



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

AGENDA

REGULAR MEETING OF THE CITY COUNCIL

AND / OR

WORK SESSION OF THE CITY COUNCIL

6:00 PM

APRIL 24, 2012

TOWN HALL

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

WORK SESSION

Item
#WS1 - Presentation and discussion of issues related to Addison
by Texas House Representative Stefani Carter.

Item
#WS2 - Discussion regarding the Town of Addison Municipal Court
and processes and procedures involving warrants.

REGULAR MEETING

Pledge of Allegiance

Item #R1- Announcements and Acknowledgements regarding Town

and Council Events and Activities

Introduction of Employees

Discussion of Events/Meetings

Item #R2- Consent Agenda.

#2a- Approval of Minutes for the April 10, 2012 Regular Council Meeting.

Item #R3 Discussion regarding the George H.W. Bush Elementary school graphics program and fundraising efforts.

Item #R4 Discussion and consideration of approval of the purchase of a booking, management and room diagramming software package for use in the Conference and Theatre Centre and Visit Addison from NFS Hospitality Not to exceed \$30,000. Subject to final review and approval of the City Manager and City Attorney.

Attachment(s):

1. Software Contract

Recommendation:

Staff recommends approval.

Item #R5 Consideration and approval authorizing the City Manager to execute a change order with Landmark Structures to paint and reconfigure the lightning protection masts in the amount not to exceed \$64,000 and to provide for a five week extension period.

Attachment(s):

1. Elevated Storage Tank redesign

Recommendation:

Staff recommends approval.

Item #R6 Discussion and consideration of approval of personnel restructuring in the City Manager's Office.
-

Recommendation:

Staff recommends approval.

Item #R7 Presentation and discussion regarding a proposed sale and assignment of two ground lease properties at Addison Airport, one of which is located at 4570 Westgrove Drive (known as Westgrove Air Plaza) and the other which is an unimproved tract located adjacent to Westgrove Air Plaza at the southwest corner of the intersection of Addison Road and Westgrove Road.
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Item #ES1 - Closed (Executive) session of the Addison City Council pursuant to Section 551.087, Texas Government Code, to discuss or deliberate regarding commercial or financial information that the City Council has received from a business prospect or business prospects that the City Council seeks to have locate, stay, or expand in or near the territory of the Town of Addison and with which the City Council is conducting economic development negotiations, and/or to deliberate the offer of a financial or other incentive to such business prospect or business prospects.

Item #R8 Consideration of any action regarding commercial or financial information that the City Council has received from a business prospect or business prospects that the City Council seeks to have locate, stay, or expand in or
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near the territory of the Town of Addison and with which the City Council is conducting economic development negotiations, and/or any action regarding the offer of a financial or other incentive to such business prospect or business prospects.

Adjourn Meeting

Posted:

Matt McCombs, 4/20/2012, 5:00 PM

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:

Presentation and discussion of issues related to Addison by Texas House Representative Stefani Carter.

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 Town of Addison Municipal Court and processes and procedures involving warrants.

FINANCIAL IMPACT:

n/a

BACKGROUND:

n/a

RECOMMENDATION:

n/a

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

Type:

No Attachments Available

Council Agenda Item: #R 2a

AGENDA CAPTION:

Approval of Minutes for the April 10, 2012 Regular Council Meeting.

FINANCIAL IMPACT:

N/A

BACKGROUND:

N/A

RECOMMENDATION:

N/A

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

[April 10 Minutes](#)

Type:

Backup Material

OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL REGULAR MEETING

April 10, 2012

7:30 PM - Town Hall

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

Chris Terry, 4/6/12, 5:00 pm

Council Members Present:

Arfsten, Clemens, DeFrancisco, Lay, Meier, Mellow, Resnik

Absent:

None

REGULAR MEETING

Item #R1 - Announcements and Acknowledgements regarding Town and Council Events and Activities

The following employees were introduced: Chad Hancock, Information Technology; John David Hernandez, Fire Department; Paul Jackson, Parks Department.

There was no action taken.

Item #R2 - Consent Agenda

#2a - Approval of Minutes for the March 27, 2012 Regular Council Meeting.

Item approved subject to the correction of voting information on item R8 of the March 27 agenda.

A motion to Approve w/ Conditions was made by Council Member Blake Clemens.

The motion was seconded by Council Member Neil Resnik.

The motion result was: Passed

Voting Aye: Arfsten, Clemens, DeFrancisco, Lay, Meier, Mellow,
Resnik

Voting Nay: None

#2b - Discussion and consideration of approval of a 9-1-1 Emergency Service Agreement between the Town and Big River Telephone Company, LLC regarding billing for 9-1-1 emergency services.

A motion to Approve w/ Conditions was made by Council Member Blake Clemens.

The motion was seconded by Council Member Neil Resnik.

The motion result was: Passed

Voting Aye: Arfsten, Clemens, DeFrancisco, Lay, Meier, Mellow,
Resnik

Voting Nay: None

#2c - Discussion and consideration of a Resolution charging the Addison Planning and Zoning Commission with the task of examining the Town's current Comprehensive Plan, researching options and possibilities for the use of land within the Town's boundaries, and making recommendations to the City Council on revisions to the Town of Addison Comprehensive Plan.

A motion to Approve w/ Conditions was made by Council Member Blake Clemens.

The motion was seconded by Council Member Neil Resnik.

The motion result was: Passed

Voting Aye: Arfsten, Clemens, DeFrancisco, Lay, Meier, Mellow,
Resnik

Voting Nay: None

Item #R3 - Presentation of a proclamation for the Dallas Holocaust Museum.

Mayor Todd Meier presented the proclamation to Max Glauben. Neil Resnik and Max Glauben also spoke regarding this item.

There was no action taken.

Item #R4 - Presentation of a resolution recognizing Joel Jenkinson as the Texas Department of Transportation Aviation Division, General Aviation Reliever Airport Manager of the Year Award recipient.

Mayor Todd Meier presented the proclamation to Joel Jenkinson.

There was no action taken.

Item #R5 - Recognition of Sergeant Shawn Allen and Investigator Eric Aguilar for creation of New Police Badges.

Ron Davis presented and spoke regarding this item.

There was no action taken.

Item #R6 - Discussion and consideration of appointment a member to the Board of Zoning Adjustment.

Bruce Arfsten nominated Jeff White to the Board of Zoning Adjustment.

A motion to Approve was made by Council Member Bruce Arfsten.

The motion was seconded by Mayor Todd Meier.

The motion result was: Passed

Voting Aye: Arfsten, Clemens, DeFrancisco, Lay, Meier, Mellow, Resnik

Voting Nay: None

Item #R7 - PUBLIC HEARING Case 1651-SUP/Sweet Frog Premium Frozen Yogurt. Public hearing, discussion and consideration of approval of an ordinance approving a change in zoning on property located at 3750 Belt Line Road, Suite 188C, by approving a Special

Use Permit for a restaurant (yogurt shop) on application from Sweet Frog, represented by Mr. Jay Woo and Mr. Mike Pak. COMMISSION FINDINGS: The Addison Planning and Zoning Commission, meeting in regular session on March 22, 2012, voted to recommend approval a Special Use Permit for a restaurant, subject to the following conditions: -1,209 square feet currently contained in the Schlotzsky's restaurant space must be abandoned by Schlotzsky's and vacated prior to the issuance of a building permit for the Sweet Frog space.- Four dead Live Oak trees and one dead Redbud tree on the east end of the site shall be replaced prior to the issuance of a Certificate of Occupancy for the Sweet Frog space. Voting Aye: Angel, Doherty, Groce, Hewitt, Oliver, Stockard, Wood Voting Nay: none Absent: none

Carmen Moran presented and spoke regarding this item. Bernard Shaw, Weitzman Group, also spoke regarding this item.

A motion to Approve was made by Council Member Neil Resnik. The motion was seconded by Council Member Chris DeFrancisco. The motion result was: Passed
Voting Aye: Arfsten, Clemens, DeFrancisco, Lay, Meier, Mellow, Resnik
Voting Nay: None

Item #R8 - Presentation and discussion of the Town's economic development department's one-year milestone report of achievements and status report of incentives awarded to corporate projects.

Orlando Campos presented and spoke regarding this item.

There was no action taken.

Item #R9 - Presentation and discussion of a bi-annual report of projects initiated by the Metrocrest Chamber of Commerce as part of the Service Agreement between the Town of Addison and the Metrocrest Chamber.

Tracy Eubanks, Metrocrest Chamber of Commerce, spoke regarding this item.

There was no action taken.

Item #R10 - Presentation and discussion regarding the Town of Addison library card program.

Ron Whitehead and Matt McCombs presented and spoke regarding this item.

There was no action taken.

Item #ES1 - Closed (executive) session of the Addison City Council, pursuant to Section 551.071 of the Texas Government Code, to conduct a private consultation with its attorney(s) to seek the advice of its attorney(s) on a matter in which the duty of the attorney(s) to the City Council under the Texas Disciplinary Rules of Professional Conduct clearly conflicts with Chapter 551, Texas Government Code, regarding an economic development agreement for the Village on the Parkway.

Item was pulled from the agenda.

There was no action taken.

Item #R11 - Consideration of any action regarding commercial or financial information that the City Council has received from a business prospect or business prospects that the City Council seeks to have locate, stay, or expand in or near the territory of the Town of Addison and with which the City Council is conducting economic development negotiations, and/or any action regarding the offer of a financial or other incentive to such business prospect or business prospects.

Item was pulled from the agenda.

There was no action taken.

Mayor-Todd Meier

Attest:

City Secretary-Chris Terry

Council Agenda Item: #R3

AGENDA CAPTION:

Discussion regarding the George H.W. Bush Elementary school graphics program and fundraising efforts.

FINANCIAL IMPACT:

n/a

BACKGROUND:

n/a

RECOMMENDATION:

n/a

COUNCIL GOALS:

Create Raving Fans of the "Addison Way", Maintain and Enhance our Unique Culture, Work to instill a "Sense of Community" in Addison's residents

ATTACHMENTS:

Description:

Type:

No Attachments Available

Council Agenda Item: #R4

AGENDA CAPTION:

Discussion and consideration of approval of the purchase of a booking, management and room diagramming software package for use in the Conference and Theatre Centre and Visit Addison from NFS Hospitality Not to exceed \$30,000. Subject to final review and approval of the City Manager and City Attorney.

FINANCIAL IMPACT:

Funds were budgeted in the FY 2012 Conference Centre budget and are available for this purchase.

BACKGROUND:

The Conference and Theatre Centre has used the same booking software, ESP2000, since 1998. That software has not been modified in a significant way since its original purchase. Since the software is not customizable staff spends a considerable amount of time extracting data by hand for reporting and managing the venues. In January 2012 we released an RFP for replacement software. Four responses were received and we narrowed the pool to two providers. A committee of ACTC staff, IT staff and Finance staff reviewed the proposals and participated in on-line demonstrations and questions and answers. The committee agreed that the NFS Hospitality software best met our needs and was within our budgeted amount.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

Continue to Attract Visitors

ATTACHMENTS:

Description:

[Software Contract](#)

Type:

Backup Material



SOFTWARE CONTRACT

Between

NFS Hospitality Corporation

And

ACTC and Visit Addison

NFS Hospitality Corporation

USA
6390 E. Thomas Road
Suite 310
Scottsdale, AZ 85231
USA

United Kindom
NFS Hospitality
15 Hertforde Court
John Tate Building
Foxholes Business Park
Hertford SG13 7NW

South Africa
NFS (S.A.) Pty Ltd
Suite 201, Old Sanlam
Building, Kempton Park 1619
South Africa

Ireland
NFS Ireland
6-9 Trinity Street
Dublin 2
Rep. of Ireland

Standard Agreement Ref No: 05-04-2012

SCHEDULE 1

Rendezvous Purchase Pricing

Company Name: ACTC and Visit Addison
 Delivery Address: TBD

	Name	Phone	Email
Project Manager			
IT Contact			
Accounts Payable Contact			

Software: Rendezvous Event Scheduling Solution - **Version 3.83**

Rendezvous Pricing				
Rendezvous Licenses	Quantity	Cost	Total	
Admin License (1 - 5 users)	3	\$1,250	\$3,750	
"Normal" User	3	\$500	\$1,500	
Multiple Properties	2	\$1,000	\$2,000	
Additional Modules				
Accounting Interface	1	\$2,750	\$2,750	
Online Request Module	1	\$1,500	\$1,500	
Room Diagramming Module - 3 Users	1	\$2,295	\$2,295	
Modules Included				
Calendars				
Client Database				
Event Bookings				
Resources - A/V, IT, Catering, etc				
Billing				
Reports				
Query Tool				
Software/License Total				\$13,795
Remote Installation	1.5	\$1,500	\$2,250	
Configuration	3	\$1,250	\$3,750	
Training (centralized/train-the-trainer)	3	\$1,250	\$3,750	
Client/Host Import	1	\$1,500	\$1,500	
Installation/Training Total				\$11,250

Rendezvous Package Total					\$25,045
Annual Support, Maintenance & Upgrades					
Support/Maintenance/Upgrades (M - F; 8am - 5pm)		22%			\$3,035
24/7 Support/Maintenance/Upgrades		30%			\$4,139
* The above quote does not include travel and related expenses.					
Optional Modules					
Digital Signage Integration		1		TBD	
Room Diagramming Module		3		\$2,295	
Client/Host Import		1		\$1,500	
Accounting Interface		1		\$2,750	
Report Writing		1		\$1,500	
Custom Programming		1		\$1,750	

SCHEDULE 2

Service Levels and Helpdesk Procedures

NFS operate a 24/7 manned Helpdesk. For the Rendezvous software, NFS offer either a business day (Monday to Friday excluding public holidays) service or an extended 24/7 service level.

An automated Helpdesk tracking system is used which makes it possible for NFS to track the resolution of problems and report back to clients on the nature and frequency of support calls. In doing so we are able to identify specific issues, for example, a need for additional training or a product malfunction that needs to be addressed.

NFS processes for dealing with support issues and service levels are now summarised:

1) System – Down

- Escalated to senior IT person.
- Call back within 30 minutes if call cannot be taken when placed.

2) Software – Procedural

- Helpdesk takes call when placed.
- Call back within 2 hours.

3) Software – Report Changes

- E-mail helpdesk with changes required.
- 48-hour response by telephone or e-mail.
- Report changes scheduled, typically 5 – 14 day lead times, PO required for new reports or modifications.

4) Software or Reporting Malfunctions

Call logged with helpdesk, client should identify priority level:

- Priority 1 – Major issue (critical to operation) escalated to Product Manager, call back within the hour. Resolution within 24 hours (working day) where possible.
- Priority 2 – Important but not critical. Call back within 4 hours with resolution discussed and agreed, typically within 7 days.
- Priority 3 – E-Mail response within 1 week. Resolution discussed and agreed.

5) Operating System \ Other IT Issues

- Log problem with helpdesk.
- Call dealt with as described in 4 above.

SCHEDULE 3

Payment Terms

Software License Fees	On Contract
Services	Invoiced on Completion
Support	Invoiced on Training
Development	50% on Contract 50% on Delivery
Other Post Install Services	Invoiced on Completion of Work.

SCHEDULE 4

Technical Specifications and System Requirements

Server	Windows 2000 Server sp3 / Windows 2003 Server / Windows 2008
Important	Web/Application server and MSSQL/Database server must be two different machines. If Virtual machines are used adequate resources must be allocated to each server. 64 bit operating systems are supported.
Free disk space	Web Server 2GB Free Minimum on OS Drive + 20GB Minimum on Data Drive SQL Server 50GB Minimum on Data / Log File Drive – <i>(Disk sizes are safe estimates – size cannot be foreseen without knowing how many booking will be created)</i>
Operating System	All Operating Systems which are currently supported by Microsoft and which support the IIS and database servers chosen. See Recommendations below. 32 & 64 bit Operating Systems are supported.
Processor	Dual processor, Pentium 4/Xeon, 2.4 GHz Minimum
RAM	Operating System Maximum
CD Rom	Maybe required for installing software
Browsers	Microsoft Internet Explorer 6 sp1 or Microsoft Internet Explorer 7 Microsoft Internet Explorer 8 Microsoft Internet Explorer 9
Web Server	Microsoft IIS 5 or Microsoft IIS 6 Microsoft IIS 7 Microsoft SQL Server 2000 (sp4) or above or Microsoft SQL Server 2005 Microsoft SQL Server 2008
Database	Suitable Editions of SQL server must be in place to suit the environment and the number of users. Up to 5 Users > SQL Express can be used. Above 5 users SQL Server Standard Edition should be suitable for Rendezvous use.
Reporting	Seagate Crystal Reports Developers Edition V10 or XI
Email	Rendezvous will forward emails to your email server e.g. Exchange / Lotus Notes – please talk to your NFS project manager if your chosen system is not one of these.
Recommendations	<ul style="list-style-type: none"> SBS is not recommended. Running Exchange on the same server as Rendezvous is not recommended Running SharePoint on the same server as Rendezvous is not recommended. Please note that there are combinations of Microsoft Operating Systems which may not support the Database Server version chosen. Please check with your supplier before purchasing. Some interfaces may require SQL tools such as DTS or SSIS – Although Rendezvous will run on versions which do not have these additions, please check with your NFS project manager to make sure that your chosen version is future proofed for your business requirements. <p>Technical Specifications are guidelines only – actual specifications may vary based on actual system configuration.</p>

Workstation	Windows 2000 / XP / Vista / Windows 7		
Free disk space	2GB		
RAM	512MB		
Browsers	Microsoft Internet Explorer 6 sp1 or Microsoft Internet Explorer 7 Microsoft Internet Explorer 8 Firefox & Safari are supported for Self Service Users		
Graphics Card	Resolution needs to run a minimum of 1024 x 768 @ 16M colors		
Monitor	17" SVGA Monitor		
Operating System	XP/2000/Vista/Windows 7		
Network	LAN	WAN	Internet
	100-1000 MB	2-10 MB (Dedicated/SDSL) (<u>256K Dedicated Per User</u> , upload and download speed)	256K <u>Dedicated Per User</u> , upload and download speed
Other	Miscellaneous Requirements		
Email	Microsoft Outlook /Office Suite.		
Reports	Acrobat Reader v7+		
Protocols	TCP\IP		
The following is required to make full use of the application			
Merge Export	Microsoft Office (including Word and Excel)		
Remote Support	VPN/Remote Desktop/VNC/pcAnywhere. Access to server machines on each site is necessary for Product support		
Backup	Backup software – customer's choice.		

SCHEDULE 5

Standard Service Charge - Pricing Schedule

➤ Additional User Training	\$1250/day
➤ Report writing services	\$1500/day
➤ IT Services Project Management	\$1500/day
➤ Business Analysis	\$1500/day
➤ Development Services	\$1750/day
➤ 24/7 Emergency IT Assistance	\$300/hr
➤ Data Conversion Services	\$250/hr
➤ Customer Project Related	POA

The Customer ACCEPTS the Software Contract Terms and Conditions including Schedules 1 – 5.

The Contractor undertakes and agrees, upon signing this Agreement, to deliver and support the Software in accordance with the terms of this Agreement

The Customer **Date**
Print (Capital letters) *(Authorized Signature)*

The Contractor **Date**.....
Print (Capital letters) *(Authorized Signature)*
Natalie Appleton - NFS Hospitality Corporation

Title: **US Head of Operations**
Address: **6390 E. Thomas Road, Suite 310, Scottsdale, AZ 85231**
Telephone: **602-441-3525**

SOFTWARE CONTRACT – TERMS AND CONDITIONS

1. DEFINITIONS

- a. "Licensed Version" – The Computer Software Type and Version as provided to the CUSTOMER including all copies and any extracts from such Software, or derivative works thereof.
- b. "Revisions" – Either a modification or addition that, when made or added to the Licensed Version, attempts to correct any substantial nonconformity with the functional specification.
- c. "Upgrades" – Any modification, enhancement, amendment, improvement or addition that, when made or added to the Licensed Version, materially changes its utility, efficiency, functional capability, or application, but does not constitute solely a Revision .
- d. "Releases" – New versions of the Licensed Version which may include both Revisions and Upgrades and which shall not without the prior written consent of the CUSTOMER result in any of the facilities or functions as detailed in the functional specification, being materially diminished or curtailed.
- e. "Hardware" – All computers, cabling, printers and peripherals, network equipment, operating systems, or other items which are necessary to execute the Licensed Version.

2. GENERAL PROVISIONS

- a. NFS grants the CUSTOMER a non-exclusive, non-transferable license to use the Licensed Version solely through the CUSTOMER's own Hardware, in accordance with the terms and conditions of this Agreement. Other than as expressly authorized by this Agreement, CUSTOMER shall not authorize or permit access to and use of the Licensed Version, by any other person or entity for any reason whatsoever. CUSTOMER acknowledges and agrees that the Licensed Version (including any and all computer software, Upgrades, Releases, Revisions, **computer hardware (No hardware)**, and documentation therefore) is proprietary to NFS, and that CUSTOMER acquires no right, title or interest to the Licensed Version other than the license to use and access the Licensed Version granted in this Subparagraph. CUSTOMER agrees not to (i) use, reproduce, sublicense, distribute or dispose of the Licensed Version; (ii) alter, create derivative works of, edit, modify, or revise the Licensed Version; (iii) reverse engineer, reverse compile, or disassemble the Licensed Version, in whole or in part; and/or (iv) directly or indirectly, export, re-export, or otherwise transmit or disclose the Licensed Version, in whole or in part, or any confidential information or technical data relating thereto, to any country, entity, or individual to which such export, re-export, disclosure, or transmission is restricted by any applicable U.S. regulation or statute, without prior written consent, if required, of the U.S. Department of Commerce, or other such governmental entity as may have jurisdiction over such export, re-export or transmission. CUSTOMER may make copies of the Licensed Version solely for backup purposes.
- b. This Agreement is effective beginning on execution of this Agreement by both parties and shall continue, until terminated as provided herein or by failure to pay requested fees not under dispute within, 14 days of a written request to do so by NFS, following the due date for payment.
- c. Neither this License nor any right or interest hereunder shall be assignable by CUSTOMER, its beneficiaries, or legal representatives without NFS's prior written consent , provided however, that Customer may assign this Agreement or any rights granted hereunder in connection with a merger or reorganization of the Customer or sale of

all or substantially all of its assets or any business transaction of a similar nature in each case, without the prior consent of NFS.

- d. This Agreement shall be binding upon the CUSTOMER and NFS and their respective permitted successors and assigns.
- e. This Agreement may not be modified or amended except by any instrument in writing signed by the CUSTOMER and NFS or their permitted successors and assigns.
- f. NFS does not, by this Agreement, make any agreement to service or maintain in any way hardware previously purchased or to be purchased by CUSTOMER to accommodate any NFS Software. In the event of a hardware problem that requires NFS's personnel to assist, all reasonable transportation, food, accommodation, and labour cost (including travelling time) by NFS's personnel reasonably incurred, will be paid by CUSTOMER.
- g. NFS will notify CUSTOMER of Releases, as they are available. All Releases made by NFS and offered for license to others shall be made available to the CUSTOMER as soon as is reasonably practicable.
- h. Hardware and operating system requirements are in SCHEDULE 3.

3. REVISIONS AND UPGRADES

- a. During the term of this Agreement, NFS agrees to make available to CUSTOMER all Revisions and Upgrades as they become available, provided that, CUSTOMER is not in default of any of its obligations under any and all agreements which CUSTOMER has entered into with NFS. Revisions, Upgrades and related documentation shall be provided to CUSTOMER free of charge. CUSTOMER shall be responsible for any and all shipping and handling charges relating to such Revisions, Upgrades and related documentation. CUSTOMER shall also pay for reasonable food, accommodation, transportation and business telephone calls and expenses for NFS support staff, and for the reasonable cost of labour incurred in installing any Revision or Upgrade at NFS's then current rates. NFS SHALL ONLY BE OBLIGATED TO MAINTAIN, SUPPORT AND SERVICE NFS's THEN CURRENT VERSION OF THE LICENSED VERSION AND THE IMMEDIATELY PRECEDING VERSION OF SUCH SOFTWARE.
- b. If CUSTOMER has made any modification to the Licensed Version, then CUSTOMER shall be responsible for the reasonable cost of any reinstallations or rectification required.
- c. All repairs, training and assistance provided by NFS via telephone or modem (collectively "Telephone Assistance") for CUSTOMER, will be registered by NFS by date, type of repair, training, and/or assistance, and time spent. Subject to the provisions of section 9a CUSTOMER will be charged at NFS's then current rates for such services.
- d. NFS shall provide a minimum period of three (3) months written notice of its intention to withdraw support for a particular Version or Release.

4. TERM AND TERMINATION

- a. This Agreement shall be renewed for additional one year automatically, from year to year, after its initial term; unless cancelled by written notice given by either party no less than three (3) months prior to the end of the current yearly term.
- b. Either party shall have the right to terminate the Agreement immediately on written notice to the other party (the "Breaching Party") if:-

- (i) The Breaching Party, its Agent or Subcontractor commits a breach of this Agreement and fails to remedy the same within 14 days of a written request to do so, or:-
- (ii) The Breaching Party (A) makes a general assignment for the benefit of creditors; (B) files a voluntary bankruptcy petition; (C) becomes the subject of an order for relief or is declared insolvent in any federal or state bankruptcy or insolvency proceedings; (D) files a petition or answer seeking for the Breaching Party a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law; (E) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Breaching Party in a proceeding of the type described in subclauses (A) through (D) of this subclause (ii); (F) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the Breaching Party's or of all or any substantial part of the Breaching Party's properties; or (G) has a proceeding seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law commenced against the Breaching Party and sixty (60) days have expired without dismissal thereof or with respect to which, without the Breaching Party's consent or acquiescence, a trustee, receiver, or liquidator of the Breaching Party or of all or any substantial part of the Breaching Party's properties has been appointed and sixty (60) days have expired without the appointments having been vacated or stayed, or sixty (60) days have expired after the date of expiration of a stay, if the appointment has not previously been vacated.

5. SERVICE LEVELS (SEE SCHEDULE 2 FOR APPLICABLE SUPPORT SERVICE LEVEL)

- a. During the first 30 days after installation of the Licensed Version, the CUSTOMER will be entitled to unlimited support during the hours stipulated in SCHEDULE 1 of this Agreement.
- b. 9.00am to 5.00PM (Business Hours) Weekday Service Monday-Friday: NFS will accept calls relating to business inquiries, maintenance problem solving, emergencies, or explanation concerning any aspect of the Licensed Version to CUSTOMER.
- c. Night Service and 24 Hour Holiday/Weekend Service: NFS will accept calls of an emergency nature only concerning the operational aspects of the Licensed Version to the CUSTOMER, or the correction of errors therein, in an effort to make the system operational.
- d. All hourly charges for services provided by NFS which are not covered by this Support Agreement shall be at \$200.00 per call/hour plus any applicable sales taxes during standard business hours and \$250.00 per call/hour plus applicable sales taxes after hours. These rates may change from time to time as determined by NFS in its sole discretion.
- e. All charges are subject to the warrant in section 9a.

6. PRICES

All quoted prices and charges associated with the products and services shall be made in US dollars.

- a. The Annual License and Support fee set forth in Schedule 1 is due on installation of the Licensed Version and subject to Clause 4 hereof shall be due on each anniversary date of the original installation.
- b. CUSTOMER will be invoiced forty-five (45) days in advance prior to the anniversary date of this agreement and payment shall be made in full on or prior to the anniversary date. In the event of non-payment of all undisputed fees by the CUSTOMER of fees due to NFS, NFS may refuse any calls or support on the first of the month following the anniversary date. Support may be resumed upon full payment of all fees due to NFS.

7. ACCESS TO LICENSED VERSION

If access to Licensed Version is required by NFS for any purpose to enable NFS to provide the services herein, NFS shall on reasonable notice and within office hours have access to the Licensed Version to provide service thereof by prior agreement with the CUSTOMER. NFS charges for support assume appropriate remote access is provided by the CUSTOMER.

8. INDEPENDENT CONTRACTOR

NFS is at all times in its performance hereof acting solely as an independent contractor and the CUSTOMER shall exercise no control, other than as specified herein, over activities or operations of NFS.

9. DISCLAIMER OF WARRANTY AND LIMITATIONS OF LIABILITY

- a. NFS provides the Licensed Version to CUSTOMER on an "As Is" basis. NFS warrants that the Licensed Version will perform the functions demonstrated to CUSTOMER and conform with software specifications provided to CUSTOMER. NFS shall not be liable to CUSTOMER for consequential damages. As part of the service commitment, NFS warrants that the delivery of services (training/support) will be in line with industry standards for scheduling software.
- b. NFS shall not be responsible for repairs or damages, malfunctions, or service failures caused by (1) an attempt to repair or modify such damages, malfunctions, or service failures by a non-NFS personnel agent or subcontractor; (2) failure to materially follow NFS's installation, operation, or maintenance instructions; (3) attachment to or incorporation in the Licensed Version by the CUSTOMER of non-NFS's products not supported by NFS; or (4) any factor in the nature of force majeure and what is beyond NFS's and its agents and subcontractors control, including fire, explosion, lightning, pest damage, power surges or failures, strikes or labor disputes, water, acts of God, the elements, war, civil disturbances, acts of civil or military authorities or the public enemy, fuel or energy shortages, or acts of omissions of communications carriers. The obligations of the parties under this clause 9 shall survive the expiration or termination of this Agreement for whatever reason.

10. INDEMNIFICATION.

If a third party claims that the Licensed Version infringes a United States patent, copyright, trademark or trade secret, NFS will defend the CUSTOMER against that claim at NFS's expense; provided that the CUSTOMER promptly notifies NFS in writing of the claim, and allows NFS to control (subject to customer's reasonable consent) and cooperates with NFS in, the defense of the claim or any related settlement. If such a claim is made, the CUSTOMER agrees to permit NFS to enable the CUSTOMER to continue to use the Licensed Version, or to modify or replace with non-infringing software, or if such options are not available, refund a portion of the license fee based on the depreciated value of the Licensed Version. The obligations of the parties under this clause 10 shall survive the expiration or termination of this Agreement for whatever reason.

11. CUSTOMER RESPONSIBILITY

- a. If persons other than NFS employees, sub-contractors or agents shall on instructions of the CUSTOMER perform unauthorized software maintenance, install revisions, upgrades, or modifications to the Licensed Version or any module thereof, without the prior written consent of NFS, NFS agrees to use its best efforts to restore systems to normal operation, provided that all such repair services shall be charged to the CUSTOMER at NFS's then current rates.
- b. The CUSTOMER shall pay for the software carriage, incidental charges, replacements and service charges to

the Licensed Version arising from its negligence or the negligence of its employees or representatives. Without limiting the foregoing, the CUSTOMER shall pay for the full cost of any repairs, replacements or service charges to the Licensed Version caused by the CUSTOMER failure to maintain a proper environment for the computer equipment on which the Licensed Version operates.

- c. The CUSTOMER shall pay any and all fees imposed by it pursuant to Clauses 3 and 11 within forty-five (45) days written notice by NFS.

12. MISCELLANEOUS

- a. This Agreement shall be interpreted in accordance with the laws of the State of Florida and any arbitration or legal proceeding arising out of this Agreement will occur in the state of Florida, county of Orange and the CUSTOMER hereby agrees to and submits to personal jurisdiction in state of Florida.
- b. All notices and other communications under or in connection with this Agreement shall be in writing and shall be deemed given (a) if delivered personally (including by overnight express or messenger), upon delivery, or (b) if delivered by registered or certified mail (return receipt requested), upon the earlier of actual delivery or three (3) days after being mailed, in each case to the parties at the address set forth for such party on SCHEDULE 1 of this Agreement.
- c. If, for any reason, any provision of this Agreement is held invalid, such invalidity shall not affect any other provision of this Agreement not held so invalid, and each such other provision shall to the full extent consistent with the law continue in full force and effect. If any provision of this Agreement shall be held invalid in part, such invalidity shall in no way affect the rest of such provision not held so invalid, and the rest of such provision together with all other provisions of this Agreement shall apply to the full extent permitted by law.
- d. No terms or conditions of this Agreement shall be deemed to have been waived, nor are there any estoppels against the enforcement of any provision of this Agreement except by written instrument by the party charged with such waiver or estoppels. No such written waiver shall be deemed a continuing waiver unless specifically stated therein, and each such waiver shall operate only as to the specific term or condition for the future or as to any that is specifically waived.
- e. No rights of any third party are created by this Agreement and no person not a party to this Agreement may rely on any aspect of this Agreement notwithstanding any representation, written or oral, to the contrary.
- f. In the event a party initiates legal action (including arbitration or trial and appellate proceedings) to enforce its rights hereunder, the prevailing party in such action shall recover from the non-prevailing party its reasonable litigation expenses (including, but not limited to, reasonable attorneys' fees and costs) of all such proceedings.

12. SOFTWARE SUPPORT EXCLUSIONS

This section covers support services not covered by the Agreement and for which specific charges apply.

- a. Software charges related to new hardware being installed.
- b. Installation of new hardware which may be undertaken by CUSTOMER or NFS.
- c. Re-installation of Operating Systems.
- d. Any telephone assistance provided for the installation of hardware, software or networking initiated by the CUSTOMER which are due to catastrophic failure of hardware, as a result of force majeure affecting CUSTOMER including power failures, age, defective hardware or environmental circumstances such as lightning strikes, power surges or floods.

- e. Network changes initiated by the CUSTOMER, which impact the operation of the NFS Software.
- f. Malfunctioning of items not supplied, installed or configured by NFS e.g. backup devices.
- g. Problems related to other software application not supplied, installed or configured by NFS e.g. word processing which might require NFS assistance to resolve.
- h. Reporting changes requested by the CUSTOMER.
- i. Time based charges for training, upgrades, data conversion and other services can be found in SCHEDULE 4.

13. EFFECT OF TERMINATION

- a. Unless the CUSTOMER terminates this Agreement in accordance with 4b above, there will be no refunds of the balance of the maintenance fees paid by the CUSTOMER.
- b. Upon termination the CUSTOMER shall retain the right to use the Licensed Version as upgraded and revised at such time in perpetuity.
- d. Termination under the above provisions shall be without prejudice and will not affect or limit any rights, liabilities or obligations accrued prior to the date of termination.

14. CONFIDENTIALITY

Except as required by law, each party hereto undertakes and agrees to treat as confidential and not at any time for any reason whatsoever to disclose or permit to be disclosed to any person or persons whatsoever or otherwise make use of or permit to be made use of any information relating to the other's business affairs, intellectual property rights, or finances, or anything designated or understood to be confidential, where knowledge or details of same was received during the period of or under pursuant to or in connection with this Agreement. The obligations of the parties under this clause 14 shall survive the expiration or termination of this Agreement for whatever reason.

15. PAYMENT

NFS reserves the right to withdraw support from the CUSTOMER, if payment for software, hardware or services has not been made in accordance with the terms of this Agreement. NFS will provide a 10 day notice / cure period.

16. CHECKING SOFTWARE

CUSTOMER must provide written notice to NFS no later than 28 days from the date of installation of the Licensed Version at the CUSTOMER's site indicating that the Licensed Version is not in conformity with the Contract, or is otherwise not acceptable, as well as the specific grounds or reasons thereof. Except in the case of defects that are not discoverable in such 28 day period, failure to provide such written notice shall be deemed as acceptance by the CUSTOMER of the Licensed Version and any outstanding balance due for the Licensed Version and Services will become due for payment forthwith.

17. SOFTWARE

CUSTOMER acknowledges that all computer software supplied by NFS to the CUSTOMER belongs to and is the sole property of NFS, and that all such software is confidential and proprietary to NFS.

18. ADDITIONAL DISCLAIMERS.

CUSTOMER acknowledges that it is responsible for the accuracy and timely delivery of data to NFS in connection with building an operational system. NFS will not be responsible or liable for data provided by CUSTOMER included in the Licensed Version.

Council Agenda Item: #R5

AGENDA CAPTION:

Consideration and approval authorizing the City Manager to execute a change order with Landmark Structures to paint and reconfigure the lightning protection masts in the amount not to exceed \$64,000 and to provide for a five week extension period.

FINANCIAL IMPACT:

Funds are available in the project budget to address the change order.

BACKGROUND:

In order to provide protection for the wind turbines and meet the Master Label requirement, the original design provided for the installation of 24 lightning protection masts. The effect of the design and installation creates a somewhat cluttered look and on certain days the wind turbines almost disappear. Staff requested that Landmark investigate options to minimize the impact of the lightning protection masts. Landmark has proposed two options. The first option provides for the painting of all the lightning protection masts including the ground display the same color as the wind turbines for a total cost of \$60,780. The second option provides for a redesign of the lightning protection masts and the painting of the redesign protection including the ground display for a total cost of \$63,273. Both options meet the Master Label requirements.

Staff believes that the proposed change would significantly improve the aesthetics of the overall project and given the cost difference between the two options would recommend option two in the amount of \$63,273.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

[Elevated Storage Tank redesign](#)

Type:

Cover Memo

Council Agenda Item: #R6

AGENDA CAPTION:

Discussion and consideration of approval of personnel restructuring in the City Manager's Office.

FINANCIAL IMPACT:

BACKGROUND:

Based on the discussion regarding the personnel restructuring of the City Manager's Office, the budgetary impact is listed below.

This includes formalizing Matt McCombs' position as Assistant to the City Manager/Assistant City Secretary. In addition, Dannette Robberson would be hired as an Assistant to the City Manager and she would be assigned to work primarily with Visitor Services. Finally, Alison Ream would also be promoted to the Assistant to the City Manager position and be assigned to Public Works.

Department\Fund	Change/Impact
City Manager\General Fund	\$9,798.02
Visitor Services\Hotel Fund	\$8,362.84
Public Works\Utility Fund	\$17,341.58

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

Maintain and Enhance our Unique Culture, Employ High-Quality, Service-Oriented Personnel

ATTACHMENTS:

Description:

Type:

No Attachments Available

Council Agenda Item: #R7

AGENDA CAPTION:

Presentation and discussion regarding a proposed sale and assignment of two ground lease properties at Addison Airport, one of which is located at 4570 Westgrove Drive (known as Westgrove Air Plaza) and the other which is an unimproved tract located adjacent to Westgrove Air Plaza at the southwest corner of the intersection of Addison Road and Westgrove Road.

FINANCIAL IMPACT:

n/a

BACKGROUND:

n/a

RECOMMENDATION:

n/a

COUNCIL GOALS:

Develop and utilize the Addison Airport as an engine to drive economic growth in the community

ATTACHMENTS:

Description:

Type:

No Attachments Available

Council Agenda Item: #ES1

AGENDA CAPTION:

Closed (Executive) session of the Addison City Council pursuant to Section 551.087, Texas Government Code, to discuss or deliberate regarding commercial or financial information that the City Council has received from a business prospect or business prospects that the City Council seeks to have locate, stay, or expand in or near the territory of the Town of Addison and with which the City Council is conducting economic development negotiations, and/or to deliberate the offer of a financial or other incentive to such business prospect or business prospects.

FINANCIAL IMPACT:

TBD

BACKGROUND:

N/A

RECOMMENDATION:

N/A

COUNCIL GOALS:

Provide For A Diversified Business Climate

ATTACHMENTS:

Description:

Type:

No Attachments Available

Council Agenda Item: #R8

AGENDA CAPTION:

Consideration of any action regarding commercial or financial information that the City Council has received from a business prospect or business prospects that the City Council seeks to have locate, stay, or expand in or near the territory of the Town of Addison and with which the City Council is conducting economic development negotiations, and/or any action regarding the offer of a financial or other incentive to such business prospect or business prospects.

FINANCIAL IMPACT:

TBD

BACKGROUND:

N/A

RECOMMENDATION:

N/A

COUNCIL GOALS:

Provide For A Diversified Business Climate

ATTACHMENTS:

Description:

Type:

No Attachments Available