. Compliance software tools. Software tools used to demonstrate energy code compliance utilizing the UA alternate approach shall be approved by the building official. The PNL program REScheck<sup>TM</sup> is not acceptable for residential compliance.

Exception: When REScheck<sup>TM</sup> "UA Trade-off" compliance approach or the UA Alternative compliance approach is used, the compliance certificate must demonstrate that the maximum glazed area does not exceed 15% of the conditioned floor area.

N1102.1. Insulation and fenestration criteria. The building thermal envelope shall meet the requirements of table N1102.1 based on the climate zone specified in Table N1101.2. The use of Tables N1102.1 and N1102.2.2 are limited to a maximum glazing area of 15% window to floor area ratio.

N1102.12. Insulation installed in walls. Insulation batts installed in walls shall be totally surrounded by an enclosure on all sides consisting of framing lumber, gypsum, sheathing, wood structural panel sheathing or other equivalent material approved by the building official.

OFFICE OF THE CITY SECRETARY

ORDINANCE NO.



To: Carmen Moran, Director Development Services

From: Lynn Chandler, Building Official

Date: December 20, 2010

Subject: 2009 IPMC

The following changes were made to the 2009 IPMC:

Sec. 18-101. Adopted. Text changed to read 2009 IPMC.

Sec. 18-124. Building/Fire Code Board of Appeals. Text changed to read Section 113.

**AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING CHAPTER 18 BUILDING AND BUILDING REGULATIONS, OF THE CODE OF ORDINANCES OF THE TOWN BY AMENDING VARIOUS PROVISIONS OF ARTICLE III (PROPERTY MAINTENANCE CODE) THEREOF, INCLUDING: SECTIONS 18-101 (ADOPTED), 18-124 (BUILDING/FIRE CODE BOARD OF APPEALS); PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY NOT TO EXCEED THE SUM OF FIVE HUNDRED DOLLARS (\$500.00) FOR EACH OFFENSE AND A SEPARATE OFFENSE SHALL BE DEEMED COMMITTED EACH DAY DURING OR ON WHICH A VIOLATION OCCURS OR CONTINUES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the amendments set forth in this Ordinance to Chapter 18 are pursuant to investigation and analysis by the City, and are with a view of and to further the purposes and objectives set forth in Section 18-31 of the Code, including to promote the health, safety, welfare, convenience and enjoyment of the public, including to protect the public welfare, and are to comply with applicable State law; and

**WHEREAS**, the adoption of this Ordinance and the amendments set forth herein are for and in the best interests of the health, safety and welfare of the City and its citizens.

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

Section 1. Incorporation of Recitals. The above and foregoing recitals and premises to this Ordinance are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. Amendment. The Code of Ordinances of the Town of Addison, Texas (the "City") is hereby amended by amending certain sections and provisions of Chapter 18, Building and Building Regulations, thereof as set forth in Exhibit A attached hereto and incorporated herein for all purposes, and all other chapters, articles, sections, subsections, sentences, phrases and words of the said Code of Ordinances are not amended hereby.

Section 3. Savings; Repealer. This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance. Provided, however, that the repeal of such ordinances or parts of such ordinances, and the amendments and changes made by this Ordinance, shall not affect any right, property or claim which was or is vested in the City, or any act done, or right accruing or accrued, or established, or any suit, action or proceeding had or commenced before the time when this Ordinance shall take effect; nor shall said repeals, amendments or changes affect any offense committed, or any penalty or forfeiture incurred, or any suit or prosecution pending at the time when this Ordinance shall take effect under any of the ordinances or sections thereof so

repealed, amended or changed; and to that extent and for that purpose the provisions of such ordinances or parts of such ordinances shall be deemed to remain and continue in full force and effect.

Section 4. Penalty. It shall be unlawful for any person, firm, corporation, or other business entity to violate any provision of this Ordinance, and any person, firm, corporation, or other business entity violating or failing to comply with any provision hereof shall be fined, upon conviction, in an amount of not more than Five Hundred and No/100 Dollars (\$500.00), and a separate offense shall be deemed committed each day during or on which a violation or failure occurs or continues.

Section 5. Severability. The provisions of this Ordinance are severable, and if any section or provision of this Ordinance or the application of any section or provision to any person, firm, corporation, entity, situation or circumstance is for any reason adjudged invalid or held unconstitutional by a court of competent jurisdiction, the same shall not affect the validity of any other section or provision of this Ordinance or the application of any other section or provision to any other person, firm, corporation, entity, situation or circumstance, and the City Council declares that it would have adopted the valid portions of this Ordinance adopted herein without the invalid or unconstitutional parts and to this end the provisions of this Ordinance adopted herein shall remain in full force and effect.

Section 6. Effective Date. This Ordinance shall become effective from and after its passage and approval and its publication as may be required by law (including, without limitation, the City Charter and the ordinances of the City).

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this.

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

ATTEST:

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
John Hill, City Attorney

**EXHIBIT A**  
**TO ORDINANCE NO. \_\_\_\_\_**

1. Section 18-101 of the Code is amended to read as follows:

Sec. 18-101. Adopted.

The rules and regulations of the International Property Maintenance Code, 2009 Edition, a copy of which, authenticated by the signature of the mayor and the city secretary, and made a public record by ordinance, are hereby adopted as the rules and regulations to provide a just, equitable and practicable method to be cumulative with and in addition to, any other remedy provided by the International Building Code, 2009 Edition, or otherwise available at law, whereby buildings or health, morals, property, safety or welfare of the general public or their occupants may be required to be repaired. The International Property Maintenance Code, 2009 Edition, is hereby adopted, a copy of which is attached to the ordinance from which this section is derived and made a part hereof for all purposes.

2. Section 18-124 of the Code is amended to read as follows:

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

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

SECTION 111  
MEANS OF APPEAL

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

*Section 111.2 Board of Appeals.* The board of appeals, being denominated as the Building/Fire Code Board of Appeals, shall consist of the members of the board of

adjustment appointed by the city council pursuant to Appendix A, Article XXIV of the Code of Ordinances of the Town of Addison. The provisions applicable to the board of appeals as set forth and described in Section 113 of the International Building Code adopted by the town, including, without limitation, general provisions, limitations of power, powers of the board, and appeal process, shall be applicable to and govern appeals and the said board of appeals for purposes of this code.

To: Carmen Moran, Director Development Services

From: Lynn Chandler, Building Official

Date: December 21, 2010

Subject: 2006 ICCEC

The following changes were made to the 2006 ICCEC ordinance:

\Sec. 18-163. General Definitions. Added, changed and deleted several definitions to be compatible with the State of Texas electrical licensing law.

Sec, 18-166. Electrical Provisions and Standards. The International Code Council (ICC) no longer publishes an electrical code. The 2006 ICCEC was adopted basically for its administrative provisions. Therefore I am recommending keeping the 2006 ICCEC for its administrative provisions and deleting reference to other code editions.

Sec. 18-221. Required. Added, and deleted required electrical licenses to be compatible with State of Texas electrical licensing law.

Sec.18-222. Registration Procedure; License Fee; Requirements. Changed section to only require electrical contractor to obtain an Addison electrical license. This fee was also increased from \$50.00 to \$75.00. The State of Texas tests and licenses the electrical tradesmen so we do not require them to obtain an Addison license.

Sec. 18-223 to Sec.18-230. Sec.18-221 (c) of the Addison code requires electricians to have a State license of the right classification to perform electrical work. Therefore these sections were deleted because the State licensing law dictates what each type of license permits the electrician to do and I considered it redundant to keep these sections.

**TOWN OF ADDISON, TEXAS**

**ORDINANCE NO.**

**AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING CHAPTER 18, BUILDING AND BUILDING REGULATIONS, OF THE CODE OF ORDINANCES OF THE TOWN BY AMENDING VARIOUS PROVISIONS OF ARTICLE IV (ELECTRICAL CODE) THEREOF, INCLUDING: SECTIONS 18-163 (GENERAL DEFINITIONS), 16-166 (ELECTRICAL PROVISIONS AND STANDARDS), 18-221 (REQUIRED), 18-222 (REGISTRATION PROCEEDURE; LICENSE FEE; REQUIREMENTS); AND DELETING IN THEIR ENTIRETY FROM THE CODE OF ORDINANCES SECTIONS 18-223 (REQUIREMENTS FOR MASTER ELECTRICIANS), 18-224 (REQUIREMENTS FOR JOURNEYMAN ELECTRICIANS), 18-25 (REQUIREMENTS FOR MAINTENANCE ELECTRICIANS), 18-226 (REQUIREMENTS FOR SPECIALIST ELECTRICIANS), 18-227 (REQUIREMENTS FOR BUILDING MAINTENANCE OPERATORS), 18-228 (REQUIREMENTS FOR ELECTRICAL CONTRACTOR), 18-229 (REQUIREMENTS FOR LIGHTING MAINTENANCE CONTRACTORS), AND 18-230 (REQUIREMENTS FOR ELEVATOR CONTRACTORS); PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY NOT TO EXCEED THE SUM OF FIVE HUNDRED DOLLARS (\$500.00) FOR EACH OFFENSE AND A SEPARATE OFFENSE SHALL BE DEEMED COMMITTED EACH DAY DURING OR ON WHICH A VIOLATION OCCURS OR CONTINUES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the amendments set forth in this Ordinance to Chapter 18 are pursuant to investigation and analysis by the City, and are with a view of and to further the purposes and objectives set forth in Section 18-31 of the Code, including to promote the health, safety, welfare, convenience and enjoyment of the public, including to protect the public welfare, and are to comply with applicable State law; and

**WHEREAS**, the adoption of this Ordinance and the amendments set forth herein are for and in the best interests of the health, safety and welfare of the City and its citizens.

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

Section 1. Incorporation of Recitals. The above and foregoing recitals and premises to this Ordinance are true and correct and are incorporated herein and made a part hereof for all

purposes.

Section 2. Amendment. The Code of Ordinances of the Town of Addison, Texas (the “City”) is hereby amended by amending certain sections and provisions of Chapter 18, Building and Building Regulations, thereof as set forth in Exhibit A attached hereto and incorporated herein for all purposes, and all other chapters, articles, sections, subsections, sentences, phrases and words of the said Code of Ordinances are not amended hereby.

Section 3. Savings; Repealer. This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance. Provided, however, that the repeal of such ordinances or parts of such ordinances, and the amendments and changes made by this Ordinance, shall not affect any right, property or claim which was or is vested in the City, or any act done, or right accruing or accrued, or established, or any suit, action or proceeding had or commenced before the time when this Ordinance shall take effect; nor shall said repeals, amendments or changes affect any offense committed, or any penalty or forfeiture incurred, or any suit or prosecution pending at the time when this Ordinance shall take effect under any of the ordinances or sections thereof so repealed, amended or changed; and to that extent and for that purpose the provisions of such ordinances or parts of such ordinances shall be deemed to remain and continue in full force and effect.

Section 4. Penalty. It shall be unlawful for any person, firm, corporation, or other business entity to violate any provision of this Ordinance, and any person, firm, corporation, or other business entity violating or failing to comply with any provision hereof shall be fined, upon conviction, in an amount of not more than Five Hundred and No/100 Dollars (\$500.00), and a separate offense shall be deemed committed each day during or on which a violation or failure occurs or continues.

Section 5. Severability. The provisions of this Ordinance are severable, and if any section or provision of this Ordinance or the application of any section or provision to any person, firm, corporation, entity, situation or circumstance is for any reason adjudged invalid or held unconstitutional by a court of competent jurisdiction, the same shall not affect the validity of any other section or provision of this Ordinance or the application of any other section or provision to any other person, firm, corporation, entity, situation or circumstance, and the City Council declares that it would have adopted the valid portions of this Ordinance adopted herein without the invalid or unconstitutional parts and to this end the provisions of this Ordinance adopted herein shall remain in full force and effect.

Section 6. Effective Date. This Ordinance shall become effective from and after its passage and approval and its publication as may be required by law (including, without limitation, the City Charter and the ordinances of the City).

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this.

---

Joe Chow, Mayor



ATTEST:

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
John Hill, City Attorney

**EXHIBIT A  
TO ORDINANCE NO. \_\_\_\_\_**

Chapter 18, Building and Building Regulations, of the Code of Ordinances (the “Code”) of the Town of Addison, Texas is hereby amended by amending various sections of the said Code as set forth below and as follows (additions are underlined; deletions are):

1. Section 18-163 of the Code is amended to read as follows:

Sec. 18-163. General Definitions.

The ICC Electrical Code is amended by adding the following definitions to Section 202:

*Electrical Construction* means work and material used in installing, maintaining, erecting, repairing or extending a system of electrical wiring, and all appurtenances, apparatus, or equipment used in that connection, inside or outside of, or attached to any building, structure, lot, or premises.

*Electrical contractor* means a person engaged in the business of installing or altering, by contract, electrical equipment. The term includes a person who subcontracts to do the work, but does not include bona fide employees employed by a contractor to do or supervise work.

**electrical signs. The term includes a person who** *Electrical sign contractor* **means a person engaged in the business of manufacturing, installing, or altering subcontracts to do the work, but does not include bona fide employees employed by a contractor to do or supervise work.**

*Electrician* means a person engaged in the trade or business of electrical construction and who is qualified under the provisions of article IV of chapter 18 of the Addison Code.

*Journeyman electrician* means an individual licensed or registered to work under the general supervision of a master electrician and who possesses the necessary qualifications, training, and technical knowledge to perform, plan, layout, install, maintain, and extend electrical equipment, and supervise electrical construction and electrical sign work and who is capable of performing this work in accordance with plans and specifications furnished to the individual and in accordance with applicable laws and ordinances governing the work.

*Journeyman sign electrician* means an individual licensed or registered to work under the general supervision of a master sign electrician, or master electrician who possesses the necessary qualifications, training, and technical knowledge to perform, plan, layout, install, and supervise electrical sign work, and who is capable of performing this work in accordance with plans and specifications furnished to the individual in accordance with applicable laws and ordinances of the governing work.

*Maintenance electrician* means a licensed or registered individual who possesses the necessary qualifications, training, and technical knowledge to repair, operate, and replace electrical equipment in a specific building or premises.

*Master electrician* means an individual who possesses the necessary qualifications, training, and technical knowledge to design, perform electrical construction, perform electrical work, plan, layout, and supervise the installation, maintenance, and extension of electrical equipment.

*Master sign electrician* means a licensed or registered individual who possesses the necessary qualifications, training, and technical knowledge to design and perform electrical sign work under all electrical sign classifications.

*Residential wireman* means a licensed or registered individual who works under the supervision of a master electrician and who possesses the necessary qualifications and training to plan, layout, or supervise construction specific to one and two-family dwellings, as defined by the International Residential Code, and multifamily dwellings not exceeding either three floors above grade or four floors above grade where the entire structure is protected throughout by an approved automatic sprinkler system.

*Apprentice* (a) electrical: a licensed or registered individual who is engaged in the

process of learning and assisting in the installation of electrical work under the supervision of a licensed master electrician. (b) sign: a licensed or registered individual engaged in the process of learning and assisting in the performance of electrical sign work under the supervision of a licensed master sign electrician.

*Fire rated* means those types of construction defined as Type I, A & B, and II A in the International Building Code.

2. Section 18-166 of the Code is amended to read as follows:

Sec. 18-166 Electrical provisions and standards.

The ICCEC is amended by:

(a) Changing “Chapter 13” in the first sentence of Section 102.6 to read “the International Building Code”.

(b) Deleting Chapter 12 Electrical Provisions and Chapter 13 Standards .

3. Section 18-221 of the Code is amended to read as follows:

Sec. 18-221. Required.

a) No person shall engage in the business of electrical construction or make any repairs, alterations, additions, or changes to an existing system of electrical wiring or equipment unless that person is licensed as a qualified electrician in one of the following classifications:

- (1) Electrical contractor.
- (2) Electrical sign contractor .
- (3) Master electrician.
- (4) Journeyman electrician.
- (5) Maintenance electrician.
- (6) Residential wireman .

- (7) Apprentice electrician .
  - (8) Master sign electrician
  - (9) Journeyman sign electrician.
- (b) A person licensed in one of these classifications shall be permitted to perform the work of that classification as defined in article IV of Chapter 18 of the Addison Code.
- (c) Any person who installs, repairs, or alters an electrical system shall be licensed by the State of Texas to perform such work.

4. Section 18-222 of the Code is amended to read as follows:

Sec. 18-222. Registration procedure;  
license fee; requirements.

(a) In order to be licensed in one of the classifications of electrical contractor an applicant must be licensed by the State of Texas.

(b) The fee to be paid for both the initial electrical contractor license and renewals is as follows:

(1) Electrical contractor .....\$75.00

(2)Electrical sign contractor \$75.00

(c) A person shall not lend, rent, or transfer his license to any other person. Every holder of a license as a master, journeyman, maintenance, master sign, journeyman sign, apprentice electrician or residential wireman shall carry his registration card or license on his person at all times while doing electrical work and shall produce and exhibit it when requested by the building official.

(d) A contractor license shall expire at midnight one year from the date of its issuance and must be renewed annually upon application to the town and payment of the licensing fee shown above.

5. Section 18-223 of the Code is deleted in its entirety.

Sec. 18-223. Reserved

6. Section 18-224 of the Code is deleted in its entirety.

Sec. 18-224.

7. Section 18-225 of the Code is deleted in its entirety.

Sec. 18-225.

8. Section 18-226 of the Code is deleted in its entirety.

Sec. 18-226.

9. Section 18-227 of the Code is deleted in its entirety.

Sec. 18-227.

10. Section 18-228 of the Code is deleted in its entirety. Sec. 18-228.

11. Section 18-229 of the Code is deleted in its entirety.

Sec. 18-229.

12. Section 18-230 of the Code is deleted in its entirety.

Sec. 18-230.

To: Carmen Moran, Director Development Services

From: Lynn Chandler, Building Official

Date: December 20, 2010

Subject: 2009 IPC, IFGC, IPSDC

The following changes were made to the 2009 IPC ordinance:

Sec. 18-341. Adopted. Text was changed to read 2009 Editions.

Sec. 18-363. Building/Fire Code Board of Appeals. Text changed to read Section 113.

Sec. 18-364 Licensing and registration of contractors. This section was changed to raise the registration fee for irrigation contractors from \$50.00 to \$75.00 and require no contractor registration fee for plumbing contractors to comply with State law.

Sec. 18-368.1. Inspection and testing of backflow prevention assemblies. Changed text to read Sections 312.10, 31210.1, and 312.10.2.

**AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING CHAPTER 18, BUILDING AND BUILDING REGULATIONS, OF THE CODE OF ORDINANCES OF THE TOWN BY AMENDING VARIOUS PROVISIONS OF ARTICLE VI (PLUMBING CODE) THEREOF INCLUDING; SECTIONS 18-341 (ADPOTED) (AND ADOPTING THE INTERNATIONAL PLUMBING CODE, 2009 EDITION, 18-364 (LICENSING AND REGISTRATION OF CONTRACTORS), AND 18-368.1 (INSPECTION AND TESTING OF BACKFLOW PREVENTION ASSEMBLIES), PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY NOT TO EXCEED THE SUM OF FIVE HUNDRED DOLLARS (\$500.00) FOR EACH OFFENSE AND A SEPARATE OFFENSE SHALL BE DEEMED COMMITTED EACH DAY DURING OR ON WHICH A VIOLATION OCCURS OR CONTINUES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the amendments set forth in this Ordinance to Chapter 18 are pursuant to investigation and analysis by the City, and are with a view of and to further the purposes and objectives set forth in Section 18-31 of the Code, including to promote the health, safety, welfare, convenience and enjoyment of the public, including to protect the public welfare, and are to comply with applicable State law; and

**WHEREAS**, the adoption of this Ordinance and the amendments set forth herein are for and in the best interests of the health, safety and welfare of the City and its citizens.

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

Section 1. Incorporation of Recitals. The above and foregoing recitals and premises to this Ordinance are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. Amendment. The Code of Ordinances of the Town of Addison, Texas (the "City") is hereby amended by amending certain sections and provisions of Chapter 18, Building and Building Regulations, thereof as set forth in Exhibit A attached hereto and incorporated herein for all purposes, and all other chapters, articles, sections, subsections, sentences, phrases and words of the said Code of Ordinances are not amended hereby.

Section 3. Savings; Repealer. This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance. Provided, however, that the repeal of such ordinances or parts of such ordinances, and the amendments and changes made by this Ordinance, shall not affect any right, property or claim which was or is vested in the City, or any act done, or right accruing or accrued, or established, or any suit, action or proceeding had or commenced before the time

when this Ordinance shall take effect; nor shall said repeals, amendments or changes affect any offense committed, or any penalty or forfeiture incurred, or any suit or prosecution pending at the time when this Ordinance shall take effect under any of the ordinances or sections thereof so repealed, amended or changed; and to that extent and for that purpose the provisions of such ordinances or parts of such ordinances shall be deemed to remain and continue in full force and effect.

Section 4. Penalty. It shall be unlawful for any person, firm, corporation, or other business entity to violate any provision of this Ordinance, and any person, firm, corporation, or other business entity violating or failing to comply with any provision hereof shall be fined, upon conviction, in an amount of not more than Five Hundred and No/100 Dollars (\$500.00), and a separate offense shall be deemed committed each day during or on which a violation or failure occurs or continues.

Section 5. Severability. The provisions of this Ordinance are severable, and if any section or provision of this Ordinance or the application of any section or provision to any person, firm, corporation, entity, situation or circumstance is for any reason adjudged invalid or held unconstitutional by a court of competent jurisdiction, the same shall not affect the validity of any other section or provision of this Ordinance or the application of any other section or provision to any other person, firm, corporation, entity, situation or circumstance, and the City Council declares that it would have adopted the valid portions of this Ordinance adopted herein without the invalid or unconstitutional parts and to this end the provisions of this Ordinance adopted herein shall remain in full force and effect.

Section 6. Effective Date. This Ordinance shall become effective from and after its passage and approval and its publication as may be required by law (including, without limitation, the City Charter and the ordinances of the City).

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this.

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

ATTEST:

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
John Hill, City Attorney



**EXHIBIT A**  
**TO ORDINANCE NO. \_\_\_\_\_**

1. Section 18-341 of the Code is amended to read as follows:

Sec. 18-341. Adopted.

(a) The rules and regulations of the International Plumbing Code, International Fuel Gas Code, and the International Private Sewage Disposal Code, 2009 Editions, are hereby adopted as the rules and regulations and controlling the design, construction, installation, quality of materials, location, operation and maintenance of plumbing apparatus and fixtures within the city.

(b) The International Plumbing Code, International Fuel Gas Code and International Private Sewage Disposal Code, 2009 Editions (copies of which, authenticated by the signature of the mayor and the city secretary, and made a public record by ordinance, are on file in the city secretary's office) are hereby adopted as the plumbing code of the city as fully as if copied at length in this article, but with the following changes therein and additions thereto provided in this article.

2. Section 18-363 of the Code is amended to read as follows:

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

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

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

*Section 109. Building/Fire Code Board of Appeals.* For purposes of this code, appeals shall be to the board of appeals, being denominated as the Building/Fire Code Board of Appeals, which shall consist of the members of the board of adjustment appointed by the city council pursuant to Appendix A, Article XXIV of the Code of Ordinances of the Town of Addison. The provisions applicable to the board of appeals as set forth and described in Section 113 of the International Building Code adopted by the town, including, without limitation, general provisions, limitations of power, powers of the board, and appeal process, shall be applicable to and govern appeals and the said board of appeals for purposes of

this code.

3. Section 18-364 of the Code is amended to read as follows:

Sec. 18-364. Licensing and registration of contractors.

The International Plumbing Code is amended by adding subsection 106.7 to read as follows:

106.7. Licensing.

(a) No person, corporation, firm, or contractor shall engage in the design, installation, construction, maintenance, service, repair, alteration or modification of a product or a plumbing system unless licensed as a plumbing or irrigation contractor by the town. However, no license is required for work that is not required to be permitted.

(b) To register with the town as a plumbing or irrigation contractor, an application shall be made in writing on forms furnished for that purpose, and filed with the building official. This application shall contain a copy of the person's state plumbing or irrigation license. The contractor registration fees shall be as follows:

1. Plumbing contractor ..... no fee
2. Irrigation contractor ..... \$75.00

Exception: A homeowner is not required to be licensed as a registered contractor to perform work in his own home.

(c) The plumbing contractor's license shall be valid for one (1) year from the date of registration.

(d) The contractor shall be subject to the requirements and penalties of the Code of Ordinances of the Town of Addison.

(e) Any person who installs, repairs or alters a plumbing or irrigation system shall be licensed by the State of Texas to perform such work.

4. Section 18-368.1 of the Code is amended to read as follows:

Sec. 18-368.1. Inspection and testing of backflow prevention assemblies.

The International Plumbing Code is amended by changing Section 312.10 to read as follows:

312.10 Inspection testing of backflow prevention assemblies. Inspection and testing shall comply with Sections 312.10.1 and 312.10.2.

312.10.1 Inspections. Annual inspections shall be made of all backflow prevention assemblies and air gaps to determine whether they are operable. In the absence of local provisions, the owner is responsible to ensure that testing is performed.

312.10.2 Testing. Reduced pressure principle backflow preventer assemblies, double check-valve assemblies, pressure vacuum breaker assemblies, reduced pressure detector fire protection backflow prevention assemblies, double check detector fire protection backflow prevention assemblies hose connection backflow preventers, and spill-proof vacuum breakers shall be tested at the time of installation, immediately after repairs or relocation and at least annually. The testing shall be performed in accordance with applicable local provisions. In the absence of local provisions, the owner is responsible to ensure that testing is done in accordance with one of the following standards;

ASSE 5013, ASSE 5015, ASSE 5020, ASSE 5047, ASSE 5048, ASSE 5052, ASSE 5056, CSA B64.10 OR CSA B64.10.1.

To: Carmen Moran, Director Development Services

From: Lynn Chandler, Building Official

Date: December 20, 2010

Subject: 2009 IMC

The following changes were made to the 2009 IMC:

Sec.18-291. Adopted. Text changed to read 2009 IMC.

Sec.18-313. Building/Fire Code Board of Appeals. Changed text to read Section 113.

Sec.18-314. Licensing and registration of contractors. Raised registration fee from \$50.00 to \$75.00.

**AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING CHAPTER 18, BUILDING AND BUILDING REGULATIONS, OF THE CODE OF ORDINANCES OF THE TOWN BY AMENDING VARIOUS PROVISIONS OF ARTICLE V (MECHANICAL CODE) THEREOF, INCLUDING : SECTIONS 18-291 (ADOPTED) (AND ADOPTING THE INTERNATIONAL MECHANICAL CODE, 2009 EDITION), 18-313 (BUILDING/FIRE CODE BOARD OF APPEALS), AND 18-314 (LICENSING AND REGISTRATION OF CONTRACTORS); PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY NOT TO EXCEED THE SUM OF FIVE HUNDRED DOLLARS (\$500.00) FOR EACH OFFENSE AND A SEPARATE OFFENSE SHALL BE DEEMED COMMITTED EACH DAY DURING OR ON WHICH A VIOLATION OCCURS OR CONTINUES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the amendments set forth in this Ordinance to Chapter 18 are pursuant to investigation and analysis by the City, and are with a view of and to further the purposes and objectives set forth in Section 18-31 of the Code, including to promote the health, safety, welfare, convenience and enjoyment of the public, including to protect the public welfare, and are to comply with applicable State law; and

**WHEREAS**, the adoption of this Ordinance and the amendments set forth herein are for and in the best interests of the health, safety and welfare of the City and its citizens.

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

Section 1. Incorporation of Recitals. The above and foregoing recitals and premises to this Ordinance are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. Amendment. The Code of Ordinances of the Town of Addison, Texas (the “City”) is hereby amended by amending certain sections and provisions of Chapter 18, Building and Building Regulations, thereof as set forth in Exhibit A attached hereto and incorporated herein for all purposes, and all other chapters, articles, sections, subsections, sentences, phrases and words of the said Code of Ordinances are not amended hereby.

Section 3. Savings; Repealer. This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance. Provided, however, that the repeal of such ordinances or parts of such ordinances, and the amendments and changes made by this Ordinance, shall not affect any right,

property or claim which was or is vested in the City, or any act done, or right accruing or accrued, or established, or any suit, action or proceeding had or commenced before the time when this Ordinance shall take effect; nor shall said repeals, amendments or changes affect any offense committed, or any penalty or forfeiture incurred, or any suit or prosecution pending at the time when this Ordinance shall take effect under any of the ordinances or sections thereof so repealed, amended or changed; and to that extent and for that purpose the provisions of such ordinances or parts of such ordinances shall be deemed to remain and continue in full force and effect.

Section 4. Penalty. It shall be unlawful for any person, firm, corporation, or other business entity to violate any provision of this Ordinance, and any person, firm, corporation, or other business entity violating or failing to comply with any provision hereof shall be fined, upon conviction, in an amount of not more than Five Hundred and No/100 Dollars (\$500.00), and a separate offense shall be deemed committed each day during or on which a violation or failure occurs or continues.

Section 5. Severability. The provisions of this Ordinance are severable, and if any section or provision of this Ordinance or the application of any section or provision to any person, firm, corporation, entity, situation or circumstance is for any reason adjudged invalid or held unconstitutional by a court of competent jurisdiction, the same shall not affect the validity of any other section or provision of this Ordinance or the application of any other section or provision to any other person, firm, corporation, entity, situation or circumstance, and the City Council declares that it would have adopted the valid portions of this Ordinance adopted herein without the invalid or unconstitutional parts and to this end the provisions of this Ordinance adopted herein shall remain in full force and effect.

Section 6. Effective Date. This Ordinance shall become effective from and after its passage and approval and its publication as may be required by law (including, without limitation, the City Charter and the ordinances of the City).

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this.

---

Joe Chow, Mayor

ATTEST:

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
John Hill, City Attorney

**EXHIBIT A**  
**TO ORDINANCE NO. \_\_\_\_\_**

1. Section 18-291 of the Code is amended to read as follows:

Sec. 18-291. Adopted.

(a) The rules and regulations of the International Mechanical Code, 2009 Edition, are hereby adopted as the rules and regulations regulating and controlling the design, construction, installation, quality of materials, location, operation and maintenance of heating, ventilating, cooling, refrigeration systems, incinerators and other miscellaneous heat producing appliances in the city.

(b) The International Mechanical Code, 2009 Edition (a copy of which, authenticated by the signature of the mayor and the city secretary, and made a public record by ordinance, is on file in the city secretary's office), is hereby adopted as the mechanical code of the city as fully as if copied at length in this article, but with the changes therein and additions thereto provided in this article.

2. Section 18-313 of the Code is amended to read as follows:

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

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

*Section 109. Building/Fire Code Board of Appeals.* For purposes of this code, appeals shall be to the board of appeals, being denominated as the Building/Fire Code Board of Appeals, which shall consist of the members of the board of adjustment appointed by the city council pursuant to Appendix A, Article XXIV of the Code of Ordinances of the Town of Addison. The provisions applicable to the board of appeals as set forth and described in Section 113 of the International Building Code adopted by the town, including, without limitation, general provisions, limitations of power, powers of the board, and appeal process, shall be applicable to and govern appeals and the said board of appeals for purposes of this code.

3. Section 18-313 of the Code is amended to read as follows:

Sec. 18-314. Licensing and registration of contractors.



The International Mechanical Code is amended by adding subsection 106.6 to read as follows:

106.6. Licensing.

(a) No person, corporation, firm, or contractor shall engage in the design, installation, construction, maintenance, service, repair, alteration or modification of a product or of equipment in environmental air conditioning, commercial refrigeration, or process cooling or heating systems or ventilation, without first obtaining an air conditioning and refrigeration contractor's license.

(b) To register with the town as a mechanical contractor, an application shall be made in writing on forms furnished for that purpose along with a seventy-five dollar (\$75.00 ) registration fee, and filed with the building official. This application shall contain a copy of the person's state air conditioning and refrigeration license.

Exception: a homeowner is not required to be licensed as a registered contractor to perform work in his own home.

(c) The air conditioning and refrigeration contractor's license shall be valid for one (1) year from the date of registration.

(d) The contractor shall be subject to the requirements and penalties of the code of ordinances of the Town of Addison.

(e) Any person who installs, repairs or alters environmental air conditioning, commercial refrigeration, or process cooling or heating systems or ventilation shall be licensed by the State of Texas to perform such work.

To: Carmen Moran, Director Development Services

From: Lynn Chandler, Building Official

Date: December 20, 2010

Subject: Building/Fire Code Board of Appeals

The text was changed to read Section 113 and Section 113.2 to the Building/Fire Code Board of Appeals in the following sections of the code.

Fences Sec. 18-614,

Satellite Earth Stations Sec. 18-653,

Swimming Pools and Spas Sec. 18-725 and

Solar Energy Systems Sec. 18-730.

**TOWN OF ADDISON, TEXAS**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING CHAPTER 18 (BUILDING AND BUILDING REGULATIONS) OF THE CODE OF ORDINANCES OF THE TOWN BY AMENDING VARIOUS PROVISIONS OF ARTICLE X (FENCES), ARTICLE XI (SATELLITE EARTH STATIONS), ARTICLE XII (SWIMMING POOLS AND SPAS) AND ARTICLE XIII (SOLAR ENERGY SYSTEMS) THEREOF, INCLUDING: SECTIONS 18-614 (BUILDING/FIRE CODE BOARD OF APPEALS), 18-652 (BUILDING/FIRE CODE BOARD OF APPEALS), 18-725 (BUILDING /FIRE CODE BOARD OF APPEALS), AND 18-730 (BUILDING/FIRE CODE BOARD OF APPEALS); PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY NOT TO EXCEED THE SUM OF FIVE HUNDRED DOLLARS (\$500.00) FOR EACH OFFENCE AND A SEERATE OFFENCE SHALL BE DEEMED EACH DAY DURING OR ON WHICH A VIOLATION OCCURS OR CONTINUES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the amendments set forth in this Ordinance to Chapter 18 are pursuant to investigation and analysis by the City, and are with a view of and to further the purposes and objectives set forth in Section 18-31 of the Code, including to promote the health, safety, welfare, convenience and enjoyment of the public, including to protect the public welfare, and are to comply with applicable State law; and

**WHEREAS**, the adoption of this Ordinance and the amendments set forth herein are for and in the best interests of the health, safety and welfare of the City and its citizens.

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

Section 1. Incorporation of Recitals. The above and foregoing recitals and premises to this Ordinance are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. Amendment. The Code of Ordinances of the Town of Addison, Texas (the “City”) is hereby amended by amending certain sections and provisions of Chapter 18, Building and Building Regulations, thereof as set forth in Exhibit A attached hereto and incorporated herein for all purposes, and all other chapters, articles, sections, subsections, sentences, phrases and words of the said Code of Ordinances are not amended hereby.

Section 3. Savings; Repealer. This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance. Provided, however, that the repeal of such ordinances or parts of such

ordinances, and the amendments and changes made by this Ordinance, shall not affect any right, property or claim which was or is vested in the City, or any act done, or right accruing or accrued, or established, or any suit, action or proceeding had or commenced before the time when this Ordinance shall take effect; nor shall said repeals, amendments or changes affect any offense committed, or any penalty or forfeiture incurred, or any suit or prosecution pending at the time when this Ordinance shall take effect under any of the ordinances or sections thereof so repealed, amended or changed; and to that extent and for that purpose the provisions of such ordinances or parts of such ordinances shall be deemed to remain and continue in full force and effect.

Section 4. Penalty. It shall be unlawful for any person, firm, corporation, or other business entity to violate any provision of this Ordinance, and any person, firm, corporation, or other business entity violating or failing to comply with any provision hereof shall be fined, upon conviction, in an amount of not more than Five Hundred and No/100 Dollars (\$500.00), and a separate offense shall be deemed committed each day during or on which a violation or failure occurs or continues.

Section 5. Severability. The provisions of this Ordinance are severable, and if any section or provision of this Ordinance or the application of any section or provision to any person, firm, corporation, entity, situation or circumstance is for any reason adjudged invalid or held unconstitutional by a court of competent jurisdiction, the same shall not affect the validity of any other section or provision of this Ordinance or the application of any other section or provision to any other person, firm, corporation, entity, situation or circumstance, and the City Council declares that it would have adopted the valid portions of this Ordinance adopted herein without the invalid or unconstitutional parts and to this end the provisions of this Ordinance adopted herein shall remain in full force and effect.

Section 6. Effective Date. This Ordinance shall become effective from and after its passage and approval and its publication as may be required by law (including, without limitation, the City Charter and the ordinances of the City).

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this.

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

ATTEST:

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
John Hill, City Attorney

**EXHIBIT A  
TO ORDINANCE NO. \_\_\_\_\_**

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

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

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

In order to determine the suitability of alternate materials and methods of construction, and to provide for reasonable interpretation of and exceptions to, the provisions of this article, there shall be and is hereby created a board of appeals. The said board of appeals, being denominated as the Building/Fire Code Board of Appeals, shall consist of the members of the board of adjustment appointed by the city council pursuant to Appendix A, Article XXIV of the Code of Ordinances of the Town of Addison. The provisions applicable to the board of appeals as set forth and described in Section 113 of the International Building Code adopted by the town, including, without limitation, general provisions, powers of the board, and appeal process, but save and except Section 113.2 of the said International Building Code, shall be applicable to and govern appeals and the said board of appeals for purposes of this article.

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

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

Any person aggrieved by the application of this article may appeal its effect to a board of appeals, being denominated as the Building/Fire Code Board of Appeals, which shall consist of the members of the board of adjustment appointed by the city council pursuant to Appendix A, Article XXIV of the Code of Ordinances of the Town of Addison. The provisions applicable to the board of appeals as set forth and described in Section 113 of the International Building Code adopted by the town, including, without limitation, general provisions, powers of the board, and appeal process, but save and except Section 113.2 of the said International Building Code, shall be applicable to and govern appeals and the said board of appeals for purposes of this article.

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

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

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

For purposes of this article, appeals shall be to the board of appeals, being denominated as the Building/Fire Code Board of Appeals, which shall consist of the members of the board of adjustment appointed by the city council pursuant to Appendix A, Article XXIV of the Code of Ordinances of the Town of Addison. The provisions applicable to the board of appeals as set forth and described in Section 113 of the International Building Code adopted by the town, including, without limitation, general provisions, limitations of power, powers of the board, and appeal process, shall be applicable to and govern appeals and the said board of appeals for purposes of this article.

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

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

Any person aggrieved by the application of this article may appeal its effect to a board of appeals, being denominated as the Building/Fire Code Board of Appeals, which shall consist of the members of the board of adjustment appointed by the city council pursuant to Appendix A, Article XXIV of the Code of Ordinances of the Town of Addison. The provisions applicable to the board of appeals as set forth and described in Section 113 of the International Building Code adopted by the town, including, without limitation, general provisions, powers of the board, and appeal process, but save and except Section 113.2 of the said International Building Code, shall be applicable to and govern appeals and the said board of appeals for purposes of this article.

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

## **Council Agenda Item: #R7**

### **AGENDA CAPTION:**

Presentation, discussion and consideration of approval of an Ordinance amending Chapter 38 (Fire Prevention and Protection) of the Code of Ordinances by amending various sections thereof regarding the International Fire Code, and adopting the International Fire Code, 2009 Edition (and all appendices thereto) and making such other changes and providing for other provisions regarding and relating to the International Fire Code as set forth in the Ordinance, including continuing in effect certain provisions of the International Fire Code, 2006 Edition regarding automatic fire extinguishing systems.

### **FINANCIAL IMPACT:**

There is no financial impact on the Town.

### **BACKGROUND:**

Standard adoption of the latest edition of the International Fire Code with the appropriate amendments in concurrence with the adoption of the Building Code, Residential Code, etc.

### **RECOMMENDATION:**

Staff recommends approval.

### **COUNCIL GOALS:**

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

### **ATTACHMENTS:**

Description:

[Proposed Fire Code Adoption Ordinance](#)

Type:

Ordinance



**TOWN OF ADDISON, TEXAS**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING CHAPTER 38 OF THE CODE OF ORDINANCES OF THE TOWN BY AMENDING VARIOUS PROVISIONS OF ARTICLE II (FIRE CODE) THEREOF, INCLUDING SECTIONS 38-31 (ADOPTION) (AND ADOPTING THE INTERNATIONAL FIRE CODE, 2009 EDITION, INCLUDING ALL APPENDICES THERETO), 38-32 (DEFINITIONS), 38-33 (ENFORCEMENT), 38-34 (HAZARDOUS MATERIALS AND FALSE ALARM RESPONSE AND REMUNERATION), 38-51 (GENERALLY), AND 38-53 (PROVISIONS FOR FIRE SAFETY), AND THEREBY PRESCRIBING REGULATIONS GOVERNING THE SAFETY OF LIFE AND PROPERTY FROM FIRE AND RELATED CONDITIONS; ESTABLISHING A FIRE PREVENTION DIVISION, PROVIDING OFFICERS THEREFOR AND DEFINING THEIR DUTIES AND POWERS; AMENDING THE SAID 2009 INTERNATIONAL FIRE CODE AS SET FORTH HEREIN; PRESCRIBING REGULATIONS GOVERNING THE OPERATION OF THE FIRE DEPARTMENT; PROVIDING A PENALTY NOT TO EXCEED THE SUM OF \$2,000 FOR EACH OFFENSE AND A SEPARATE OFFENSE SHALL BE DEEMED COMMITTED EACH DAY DURING OR ON WHICH A VIOLATION OCCURS OR CONTINUES; PROVIDING FOR INJUNCTIVE RELIEF; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the amendments set forth in this Ordinance to Chapter 38 of the Code of Ordinances of the Town of Addison, Texas (“City”) are pursuant to investigation and analysis by the City, and are with a view of and to further the purposes and objectives of, and to promote, the health, safety, welfare, convenience and enjoyment of the public, including to protect the public welfare, and are to comply with applicable State law; and

WHEREAS, among other things, this Ordinance continues in effect the provisions of Section 903.2 of the International Fire Code, 2006 Edition, as amended to read as set forth in Section 38-53(i) of the Code of Ordinances of the City, for the purpose of the application, interpretation, and/or enforcement of the said Section 903.2 (together with any other provisions of the International Fire Code (including, without limitation, any appendices) that are deemed by the Fire Prevention Chief of the Town of Addison to be necessary for or useful to the application, interpretation, and/or enforcement of the said Section 903.2), and the City Council hereby finds that the requirements included in and provisions of the said Section 903.2 and such other provisions of the International Fire Code, 2006 Edition have been in effect prior to January 1, 2009, and that the continuation of those requirements and provisions by this Ordinance is not and does not constitute the enactment of an ordinance, bylaw, order, building code, or rule requiring the installation of a multipurpose residential fire protection sprinkler system or any other fire sprinkler protection system in a new or existing one- or two-family dwelling after January 1, 2009; and

WHEREAS, the adoption of this Ordinance and the amendments set forth herein are for and in the best interests of the health, safety and welfare of the City and its citizens.

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

**Section 1. Amendments; Repeal.**

A. The Code of Ordinances of the Town of Addison, Texas is hereby amended in the following particulars, and all other chapters, sections, subsections, paragraphs, sentences, phrases and words of the said Code are not amended but are hereby ratified, verified, approved and affirmed.

1. Chapter 38 (Fire Prevention and Protection) is amended as set forth in Exhibit A attached hereto and incorporated herein.

**Section 2. Savings.** This Ordinance shall be cumulative of all other ordinances of the City affecting fire prevention, protection, and safety and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance; provided, however, that any complaint, liability, action, cause of action, or claim which, prior to the effective date of this Ordinance has been initiated or has arisen under or pursuant to any ordinance or portion of the Code of Ordinances repealed hereby, shall continue to be governed by the provisions of those repealed ordinances or portions of the Code, and for that purposes such ordinances or portions of the Code shall be deemed to remain and shall continue in full force and effect.

**Section 3. Penalty; Injunctive Relief.** It shall be unlawful for any person to violate any provision of this Ordinance, and any person violating or failing to comply with any provision hereof shall be fined, upon conviction, in an amount of not more than Two Thousand Dollars (\$2,000.00), and a separate offense shall be deemed committed each day during or on which a violation occurs or continues. In addition to and cumulative to all other penalties, the Town of Addison shall have the right to seek injunctive relief for any and all violations of this Ordinance.

**Section 4. Severability.** The sections, paragraphs, sentences, phrases, clauses and words of this Ordinance are severable, and if any section, paragraph, sentence, phrase, clause or word in this Ordinance or application thereof to any person or circumstance is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares that it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

**Section 5. Effective Date.** This Ordinance shall become effective from and after its date of passage and publication as provided by law.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

Joe Chow, Mayor

ATTEST:

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
John Hill, City Attorney

**EXHIBIT A  
TO ORDINANCE NO. \_\_\_\_\_**

Chapter 38, Fire Prevention and Protection, of the Code of Ordinances (the “Code”) of the Town of Addison, Texas is hereby amended in various sections of Article II (Fire Code) thereof as set forth below and as follows (additions are underlined; deletions are ~~struck through~~):

1. Section 38-31 of the Code is amended to read as follows:

**Section 38-31. –Adoption.**

There is hereby adopted by the Town of Addison, for the purpose of prescribing regulations governing the safety of life and property from fire and related conditions, that certain code known as the International Fire Code (for purposes of this Chapter 38, “Code”), including all appendices thereto, in particular the 2009~~2006~~ edition thereof, published by the International Code Council, Inc., hereinafter known as the "Fire Code" or the "Code", and the whole thereof except for such portions as are modified herein, and the same are incorporated as fully as if set out at length herein. From the date on which the adoption of the said International Fire Code, 2009 edition~~this Ordinance~~ shall take effect, the provisions thereof and herein shall be controlling within the corporate limits of the Town of Addison, Texas.

Notwithstanding the adoption of the 2009 International Fire Code, Section 903.2 of the International Fire Code, 2006 Edition (“2006 International Fire Code”), as amended by Section 38-53(i) of this Code, below, is , together with any other provisions of the 2006 International Fire Code (including, without limitation, any appendices) that are deemed by the Fire Prevention Chief of the Town of Addison to be necessary for or useful to the application, interpretation, and/or enforcement of the said Section 38-53(i), continued in full force and effect for the purpose of the application, interpretation, and/or enforcement of the said Section 903.2. For purposes of the said Section 38-53(i), references to “the code” and the “Fire Code” means the 2006 International Fire Code. For purposes of the application, interpretation, and/or enforcement of the said Section 903.2 and any other provisions of the 2006 International Fire Code (including, without limitation, any appendices) that are deemed by the Building Official of the Town of Addison to be necessary for or useful to the application, interpretation, and/or enforcement of the said Section 903.2, in the event of any conflict between Section 903.2 (and such other provisions of the 2006 International Fire Code) and the provisions of the International Fire Code, 2009 Edition, the provisions of the said Section 903.2 (and such other provisions of the 2006 International Fire Code) shall control.

2. Section 38-32 of the Code is amended to read as follows:

**Section 38-32 – Definitions.**

Words, terms and phrases when used herein and in the code shall have the meanings ascribed to them by the Code unless otherwise expressly stated or unless the context

clearly indicates a different meaning. Terms not defined by the Code shall have ordinarily accepted meanings such as the context implies.

The definition of “high-rise building” shall be added to Section 202 of the code and shall mean: A building having any floor used for human occupancy located more than 55 feet (16764 mm) above the lowest level of fire department vehicle access.

(a) Any and all references in the code to high-rise buildings or portions thereof shall be assumed to have this meaning regardless of any other height specified.

3. Section 38-33 of the Code is amended to read as follows:

**Section 38-33. – Enforcement.**

(a) The Fire Code shall be administered and enforced by the Fire Prevention Division of the Fire Department of the Town of Addison, said Division is hereby established and shall be operated under the supervision of the Fire Chief.

(b) The person in charge of the Fire Prevention Division, known as the Fire Prevention Chief, shall be appointed by the Fire Chief on the basis of proper qualifications.

(c) With the approval of the Fire Chief, the Fire Prevention Chief may appoint such qualified persons to the Fire Department as shall be necessary to serve as Inspectors. Each Inspector so assigned shall be authorized to enforce the provisions of the Fire Code as set forth in Section 103.3 of the Code. The Fire Chief may recommend to the City Manager the employment of technical specialists, who, if such authorization is made, shall be appointed on the basis of proper qualifications.

(d) Members of the Fire Prevention Division shall inspect, as often as may be necessary, any building, property, place or thing in the Town in accordance with Section 104 and other relevant sections of the Fire Code.

(e) Section 104.10 of the Code shall be amended to read by the addition of:

1) Such investigation shall be limited to the origin and cause of the incident. If, in the opinion of the assigned Fire Department investigator, the cause involves any violation of the penal code; the Fire Department investigator shall immediately contact the Addison Police Department for assistance. Police Investigators shall assume any criminal portion of the investigation and pursue it to its conclusion in accordance with the penal code, with such assistance at the scene of the incident as may be necessary by the assigned Fire Department investigator.~~Fire Investigations. The Fire Prevention Division is authorized to investigate promptly the cause, origin and circumstances of each fire occurring in the jurisdiction involving injury or loss of life to a person or damage or destruction of property. Such investigation shall be limited to the cause and origin of the fire. If, in the~~

~~opinion of the assigned fire investigator such fire is of suspicious origin, the fire investigator shall immediately contact members of the Addison Police Department's Criminal Investigation Division. Said Police Investigators shall assume the criminal portion of the investigation and pursue it to its conclusion in accordance with the penal code with such assistance at the fire scene as may be necessary by the Fire Prevention Division.~~

(f) Section 109.3 of the Code shall be amended by the addition of:

a) Members of the Fire Prevention Division may issue citations or file complaints in Municipal Court as necessary for violations of the Fire Code or this Ordinance. Each day a violation continues shall be deemed a separate offense. Said violations shall be punishable by payment of a fine not to exceed \$2000.00 dollars as determined by the Municipal Judge of the Town of Addison.

4. Section 38-34 of the Code is amended to read as follows:

**Section 38-34. – Hazardous Materials and False Alarm Response and Remuneration.**

(a) *Hazardous material release:* Any party(ies) who accidentally, negligently or intentionally causes or is responsible for a spill of hazardous material as defined in the Code which affects public or private property within the Town, shall be liable for the payment of all costs incurred by the Town in the effort to mitigate and abate the hazard. The remedy provided by this Section shall be in addition to any other remedies provided by law.

(b) *Recoverable costs:* For the purposes of this chapter, costs incurred by the Town shall include, but not be limited to, all actual out-of-pocket expenses attributable to the abatement or clean up of the hazardous material(s), including costs of equipment operations, costs of materials utilized, costs of third party specialists, experts or contract labor not in the full time employment of the Town, overhead costs, overtime costs and any other incidental costs incurred by the Town. Basic costs associated with Fire Department services shall be Four Hundred Dollars (\$400.00) per hour for each engine or truck company and Two Hundred Dollars (\$200.00) per hour for each medical unit.

(c) *False fire alarms:* If, within a calendar year, the Addison Fire Department responds to three false fire or medical alarms at the same address, the owner or manager of the property shall be assessed a fee of \$300.00 for each and every subsequent false alarm response during the remainder of the calendar year. False fire or medical alarms caused by failure to properly operate or maintain a fire protection alarm system, or by negligence on the part of the property owner, manager, agents or contractors may be assessed per occurrence.

5. Section 38-51 of the Code is amended to read as follows:

**Sec. 38-51. – Generally.**

The ~~2006~~2009 edition of the International Fire Code is modified by the deletions, amendments and modifications provided for in this division.

6. Section 38-53 of the Code is amended to read as follows:

**Section 38-53. - Provisions for Fire Safety.**

- (a) Section 304.1 of the Code shall be amended to read:

*Waste Material.* Accumulations of any type of waste or scrap material shall not be allowed to remain in any location where, in the opinion of the Fire Prevention Chief, they may constitute a fire and life-safety hazard or impede Fire Department operations.

- (b) Section 307.1 of the Code shall be amended to read:

*General.* Open burning, including recreational or ceremonial, fires shall not be permitted in the Town of Addison.

*Exception:* Outdoor cooking is permitted and shall be in accordance with Section ~~308.3-1~~308.1.4

- (c) Section 401.3.1 Shall be amended to read:

*False Alarms and Reports.* It shall be unlawful for a person, device or system to give, signal or transmit a false fire or medical alarm.

- (d) Section 503.1 Shall be amended to read.

*Where required.* Fire lanes and other emergency access routes shall be provided in accordance with Sections 503.1.1 through 503.1.3 or as approved by the Fire Prevention Chief.

- (e) Section 503.2.1 of the code shall be amended to read:

*Dimensions.* Fire lanes and other emergency access routes shall have an unobstructed width of not less than 24-feet and an unobstructed vertical clearance of not less than 14-feet. Turning radii, weight capacity, marking and all other dimensions or factors affecting fire lanes or emergency access routes shall be as specified in the Code or as approved by the Fire Prevention Chief.

- (f) Section 901.6.1 of the code shall be amended to read:

*Standards.* Fire protection systems shall be inspected, tested and maintained in accordance with the reference standards listed in Table 901.6.1 or at intervals determined by the Fire Prevention Chief.

(g) Section 901.7 of the code shall be amended to read:

*Systems out of service.* Where a fire protection system is out of service for any reason, or in the event of an excessive number of activations, the fire department shall be notified immediately and, where required by the Fire Prevention Chief, the building shall be evacuated or an approved fire watch shall be provided until the fire protection system has been repaired and returned to service.

(h) Section 903.1.1 ~~is deleted in its entirety~~ shall be amended to read:

*Alternative protection.* Alternative automatic fire extinguishing systems complying with Section 904 may be permitted as approved by the Fire Prevention Chief only in addition to automatic fire sprinkler protection. In no case shall fire sprinkler protection be removed or omitted based on the presence of alternative fire extinguishing systems.

(i) Section 903.2 of the code shall be amended to read:

*Where required.* An approved automatic fire sprinkler system shall be installed as follows:

- 1) In all buildings of any area, size or occupancy built, added to or moved into the Town of Addison after December 8, 1992. In the case of an addition to an existing structure or space an approved automatic fire sprinkler system shall be installed in the addition and the existing structure or space.

Unless otherwise required in the code, the following exceptions apply:

*Exception 1:* Detached Group U occupancies that do not exceed 500 square feet in area and are located six feet from any other building.

*Exception 2:* Open parking garages of noncombustible construction that have no other types of occupancies located above the garage.

*Exception 3:* Existing, unsprinklered, single-family detached dwellings which are added to for the purpose of increasing livable area.

*Exception 4:* Covered walkways or open canopies above fuel dispensing pumps, bus stops or other similar structures intended only for the temporary protection of persons from inclement weather but not including covered patios attached to buildings.

*Exception 5:* Group S-2 occupancies used only for the storage or parking of aircraft. (NOTE: All aircraft hangars are subject to the provisions of NFPA 409.)



2) In any existing building of any size, area or occupancy (except single family detached residences) remodeled or reconstructed after the effective date of this ordinance where greater than 50% of either the square footage or the (DCAD assessed) dollar value is involved.

3) In the attic of any building required by this section to have a fire sprinkler system.

*Exception: the attics of single family residences on fee simple lots.*

4) In the occupancies and locations set forth in Section 903 of the Fire Code.

~~(j) Section 903.2.1.2 #1 Shall be amended to read:~~

~~1. The fire area exceeds 1500 Square feet.~~

~~(k) Section 903.3.1.1 shall be amended to read:~~

~~NFPA-13 sprinkler systems. Where the provisions of this ordinance require that a building or portion thereof be equipped with an automatic fire sprinkler system, sprinklers shall be installed in accordance with the appropriate version of NFPA-13 with any such additions or modifications as may be required by the Fire Prevention Chief. Additionally, sprinkler coverage will include all bathrooms and closets, regardless of size or use; except as provided in Sections 903.3.1.1.1 exceptions (1) & (2). Sprinklers will also be installed on covered balconies and porches.~~

~~(l) Section 903.4 of the Code shall be amended to read:~~

~~*Sprinkler system monitoring and alarms.* All valves controlling the water supply and all water flow alarm switches on fire sprinkler systems shall be electronically supervised and monitored by an approved fire alarm monitoring agency, regardless of the number of sprinkler heads served.~~

~~*Exception.* Fire sprinkler valve and alarm monitoring for single family residences on fee simple lots shall be at the discretion of the property owner.~~

~~(m) Section 904.2 shall be amended to read:~~

~~Generally. Other types of fire extinguishing systems shall not be installed as an alternative to or replacement for required automatic fire sprinkler systems. Alternative systems may only be installed to supplement required fire sprinkler systems.~~

~~(n) Section 905.1 of the Code shall be amended to read:~~

~~*Generally.* Standpipe systems shall be provided as set forth in this section or as required by the Prevention Chief (balance unchanged).~~

(~~om~~) Section 3301.1 of the Code shall be amended to read:

*Scope.* The manufacture, possession, storage, sale, transportation, use, handling and/or presence of explosive materials of any type is prohibited in the Town of Addison except as noted below:

*Exception 1.* Explosive materials used by the armed forces of the United States or other governmental agencies acting in an official capacity.

*Exception 2.* The possession, use and storage of small arms ammunition in accordance with section 3306 of the Code.\*

*Exception 3.* Approved construction or demolition projects for which a permit has been obtained and where all necessary safety precautions are reviewed by the fire department and observed on site.

(~~pn~~) Section 3308.1 of the Code is hereby amended to read:

*Generally.* The manufacture, possession, storage, sale, transportation, use, handling and/or presence of fireworks or pyrotechnic material of any type is prohibited in the Town of Addison except as noted below:

*Exceptions.*

1) Approved events organized and conducted by licensed fireworks and pyrotechnic professionals where all necessary safety precautions are reviewed by the fire department and observed on site.

2) Any composition or device that produces a visible or audible effect for entertainment purposes and that produces negligible heat or flame and is not activated by contact with a flame or heat producing device.

(~~qo~~) Section 3404 of the Code shall be amended by the addition of:

*3404.1 Location.* Facilities storing or handling hazardous, flammable or combustible liquids or materials in excess of the quantities listed in Table 2703.1.1, may only be located as approved by the Fire Prevention Chief.

(~~rp~~) Section 3404.3.8 of the Code is hereby amended to read:

*Liquid storage warehouses.* The storage of flammable liquids in the manner defined by the Code as a "liquid storage warehouse" is prohibited in the Town of Addison.

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

### **AGENDA CAPTION:**

Presentation, discussion and consideration of approval to authorize the City Manager to execute a Construction Contract with CPS Civil, LLC in the amount of \$862,824.60 with contract duration of 175 calendar days for the construction of certain public infrastructure (including streets and water lines, 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 Allocated for Phase 2 by the Master Facilities Agreement, Revised Exhibit "C1").

### **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 2, includes the utility, water, drainage and paving improvements for Bella Lane. On February 9, 2010, Council authorized the First Amendment to the Master Facilities Agreement with UDR, Inc. that specified that \$1,474,783 of the funds is for the design and construction of Vitruvian Park Public Infrastructure, Phase 2. The revised Exhibit C-1 approved by Council on February 9, 2010 is attached for reference. Of the \$1,474,783 specified by the Council, \$138,075 has been committed to design fees. Additionally, \$34,513 is to be authorized by another item for inspection and testing services by Kleinfelder. Finally, \$69,026 is to be authorized by another item for construction management by UDR, Inc. A complete cost analysis is attached to this item.

The Town received six bids on February 22, 2011. The lowest responsive bid received was \$950,324.60 from CPS Civil, LLC. 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 \$500/day based on the number of days under or over the amount bid respectively. Detailed bid tabulation is attached to this agenda item.

CPS Civil, LLC has been in business since the Fall 2009. Staff has reviewed their financial statements and contacted their references. During the reference check, it was determined that the firm did not possess the necessary experience in regards to slip-form paving, which is a requirement of the bid specifications. Additionally, staff had some concerns about the project manager assigned to the project. Consequently, staff met with the owners of CPS Civil, LLC. They have agreed to engage the services of a company experienced with slip-form paving to perform the slip-form paving for the roadway. Additionally, they have agreed to manage the project personally in order to insure its successful completion.

**RECOMMENDATION:**

Staff recommends approval.

**COUNCIL GOALS:**

Promote Quality Transportation Services

**ATTACHMENTS:**

Description:

[Bid Tab for Phase 2](#)

[Cost Analysis for Phase 2](#)

Type:

Exhibit

Exhibit

**VITRUVIAN PARK - PHASE 2 INFRASTRUCTURE IMPROVEMENTS**  
**Water, Sanitary Sewer & Storm Drain Improvements**  
**(Bella Lane)**

**BID SCHEDULE**

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	JESKE CONSTRUCTION CO.		CPS CIVIL		NORTH TEXAS CONTRACTING		TEXAS STANDARD CONST.		OMEGA CONTRACTING		PHILLIPS MAY CORP.	
				UNIT PRICE	TOTAL AMOUNT	UNIT PRICE	TOTAL AMOUNT	UNIT PRICE	TOTAL AMOUNT	UNIT PRICE	TOTAL AMOUNT	UNIT PRICE	TOTAL AMOUNT	UNIT PRICE	TOTAL AMOUNT
<b>BASE BID</b>															
1	For Mobilization (not to exceed 5% of total bid amount)	1	L.S.	\$53,500.00	\$ 53,500.00	\$42,000.00	\$ 42,000.00	\$26,500.00	\$ 26,500.00	\$35,000.00	\$ 35,000.00	\$42,000.00	\$ 42,000.00	\$56,242.27	\$ 56,242.27
2	For Installation and Maintenance of Barricades, Signage, Pav't Markings and Traffic Control Measures	1	L.S.	\$500.00	\$ 500.00	\$10,000.00	\$ 10,000.00	\$3,000.00	\$ 3,000.00	\$12,000.00	\$ 12,000.00	\$5,000.00	\$ 5,000.00	\$6,056.00	\$ 6,056.00
3	For Installation of Inlet Protection Devices on Existing Inlets	4	EA.	\$110.00	\$ 440.00	\$150.00	\$ 600.00	\$150.00	\$ 600.00	\$25.00	\$ 100.00	\$80.00	\$ 320.00	\$179.00	\$ 716.00
4	For Furnishing and Installing Project Signs in Accordance with Sign Plan	1	EA.	\$450.00	\$ 450.00	\$400.00	\$ 400.00	\$500.00	\$ 500.00	\$200.00	\$ 200.00	\$1,000.00	\$ 1,000.00	\$2,240.00	\$ 2,240.00
5	For Compliance with Storm Water Pollution Prevention Plan Including Maintenance of Erosion Control Devices	1	L.S.	\$1,150.00	\$ 1,150.00	\$3,000.00	\$ 3,000.00	\$500.00	\$ 500.00	\$1,000.00	\$ 1,000.00	\$1,500.00	\$ 1,500.00	\$3,028.00	\$ 3,028.00
6	For Installing Construction Entrance	1	EA.	\$1,100.00	\$ 1,100.00	\$900.00	\$ 900.00	\$800.00	\$ 800.00	\$800.00	\$ 800.00	\$1,800.00	\$ 1,800.00	\$3,657.00	\$ 3,657.00
7	For Maintaining Existing Construction Entrance	1	L.S.	\$500.00	\$ 500.00	\$350.00	\$ 350.00	\$200.00	\$ 200.00	\$400.00	\$ 400.00	\$1,200.00	\$ 1,200.00	\$1,134.00	\$ 1,134.00
8	For Installing Silt Fence Sediment Barrier	1,723	L.F.	\$1.60	\$ 2,756.80	\$1.50	\$ 2,584.50	\$2.00	\$ 3,446.00	\$1.00	\$ 1,723.00	\$1.30	\$ 2,239.90	\$1.33	\$ 2,291.59
9	For Sawcutting, Removal & Recycling of Existing Asphalt Street Pavement (Reference Special Provision 83)	792	S.Y.	\$2.90	\$ 2,296.80	\$5.00	\$ 3,960.00	\$5.00	\$ 3,960.00	\$6.00	\$ 4,752.00	\$7.00	\$ 5,544.00	\$5.45	\$ 4,316.40
10	For Sawcutting, Removal & Recycling of Existing Concrete Street Pavement (Reference Special Provision 83)	126	S.Y.	\$9.00	\$ 1,134.00	\$5.00	\$ 630.00	\$8.00	\$ 1,008.00	\$7.00	\$ 882.00	\$15.00	\$ 1,890.00	\$7.27	\$ 916.02
11	For Sawcutting, Removal & Recycling of Existing Concrete Sidewalk Pavement	506	S.F.	\$0.80	\$ 404.80	\$1.00	\$ 506.00	\$2.00	\$ 1,012.00	\$0.75	\$ 379.50	\$2.00	\$ 1,012.00	\$1.21	\$ 612.26
12	For Sawcutting, Removal and Recycling of Existing Concrete Curb and Gutter	262	L.F.	\$2.80	\$ 733.60	\$5.00	\$ 1,310.00	\$5.00	\$ 1,310.00	\$10.00	\$ 2,620.00	\$7.00	\$ 1,834.00	\$3.03	\$ 793.86
13	For Unclassified Street Excavation and Controlled Density Placement of Embankment Materials	2,435	C.Y.	\$11.50	\$ 28,002.50	\$10.00	\$ 24,350.00	\$15.00	\$ 36,525.00	\$14.00	\$ 34,090.00	\$10.00	\$ 24,350.00	\$12.40	\$ 30,194.00
14	For Fine Grading and Subgrade Preparation	4,459	S.Y.	\$0.50	\$ 2,229.50	\$0.50	\$ 2,229.50	\$1.00	\$ 4,459.00	\$3.00	\$ 13,377.00	\$1.00	\$ 4,459.00	\$1.21	\$ 5,395.39
15	For 6" Lime Stabilized Subgrade	4,459	S.Y.	\$2.60	\$ 11,593.40	\$4.00	\$ 17,836.00	\$3.00	\$ 13,377.00	\$4.00	\$ 17,836.00	\$4.50	\$ 20,065.50	\$3.10	\$ 13,822.90
16	For Furnishing and Placing Hydrated Lime (6% by Weight)	81	TONS	\$147.00	\$ 11,907.00	\$150.00	\$ 12,150.00	\$175.00	\$ 14,175.00	\$135.00	\$ 10,935.00	\$160.00	\$ 12,960.00	\$170.00	\$ 13,770.00
17	For Furnishing and Placing 10" Reinforced Concrete Street Pavement (4200 PSI)	3,389	S.Y.	\$48.00	\$ 162,672.00	\$40.00	\$ 135,560.00	\$38.00	\$ 128,782.00	\$53.00	\$ 179,617.00	\$42.00	\$ 142,338.00	\$62.70	\$ 212,490.30
18	For Constructing 6" Reinforced Monolithic Concrete Curb	1,935	L.F.	\$2.00	\$ 3,870.00	\$1.00	\$ 1,935.00	\$1.00	\$ 1,935.00	\$2.00	\$ 3,870.00	\$4.00	\$ 7,740.00	\$19.39	\$ 37,519.65
19	For Constructing 6" Reinforced Concrete Curb & Gutter	348	L.F.	\$29.50	\$ 10,266.00	\$15.00	\$ 5,220.00	\$22.00	\$ 7,656.00	\$28.00	\$ 9,744.00	\$20.00	\$ 6,960.00	\$26.70	\$ 9,291.60
20	For Constructing Concrete Street Header	44	L.F.	\$8.00	\$ 352.00	\$4.00	\$ 176.00	\$10.00	\$ 440.00	\$10.00	\$ 440.00	\$15.00	\$ 660.00	\$97.00	\$ 4,268.00
21	For Furnishing and Placing 4" Crushed Limestone Flex Base	935	S.Y.	\$7.00	\$ 6,545.00	\$5.00	\$ 4,675.00	\$5.00	\$ 4,675.00	\$10.00	\$ 9,350.00	\$7.00	\$ 6,545.00	\$9.00	\$ 8,415.00
22	For Furnishing and Placing 4" HMAC Type "B" Base Course	839	S.Y.	\$16.90	\$ 14,179.10	\$12.00	\$ 10,068.00	\$12.00	\$ 10,068.00	\$15.00	\$ 12,585.00	\$9.60	\$ 8,054.40	\$19.00	\$ 15,941.00
23	For Furnishing and Placing 2" HMAC Type "D" Surface Course	839	S.Y.	\$10.10	\$ 8,473.90	\$7.00	\$ 5,873.00	\$6.00	\$ 5,034.00	\$10.00	\$ 8,390.00	\$17.00	\$ 14,263.00	\$12.00	\$ 10,068.00
24	For Furnishing and Placing Emulsified Asphalt Membrane (MS-2) (0.2 Gal/SY)	168	GAL.	\$3.90	\$ 655.20	\$5.00	\$ 840.00	\$3.00	\$ 504.00	\$25.00	\$ 4,200.00	\$4.00	\$ 672.00	\$7.00	\$ 1,176.00
25	For Furnishing, Laying and Compacting Short Term Asphalt Pavement Repair	30	S.Y.	\$32.00	\$ 960.00	\$15.00	\$ 450.00	\$40.00	\$ 1,200.00	\$18.00	\$ 540.00	\$36.00	\$ 1,080.00	\$54.50	\$ 1,635.00
26	For Topsoil Placement to a Depth of 6"	947	C.Y.	\$12.00	\$ 11,364.00	\$20.00	\$ 18,940.00	\$22.00	\$ 20,834.00	\$40.00	\$ 37,880.00	\$31.00	\$ 29,357.00	\$32.90	\$ 31,156.30
27	For Furnishing and Installing Pavestone Concrete Street Paver, Running Bond Pattern, 3-1/8" Thickness, Bellows Brown Color	304	S.F.	\$7.60	\$ 2,310.40	\$8.00	\$ 2,432.00	\$7.00	\$ 2,128.00	\$35.00	\$ 10,640.00	\$7.00	\$ 2,128.00	\$7.10	\$ 2,158.40
28	For Installing Handicap Ramps	6	EA.	\$1,064.00	\$ 6,384.00	\$900.00	\$ 5,400.00	\$1,000.00	\$ 6,000.00	\$800.00	\$ 4,800.00	\$1,000.00	\$ 6,000.00	\$2,502.00	\$ 15,012.00
29	For Furnishing and Installing Pavestone ADA Concrete Paver, Running Bond Pattern, 2-3/8" Thickness, Bellows Brown Color	140	S.F.	\$11.00	\$ 1,540.00	\$12.00	\$ 1,680.00	\$8.00	\$ 1,120.00	\$35.00	\$ 4,900.00	\$8.00	\$ 1,120.00	\$8.30	\$ 1,162.00
30	For Furnishing & Installing Hydromulch Seeding (NCTCOG Item 3.10 "Seeding") of Disturbed Areas (Ref. Special Provisions)	11,906	S.Y.	\$0.90	\$ 10,715.40	\$0.60	\$ 7,143.60	\$0.50	\$ 5,953.00	\$1.00	\$ 11,906.00	\$0.80	\$ 9,524.80	\$0.33	\$ 3,928.98
31	For 4-Inch Wide White Solid Thermoplastic Pavement Marking	240	L.F.	\$1.53	\$ 367.20	\$2.00	\$ 480.00	\$2.00	\$ 480.00	\$1.00	\$ 240.00	\$1.60	\$ 384.00	\$3.63	\$ 871.20
32	For 12-Inch Wide White Solid Thermoplastic Pavement Marking (Crosswalk)	98	L.F.	\$3.06	\$ 299.88	\$4.00	\$ 392.00	\$3.00	\$ 294.00	\$6.00	\$ 588.00	\$3.20	\$ 313.60	\$4.85	\$ 475.30
33	For 24-Inch Wide White Solid Thermoplastic Pavement Marking (Stop Bar)	11	L.F.	\$8.16	\$ 89.76	\$10.00	\$ 110.00	\$9.00	\$ 99.00	\$8.00	\$ 88.00	\$8.50	\$ 93.50	\$9.69	\$ 106.59
34	For Installing Type 11 ReflectORIZED Blue Pav't Markers for Hydrants	3	EA.	\$5.10	\$ 15.30	\$6.00	\$ 18.00	\$6.00	\$ 18.00	\$5.00	\$ 15.00	\$5.30	\$ 15.90	\$12.00	\$ 36.00
35	For Providing and Installing Stop Sign (R1-1) Complete with Two Street Name Signs and Mount per Vitruvian Park Standards	1	EA.	\$1,400.00	\$ 1,400.00	\$1,500.00	\$ 1,500.00	\$1,500.00	\$ 1,500.00	\$650.00	\$ 650.00	\$1,400.00	\$ 1,400.00	\$606.00	\$ 606.00
36	For Connecting Proposed Pipe to Existing 30-Inch Storm Sewer Pipe	2	EA.	\$510.00	\$ 1,020.00	\$500.00	\$ 1,000.00	\$500.00	\$ 1,000.00	\$500.00	\$ 1,000.00	\$300.00	\$ 600.00	\$606.00	\$ 1,212.00

37	For Connecting Proposed Pipe to Existing 24-Inch Storm Sewer Pipe	1	EA.	\$468.00	\$ 468.00	\$250.00	\$ 250.00	\$500.00	\$ 500.00	\$500.00	\$ 500.00	\$300.00	\$ 300.00	\$606.00	\$ 606.00
38	For Constructing Standard 4' Type "A" Square Storm Drain Manhole	4	EA.	\$2,977.00	\$ 11,908.00	\$2,000.00	\$ 8,000.00	\$3,500.00	\$ 14,000.00	\$2,200.00	\$ 8,800.00	\$4,000.00	\$ 16,000.00	\$3,877.00	\$ 15,508.00
39	For Constructing 10' Recessed Curb Inlet	4	EA.	\$2,600.00	\$ 10,400.00	\$2,500.00	\$ 10,000.00	\$2,500.00	\$ 10,000.00	\$2,700.00	\$ 10,800.00	\$3,300.00	\$ 13,200.00	\$3,877.00	\$ 15,508.00
40	For Furnishing and Installing 30-Inch Reinforced Concrete Pipe (Class III)	247	L.F.	\$73.40	\$ 18,129.80	\$70.00	\$ 17,290.00	\$75.00	\$ 18,525.00	\$95.00	\$ 23,465.00	\$60.00	\$ 14,820.00	\$75.00	\$ 18,525.00
41	For Furnishing and Installing 24-Inch Reinforced Concrete Pipe (Class III)	45	L.F.	\$61.20	\$ 2,754.00	\$50.00	\$ 2,250.00	\$65.00	\$ 2,925.00	\$85.00	\$ 3,825.00	\$55.00	\$ 2,475.00	\$57.00	\$ 2,565.00
42	For Furnishing and Installing 18-Inch Reinforced Concrete Pipe (Class III)	537	L.F.	\$52.70	\$ 28,299.90	\$40.00	\$ 21,480.00	\$55.00	\$ 29,535.00	\$65.00	\$ 34,905.00	\$45.00	\$ 24,165.00	\$45.00	\$ 24,165.00
43	For TV Inspection of Storm Drain System	829	L.F.	\$2.40	\$ 1,989.60	\$1.00	\$ 829.00	\$1.00	\$ 829.00	\$4.00	\$ 3,316.00	\$1.00	\$ 829.00	\$1.20	\$ 994.80
44	For Preparing, Furnishing, Installing and Maintaining Trench Safety System for Storm Drain Improvements	1	L.S.	\$480.00	\$ 480.00	\$2,000.00	\$ 2,000.00	\$2,000.00	\$ 2,000.00	\$10.00	\$ 10.00	\$1,500.00	\$ 1,500.00	\$515.00	\$ 515.00
45	For Removal of Plug & Blocking and Connection to Existing 10-inch Water Pipe	1	EA.	\$723.00	\$ 723.00	\$1,000.00	\$ 1,000.00	\$1,000.00	\$ 1,000.00	\$1,750.00	\$ 1,750.00	\$300.00	\$ 300.00	\$1,212.00	\$ 1,212.00
46	For Furnishing and Installing 10-Inch PVC Water Pipe by Open Cut with Embedment	960	L.F.	\$56.40	\$ 54,144.00	\$32.00	\$ 30,720.00	\$65.00	\$ 62,400.00	\$79.00	\$ 75,840.00	\$35.00	\$ 33,600.00	\$29.00	\$ 27,840.00
47	For Furnishing and Installing 8-Inch PVC Water Pipe by Open Cut with Embedment	191	L.F.	\$50.00	\$ 9,550.00	\$30.00	\$ 5,730.00	\$60.00	\$ 11,460.00	\$49.00	\$ 9,359.00	\$32.00	\$ 6,112.00	\$25.00	\$ 4,775.00
48	For Furnishing and Installing 6-Inch PVC Water Pipe by Open Cut with Embedment	69	L.F.	\$45.20	\$ 3,118.80	\$25.00	\$ 1,725.00	\$55.00	\$ 3,795.00	\$60.00	\$ 4,140.00	\$30.00	\$ 2,070.00	\$22.00	\$ 1,518.00
49	For Furnishing and Installing 2" Copper Water Pipe by Open Cut	6	L.F.	\$60.60	\$ 363.60	\$10.00	\$ 60.00	\$40.00	\$ 240.00	\$150.00	\$ 900.00	\$60.00	\$ 360.00	\$97.00	\$ 582.00
50	For Furnishing and Installing 1 1/2" Copper Water Pipe by Open Cut	38	L.F.	\$52.10	\$ 1,979.80	\$10.00	\$ 380.00	\$30.00	\$ 1,140.00	\$35.00	\$ 1,330.00	\$35.00	\$ 1,330.00	\$36.00	\$ 1,368.00
51	For Furnishing and Installing 10-Inch PVC Water Pipe in Existing Casing Pipe Under Bridge	186	L.F.	\$92.50	\$ 17,205.00	\$35.00	\$ 6,510.00	\$30.00	\$ 5,580.00	\$85.00	\$ 15,810.00	\$37.00	\$ 6,882.00	\$45.00	\$ 8,370.00
52	For Furnishing and Installing 10-Inch Gate Valve Complete w/ C.I. Valve Box and Cover	8	EA.	\$2,032.00	\$ 16,256.00	\$1,500.00	\$ 12,000.00	\$2,000.00	\$ 16,000.00	\$3,500.00	\$ 28,000.00	\$2,000.00	\$ 16,000.00	\$2,060.00	\$ 16,480.00
53	For Furnishing and Installing 8-Inch Gate Valve Complete w/ C.I. Valve Box and Cover	5	EA.	\$1,442.00	\$ 7,210.00	\$1,000.00	\$ 5,000.00	\$1,200.00	\$ 6,000.00	\$1,500.00	\$ 7,500.00	\$1,300.00	\$ 6,500.00	\$1,272.00	\$ 6,360.00
54	For Furnishing and Installing 6-Inch Gate Valve Complete w/ C.I. Valve Box and Cover	3	EA.	\$1,037.00	\$ 3,111.00	\$600.00	\$ 1,800.00	\$900.00	\$ 2,700.00	\$1,000.00	\$ 3,000.00	\$1,000.00	\$ 3,000.00	\$969.00	\$ 2,907.00
55	For Furnishing and Installing Fire Hydrant Assembly, Complete in Place	3	EA.	\$2,942.00	\$ 8,826.00	\$2,500.00	\$ 7,500.00	\$2,700.00	\$ 8,100.00	\$2,700.00	\$ 8,100.00	\$2,500.00	\$ 7,500.00	\$2,969.00	\$ 8,907.00
56	For Furnishing and Installing Cast Iron Fittings for Water Pipe	3	TONS	\$5,803.00	\$ 15,087.80	\$3,000.00	\$ 7,800.00	\$4,000.00	\$ 10,400.00	\$3,900.00	\$ 10,140.00	\$5,500.00	\$ 14,300.00	\$6,058.00	\$ 15,750.80
57	For Furnishing and Installing 2" Water Service Tap	2	EA.	\$968.00	\$ 1,936.00	\$1,500.00	\$ 3,000.00	\$1,000.00	\$ 2,000.00	\$2,300.00	\$ 4,600.00	\$620.00	\$ 1,240.00	\$1,333.00	\$ 2,666.00
58	For Furnishing and Installing 1 1/2" Irrigation Meter and Box	1	EA.	\$1,787.00	\$ 1,787.00	\$500.00	\$ 500.00	\$1,400.00	\$ 1,400.00	\$2,500.00	\$ 2,500.00	\$530.00	\$ 530.00	\$666.00	\$ 666.00
59	For Furnishing and Installing 1 1/2" Irrigation Meter Box Only	1	EA.	\$383.00	\$ 383.00	\$500.00	\$ 500.00	\$1,000.00	\$ 1,000.00	\$500.00	\$ 500.00	\$400.00	\$ 400.00	\$666.00	\$ 666.00
60	For Final Adjustment of Existing Water Valves to Final Pavement Grade	16	EA.	\$192.00	\$ 3,072.00	\$30.00	\$ 480.00	\$100.00	\$ 1,600.00	\$375.00	\$ 6,000.00	\$100.00	\$ 1,600.00	\$333.00	\$ 5,328.00
61	For Preparing, Furnishing, Installing and Maintaining Trench Safety System for Water Line Improvements	1	L.S.	\$479.00	\$ 479.00	\$1,500.00	\$ 1,500.00	\$3,000.00	\$ 3,000.00	\$10.00	\$ 10.00	\$2,600.00	\$ 2,600.00	\$521.00	\$ 521.00
62	For Removal of Plug & Connection to Existing 8" Sanitary Sewer Pipe	1	EA.	\$335.00	\$ 335.00	\$500.00	\$ 500.00	\$1,000.00	\$ 1,000.00	\$2,000.00	\$ 2,000.00	\$300.00	\$ 300.00	\$545.00	\$ 545.00
63	For Furnishing and Installing 8-Inch PVC Sanitary Sewer Pipe (8' - 10' Depth) by Open Cut with Embedment	338	L.F.	\$83.00	\$ 28,054.00	\$30.00	\$ 10,140.00	\$50.00	\$ 16,900.00	\$65.00	\$ 21,970.00	\$35.00	\$ 11,830.00	\$27.87	\$ 9,420.06
64	For Standard 4' Diameter Sanitary Sewer Manhole to 6' Depth with Standard Frame and Cover	2	EA.	\$3,800.00	\$ 7,600.00	\$2,500.00	\$ 5,000.00	\$3,500.00	\$ 7,000.00	\$3,300.00	\$ 6,600.00	\$4,000.00	\$ 8,000.00	\$2,423.00	\$ 4,846.00
65	For Extra Depth for Standard 4' Diameter Sanitary Sewer Manhole in Excess of 6' Depth	8	VF.	\$117.00	\$ 936.00	\$150.00	\$ 1,200.00	\$150.00	\$ 1,200.00	\$160.00	\$ 1,280.00	\$425.00	\$ 3,400.00	\$185.00	\$ 1,480.00
66	For Standard 5' Diameter External Drop Sanitary Sewer Manhole to 6' Depth with Frame and Cover	1	EA.	\$8,180.00	\$ 8,180.00	\$4,000.00	\$ 4,000.00	\$4,000.00	\$ 4,000.00	\$3,950.00	\$ 3,950.00	\$5,000.00	\$ 5,000.00	\$5,634.00	\$ 5,634.00
67	For Extra Depth for Standard 5' Diameter External Drop Manhole in Excess of 6' Depth	8	VF.	\$192.00	\$ 1,536.00	\$200.00	\$ 1,600.00	\$200.00	\$ 1,600.00	\$250.00	\$ 2,000.00	\$500.00	\$ 4,000.00	\$245.00	\$ 1,960.00
68	For Furnishing and Installing 8-Inch Lateral Cleanouts	4	EA.	\$463.00	\$ 1,852.00	\$300.00	\$ 1,200.00	\$200.00	\$ 800.00	\$1,200.00	\$ 4,800.00	\$450.00	\$ 1,800.00	\$666.00	\$ 2,664.00
69	For TV Inspection of Sanitary Sewer System	338	L.F.	\$1.33	\$ 449.54	\$1.00	\$ 338.00	\$1.00	\$ 338.00	\$3.00	\$ 1,014.00	\$1.00	\$ 338.00	\$1.82	\$ 615.16
70	For Preparing, Furnishing, Installing and Maintaining Trench Safety System for Sewer Line Improvements	1	L.S.	\$478.00	\$ 478.00	\$1,000.00	\$ 1,000.00	\$5,000.00	\$ 5,000.00	\$10.00	\$ 10.00	\$800.00	\$ 800.00	\$515.00	\$ 515.00
71	For Installation of Bega Street Light Pole, Type 1, Single 100W 240V MH Luminare on 11'-8" Pole, Color Silver, Complete in Place (Reference Special Provision 82)	26	EA.	\$3,430.00	\$ 89,180.00	\$3,000.00	\$ 78,000.00	\$2,700.00	\$ 70,200.00	\$3,900.00	\$ 101,400.00	\$3,100.00	\$ 80,600.00	\$3,532.00	\$ 91,832.00
72	For Installation of Phillips Type P Street Light Pole, Type 1, Single 100W 240V MH Luminare on 11'-8" Pole, Color Silver, Complete in Place (Reference Special Provision 82)	26	EA.	\$3,690.00	\$ 95,940.00	\$3,100.00	\$ 80,600.00	\$2,800.00	\$ 72,800.00	\$4,100.00	\$ 106,600.00	\$3,400.00	\$ 88,400.00	\$3,797.00	\$ 98,722.00
73	For Concrete Drilled Shaft Foundation, Type 1, Complete in Place	26	EA.	\$560.00	\$ 14,560.00	\$900.00	\$ 23,400.00	\$600.00	\$ 15,600.00	\$900.00	\$ 23,400.00	\$600.00	\$ 15,600.00	\$576.00	\$ 14,976.00
74	For Connection to Existing 1 1/4" PVC Conduit	4	EA.	\$120.00	\$ 480.00	\$150.00	\$ 600.00	\$300.00	\$ 1,200.00	\$10.00	\$ 40.00	\$320.00	\$ 1,280.00	\$121.00	\$ 484.00
75	For Connection to Existing 3/4" PVC Conduit	2	EA.	\$120.00	\$ 240.00	\$100.00	\$ 200.00	\$300.00	\$ 600.00	\$50.00	\$ 100.00	\$320.00	\$ 640.00	\$121.00	\$ 242.00
76	For Installation of 2" Schedule 40 PVC Conduit	43	L.F.	\$9.50	\$ 408.50	\$9.00	\$ 387.00	\$9.00	\$ 387.00	\$12.00	\$ 516.00	\$8.46	\$ 363.78	\$9.70	\$ 417.10
77	For Installation of 1 1/4" Schedule 40 PVC Conduit	1,890	L.F.	\$7.10	\$ 13,419.00	\$6.00	\$ 11,340.00	\$5.50	\$ 10,395.00	\$10.00	\$ 18,900.00	\$5.30	\$ 10,017.00	\$7.30	\$ 13,797.00

78	For Installation of 3/4" Schedule 40 PVC Conduit	277	L.F.	\$6.50	\$ 1,800.50	\$5.00	\$ 1,385.00	\$4.00	\$ 1,108.00	\$8.00	\$ 2,216.00	\$5.81	\$ 1,609.37	\$6.60	\$ 1,828.20
79	For Furnishing and Installing Electric Conductor (No. 6 cu) XHHW-2 Insulated	3,980	L.F.	\$1.70	\$ 6,766.00	\$3.00	\$ 11,940.00	\$1.00	\$ 3,980.00	\$3.00	\$ 11,940.00	\$1.10	\$ 4,378.00	\$1.76	\$ 7,004.80
80	For Furnishing and Installing Electric Conductor (No. 10 cu) XHHW-2 Insulated	1,990	L.F.	\$0.85	\$ 1,691.50	\$1.00	\$ 1,990.00	\$1.00	\$ 1,990.00	\$2.00	\$ 3,980.00	\$1.10	\$ 2,189.00	\$0.86	\$ 1,711.40
81	For Furnishing and Installing Electric Conductor (No. 12 cu) XHHW-2 Insulated	495	L.F.	\$0.85	\$ 420.75	\$1.00	\$ 495.00	\$1.00	\$ 495.00	\$2.00	\$ 990.00	\$1.10	\$ 544.50	\$0.81	\$ 400.95
82	For Installation of 1-6" and 1-2" Schedule 40 PVC Irrigation Conduits	191	L.F.	\$17.40	\$ 3,323.40	\$7.00	\$ 1,337.00	\$20.00	\$ 3,820.00	\$10.00	\$ 1,910.00	\$20.00	\$ 3,820.00	\$17.92	\$ 3,422.72
83	For Installation of Pull Box, Type A	2	EA.	\$650.00	\$ 1,300.00	\$300.00	\$ 600.00	\$700.00	\$ 1,400.00	\$800.00	\$ 1,600.00	\$650.00	\$ 1,300.00	\$666.00	\$ 1,332.00
84	For Electric Service Pedestal, Type PS, 120/240 V. Single Phase Electric Service, Milbank CP3B A-size or Approved Equal, With 200 Amp Panel & Main Breaker, and Two Separate Lighting Controls w/ HOA Switches, Complete in Place	1	EA.	\$9,250.00	\$ 9,250.00	\$15,000.00	\$ 15,000.00	\$4,000.00	\$ 4,000.00	\$4,800.00	\$ 4,800.00	\$6,000.00	\$ 6,000.00	\$9,511.00	\$ 9,511.00
85	For Connection to Existing Oncor 10E6 Duct Bank	1	EA.	\$2,335.00	\$ 2,335.00	\$3,500.00	\$ 3,500.00	\$1,500.00	\$ 1,500.00	\$4,800.00	\$ 4,800.00	\$550.00	\$ 550.00	\$1,999.00	\$ 1,999.00
86	For Furnishing and Constructing 10E6 Duct Bank Structure per Oncor Requirements	47	L.F.	\$206.00	\$ 9,682.00	\$150.00	\$ 7,050.00	\$170.00	\$ 7,990.00	\$250.00	\$ 11,750.00	\$190.00	\$ 8,930.00	\$194.00	\$ 9,118.00
87	For Furnishing and Constructing 8E6 Duct Bank Structure per Oncor Requirements	46	L.F.	\$185.00	\$ 8,510.00	\$120.00	\$ 5,520.00	\$165.00	\$ 7,590.00	\$210.00	\$ 9,660.00	\$180.00	\$ 8,280.00	\$188.00	\$ 8,648.00
88	For Furnishing and Constructing 6E6 Duct Bank Structure per Oncor Requirements	390	L.F.	\$160.00	\$ 62,400.00	\$90.00	\$ 35,100.00	\$85.00	\$ 33,150.00	\$190.00	\$ 74,100.00	\$120.00	\$ 46,800.00	\$99.00	\$ 38,610.00
89	For Furnishing and Constructing 4E6 Duct Bank Structure per Oncor Requirements	14	L.F.	\$135.00	\$ 1,890.00	\$100.00	\$ 1,400.00	\$110.00	\$ 1,540.00	\$99.00	\$ 1,386.00	\$130.00	\$ 1,820.00	\$124.00	\$ 1,736.00
90	For Furnishing and Constructing 4E4 Duct Bank Structure per Oncor Requirements	305	L.F.	\$126.00	\$ 38,430.00	\$50.00	\$ 15,250.00	\$55.00	\$ 16,775.00	\$90.00	\$ 27,450.00	\$80.00	\$ 24,400.00	\$61.00	\$ 18,605.00
91	For Furnishing and Constructing 3 Way Electrical Manhole per Oncor Requirements	2	EA.	\$13,780.00	\$ 27,560.00	\$14,000.00	\$ 28,000.00	\$14,000.00	\$ 28,000.00	\$12,000.00	\$ 24,000.00	\$12,000.00	\$ 24,000.00	\$16,963.00	\$ 33,926.00
92	For Furnishing and Constructing 2 Way Electrical Manhole per Oncor Requirements	1	EA.	\$13,150.00	\$ 13,150.00	\$11,000.00	\$ 11,000.00	\$11,000.00	\$ 11,000.00	\$12,000.00	\$ 12,000.00	\$11,000.00	\$ 11,000.00	\$13,328.00	\$ 13,328.00
93	For End and Plugging of Electrical Duct Bank Structure per Oncor Requirements	8	EA.	\$1,800.00	\$ 14,400.00	\$200.00	\$ 1,600.00	\$110.00	\$ 880.00	\$2,000.00	\$ 16,000.00	\$500.00	\$ 4,000.00	\$121.00	\$ 968.00
94	For Furnishing & Installing Concrete Deepwell Pad for 5 or 6 Way 25KV Deadfront Switchgear per Oncor Requirements & Specs	1	EA.	\$2,570.00	\$ 2,570.00	\$4,650.00	\$ 4,650.00	\$5,000.00	\$ 5,000.00	\$1,500.00	\$ 1,500.00	\$4,000.00	\$ 4,000.00	\$5,634.00	\$ 5,634.00
95	For Concrete Vault for Subsurface Deadfront Switchgear per Oncor Requirements & Specs	1	EA.	\$33,420.00	\$ 33,420.00	\$21,000.00	\$ 21,000.00	\$20,000.00	\$ 20,000.00	\$25,000.00	\$ 25,000.00	\$25,500.00	\$ 25,500.00	\$28,473.00	\$ 28,473.00
96	For Preparing, Furnishing, Installing and Maintaining Trench Safety System for Duct Bank Improvements	1	L.S.	\$480.00	\$ 480.00	\$1,500.00	\$ 1,500.00	\$1,000.00	\$ 1,000.00	\$10.00	\$ 10.00	\$4,000.00	\$ 4,000.00	\$909.00	\$ 909.00
<b>Total Base Bid</b>					<b>\$ 1,084,866.03</b>		<b>\$ 862,824.60</b>		<b>\$ 887,459.00</b>		<b>\$ 1,232,309.50</b>		<b>\$ 959,526.25</b>		<b>\$ 1,122,333.00</b>
TOTAL OF TIME BID: (Calendar Days)					200		175		150		180		120		160
TOTAL OF CALENDAR DAYS x \$500.00 (B):					\$ 100,000.00		\$ 87,500.00		\$ 75,000.00		\$ 90,000.00		\$ 60,000.00		\$ 80,000.00
<b>(A) + (B) = TOTAL BID:</b>					<b>\$ 1,184,866.03</b>		<b>\$ 950,324.60</b>		<b>\$ 962,459.00</b>		<b>\$ 1,322,309.50</b>		<b>\$ 1,019,526.25</b>		<b>\$ 1,202,333.00</b>

PHASE 2 COST ANALYSIS

2/22/2011

Phase 2 Design & Construction Costs		<u>\$ 1,474,783.00</u>
Professional Services Fees		
Icon Consulting Engineers, Inc.	<u>\$(138,075.00)</u>	
Total Professional Services		\$ (138,075.00)
Construction		
Original Contract	<u>\$(862,824.60)</u>	
Total Construction		\$ (862,824.60)
Construction Phase Services		
Kleinfelder (4%)	\$ (34,512.98)	
UDR (8%)	<u>\$(69,025.97)</u>	
Total Construction Phase Services		<u>\$ (103,538.95)</u>
Remaining Funds		\$ 370,344.45



## **Council Agenda Item: #R9**

### **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 Kleinfelder, Inc. for an amount not to exceed \$42,457.00 for additional services related to the Construction Inspection and Materials Testing of certain public infrastructure (including park, streetscape 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 Allocated for Phase 2 by the Master Facilities Agreement, Revised Exhibit "C1").

### **BACKGROUND:**

Upon the approval of the Master Facilities Agreement with UDR on October 9, 2007, the Public Works Department began the process of procuring the professional services needed for the Inspection and Materials Engineering and Testing of the Vitruvian Park Public Infrastructure. On May 29, 2008, Requests for Qualifications were sent to four (4) highly respected and qualified engineering firms that provide these services. A Statement of Qualifications was received from each firm and interviews were conducted on June 18, 2008. Although all of the firms were qualified, two firms were selected to complete a trial period during the summer. At the completion of the trial period for both firms, it was determined that Kleinfelder would be the optimal firm to perform the Inspection and Materials Engineering and Testing of the Vitruvian Park Public Infrastructure. A contract with Kleinfelder, Inc. for the first phase of Vitruvian Park was approved by Council on October 28, 2008.

Kleinfelder has done an exceptional job providing Construction Inspection and Materials Testing services on Phase 1 of Vitruvian Park and staff recommends continuing to utilize them through the duration of Phase 2.

**RECOMMENDATION:**

Staff recommends approval.

**COUNCIL GOALS:**

N/A

**ATTACHMENTS:**

Description:

Type:

No Attachments Available

## **Council Agenda Item: #R10**

### **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 \$69,026.00, for and regarding the management of the construction of certain public infrastructure (including streets, water and sanitary sewer lines, 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 Allocated for Phase 2 by the Master Facilities Agreement, Revised Exhibit "C1").

### **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 2 (Bella Lane) is \$862,824.60. Eight percent (8%) of this figure is \$69,026.

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:**

N/A

**ATTACHMENTS:**

Description:

[Construction Management Agreement - Vitruvian Park Phase II](#)

Type:

Cover Memo

STATE OF TEXAS

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§  
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**ASSIGNMENT AND CONSTRUCTION  
SERVICES AGREEMENT**

COUNTY OF DALLAS

This Assignment and Construction Services Agreement (the "Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2011 by and between the Town of Addison, Texas (the "City"), UDR, Inc., a Maryland corporation ("UDR"), and the Property Owners (as defined herein) (the City, UDR, and Property Owners are sometimes referred to together herein as the "parties" and individually as a "party").

Recitals:

1. UDR, together with (a) DCO Brooks Apartments LP, DCO Greenbrook Apartments LP, DCO Talisker LP, DCO Garden Oaks LP, DCO Glenwood Apartments LP, DCO Clipper Pointe LP, DCO Springhaven LP, DCO Addison At Brookhaven LP, and DCO Greenhaven LP, each being a Delaware limited partnership, and (b) DCO Savoye, LLC, and DCO Savoye 2, LLC, each of which is a Delaware limited liability company, (collectively, the "Property Owners"), are the sole owners of certain real property located in the City, which real property is as described in Exhibit "A" to the Original Master Facilities Agreement (as hereinafter defined) (the "Property").

2. The Property is in the process of redevelopment by UDR and the Property Owners (to the extent of their respective ownership of the Property), which redevelopment consists of a mixed use development with urban residential, commercial, and retail uses organized within a system of pedestrian-friendly streets and trails, integrating therein an existing creek, surrounding green space, and open space for recreation opportunities, along with water features, passive recreation amenities and landscapes intended to provide enhanced aesthetics (the "Project"). The redevelopment of the Property, as reflected in the Facilities Agreement (as hereinafter defined) is divided into phases, as reflected in Revised Exhibit "C-1," Exhibit "C-2," and Revised Exhibit "E" of the Facilities Agreement. UDR and the Property Owners are in the process of the development and construction of Phase I of the Project ("Phase I") as defined and described in the Facilities Agreement.

3. In connection with the redevelopment of the Property, on March 11, 2008 the City, UDR and the Property Owners entered into an agreement entitled "Master Facilities Agreement" (the "Original Master Facilities Agreement") which provides in part for funding by the City to pay for a portion of the cost to design and construct certain public infrastructure improvements as described and referred to therein as the "Public Infrastructure Improvements" (and so called herein). Thereafter, the said Original Master Facilities Agreement was (a) modified by that "Modification to Master Facilities Agreement" made in or about August, 2009 which, among other things, reflects the conveyance of a portion of the Property, (b) amended by that "First Amendment to Master Facilities Agreement" having an effective date of February 10, 2010 (the "First Amendment"), and (c) and modified by that Second Modification to Master Facilities Agreement made in August, 2010 which, among other things, also reflects the conveyance of a portion of the Property. The said Original Master Facilities Agreement, as so modified and amended, is referred to herein as the "Facilities Agreement."

In the Facilities Agreement, the Public Infrastructure Improvements are separated by City funding (identified in the Facilities Agreement as Funding No. 1 and Funding No. 2 (and so called herein)) and by phases and subphases (e.g., Phase 1A Infrastructure, Phase 1B Infrastructure, Phase 2 Infrastructure) as reflected in Revised Exhibit “C-1” and in Exhibit “C-2” thereof, and further separated (as to Funding No. 2) by type of improvement as reflected in Revised Exhibit D to the Facilities Agreement.

4. The Facilities Agreement recognizes the construction by UDR and the Property Owners of certain private facilities and improvements within the Property and the need to coordinate the construction of private facilities and improvements with the construction of public facilities and improvements. In order to accommodate such coordination, the Facilities Agreement provides that, following the award and execution by the City of a contract to construct Public Infrastructure Improvements, the City will assign its rights, powers, duties, and obligations under the applicable construction contract to UDR, and UDR will then act and serve as the owner and construction manager under the applicable construction contract for all purposes.

5. The Public Infrastructure Improvements identified in the Facilities Agreement include those improvements shown as Phase 2 in each of Revised Exhibit “C-1” (Funding No. 1) and Revised Exhibit “D” (Funding No. 1) to the Facilities Agreement, and are included within that area shown as Phase I in each of Revised Exhibit “C-1” and Revised Exhibit “E” (Vitruvian Development Phasing Plan) to the Facilities Agreement (each of which exhibits are a part of Attachment 2 to the First Amendment and are referred to in this Agreement, respectively, as “Revised Exhibit ‘C-1’,” “Revised Exhibit ‘D’,” and “Revised Exhibit ‘E’”). The said Phase 2 improvements are further shown in the said Revised Exhibit “C-1” as “Vitruvian Way Realignment at Intersection of Spring Valley Road” and are the subject of and described in the Construction Contract (as hereinafter defined) (for purposes of this Agreement, such improvements are referred to herein as the “Current Public Improvements”). The Current Public Improvements are to be constructed on or immediately adjacent to land owned by the respective Property Owners as reflected in Exhibit “A” to the Original Master Facilities Agreement.

6. In accordance with applicable law, the City has selected CPS Civil (the “Contractor”) to construct the Current Public Improvements and has entered into a contract with the Contractor dated \_\_\_\_\_, 2011 to perform a portion of such construction (the “Current Public Improvements Construction Contract” or “Construction Contract”) (a true and correct copy of the Construction Contract is on file in the office of the Director of Public Works of the City) (without limitation, the Construction Contract consists of the agreement between the City and the Contractor, the conditions of the contract (general, special, supplementary, and other conditions), drawings, specifications, and all modifications thereto issued after the execution of the Construction Contract (including all change orders, whether additive or deductive)). Engineering services to design the Current Public Improvements and to prepare plans and specifications for the construction of the Current Public Improvements have been provided by Icon Consulting Engineers, Inc. (“Engineer”). In accordance with the Facilities Agreement, the City by this Agreement desires to assign to UDR the City’s rights, powers, duties and obligations under the Construction Contract, and UDR desires to accept such rights, powers, duties and obligations and to serve as the owner and construction manager for all purposes under and with respect to the Construction Contract.

**NOW, THEREFORE,** for and in consideration of the above and foregoing premises, and other good and valuable consideration, the Town of Addison, Texas and UDR, Inc., and Property Owners do hereby contract and agree as follows:

**Section 1. Incorporation of Recitals.** The above and foregoing Recitals are true and correct and are incorporated herein for all purposes.

**Section 2. Funding.** As set forth in the Recitals and in the First Amendment, the Current Public Improvements are the Infrastructure Improvements identified in Revised Exhibit “C-1” as Phase 2 (Vitruvian Way Realignment at Intersection of Spring Valley Road) and identified in Revised Exhibit “D” as Phase 1 \_\_ (under “Funding #1”).

The Facilities Agreement provides for an allocation of City funds (\$1,474,783.00 as set forth in Revised Exhibit “C-1” and in Revised Exhibit “D”) to pay toward the design, construction, construction management, and inspection and testing of the Current Public Improvements. A portion of that amount has been heretofore expended to pay for the design (engineering) of the Current Public Improvements (such portion being in the amount of \$138,075) and has been allocated toward the payment of construction management (\$69,026.00) and inspection and testing services (\$42,457), leaving a certain balance in the amount of \$1,225,225 to pay toward the cost of construction and the Construction Contract. Further, in accordance with the Facilities Agreement, UDR and the Property Owners will pay to the City funds as may be needed to pay for change orders to the Construction Contract prior to the execution of a change order.

**Section 3. Assignment.** The City does hereby assign and transfer all of its rights, powers, duties and obligations under the Current Public Improvements Construction Contract to UDR. UDR shall act and serve as the owner and construction manager under the Construction Contract for all purposes, including observation, review, supervision and coordination of all construction Work.

**Section 4. Construction Management.**

A. Responsibilities; Construction Supervisor.

1. In connection with the performance of the Work and the construction of the Current Public Improvements, UDR shall perform and be responsible for all aspects of construction management services and shall provide oversight of and coordinate the construction of the Current Public Improvements. In connection with such services, UDR shall, among other things, comply with and abide by the terms, conditions, and provisions set forth in (i) Exhibit A attached hereto and incorporated herein (and references in the said Exhibit A to the “Construction Manager” shall mean and refer to UDR and the Construction Supervisor designated by UDR as described below), and in (ii) the Facilities Agreement (including the First Amendment).

Pursuant to and in accordance with the Facilities Agreement, UDR shall select and designate an individual employed by UDR to serve as the construction supervisor and manager (the “Construction Supervisor”) during construction of the Current Public Improvements, who shall have significant experience in managing construction projects of the type that is the subject of the Current Public Improvements Construction Contract.

Following the selection and designation of each of the Construction Supervisor, UDR shall promptly provide to the City the name of the person so designated and the person's contact information, and shall promptly update such contact information in the event of any change. The Construction Manager shall provide and perform all of the work and services pursuant to and as set forth in this Agreement and in the Facilities Agreement (including the First Amendment).

UDR shall perform its work and services hereunder in accordance with all laws, rules, charters, codes, regulations, standards, permits and rules of each governmental body, agency, or other authority (including, without limitation, the City) and in accordance with the care set forth herein. Without in any way limiting the foregoing or any other provision of this Agreement, in connection with its work and services under this Agreement, UDR shall be liable to the City for any and all damages, injuries, liability, or other harm of whatever nature to the extent caused by or resulting from any errors, acts or omissions of UDR or any UDR's owners, managers, directors, partners, officers, employees, agents, contractors, subcontractors, or any person or entity for whom UDR and/or the Property Owners (or any of them) is legally liable.

Notwithstanding anything herein to the contrary, UDR and the City acknowledge that the City is entering into this Agreement in reliance on UDR's professional abilities with respect to performing its work and services set forth herein. UDR agrees to use its professional skill, judgment and abilities in the performance of its work and services hereunder, and UDR shall be responsible, to the level of competency presently maintained by other construction managers in the same type of work in Dallas County, for the professional and technical soundness, accuracy, and adequacy of all of its work and services under this Agreement.

The City's representative for purposes of this Agreement shall be Tom Forrest (or such other person as the City Manager shall name (and if the City's representative is other than Tom Forrest, the City shall give prompt written notice thereof to UDR)) (the "City Representative"). In connection with the construction of the Current Public Improvements, (i) all communication from UDR (and including the Construction Supervisor) to the City shall be directed to the City Representative or the City Representative's designee (if any), and (ii) all communication from the City to UDR and the Property Owners under this Agreement shall be directed to the Construction Supervisor. UDR and the Property Owners shall be fully responsible and liable for the construction management work and services, and for the Construction Supervisor and all of their work and activities, and for all other employees, agents, representatives, contractors and subcontractors of UDR and/or the Property Owners.

The Construction Supervisor shall, and UDR shall cause the Construction Supervisor to, meet and communicate with the City, including the City Representative and the City's Director of Parks, on a regular basis. Among other things, the Construction Supervisor shall inform the City Manager of all emergencies and the occurrence of any unforeseen circumstances relating to the Construction Contract.

In the event the performance of the Construction Supervisor is reasonably determined by the City Manager to be unsatisfactory to the City Manager as evidenced by written notice to UDR from the City Manager, UDR shall, if the Construction Supervisor has not cured the unsatisfactory performance as set forth in the notice within a reasonable period of time following written receipt of such request (but in any event not to exceed 30 days, but such time period may be extended if necessary in order to comply with any applicable federal, state, or local law or regulation), remove the current Construction Supervisor and appoint a replacement in accordance



with the provisions of this subsection within a reasonable time period thereafter (but not to exceed 15 days).

2. UDR shall use its best efforts to ensure that the work as described and set forth in the Current Public Improvements Construction Contract to be performed under the Construction Contract (and including the construction of the Current Public Improvements) (the “Work”) is completed in a timely manner and in accordance with the Construction Contract documents, plans, standards, specifications, and other materials and information related thereto. UDR shall coordinate the construction as a construction manager, including confirming that the Engineer has observed and reviewed the Work of the Contractor, to guard the City against defects and deficiencies in the Work without assuming responsibility for the means and methods used by the Contractor. UDR shall promptly notify the City of any defects or deficiencies in the Work if the same are observed or detected by UDR (and including the Construction Manager) or otherwise brought to UDR’s attention.

3. In connection with its construction management services, UDR will facilitate weekly meetings with the City Representative and designated City staff members regarding the planning and construction of the Current Public Improvements, which meetings shall occur more often as may be requested by the City Representative. In connection with or related to the Work, UDR shall coordinate testing by any geotechnical engineering firm which has been selected by the City in accordance with the Facilities Agreement upon written notice thereof to UDR from the City.

B. Contractor Claims. Except as provided in paragraph C of this Section 4, UDR and the Property Owners shall resolve and completely pay or settle, by litigation or otherwise, any claims of the Contractor or any subcontractor arising out of the Construction Contract, without involving the City.

C. Payment to Contractor; City’s Wrongful Failure to Make Payments.

1. UDR shall review all invoices or pay or draw requests received from the Contractor and forward the same, by the Thursday immediately following receipt thereof, to the City for payment with such supporting documentation as the City may require. Except as provided in this Agreement or in the Facilities Agreement, all payments for Work performed under the Construction Contract shall be paid by the City and made payable to the Contractor and shall be delivered to UDR for forwarding to the Contractor; provided, however, that the City shall not be obligated to make a payment under any such invoice or pay estimate unless UDR has provided to the City a certification regarding the invoice or pay estimate and UDR has reviewed and approved the same.

UDR’s certification shall be by affidavit sworn to by the appropriate official of UDR authorized to submit the same, and shall certify that the estimate of Work completed for the relevant period is true and correct to the best of UDR’s information and belief, has been measured and verified in accordance with the Construction Contract documents, and that all Construction Contract preconditions to payment have been met. If not previously provided to the City, copies of all material testing results (if applicable and available) shall be furnished with the certification.

With respect to each invoice or pay or draw request from the Contractor or any other contractor or material supplier, the City may withhold from the payment thereof the amount of retainage which is to be withheld from each payment to the Contractor under the Construction Contract and any other amounts in accordance with or as set forth in the Construction Contract.

Subject to the terms of the Construction Contract, retainage under the Construction Contract (together with any change orders thereto) shall be made by the City to UDR for forwarding to the Contractor upon the final acceptance by the City of the Work performed by the Contractor.

2. All change orders with respect to the Construction Contract and the construction of the Current Public Improvements shall be processed and approved by the City in accordance with the City's procedure for the review and approval thereof. In the event of a change order which increases the cost of construction work for the construction of the Current Public Improvements, there shall be withheld from each payment of an invoice, pay request or draw in connection with that change order the retainage required to be withheld under the Construction Contract, and if such payment is made by UDR, UDR shall promptly transfer such retainage to the City.

3. In order to secure the obligations of UDR to make payments under the Construction Contract (if any such payment is or may be required), UDR shall provide to the City, prior to the issuance of a notice to commence construction under the Construction Contract, UDR's guarantee of UDR's payment obligations in a form acceptable to the City; provided, however, that this provision does not modify or change the obligation and responsibility of UDR and the Property Owners to pay to the City the difference between contracted costs and projected total costs prior to the execution of a construction contract (or any changer order) by the City related to Public Infrastructure Improvements (and including the Current Public Improvements) as set forth herein and in the Facilities Agreement.

4. In the event that claims from the Contractor under the Construction Contract result from the wrongful failure by the City to make construction payments in accordance with the terms of this Agreement, UDR may seek reimbursement in accordance with this paragraph C.4. of this Section. In the event UDR intends to seek reimbursement from the City for the expense incurred by UDR in resolving any claim caused directly by the City's wrongful failure to make such construction payments, UDR shall notify the City in writing of the claim and any proposed settlement or resolution. The City reserves the right upon such notice, and at the City's sole election, to make an audit of those portions of the books, records, accounts and other data of UDR and of the Contractor relating to the claim and overall performance of the Current Public Improvements Construction Contract before approving payment of such claim.

D. Construction Management Fee. In connection with and for UDR's work and services as construction manager and supervisor and coordinator of the construction of the Current Public Improvements (including the work and services of the Construction Supervisor), and subject to the terms and conditions of this Agreement, the City shall pay to UDR an amount equivalent to eight percent (8%) of that portion of the total construction costs for the Current Public Improvements as set forth in the Construction Contract to be paid from funds allocated by the City from Funding No. 1 for the construction of the Current Public Improvements (the Phase 2 infrastructure improvements). The said amount is the maximum compensation or other

payment that UDR is entitled to pursuant to this Agreement (UDR and the Property Owners not being entitled to any other amount or payment under or in connection with this Agreement).

Such amount is to be paid in installments as the Work under the Current Public Improvements Construction Contract progresses and in accordance with this subsection D. Each installment payment shall be made within thirty (30) days following the City's receipt of an invoice from UDR requesting payment of the applicable installment amount, which amount shall not exceed an amount determined by multiplying (i) the amount of any unpaid invoice or pay or draw request properly submitted by the Contractor pursuant to the Construction Contract (less the amount of any retainage under the Construction Contract) for payment for the then current month and due and owing by the City, times (ii) a fraction, the numerator of which is the total cost of the Construction Contract and the denominator of which is the amount of Funding No. 1 which has been allocated by the City to payment of the Construction Contract, times (iii) eight percent (8%) (the intent being that the payment to UDR for UDR's construction management services shall parallel payment to the Contractor for the Contractor's Work and services under the Construction Contract).

For example: Assume the total cost of the Construction Contract is \$1,200,000, the City has allocated from Funding No. 1 \$1,000,000 to pay toward such cost, and UDR will pay \$200,000 of such cost. The City's proportionate share of the \$1,200,000 construction cost is  $\$1,000,000 / \$1,200,000$ , or 83.33%. The Contractor submits a pay request of \$300,000. Based on the pay request, UDR shall be entitled to receive as a construction management fee the sum of  $(\$300,000 \times 83.33\%) \times 8\%$ , or \$19,999.20.

In accordance with the Facilities Agreement, the amounts paid to UDR pursuant to this paragraph shall be paid solely from Funding No. 1.

If during or following the completion of construction of the Current Public Improvements for which UDR received a management fee, it is determined that UDR was not entitled to the management fee, UDR shall reimburse to the City the management fee to which UDR was not entitled (e.g., to the extent funding was not available to pay the same as described herein or in the Facilities Agreement).

## **Section 5. Insurance.**

A. At all times in connection with this Agreement, UDR and the Property Owners shall purchase and maintain in a company or companies lawfully authorized to do business in the State of Texas such insurance coverages as set forth below:

1. Commercial General Liability insurance at minimum combined single limits of \$2,000,000 per-occurrence and \$5,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations (\$2,000,000 products/completed operations aggregate), and XCU (Explosion, Collapse, Underground) hazards. Coverage for products/completed operations must be maintained for at least two (2) years after the construction work has been completed. Coverage must be amended to provide for an each-project aggregate limit of insurance. An alternative would be to have separate limits for all lines of General Liability coverage for each project.

2. Employers Liability coverage at minimum limits of \$1,000,00 each occurrence each accident / \$1,000,000 by disease each occurrence / \$1,000,000 by disease aggregate.

3. Builders Risk coverage as follows:

- (a) "All Risk" Builders Risk insurance, including collapse coverage, is required on a completed value form if the contract is for the construction of a structure or building.
- (b) The Builders Risk policy must provide transit and off-premises coverage if the contract with the builder makes the Town of Addison responsible for materials. The deductible shall not exceed \$5,000.

B. UDR and the Property Owners are nonsubscribers under the Texas Workers Compensation Act. Therefore UDR and Property Owners shall maintain coverage and/or adequate collateral to fund payment of claims arising out of workplace injuries of UDR employees and Property Owners employees. UDR and the Property Owners shall provide proof of same in form and content acceptable to the City.

C. With reference to the foregoing insurance requirements, UDR and the Property Owners shall specifically endorse applicable insurance policies as follows:

- 1. The Town of Addison, Texas shall be named as an additional insured with respect to General Liability.
- 2. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions applicable to the claims of the Town of Addison.
- 3. A waiver of subrogation in favor of the Town of Addison, Texas, its officers, employees, and agents shall be contained in each policy required herein.
- 4. All insurance policies shall be endorsed to require the insurer to immediately notify the Town of Addison, Texas of any material change in the insurance coverage.
- 5. All insurance policies shall be endorsed to the effect that the Town of Addison, Texas will receive at least sixty (60) days' notice prior to cancellation or non-renewal of the insurance.
- 6. All insurance policies, which name the Town of Addison, Texas as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
- 7. Required limits may be satisfied by any combination of primary and umbrella liability insurances.
- 8. UDR and the Property Owners may maintain reasonable and customary deductibles. UDR and the Property Owners shall give notice to the City of any deductible or retention obligations in excess of \$25,000.00.

9. Insurance must be purchased from insurers that are financially acceptable to the City and licensed to do business in the State of Texas.

All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, delivered to UDR and the Property Owners and the City prior to the commencement of any Work under the Construction Contract, and shall:

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

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

**Section 6. UDR's and Property Owners' Indemnity Obligation. UDR and the Property Owners (UDR and the Property Owners being referred to together in this Section 6 as the "Developer") covenant and agree to FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS the Town of Addison, Texas and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas, individually or collectively, in both their official and private capacities (the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas each being an "Addison Person" and collectively the "Addison Persons"), from and against any and all costs, claims, liens, harm, damages, losses, judgments, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability, and suits, of any kind and nature whatsoever made upon any Addison Person, whether directly or indirectly, (the "Claims"), that arise out of, result from, or relate to: (1) any act or omission, work or services of Developer or any owner, officer, director, manager, employee, agent, representative, consultant, contractor, subcontractor, licensee, or concessionaire of Developer, or any other person or entity for whom Developer is legally responsible, and their respective owners, officers, directors, managers, employees, agents, representatives, consultants, contractors, subcontractors, licensees, and concessionaire (collectively, the "Developer Persons") as the owner and construction manager under the Construction Contract, (2) representations or warranties by Developer under this Agreement, and/or (3) any other act or omission under, in connection with, or in performance of this Agreement or of the Construction Contract by Developer or by any of the other Developer Persons. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE OF ANY ADDISON PERSON OR BY CONDUCT OF AN ADDISON PERSON THAT GIVES RISE TO STRICT LIABILITY, BUT DOES NOT INCLUDE CLAIMS FOUND TO BE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN ADDISON PERSON.**

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

**Section 7. Default.**

A. In the event of a default or breach of this Agreement or of the Facilities Agreement (“default”) by UDR and/or any of the Property Owners, the City shall have the right to terminate this Agreement by giving at least thirty (30) days written notice of such termination to UDR. A default of this Agreement shall constitute a default under the Facilities Agreement. For purposes hereof, a default means and includes any violation of or breach of any provision of this Agreement.

UDR and the Property Owners shall have a period of not more than thirty (30) days from the time of UDR’s receipt of notice of default and termination is delivered by the City within which to cure any default of this Agreement. If any such default remains uncured to the satisfaction of the City at the end of such thirty (30) day period, the City may immediately terminate this Agreement by giving written notice thereof to UDR. Notwithstanding the proceeding to the contrary, the City Manager may approve reasonable extensions to cure periods or deadlines for performance of any work by UDR and the Property Owners. In the event this Agreement is terminated by the City for any reason, UDR and the Property Owners shall not thereafter be entitled to payment of a construction management fee as described herein and in the Facilities Agreement, but shall be entitled to receive payment of the portion of such fee which is proportionate and applicable to the construction management services provided by UDR and the Property Owners prior to such termination and for which UDR and/or the Property Owners have not been paid. In the event of a default or other breach of this Agreement, the City shall have all rights and remedies available at law, in equity or otherwise in connection therewith.

In the event of termination, all finished or unfinished data, studies, reports and other items related to this Agreement and prepared by or in the possession of UDR or the Construction Supervisor shall be promptly delivered to the City, such items being the property of the City.

B. Insolvency. If at any time after the execution of this Agreement (i) any insolvency proceedings shall be instituted against UDR or any of the Property Owners pursuant to any Federal or State law now or hereafter enacted, or any receiver or trustee shall be appointed for all or any portion of UDR’s or any of the Property Owners’ business or property for which this Agreement is a material part, or any execution or attachment shall issue against UDR or any of the Property Owners or any of UDR’s or any of the Property Owners’ business or property for which this Agreement is a material part, and any of such proceedings, process or appointment be not discharged, dismissed or otherwise adjudicated within sixty (60) days from the date of such filing, appointment or issuance or within such other time as provided by applicable law or as may be ordered by a court of competent jurisdiction, or (ii) UDR or any of the Property Owners shall be adjudged insolvent, or UDR or any of the Property Owners shall make an assignment for the benefit of creditors, or UDR or any of the Property Owners shall file a petition or petitions for (or enters into) an arrangement for reorganization, liquidation, composition or any other

arrangement with UDR's or any of the Property Owners' creditors, or (iii) in the event this Agreement is assumed and assigned under any Federal or State law including applicable Bankruptcy or such other insolvency laws now or hereafter enacted, or this Agreement shall pass, by operation of law or otherwise, to anyone other than UDR or any of the Property Owners (except as herein provided), without first curing all defaults and providing adequate assurance of future performance as deemed appropriate within the sole discretion of the City, then the occurrence of any one of the above stated contingencies outlined in subsections (i), (ii), and (iii) shall be deemed to constitute and shall be construed as a breach and/or repudiation by UDR and the Property Owners of UDR's and the Property Owners' rights and obligations hereunder and shall cause this Agreement to be cancelled and terminated at the City's sole discretion effective as soon as permitted by then applicable law without thereby releasing UDR and the Property Owners; and upon such termination this Agreement shall not be treated as an asset of UDR's and the Property Owners' estate.

**Section 8. Texas Law to Apply; Venue.** The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas, without reference to its conflict of law provisions. Venue for any action or matter under this Agreement lies exclusively in Dallas County, Texas. This Agreement and all of its terms and conditions are subject to applicable federal, state, and local laws, ordinances, rules, regulations, and codes, including, without limitation, the Zoning Ordinance and the City Charter of the Town of Addison, Texas.

**Section 9. Independent Contractor.** Each of UDR and the Property Owners is and shall at all times operate as an independent contractor and not as an agent of the City in connection with or during any performance of this Agreement, and nothing herein shall be construed to create a partnership, joint venture, joint enterprise, or agency relationship between the parties hereto, or to allow the City to exercise discretion or control over the manner in which UDR and the Property Owners perform the work and services which are the subject matter of this Agreement; provided always however that the work and services to be provided by UDR and the Property Owners shall be provided in a manner consistent with all applicable laws, standards and regulations governing the same. No personnel of UDR or the Property Owners or of any contractor or UDR or the Property Owners shall be deemed under any circumstances to be an agent or employee of the City, nor do such personnel have authority to bind the City by any representation, promise, contract or agreement. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Each party hereto represents that it is acting on its own behalf and is not acting as an agent for or on behalf of any third party.

**Section 10. Entire Agreement.** This Agreement represents the entire and integrated agreement between the City, UDR and the Property Owners relative to the management of the construction of Current Public Improvements and the matters contained herein related thereto and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Assignment may be amended only by written instrument signed by both the City, UDR, and the Property Owners.

**Section 11. Severability.** The sections, paragraphs, sentences, phrases, words, and all other provisions of this Agreement are severable, and if any clause, paragraph, section, paragraph, phrase, word, or any other part or portion of this Agreement shall be found by a court of competent jurisdiction to be illegal, unlawful, unconstitutional or void for any reason, the balance of the

Agreement shall remain in full force and effect and the parties shall be deemed to have contracted as if said clause, section, paragraph or portion had not been in the Agreement initially. In lieu of any such illegal, unlawful, unenforceable, unconstitutional or void provision, part, or portion, the parties agree to seek to reasonably negotiate to add to this Agreement a provision as similar in its terms to such illegal, unlawful, unenforceable, unconstitutional or void provision, part, or portion as may be possible and be legal, valid and enforceable.

## **Section 12. Miscellaneous.**

A. In connection with this Agreement and the matter set forth herein, all of UDR's, the Property Owners', and the Construction Supervisor's books and other records related to the Construction Contract and the construction of the Current Public Improvements shall be available for inspection by the City at UDR's office in Dallas, Texas (located at 5430 LBJ Freeway, Suite 1250, Dallas, Texas 75240). The City further has the right to conduct at any time inspections of all places where Work is undertaken pursuant to the Construction Contract or otherwise in connection with this Agreement.

B. UDR and the Property Owners have no authority to and shall not assign, convey, subcontract, pledge, or otherwise transfer in any manner this Agreement, or any of the privileges, rights, responsibilities, or duties set forth herein, to any other person or entity, without the express prior written approval and consent of the City. Any assignment, conveyance, pledge, subcontract, or other transfer in violation of this provision shall be null and void *ab initio* and cause for immediate termination (no period of cure) by the City.

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

D. Except as otherwise provided for in this Agreement, all obligations and responsibilities arising prior to the expiration or termination of this Agreement allocating responsibility or liability of or between the parties shall survive the completion or termination of this Agreement, and any rights and remedies the parties may have with respect to the other arising out of the performance during the term of this Agreement shall survive the cancellation, expiration, or termination of this Agreement.

E. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by the parties shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law statute, ordinance, or otherwise. The failure by any of the parties hereto to exercise any right, power or option given to it by this Agreement, or to insist upon strict compliance with the terms of this Agreement, shall not constitute a waiver of any of the terms and/or conditions of this Agreement, including, without limitation, with respect to any such right, power or option or to such compliance or to any other breach hereof, nor a waiver by such party of its rights at any time thereafter to require strict and exact compliance with all of the terms hereof. A party to this Agreement shall be deemed to have waived a right, power or option hereunder only if said party shall expressly do so in writing. Pursuit of any rights or remedies set forth in this Agreement does not preclude pursuit of other remedies in this Agreement or provided by law, in equity, or otherwise.



F. Where the terms of this Agreement require that notice in writing be provided or given, such notice shall be in writing, addressed as provided hereinafter to the party to whom the notice or request is given, and shall be either (i) delivered personally, (ii) sent by United States certified mail, postage prepaid, return receipt requested, or (iii) placed in the custody of Federal Express Corporation or other nationally recognized carrier to be delivered overnight. Notice shall be deemed delivered and given (x) when received if delivered personally (y) three (3) days following the deposit of the notice in the United States mail, postage prepaid, and sent by certified mail, return receipt requester and properly addressed as set forth below, and (z) twenty-four (24) hours after deposit if sent by Federal Express or other nationally recognized carrier. Addresses for purpose of this Section are as follows:

To the City:

Town of Addison, Texas  
5300 Belt Line Road  
Dallas, Texas 75254-7606  
Attn: City Manager

To UDR and/or the Property Owners:

Mr. Tom Lamberth  
UDR, Inc.  
Three Lincoln Center  
5430 LBJ Freeway, Suite 1250  
Dallas, Texas 75240

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

G. This Agreement and all of its terms and conditions are subject to applicable laws, ordinances, rules, regulations, and codes, including, without limitation, the City Charter of the Town of Addison, Texas.

H. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect. UDR and the Property Owners warrant and represent to the City that there are no other parties, persons, or entities (including any other parties, persons, or entities who may have a lien against or interest in the Property) whose consent to or approval of this Agreement is or may be necessary in order to effectuate this Agreement and to allow UDR and/or Phase One Owner to carry out their duties, responsibilities, and obligations under this Agreement.

I. UDR represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the State of Maryland, that it is authorized to conduct and do business in the State of Texas, and that the same shall remain in good standing throughout the term of this Agreement. Each of the Property Owners, except for DCO Savoye LLC, represent and warrant that they are each a limited partnership duly organized, validly existing and in good standing under the laws of the State of Delaware; DCO Savoye LLC represents and warrants that it is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware; and each of the Property Owners

represent and warrant that they each are authorized to conduct and do business in the State of Texas, and that the same shall remain in good standing throughout the term of this Agreement. UDR and the Property Owners further represent and warrant that as to each of the Property Owners, except for DCO Glenwood Apartments LP, the general partner of each of the Property Owners is DCO Realty Inc., a Delaware corporation (“DCO Realty”); that with respect to DCO Glenwood Apartments LP, the general partner is DCO Glenwood Apartments GP LLC, a Delaware limited liability company, and DCO Realty is its sole member; that with respect to DCO Savoye LLC, the sole member of DCO Savoye LLC is DCO Realty; that with respect to all of the Property Owners, DCO Realty has and possesses the power and authority to control (i.e. directly possesses the power to direct the management and policies without the consent or approval of any other person or entity) each of them, and is an Affiliate (as the term “Affiliate” is defined in the Facilities Agreement) of UDR, and that UDR has ownership of and controls (i.e. directly possesses the power to direct the management and policies without the consent or approval of any other person or entity) DCO Realty and the Property Owners.

J. Notwithstanding any other provision of this Agreement nothing in this Agreement shall or may be deemed to be, or shall or may be construed to be, a waiver or relinquishment of any immunity, defense, or tort limitation to which the City, its officials, officers, employees, representatives, and agents is or may be entitled.

K. This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document. All exhibits, schedules and addenda attached to this Agreement are incorporated herein by reference and for all purposes. For purposes of this Agreement, "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

L. Subject to the provisions of subsection B. of this Section, this Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties hereto.

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

**TOWN OF ADDISON, TEXAS**

**UDR, INC.**  
**a Maryland corporation**

By: \_\_\_\_\_  
Ron Whitehead, City Manager

By: \_\_\_\_\_  
Mark M. Culwell

ATTEST:

Title: \_\_\_\_\_

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

**DCO BROOKS APARTMENTS LP,**  
a Delaware limited partnership

By: DCO Realty, Inc., its General Partner

By: \_\_\_\_\_  
Mark M. Culwell

**DCO GREENBROOK APARTMENTS LP,**  
a Delaware limited partnership

By: DCO Realty, Inc., its General Partner

By: \_\_\_\_\_  
Mark M. Culwell

**DCO TALISKER LP,**  
a Delaware limited partnership

By: DCO Realty, Inc., its General Partner

By: \_\_\_\_\_  
Mark M. Culwell

**DCO GARDEN OAKS LP,**  
a Delaware limited partnership

By: DCO Realty, Inc., its General Partner

By: \_\_\_\_\_  
Mark M. Culwell

**DCO GLENWOOD APARTMENTS LP,**  
a Delaware limited partnership

By: DCO Glenwood Apartments GP LLC,  
its General Partner  
By: DCO Realty, Inc., its Sole Member

By: \_\_\_\_\_  
Mark M. Culwell

**DCO CLIPPER POINTE LP,**  
a Delaware limited partnership

By: DCO Realty, Inc., its General Partner

By: \_\_\_\_\_  
Mark M. Culwell

**DCO SPRINGHAVEN LP,**  
a Delaware limited partnership

By: DCO Realty, Inc., its General Partner

By: \_\_\_\_\_  
Mark M. Culwell

**DCO ADDISON AT BROOKHAVEN LP,**  
a Delaware limited partnership

By: DCO Realty, Inc., its General Partner

By: \_\_\_\_\_  
Mark M. Culwell

**DCO GREENHAVEN LP,**  
a Delaware limited partnership

By: DCO Realty, Inc., its General Partner

By: \_\_\_\_\_  
Mark M. Culwell

**DCO SAVOYE LLC,** a Delaware limited liability  
company

By: DCO REALTY, INC., a Delaware corporation,  
its Sole Member

By: \_\_\_\_\_  
W. Mark Wallis, President

**DCO SAVOYE 2 LLC**, a Delaware limited liability company

By: DCO REALTY, INC., a Delaware corporation,  
its Sole Member

By: \_\_\_\_\_  
W. Mark Wallis, President

**EXHIBIT A**  
**TO ASSIGNMENT AND CONSTRUCTION SERVICES AGREEMENT**

**ARTICLE 1**  
**CONSTRUCTION MANAGER'S**  
**RESPONSIBILITIES**

Unless otherwise set forth in this Exhibit A, capitalized terms used herein have the same meaning as set forth in the Assignment and Construction Services Agreement (the "Agreement") to which this Exhibit A is attached and into which it is incorporated.

For purposes of this Exhibit A, the term "Project" means the construction and installation of the Current Public Improvements as described herein and in the Current Public Improvements Construction Contract.

In connection with this Agreement and in addition to all other matters set forth in this Agreement, at all times material to the construction of the Current Public Improvements and while such construction is ongoing, the Construction Manager:

(a) shall provide the use of Construction Manager's existing construction trailer (the "trailer") for reasonable use by a representative of the City's inspector and testing entity (the "City Inspector") at such times as Construction Manager's personnel are present (as of the date this Agreement is made and entered into as first set forth above, the City Inspector is Kleinfelder Central, Inc.; however, the City has and retains the right, in its sole discretion, to change the City Inspector or to discontinue the services (or any portion of the services) of the City Inspector at any time). In connection therewith, the City Inspector shall also have reasonable access, when Construction Manager's personnel are present at the trailer, to Construction Manager's internet access connected to the trailer and Construction Manager's existing computer currently located in the trailer (and the Town of Addison acknowledges that the existing trailer, computer and related internet connection currently on site meet with the City's approval and satisfy the aforesaid obligations); and

(b) agrees to permit the City Inspector to store in the trailer certain testing equipment (which has been represented to Construction Manager to be the size of 3 large brief cases, and being identified to as a nuclear density gauge (tests how much compaction is done) (the "test equipment"). The Town of Addison hereby indemnifies and holds harmless: Construction Manager (including UDR), Property Owners, and all of their respective employees and representatives (collectively "indemnified parties") from any claim, cause of action, or demand made by City Inspector or any third party against any one or more of the indemnified parties related to any alleged loss or damages to the test equipment.

**1.1 CONSTRUCTION MANAGER'S SERVICES**

1.1.1 The Construction Manager's services consist of those services performed by the Construction Supervisor, Construction Manager's employees and Construction Manager's consultants, representatives, and subcontractors pursuant to this Agreement. For purposes of this Exhibit A, the term "Construction Manager" means UDR and the Construction Supervisor described in the Agreement.

1.1.2 The Construction Manager's services shall be provided in conjunction with the services of a design professional or design professionals (including the Engineer (as defined in the Agreement) (the "Design Professional")).

1.1.3 The Construction Manager shall provide sufficient organization, personnel and management to carry out the requirements of this Agreement in an expeditious and economical manner consistent with the interests of the Town of Addison, Texas (the "City"), and including a full-time staff to coordinate, provide overall direction of the Work and monitor progress of the Work.

The Construction Manager covenants to furnish the Construction Manager's best skill and judgment and to cooperate with the Design Professional in furthering the interests of the City. The Construction Manager agrees to furnish efficient business administration and superintendence and to use the Construction Manager's best efforts at all times in the most expeditious and economical manner consistent with the interests of the City.

1.1.4 The Construction Manager shall expeditiously review design documents during their development or revision and advise on proposed site use and improvements, selection of materials, building systems and equipment, and methods of Project delivery. The Construction Manager shall keep the City and the design team informed of cost implications of their design concepts, provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction, and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, and possible economies.

1.1.5 The Construction Manager shall prepare and periodically update a Project schedule for the City's review and acceptance. In the Project schedule, the Construction Manager shall coordinate and integrate the Construction Manager's services and the City Inspector's services and any City responsibilities with anticipated construction schedules, highlighting critical and long-lead-time items.

1.1.6 The Construction Manager shall consult with the City and the Design Professional regarding the Construction Contract and related documents and make recommendations whenever design details adversely affect constructibility, cost or schedules.

1.1.7 Construction Manager shall, or shall cause Contractors to, provide and maintain suitable temporary structures as required by law or reasonable safety precautions to protect the public and avoid obstruction or interference with vehicular or pedestrian traffic in public streets, alleyways or private rights-of-way. All construction field offices or other temporary structures shall be built of fire-proof materials. Construction Manager shall, or shall cause Contractors to, leave proper access to hydrants and other similar places, and shall provide sufficient lighting during

working hours and from twilight of each day until full daylight of each following day. When Work is suspended, Construction Manager shall, or shall cause Contractors to, leave roadways and sidewalks in proper condition and restore all such to good condition on completion of the Work. Construction Manager shall, or shall cause Contractors to, maintain and keep in good repair, shift and alter as conditions may require, all guard rails, passageways and temporary structures and remove same when the Work is completed or when the need for their use has ceased.

1.1.8 The Construction Manager shall provide recommendations and information regarding the allocation of responsibilities for safety programs among the Contractors.

1.1.9 The Construction Manager shall expedite and coordinate the ordering and delivery of materials requiring long lead time.

1.1.10 The Construction Manager shall monitor compliance with the Storm Water Pollution Prevention Plan and any or all laws, regulations, and permits issued by Federal, State and Local authorities.

1.1.11 The Construction Manager shall assist the City in selecting, retaining and coordinating the professional services of surveyors, special consultants and testing laboratories required for the Project.

1.1.12 Regarding payment to the Construction Manager under this Agreement, notwithstanding any other provision of this Agreement, the City shall not be obligated to make payment to the Construction Manager hereunder if:

1. The Construction Manager is in default of any of its obligations under this Agreement (and payment may be withheld to the extent of any such default);
2. Any part of such payment is attributable to any services of the Construction Manager which are not performed in accordance with this Agreement;
3. The Construction Manager has failed to make payment promptly to consultants or other third parties used by the Construction Manager in connection with the Construction Manager's services hereunder for which the City has made payment to the Construction Manager; or
4. If the City, in its good faith judgment and after consultation with the Construction Manager, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the services hereunder, no additional payments will be due the Construction Manager hereunder unless and until the Construction Manager performs a sufficient portion of the services so that such portion of the compensation remaining unpaid is determined by the City to be sufficient to complete the services.

## **ARTICLE 2**

### **SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES**

## **2.1 PRE-CONSTRUCTION PHASE**

2.1.1 The Construction Manager shall obtain insurance certificates, bonds and any other relevant documents from the Contractor, and obtain building permits and special permits for permanent improvements, except for permits required to be obtained directly by the Contractor and any other contractors. The Construction Manager shall verify that the City has paid applicable fees and assessments. The Construction Manager shall assist the City in connection with the City's responsibility for filing documents required for the approvals of governmental authorities having jurisdiction over the construction of the Current Public Improvements.

## **2.2 CONSTRUCTION PHASE - ADMINISTRATION OF THE CONSTRUCTION CONTRACT**

2.2.1 The Construction Phase will commence with the award of the Construction Contract and will end 30 days after final payment to the Contractor is due.

2.2.2 The Construction Manager shall provide administration of the Construction Contract in cooperation with the Design Professional and the City Inspector and as set forth herein and in accordance with the Current Public Improvements Construction Contract.

2.2.3 The Construction Manager shall provide administrative, management and related services to coordinate scheduled activities and responsibilities of the Contractor and with those of the Construction Manager, the City, the City Inspector and the Design Professional to endeavor to manage the Project in accordance with the latest approved estimate of construction costs, any Project schedule (approved by the City), and the Construction Contract and related documents.

2.2.4 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress and scheduling. The Construction Manager shall prepare and promptly distribute minutes to the City and Contractor. The Construction Manager shall conduct a pre-construction conference for the entire construction team to establish job site practices and guidelines, including, but not limited to, establishing job site work rules; safety and security procedures; developing a detailed phasing and relocation strategy; establishing traffic flow patterns, including planning the means of egress, traffic control and work hours; planning storage and staging areas, including equipment placement, job office location, and utility availability.

2.2.5 Utilizing the construction schedule(s) provided by the Contractor, the Construction Manager shall update the Project construction schedule incorporating the activities of the Contractor on the Project, including activity sequences and durations, allocation of labor and materials, processing of shop drawings, product data and samples, and delivery of products requiring long lead time and procurement. The Project construction schedule shall include the City's occupancy requirements showing portions of the Project having occupancy priority. The Construction Manager shall update and reissue the Project construction schedule as required to show current conditions. If an update indicates that the previously approved Project construction schedule may not be met, the Construction Manager shall recommend corrective action to the City.



2.2.6 Consistent with the various bidding documents, and utilizing information from the Contractor, the Construction Manager shall coordinate the sequence of construction and assignment of space in areas where the Contractor is performing Work. The Construction Manager shall ensure proper provisions for safety, temporary protection, pedestrian flow and ongoing building use. The Construction Manager shall oversee scheduling and expediting, quality assurance, daily work schedule management, communications among trade contractors and consultants, document control and contract compliance, and shall perform at least daily Project, job and Work inspection and observation (and more often as the City may request).

2.2.7 The Construction Manager shall use its best efforts to obtain prompt and satisfactory performance from the Contractor and subcontractors. The Construction Manager shall require each Contractor to perform and complete its respective portion of the Work in accordance with the Contract Documents pertaining to such Contractor. The Construction Manager shall recommend courses of action to the City when requirements of the Construction Contract are not being fulfilled. The Construction Manager shall arrange for all work, labor, services, materials, supplies, and equipment necessary for the execution and completion of the Work.

2.2.8 The Construction Manager shall provide regular monitoring of the maximum amount of costs set forth in the Construction Contract, showing actual costs for activities in progress and estimates for uncompleted tasks. The Construction Manager shall show actual costs for activities in progress and estimates for uncompleted tasks by way of comparison with such approved estimate. The Construction Manager shall identify variances between actual and budgeted costs (that is, costs that comprise the then existing maximum amount of costs set forth in the Construction Contract), and advise the City whenever projected costs are likely to exceed such budgeted costs. At least once each month, the Construction Manager shall prepare and distribute Project cost reports during the construction of the Project. The reports shall specify actual Project and construction costs compared to the Project and construction budget.

2.2.9 The Construction Manager shall manage the overall Project budget, control changes, develop cash flow reports and forecasts for the Project and advise the City as to variances between actual and budgeted costs (that is, costs that comprise the then existing maximum amount of costs set forth in the Construction Contract).

2.2.10 The Construction Manager shall maintain accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records.

2.2.11 The Construction Manager shall develop and implement procedures for the review and processing of applications by Contractor for progress and final payments in accordance with the City's payment application procedures.

2.2.11.1 Based on the Construction Manager's observations and evaluations of each Contractor's application for payment, the Construction Manager shall review and approve each such application and determine whether the amount requested reflects the progress of the Contractor's Work. The Construction Manager shall make appropriate adjustment to each payment application and shall prepare and forward to the City a progress payment report. The report shall state the total contract price, payments to date, current payment requested, retainage and actual

amounts owned for the current period. Included in this report shall be a Certificate of Payment that shall be signed by the Construction Manager and delivered to the City for the City's approval and payment.

2.2.11.2 The Construction Manager shall prepare a Project application for payment based on the Contractor' certificates for payment.

2.2.11.3 The Construction Manager's approval of payment shall constitute a representation to the City, based on the Construction Manager's determinations, inspections and observations at the Project site and on the data comprising the Contractor' applications for payment, that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Construction Contract and related documents. The forgoing representations are subject to an evaluation of the Work for conformance with the Construction Contract and related documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Construction Contract and related documents correctable prior to completion and to specific qualifications expressed by the Construction Manager. The issuance of a certificate for payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified.

2.2.12 The Construction Manager shall review the safety programs developed by the Contractor (and any subcontractors) for purposes of coordinating the safety programs with those of any other contractors. The Construction Manager's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractor, subcontractors, agents or employees of the Contractor or subcontractors, or any other persons performing portions of the Work and not directly employed by or on behalf of, or under contract by or on behalf of, the Construction Manager.

The Construction Manager shall, or shall cause Contractors to, take all precautionary measures as required by the City and all other governmental authorities to prevent and correct hazardous conditions, and shall conduct all operations with due regard for the avoidance of hazardous conditions.

The Construction Manager shall plan all Work to minimize personal injury, property damage and loss of productive time, and shall maintain a system of prompt detection and correction of unsafe practices and conditions. The Construction Manager shall furnish and maintain all necessary first aid equipment in a special location on the Project site. The Construction Manager shall investigate all accidents promptly to determine cause and to take necessary corrective action, and shall file required reports in connection therewith.

The Construction Manager shall, or shall cause Contractors to, adequately protect existing facilities and adjacent property. Any portion of the Work and any existing improvements or appurtenances liable to damage shall be properly protected.

2.2.13 The Construction Manager shall determine that the Work of the Contractor is being performed in accordance with the requirements of the Construction Contract, endeavoring to guard the City against defects and deficiencies in the Work. As appropriate, the Construction

Manager shall have authority, upon written authorization from the City, to require additional inspection or testing of the Work in accordance with the provisions of the Construction Contract, whether or not such Work is fabricated, installed or completed. The Construction Manager, in consultation with the Design Professional, the City Inspector, and the City, may reject Work which does not conform to the requirements of the Contract. The Construction Manager agrees to cause to be performed any work and furnish and install any materials and equipment which Construction Manager deems reasonably necessary during an emergency endangering life or property; the Construction Manager shall notify the City of the emergency as soon as practicable but shall not wait for instruction before proceeding unless the cost to be incurred by reason thereof shall exceed \$5,000.00.

The Construction Manager warrants to the City that materials and equipment furnished by Construction Manager and Contractor(s) will be of first class quality and new unless otherwise required or permitted by the Construction Contract and related documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Construction Contract and related documents. Work not conforming to these requirements shall be considered defective. The Construction Manager's warranty excludes remedy for damage or defect caused by normal wear and tear under normal usage. If required by the City, the Construction Manager shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2.2.14 The Construction Manager shall schedule and coordinate the sequence of construction in accordance with the Construction Contract and the latest approved Project construction schedule

2.2.15 With respect to each Contractor's own Work, the Construction Manager shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work of each of the Contractor, since these are solely the Contractor's responsibility under the Contract for Construction. The Construction Manager shall determine that the Contractor carries out its work in accordance with the terms and conditions of the Construction Contract.

2.2.16 The Construction Manager shall transmit to the Design Professional requests for interpretations of the meaning and intent of the Drawings and Specifications, and assist in the resolution of questions that may arise.

2.2.17 The Construction Manager shall review requests for changes, assist in negotiating Contractor' proposals, submit recommendations to the Design Professional and the City, and, if they are accepted, prepare Change Orders and Construction Change Directives which incorporate the Design Professional's or other modifications to the Construction Contract and related documents, and submit the same to the City for review and approval. At least once each month during the construction of the Project, the Construction Manager shall prepare and distribute to the City and Design Professional Change Order Reports.

The City, from time to time, has and reserves the right to, among other things, order (in writing) changes in the Work, including additions, deletions, and modifications in the Work; Work which must be performed in respect of unforeseen conditions; changes in the intensity and

pace of the Work (including suspensions of the Work or any portion thereof); and uncovering and covering of a portion of the Work, if such portion, upon uncovering, is found to be acceptable.

2.2.18 The Construction Manager shall assist the Design Professional in the review, evaluation and documentation of any claims.

2.2.19 The Construction Manager shall receive certificates of insurance from the Contractor and forward them to the City, and shall assist the City in evaluating the same.

2.2.20 In collaboration with the Design Professional, the Construction Manager shall establish and implement procedures for expediting the processing and approval of shop drawings, product data, samples, proposed substitutions, design modification, and other submittals. The Construction Manager shall review all shop drawings, product data, samples, proposed substitutions, design modifications, and other submittals from the Contractor for general conformance with the Contract Documents and make any recommendations regarding the same. If any such submittal is deemed to be in such general conformance, the Construction Manager shall promptly forward it to the Design Professional and the City; if any such submission is deemed to not be in such general conformance, it shall be returned to the applicable Contractor for correction and resubmittal to Construction Manager. The Construction Manager shall coordinate submittals with information contained in related documents and transmit to the Design Professional those which have been approved by the Construction Manager. The Construction Manager's actions shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the City or Contractor.

2.2.21 The Construction Manager shall record the progress of the Project on a daily basis. The Construction Manager shall submit written progress reports to the City including information on each Contractor and each Contractor's Work, as well as the entire Project, showing percentages of completion. The submittal of this report shall coincide with the submittal of the Construction Manager's invoice for professional services. The Construction Manager shall keep, and submit to the City, a daily log containing a record of weather, each Contractor's Work on the site, number of workers, identification of equipment, Work accomplished, problems encountered, other similar relevant information pertaining to the construction of the Current Public Improvements, and other information as the City may require.

2.2.22 The Construction Manager shall maintain at the Project site for the City one record copy of the Construction Contract and related documents, and all other contracts, drawings, specifications, addenda, change orders and other modifications, in good order and marked currently to record changes and selections made during construction which are related to the Project and/or the Construction Contract, and in addition, approved shop drawings, product data, samples and similar required submittals. The Construction Manager shall maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations certified by a qualified surveyor or professional engineer. The Construction Manager shall make all such records available to the City and to the Design Professional at all times, and upon completion of the Project (or at such other times as may be requested by the City) shall deliver them to the City.

2.2.23 The Construction Manager shall arrange for the delivery, storage, protection and security of materials, systems and equipment that are a part of the Project until such items are incorporated into the Project. In addition, the protection of and security for such materials, systems and equipment after such delivery to the Project site and until such items are incorporated into the Project is the Construction Manager's responsibility.

2.2.24 With the City's, the City Inspector's, and the Design Professional's personnel, the Construction Manager shall observe the Contractors' checkout of utilities, operational systems and equipment for readiness and assist in their initial start-up and testing. The Construction Manager shall arrange, with the City's approval and consent, for the appropriate contractors to assist in training the City's personnel, as needed, to operate and maintain all systems and equipment, and shall monitor, as necessary, this training.

With the Design Professional, the City Inspector's, and the City's personnel, the Construction Manager shall observe the Contractor's final testing and start-up of utilities, operational systems and equipment.

2.2.25 When the Construction Manager considers the Contractor's Work and services or a designated portion thereof substantially complete, the Construction Manager shall, jointly with the Contractor, prepare for the City and the Design Professional a list of incomplete or unsatisfactory items and a schedule for their completion. The Construction Manager shall assist the City, the City Inspector, and the Design Professional in determining whether the Work or designated portion thereof is substantially complete.

2.2.26 The Construction Manager shall coordinate and monitor the correction and completion of the Work by the Contractor. Following issuance of a certificate of substantial completion of the Work or a designated portion thereof, the Construction Manager shall evaluate the completion of the Work of the Contractor and make recommendations to the City and the Design Professional when Work is ready for final inspection. After substantial completion of the Work has been achieved, the Construction Manager shall coordinate the correction and completion of the Work remaining to be completed. The Construction Manager shall evaluate the completion of the Work of the Contractors, and assist the Design Professional, the City Inspector, and the City in conducting final review and observation.

2.2.27 The Construction Manager shall secure from the Contractor(s) and transmit to the Design Professional, or to such other appropriate person as City may direct, all required guarantees, lien waivers, releases, bonds, affidavits, warranties and similar submittals required by the Construction Contract for delivery to the City and deliver all keys, manuals, record drawings and maintenance stocks to the City. The Construction Manager shall forward to the Design Professional a final Project application for payment upon compliance with the requirements of the Construction Contract and related documents.

2.2.28 Construction Manager agrees that it will not disclose to third parties, without the consent of the City, any confidential or proprietary information obtained from or through the City or otherwise.

2.2.29 The Construction Manager agrees to exercise such controls as may be necessary for proper financial management under this Agreement; the accounting and control systems shall be satisfactory to the City. The Construction Manager agrees to keep full and detailed Project books and records showing the charges billed to the City for performance of the Work. Such Project books and records shall be open for inspection by the City and its authorized representatives upon reasonable notice to the Construction Manager and at reasonable hours at the Construction Manager's office, and shall be retained by Construction Manager for a period of three years after the Work has been completed.

### **ARTICLE 3 DISPUTE RESOLUTION**

3.1 Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof may, by agreement of the parties, be submitted to nonbinding mediation, as a first step in seeking a resolution of the same. If the parties agree to submit a claim, dispute or other matter in question to nonbinding mediation, the same shall be mediated by a mutually acceptable third-party to be chosen by the disputing parties within thirty (30) days after written notice by one of them requesting mediation. The disputing parties shall share the costs of the mediation equally. By mutual agreement the parties may postpone mediation until each has completed some specified but limited discovery about the dispute. By mutual agreement, the parties may use a nonbinding form of dispute resolution other than mediation. Any nonbinding dispute resolution process conducted under this Article shall be confidential within the meaning of Sections 154.053 and 154.073 of the Texas Civil Practice and Remedies Code and any successor statute thereto. If neither a negotiated settlement or mediated resolution is obtained within the time periods provided by this Article, the parties may pursue any available remedy or right, whether at law, in equity, or otherwise.

3.2 Any request for mediation or another form of nonbinding dispute resolution shall be filed in writing with the other party within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation or other form of nonbinding dispute resolution be made after the date when institution of legal, equitable or other proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of limitations.

3.3 No mediation or other form of nonbinding dispute resolution process arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement signed by the City, UDR, and any other person or entity sought to be joined. Consent to mediation or other form of nonbinding dispute resolution involving an additional person or entity shall not constitute consent to mediation or other form of nonbinding dispute resolution of any claim dispute or other matter in question not described in the written consent or with a person or entity not named or described therein.

3.4 Notwithstanding the foregoing provisions of this Article 3, the parties may at any time pursue any available legal, equitable, or other remedy or right and/or file a lawsuit or other action or proceeding regarding or in connection with this Agreement.

**ARTICLE 4**  
**MISCELLANEOUS PROVISIONS**

4.1 As a condition of this Agreement, Construction Manager covenants that Construction Manager will take all necessary actions to insure that, in connection with any work under this contract, Construction Manager, its employees, consultants and agents will not discriminate in the treatment or employment of any person or group of persons on the ground of race, color, religion, national origin, sex or disability in any manner prohibited by applicable law.

4.2 All reports, documents and materials prepared by Construction Manager under this Agreement shall be the sole property of the City. Construction Manager may retain a copy of such reports, documents, and materials.

## Council Agenda Item: #ES1

**AGENDA CAPTION:**

Closed (executive) session of the City Council pursuant to Section 551.071, Texas Government Code, to conduct a private consultation with its attorney(s) to seek the advice of its attorney(s) about pending litigation, to wit: *In re Great Escape Aviation, Inc.*, Case No. 10-35871-hdh-11, U.S. Bankruptcy Court, Northern District of Texas.

**FINANCIAL IMPACT:**

n/a

**BACKGROUND:**

n/a

**RECOMMENDATION:**

n/a

**COUNCIL GOALS:**

N/A

**ATTACHMENTS:**

Description:

Type:

No Attachments Available



## Council Agenda Item: #R11

**AGENDA CAPTION:**

Consideration of any action regarding pending litigation, to wit: *In re Great Escape Aviation, Inc.*, Case No. 10-35871-hdh-11, U.S. Bankruptcy Court, Northern District of Texas.

**FINANCIAL IMPACT:**

n/a

**BACKGROUND:**

n/a

**RECOMMENDATION:**

n/a

**COUNCIL GOALS:**

N/A

**ATTACHMENTS:**

Description:

Type:

No Attachments Available