



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

7:30 PM

OCTOBER 23, 2012

TOWN HALL

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

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### REGULAR MEETING

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#### **Pledge of Allegiance**

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

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 October, 2012 Regular Council

Meeting.

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#2b- Approval of an amendment to the Code of Ordinances of the City by amending Chapter 66 (Solid Waste) Article II (Collection And Disposal), Division 2 (Service Charge) by amending Section 66-52 increasing from \$12.24 to \$12.30 the monthly fee for single family residential garbage and recycling collection.

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#2c- Approval of a resolution establishing energy conservation goals per Senate bill 898 by the 82nd Legislative Session of Texas.

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#2d- Approval of contracts for services with non-profit organizations (including CONTACT Crisis Line, The Family Place, Launchability, Metrocrest Chamber of Commerce, Metrocrest Family Medical Clinic, Metrocrest Social Services, Senior Adult Services, Texas Wranglers, Dance Council, Water Tower Theatre, and the Addison Arbor Foundation) for Fiscal Year 2012-2013, subject to final review and approval by the City Manager and City Attorney.

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Item #R3 Presentation, discussion, and consideration of approval authorizing the City Manager to negotiate and enter into a Memorandum of Understanding with Baylor University and their Accelerated Ventures Program.

Attachment(s):

1. Addison/Baylor MOU

Recommendation:

The Economic Development Department recommends that

the Town Council authorize the City Manager to proceed with the Memorandum of Understanding between Baylor University/Accelerated Venture Program and the Town.

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Item #R4 Discussion regarding the Addison Legacy Foundation.

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Item #R5 Discussion and consideration of approval of a professional services agreement with the Vivanti Group in an amount not to exceed \$60,000 for the provision of a branding study, subject to final review and approval of the City Manager and City Attorney.

Recommendation:

Staff recommends approval.

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Item #R6 Presentation, discussion and consideration of approval authorizing the City Manager to execute a master agreement with Dallas County for the Major Capital Improvement Program.

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Attachment(s):

1. Master Agreement - MCIP

Recommendation:

Staff recommends approval.

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Item #R7 Presentation, discussion and consideration of adoption of an Ordinance providing for the making of certain findings by the City Council of the Town pertaining to the anticipated adoption by the Town of the Municipal Drainage Utility Systems Act (Subchapter C of Chapter 552, Tex. Loc. Gov. Code) and a declaration of stormwater (drainage) of the Town to be a Public Utility pursuant to the said Act, including that the Town will establish a schedule

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of stormwater (drainage) charges against all real property in the proposed service area of the Town, that the Town will provide stormwater (drainage) service for all real property in the service area on the payment of stormwater (drainage) charges, except real property exempted under the said Act, and that the Town will offer stormwater (drainage) service on nondiscriminatory, reasonable, and equitable terms; and providing for related matters.

Attachment(s):

1. DRAFT Findings Ordinance

Recommendation:

Staff recommends approval.

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Item #R8 **PUBLIC HEARING**, presentation, discussion and consideration of approval of an Ordinance amending the Town of Addison's Code of Ordinances by amending Chapter 82 (Utilities) thereof to add a new Article VI, Division 1 regarding a Stormwater (drainage) Utility System; declaring the adoption of Chapter 552, Subchapter C, Tex. Loc. Gov. Code (the Municipal Drainage Utility Systems Act) and declaring stormwater (drainage) to be a public utility and establishing a service area in connection therewith; providing definitions; providing for the establishment and calculation of stormwater (drainage) utility fees, including property classifications, for billing policies and procedures, and for credits; providing penalties and remedies for nonpayment of fees, including discontinuance of utility services and the filing of a lien; establishing an administrative appeals process; providing for termination of the stormwater (drainage) utility system; providing for a stormwater (drainage) utility fund; exempting certain property from fees; and providing for other related matters.

Attachment(s):

1. Ordinance

Recommendation:

Staff recommends approval.

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Item #R9 **PUBLIC HEARING**, presentation, discussion and consideration of approval of an Ordinance amending the Town of Addison's Code of Ordinances by amending Chapter 82 (Utilities), Article VI (Stormwater (Drainage) Utility System) thereof by adding a new Division II regarding Stormwater (drainage) Utility Fees; establishing monthly Stormwater (drainage) Utility fees for the purpose of funding the Stormwater (drainage) Utility System; and providing for other related matters.

Attachment(s):

1. DRAFT Fees Ordinance

Recommendation:

Staff recommends approval

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Item #ES1 - Closed (executive) session of the Addison City Council pursuant to Section 551.072, Tex. Gov. Code, to deliberate the lease or value of certain real property located at 4460 Belt Line Road.

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Item #R10 - Presentation, discussion and consideration of any action regarding the lease between the Town, as landlord, and Durga Services, LLC, as tenant, of the property located at 4460 Belt Line Road.

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Adjourn Meeting

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Posted:

Chris Terry, 10/19/2012, 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: # R 2a

**AGENDA CAPTION:**

Approval of Minutes for the October, 2012 Regular Council Meeting.

**FINANCIAL IMPACT:**

N/A

**BACKGROUND:**

N/A

**RECOMMENDATION:**

N/A

**COUNCIL GOALS:**

N/A

**ATTACHMENTS:**

Description:

 [October 9 Minutes](#)

Type:

Backup Material

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

October 9, 2012

6:00 PM - Town Hall

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

Upstairs Conference Room

Council Members Present:

Arfsten, Clemens, DeFrancisco, Meier, Moore, Resnik

Absent:

Gunther

**Work Session**

Item #WS1 - Discussion regarding recycling in Addison.

Item #WS2 - Discussion regarding the City Council's Fiscal Year  
2012-2013 Strategic Plan.

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Mayor-Todd Meier

Attest:

\_\_\_\_\_

City Secretary-Chris Terry

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

October 9, 2012

6:00 PM - Town Hall

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

Chris Terry, 10/5/2012, 5:00 pm.

Council Members Present:

Arfsten, Clemens, DeFrancisco, Meier, Moore, Resnik

Absent:

Gunther

**REGULAR MEETING**

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

Item #R2 - Consent Agenda

#2a - Approval of Minutes for the September 25, 2012 Regular Council Meeting.

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

The motion was seconded by Council Member Bruce Arfsten.

The motion result was: Passed

Voting Aye: Arfsten, Clemens, DeFrancisco, Meier, Moore, Resnik

Voting Nay: None

Absent: Gunther

#2b - Approval of the purchase of (1) 2013 Sutphen

&#8220;Monarch&#8221; Rescue Pumper Fire Truck, under the Town's Inter-local Agreement with the Texas Local Government Purchasing Cooperative - known as BuyBoard.

A motion to Approve was made by Council Member Blake Clemens.  
The motion was seconded by Council Member Bruce Arfsten.  
The motion result was: Passed  
Voting Aye: Arfsten, Clemens, DeFrancisco, Meier, Moore, Resnik  
Voting Nay: None

Absent: Gunther

Item #R3 - Discussion and consideration of approval of the formation and appointment of a committee to review naming policy.

Council Member Bruce Arfsten nominated Reggie Carney.

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, Meier, Moore, Resnik  
Voting Nay: None

Absent: Gunther

Item #R4 - PUBLIC HEARING, presentation, and discussion regarding the adoption of an ordinance that amends the Town of Addison's Code of Ordinances by amending Chapter 82 (Utilities) to add thereto a new Article VI, Division 1 regarding a Stormwater (drainage) Utility System; declaring the adoption of Chapter 552, Tex. Loc. Gov. Code, being the Municipal Drainage Utility Systems Act and declaring stormwater (drainage) to be a public utility; establishing a municipal Stormwater (drainage) Utility system; providing for the establishment and calculation of stormwater (drainage) utility fees, including property classifications, for billing policies and procedures, and for credits; providing penalties and remedies for nonpayment of fees, including discontinuance of utility services and the filing of a lien; establishing an administrative appeals process; providing for termination of the stormwater (drainage) utility system; providing for a stormwater (drainage) utility fund; exempting certain property from fees; providing

a penalty clause; providing a severability clause; providing a savings clause; providing for publication; and providing an effective date.

The following individuals spoke regarding this item:

Tom Hunse, 14784 Winnwood, Dallas, TX 75254

Wendy Kalisher, 4201 Airobrn Dr., Addison, TX 75001

John Branch, 15060 Winnwood, Dallas, TX 75254

William Perry, 3837 Azure, Addison, TX 75001

There was no action taken.

Item #R5 - PUBLIC HEARING, presentation, and discussion regarding the adoption of an ordinance that amends the Town of Addison's Code of Ordinances by amending Chapter 82 (Utilities), Article VI (Stormwater (Drainage) Utility System) (proposed) of the said Code of Ordinances by adding thereto a new Division II regarding Stormwater (drainage) Utility Fees; establishing monthly Stormwater (drainage) Utility fees for the purpose of funding the Stormwater (drainage) Utility System; providing a severability clause; providing a savings clause; providing for publication; and providing an effective date.

The following individuals spoke regarding this item:

Sam Thomas, 17001 Addison Road., Addison, TX 75001

Mark Brooks, 14901 Dallas Parkway, Dallas, TX 75254

Morris Norwood, 14593 Longfellow Court, Addison, TX 75001

Tom Hunse, 14784 Winnwood, Dallas, TX 75254

Wendy Kalisher, 4201 Airborn Drive, Addison, TX 75001

William Perry, 3837 Azure, Addison, TX 75001

There was no action taken.

Item #R6 - Presentation and discussion regarding the Surveyor 1.5 million gallon Elevated Storage Tank project.

There was no action taken.

Item #R7 - Presentation, discussion, and consideration of approval of amendment number 4 to the Program/Project Management

Professional Services agreement between the Town of Addison and R.H. Shackelford, Inc. in the amount not to exceed \$178,965.

A motion to Approve was made by Council Member Chris DeFrancisco.

The motion was seconded by Council Member Blake Clemens.

The motion result was: Passed

Voting Aye: Arfsten, Clemens, DeFrancisco, Meier, Moore, Resnik

Voting Nay: None

Absent: Gunther

Item #R8 - Presentation, discussion, and consideration of approval authorizing the City Manager to execute Change Order number 2 in the amount of \$32,085.00 for the Slope Protection/Drop Structure at Bella Lane.

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

The motion was seconded by Council Member Bruce Arfsten.

The motion result was: Passed

Voting Aye: Arfsten, Clemens, DeFrancisco, Meier, Moore, Resnik

Voting Nay: None

Absent: Gunther

Item #ES1 - Closed (executive) session of the Addison City Council pursuant to Section 551.072, Tex. Gov. Code, to deliberate the lease or value of certain real property located at Addison Airport.

Council entered Executive Session at 9:11 p.m.

There was no action taken.

Item #ES2 - Closed (executive) session of the Addison City Council pursuant to Section 551.072, Tex. Gov. Code, to deliberate the lease or value of certain real property located at 4460 Belt Line Road.

Council left Executive Session at 9:52 p.m.

There was no action taken.

Item #R9 - Presentation, discussion and consideration of any action regarding the lease between the Town, as landlord, and Durga Services, LLC, as tenant, of the property located at 4460 Belt Line Road.

Mayor Pro Tem Blake Clemens moved to deny applicant's request for reduction in rent and to deny applicant's request of assignment of lease.

A motion to Deny was made by Council Member Blake Clemens.

The motion was seconded by Council Member Bruce Arfsten.

The motion result was: Passed

Voting Aye: Arfsten, Clemens, DeFrancisco, Meier, Moore, Resnik

Voting Nay: None

Absent: Gunther

Item #R10 - Presentation, discussion, and consideration of action regarding certain real property located at Addison Airport, including the lease or value of such property and related matters.

Council Member Neil Resnik moved to approve early termination of the Oncor lease subject to final review and approval by the city manager and city attorney.

A motion to Approve was made by Council Member Neil Resnik.

The motion was seconded by Council Member Blake Clemens.

The motion result was: Passed

Voting Aye: Arfsten, Clemens, DeFrancisco, Meier, Moore, Resnik

Voting Nay: None

Absent: Gunther

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Mayor-Todd Meier

Attest:

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City Secretary-Chris Terry

## Council Agenda Item: # R 2a

### **AGENDA CAPTION:**

Approval of an amendment to the Code of Ordinances of the City by amending Chapter 66 (Solid Waste) Article II (Collection And Disposal), Division 2 (Service Charge) by amending Section 66-52 increasing from \$12.24 to \$12.30 the monthly fee for single family residential garbage and recycling collection.

### **FINANCIAL IMPACT:**

N/A

### **BACKGROUND:**

The Town has a five-year contract with Waste Management to provide residential garbage and recycling collection to all single family homes. This contract began October 1, 2000 and automatically renews for additional five-year periods if neither party requests termination.

The Town's contract rate is adjusted annually based on the Producer Price Index (PPI). This year, the PPI increased 0.5%, which will increase single family garbage and recycling collection rates from \$12.24 to \$12.30 per month. The increase will take effect November 1, 2012.

### **RECOMMENDATION:**

Staff recommends approval.

### **COUNCIL GOALS:**

Mindful Stewardship of Town Resources

### **ATTACHMENTS:**

Description:

- 📎 [Waste Management Contract](#)
- 📎 [Rate Adjustment Request](#)
- 📎 [DRAFT Ordinance Revision](#)

Type:

Backup Material  
Backup Material  
Ordinance

AGREEMENT

STATE OF TEXAS

COUNTY OF DALLAS

THIS AGREEMENT is made and entered into this 25 day of September, 2000, by and between the Town of Addison, of the County of Dallas and State of Texas, acting through its City Manager, duly authorized so to do, Party of the First Part, hereinafter termed the OWNER, and Waste Management Inc. of the City of Lewisville, County of Denton, State of Texas, Party of the Second Part, hereinafter termed CONTRACTOR.

WITNESSETH: That for and in consideration of the payment and agreement hereinafter mentioned, to be made and performed by the OWNER, the said CONTRACTOR hereby agrees with the said OWNER to commence and complete construction of certain improvements as follows:

Residential Solid Waste and Recycling Collection and Disposal

and all extra work in connection therewith, under the terms as stated in the General and Specific Conditions of the AGREEMENT; and at his own proper cost and expense to furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance and other accessories and services necessary to complete the said construction, in accordance with the conditions and prices stated in the Proposal attached hereto and in accordance with the Advertisement for Bids, Instructions to Bidders, General Provisions, Special Provisions, Plans, and other drawings and printed or written explanatory matter thereof, and the Technical Specifications and Addenda thereto, as prepared by the OWNER, each of which has been identified by the endorsement of the CONTRACTOR and the OWNER thereon, together with the CONTRACTOR'S written Proposal and the General Provisions, all of which are made a part hereof and collectively evidence and constitute the entire AGREEMENT.

The CONTRACTOR hereby agrees to commence work within five (5) calendar days after the date of written notice to do so shall have been given to him, and to substantially complete the work within 365 calendar days after he commences work, subject to such extensions of time as are provided by the General Provisions.

The OWNER agrees to pay the CONTRACTOR in current funds the price set forth in the proposal which forms a part of this contract in accordance with the Proposal submitted thereof, subject to additions and deductions, as provided in the General Provisions, and to make

payments of account thereof as provided therein.

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. IN WITNESS WHEREOF, the parties of these presents have executed this AGREEMENT in the year and day first above written.

TOWN OF ADDISON  
(OWNER)

ATTEST:

By: R. Whitless

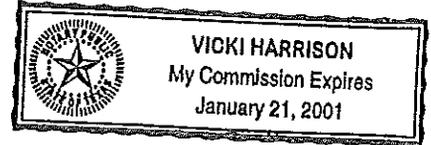
C. Moran

City Manager

City Secretary

(CONTRACTOR)

ATTEST:



By: Al Latini

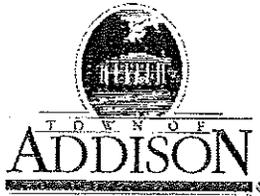
By: Vicki Harrison

The following to be executed if the CONTRACTOR is a corporation:

I, Al Latini, Division Vice-President, certify that I am the \_\_\_\_\_ of the corporation named as CONTRACTOR herein; that Al Latini, who signed this Contract on behalf of the CONTRACTOR is the Division Vice-President (official title) of said corporation; that said Contract was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.



Signed: Al Latini



**FINANCE DEPARTMENT / PURCHASING DIVISION**

5350 Belt Line Road

(972) 450-7091 – Facsimile (972) 450-7096

Post Office Box 9010 Addison, Texas 75001

TAMMY FRANKS  
PURCHASING ASSISTANT

## REQUEST FOR BIDS

The Town of Addison is accepting bids from all interested parties for Residential Solid Waste and Recycling Collection and Disposal.

Bid No: 00-22

Bid Name: Residential Solid Waste and Recycling Collection and Disposal

Bids Opened: 10:00AM, June 15 2000  
Office of the Purchasing Manager  
Addison Finance Building  
5350 Belt Line, Addison, Texas 75240

Please pay particular attention to 1.3 of the Instructions to Bidders regarding delivery of your bid.

If you do not wish to bid, but do wish to remain on the bidder list, please return an envelope with your company name and address on the outside and clearly marked "NO-BID, BID NO: 00-22". It will not be necessary to return any of the forms or documents if you wish to "NO-BID".

For questions concerning the bid process, contact Tammy Franks, Purchasing Assistant, at 972/450-7091 or e-mail at [tfranks@ci.addison.tx.us](mailto:tfranks@ci.addison.tx.us). For questions concerning the specifications or the work to be performed, contact Robin Jones, Street Superintendent, at 972-450-2849 or e-mail at [rjones@ci.addison.tx.us](mailto:rjones@ci.addison.tx.us).

## TOWN OF ADDISON

### INSTRUCTIONS TO BIDDERS

#### 1.0 RECEIPT AND PREPARATION OF THE BID

- 1.1 Bids will be received by the Purchasing Manager of the Town of Addison until time specified in the Invitation to Bid, at which time bids will be publicly opened and read aloud, in the Finance Building of the Town of Addison located at 5350 Belt Line Rd., Addison, TX 75240. Bids must be received by the specified time in order to be considered, and bids submitted after this closing time will not be considered and will be returned unopened.
- 1.2 Each bid shall be enclosed in a sealed envelope, addressed to the Purchasing Manager, Town of Addison, P.O. Box 9010, Addison, Texas, 75001. Bids must be labeled in the lower left-hand corner with the bid name and number. Bidders must also include their company name and address on the outside of the envelope.
- 1.3 Bidders are responsible for making certain bids are delivered to the purchasing department at 5350 Belt Line Road, Addison, TX 75240. Mailing of a bid does not insure that the bid will be delivered on time or delivered at all. If bidder does not hand deliver bid, it is suggested that he/she use some sort of delivery service that provides a receipt.
- 1.4 Bids may be withdrawn prior to the above scheduled time set for closing of the bids. Any bid received after the time and date specified will not be considered.
- 1.5 The Town of Addison reserves the right to postpone the date and time for opening bids through an addendum.

#### 2.0 TAXES

All bids are required to be submitted without State Sales tax. The Town of Addison is exempt from payment of such taxes and a Tax Exemption Certificate will be executed for the successful bidder.

#### 3.0 SCOPE OF WORK

The work under this contract shall consist of the items or services contained in the bid, including all materials, equipment, labor and all other items necessary to complete said work in accordance with the contract documents.

#### 4.0 EXAMINATION OF CONTRACT DOCUMENTS AND SITES

- 4.1 Before submitting a bid, each bidder must thoroughly examine the contract documents and project site to ensure that the services you are proposing meets the intent of these specifications.
- 4.2 The Town of Addison is not responsible for incomplete bid packets.
- 4.3 Bidders are instructed to return all pages of bid packet that contain written responses from you.

#### 5.0 BIDDING

##### 5.1 Bid Bond

Bidders will be required to submit a Bid Security, made payable to the Town of Addison in the amount of five per cent (5%) of the Bidders total bid price. Security shall be in the form of a certified bank check or a Bid Bond issued by a corporate surety authorized and admitted to do business in the State of Texas and licensed by the State to issue surety bonds. The surety shall also appear as a qualified surety on the list from the U.S. Treasury Department.

The Bid Security of the Successful Bidder will be retained until such Bidder has furnished a payment bond, if the contract price is \$25,000 or more, or until a contract is executed if the price is less than \$25,000. If the amount of the bid is \$100,000 or more, a Performance Bond equal to the total contract price, shall be required and the contractor shall include this cost in his bid. Bonds must be furnished within five (5) days of the Notice of Award. If the Bidder fails to furnish the required Bonds within the prescribed time, the Owner may annul the Notice of Award and the Bid Security of that Bidder will be forfeited. The Bid Security of any Bidder whom the Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the Contract is awarded.

Attorneys-in-fact who sign bid bonds must file with each bond, a certified and effectively dated copy of their Power of Attorney.

- 5.2 Bidders are instructed to consider the following factors in preparation of your bid:
- a. Bids shall remain firm for a period of 60 calendar days after the scheduled bid opening.
  - b. Exceptions to any specifications, or part thereof, must be clearly stated and included with your Bid Proposal Form.
  - c. Bidders are instructed to include all necessary charges, related to this contract.

## **6.0 AWARD OF CONTRACT**

- 6.1 The Town of Addison reserves the right to reject any or all bids, reject any particular item on a bid, and to waive immaterial formalities. The contract will be awarded to the lowest responsible bidder whose bid is most advantageous to the city, price and other factors considered.
- 6.2 Award will be based upon any analysis of the following criteria: Bidders ability to produce the goods or services requested, performance on similar contracts, and an evaluation of the bidder's understanding of the purchaser's needs. To demonstrate bidder's qualifications to perform the work, each bidder must submit with their bid, five (5) customer references for similar projects, including name of customer, telephone number and individual to contact.
- 6.3 The anticipated start date is September 21, 2000.
- 6.4 The owner and the contractor will execute the Contract Agreement, a sample is enclosed, and a Notice to Proceed will be issued when all bonds and insurance certificates are attached to the executed agreement.
- 6.5 The contractor should submit an invoice monthly and payment will be made within thirty days.

## **7.0 CERTIFICATES OF INSURANCE REQUIRED**

- 7.1 The Contractor shall agree to furnish and maintain, during the period of this agreement, insurance coverage meeting the following requirements:
- a. Commercial General Liability Insurance at minimum combined single limits of \$500,000 per occurrence and \$1,000,000 general aggregate for Bodily Injury and Property Damage, which coverage shall include Products/Completed Operations, (\$1,000,000 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 work is completed. Coverage must be written on an Occurrence Form. Contractual Liability must be maintained with respect to the contractor's obligations contained in the contract.

- b. Workers Compensation insurance at statutory limits, including employers liability coverage at minimum limits of \$100,000 per occurrence - each accident, \$100,000 per occurrence - disease, and \$500,000 aggregate - disease.
- c. Commercial automobile liability insurance at minimum combined single limits of \$500,000. per occurrence for owned, non-owned and hired coverage.

7.2 Contractor shall provide the following endorsements:

- a. Named insured wording which includes the Contractor and the Town of Addison with respect to general liability, automobile liability.
- b. All liability policies shall contain cross liability and severability of interest clauses.
- c. A waiver of subrogation in favor of the Town of Addison with respect to the worker's compensation insurance and all other insurance policies.
- d. The policy shall be endorsed to require the insured to immediately notify the Town of Addison of any material changes in the insurance coverage.

7.3 All insurance shall be purchased from an insurance company, which meets the following requirement:

- a. Must be issued by a carrier, which is rated "A-1" or better by A.M. Best's Key Rating Guide.
- b. Licensed and admitted to do business in the State of Texas and is a subscriber to the Texas Guaranty Fund.

7.4 All insurance must be written on forms filed with and approved by the Texas State Board of Insurance. Certificates of insurance shall be prepared and executed by the insurance company or it's authorized agent and shall contain provisions representing and warranting the following:

- a. The company is licensed and admitted to do business in the state of Texas.
- b. The Texas State Board of Insurance has approved the company's forms.
- c. Sets forth all endorsements as required above.
- d. The Town of Addison will receive at least thirty (30) days notice prior to cancellation or termination of insurance.

**RESIDENTIAL SOLID WASTE AND RECYCLING**  
**COLLECTION AND DISPOSAL**  
**GENERAL SPECIFICATIONS**

**1.0**            **GRANT**

- 1.1            The Contractor shall be granted the nonexclusive right and privilege to provide collection and removal of solid waste and or recyclable materials for single-family residential units (estimated to be 1,613) within the corporate limits of the Town of Addison. Further, the Contractor shall furnish all personnel, labor, equipment, trucks, and all other items necessary to provide for said collection and removal.

**2.0**            **DEFINITIONS**

- 2.1            Bags – Plastic sacks designed to store refuse with sufficient wall strength to maintain physical integrity when lifted by top. Total weight of a bag and its contents shall not exceed 35 lbs.
- 2.2            Bulky waste – Stoves, water tanks, washing machines, furniture, large pieces of construction debris (generated from the residential unit only) with the exception of roofing materials, and other waste material other than dead animals and hazardous waste with weights or volumes greater than those that fit in garbage bags.
- 2.3            Bundled Waste – Tree, shrub and brush trimmings securely tied together forming an easily handled package not exceeding four and one half feet in length, or 50 pounds in weight.
- 2.4            Town – The Town of Addison, Texas.
- 2.5            Construction Debris – Waste building materials resulting from construction, remodeling, repair or demolition operations.
- 2.6            Contract Documents – The Request for Bids, Instructions to Bidders, Contractor's Proposal, General Specifications, the Contract Performance Bond and any changes to the foregoing document agreed to by the Town and Contractor.
- 2.7            Contractor – The person, corporation, or partnership performing services under this Contract.
- 2.8            Dead Animals – Animals or portions thereof equal to or greater than 10 pounds that have expired from any cause, except those slaughtered or killed for human use.
- 2.9            Director – The Town of Addison Director of Public Works or his designee.
- 2.10          Disposal Site – A refuse depository including but not limited to sanitary landfills, transfer stations, incinerators and waste processing/separation centers licensed, permitted or approved by all governmental bodies and agencies having jurisdiction and requiring such licenses, permits or approvals to receive for processing or final disposal of refuse, dead animals, and recyclables.

- 2.11 Garbage – Any and all dead animals of less than 10 pounds in weight, except those slaughtered for human consumption; every accumulation of waste (animal, vegetable and/or other matter) that results from the preparation, processing, consumption, dealing in, handling, packing, canning, storage, transportation, decay or decomposition of meats, fish, fowl, birds, fruits, grains or other animal or vegetable matter (including, but not by way of limitation, used tin cans and other food containers; and all easily decomposable waste animal or vegetable matter which is likely to attract flies or rodents); except (in all cases) any matter included in the definition of Bulky Waste, Construction Debris, Dead Animals, and Hazardous Waste
- 2.12 Garbage Bags – Plastic sacks designed to store Refuse or Garbage with sufficient wall strength to maintain physical integrity when lifted by top. Total weight of a bag and its contents shall not exceed 35 pounds.
- 2.13 Hazardous Waste – Waste, in any amount, which is defined, characterized or designated as hazardous by the United States Environmental Protection Agency or appropriate State agency by or pursuant to Federal or State law, or waste, in any amount, which is regulated under State or Federal law. For purposes of this contract, the term Hazardous Waste shall also include motor oil, gasoline, paint and paint cans.
- 2.14 Overflow – All garbage generated at a residential unit that does not fit inside garbage bags but isn't considered bulky waste.
- 2.15 Producer – An occupant of a residential unit who generates refuse.
- 2.16 Recycling Bins – An 18 gallon plastic bin, blue in color, which meets all Town of Addison requirements. Bin will include an approved lid.
- 2.17 Recycling Containers – A 95 gallon polycart container on wheels with lid, which meets all Town of Addison requirements.
- 2.18 Recyclable Material – Recyclable material shall include all newsprint including slicks, magazines, phone books, aluminum food and beverage cans, all steel and tin cans, empty aerosol cans, clear, green, and brown, glass, and plastic bottles and containers #1 through #7. Other materials may be added by mutual consent of the Town and Contractor.
- 2.19 Refuse – Residential refuse and bulky waste, and construction debris generated at a residential unit.
- 2.20 Resident – Person residing at a residential unit.
- 2.21 Residential Unit – A dwelling within the corporate limits of the Town of Addison occupied by a single family. A residential unit shall be deemed occupied when either water or domestic light and power services are being supplied thereto. A condominium dwelling, whether of single or multi-level construction, consisting of multiple units, shall be treated as a residential unit, except that each single-family dwelling within any such residential unit shall be billed separately as a residential unit.
- 2.22 Residential Refuse – All garbage and rubbish generated by a customer at a residential unit.

- 2.23 Rubbish – all waste wood, wood products, tree trimmings, grass cuttings, dead plants, weeds, leaves, dead trees or branches thereof, chips, shavings, sawdust, printed matter, paper, pasteboard, rags, straw, used or discarded clothing, shoes and boots, combustible waste pulp and other products such as are used for packaging, glass, ashes, floor sweeping, glass mineral or metallic substances, and any and all other waste materials not included in the definition of Bulky Waste, Construction Debris, Dead Animals, Garbage, or Hazardous Waste.

### 3.0 SCOPE OF WORK

- 3.1 Performance Standards  
The work under this contract shall consist of the items contained in the Request for Bid, including all the supervision, materials, equipment, labor and all other items necessary to complete said work in accordance with the Contract. Contractor must demonstrate successful prior 10-year minimum experience in residential solid waste collection and prior 5-year minimum experience in residential recycling collection.

### 4.0 TYPE OF COLLECTION

- 4.1 Service Provided – Garbage
- (a) Contractor shall provide manual curbside collection of Residential Refuse to each residential unit two days per week. Collection days shall be Monday and Thursday of each week. Collection shall take place regardless of weather or Holidays. Collection shall begin by 7:00 a.m. on the designated collection day.
  - (b) Collection from Residential Units of Bulky Waste, bulky Construction Debris, and Hazardous Waste shall be provided by Town of Addison Public Works Department employees. The contractor shall collect all Bundled Waste.
  - (c) Contractor shall provide curbside, alleyway, or closet collection as necessary. Note: residential units on Le Grande Drive, Winter Park Lane, Pokolodi Circle, Leadville Place, and Rush Circle have closets on side of garages for garbage storage. At the time of the request for bids, approximately 50% of these residents use the closets with the remaining 50% setting their garbage out at curbside. Contractor to check all closets and empty if being used.
  - (d) Contractor shall collect all garbage and refuse at curbside, alleyway, and closet regardless of volume set out. No extra compensation will be given contractor for increase in number of bags or cans set out on garbage days. The Town encourages residents to use garbage bags by supplying them to residents at cost. Contractor shall pickup all garbage set out in other suitable containers such as but not limited to garbage cans, cardboard boxes, buckets, etc.
  - (e) All refuse collected by the Contractor shall be so contained, tied or enclosed that leaking, spilling or blowing is prevented. All refuse collected for disposal by the contractor shall be hauled to a Disposal Site. The charge for disposal shall be included in the rate set forth in the Contractors Proposal. The Contractor shall demonstrate that he has secured adequate landfill capacity to dispose of all Town refuse for a minimum 5-year period.

4.2

Service Provided – Recycling

- (a) The Contractor shall collect and market commingled recyclable materials, every week on Monday beginning at 8:00 a.m. (regardless of weather or Holiday), from all residences (estimated to be 1,613) receiving individual garbage collection services in Town. It is the intent under this Contract for the Contractor to have a minimum 5-years experience in the business of collecting, processing and selling recycling commodities.
- (b) Contractor shall deliver and service up to twenty (20) recycling containers to Town facilities for the collection of recycling materials collected at Town buildings. These materials to include items described in this document (section 4.5) with the addition of standard office paper products.

4.3

Storage Containers – Recycling

- (a) The Contractor shall provide each household with an 18-gallon reusable bin for accumulating recyclable materials. Each bin shall be clearly marked with a logo approved by the Town. Collection shall be approved from authorized bins only. Once provided to each household, the bin is the responsibility of the resident.
- (b) Each household shall receive one bin at no cost. Any household can receive additional bins, if requested, from the contractor. The cost shall be established by the contractor and approved by the Town. Residents shall not be limited as to the number of bins they can place out for collection. The charge for collecting multiple bins will be the same as for collection from a single bin.
- (c) Contractor shall provide free of charge up to 200 extra recycling bins per year, if requested by the Town, to replace damaged, lost, or stolen bins.
- (d) If Contractor employees determine that the recyclable material set out by residents is unacceptable due to the inappropriateness of the materials, Contractor will leave the inappropriate material in the bin. A sticker shall be attached to the bin explaining the reason the materials were rejected. Contractor will not be required to collect recyclable materials mixed with garbage or rubbish normally collected by solid waste collection crews.

4.4

Location of Containers, Bags, Bins

- (a) Collection of the recyclable materials shall occur at curbside, alley, trash closets, or from any location of normal garbage collection.
- (b) Contractor shall collect recycling material set out for collection outside of the normal recycling bin when necessary. Example, extra newspaper bundled or bagged, where volume of material is greater than bin size, etc.

4.5

Recycling Materials Collected and Marketed

- (a) Newsprint, magazines, phone books
- (b) Aluminum beverage cans
- (c) Glass – clear, green, brown
- (d) Steel (tin) cans and empty aerosol cans
- (e) Plastics #1 - #7
- (f) Material added by mutual consent of the Town and Contractor

## 5.0 COLLECTION OPERATIONS – GARBAGE AND RECYCLING

### 5.1 Conformity to Law

- (a) All collections shall be made as quietly as possible and conform to all Federal, State, county, or Town noise level regulations.

### 5.2 New Customers

- (a) New customers may be added at any time.

### 5.3 Reporting Requirements

- (a) The Contractor shall provide the Town with monthly recycling reports within five days from the end of the month being reported. These reports shall include:
  - 1. Estimated tonnages of all materials received by type of material, based on "test load" percentages.
  - 2. Average percent of total weight collected by material.
  - 3. Material market prices and amount to be paid to Town (50%)
  - 4. Number of set outs per collection day.
  - 5. Average pounds per set out per month.
  - 6. Average pounds per home per month.
- (b) The Contractor shall provide the Town with a monthly garbage collection report within five days from the month being reported. This report shall include:
  - 1. The tonnage of all material collected for the month.

### 5.4 Collection Equipment

- (a) The contractor shall provide and maintain a fleet of collection vehicles sufficient in number and capacity to efficiently perform the work (garbage and or recycling collection) and render the services required by the contract. The contractor shall provide evidence of the ability to perform under breakdown or layoff conditions, in the form of an alternate plan of action.
- (b) The contractors vehicles shall be clearly identified with the name, address, and phone number of the company's local office on each of it's cab doors or an equally conspicuous location on the vehicle.
- (c) Garbage collection vehicles and recycling collection vehicle shall be clearly distinguishable from one another. At no time shall garbage collection vehicles be used to collect recycling material or recycling collection vehicles be used to collect garbage.
- (d) Each collection vehicle shall be kept clean and in good operating condition at all times. The Town reserves the right to inspect the Contractor's collection vehicles at any time. If the Town inspector determines the vehicle to be offensive or unsafe, the Contractor shall repair, clean, and deodorize the equipment at his own expense.
- (e) Each collection vehicle shall be equipped with a shovel and a broom, or a rake to be used for the collection of spilled materials.
- (f) The Contractor shall furnish the Town a list of all equipment to be used in fulfilling the contract and shall update that list as may be requested by the Town.

### 5.5 Collection Routes

- (a) The Contractor shall establish its own routes and submit route list to the Town for final approval.

### 5.6 Employees

- (a) All field employees of the contractor shall wear uniforms identifying them as employees of the Contractor.
- (b) Employees driving any vehicles used in connection with the contract shall, at all times, possess and carry the appropriate State of Texas operators license for the vehicle being operated.
- (c) The Contractor's employees, officers, and agents, shall at no time be allowed to identify themselves, or in any way represent themselves, as being employees or agents of the Town of Addison.
- (d) The Contractor shall prohibit the drinking of alcoholic beverages or the use of controlled substances by employees while on duty or in the course of performing duties under this contract.
- (e) The Contractor shall maintain a local office and an authorized managing agent within Dallas County and provide the address of same. The Contractor shall furnish the Town the name of the managing agent prior to commencing operations and will notify the Town if the managing agent is changed. The managing agent shall serve as point of contact for communication between the Town and the Contractor. On collection days the Contractor's local office shall be open during normal business hours.

### 5.7 Complaints

- (a) All complaints to the Contractor shall be given prompt and courteous attention. On or before the 10<sup>th</sup> day of each month, the Contractor shall provide a written report to the Town regarding each complaint received by the Contractor during the month immediately preceding the date of the report, which report shall include a statement as to the status of each complaint. In the case of missed scheduled collections, the Contractor shall arrange for collection no later than the next day. If the Contractor has a collection vehicle in Town at the time of the missed collection complaint, the Contractor shall return to the missed area prior to quitting work for the day, and collect the missed materials.

## 6 CONTRACT

### 6.1 Term of Contract

- (a) Subject to the annual appropriation of revenues by the Town for the payment of the Contractor in accordance with the terms of this Contract, this Contract shall be for a 5-year period beginning September 21, 2000 and ending 5 years thereafter (the "Initial Term"). The Initial Term shall automatically be extended for a successive additional 5-year term, (and each such additional 5-year term being referred to herein as an "Additional Term"), unless either party notifies the other party in writing, not less than sixty (60) days prior to the expiration of the Initial Term or of any Additional Term as the case may be, of its intentions to terminate this Contract. Any such written notice shall be served by certified or registered mail, return receipt requested.

## 6.2 Remuneration

- (a) The Contractor shall quote a rate for service (garbage and or recycling) per residential unit per month. The rate shall include any container charge, set up charge or other charges associated with providing service.
- (b) Prices bid will be for a 2-year period beginning September 21, 2000. Beginning with year three (3), and once a year thereafter, prices will increase or decrease by one hundred percent in wholesale price as measured by the Producers Price Index (PPI).
- (c) The Contractor is entitled to fifty (50%) percent of all proceeds from the authorized collection and sale of recyclable materials.
- (d) The Town shall submit statements to and collect from all residential units.
- (e) The Town shall pay the Contractor, by the 20<sup>th</sup> of each month following the previous months billing, the amount specified in the contract for each residential unit serviced by the Contractor and billed by the Town.

## 6.3 Indemnification and Performance

- (a) The Contractor shall indemnify and defend the Town, its officials, officers, employees, and agents against, and hold the Town, its officials, officers, employees, and agents harmless from, any and all liability, actions, causes of action, lawsuits, judgments, claims, damages, costs or fees, including reasonable attorney's fees and costs of court, for any injury to or the death of any person, or damage to or destruction of any property, resulting from, based upon, or arising out of, in whole or part, any act or omission of Contractor, its officers, employees, subcontractors and agents, under or in connection with this Contract. The provisions of this Section shall survive the termination, cancellation or expiration of this Contract. The Contractor shall carry insurance as specified.
- (b) The Contractor shall provide a performance bond equivalent to 100% of the annual revenue, assuming collection from 1,613 homes in Addison.
- (c) The Contractor shall have a 14-day period from the commencement of collections to resolve any operational start-up problems without violating the Contract.
- (d) The contract may be amended or terminated by the Town of Addison if the Town Council fails to approve funding for this Contract each year, by giving 14 days written notice.

## 6.4 Marketing and Promotion

- (a) The Contractor is responsible for publicizing and promoting service to all residential units and interested parties in Addison. Promotion will include, but not be limited to the following:
  - 1. At least two professionally prepared brochures hung on residents' front doors at two week intervals describing the upcoming collection service, the start date, the recyclables to be collected, and any other pertinent information necessary to insure community education. Additional copies of brochures will be available to the Town or any citizen upon request and will be available for enclosure with utility bills.

2. Any other necessary public notification or reasonable educational effort requested by the Town, including but not limited to an annual mailer to residents reporting results of recycling efforts.

#### 6.5 Commencement of Service

It is anticipated that the start date for this Contract will be September 21, 2000. Because Town Council approval of this service may not occur until four to five weeks prior to September 21, 2000, the Contractor must be able to print and distribute all educational materials, distribute all recyclable material bins, and be able to start collection within a 30 day period if necessary.

#### 6.6 Additional Requirements

The Contractor must be able to develop an apartment-recycling program, acceptable to the Town, and implement it within 60 days of commencing collection services to single family residences.

#### 6.7 Termination for Cause

The Town has the right to terminate the contract if the Contractor is in default on any portion of the contract.

The Town will give the Contractor notice of any non-compliance with the contract, by phone and facsimile, at which time the Contractor will have forty-eight (48) hours to cure non-compliance or take appropriate action, The Town being the sole judge as to what is appropriate action, to begin the cure.

If the Contractor is not in compliance within forty-eight hours, the Town may declare the Contractor in default by sending a notice of default by certified mail. The sending of a notice of default voids the Contract rights of the Contractor and the Town may retain any unpaid funds to help reimburse the Town for its expenses, in addition to seeking any other legal means available to it through the laws and courts of the County of Dallas, the State of Texas, or the United States.

The validity of this Contract 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. This agreement shall be performable and all compensation payable in Dallas County, Texas. Venue under this Contract lies in Dallas County, Texas.

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

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

AGREEMENT

STATE OF TEXAS

COUNTY OF DALLAS

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2000, by and between the Town of Addison, of the County of Dallas and State of Texas, acting through its City Manager, duly authorized so to do, Party of the First Part, hereinafter termed the OWNER, and \_\_\_\_\_, of the City of \_\_\_\_\_, County of \_\_\_\_\_ State of \_\_\_\_\_, Party of the Second Part, hereinafter termed CONTRACTOR.

WITNESSETH: That for and in consideration of the payment and agreement hereinafter mentioned, to be made and performed by the OWNER, the said CONTRACTOR hereby agrees with the said OWNER to commence and continue work as follows for:

**Residential Solid Waste and or Recycling Collection and Disposal**

and all extra work in connection therewith, under the terms as stated in the General and Specific Conditions of the AGREEMENT; and at his own proper cost and expense to furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance and other accessories and services necessary to complete the said construction, in accordance with the conditions and prices stated in the Bid attached hereto and in accordance with the Advertisement for Bids, Requests for Bids, Instructions to Bidders, General Specifications, and printed or written explanatory matter thereof, and Addenda thereto, as prepared by the OWNER, each of which has been identified by the endorsement of the CONTRACTOR and the OWNER thereon, together with the CONTRACTOR'S written Proposal and the General Specifications, all of which are made a part hereof and collectively evidence and constitute the entire AGREEMENT.

The CONTRACTOR hereby agrees to commence work on September 21, 2000 and continue to provide service until the contract is terminated as provided in section 6.1 of the General Specifications

The OWNER agrees to pay the CONTRACTOR rates as specified in 6.2 of the General Specifications for the performance of the Contract in accordance with the Proposal submitted thereof, subject to additions and deductions, as provided in the General Specifications, and to make payments of account thereof as provided therein.

IN WITNESS WHEREOF, the parties of these presents have executed this AGREEMENT in the year and day first above written.

TOWN OF ADDISON  
(OWNER)

ATTEST:

By: \_\_\_\_\_  
City Manager

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
(CONTRACTOR)

ATTEST:

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

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

The following to be executed if the CONTRACTOR is a corporation:

I, \_\_\_\_\_, certify that I am the secretary of the corporation named as CONTRACTOR herein; that \_\_\_\_\_, who signed this Contract on behalf of the CONTRACTOR is the \_\_\_\_\_ (official title) of said corporation; that said Contract was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

Signed: \_\_\_\_\_

Corporate Seal

**TOWN OF ADDISON**  
P.O. Box 9010  
Addison, TX 75001-9010  
972-450-7090  
Fax: 972-450-7096  
Firm: 972-450-7095  
E-mail – [purchasing@ci.addison.tx.us](mailto:purchasing@ci.addison.tx.us)

Bidders on Addison Projects **BID # 00-22**

Dear Bidder:

The Town maintains a FAX on Demand, called the "FIRM", which allows you to retrieve information about our bids, including a copy of the Bid Tabulation. Bid Tabulations are available about one hour after the bid opening and can be retrieved from any touch-tone phone, sending the bid-tab directly to your FAX machine.

Dial 972-450-7095 and follow the voice prompts, be sure to wait for the "beep" before you push a key on your phone in response to instructions. The last entry you will be asked to make is to enter the document number of the document you want. The number will always be the last two digits of the bid concerned. For example, if you are interested in receiving the bid tabulation of Bid No. 00-15, request document 15.

The Town also maintains a web page [www.ci.addison.tx.us](http://www.ci.addison.tx.us). Under the Purchasing Division section you can also find complete bids along with the bid tabulations. If you have any suggestion on how we can further assist you please let us know.

If you have a problem or need assistance call the number in the letterhead.

Sincerely Yours

*T. Franks*

Tammy Franks  
Purchasing Assistant

P.S. You can get a plan holder list each morning by calling the FIRM and requesting document 85.



**Check here and fax back if you want your name removed from the list of companies we notify about this type of bid.**

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Fax Number



October 2, 2011

Mr. Jerry Davis  
Director of Public Works  
Town of Addison  
PO Box 9010  
Addison, TX 75001-9010

Dear Jerry,

This letter provides information regarding rate adjustments for the coming year.

The contract provides for an adjustment based upon the Producer Price Index (PPI) annually. The PPI from the last twelve months has advised an upward change of 0.5%.

This would adjust residential rates from \$12.24 per month to \$12.30 per month. Please advise when this will be on the city council agenda. I will plan on attending in case there are any questions.

Also attached is a brochure from our new program called At Your Door. This is a household hazardous waste and electronic waste collection for your residents whereby these materials are collected at the resident's front doors on an on-call basis.

This efficient, low cost method of collection encourages residents to dispose of materials quickly and discourages illegal dumping or long-term storage. This service would be in the neighborhood of \$1 per home per month. If you like, I can work you up some firm pricing.

Thank you for your continued confidence in Waste Management and please feel free to contact me with any questions and/or comments.

Sincerely,

Joe Jaynes  
Public Sector Solutions

TOWN OF ADDISON, TEXAS

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

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING THE CODE OF ORDINANCES OF THE CITY BY AMENDING CHAPTER 66 (SOLID WASTE), ARTICLE II (COLLECTION AND DISPOSAL), DIVISION 2 (SERVICE CHARGE) BY AMENDING SECTION 66-52 THEREOF BY ADJUSTING THE MANDATORY MONTHLY FEE FOR GARBAGE COLLECTION, HAULING AND DISPOSAL (CURBSIDE PICKUP) FROM EACH SINGLE DWELLING UNIT WITHIN THE CITY FROM \$12.24 TO \$12.30; PROVIDING THAT SUCH INCREASED RATE SHALL TAKE EFFECT ON OCTOBER 1, 2012; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Amendment.** Chapter 66 (Solid Waste), Article II (Collection and Disposal), Division 2 (Service Charge) of the Code of Ordinances (the "Code") of the Town of Addison, Texas (the "City") is hereby amended as set forth below, and all other chapters, articles, sections, subsections, paragraphs, sentences, phrases and words of the Code are not amended but are hereby ratified and affirmed.

A. Section 66-52 (Single dwelling units) of Chapter 66, Article II, Division 2 of the Code is hereby amended to read as follows (additions are underlined, deletions are ~~struck through~~):

All owners, lessees or persons in possession of residential property shall be charged a mandatory monthly fee for garbage collection, hauling and disposal from residences situated within the corporate limits of the town as follows:

Curbside pickup for each single dwelling unit, exclusive of sales tax and applicable state fees . . . \$12.30~~\$12.24~~.

**Section 2. Effective Date of Increase.** The change in the mandatory monthly fee for garbage collection, hauling and disposal from residences as set forth in Section 1 above shall be effective as of October 1, 2012.

**Section 3. Savings.** 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 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 portion of this Ordinance, and the City Council hereby declares that it would have passed such remaining portion of this Ordinance despite such invalidity, which remaining portion 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.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this \_\_\_\_\_ day of October, 2012.

\_\_\_\_\_  
Todd Meier, Mayor

ATTEST:

By: \_\_\_\_\_  
Chris Terry, City Secretary

APPROVED AS TO FORM:

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

## Council Agenda Item: # R 2b

### **AGENDA CAPTION:**

Approval of a resolution establishing energy conservation goals per Senate bill 898 by the 82nd Legislative Session of Texas.

### **FINANCIAL IMPACT:**

The Town would recognize savings in utility expenditures if the goal of reducing consumption was reached. There is not a penalty if the Town fails to reach its goal.

### **BACKGROUND:**

In 2001, the 77th Texas Legislature passed [Senate Bill 5 \(SB5\)](#), also known as the Texas Emissions Reduction Plan, to amend the Texas Health and Safety Code. The legislation mandated ambitious, fundamental changes in energy use to help the state's political jurisdictions to comply with federal Clean Air Act standards. It applied to all political subdivisions within Texas' 38 'non-attainment' counties, and was later expanded to include [41 counties](#). In 2007, the 80th Texas Legislature passed [Senate Bill 12 \(SB 12\)](#) which extended the timeline set in SB 5 for emission reductions through 2011. Where SB 5 required political subdivisions to reduce their electrical consumption by five percent (5%) for five years beginning January 1, 2002, the SB 12 legislation required that such entities establish a goal to make the five percent (5%) reductions each year for six years, effective September 1, 2007.

SB 12 amended the Health and Safety Code Section 388.005, in part, by requiring affected political subdivisions to: implement all cost-effective energy-efficiency measures, establish a goal to reduce electricity consumption by 5 percent each year for 6 years, and report efforts and progress annually to the State Energy Conservation Office (SECO). The report details the efforts being undertaken by SECO to provide assistance and information to affected entities, as well as the progress and efforts made by political subdivisions in meeting the energy efficiency mandates of SB 5 / SB 12.

### **RECOMMENDATION:**

Staff recommends approval

**COUNCIL GOALS:**

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

**ATTACHMENTS:**

Description:

 [Resolution - Reduction of Energy Consumption](#)

Type:

Resolution Letter

**TOWN OF ADDISON, TEXAS**

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

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS ESTABLISHING ENERGY CONSERVATION GOALS AS REQUIRED BY TEXAS HEALTH AND SAFETY CODE § 388.005, AS AMENDED BY SENATE BILL 898 OF THE 82<sup>ND</sup> LEGISLATIVE SESSION OF 2011, STATE OF TEXAS; REQUIRING THE FILING OF AN ANNUAL REPORT ON COMPLIANCE WITH THE CITY'S ENERGY CONSERVATION GOALS WITH THE STATE ENERGY CONSERVATION OFFICE ("SECO") ON A FORM PROVIDED BY SECO; AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, Senate Bill 898 of the 82nd Legislative Session of 2011 amends the Texas Health and Safety Code § 388.005, to require political subdivisions in nonattainment areas to establish a goal to reduce electric consumption by at least five percent each state fiscal year for 10 years beginning September 1, 2011; and

**WHEREAS**, the Town of Addison, Texas ("City") is a political subdivision located in a nonattainment area or in an affected county, not otherwise exempted from having to establish an energy conservation goal; and

**WHEREAS**, Senate Bill 898 requires the City to file an annual report of energy conservation efforts with the State Energy Conservation Office ("SECO") on a form to be provided by SECO; and

**WHEREAS**, reduction in consumption of electricity at City electric accounts will reduce electric generation requirements, which will in turn have a beneficial impact on Electric Reliability Council of Texas (ERCOT) system reliability, air quality, and the City's budget.

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

Section 1. The Town of Addison, Texas ("City") hereby establishes a goal that electricity consumption be reduced by five percent each fiscal year for ten years, beginning September 1, 2011.

Section 2. The City file an annual energy consumption goal compliance report with SECO on a form provided by SECO as may be required by § 388.005 of the Texas Health and Safety Code.

Section 3. This Resolution shall become effective immediately upon its passage.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this \_\_\_\_\_ day of October, 2012.

\_\_\_\_\_  
Todd Meier, Mayor

ATTEST:

By: \_\_\_\_\_  
Chris Terry, City Secretary

## Council Agenda Item: # R 2c

### **AGENDA CAPTION:**

Approval of contracts for services with non-profit organizations (including CONTACT Crisis Line, The Family Place, Launchability, Metrocrest Chamber of Commerce, Metrocrest Family Medical Clinic, Metrocrest Social Services, Senior Adult Services, Texas Wranglers, Dance Council, Water Tower Theatre, and the Addison Arbor Foundation) for Fiscal Year 2012-2013, subject to final review and approval by the City Manager and City Attorney.

### **FINANCIAL IMPACT:**

A total of \$537,000 has been allocated for the non-profit contracts. Of this amount, \$397,000 is budgeted in the hotel fund, and includes the Water Tower Theatre and the Dance Council. The remaining \$140,000 is located in the Council Projects budget of the General Fund.

The contract for Communities in Schools, Dallas, is not included in this item, as it is currently under evaluation by Council Liaisons.

### **BACKGROUND:**

These are the contracts which council has discussed as part of the Fiscal Year 2012-2013 budget process in August and September. All were approved with the exception of Communities in Schools, as noted above. The contract for the Addison Arbor Foundation, being a new contract, requires slightly more development time, but will be made available to council prior the October 23 meeting for review.

### **RECOMMENDATION:**

Staff recommends approval.

### **COUNCIL GOALS:**

Mindful Stewardship of Town Resources

### **ATTACHMENTS:**

Description:

📎 [FY2013 Requests and Funding Level Summary](#)

📎 [FY2013 Non-Profit Contracts](#)

Type:

Backup Material

Backup Material

**Summary of Nonprofit Grant Requests FY 2012-2013**

<b>Organization</b>	<b>Recieved 11-12</b>	<b>Request 12-13</b>	<b>Recommended 12-13</b>
Communities in Schools Dallas, Inc.	\$ 18,750.00	\$ 32,000.00	
CONTACT Crisis Line	\$ 5,000.00	\$ 10,000.00	\$ 5,000.00
The Family Place	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00
Launchability (Special Care&Career Svcs)	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00
Metrocrest Chamber of Commerce	\$ 35,000.00	\$ 35,000.00	\$ 35,000.00
Metrocrest Family Medical Clinic*	\$ -	\$ 3,000.00	\$ 3,000.00
Metrocrest Social Services	\$ 30,000.00	\$ 50,000.00	\$ 30,000.00
Senior Adult Services	\$ 17,000.00	\$ 20,000.00	\$ 17,000.00
United Basketball League - Texas Wranglers	\$ 2,000.00	\$ 30,000.00	\$ 2,000.00
Dance Council	\$ 7,000.00	\$ 7,200.00	\$ 7,000.00
WaterTower Theatre	\$ 390,000.00	\$ 390,000.00	\$ 390,000.00
Addison Arbor Foundation	\$ -	\$ 33,000.00	\$ 33,000.00
<b>Total</b>	<b>\$519,750</b>	<b>\$625,200</b>	<b>\$537,000</b>

\*Awarded \$3,000.00, but never returned their contract.

FirstName	LastName		Company	Phone Number	Email	Received '13
Tracy	Eubanks	President	Metrocrest Chamber of Commerce	469-587-0420, x1	<a href="mailto:tracy@metrocrestchamber.com">tracy@metrocrestchamber.com</a>	7/2/2012
Sandra G.	Chavarria	Executive Director	Communities in Schools Dallas, Inc.	214-827-0955 x227	<a href="mailto:sandyc@cisdallas.org">sandyc@cisdallas.org</a>	7/2/2012
Pam	Deslorieux	Executive Director	Dance Council	214-219-2290	<a href="mailto:director@thedancecouncil.org">director@thedancecouncil.org</a>	7/2/2012
Jane Wood	Hawkins, RN	Executive Director	Metrocrest Family Medical Clinic	972-484-6336	<a href="mailto:janehawkinsmfm@sbcbglobal.net">janehawkinsmfm@sbcbglobal.net</a>	7/2/2012
Bunny	Summerlin	Executive Director	Metrocrest Social Services	972-446-2100	<a href="mailto:bsummerlin@metrocrestsocialservice.com">bsummerlin@metrocrestsocialservice.com</a>	7/2/2012
Cathy	Packard	Executive Director	LaunchAbility	972-991-6777 x 112	<a href="mailto:cathyp@specialcarecareer.org">cathyp@specialcarecareer.org</a>	7/2/2012
Paige	Flink	Executive Director	The Family Place	214-443-7787	<a href="mailto:phflink@familyplace.org">phflink@familyplace.org</a>	7/2/2012
Greg	Gerendas	Executive Director	Senior Adult Services	972-242-4464 x 316	<a href="mailto:gregory.gerendas@senioradultservice.com">gregory.gerendas@senioradultservice.com</a>	7/2/2012
Benaye Y.	Rogers		CONTACT Crisis Line	972-233-0866	<a href="mailto:brogers@contactcrisisline.org">brogers@contactcrisisline.org</a>	7/9/2012
Ozzie	Denson	Executive Director	UBL Texas Wranglers	972-781-8120	<a href="mailto:coachdenson32@yahoo.com">coachdenson32@yahoo.com</a>	7/2/2012
Mary Jo	Cater	President	Addison Arbor Foundation	972-934-0617	<a href="mailto:maryjo_cater@yahoo.com">maryjo_cater@yahoo.com</a>	7/11/2012

Contracts Sent PAM Submit

STATE OF TEXAS

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**CONTRACT FOR SERVICES**

COUNTY OF DALLAS

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This Contract for Services (“Contract”) is made and entered into as of the 1st day of October, 2012 by and between the Town of Addison, Texas (the “City”) and Contact Crisis Line (“Contact Crisis Line”).

**WITNESSETH:**

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

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

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

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

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

**I. TERM**

The term of this contract and agreement shall be for a period of one year from the 1st day of October, 2012 through the 30th day of September, 2013, except as otherwise provided for herein.

**II. SERVICES**

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

(a) Crisis Prevention and Resource Services: From the Susan and Ben Odom Call Center, more than 100 specially trained Crisis Line Specialists support callers 242 hours a day with crisis prevent services, as well as referring them to other community agencies if further assistance is needed during the City’s 2012-2013 fiscal year.

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

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

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

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

### III. COMPENSATION

For the operation and provision of the services, projects and programs of Contact Crisis Line as described herein, the City shall pay Contact Crisis Line the sum of Five Thousand and No/100 Dollars (\$5,000.00). Such sum shall be paid on or before January 1, 2012, provided Contact Crisis Line is not then in default of this Contract.

### IV. RESPONSIBILITY; INDEMNIFICATION

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

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

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

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

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

## **V. TERMINATION**

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

## **VI. CONFLICT OF INTEREST**

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

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

## **VII. ACCOUNTING**

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

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

Contact Crisis Line shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the thirtieth (30<sup>th</sup>) day after the close of each quarter (beginning with the quarter ending December 31, 2012, with the last quarter ending September 30, 2013), Contact Crisis Line shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by Contact Crisis Line of the funds paid to Contact Crisis Line under this Contract; and (b) a year-to-date report of the expenditures made by Contact of the funds paid to Contact under this Contract (and if this Contract is terminated prior to its expiration, Contact Crisis Line shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, Contact Crisis Line shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of Contact Crisis Line's fiscal year, Contact Crisis Line shall provide the City with a financial statement signed by the Chairman of Contact Crisis Line's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth Contact Crisis Line's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

## **VIII. INDEPENDENT CONTRACTOR**

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

#### **IX. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT**

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

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

#### **X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE**

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

#### **XI. COPYRIGHT**

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

#### **XII. NON-DISCRIMINATION**

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

### **XIII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS; RECITALS**

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

### **XIV. VENUE; GOVERNING LAW**

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

### **XV. COUNTERPARTS**

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

### **XVI. NO WAIVER; RIGHTS CUMULATIVE**

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

### **XVII. NOTICES**

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

The City's address:

Matthew McCombs  
Assistant to the City Manager  
Town of Addison

Contact Crisis Line's address:

Benaye Y. Rodgers  
President  
P.O. Box 800742

5300 Belt Line Road  
Dallas, Texas 75254

Richardson, Texas 75080

**XVIII. SEVERABILITY**

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

**XIX. AUTHORITY TO EXECUTE CONTRACT**

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

**XX. ENTIRE AGREEMENT**

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

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

**TOWN OF ADDISON, TEXAS**

**CONTACT CRISIS LINE**

By: \_\_\_\_\_  
Ron Whitehead, City Manager

By: \_\_\_\_\_  
Benaye Rodgers, Executive Director

STATE OF TEXAS

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**CONTRACT FOR SERVICES**

COUNTY OF DALLAS

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This Contract for Services (“Contract”) is made and entered into as of the 1st day of October, 2012 by and between the Town of Addison, Texas (the “City”) and the Dance Council (the “Dance Council”).

**WITNESSETH:**

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

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

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

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

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

**I. TERM**

The term of this Contract shall be for a period of one year from the 1st day of October, 2012 through the 30th day of September, 2013, except as otherwise provided for herein.

**II. SERVICES**

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

(a) Provide a program entitled “Taste Dance: Addison Style”. This program shall be a four part series of lecture/demonstrations on dance to be presented at the Conference and Theatre Centre for a Sunday afternoon festival during the City’s 2012-2013 fiscal year, on dates and at times to be decided. Dance themes addressed in the lecture/demonstrations shall include the following or items like the following:

**-Elledanceworks - Modern Dance**

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

**-Contemporary Ballet Dallas – Contemporary Ballet**

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

**-Legacy Tap Project - Tap**

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

**-North Texas Middle Eastern Dance Association - Bellydance**

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

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

(c) The inclusion of the Addison logo on the Dance Council web site ([www.thedancecouncil.org](http://www.thedancecouncil.org)) or any other web site of the Dance Council. The Dance Council shall contact the City regarding the details of including the Addison logo on the web site.

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

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

(f) Work and coordinate with the City's Special Events Department to promote and mark City events, with details regarding the same to be determined by the City, in consultation with the Dance Council, during the City's 2012-2013 fiscal year.

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

**III. COMPENSATION**

For the operation and provision of the services, projects and programs of the Dance Council as described herein, the City shall pay the Dance Council the sum of Seven Thousand and No/100 Dollars (\$7,000.00). Such sum shall be paid on or before April 9, 2013, provided Dance Council is not then in default of this Contract.

#### IV. INDEMNIFICATION

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

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

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

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

## **V. TERMINATION**

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

## **VI. CONFLICT OF INTEREST**

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

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

## **VII. ACCOUNTING**

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

The funds paid to Dance Council pursuant to this Contract shall be maintained in a separate account established for that purpose and may not be commingled with any other money. Funds

received hereunder from the City may be spent for day to day operations, supplies, salaries and other administrative costs provided that such costs are necessary for the promotion and encouragement of the purposes for which the funds may be used as described herein.

Dance Council shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the thirtieth (30<sup>th</sup>) day after the close of each quarter (beginning with the quarter ending December 31, 2012, with the last quarter ending September 30, 2013), Dance Council shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by Dance Council of the funds paid to Dance Council under this Contract; and (b) a year-to-date report of the expenditures made by Dance Council of the funds paid to Dance Council under this Contract (and if this Contract is terminated prior to its expiration, Dance Council shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, Dance Council shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of Dance Council's fiscal year, Dance Council shall provide the City with a financial statement signed by the Chairman of Dance Council's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth Dance Council's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

#### **VIII. INDEPENDENT CONTRACTOR**

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

#### **IX. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT**

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

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

#### **X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE**

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

## **XI. COPYRIGHT**

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

## **XII. NON-DISCRIMINATION**

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

## **XIII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS; RECITALS**

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

## **XIV. VENUE; GOVERNING LAW**

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

## **XV. COUNTERPARTS**

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

## **XVI. NO WAIVER; RIGHTS CUMULATIVE**

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

## **XVII. NOTICES**

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

The City's address:

Matthew McCombs  
Assistant to the City Manager  
Town of Addison  
5300 Belt Line Road  
Dallas, Texas 75254

Dance Council's address:

Pam Deslorieux  
Executive Director  
3630 Harry Hines Blvd.  
Dallas, Texas 75219

## **XVIII. SEVERABILITY**

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

## **XIX. AUTHORITY TO EXECUTE CONTRACT**

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

## **XX. ENTIRE AGREEMENT**

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

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

**TOWN OF ADDISON, TEXAS**

**DANCE COUNCIL**

By: \_\_\_\_\_  
Ron Whitehead, City Manager

By: \_\_\_\_\_  
Pam Deslorieux, Executive Director

STATE OF TEXAS

§

CONTRACT FOR SERVICES

COUNTY OF DALLAS

§

§

This Contract for Services (“Contract”) is made and entered into as of the 1st day of October, 2012 by and between the Town of Addison, Texas (the “City”) and LaunchAbility (“LaunchAbility”).

**WITNESSETH:**

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

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

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

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

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

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

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

**I. TERM**

The term of this Contract shall be for a period of one year from the 1st day of October, 2012 through the 30th day of September, 2013, except as otherwise provided for herein.

## **II. SERVICES**

LaunchAbility covenants and agrees that it shall:

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

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

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

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

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

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

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

## **III. COMPENSATION**

For the operation and provision of the services, projects and programs of LaunchAbility as described herein, the City shall pay LaunchAbility the sum of Five Thousand and No/100 Dollars (\$5,000.00). Such sum shall be paid on or before January 1, 2013, provided LaunchAbility is not then in default of this Contract.

## **IV. RESPONSIBILITY; INDEMNIFICATION**

(a) LAUNCHABILITY AGREES TO ASSUME AND DOES HEREBY ASSUME ALL RESPONSIBILITY AND LIABILITY FOR DAMAGES OR INJURIES SUSTAINED BY PERSONS OR PROPERTY, WHETHER REAL OR ASSERTED, BY OR FROM THE

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

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

LaunchAbility shall promptly advise the City in writing of any claim or demand against any Addison Person or LaunchAbility related to or arising out of LaunchAbility' activities under this Contract and shall see to the investigation and defense of such claim or demand at LaunchAbility' 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 LaunchAbility of any of its obligations hereunder.

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

## **V. TERMINATION**

This Contract may be canceled and terminated by either party at any time and for any reason upon giving at least thirty (30) days written notice of such cancellation and termination to the other party hereto. Such notice shall be sent certified mail, return receipt requested, and to the most recent address shown on the records of the party terminating the Contract. The thirty (30) day

period shall commence upon deposit of the said notice in the United States mail and shall conclude at midnight of the 30th day thereafter. In the event of such cancellation and termination and if LaunchAbility has failed at the time of such cancellation and termination to provide all of the services set forth herein, LaunchAbility shall refund to the City that portion of funds paid to LaunchAbility under the terms of this Contract in accordance with the following: Prorata funding returned to the City by LaunchAbility shall be determined by dividing the amount paid by the City under this Contract by 365 (the “daily rate”), and then multiplying the daily rate by the number of days which would have remained in the term hereof but for the cancellation or termination. Upon payment or tender of such amount, all of the obligations of LaunchAbility and the City under this Contract shall be discharged and terminated (except as otherwise provided herein, e.g., except for obligations and responsibilities as may survive termination or cancellation of this Contract as provided for in this Contract) and no action shall lie or accrue for additional benefit, consideration or value for or based upon the services performed under or pursuant to this Contract.

## **VI. CONFLICT OF INTEREST**

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

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

## **VII. ACCOUNTING**

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

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

LaunchAbility shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the thirtieth (30<sup>th</sup>) day after the close of each quarter (beginning with the quarter ending December 31, 2012, with the last quarter ending September 30, 2013), LaunchAbility shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by

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

### **VIII. INDEPENDENT CONTRACTOR**

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

### **IX. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT**

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

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

### **X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE**

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

### **XI. NON-DISCRIMINATION**

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

### **XII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS; RECITALS**

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

### **XIII. VENUE; GOVERNING LAW**

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

### **XIV. COUNTERPARTS**

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

### **XV. NO WAIVER; RIGHTS CUMULATIVE**

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

### **XVI. NOTICES**

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

The City's address:

Matthew McCombs  
Assistant to the City Manager  
Town of Addison  
5300 Belt Line Road  
Dallas, Texas 75254

LaunchAbility' address:

Cathy Packard  
Executive Director  
LaunchAbility  
4350 Sigma, Suite 100  
Farmers Branch, Texas 75244

**XVII. SEVERABILITY**

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

**XVIII. AUTHORITY TO EXECUTE CONTRACT**

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

**XIX. ENTIRE AGREEMENT**

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

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

**TOWN OF ADDISON, TEXAS**

**LAUNCHABILITY**

By: \_\_\_\_\_  
Ron Whitehead, City Manager

By: \_\_\_\_\_  
Cathy Packard, Executive Director



(c) provide marketing support to the City's Economic Development Department.

2. *Entrepreneur Development Support* - The Chamber will provide to the City the following entrepreneur development support services ("Entrepreneur Development Support Services"):

(a) develop local business start-up manual that includes the steps for starting a business;

(b) highlight local resources available to entrepreneurs (i.e. SBA, SBDCs, SCORE, etc.);

(c) develop a list of Chamber members that can provide initial counseling to entrepreneurs focusing in on accounting, legal support, marketing, etc.; and

(d) provide quarterly training event led by seasoned professional that will enhance knowledge for entrepreneurs on starting a business.

3. *WorldFest Relationship Enhancement* - The Chamber will provide to the City the following WorldFest relationship enhancement services ("WorldFest Relationship Enhancement Services"):

(a) develop a strategy to reach out to minority/ethnic chambers of commerce in the region to create awareness of WorldFest in Addison; and

(b) increase participation of minority chambers in WorldFest.

4. *Hotel Concierge Support* - The Chamber will provide to the City the following hotel concierge support services ("Hotel Concierge Support Services"):

(a) assist the City's Department of Visitor Services in establishing a hotel concierge business program for major conferences held at local hotels; and

(b) provide volunteers at targeted hotel conferences to disseminate information of local attractions, local events, and business support services.

5. *Develop Aviation Related Forum at Addison Airport* - The Chamber will provide to the City the following services regarding the development of an aviation related forum at Addison Airport ("Addison Airport Support Services"):

(a) collaborate with Addison Airport management to develop a timely aviation forum; and

(b) market the forum to local businesses with emphasis on Airport tenants.

B. Within 30 days following the end of each calendar quarter during the term of this Contract (e.g., following the end of December, 2012; March, 2013; June, 2013; and September, 2013), the Chamber will provide to the City a written report identifying the work and services of the Chamber performed and provided by the Chamber during the immediately prior quarter with respect to each of the Services. A form to be used by the Chamber in making those reports is attached hereto as Exhibit 1 and incorporated herein.

A City representative as determined by the City Council shall serve as an Ex-Officio Director of the Chamber and as a member of the Chamber's Economic Development Committee. The City's staff member responsible for Economic Development shall also be a member of the Committee.

### III. COMPENSATION

A. For the design, development and implementation of the programs enumerated in Section II above, the City shall pay to the Chamber the sum of Thirty-Five Thousand and No/100 Dollars (\$35,000.00), with such amount to be paid on or before January 1, 2013 provided the Chamber is not then in default of this Contract. Such amount is allocated to the services of the Chamber as follows: (i) for the Economic Development Marketing Services, the sum of \$10,000.00; (ii) for the Entrepreneur Development Support Services, the sum of \$10,000.00; (iii) for the WorldFest Relationship Enhancement Services, the sum of \$5,000.00; (iv) for the Hotel Concierge Support Services, the sum of \$5,000.00; and (v) for the Addison Airport Support Services, the sum of \$5,000.00.

B. If requested, the Chamber shall provide its monthly financial statements to the City Manager. Such reports shall include statements of revenues and expenses. The City Manager shall also receive a copy of the Annual Business Plan and Annual Report of program activity. No payment shall be made during any period in which this provision is not complied with. Such statement shall provide sufficient information as to support the accuracy of the monthly financial statements.

### IV. RESPONSIBILITY; INDEMNIFICATION

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

(b) ***INDEMNITY OWED BY THE CHAMBER.*** The Chamber covenants and agrees to **FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS** the Town of Addison, Texas and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas, individually or collectively, in both their official and private capacities (the Town of Addison, Texas and the elected officials, the officers,

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

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

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

## **V. TERMINATION**

This Contract may be canceled and terminated by either party at any time and for any reason upon giving at least thirty (30) days written notice of such cancellation and termination to the other party hereto. Such notice shall be sent certified mail, return receipt requested, and to the most recent address shown on the records of the party terminating the Contract. The thirty (30) day period shall commence upon deposit of the said notice in the United States mail and shall conclude at midnight of the 30th day thereafter.

In the event of such cancellation and termination and if the Chamber has failed at the time of such cancellation and termination to provide all the Services set forth herein, the Chamber shall refund to the City a portion of funds paid to the Chamber under the terms of this Contract in accordance with the following: Prorata funding returned to the City by the Chamber shall be determined by dividing the amount paid for each of the Economic Development Marketing Services, the Entrepreneur Development Support Services, the WorldFest Relationship Enhancement Services, the Hotel Concierge Support Services, and the Addison Airport Support

Services by 366 (the “daily rate”), and then multiplying the daily rate by the number of days which would have remained in the term hereof but for the cancellation or termination.

For example, assume this Contract is terminated on March 31, 2013; but for the termination, 183 days of the term of this Contract would have remained at that time. As of the date of termination, the Chamber has not provided all of the Economic Development Marketing Services. Accordingly, the Chamber would reimburse to the City the sum of \$10,000.00 ÷ 366 X 183, or \$5,000.00.

Upon payment or tender of such amount, all of the obligations of the Chamber and the City under this Contract shall be discharged and terminated (except as otherwise provided herein, e.g., except for obligations and responsibilities as may survive termination or cancellation of this Contract as provided for in this Contract) and no action shall lie or accrue for additional benefit, consideration or value for or based upon the services performed under or pursuant to this Contract.

## **VI. CONFLICT OF INTEREST**

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

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

## **VII. ACCOUNTING**

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

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

The Chamber shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the thirtieth (30<sup>th</sup>) day after the close of each quarter (beginning with the quarter ending December

31, 2012, with the last quarter ending September 30, 2013), the Chamber shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by the Chamber of the funds paid to the Chamber under this Contract; and (b) a year-to-date report of the expenditures made by the Chamber of the funds paid to the Chamber under this Contract (and if this Contract is terminated prior to its expiration, the Chamber shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, the Chamber shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of the Chamber's fiscal year, the Chamber shall provide the City with a financial statement signed by the Chairman of the Chamber's Board of Directors (or other person acceptable to the City) as accepted by the Chamber's Board of Directors, of and setting forth all activities funded by this Contract and the Chamber's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

### **VIII. INDEPENDENT CONTRACTOR**

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

### **IX. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT**

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

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

### **X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE**

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

### **XI. NON-DISCRIMINATION**

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

## **XII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS; RECITALS**

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

## **XIII. VENUE; GOVERNING LAW**

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

## **XIV. COUNTERPARTS**

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

## **XV. NO WAIVER; RIGHTS CUMULATIVE**

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

## **XVI. NOTICES**

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

The City's address:

Matthew McCombs  
Assistant to the City Manager  
Town of Addison  
5300 Belt Line Road  
Dallas, Texas 75254

The Chamber's address:

Tracy Eubanks  
President  
Metrocrest Chamber of Commerce  
5100 Belt Line Road, Suite 430  
Dallas, Texas 75254

**XVII. SEVERABILITY**

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

**XVIII. AUTHORITY TO EXECUTE CONTRACT**

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

**XIX. ENTIRE AGREEMENT**

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

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

**TOWN OF ADDISON, TEXAS**

**METROCREST CHAMBER OF  
COMMERCE**

By: \_\_\_\_\_  
Ron Whitehead, City Manager

By: \_\_\_\_\_  
Tracy Eubanks, President

**EXHIBIT 1**  
**TO CONTRACT FOR SERVICES**

**Metrocrest Chamber of Commerce**  
**Service Agreement Milestone Quarterly Report**

**Town of Addison**

<b>1. Economic Development Marketing (\$10,000):</b>		
➤ Assist with sports marketing development by creating an inventory and analysis of facilities in the area to accommodate such events.		
➤ Provide marketing support of Addison Conference Center and Visit Addison facilities that will generate at least 5 events annually.		
➤ Provide marketing support to our economic development department.		
<b>Item</b>	<b>Date</b>	<b>Accomplishment/Milestone/Progress</b>
<b>2. Entrepreneur Development Support (\$10,000):</b>		
➤ Develop local business start-up manual that includes the steps for starting a business.		
➤ Highlight local resources available to entrepreneurs (i.e. SBA, SBDCs, SCORE, etc.)		
➤ Develop list of Chamber members that can provide initial counseling to entrepreneurs focusing in on accounting, legal support, marketing, etc.		
➤ Provide quarterly training event led by seasoned professional that will enhance knowledge for entrepreneurs on starting a business.		
<b>Item</b>	<b>Date</b>	<b>Accomplishment/Milestone/Progress</b>
<b>3. WorldFest Relationship Enhancement (\$5,000):</b>		
➤ Develop strategy to reach out to minority/ethnic chambers of commerce in the region to create awareness of WorldFest in Addison.		
➤ Increase participation of minority chambers in WorldFest.		
<b>Item</b>	<b>Date</b>	<b>Accomplishment/Milestone/Progress</b>

<b>4.</b>	<b><i>Hotel Concierge Support (\$5,000):</i></b>	
	➤ Assist Visitor Services in establishing a Hotel Concierge Business program for major conferences held at local hotels.	
	➤ Provide volunteers at targeted hotel conferences to disseminate information of local attractions, local events, and business support services.	
<b>Item</b>	<b>Date</b>	<b>Accomplishment/Milestone/Progress</b>
<b>5.</b>	<b><i>Develop Aviation Related Forum at Addison Airport (\$5,000):</i></b>	
	➤ Collaborate with airport management to develop a timely aviation forum.	
	➤ Market event to local businesses with emphasis on airport tenants.	
<b>Item</b>	<b>Date</b>	<b>Accomplishment/Milestone/Progress</b>

STATE OF TEXAS

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**CONTRACT FOR SERVICES**

COUNTY OF DALLAS

§

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This Contract for Services ("Contract") is made and entered into as of the 1st day of October, 2012 by and between the Town of Addison, Texas (the "City"), and Metrocrest Family Medical Clinic ("Metrocrest Family Medical Clinic").

**WITNESSETH:**

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

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

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

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

**I. TERM**

The term of this Contract shall be for a period of one year from the 1st day of October, 2012 through the 30th day of September, 2013, except as otherwise provided for herein.

**II. SERVICES**

Metrocrest Family Medical Clinic covenants and agrees that it shall:

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

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

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

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

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

### III. COMPENSATION

For the operation and provision of the services, projects and programs of Metrocrest Family Medical Clinic as described herein, the City shall pay Metrocrest Family Medical Clinic the sum of Three Thousand and No/100 Dollars (\$3,000.00). Such sum shall be paid on or before January 1, 2013, provided Metrocrest Family Medical Clinic is not then in default of this Contract.

### IV. RESPONSIBILITY; INDEMNIFICATION

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

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

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

Metrocrest Family Medical Clinic shall promptly advise the City in writing of any claim or demand against any Addison Person or Metrocrest Family Medical Clinic related to or arising out of Metrocrest Family Medical Clinic's activities under this Contract and shall see to the investigation and defense of such claim or demand at Metrocrest Family Medical Clinic'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 Metrocrest Family Medical Clinic of any of its obligations hereunder.

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

## **V. TERMINATION**

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

## **VI. CONFLICT OF INTEREST**

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

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

## **VII. ACCOUNTING**

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

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

Metrocrest Family Medical Clinic shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the thirtieth (30<sup>th</sup>) day after the close of each quarter (beginning with the quarter ending December 31, 2012, with the last quarter ending September 30, 2013), Metrocrest Family Medical Clinic shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by Metrocrest Family Medical Clinic of the funds paid to Metrocrest Family Medical Clinic under this Contract; and (b) a year-to-date report of the expenditures made by Metrocrest Family Medical Clinic of the funds paid to Metrocrest Family Medical Clinic under this Contract (and if this Contract is terminated prior to its expiration, Metrocrest Family Medical Clinic shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, Metrocrest Family Medical Clinic shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of Metrocrest Family Medical Clinic’s fiscal year, Metrocrest Family Medical Clinic shall provide the City with a financial statement signed by the Chairman of Metrocrest Family Medical Clinic’s Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth Metrocrest Family Medical Clinic’s income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

## **VIII. INDEPENDENT CONTRACTOR**

In performing services under this Contract, the relationship between the City and Metrocrest Family Medical Clinic is that of independent contractor, and the City and Metrocrest Family Medical Clinic by the execution of this Contract do not change the independent status of Metrocrest Family Medical Clinic. Metrocrest Family Medical Clinic is an independent contractor, and no

term or provision of this Contract or action by Metrocrest Family Medical Clinic in the performance of this Contract is intended nor shall be construed as making Metrocrest Family Medical Clinic the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship, or to allow the City to exercise discretion or control over the manner in which Metrocrest Family Medical Clinic performs the services which are described in this Contract.

#### **IX. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT**

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

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

#### **X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE**

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

#### **XI. NON-DISCRIMINATION**

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

#### **XII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS; RECITALS**

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

#### **XIII. VENUE; GOVERNING LAW**

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

#### **XIV. COUNTERPARTS**

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

#### **XV. NO WAIVER; RIGHTS CUMULATIVE**

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

#### **XVI. NOTICES**

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

The City's address:

Matthew McCombs  
Assistant to the City Manager  
Town of Addison  
5300 Belt Line Road  
Dallas, Texas 75254

Metrocrest Family Medical Clinic's address:

Jane Wood Hawkins  
Executive Director  
Metrocrest Family Medical Clinic  
1 Medical Parkway, Suite 149  
Dallas, Texas 75234

#### **XVII. SEVERABILITY**

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

#### **XVIII. AUTHORITY TO EXECUTE CONTRACT**

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

#### **XIX. ENTIRE CONTRACT**

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

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

**TOWN OF ADDISON, TEXAS**

**METROCREST FAMILY MEDICAL  
CLINIC**

By: \_\_\_\_\_  
Ron Whitehead, City Manager

By: \_\_\_\_\_  
Jane Wood Hawkins, Executive Director

STATE OF TEXAS

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**CONTRACT FOR SERVICES**

COUNTY OF DALLAS

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This Contract for Services (“Contract”) is made and entered into as of the 1st day of October, 2012 by and between the Town of Addison, Texas (the “City”) and Metrocrest Social Services (“Metrocrest”).

**WITNESSETH:**

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

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

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

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth, the Town of Addison, Texas and Metrocrest Social Services do hereby contract and agree as follows:

**I. TERM**

The term of this Contract shall be for a period of one year from the 1st day of October, 2012 through the 30th day of September, 2013, except as otherwise provided for herein.

**II. SERVICES**

During the term of this Contract, Metrocrest covenants and agrees that it shall:

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

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

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

### III. COMPENSATION

For the operation and provision of the services, projects and programs of Metrocrest as described herein, the City shall pay Metrocrest the sum of Thirty Thousand and No/100 Dollars (\$30,000.00). Such sum shall be paid on or before January 1, 2013, provided Metrocrest is not then in default of this Contract.

### IV. INDEMNIFICATION

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

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

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

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

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

## V. TERMINATION

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

## VI. CONFLICT OF INTEREST

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

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

## **VII. ACCOUNTING**

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

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

Metrocrest shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the thirtieth (30<sup>th</sup>) day after the close of each quarter (beginning with the quarter ending December 31, 2012, with the last quarter ending September 30, 2013), Metrocrest shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by Metrocrest of the funds paid to Metrocrest under this Contract; and (b) a year-to-date report of the expenditures made by Metrocrest of the funds paid to Metrocrest under this Contract (and if this Contract is terminated prior to its expiration, Metrocrest shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, Metrocrest shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days following the end of Metrocrest's fiscal year, Metrocrest shall provide the City with a financial statement signed by the Chairman of Metrocrest's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth Metrocrest's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

## **VIII. INDEPENDENT CONTRACTOR**

In performing services under this Contract, the relationship between the City and Metrocrest is that of independent contractor, and the City and Metrocrest by the execution of this Contract do

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

#### **IX. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT**

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

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

#### **X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE**

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

#### **XI. NON-DISCRIMINATION**

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

#### **XII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS; RECITALS**

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

#### **XIII. VENUE; GOVERNING LAW**

In the event of any action under this Contract, exclusive venue for all causes of action shall be instituted and maintained in Dallas County, Texas. This Agreement shall be governed by and construed under the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction.

#### **XIV. COUNTERPARTS**

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

#### **XV. NO WAIVER; RIGHTS CUMULATIVE**

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

#### **XVI. NOTICES**

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

The City's address:

Matthew McCombs  
Assistant to the City Manager  
Town of Addison  
5300 Belt Line Road  
Dallas, Texas 75254

Metrocrest's address:

Ms. Bunny Summerlin  
Executive Director  
Metrocrest Social Services  
13801 Hutton Drive, Suite 150  
Farmers Branch, Texas 75234

#### **XVII. SEVERABILITY**

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

#### **XVIII. AUTHORITY TO EXECUTE CONTRACT**

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

#### **XIX. ENTIRE AGREEMENT**

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

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

**TOWN OF ADDISON, TEXAS**

**METROCREST SOCIAL SERVICES**

By: \_\_\_\_\_  
Ron Whitehead, City Manager

By: \_\_\_\_\_  
Bunny Summerlin, Executive Director

STATE OF TEXAS

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CONTRACT FOR SERVICES

COUNTY OF DALLAS

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This Contract for Services (“Contract”) is made and entered into as of the 1st day of October, 2012 by and between the Town of Addison, Texas (the “City”) and Senior Adult Services of Addison, Carrollton, Coppell, and Farmers Branch (“Senior Adult Services”).

**WITNESSETH:**

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

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

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

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

**I. TERM**

The term of this Contract shall be for a period of one year from October 1, 2012 through September 30, 2013, except as otherwise provided for herein.

**II. SERVICES**

Senior Adult Services covenants and agrees that it shall:

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

(6) Care Givers Support

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

### III. COMPENSATION

For the operation and provision of the services, projects and programs of Senior Adult Services as described herein, the City shall pay Senior Adult Services the sum of Seventeen Thousand and No/100 Dollars (\$17,000.00). Such sum shall be paid on or before January 1, 2013, provided Senior Adult Services is not then in default of this Contract.

### IV. INDEMNIFICATION

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

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

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

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

## **V. TERMINATION**

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

## **VI. CONFLICT OF INTEREST**

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

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

## **VII. ACCOUNTING**

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

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

Senior Adult Services shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the thirtieth (30<sup>th</sup>) day after the close of each quarter (beginning with the quarter ending December 31, 2012, with the last quarter ending September 30, 2013), Senior Adult Services shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by Senior Adult Services of the funds paid to Senior Adult Services under this Contract; and (b) a year-to-date report of the expenditures made by Senior Adult Services of the funds paid to Senior Adult Services under this Contract (and if this Contract is terminated prior to its expiration, Senior Adult Services shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, Senior Adult Services shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of Senior Adult Services' fiscal year, Senior Adult Services shall provide the City with a financial statement signed by the Chairman of Senior Adult Services' Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth Senior Adult Services' income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

## **VIII. INDEPENDENT CONTRACTOR**

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

## **IX. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT**

Senior Adult Services may not and shall have no authority to assign, transfer, or otherwise convey by any means whatsoever this Contract or any of the rights, duties or responsibilities

hereunder without obtaining the prior written approval of the City, and any attempted assignment, transfer, or other conveyance of this Contract without such approval shall be null and void and be cause for immediate termination of this Contract by the City.

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

#### **X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE**

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

#### **XI. NON-DISCRIMINATION**

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

#### **XII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS; RECITALS**

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

#### **XIII. VENUE; GOVERNING LAW**

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

#### **XIV. COUNTERPARTS**

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

#### **XV. NO WAIVER; RIGHTS CUMULATIVE**

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

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

## **XVI. NOTICES**

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

The Town's address:

Matthew McCombs  
Assistant to the City Manager  
Town of Addison  
5300 Belt Line Road  
Dallas, Texas 75254

Senior Adult Services' address:

Gregory Gerendas  
Executive Director  
Senior Adult Services  
One Medical Parkway  
Professional Plaza I, Suite 115  
Farmers Branch, Texas 75234

## **XVII. SEVERABILITY**

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

## **XVIII. AUTHORITY TO EXECUTE CONTRACT**

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

## **XIX. ENTIRE CONTRACT**

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

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

**TOWN OF ADDISON, TEXAS**

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

By: \_\_\_\_\_  
Ron Whitehead, City Manager

By: \_\_\_\_\_  
Gregory Gerendas, Executive Director

STATE OF TEXAS

§

**CONTRACT FOR SERVICES**

§

COUNTY OF DALLAS

§

This Contract for Services (“Contract”) is made and entered into as of the 1st day of October, 2012 by and between the Town of Addison, Texas (the “City”) and The Family Place, Inc., a Texas non-profit corporation (“The Family Place”).

**WITNESSETH:**

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

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

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

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

**I. TERM**

The term of this Contract shall be for a period of one year from the 1st day of October, 2012 through the 30th day of September, 2013, except as otherwise provided for herein.

**II. SERVICES**

The Family Place covenants and agrees that it shall:

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

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

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

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

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

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

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

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

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

### **III. COMPENSATION**

For the operation and provision of the services, projects and programs of The Family Place as described herein, the City shall pay The Family Place the sum of Ten Thousand and No/100 Dollars (\$10,000.00). Such sum shall be paid on or before January 1, 2013, provided The Family Place is not then in default of this Contract.

### **IV. RESPONSIBILITY; INDEMNIFICATION**

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

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

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

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

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

## **V. TERMINATION**

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

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

## **VI. CONFLICT OF INTEREST**

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

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

## **VII. ACCOUNTING**

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

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

The Family Place shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the thirtieth (30<sup>th</sup>) day after the close of each quarter (beginning with the quarter ending December 31, 2012, with the last quarter ending September 30, 2013), The Family Place shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by The Family Place of the funds paid to The Family Place under this Contract; and (b) a year-to-date report of the expenditures made by The Family Place of the funds paid to The Family Place under this Contract (and if this Contract is terminated prior to its expiration, The Family Place shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, The Family Place shall make its records

available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of The Family Place's fiscal year, The Family Place shall provide the City with a financial statement signed by the Chairman of The Family Place's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth The Family Place's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

### **VIII. INDEPENDENT CONTRACTOR**

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

### **IX. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT**

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

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

### **X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE**

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

### **XI. NON-DISCRIMINATION**

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

### **XII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS; RECITALS**

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

### **XIII. VENUE; GOVERNING LAW**

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

### **XIV. COUNTERPARTS**

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

### **XV. NO WAIVER; RIGHTS CUMULATIVE**

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

### **XVI. NOTICES**

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

The City's address:

Matthew McCombs  
Assistant to the City Manager  
Town of Addison  
5300 Belt Line Road  
Dallas, Texas 75254

The Family Place's address:

Paige Flink  
Executive Director  
The Family Place  
7424 Greenville Ave # 202  
Dallas, TX 75231-4534

### **XVII. SEVERABILITY**

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

**XVIII. AUTHORITY TO EXECUTE CONTRACT**

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

**XIX. ENTIRE CONTRACT**

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

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

**TOWN OF ADDISON, TEXAS**

**THE FAMILY PLACE, INC.**

By: \_\_\_\_\_  
Ron Whitehead, City Manager

By: \_\_\_\_\_  
Paige Flink, Executive Director

STATE OF TEXAS

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CONTRACT FOR SERVICES

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COUNTY OF DALLAS

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This Contract for Services ("Contract") is made and entered into as of the 1st day of October, 2012 by and between the Town of Addison, Texas (the "City"), and United Basketball League, Texas, Texas Wranglers ("UBL").

**WITNESSETH:**

**WHEREAS**, United Basketball League, Texas is a \_\_\_\_\_ *[e.g., private, non-profit organization established under the laws of the State of Texas for the purpose of...]* \_\_\_\_\_; and

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

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

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

**I. TERM**

The term of this Contract shall be for a period of one year from the 1st day of October, 2012 through the 30th day of September, 2013, except as otherwise provided for herein.

**II. SERVICES**

UBL covenants and agrees that it shall:

- (a) play "home games" within the corporate limits of the City;
- (b) play at least one "play-off game" within the corporate limits of the City;
- (c) participate in at least one City special event to provide interactive basketball demonstrations;
- (d) coordinate with the Town's Visitor Services Department to promote and book hotel rooms in Addison for players and game attendees for "home" and "play off" games held in Addison. Such efforts shall be measured and documented;

- (e) Present a mid-year written report to the City on the progress and status of services provided by UBL, and continue quarterly status reporting to the City in a mutually agreed upon form;
- (f) Provide a copy of UBL's annual audit of financial condition to the City; and
- (g) Submit detailed quarterly financial statements and program results to the City within thirty (30) days after the end of the preceding quarter explaining all expenditures.

### III. COMPENSATION

For the operation and provision of the services, projects and programs of UBL as described herein, the City shall pay UBL the sum of Two Thousand and No/100 Dollars (\$2,000.00). Such sum shall be paid on or before January 1, 2013, provided UBL is not then in default of this Contract.

### IV. RESPONSIBILITY; INDEMNIFICATION

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

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

UBL shall promptly advise the City in writing of any claim or demand against any Addison Person or UBL related to or arising out of UBL's activities under this Contract and shall see to the investigation and defense of such claim or demand at UBL'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 UBL of any of its obligations hereunder.

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

## **V. TERMINATION**

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

## **VI. CONFLICT OF INTEREST**

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

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

## **VII. ACCOUNTING**

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

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

UBL shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the thirtieth (30<sup>th</sup>) day after the close of each quarter (beginning with the quarter ending December 31, 2012, with the last quarter ending September 30, 2013), UBL shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by UBL of the funds paid to UBL under this Contract; and (b) a year-to-date report of the expenditures made by UBL of the funds paid to UBL under this Contract (and if this Contract is terminated prior to its expiration, UBL shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, UBL shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of UBL's fiscal year, UBL shall provide the City with a financial statement signed by the Chairman of UBL's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth UBL's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

#### **VIII. INDEPENDENT CONTRACTOR**

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

#### **IX. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT**

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

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

#### **X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPIRS**

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

#### **XI. NON-DISCRIMINATION**

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

#### **XII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS; RECITALS**

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

#### **XIII. VENUE; GOVERNING LAW**

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

#### **XIV. COUNTERPARTS**

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

#### **XV. NO WAIVER; RIGHTS CUMULATIVE**

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

#### **XVI. NOTICES**

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

notice shall be deemed communicated on the third (3rd) day after depositing the same in the United States mail.

The City's address:

UBL's address:

Matthew McCombs  
Assistant to the City Manager  
Town of Addison  
5300 Belt Line Road  
Dallas, Texas 75254

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**XVII. SEVERABILITY**

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

**XVIII. AUTHORITY TO EXECUTE CONTRACT**

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

**XIX. ENTIRE CONTRACT**

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

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

**TOWN OF ADDISON, TEXAS**

**UNITED BASKETBALL LEAGUE, TEXAS**

By: \_\_\_\_\_  
Ron Whitehead, City Manager

By: \_\_\_\_\_  
Typed/printed name: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

ATTEST:

By: \_\_\_\_\_  
Chris Terry, City Secretary

By: \_\_\_\_\_  
Typed/printed name: \_\_\_\_\_  
Its: \_\_\_\_\_



STATE OF TEXAS

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**CONTRACT FOR SERVICES**

COUNTY OF DALLAS

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§

This Contract for Services (“Contract”) is made and entered into as of the 1st day of October, 2012 by and between the Town of Addison, Texas (the “City”) and the WaterTower Theatre Incorporated (“WTT”), a Texas non-profit corporation with its principal place of business in Addison, Dallas County, Texas.

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

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

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

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

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

**I. TERM**

The term of this Contract shall be for a period of one year from the 1st day of October, 2012 through the 30th day of September, 2013, except as otherwise provided for herein.

**II. SERVICES**

WTT shall provide the following services:

- (a) Presentation of a minimum of five (5) main stage productions, one (1) season extra production, and The Out of the Loop Festival.
- (b) Recognition of the City in all playbills printed in connection with the productions.
- (c) Work with all hotels located in the City to generate awareness regarding the theatre.

(d) Work and coordinate with the City's Special Events Department to promote and market City events, with details regarding the same to be determined by the City, in consultation with WTT, during the City's 2012-2013 fiscal year.

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

### III. COMPENSATION

The City agrees to pay WTT as base consideration the sum of Two Hundred Forty Thousand and No/100 Dollars (\$240,000.00) "Base Consideration" from its revenue derived from the City's hotel occupancy tax, provided that the minimum number of shows are actually presented and performed as set forth in this Contract. Payment of the Base Consideration to WTT will be made by the Town on or before January 1, 2013. In addition to the Base Consideration as provided above, the City agrees to pay to WTT "Matching Funds" in an amount up to One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00). A description of what constitutes Matching Funds and the process for the payment of such Funds is set forth in Exhibit A attached hereto and incorporated herein.

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

### IV. RESPONSIBILITY; INDEMNIFICATION

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

(b) **WTT'S Indemnification Obligation:** WTT covenants, agrees to, and shall **DEFEND (with counsel reasonably acceptable to the Town of Addison, Texas), INDEMNIFY, AND HOLD HARMLESS** the Town of Addison, Texas and the Town of Addison, Texas' elected officials, its officers, employees, representatives, agents and volunteers (the Town of Addison, Texas and the elected officials, the officers, employees, representatives, agents, and volunteers of the Town of Addison, Texas being each an "Addison Person" and collectively "Addison Persons") from and against any and all claims, liabilities, judgments, lawsuits, demands, harm, losses, damages, proceedings, suits, actions, causes of action, liens, fees, fines, penalties, expenses, or costs, of any kind and nature whatsoever made upon or incurred by the City and/or any other Addison Person, whether directly or indirectly, (the "Claims") that arise

out of, result from, or relate to: (i) the performance or provision by WTT of the WTT Services as described above in Section II of this Contract, (ii) any representations and/or warranties by WTT under this Contract, and (iii) any act or omission under, in performance of, or in connection with the WTT Services and/or this Contract by WTT or by any of WTT's owners, directors, officers, shareholders, managers, partners, employees, agents, consultants, contractors, subcontractors, invitees, guests, customers, licensees, sublicensees, or any other person or entity for whom WTT is legally responsible, and their respective owners, directors, officers, shareholders, managers, partners, employees, agents, consultants, contractors, subcontractors, invitees, guests, customers, and licensees ("WTT Persons"). SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND. However, WTT's liability under this clause shall be reduced by that portion of the total amount of the Claims (excluding defense fees and costs) equal to the Addison Person or Addison Persons' proportionate share of the negligence, or conduct that would give rise to strict liability of any kind, that caused the loss. Likewise WTT's liability for Addison or any other Addison Person's defense costs and attorneys' fees shall be reduced by that portion of the defense costs and attorneys' fees equal to the Addison Person or Addison Persons' proportionate share of the negligence, or conduct that would give rise to strict liability of any kind, that caused the loss.

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

The indemnity, hold harmless, and defense obligations set forth herein shall survive the expiration or termination of this Contract.

## V. TERMINATION

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

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

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

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

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

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

## **VI. CONFLICT OF INTEREST**

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

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

## **VII. ACCOUNTING**

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

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

WTT shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the thirtieth (30<sup>th</sup>) day after the close of each quarter (beginning with the quarter ending December 31, 2012, with the last quarter ending September 30, 2013), WTT shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by WTT of the funds paid to WTT under this Contract; and (b) a year-to-date report of the expenditures made by WTT of the funds paid to WTT under this Contract (and if this Contract is terminated prior to its expiration, WTT shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, WTT shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of WTT's fiscal year, WTT shall provide the City with a financial statement signed by the Chairman of WTT's Board of Directors (or

other person acceptable to the Town) and audited by an independent Certified Public Accountant, setting forth WTT's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

### **VIII. INDEPENDENT CONTRACTOR**

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

### **IX. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT**

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

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

### **X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE**

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

### **XI. COPYRIGHT**

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

### **XII. NON-DISCRIMINATION**

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

**XIII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS; RECITALS**

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

**XIV. VENUE; GOVERNING LAW**

In the event of any suit or action under this Contract, exclusive venue for all suits or actions shall be instituted and maintained in Dallas County, Texas. This Contract shall be governed by and construed under and pursuant to the laws of the State of Texas without regard to choice of law rules of any jurisdiction.

**XV. COUNTERPARTS**

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

**XVI. NO WAIVER; RIGHTS CUMULATIVE**

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

**XVII. NOTICES**

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

The City's address:

Matthew McCombs  
Assistant to the City Manager

WTT's address:

Terry Martin  
Producing Artistic Director

Town of Addison  
5300 Belt Line Road  
Dallas, Texas 75254

WaterTower Theatre Incorporated  
15650 Addison Road  
Addison, Texas 75001

**XVIII. SEVERABILITY**

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

**XIX. AUTHORITY TO EXECUTE CONTRACT**

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

**XX. ENTIRE AGREEMENT**

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

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

**TOWN OF ADDISON, TEXAS**

**WATERTOWER THEATRE  
INCORPORATED**

By: \_\_\_\_\_  
Ron Whitehead, City Manager

By: \_\_\_\_\_  
Terry Martin, Producing Artistic Director

EXHIBIT "A"  
TO  
2012-2013 CONTRACT FOR SERVICES  
BETWEEN THE TOWN OF ADDISON  
AND WATERTOWER THEATRE INCORPORATED

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

For each One Dollar of Theatre Funds (as defined herein) actually received by WTT, the City shall pay to WTT an equal amount ("Matching Funds") up to but not exceeding One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00). In order to receive Matching Funds, WTT shall provide to the City such proof of its receipt of Theatre Funds as the City shall reasonably require. WTT shall make application on or before the 15<sup>th</sup> day of each month for distribution of Matching Funds (beginning January 16, 2013) and the City shall pay such Matching Funds provided the City has received adequate proof, in the City's sole opinion, of the actual receipt of Theatre Funds by WTT as set forth in each application.

For purposes of this Agreement, the term "Theatre Funds" shall mean and include: (i) cash funds actually received by WTT during the term hereof from any gifts, grants, donations, or other cash contributions from any person or business entity (whether for-profit or non-profit), and (ii) that amount of funds determined by multiplying (a) the number of 2013 WTT season tickets sold by WTT on or before November 15, 2012, times (b) the average cost of a single season ticket, times (c) 25%. For purposes of this Agreement, the average cost of a single season ticket shall be \$110.00.

## **AGREEMENT FOR THE USE OF THE ADDISON THEATRE CENTRE**

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

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

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

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

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

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

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

### **SECTION 1**

#### **PURPOSE; THEATRE CENTRE DEFINED**

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

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

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

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

## **SECTION 2**

### **LEASE OF THEATRE CENTRE**

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

## **SECTION 3**

### **TERM AND TERMINATION**

(a) The term of this Agreement is for a period beginning on the 1<sup>st</sup> day of October 2012, and continuing until September 30, 2013, unless the term is extended or earlier cancelled, as provided herein.

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

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

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

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

(iv) WTT fails to comply with any term of the 2012-2013 Contract for Services between the Town of Addison and Water Tower Theatre Company within thirty (30) days after written notice of such failure to comply from the TOWN.

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

(d) This Agreement may be renewed and extended for a term of twelve (12) months beginning October 1, 2013, and ending September 30, 2013, and for like twelve (12) month periods thereafter upon the express written consent of the TOWN and WTT, given within ninety (90) days prior to October 1st each succeeding year.

#### SECTION 4

##### USE AND OCCUPANCY BY WTT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) *Food and Beverage.* Except as provided herein, food and beverages are prohibited within the performance spaces at the Theatre Centre. The sole exception will be bottled water with a lid that may be brought into the performance spaces at any time. However, no liquid may be stored or consumed in the vicinity of any electronic equipment.

Food and beverage may be brought in the Main Space and Studio Theatre during special events such as the annual Gala fundraiser. A performance will not, however, constitute a special event. All food, food service items, beverages, beverage containers, catering supplies and trash must be removed from the spaces that evening immediately following the conclusion of the event. All spills, stains and other food and beverage messes shall be cleaned that evening. Failure to clean up in this manner will result in the Manager contacting the cleaning service to provide a full cleaning of the space. The resulting cleaning fee will be charged to WTT on the next regular monthly invoice.

(e) *Use of Dressing Rooms.* When the main theatre space is rented, during a non-special event time, dressing rooms 1-4 will be included as part of that rental. If the rehearsal hall

is rented to another group, dressing rooms 5 and 6 will be made available to the group in the rehearsal hall. If the rehearsal hall is not being rented by another group or not needed by the renting group dressing rooms 1-6 may be used by the renter of the main space.

## SECTION 5

### USE AND OCCUPANCY BY THE TOWN

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

(b) *Concessions.*

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

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

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

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

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

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

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

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

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

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

(ii) In connection with each Third Party Show:

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

## SECTION 6

### RENTAL

(a) WTT shall pay to the TOWN rent for its use of the office areas and other areas as reserved by WTT, according to the schedule of fees set forth in Exhibit B, attached hereto and made a part hereof. Payments for rent shall be made in twelve (12) equal installments, with each installment being due and payable on or before the 15<sup>th</sup> day of each month as payment for the immediately preceding month. The first such installment of rent is due and payable on or before November 15, 2012, and the last such installment is due and payable on or before October 15, 2013 (and the obligation of WTT to make the last installment shall survive the expiration of this Agreement). The rent paid by WTT may be adjusted from time to time to reflect a cancellation or addition of a show or event by WTT. The TOWN further reserves the right to adjust the rates

of the fees set out on Exhibit B from time to time in accordance with changes in the costs associated with operating the facility, by providing WTT at least 45 days prior written notice of the change. The TOWN shall invoice WTT for all dates, times and spaces reserved by WTT, including the fees for use of Office Spaces, as defined in Section 4(a).

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

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

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

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

## **SECTION 7**

### **USE OF EQUIPMENT**

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

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

be required to conduct himself/herself in a professional manner, and WTT will cooperate with the TOWN to assure professional conduct is maintained at all times.

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

## **SECTION 8**

### **TOWN OF ADDISON TECHNICAL COORDINATOR**

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

## **SECTION 9**

### **UTILITIES**

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

## **SECTION 10**

### **MAINTENANCE SERVICES**

(a) The TOWN shall provide:

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

definition of routine janitorial service applies to educational camps. Any services above routine will be billed to WTT at the prevailing rate.

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

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

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

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

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

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

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

## **SECTION 11**

### **OWNERSHIP OF PROPERTY**

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

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

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

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

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

## SECTION 12

### ACKNOWLEDGEMENTS IN PRINTED MATERIALS

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

## SECTION 13

### INSURANCE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **SECTION 14**

### **ABATEMENT OF NUISANCES; TOWN SPECIAL EVENTS**

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

## **SECTION 15**

### **ALTERATIONS, ADDITIONS, AND IMPROVEMENTS**

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

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

## SECTION 16

### ASSUMPTION OF RESPONSIBILITY; INDEMNIFICATION

(a) WTT AGREES TO ASSUME AND DOES HEREBY ASSUME ALL RESPONSIBILITY AND LIABILITY FOR DAMAGES OR INJURIES SUSTAINED BY PERSONS OR PROPERTY, WHETHER REAL OR ASSERTED, BY OR FROM (I) THE PERFORMANCE OF SERVICES PERFORMED AND TO BE PERFORMED HEREUNDER, OR (II) THE OCCUPATION AND USE OF THE THEATRE CENTRE PURSUANT TO THIS AGREEMENT, BY WTT OR BY ANY OF ITS OWNERS, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, MEMBERS, AGENTS, SERVANTS, REPRESENTATIVES, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INVITEES, PATRONS, GUESTS, VOLUNTEERS, CUSTOMERS, AND CONCESSIONAIRES (IN THE CAPACITY AS OWNER, OFFICER, DIRECTOR, MANAGER, EMPLOYEE, MEMBER, AGENT, SERVANT, REPRESENTATIVE, CONSULTANT, CONTRACTOR, SUBCONTRACTOR, LICENSEE, INVITEE, PATRON, GUEST, VOLUNTEER, CUSTOMER, OR CONCESSIONAIRE OF OR FOR WTT), OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE.

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

**(excluding defense fees and costs) equal to the Addison Person or Addison Persons' proportionate share of the negligence, or conduct that would give rise to strict liability of any kind, that caused the loss. Likewise WTT's liability for Addison or any other Addison Person's defense costs and attorneys' fees shall be reduced by that portion of the defense costs and attorneys' fees equal to the Addison Person or Addison Persons' proportionate share of the negligence, or conduct that would give rise to strict liability of any kind, that caused the loss.**

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

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

## **SECTION 17**

### **BONDS**

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

## **SECTION 18**

### **NON-DISCRIMINATION**

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

## **SECTION 19**

### **AUDITS**

WTT shall have its financial statements audited on an annual basis by an independent auditing firm of certified public accountants and shall submit a copy of the auditor's report for

the preceding fiscal year with its proposed annual operating budget to the City Manager. The TOWN reserves the right to require a special audit of WTT's books and records at any time either by the City Manager or by an outside independent auditor if such action is determined necessary by the Town Council. The TOWN shall pay all expense of the independent auditor related to the special audit. WTT shall make available to the TOWN or its agents all necessary books, records and other documents necessary to perform such audit.

## **SECTION 20**

### **ASSIGNMENT; NO THIRD-PARTY BENEFIT**

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

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

## **SECTION 21**

### **NOTICES**

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

If intended for the TOWN, to:

Chris Terry  
Assistant City Manager  
Town of Addison  
P.O. Box 9010  
Addison, TX 75001-9010

If intended for WTT, to:

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

## **SECTION 22**

### **APPROVALS**

(a) Whenever in this Agreement the approval of the TOWN is required for any purpose, WTT shall file the appropriate documents with the Addison Conference and Theatre Centre ("ACTC") Manager with notice of action proposed to be taken, and the ACTC Manager

agrees to notify WTT of the TOWN's approval or disapproval within 60 days of the filing thereof.

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

## **SECTION 23**

### **SUCCESSORS AND ASSIGNS**

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

## **SECTION 24**

### **APPLICABLE LAWS**

This Agreement is made subject to the charter and ordinances of the TOWN, as amended, and all applicable laws and regulations of the State of Texas and the United States. The Agreement shall be governed by and construed under and in accordance with the laws of the State of Texas without reference to the choice of laws rules of any jurisdiction.

## **SECTION 25**

### **INTELLECTUAL PROPERTY AND COPYRIGHT INDEMNIFICATION**

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

## **SECTION 26**

### **NO PARTNERSHIP OR JOINT VENTURE**

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

## **SECTION 27**

### **NO WAIVER**

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

## **SECTION 28**

### **FORCE MAJEURE**

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

## **SECTION 29**

### **VENUE**

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

## **SECTION 30**

### **LEGAL CONSTRUCTION**

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

## **SECTION 31**

### **SIGNAGE**

WTT shall not place or permit to be placed on the exterior of the Theatre Centre, or the door, window or roof thereof, or on any display window space, or within five feet behind the storefront of the Theatre Centre, if visible from the common area, any sign, plaque, decoration, lettering, advertising matter or descriptive material without the TOWN's prior written approval. WTT may submit a written request for approval to project images and text onto the water tower. All signs, decorations, lettering, advertising matter or other items used by WTT and approved by

the TOWN as aforesaid shall conform with the standards of design, motif, and decor from time to time established by the TOWN for the Theatre Centre. WTT shall furnish to the Manager of the Conference and Theatre Centre a written proposal describing any signage to be placed in the Theatre Centre. The Manager agrees to respond within fourteen (14) days in writing to the proposal.

**SECTION 32**

**USE OF THE ROOF**

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

**EXECUTED** \_\_\_\_\_, but effective as of October 1, 2012 as approved by the parties hereto.

**TOWN OF ADDISON, TEXAS**

**WATERTOWER THEATRE, INC.**

By: \_\_\_\_\_  
Ron Whitehead, City Manager

By: \_\_\_\_\_  
Terry Martin, Producing Artistic  
Director

ATTEST:

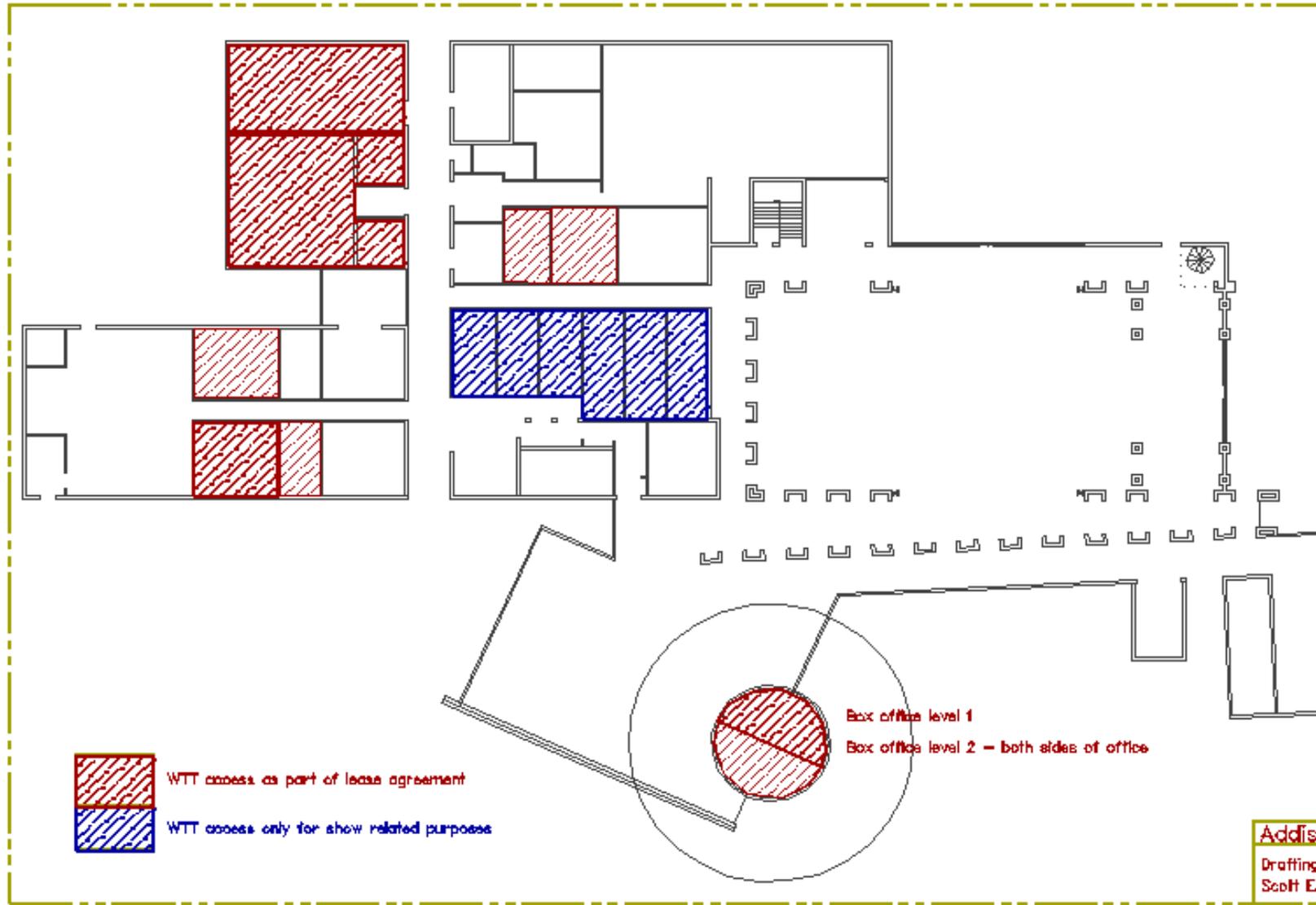
ATTEST:

By: \_\_\_\_\_  
Chris Terry, City Secretary

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

Its: \_\_\_\_\_

# EXHIBIT A ADDISON THEATRE CENTRE



## Council Agenda Item: #R3

### **AGENDA CAPTION:**

Presentation, discussion, and consideration of approval authorizing the City Manager to negotiate and enter into a Memorandum of Understanding with Baylor University and their Accelerated Ventures Program.

### **FINANCIAL IMPACT:**

N/A

### **BACKGROUND:**

During the work session, an overview was provided by Accelerated Venture Program of how their program operates. The Economic Development Department wishes to formalize an arrangement with the Program by providing free office space and business support to the entrepreneurs of the program. Such an arrangement will help launch a credible entrepreneurial program in Addison that will generate new businesses based in the community, that could potentially grow and expand in the near future.

### **RECOMMENDATION:**

The Economic Development Department recommends that the Town Council authorize the City Manager to proceed with the Memorandum of Understanding between Baylor University/Accelerated Venture Program and the Town.

### **COUNCIL GOALS:**

Create Raving Fans of the "Addison Way", Provide For A Diversified Business Climate

### **ATTACHMENTS:**

Description:

 [Addison/Baylor MOU](#)

Type:

Backup Material

# Memorandum of Understanding

between

**Town of Addison, Texas**

and

**Baylor University**

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## **I. Purpose and Scope**

Baylor University, a private university located in Waco, Texas (“Baylor”), operates a program through its Hankamer School of Business that is known as “Accelerated Ventures.” The Town of Addison, Texas is a home rule municipality (“Town”). The purpose of this Memorandum of Understanding (“MOU”) is to clearly identify the roles and responsibilities of each party as they relate to office space, collaborative business support, and communications infrastructure provided by the Town in connection with Baylor’s Accelerated Ventures Program.

The Accelerated Ventures Program (“AV Program”) is an innovative two semester course at Baylor University that enables students to create real companies, raise real funds, launch products and services, and generate sales within a single semester. Students participating in the AV Program experience the business start-up process first-hand by taking a company from its conceptualization phase to exit. Students learn the foundational principles required to start and run successful businesses while simultaneously applying these principles to the coursework.

Baylor and the Town have explored opportunities for the Town to participate in the AV Program. One opportunity that will benefit both Baylor and the Town is for Baylor students, who have initiated and developed business start-ups through the AV Program and who desire to continue those businesses after graduation (“Graduates”), to move those start-up businesses to the Town, where they will receive office space and support for a 12-month period (the “12-month period”) following graduation. This 12-month period will help provide real world incubation of the business start-ups associated with the AV Program.

The Town is authorized by Section 380.001 of the Texas Local Government Code to establish and provide for the administration of programs to promote state or local economic development and to stimulate business and commercial activity in the Town. The program described in this MOU is such a program, and it will further the Town’s objectives, benefit the Town and its inhabitants, promote local economic development, and stimulate business and commercial activity within the Town. Through its Economic Development Department, the Town has

a strategic focus to grow and expand the local economy by supporting entrepreneurs and business start-ups.

In connection with this MOU, Baylor will identify in writing to the Town a representative to coordinate this MOU on behalf of Baylor (the "Baylor Representative"), and the Town will identify in writing to Baylor a representative to coordinate this MOU on behalf of the Town (the "Town Representative").

## **II. MOU Term**

The term of this MOU will run parallel with the Town of Addison's Fiscal Year. The term commences October 1, 2012 and terminates September 30, 2013 (subject, however, to its earlier termination), and will automatically be renewed for another year unless either party provides written notice to the other party that it desires not to renew this MOU at least 30 days prior to September 30, 2013.

## **III. Town of Addison Responsibilities**

During the term of this MOU, the Town will:

1. Provide free office space ("Office") for a 12-month period to business start-ups initiated and developed by graduates of Baylor through Baylor's Accelerated Ventures Program (each being a "Start-Up Business"). An Office for a Start-Up Business will be provided in a location as determined by the Town, on a first come, first served basis. By entering into this MOU, the Town desires to accommodate Start-Up Businesses with an Office, but cannot and does not guarantee or represent that an Office will be available for each Start-Up Business. In connection with the provision of an Office and related matters, the Town may require that each Start-Up Business and its Graduate-owners execute a lease or rental agreement provided by the Town regarding the same ("Rental Agreement").
2. The Town of Addison will determine the size of the Office for each Start-Up Business after discussion with the Baylor Representative and will provide a Start-Up Business with Internet connectivity, land-line telephone equipment ("telephone"), and electrical utility service at that office.
3. During the 12-month period, the Town will provide each Start-Up Business with an Office a monthly allowance not to exceed \$\_\_\_\_\_ to pay for any telephone long-distance services to or from the Office.
4. The Town of Addison, through its Economic Development Department, will be available to each Start-Up Business to provide business network support during the 12-month period to facilitate the development of a Start-Up Business, and/or to leverage the support of community economic development stakeholders.

5. At the start of the ninth month of the 12-month period, the Town of Addison's Economic Development Department will work with each Start-Up Business to determine relocation strategies for the Start-Up Business that may be needed at the end of the 12-month period.
6. Unless otherwise directed in writing by the Town's City Manager, the Town of Addison's Director of Economic Development will serve as the Town Representative and the primary point of contact for Baylor and for each Start-Up Business.

#### **IV. Baylor Responsibilities**

Baylor, by and through its Hankamer School of Business, the AV Program, and the Baylor Representative, shall undertake the following activities during the duration of the MOU term:

1. Baylor will promote the relationship between Addison and its AV Program to students enrolled in the program at Baylor, and identify the Town as a collaborative supporter of the AV Program in its marketing collateral materials and website.
2. On or before December 15 of every year, Baylor will survey students enrolled in the AV Program regarding their interest in relocating their business to Addison upon graduation. The survey results will be provided to the Addison Economic Development Department by no later than January 15 of the following year.
3. In the early spring of each year during the term of this MOU, Baylor will allow representatives from the Town of Addison to visit Baylor in person and provide AV Program students with an overview of the Addison community, the office incubation location, and answer any questions and provide related information.
4. Each Start-Up Business will provide its own computer hardware and software equipment. Each Start-Up Business will pay all costs incurred for any long distance telephone service used by or for the Start-Up Business.
5. Baylor will work with each Start-Up Business to ensure a high level of ethical business practices are adhered to during the 12-month period.
6. Baylor will provide the Town with an end of year progress report on each Start-Up Business which will include, among other things, capital raised during incubation, an indication of growth projections, and any employment opportunities generated.

7. Baylor will provide forwarding contact information for entrepreneurs.
8. Unless otherwise directed in writing by the Dean of Baylor's Hankamer School of Business, \_\_\_\_\_ will serve as the Baylor Representative and the primary point of contact for the Town.

## **V. The Town and Baylor Agree to the Following Provisions:**

1. The Town of Addison has and reserves the right to expel, and to terminate any agreement or relationship with, any Start-Up Business that may bring or has brought, in the Town's sole opinion, harm, endangerment, or disrepute to the Town or any of its employees, volunteers, representatives, agents, or contractors, or to Baylor or to any person affiliated with the AV Program, or that may or has failed (in the Town's sole opinion) to abide by any agreement between the Town and a Start-Up Business (or Graduate) and/or any rules, policies, or regulations of the Town.
2. The Town of Addison reserves the right to expel any Start-Up Business or Graduate that may, in the Town's sole opinion, bring or have a negative effect to or on the Town and/or its brand reputation.
3. Accelerated Ventures and its business start-ups will hold the Town of Addison free and harmless of any personal and third party business liabilities and litigation.
4. Each Start-Up Business and its owners, employees, representatives and agents shall, at all times, conduct themselves in a professional manner and maintain a high-level of conduct (e.g., there shall be no misconduct, as may be determined by Addison in its sole opinion, including but not limited to dishonesty, theft, misappropriation, or any act of moral turpitude).
5. Start-Up Businesses will adhere to all safety and security protocols of the Town.
6. Any individuals issued keys to any Addison facility in connection with this MOU will not make duplicate copies or share security codes with any other person.
7. Baylor representatives may be asked, from time to time, to make a formal progress report and presentation to the Addison Town Council, and if so asked agree to make such a report and presentation.
8. The Town of Addison Economic Development Department and Baylor will work collaboratively to evaluate the progress of Start-Up Businesses that

have completed a 12-month period (or shorter) with the Town for the three year period following the completion of the 12-month (or shorter) period.

## **VI. Funding**

All support to Baylor under this MOU will be provided in the form of in-kind Office space and Office infrastructure support as may be included in a Rental Agreement.

Notwithstanding any other provision of this MOU, the Town has, and shall have, no obligation or liability to provide any support, including any in-kind support, hereunder except as allowed by law. The Town shall not be required to provide any support hereunder if prohibited or not authorized under federal, state or local laws (including any constitutional or charter provision), regulations, rules or a decision of a court of competent jurisdiction or state agency or department (including the Texas Attorney General).

## **VII. Modification and Termination; Other Provisions**

1. This MOU may be cancelled or terminated at any time and with cause or without cause by either party, by a party giving at least (30) calendar days advance written notice of such termination to the other party. Such notification shall state the effective date of termination or cancellation and include any final performance instructions/requirements.
2. Any and all amendments to this MOU must be made in writing and must be agreed to and executed by the parties before becoming effective.
3. 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 are or may be entitled, including, without limitation, any waiver of immunity to suit.
4. There is and shall be no waiver of this MOU or any provision hereof unless the same is in writing and signed by the waiving party, and any such waiver will not be deemed a waiver of or for any other occasion.
5. It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership, joint venture, joint enterprise, or other relationship between or among the parties.

6. This Agreement is subject to the provisions of the Charter and ordinances of the City, as amended or modified. This Agreement shall be construed under, governed by and is subject to the laws (including the constitution) of the State of Texas, without regard to choice of law rules, and all obligations of FRGI and the City created by this Agreement are performable in Dallas County, Texas. Venue for any suit, action or proceeding under this Agreement shall lie exclusively in Dallas County, Texas. Each party hereby submits to the exclusive jurisdiction of the courts in Dallas County, Texas for purposes of any such suit, action, or proceeding hereunder. Each party waives any claim that any such suit, action, or legal proceeding has been brought in an inconvenient forum or that the venue of that proceeding is improper.
7. The terms, conditions and provisions of this Agreement are severable, and in case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.
8. Neither party shall, or has authority to, assign, sell, pledge, transfer, encumber, or otherwise convey this MOU or any portion hereof without the prior written consent of the other party.
9. This Agreement and all of its provisions are solely for the benefit of the parties hereto and do not and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.
10. Any notice, statement, or report required or permitted to be given or delivered shall be in writing and shall be deemed to have been properly given for all purposes (i) if sent by a nationally recognized overnight carrier for next business day delivery, on the first business day following deposit of such notice with such carrier unless such carrier confirms such notice was not delivered, then on the day such carrier actually delivers such notice, or (ii) if personally delivered, on the actual date of delivery, or (iii) if sent by certified U.S. Mail, return receipt requested postage prepaid, on the third business day following the date of mailing. Addresses for any such notice, statement and/or report hereunder are as follows (which may be changed by giving notice of such change):

<u>To Baylor:</u>  <hr style="width: 100%;"/> <hr style="width: 100%;"/>	<u>To the Town:</u>  Town of Addison, Texas 5300 Belt Line Road
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_____	Dallas, Texas 75254 Attn: Director of Economic Development
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**VIII. Effective Date and Signature**

This MOU shall be effective upon the signature of Town of Addison’s and Baylor’s authorized persons. It shall be in force from October 1, 2012 to September 30, 2013 (subject, however, to its earlier termination). Town of Addison and Accelerated Ventures indicate agreement with this MOU by their signatures.

Signatures and dates

<i>[Authorized signature from Town of Addison]</i>	<i>[Authorized signature from Accelerated Ventures]</i>
Ron Whitehead, City Manager	[Insert name of Party B signatory]
Date	Date

## Council Agenda Item: #R4

**AGENDA CAPTION:**

Discussion regarding the Addison Legacy Foundation.

**FINANCIAL IMPACT:**

N/A

**BACKGROUND:**

N/A

**RECOMMENDATION:**

**COUNCIL GOALS:**

N/A

**ATTACHMENTS:**

Description:

Type:

No Attachments Available

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

### **AGENDA CAPTION:**

Discussion and consideration of approval of a professional services agreement with the Vivanti Group in an amount not to exceed \$60,000 for the provision of a branding study, subject to final review and approval of the City Manager and City Attorney.

### **FINANCIAL IMPACT:**

Funds are budgeted in the Marketing Department of the Hotel Fund.

### **BACKGROUND:**

This item was discussed at a prior Council work session. The contract is currently in development, but parameters will be discussed with Council at the October 23 regular meeting.

### **RECOMMENDATION:**

Staff recommends approval.

### **COUNCIL GOALS:**

Maintain and Enhance our Unique Culture

### **ATTACHMENTS:**

Description:

Type:

No Attachments Available

## Council Agenda Item: #R6

### **AGENDA CAPTION:**

Presentation, discussion and consideration of approval authorizing the City Manager to execute a master agreement with Dallas County for the Major Capital Improvement Program.

### **FINANCIAL IMPACT:**

n/a

### **BACKGROUND:**

In Fiscal year 2000, the Dallas County Commissioners Court replaced its traditional bond-financing approach to funding infrastructure improvements with a Major Capital Improvement Program (MCIP). The basis of this innovative approach is that projects typically will take five years from funding approval to construction completion and that each year some projects will be authorized for funding while other projects are being completed. Thus, in any given year, there will always be projects in each of various phases of implementation (i.e. design, property acquisition, construction). In contrast, under the bond-financing method, all projects are authorized at the same time and are constructed at the same time.

Dallas County Public Works implements the MCIP, typically every two to three years, through a county-wide call-for-projects that evaluates transportation infrastructure improvement projects that improve capacity and safety on regional roadways and multi-modal pathways within Dallas County that have been submitted by Dallas County cities. Dallas County has participated in Vitruvian Park, Spring Valley Road, and the Redding Trail Extension through the MCIP program.

### **RECOMMENDATION:**

Staff recommends approval.

### **COUNCIL GOALS:**

Mindful Stewardship of Town Resources, Promote Quality Transportation Services

### **ATTACHMENTS:**

Description:

 [Master Agreement - MCIP](#)

Type:

Backup Material

**MASTER AGREEMENT GOVERNING  
MAJOR CAPITAL IMPROVEMENT PROGRAM**

**THIS MASTER AGREEMENT** is made by and between the Town of Addison, Texas, hereinafter called "City" or "Town", and Dallas County, Texas, hereinafter called "County", acting by and through its duly authorized officials, which desire to enter into an Interlocal Agreement, hereinafter called "Master Agreement," for the purpose of Transportation Improvements on roads inside Dallas County that are on the North Central Texas Council of Government's Regional Thoroughfare Plan (the County and the Town are sometimes referred to herein together as the "parties" and individually as a "party").

**WITNESSETH**

**WHEREAS**, pursuant to Court Order 2002-1375, dated July 30, 2002, County Commissioners Court ("Commissioners Court") approved participation in Transportation Major Capital Improvement Program within the cities inside Dallas County; and

**WHEREAS**, the approved project lists may be modified, updated or approved by the Commissioners Court on a periodic, as-needed basis; and

**WHEREAS**, Chapter 791 of the Texas Government Code, as amended, provides authorization for local governments to enter into interlocal agreements to perform governmental functions and services, including, without limitation, functions and services for streets, roads, and drainage; and

**NOW THEREFORE, THIS AGREEMENT** is hereby made and entered into by City/Town and County for the mutual consideration stated herein and the said parties agree as follows:

**ARTICLE I. DEFINITIONS**

The following definitions are incorporated into this agreement for all purposes.

- A. **AMENDMENT** shall mean a written document executed by all parties detailing changes, additions or deletions in the Master Agreement.
- B. **AMENITY** shall mean Project features not included in the Standard Basic Project Design including but not limited to street pavers, colored concrete, planters, irrigation, decorative lighting, special signage, or any other feature above and beyond the Standard Basic Project Design or any increase in capacity in excess of County determined requirements based on anticipated future traffic flow.
- C. **CITY/TOWN** shall mean the City/Town of Addison, Dallas County, Texas.
- D. **CONTEXT SENSITIVE SOLUTIONS (CSS)** is a collaborative, interdisciplinary approach that involves all stakeholders to develop a transportation facility that fits its physical setting and preserves scenic, aesthetic, historic and environmental resources, while maintaining safety and

mobility. CSS is an approach that considers the total context within which a transportation improvement project will exist. CSS principles include the employment of early, continuous and meaningful involvement of the public and all stakeholders throughout the Project development process. It is the intent of Dallas County, through its Public Works Department, to use the essential elements of CSS in all approaches to deliver the Project. Some Projects will dictate very intense use of CSS, while others will only use a few of the elements, but the County will always consider CSS.

- E. **COUNTY** shall mean County of Dallas, State of Texas.
- F. **DIRECT PROJECT and PROGRAM COSTS** shall mean those costs that can be identified specifically with a particular Project or program cost objective. These costs generally include compensation of employees for the time devoted and identified specifically to the performance of the Project or program, cost of materials acquired, consumed or expended specifically for the purpose of the Project or program; equipment changes; damage claims and other approved capital expenditures; change orders; travel expenses incurred specifically to carry out the Project including, but not limited to, design, right-of-way, road or street drainage, utility relocation and adjustment and construction. Direct Project and Program Costs do not include either City/Town or County general overhead.
- G. **EFFECTIVE DATE** shall mean the date of the signature of the last person necessary for this **Master Agreement** to become effective (as set forth in Article II, below).
- H. **EXTRA TERRITORIAL JURISDICTION- (ETJ)** shall mean the unincorporated area outside the incorporated boundaries of the municipality as determined in Chapter 42 of the Texas Local Government Code, as amended.
- I. **FIVE PHASE PROJECT DELIVERY SYSTEM** shall mean the process for delivering a Project from conception to completion as detailed in Exhibit A, attached hereto and incorporated herein, and as well as any additions or supplements thereto. The five phases of the Five Phase Project Delivery System are planning, design, right of way, utility clearance, and construction.
- J. **FUNDING AGREEMENT** shall mean the agreement between the County and the City/Town to establish a preliminary proposed budget for a Project. As design is completed and the engineering estimate is refined, the Funding Agreement shall be incorporated into the Project Specific Agreement.
- K. **INDIRECT COSTS** shall mean those costs that benefit more than one Project and cannot be readily identified with a particular final Project or program cost objective. Their precise benefits to a specific Project are often difficult or impossible to trace.
- L. **IN-HOUSE PROJECT DELIVERY COSTS** shall mean all costs associated with the development of the Major Capital Improvement Program (MCIP) “Call for Projects”, selection of Projects, scoping of Projects, Project design, property acquisition and construction of Projects. In-House Project Delivery Costs accounting shall include but are not limited to employee time reimbursement, materials, equipment and other expenditures necessary for the management and continuation of the MCIP.
- M. **INTERLOCAL AGREEMENTS** shall mean contracts or agreements entered into between City/Town and County in accordance with Texas Government Code Chapter 791.

- N. **LEAD AGENCY** shall mean that entity responsible for Project management, including, but not limited to planning, design, right-of-way acquisition, approved utility relocation or adjustment and construction, unless otherwise designated.
- O. **MASTER AGREEMENT** shall mean this document (entitled "Master Agreement Governing Major Capital Improvement Program") including all incorporated documents, attachments, and exhibits.
- P. **MEMORANDUM OF AGREEMENT (MOA)** shall mean a written document agreed to by each party which incorporates the results of the Preliminary Design Charrette.
- Q. **MULTI-MODAL CONNECTIVITY IMPROVEMENTS** shall mean Projects which comply with the concepts in the 2005 SAFETEA-LU Act, any amendments, or any future federal transportation acts which increase safety, accessibility, flexibility, efficiency, and enhance the integration and connectivity of the transportation system, across and between modes throughout the County for motorized and non-motorized users.
- R. **ORPHAN ROADS** shall mean all or part of a street or road right of way which are outside the incorporated limits of a municipality (or municipalities) and the incorporated area of the municipality (or municipalities) abuts or extends into the right of way. These roadway segments have, in effect, been "orphaned" by the abutting city/town (or cities) that they serve in that they have been left unincorporated. Thus the County has primary responsibility for maintenance, operation, enforcement, police and/or emergency services within these unincorporated rights of way.
- S. **PARCEL OR PARCELS** shall mean those portions or parts of land and improvements located either wholly or partially thereon, identified by County, City/Town or other stakeholder as required for right-of-way requirements of the Project. Such right-of-way shall include the existing street, road, drainage or other City/Town or County real property ownership and all additional real property to be utilized for the Project.
- T. **PRELIMINARY CONCEPT CHARRETTE (PCC)** shall have the same meanings and purposes as the Preliminary Design Charrette, but be conducted very early in the design start, before substantial design is underway. The conditions for which a PCC is appropriate will be determined by the Lead Agency, but will usually be a greater uncertainty of what the road improvement will involve, the purposes, varying contexts (e.g. transit oriented development, recreational oriented development, industrial oriented development, etc.). Use of CSS will usually mean that a PCC will be conducted, since its use fits perfectly into CSS concepts. Other conditions encountered may dictate the use of a PCC, such as poor soils, presence of unconsolidated solid waste dumps, innovative integration of master planning with project delivery, unusual ROW challenges, budgetary constraints (thus calling for significant value engineering efforts), etc. The results of properly using a PCC will be that early consensus will be achieved on a basic approach to the Project design and construction, thus avoiding wasted design funding and loss of momentum for Project delivery.
- U. **PRELIMINARY DESIGN CHARRETTE (PDC)** shall mean a meeting of decision making stakeholders and other members of the Project team for the purpose of discussing feasible design alternatives, forging strong consensus among all stakeholders for the selected alternative, and entering into an MOA for the overall estimate, alignment and scope of the Project. The PDC will be scheduled when the Project preliminary design is complete or near completion. This means horizontal and vertical alignment alternatives have been designed, ROW requirements are at least approximately known for each alternative, and the design is 40% to 60% complete. The result of a PDC that is conducted with all the stakeholders present

is that the strong consensus achieved will help assure the Project is able to overcome any challenges with design completion, ROW acquisition, utility design and relocation, and finally, road construction.

- V. **PROJECT MANAGER** shall mean the person appointed by the Lead Agency who is assigned the primary duty for assuring Project Team coordination and timely Project delivery. There will be only one Project Manager assigned to a Project.
- W. **PROJECT TEAM** shall mean representatives from County, City/Town, and other stakeholders as may be mutually agreed upon by County, City/Town and stakeholders or otherwise with responsibility for delivering the completed Project.
- X. **PROJECT(S)** shall mean the proposed thoroughfare and Multi-Modal Connectivity Improvements approved by the Commissioners Court for inclusion in the transportation MCIP and approved by the City/Town.
- Y. **PROJECT DURATION** shall mean the active life of the Project. Project shall commence with the application for a Project by the City/Town and acceptance by the Dallas County Commissioners Court. Project shall be considered complete when construction has been fully completed and the one year maintenance period has expired or the Project has been terminated in accordance with Article IV of this Agreement.
- Z. **PROJECT SPECIFIC AGREEMENT or PROJECT SUPPLEMENTAL AGREEMENT (PSA)** shall mean an agreement subsequent to this Master Agreement which is entered into to establish the contractual rights and responsibilities of the City/Town and County as it relates to a particular Project. A PSA supersedes the MOA or Funding Agreements unless otherwise stated in the PSA.
- AA. **RIGHT OF WAY (ROW)** is a strip of land that is granted, through a ROW deed, an easement or other mechanism, for the Project. ROW shall mean that real property or property interest identified by County or City/Town as necessary for the construction of the Project, which shall include the existing street, road, drainage or other City/Town or County real property ownership and all additional real property to be utilized for the Project.
- BB. **SCOPING SHEETS** shall be attached to each PSA. These sheets will set forth the design criteria to be used for the Project that is the subject of the Scoping Sheets, including the alignment, appropriate specifications, typical section and other parameters of the Project. As project goals and needs are more clearly defined the Scoping Sheets shall be updated and revised by the project manager to reflect current construction goals.
- CC. **STAKEHOLDERS** shall mean any entity that has an interest in the Project.
- DD. **STANDARD BASIC PROJECT DESIGN** shall mean the standard County-approved City/Town criteria for paving, bridges, drainage and appurtenances, traffic control items including pavement markings, warranted uniform signals, street light foundations, pull boxes, conduits, sidewalks, medians, storage/turn lanes, access, required structural retaining walls and standard driveways excluding road or street amenities, or such design criteria as may be mutually agreed upon in a Project Scoping Sheets.
- EE. **TxDOT** shall mean the Texas Department of Transportation.
- FF. **UTILITIES** shall mean each City/Town utility, public utility, common carrier, governmental or quasi-governmental facility, fiber optic facility, or other facility located within the limits of the Project by virtue of Texas or Federal law or agreement between an entity and the City/Town, County, or State of Texas.

- GG. **CITY/TOWN UTILITY** shall mean those Utilities owned or operated by City/Town which requires relocation or adjustment for the purpose of the construction of the Project as identified by Project plans.
- HH. **UTILITY IN PUBLIC RIGHT-OF-WAY** shall mean all Utilities located within the public ROW and within the limits of any governmental entity.
- II. **UTILITY IN PRIVATELY OWNED RIGHT-OF-WAY** shall mean all Utilities, excluding City/Town Utilities, whose facilities are located within a private easement.
- JJ. **UTILITY BETTERMENT** shall mean any increase in the capacity of any Utility’s facility adjusted or relocated as a part of the Project as compared to the existing facility, or any upgrading of a Utility’s facility above the standard practices, devices or materials, specified by the Utility and customarily used by City/Town or Utility on projects solely financed by City/Town or Utility. Provided, however, that any adjustments necessary to successfully accomplish the Project shall not be considered a Utility Betterment, and further, that any increase in the capacity of a Utility facility resulting solely from the replacement of devices or materials no longer regularly manufactured, processed or installed shall not be considered a Utility Betterment, provided that such replacement shall be only to the standard devices or materials currently used on other projects financed solely by City/Town or Utility. This meaning shall apply to utilities that are part of the Project as well as the standard basic street components (See “Standard Basic Project Design”).

## **ARTICLE II. PERIOD OF THE AGREEMENT**

This Master Agreement becomes effective when signed by the last party whose signing makes the respective agreement fully executed (the date of such signing being the “Effective Date”). This Master Agreement shall expire ten years from the Effective Date unless terminated in accordance with Article IV.

## **ARTICLE III. AMENDMENTS**

This Master Agreement may be amended with the mutual consent of the City/Town and County. Any amendment must be in writing and approved by the parties’ respective governing bodies through either a Court Order from Commissioners Court or a City/Town Council Resolution.

## **ARTICLE IV. TERMINATION, DEFAULT, TIME OF THE ESSENCE AND FORCE MAJEURE**

### A. TERMINATION

- a. This Master Agreement may be terminated by any of the following:
  1. By expiration of the term of this Master Agreement.
  2. By either party, by notice in writing establishing the effective date of termination to the other party (the “defaulting party”) as consequence of the defaulting party being in default of the provisions of this Master Agreement or any Project Supplemental Agreement or failure to timely provide funding, with proper

allowances being made for circumstances beyond the control of the defaulting party.

3. By either party with at least ninety days written notice to the other party.
  4. By mutual written consent and agreement of the County and the Town/City.
- b. Should either party terminate this Master Agreement as herein provided, all existing, fully executed Project Supplemental Agreements made under this Master Agreement shall not be terminated (except as may be authorized or allowed by the terms of any Project Supplemental Agreements) and shall automatically incorporate all the provisions of this Master Agreement.
  - c. In the event that any Project Supplemental Agreement is terminated prior to completion of the Project, no additional Direct Project and Program Costs shall be incurred other than Direct Project and Program Costs due and payable at the time of termination for services actually performed or that shall become due and payable due to such termination. The Lead Agency, to the extent permitted, may terminate all Project contracts, unless written notice is given by either party to the other of its intent to complete the Project, and prepare a final accounting for the Project.
  - d. If the Project is terminated by the City/Town prior to the award of any construction contract and the Project is located within the City/Town limits, City/Town shall pay to County the full amount of Direct Project and Program Costs expended by County on the Project and County shall transfer to City/Town its rights and all deliverables that it may be entitled to receive under the existing professional services or other Project contracts or agreements. Such amount shall be included in the final accounting for the Project. Such amount shall be due and payable in full ninety (90) days subsequent to the termination, or thirty days subsequent to delivery of final accounting.
  - e. Once the construction contract for a Project has been awarded by the governing body of the Lead Agency, except upon the written agreement of the parties or as otherwise set forth herein or in a PSA, the PSA for that Project cannot be terminated until completion of the construction.
  - f. In the event that a Project is terminated prior to the award of the construction contract, either party may, upon written notice to the other party, take over the anticipated work for the terminated Project and prosecute the work to completion by contract or otherwise at its sole cost and expense. In the event that the party so completing the work (the "Completing Party") is not the Lead Agency, it is agreed that the Project Manager will furnish to the Completing Party a listing of current records pertaining to any outstanding obligations or other records or information required by any Project contract, including any work order, or requested in writing by Completing Party in either printed or electronic format or both. If the Completing Party is not the Lead Agency, the Lead Agency agrees to reasonably cooperate with the Completing Party (but such cooperation shall not require the Lead Agency to expend any funds). If the Completing Party is not the Lead Agency, the Lead Agency will use its best efforts to transfer to the Completing Party all contracts regarding the Project. Obligations under such contracts shall become the sole obligation of the Completing Party upon transfer. The Completing Party agrees to timely pay all future obligations under such contract as they become due and payable. The Completing Party hereby releases the Lead Agency from any and all liability under such assigned contracts subsequent to date of transfer, effective upon the transfer date. If the Completing Party is not the Lead Agency, the Lead Agency shall exercise its best efforts to insure a transition of services without interruption.

Either party shall have the right to retain copies of all data, information, engineering, studies, or other items produced to the date of termination.

- g. Provisions b. through g. of this section A. of Article IV. shall survive the termination of this Master Agreement and any PSA and shall be a continuing obligation until the transition of services, all payments made and the Projects are complete. All items listed or required in this provision shall be furnished by Lead Agency to Completing Party without additional cost or expense to Completing Party.

**B. FORCE MAJEURE:**

Neither County nor City/Town shall be deemed in violation of this Contract if it is prevented from performing any of its obligations hereunder by reason of, for or through strikes, stoppage or shortage of labor, failure of transportation, riot, fire, flood, invasion, insurrection, accident, order of court, judge or civil authority, an act of God, or any other cause reasonably beyond the party's control and not attributable to its neglect. In the event of such an occurrence, the time for performance of such obligations or duty shall be suspended until such time that such inability to perform shall be removed. The party claiming the suspension shall give written notice of such impediment or delay in performance to the other party within ten (10) days of the notifying party's actual knowledge of such occurrence (but a failure to give such notice within the said time period shall not affect the suspension of the period of time to perform). Each party shall make reasonable efforts to mitigate the effects of any suspension. The provisions of this Article IV section B shall survive the termination of this Master Agreement.

**ARTICLE V. LIABILITY FOR ACTS AND OMISSIONS**

**County and City/Town agree that both County and City/Town shall each be responsible for their own negligent acts or omissions or other tortious or non-tortious conduct in the course of performance of this Master Agreement without waiving any sovereign or governmental immunity available to either County or City/Town under Texas or other law (including, without limitation, the Texas Constitution) and without waiving any available defenses or tort limitation under Texas or other law. Nothing in this paragraph shall be construed to create or grant any rights, contractual or otherwise, in or to any third persons or entities. The provisions of this Article V shall survive the termination of this Master Agreement.**

**ARTICLE VI. LEAD AGENCY**

- A. Lead Agency shall be that entity which is responsible for the Project from conception through to completion of construction. City/Town and County may choose for County to manage a Project through design and construction and for City/Town to acquire ROW.
- B. In the event that the City/Town is the Lead Agency, the City/Town shall:
  - a. Provide Project management and leadership from Project selection to construction completion following the Five Phase Project Delivery System as detailed in Exhibit A, attached hereto, and as well as any additions or supplements thereto;
  - b. Lead Agency shall be responsible for hosting the Preliminary Concept Charrettes and or Preliminary Design Charrettes and neighborhood public workshops;

- c. Acquire ROW necessary for the Project;
  - d. Enter into or obtain whatever agreements or permits are necessary for Project completion;
  - e. Provide County with opportunity for significant input in plan development and periodic progress reviews; and
  - f. Provide records for periodic auditing for either financial accounting or engineering accounting or both.
- C. For City/Town-led Projects in which the City/Town is considering to specify transportation infrastructure elements exceeding the Standard Basic Project Design criteria, County funding will only be eligible to the Standard Basic Project Design criteria unless the City/Town and County have arrived at mutual agreement through involvement of the County during the initial design phases including the design partnering kick-off meeting and as necessary the Preliminary Concept Charrette and Preliminary Design Charrette meetings.

## **ARTICLE VII. CITY/TOWN COVENANTS**

The City/Town covenants and agrees as follows:

- A. To execute with reasonable promptness the necessary agreements for the implementation of design and construction of the Projects mutually agreed upon and incorporated herein by a PSA.
- B. To provide a City/Town Council resolution adopting approved preferred alignment, proposed estimated budget, and commitment to meet Project funding for each milestone as specified herein or in the Funding Agreement and/or PSA.
- C. To provide a City/Town Council resolution adopting the subdivision regulation in the ETJ as defined in Article XVII below.
- D. City/Town agrees to share the funding of each Project with County on an equal share basis of 50%/50% (or an otherwise agreed cost sharing arrangement as may be specified in a Funding Agreement and/or PSA) with the following exclusions:
  - a. City/Town shall bear the entire cost of:
    - 1. City/Town owned utilities relocation or adjustment such as water and sanitary sewer facilities, except utility adjustments directly attributable to storm sewer improvement conflicts;
    - 2. Amenities including but not limited to street pavers, colored concrete, planters, decorative lighting, special signage, or any other feature over the Standard Basic Project Design;
    - 3. Utility Betterments
    - 4. Direct Project and Program Costs of City/Town when it is fulfilling the role of Lead Agency unless Direct Project and Program Costs are supported by a detailed hourly accounting system equal to County's accounting system.
    - 5. City/Town Indirect Costs.
- E. When mutual written agreement has been reached as to a Project's concepts, design elements and limits by County and City/Town at (or within a reasonable period of time following) a PDC, City/Town agrees, subject to applicable law, to seek to acquire ROW required for the designated Project by voluntary dedication, the subdivision platting process, or other legal means, and to seek

to ensure through the building permitting process that setback requirements are imposed to limit encroachment upon the required ROW. City/Town agrees to fund ROW not acquired, but reasonably expected to be acquired. City/Town also agrees to fund the removal of improvements that are encroachments within existing or proposed ROW areas.

- F. In the event any proposed use of the Project ROW will conflict with the proposed Project and City/Town is unable to obtain such ROW (the “conflicting parcel”) as described above, City/Town shall notify County of such conflict. County and City/Town shall determine if the acquisition of the conflicting parcel is needed because it is impacted by the Project. In the event that agreement is reached that the conflicting parcel should be acquired and the parcel is acquired, the parcel acquisition cost shall be included in the pro rated cost of the Project in the agreed upon proportions.
- G. City/Town hereby grants the County authority to enter into eminent domain proceedings within the City/Town limits on specific ROW alignments and/or Projects as approved by the both the City/Town and County where County is the Lead Agency or where County by mutual agreement of the parties has the responsibility to acquire ROW for a Project.
- H. To require all utility companies located within or using the present public ROW on all designated transportation Projects within City’s/Town’s municipal limits to adjust and/or relocate Utilities owned by such utility companies as required by the proposed improvement of the designated transportation Project. City/Town Utilities shall be relocated or adjusted at no cost to County except as may be specifically set forth in this Master Agreement or any Project Supplemental Agreement.
- I. City/Town agrees to timely schedule and fairly consider issues relating to billboards, advertising signs, non-conforming uses, zoning and similar restrictions that require action by the governing or administrative body of City/Town to minimize cost and delay of a Project. Additional Project cost caused or contributed to by City/Town failure to timely schedule and consider such matters shall be paid in full by City/Town. Additional Project costs caused or contributed to by adoption of or changes to ordinances, orders, or laws made by either party subsequent to execution of any Project Supplemental Agreement for a Project shall be borne in full by the party making such adoption or change.
- J. To the extent allowed by law, City/Town shall require the adjustment and/or relocation of Utilities to be accomplished and finalized, as expeditiously as possible after approval of Project final plans to prevent Project schedule delays. Notwithstanding anything contained herein to the contrary, all Utilities shall be adjusted or relocated and the ROW clear for construction not later than thirty (30) days prior to the award of the Project construction contract. City/Town will notify the County and other stakeholders when utility conflicts would impact progress of Project completion. County and City/Town agree to work cooperatively and with all Stakeholders to solve any problems with relocation or adjustment of Utilities, to include helping to engage elected officials in the problem resolution with the goal to prevent delays in the commencement or prosecution of construction of the Project.
- K. Where planned roadway improvements (including, but not limited to storm drainage) are in conflict with City/Town owned water and sanitary sewer systems, that could otherwise remain in place, the actual costs of the necessary adjustment of City/Town water and sewer utilities shall be pro rated at the overall percentage agreed to by City/Town and County for cost sharing. City/Town shall be responsible for funding one hundred percent (100%) of any Utility Betterment as well as 100% of any relocation that is caused by City/Town installation during the Project Duration. Except as provided herein, all costs for adjustment and/or relocation of utilities in the public ROW shall be the responsibility of the Utility Owner or of the City/Town Utility. Any Project delay damages, to

the extent caused by City/Town Utility failure to timely relocate or adjust the City/Town Utility facility, shall be at the entire cost of City/Town.

- L. To provide for continuing surveillance and control of ROW to prevent the construction, placement, storage or encroachment of any signs or personal property that is not authorized to be constructed, placed, stored, or encroaching in the existing or proposed ROW. In the event that such signs or personal property are authorized by City/Town to encroach on necessary ROW during the duration of the Project, City/Town shall bear the entire cost of removal or relocation of said encroachment.
- M. To provide to County for County's or County's designee's use, at no cost, adequate copies of all construction standards, codes, (specifically including zoning and development codes), plats, specifications, guidelines, standards or any other pertinent information as determined by County to be required for the completion of the Project. Additionally, City/Town shall furnish County, at no cost, such documents as necessary to keep all items previously furnished to County current.
- N. Actively participate and provide authorized representation with decision making power at PCC and/or PDC, preconstruction meeting, partnering meetings and Project Team meetings which are necessary to Project development/completion and fiduciary relationships.
- O. City/Town agrees to provide timely review of interim submittals. What constitutes "timely" review will be negotiated by the parties during the PCC and/or PDC as a part of the Project schedule. City/Town further agrees that if no review notes are submitted by City/Town in writing to County on a timely basis, plans are approved as submitted.
- P. When City/Town is the Lead Agency, City/Town agrees to allow forty-five days for County review of submittals and any comments agreed upon by City/Town shall be incorporated into final document.
- Q. City/Town agrees that it will pay all additional Project costs for any City/Town requested discretionary change subsequent to the City/Town opportunity to review the sixty five percent (65%) design plans, including, but not limited to Amenities and Utility Betterments, to the extent a requested discretionary change increases the cost of the design or construction of the Project.
- R. Provide at City's/Town's cost for the continuing maintenance of all Project ROW, such as mowing, drainage, trash removal, etc., during the period between acquisition and construction.
- S. During the construction of the Project and after completion of the Project, City/Town will be responsible, to the extent the Project is located within the corporate limits of the City/Town, for the control, operation, police enforcement and/or emergency services, without cost or contribution from the County.
- T. After the completion of a Project and the period of any maintenance bond period for the Project, the City/Town will be responsible for all future maintenance without cost or contribution from the County.
- U. Bear the entire cost of design, construction and administration for landscaping, streetscaping, streetlighting, as such items are not included in the Standard Basic Project Design, and other Amenities specified or requested by City in excess of Standard Basic Project Design.
- V. It is the intent of this Master Agreement that the County will be the Lead Agency. In the event that the City/Town and County agree in writing that City/Town will manage and administer one or more Projects, City/Town and County will enter into a PSA as to that Project(s). In such instance, City/Town agrees to assume all Lead Agency responsibilities except as may be set forth in the PSA as determined by mutual consent.

**ARTICLE VIII. UTILITY IMPACTS.**

- A. In cases of a Utility In Privately Owned ROW, where it is necessary to relocate the Utility facility or make adjustments to the Utility facility by reason of the widening or improvement of the designated Project, the County (or City/Town if acting as the Lead Agency) will, after submission of ROW documentation and cost estimates by the Utility company that owns the said facilities that are acceptable to the City/Town, County and other stakeholders, assign the actual costs for the relocation and/or adjustment of said Utility facility to the Project.
- B. In cases where a Utility in Public ROW, excluding City/Town Utilities, occupies any portion of the Project ROW by Texas or Federal law or by agreement with the City/Town that allows or permits the City/Town to cause the relocation or adjustment of the Utility facilities for the construction of the Project, the City/Town shall timely require and enforce the relocation or adjustment requirement at no cost to the Project. In the event that the City/Town has no legal or contractual right to cause the relocation or adjustment, the said Utility facilities shall be relocated or adjusted and all costs thereof shall be Project costs.

**ARTICLE IX. COUNTY COVENANTS**

The County covenants and agrees as follows:

- A. To provide, as a Project cost, preliminary engineering for each Project which will define Project details, e.g., location, scope of work and specific right of way alignment for each improvement. Such preliminary engineering shall be submitted to the City/Town for approval, prior to proceeding with the final design and any Right Of Way acquisition.
- B. To provide, as a Project cost, for the construction of transportation improvements based upon design criteria conforming to Standard Basic Project Design in conformity with applicable City/Town ordinances and standards, to the extent of Commissioners Court approved program funding. The scope of work for the Project shall include the agreed upon design standards as the basis for improvement criteria. Deviations from mutually agreed upon application of City/Town standards and/or design criteria shall require prior approval of City/Town. Where City/Town standards do not exist, TxDOT standards as of the Effective Date of this Master Agreement shall be utilized unless otherwise mutually agreed by a PSA.
- C. To actively participate and provide authorized representation with decision making power at PCC and/or PDC, preconstruction meeting, partnering meetings and Project Team meetings which are necessary to Project development and completion and fiduciary relationships.
- D. To provide Project management of each Project where County is Lead Agency from commencement to completion of construction. City and County may further agree by mutual consent to redefine Project management roles as beneficial to the Project as defined in an MOA and/or Project Supplemental Agreements.
- E. Upon receipt of written request detailing the information requested, to provide information related to the Project to City/Town or City's/Town's designee at no cost to the City/Town.
- F. County agrees to provide review of interim submittals regarding each Project within forty-five days and hereby agrees that if no review notes are submitted with such time period by County (if

City/Town is filling the role as Lead Agency) in writing to City/Town, plans are approved as submitted.

- G. To submit final engineering plans for review and written approval by City/Town at least thirty (30) days prior to advertising for bids to construct the Project.
- H. To provide for the acquisition, including, without limitation, acquisition by eminent domain, of the necessary additional ROW, on designated Projects, in accordance with minimum standard requirements and utilizing existing public ROW to the maximum extent possible as a Project cost.
- I. To require all contractors to secure all necessary permits required by City/Town on said construction Projects.
- J. To furnish record drawings of construction plans for the permanent records of City/Town within twelve (12) months upon completion and acceptance of the transportation improvement Project.
- K. To transfer the real property or property interest acquired by County and used for the Project to City/Town.
- L. In the event County and City agree in writing that City will be the Lead Agency for the agreed upon Project, County will reimburse City for agreed costs as detailed in Article XIII. (Funding) in an amount not to exceed the Project cost as approved by Dallas County Commissioners Court and incorporated in the PSA. All County payments shall be in accordance with County policies and procedures or as may be mutually agreed between the parties and incorporated in a PSA.
- M. When County is the Lead Agency, County agrees to allow forty-five days for City/Town review of submittals and any comments agreed upon by County shall be incorporated into final document.

#### **ARTICLE X. PRELIMINARY DESIGN CHARRETTE (PDC), PRELIMINARY CONCEPT CHARRETTE (PCC)**

- A. City/Town and County, as specified in Articles VII and X, respectively, will designate officials or representatives to participate in a PCC and/or PDC to be conducted on a mutually agreeable date and location. At least part of this meeting will be conducted on the Project site.
- B. Results from PCC will identify the general Project scope, the basic approach and concepts to be taken with the Project, the elements of CSS that will be included, and some ideas for alignment alternatives. Lead Agency will already have been determined, and as well as Project administration and management roles, to include the Project Manager. Key Project Team participants shall be introduced to stakeholders at the PCC and or PDC. Results from the PDC will identify the preferred alignment of the Project which all stakeholders can support and build momentum behind, and provide all stakeholders a commitment for Project delivery schedules and Project budgets.

#### **ARTICLE XI. FISCAL FUNDING**

Notwithstanding anything to the contrary herein, this Master Agreement is expressly contingent upon the availability of County funding for each item and obligation contained herein. City/Town shall have no right of action against the County as regards this Master Agreement, specifically including any funding by County of the Project in the event that the County is unable to fulfill its obligations under this Master Agreement as a result of the lack of sufficient funding for any item or obligation from any source utilized to fund this Master Agreement or failure of any funding party to budget or authorize funding for this Master Agreement during the current or future fiscal years. In the event of insufficient

funding, or if funds become unavailable in whole or part, the County, at its sole discretion, may provide funds from a separate source or terminate this Master Agreement. In the event that payments or expenditures are made, they shall be made from current funds as required by Chapter 791, Texas Government Code.

Notwithstanding anything to the contrary herein, this Master Agreement is expressly contingent upon the availability of City/Town funding for each item and obligation contained herein. County shall have no right of action against the City/Town as regards this Master Agreement, specifically including any funding by City/Town of the Project in the event that the City/Town is unable to fulfill its obligations under this Master Agreement as a result of the lack of sufficient funding for any item or obligation from any source utilized to fund this Master Agreement or failure of any funding party to budget or authorize funding for this Master Agreement during the current or future fiscal years. In the event of insufficient funding, or if funds become unavailable in whole or part, the City/Town, at its sole discretion, may provide funds from a separate source or terminate this Master Agreement. In the event that payments or expenditures are made, they shall be made from current funds as required by Chapter 791, Texas Government Code.

## **ARTICLE XII. FUNDING**

A. City/Town and County mutually agree to proportionately fund the Direct Project and Program Costs as agreed by the parties in a PSA. Unless otherwise specified in the PSA, County shall bear and pay for fifty percent (50%) of the total Direct Project and Program Costs excluding the Amenities, relocation or adjustment of City/Town Utilities, Utility Betterments, Indirect Costs, Direct Project and Program Costs not supported by detailed hourly accounting system and other items as specified in this Master Agreement, any Funding Agreement, or any PSA. County shall not be responsible for any amount of funding in excess of the Project not-to-exceed amount as shown in the PSA.

Unless otherwise specified in the PSA, City/Town shall bear fifty percent (50%) of the total Direct Project and Program Costs. In addition, City/Town agrees to fund all other City cost as provided herein, including, but not limited to, Amenities, relocation or adjustment of City/Town Utilities, Utility Betterments, Indirect Cost, Direct Project and Program Cost not supported by detailed hourly accounting system and other items as specified in this Master Agreement, any Funding Agreement, or any PSA.

B. Unless otherwise stated in a PSA, the milestones for each Project shall be (1) preliminary and primary design, (2) ROW acquisition and utility relocation or adjustment, and (3) construction. The Lead Agency shall prepare an estimated cost for each milestone. Upon approval of the cost by the other party, each party shall fund its share of the respective milestones by placing that amount of money in an escrow account or otherwise encumber the funds to insure that the Lead Agency will have sufficient funding available from current revenue for the timely payment of Project milestone costs. The Lead Agency may bill the other party for periodic payments for the actual amount of work completed toward the completion of the milestone. Upon completion of the milestone, the non-management party will be furnished a notice that such work has been completed and the amount of funding that may be utilized to pay subsequent milestone Project costs. Notwithstanding any other term or condition contained herein or in any PSA, neither party will be required to award any contract until written certification has been received that funding has been placed in escrow or encumbered for the payment of the non-awarding party's portion of the Project cost.

C. In the event that the cost of the Project shall exceed the not-to-exceed amount, City/Town and County agree to either reduce the scope of construction or seek additional funding to complete the

Project at the agreed upon cost share percentages. At the termination of the Project, the Lead Agency will do a final cost accounting of the Project. In the event that the amount paid by either party exceeds its portion of the actual cost, the difference will be remitted to such party. In the event that additional funds are due, the Lead Agency will bill the other party who agrees to pay such funds within thirty (30) days of receipt of such billing (provided the payment of such funds is not in dispute).

D. If City/Town elects to manage a Project, County will reimburse City/Town based on invoices for actual costs expended as supported by documentation approved by County Auditor. Any and all supporting documentation required by County Auditor shall be included with an invoice from City/Town.

E. Upon execution of a PSA, City/Town shall escrow an amount adequate for initial Project costs which County may use to pay for initial professional services required for scoping, preliminary, and primary design.

F. City/Town and County shall enter into a Funding Agreement and/or PSA to establish commitments as required for each Project. Suggested timeframes for Funding Agreements, PSAs and/or any amendments are:

- a. As soon as a Project is accepted by Commissioners Court and as a result of the kick off partnering meeting, a Funding Agreement to establish Lead Agency for preliminary engineering and general funding responsibilities and procedures for reimbursement by Participating Agency; or
- b. When the preliminary engineering plans are at 60% complete; or
- c. After construction bids are opened amend the PSA as needed.

### **ARTICLE XIII. NO THIRD-PARTY BENEFICIARY ENFORCEMENT.**

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all right of action relating to such enforcement shall be strictly reserved to City/Town and County and nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other person. This Master Agreement and of its terms and provisions are solely for the benefit of the parties hereto and are not intended to, and do not, create or grant any rights, contractual or otherwise, to any third person or entity. It is the express intention of City/Town and the County that any entity other than City/Town or the County receiving services or benefits under this Master Agreement shall be deemed an incidental beneficiary only. This Agreement is intended only to set forth the contractual right and responsibilities of the parties hereto.

### **ARTICLE XIV. RIGHT OF ENTRY**

The City/Town agrees that County shall have the right to enter upon the Project area for the time period necessary for the completion of the Project. Subject to the City/Town's determination that City/Town police or other City/Town personnel are available and provided the City/Town does not have to pay overtime to any such police or other City/Town personnel (unless the City/Town elects to do so), City/Town agrees to furnish such police or other City/Town personnel as requested by County for traffic control or other public safety matters at no cost to the Project or County.

**ARTICLE XV. LIST OF PROJECTS**

City/Town agrees that it has been furnished with a list of the potential Projects as approved by the Dallas County Commissioners Courts, subject to the agreement between the parties of a PSA. City/Town stipulates and agrees that the Commissioners Court Order approving the Projects identifies the potential Project location and describes the type of Project in sufficient detail, and that the City/Town is fully aware of the location and type of Projects being considered.

**ARTICLE XVI. ORPHAN ROAD POLICY;**

The County encourages all cities adjacent to Orphan Roads in the County to develop, commit to and submit a plan to the County for completing the annexation of the Orphan Road segments and assuming full responsibility for these roadways. In instances where two cities abut the same Orphan Road segment, the County encourages the two cities to jointly develop a plan of the annexation of that segment. The County offers its assistance to the cities in developing such plans.

- A. The County, at the discretion of the Commissioners Court, may give additional selection value to Projects in cities that have submitted a specific plan for the annexation of Orphan Roads when the County selects, approves and schedules Projects for funding in the County’s major MCIP. Such preference may also be given in approving Projects for road and bridge district participation (Type “B” work).
- B. The County, at the discretion of the Commissioners Court, may also refuse to participate in discretionary Projects, such as road and bridge district Projects or MCIP Projects, in a City/Town that elects not to pursue the annexation of Orphan Road segments that abut its boundaries. Failure to notify the County of the City’s/Town’s intent to annex and/or failure to submit a plan for annexation in a timely manner shall be construed by the County as the City’s/Town’s election not to pursue annexation.
- C. The County, at the discretion of the Commissioners Court, may select specific Orphan Road segments for improvement when a City commits to annexation of the segment upon completion of the Project. However, the specific plan for annexation of Orphan Roads submitted by the City/Town will not be limited to annexation upon completion of improvements by the County. The County improvements may be made as road and bridge Projects or as MCIP Projects (subject to other MCIP criteria including regional thoroughfare plan designation and City/Town cost participation).
- D. This policy application is prospective and Projects selected by the County and approved by the Commissioners Court prior to the date of the adoption of this policy shall not be impacted by this policy.
- E. The County shall provide written notification of the adoption of, and future revisions of, this policy to the cities abutting orphan road segments.
- F. The provisions of this Article XVI shall survive the termination of this Master Agreement.

**ARTICLE XVII. SUBDIVISION REGULATIONS IN THE  
EXTRA TERRITORIAL JURISDICTION**

County and City/Town agree that City/Town is the office that is authorized to: (1) accept plat applications for tracts of land located in the extraterritorial jurisdiction; (2) collect all applicable plat application fees; (3) provide applicants one response indicating approval or denial of the plat

application; and (4) establishes a single set of consolidated and consistent regulations related to plats, subdivision construction plans, and subdivisions of land. The provisions of this Article XVII shall survive the termination of this Master Agreement.

**ARTICLE XVIII. MISCELLANEOUS GENERAL PROVISIONS**

A. **Applicable Law.** This Agreement and all matters pertinent thereto shall be construed under, governed by, and enforced in accordance with the laws of the State of Texas and exclusive venue shall be in Dallas County, Texas. Notwithstanding anything herein to the contrary, this Agreement is expressly made subject to County’s and City/Town’s sovereign immunity, Title 5 of Texas Civil Practice and Remedies Code, and all applicable State of Texas and Federal laws.

B. **Entire Agreement.** This Agreement, constitutes the entire agreement between the parties hereto and may not be modified except by an instrument in writing executed by the parties hereto as herein provided.

C. **Severability.** If any provision of this Agreement shall be held invalid, void or unenforceable, the remaining provisions hereof shall not be affected or impaired, and such remaining provisions shall remain in full force and effect.

D. **Default/Waiver/Mitigation.** It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this Agreement does not preclude pursuit of other remedies in this Agreement or provided by law.

E. **Federal or State of Texas Funding.** In the event that any Project work or part thereof is funded by State of Texas or U. S. Government funding and any statute, rule, regulation, grant, contract provision or other State of Texas or U. S. Government law, rule, regulation or other provision imposes additional or greater requirement(s) than stated herein, City/Town agrees to timely comply therewith without additional cost or expense to County.

F. **Headings.** The titles which are used following the number of each paragraph are only for convenience in locating various provisions of this Agreement and shall not be deemed to affect the interpretation or construction of such provision.

G. **Number and Gender.** Words of any gender used in this Agreement shall be held and construed to include any other gender; and words in the singular shall include the plural and vice versa, unless the text clearly requires otherwise.

H. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

I. **Notice.** Any notice provided for in this Agreement to be given by either party to the other, shall be required to be in writing and shall be deemed given when personally delivered, or three (3) business days after being deposited in the United States Mail, postage prepaid, certified, returned receipt requested, or registered addressed as follows:

To County: County of Dallas  
Director of Public Works  
Dallas County  
Administration Building  
411 Elm Street, Fourth Floor  
Dallas, Texas 75202-3389

To City/Town: Town of Addison, Texas  
Director of Public Works  
PO Box 9010  
Addison, Texas 75001-9010

Either party may change its address for notice by giving the other party notice thereof.

**J. No Assignment.** Neither party hereto shall, nor has the authority to, assign, transfer, or otherwise convey, in whole or in part, this Master Agreement or any portion hereof, without the prior written consent of the other party.

**K. Authorized Persons.** County and City/Town represent one to the other that, as to the undersigned officers and/or agents signing this Master Agreement on their behalf, the said officers and/or agents are the properly authorized persons for them and have the necessary authority to execute this Agreement on their behalf.

The City/Town of Addison, State of Texas, has executed the Agreement pursuant to duly authorized City/Town Council Resolution \_\_\_\_\_, Minutes \_\_\_\_\_ Dated the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

The County of Dallas, State of Texas, has executed this agreement pursuant to Commissioners Court Order Number \_\_\_\_\_ and passed on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

**TOWN OF ADDISON**

**COUNTY OF DALLAS**

BY \_\_\_\_\_  
TITLE

BY \_\_\_\_\_  
Clay Lewis Jenkins, County Judge

DATE \_\_\_\_\_

DATE \_\_\_\_\_

ATTEST \_\_\_\_\_  
CITY SECRETARY \ ATTORNEY

APPROVED AS TO FORM:

Craig Watkins  
District Attorney

\*By: \_\_\_\_\_  
Sherri Turner  
Assistant District Attorney

\*By law, the District Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval by their own respective attorney(s).

## Council Agenda Item: #R7

### **AGENDA CAPTION:**

Presentation, discussion and consideration of adoption of an Ordinance providing for the making of certain findings by the City Council of the Town pertaining to the anticipated adoption by the Town of the Municipal Drainage Utility Systems Act (Subchapter C of Chapter 552, Tex. Loc. Gov. Code) and a declaration of stormwater (drainage) of the Town to be a Public Utility pursuant to the said Act, including that the Town will establish a schedule of stormwater (drainage) charges against all real property in the proposed service area of the Town, that the Town will provide stormwater (drainage) service for all real property in the service area on the payment of stormwater (drainage) charges, except real property exempted under the said Act, and that the Town will offer stormwater (drainage) service on nondiscriminatory, reasonable, and equitable terms; and providing for related matters.

### **FINANCIAL IMPACT:**

N/A

### **BACKGROUND:**

N/A

### **RECOMMENDATION:**

Staff recommends approval.

### **COUNCIL GOALS:**

Increase Revenues by at least 6% (to \$28.5mm) while holding the tax rate to \$.55 or less and reserves to at least 25%, Mindful Stewardship of Town Resources

### **ATTACHMENTS:**

Description:

 [DRAFT Findings Ordinance](#)

Type:

Ordinance

**TOWN OF ADDISON, TEXAS**

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

**AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS PROVIDING FOR THE MAKING OF CERTAIN FINDINGS BY THE CITY COUNCIL OF THE TOWN PERTAINING TO THE ANTICIPATED ADOPTION BY THE TOWN OF THE MUNICIPAL DRAINAGE UTILITY SYSTEMS ACT (SUBCHAPTER C OF CHAPTER 552, TEX. LOC. GOV. CODE) AND A DECLARATION OF STORMWATER (DRAINAGE) OF THE TOWN TO BE A PUBLIC UTILITY PURSUANT TO SUBCHAPTER C OF CHAPTER 552, TEX. LOC. GOV. CODE, INCLUDING THAT THE TOWN WILL ESTABLISH A SCHEDULE OF CHARGES AGAINST ALL REAL PROPERTY IN THE PROPOSED SERVICE AREA OF THE CITY, THAT THE TOWN WILL PROVIDE STORMWATER (DRAINAGE) SERVICE FOR ALL REAL PROPERTY IN THE SERVICE AREA ON THE PAYMENT OF STORMWATER (DRAINAGE) CHARGES, EXCEPT REAL PROPERTY EXEMPTED UNDER THE SAID MUNICIPAL DRAINAGE UTILITY SYSTEMS ACT, AND THAT THE TOWN WILL OFFER STORMWATER (DRAINAGE) SERVICE ON NONDISCRIMINATORY, REASONABLE, AND EQUITABLE TERMS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Addison, Texas (the “City”) is a home rule municipality having the full power of local self government pursuant to Article 11, Section 5 of the Texas Constitution, Chapter 9, Tex. Loc. Gov. Code, and its Home Rule Charter; and

**WHEREAS**, Subchapter C of Chapter 552, Texas Local Government Code (the “Code”) is the “Municipal Drainage Utility Systems Act” (the “Act”) and among other things allows municipalities to establish a municipal Stormwater (drainage) Utility System within an established service area and provide rules for the use, operation, and financing of the system; and

**WHEREAS**, Section 552.045(a), Tex. Loc. Gov. Code (part of the Act) authorizes the City Council of the Town, being the governing body of the Town, by a majority vote of its entire membership to adopt the Act by an ordinance that declares its adoption and that declares the stormwater (drainage) infrastructure and services of the Town to be a public utility (the “Adopting Ordinance”); and

**WHEREAS**, Section 552.045(b) provides that, before adopting the Adopting Ordinance the City Council must find that:

- theTown will establish a schedule of stormwater (drainage) charges against all real property in the proposed service area subject to charges under the Act;
- the Town will provide stormwater (drainage) for all real property in the proposed service area on payment of stormwater (drainage) charges, except real property exempted under the Act; and
- the Town will offer stormwater (drainage) service on nondiscriminatory, reasonable, and equitable terms; and

**WHEREAS**, following the adoption of this Ordinance the City Council desires to proceed with the process set forth in the Act to adopt the Act, to declare the stormwater (drainage) of the Town to be a public utility, to establish a service area, to levy a schedule of stormwater (drainage) charges, to establish rules regarding stormwater (drainage), and to provide for such other matters as are included in the Act.

**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 to this Ordinance are true and correct and are incorporated into this Ordinance and made a part hereof for all purposes.

Section 2. Findings. The City Council desires to proceed with the process set forth in the Municipal Drainage Utility Systems Act to adopt the Act, to declare the stormwater (drainage) infrastructure and services of the Town to be a public utility, to establish a service area, to levy a schedule of stormwater (drainage) charges, to establish rules regarding stormwater (drainage), and to provide for such other matters as are included in the Act. Accordingly, the City Council does hereby find that:

- (a) the Town will establish a schedule of stormwater (drainage) charges against all real property in the proposed service area subject to charges under the Act;
- (b) the Town will provide stormwater (drainage) for all real property in the proposed service area on payment of stormwater (drainage) charges, except real property exempted under the Act; and
- (c) the Town will offer stormwater (drainage) service on nondiscriminatory, reasonable, and equitable terms.

Section 3. Notice. All notices required by the Act in order to proceed with the process set forth in the Act to adopt the Act, to declare the stormwater (drainage) infrastructure and services of the Town to be a public utility, to establish a service area, to levy a schedule of stormwater (drainage) charges, to establish rules regarding stormwater (drainage), and to provide for such other matters as are included in the Act, that have previously been published and provided are hereby approved.

Section 4. 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.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this  
the \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Todd Meier, Mayor

**ATTEST:**

By: \_\_\_\_\_  
Chris Terry, City Secretary

**APPROVED AS TO FORM:**

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

## Council Agenda Item: #R8

### AGENDA CAPTION:

**PUBLIC HEARING**, presentation, discussion and consideration of approval of an Ordinance amending the Town of Addison's Code of Ordinances by amending Chapter 82 (Utilities) thereof to add a new Article VI, Division 1 regarding a Stormwater (drainage) Utility System; declaring the adoption of Chapter 552, Subchapter C, Tex. Loc. Gov. Code (the Municipal Drainage Utility Systems Act) and declaring stormwater (drainage) to be a public utility and establishing a service area in connection therewith; providing definitions; providing for the establishment and calculation of stormwater (drainage) utility fees, including property classifications, for billing policies and procedures, and for credits; providing penalties and remedies for nonpayment of fees, including discontinuance of utility services and the filing of a lien; establishing an administrative appeals process; providing for termination of the stormwater (drainage) utility system; providing for a stormwater (drainage) utility fund; exempting certain property from fees; and providing for other related matters.

### FINANCIAL IMPACT:

N/A

### BACKGROUND:

n/a

### RECOMMENDATION:

Staff recommends approval.

### COUNCIL GOALS:

Increase Revenues by at least 6% (to \$28.5mm) while holding the tax rate to \$.55 or less and reserves to at least 25%, Mindful Stewardship of Town Resources

### ATTACHMENTS:

Description:

 [Ordinance](#)

Type:

Backup Material

## LEGAL NOTICE

Notice is hereby given that the City Council of the Town of Addison will hold a public hearing on October 9, 2012 at 7:30 P.M. at the Town of Addison, Town Hall, at 5300 Belt Line Rd, Dallas, Texas 75254 (972) 450-7000 to consider the following:

**Conduct a public hearing on and regarding adoption of an ordinance that amends the Town of Addison's Code of Ordinances by amending Chapter 82 (Utilities) to add thereto a new Article VI, Division 1 regarding a Stormwater (drainage) Utility System; declaring the adoption of the Chapter 552, Tex. Loc. Gov. Code, being the Municipal Drainage Utility Systems Act and declaring stormwater (drainage) to be a public utility; establishing a municipal Stormwater (drainage) Utility system; providing for the establishment and calculation of stormwater (drainage) utility fees, including property classifications, for billing policies and procedures, and for credits; providing penalties and remedies for nonpayment of fees, including discontinuance of utility services and the filing of a lien; establishing an administrative appeals process; providing for termination of the stormwater (drainage) utility system; providing for a stormwater (drainage) utility fund; exempting certain property from fees; providing a penalty clause; providing a severability clause; providing a savings clause; providing for publication; and providing an effective date.**

Please see Exhibit "A" for the proposed ordinance (subject to modification prior to adoption). Any interested persons and parties may submit any information they wish to be considered to the Town Secretary prior to the date of the public hearings or may appear at the public hearings to be heard, or both.

The facility is wheelchair accessible. If you plan to attend and you have a disability that requires special arrangements, please notify the City Secretary 48 hours in advance of the hearings so that reasonable accommodations can be made. For sign interpretive services, please call 72 hours in advance.

For more information on this Legal Notice, please contact the City Secretary at (972) 450-7000.

Signed this the 28<sup>th</sup> day of August, 2012.

**Chris Terry**  
City Secretary

**TOWN OF ADDISON, TEXAS**

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

**AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS, AMENDING THE TOWN'S CODE OF ORDINANCES BY AMENDING CHAPTER 82 (UTILITIES) OF THE TOWN CODE OF ORDINANCES TO ADD A NEW ARTICLE VI, DIVISION 1 REGARDING A MUNICIPAL STORMWATER (DRAINAGE) UTILITY SYSTEM; DECLARING THE ADOPTION OF THE MUNICIPAL DRAINAGE UTILITY SYSTEMS ACT (SUBCHAPTER C OF CHAPTER 552, TEX. LOC. GOV. CODE) AND DECLARING STORMWATER (DRAINAGE) TO BE A PUBLIC UTILITY AND ESTABLISHING A SERVICE AREA IN CONNECTION THEREWITH; PROVIDING DEFINITIONS; PROVIDING FOR THE ESTABLISHMENT AND CALCULATION OF STORMWATER (DRAINAGE) UTILITY FEES, INCLUDING PROPERTY CLASSIFICATIONS, FOR BILLING POLICIES AND PROCEDURES, AND FOR CREDITS; PROVIDING PENALTIES AND REMEDIES FOR NONPAYMENT OF FEES, INCLUDING DISCONTINUANCE OF UTILITY SERVICES AND THE FILING OF A LIEN; PROVIDING AN APPEAL PROCESS; PROVIDING FOR TERMINATION OF THE STORMWATER (DRAINAGE) UTILITY SYSTEM; PROVIDING FOR A STORMWATER (DRAINAGE) UTILITY FUND; PROVIDING FOR EXEMPTIONS FROM PAYMENT OF THE STORMWATER (DRAINAGE) UTILITY FEE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY, IN ACCORDANCE WITH SECTION 1-7 OF THE CODE OF ORDINANCES, IN AN AMOUNT NOT TO EXCEED THE SUM OF FIVE HUNDRED AND NO/100 DOLLARS (\$500.00), EXCEPT THAT THE PENALTY FOR A VIOLATION OF A PROVISION HEREOF REGARDING FIRE SAFETY, ZONING, OR PUBLIC HEALTH OR SANITATION SHALL NOT EXCEED THE SUM OF TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00); BUT, IN ANY EVENT THE PENALTY SHALL NOT BE LESS THAN OR EXCEED AN AMOUNT AS MAY BE PRESCRIBED BY STATE LAW FOR A VIOLATION, AND EACH DAY DURING OR ON WHICH A VIOLATION OCCURS OR CONTINUES SHALL CONSTITUTE A SEPARATE OFFENSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Addison, Texas ("Town") is a home rule municipality having the full power of local self-government pursuant to its Charter, Article XI, Section 5 of the Texas Constitution, and Chapter 9 of the Texas Local Government Code; and

**WHEREAS**, within the Town there exists a stormwater (drainage) system developed over a number of years that collects and directs stormwater (drainage) runoff; and

**WHEREAS**, it is necessary that the collection and direction of stormwater (drainage) runoff within the Town protect the public health, safety, and welfare of Town citizens including but not limited to protection against property damage; and

**WHEREAS**, the City Council of the Town (“City Council”) desires to address the various water quality and environmental issues that may burden its stormwater (drainage) infrastructure, and to protect against surface water overflow, standing surface water, and pollution arising from nonpoint source runoff within the Town; and

**WHEREAS**, the City Council has investigated and determined that it would be advantageous and beneficial to the citizens of the Town to promote the public health, safety and welfare of the citizens by adopting a Stormwater (drainage) Utility system, as authorized by the Texas Local Government Code Chapter 552, Subchapter C “Municipal Drainage Utility Systems” (the “Act”) within the Town’s municipal boundaries; and

**WHEREAS**, the Act provides for the said public utility service to be provided within an established service area; and

**WHEREAS**, among other things, the Act: (i) authorizes the Town to adopt and enforce rules it considers appropriate to operate the Stormwater (drainage) Utility (Section 552.045(e) of the Act), (ii) references rules for the use, operation, and financing of the stormwater (drainage) utility system (Section 552.042(a)(2) of the Act), (iii) references authority to prescribe bases on which a municipal Stormwater (drainage) Utility system may be funded and fees and charges in support of the system may be assessed, levied and collected (Sections 552.042(a)(5), 552.045(d) of the Act), and (iv) together with Section 580.003(a) of the Local Government Code, provides for certain exemptions from the provisions of the Act and ordinances, resolutions, and rules adopted under the Act; and

**WHEREAS**, the Town desires by this Ordinance to, among other things, (i) establish rules for the use, operation, and financing of the Town’s Stormwater (drainage) Utility system, (ii) prescribe bases on which the system is to be funded, to establish fees and charges in support of the system, and to provide for the assessment, levy and collection of the same, and (iii) to provide for certain exemptions from the provisions the Stormwater (drainage) Utility system, all in a manner that fairly, equitably, and in a non-discriminatory manner allocates the cost of stormwater (drainage) control and treatment to properties in proportion to stormwater runoff potential for each class of property; and

**WHEREAS**, in accordance with the Act and in connection with this Ordinance, the City Council, before adopting this Ordinance, adopted Ordinance No. \_\_\_\_ and therein found that: (i) the Town will establish a schedule of stormwater (drainage) charges against all real property in the proposed service area subject to charges under the Act, (ii) the Town will provide stormwater (drainage) for all real property in the proposed service area on payment of stormwater (drainage) charges, except real property exempted under the Act, and (iii) the Town will offer stormwater (drainage) service on nondiscriminatory, reasonable, and equitable terms; and

**WHEREAS**, in accordance with the Act (Section 552.045(c) thereof), notices of a public hearing regarding this Ordinance were published and a public hearing on this Ordinance held concerning the matters set forth herein; and

**WHEREAS**, as set forth herein, the City Council adopts the Act and declares that the stormwater (drainage) infrastructure and services of the Town is a public utility within the meaning of the Act.

**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 "Town") is hereby amended by amending Chapter 82 (Utilities) thereof to add thereto a new Article VI (Municipal Stormwater (Drainage) Utility System), Division 1 (Generally) regarding stormwater (drainage) 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 Code of Ordinances are not amended hereby.

Section 3. Savings; Repealer. This Ordinance shall be cumulative of all other ordinances of the Town 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 Town, 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 in accordance with and as provided in Section 1-7 of the Code of Ordinances (that is, in an amount, not to exceed \$500.00, except that a fine not to exceed \$2,000.00 shall be imposed upon a person convicted of a violation of this Ordinance if the violation governs fire safety, zoning or public health or sanitation, but any penalty imposed for a violation of this Ordinance shall not exceed or be less than the penalty as may be prescribed by state law), 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, subsection, sentence, paragraph, phrase, word, or provision of this Ordinance or the application of any section, subsection, sentence, paragraph, phrase, word, or provision hereof to any person, firm, corporation, entity, situation or circumstance is for any reason adjudged invalid or held unconstitutional by the valid judgment or decree of a court of competent jurisdiction, the same shall not affect the validity of any other section, subsection, phrase, word, or provision of this Ordinance or the application of any other section, subsection, sentence, paragraph, phrase, word, or provision to any 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 section, subsection, sentence, paragraph, phrase, word, or provision, and to this end the remainder of this Ordinance 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 but not limited to the City Charter and ordinances.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this the \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Todd Meier, Mayor

**ATTEST:**

By: \_\_\_\_\_  
Chris Terry, City Secretary

**APPROVED AS TO FORM:**

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

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

Addition of Article VI (Municipal Stormwater (Drainage) Utility System),  
Division 1 (Generally) to Chapter 82 (Utilities) of the Code of Ordinances

**ARTICLE VI. STORMWATER (DRAINAGE) UTILITY SYSTEM**

**DIVISION 1. GENERALLY**

**Section 82-261 - Municipal Stormwater (drainage) Utility System Established;  
Incorporation of Existing Facilities.**

The Act (as defined in Section 82-264 below) is hereby declared adopted and shall be fully implemented as provided by the Act and by the City Council; and the stormwater (drainage) of the town is hereby declared and found to be a public utility within the meaning of the Act. Pursuant to Section 552.046 of the Act, the town's existing stormwater (drainage) facilities, materials, and supplies, including equipment, are incorporated into the Stormwater (drainage) Utility system.

**Section 82-262 - Stormwater (Drainage) Service Provided; Service Area.**

The town will provide stormwater (drainage) service for all real property within its boundaries upon payment of the stormwater (drainage) charges applicable thereto as may be included in this Article or otherwise adopted by the town, excluding real property exempt under the Act or other law and certain real property exempted by the town, and such stormwater (drainage) service will be based on nondiscriminatory, reasonable and equitable terms. For purposes of this Article and in connection herewith, the service area for the stormwater (drainage) service is the entire area within the boundaries of the town.

**Section 82-263 - Application.**

This Article applies to the user (Owner or Customer) of a benefitted property within the service area to which Stormwater (drainage) Utility service is provided.

**Section 82-264 - Definitions.**

The following definitions shall apply to the establishment and operation of the Stormwater (drainage) Utility system:

*Act* means Chapter 552, Subchapter C (entitled "Municipal Drainage Utility Systems") of the Texas Local Government Code, as amended.

*Airport public area* means that portion of the Addison Airport, which is now or hereafter considered by the town to be the obligation and responsibility of the town to operate and

maintain for the common use and benefit of the general aviation public. Subject to the prior sentence, the airport public area includes any air navigation facility or structure designed and intended to serve the general public and is not specifically subject to a lease agreement; all runways, taxiways and other common-use paved, graveled or turfed areas and their respective protection zones, safety areas and/or object free areas; field lighting and associated beacon and lighted wind and landing direction indicators; security, fire, and emergency medical protection; protection of aerial approaches to the Airport; directional signs; and perimeter or restricted access fences. Airport public area does not include any portion of or improvement on the Airport that (a) is owned and leased or rented to third parties by the town, or (b) is occupied by or leased or rented to any government entity, authority, or agency, including the Federal Aviation Administration or U.S. Customs.

*Allocated portion* means the part of an improved parcel that has been allocated to an Owner or Customer based on the portion used by the Owner or Customer as compared to the improved parcel's total improved area.

*Benefitted property* means an improved parcel within the service area to which Stormwater (drainage) Utility service is made available. All real property within the service area directly or indirectly receives Stormwater (drainage) Utility service.

*City manager* means the town manager or the manager's designee.

*City secretary* means the town secretary or the secretary's designee.

*Customer* means a user who is recorded as the customer of, or the person using, Stormwater (drainage) Utility or other service(s) for a parcel based on the records of the town.

*DCAD* means Dallas Central Appraisal District.

*Director of Public Works* or *Director* means the town's Director of Public Works or the Director's designee.

*Equivalent Residential Unit (ERU)* means a unit of measurement of impervious surface area calculated for the average single family residential property within the service area, as measured in square feet, including the residential structure, garage, out buildings, and an allocation for the driveway, sidewalks, patios, and any other impervious surface.

*Impervious area* means a measurement in square feet of impervious surface by which the amount of stormwater (drainage) runoff potential for a benefitted property within a Customer class is estimated.

*Impervious surface* means a surface that has been compacted or covered with a layer of material so that it is resistant to penetration by water. An impervious surface includes, but is not limited to, compacted soil with a surface treatment, gravel, crushed stone surface or soil compacted by vehicle traffic, asphalt or concrete pavement, a parking lot, a driveway, a sidewalk or private roadway, a building or artificial structure, or any surface that changes the natural

landscape and increases, concentrates, pollutes, or otherwise alters the flow or amount of stormwater (drainage) runoff.

*Improved parcel* means a parcel that has a building, or other structure, or other improvement, on it that causes or creates an impervious surface.

*Include* (and any of its derivatives, such as *including*) is a term of enlargement and not of limitation or exclusive enumeration, and use thereof does not create a presumption that components not expressed are excluded.

*Non-residential property* means an improved parcel that is not a residential property, and includes improved parcels used primarily for retail, commercial, industrial, institutional, or governmental uses, and multi-story, apartment complexes consisting of five (5) or more residential dwelling units in one building, and an improved parcel that is owned by a property owners' association. A condominium property that is master metered for water utility service shall be treated as a non-residential property for the purposes of calculating Stormwater (drainage) Utility Fees.

*Owner* means the person(s) listed as the owner of a benefitted property in the records of DCAD or the town.

*Parcel* means a platted lot, or other tract of land that is separately described (by metes and bounds or otherwise), including a leased tract of land.

*Person* means an individual, sole proprietorship, partnership, limited partnership, joint venture, limited liability company, corporation, business trust, estate, association, and any other legal entity.

*Residential dwelling unit* means any building or portion thereof that contains living facilities, including provisions for sleeping, eating, cooking and sanitation, as required by applicable town codes, for not more than one family. A residential dwelling unit may be housed in a single-family house, a townhome, a manufactured home or a portion of a duplex, triplex, quadplex or an individually metered unit in a condominium complex

*Residential property* means an improved parcel upon which four (4) or fewer residential dwelling units are constructed. A townhome development that includes a row of five (5) or more residential dwelling units that share common walls, with each unit and the land on which it is located being individually owned, are also residential property. An improved parcel with condominium units that are individually metered for water utility service and are similar to townhomes are also considered residential property for the purpose of calculating Stormwater (drainage) Utility Fees.

*Service area* means the geographic area within the incorporated limits of the town.

*Stormwater (drainage) Utility Infrastructure* means the property - real, personal or mixed - that is used in providing stormwater (drainage) capacity to manage and control stormwater

(drainage) runoff for the Stormwater (drainage) Utility system, including bridges, catch basins, channels, conduits, creeks, culverts, detention ponds, retention ponds, ditches, draws, flumes, pipes, pumps, sloughs, treatment works, and appurtenances to those items, whether natural or artificial, or using force or gravity, that are used to draw off surface water from land, carry the water away, collect, store, or treat the water, or divert the water into natural or artificial watercourses.

*Stormwater runoff potential* means the relative potential for causing stormwater (drainage) runoff quantities, qualities, or velocities from an improved parcel based on the type of development or land use on the improved parcel and the size of the improved parcel.

*Stormwater (drainage) Utility* means the stormwater (drainage) utility system owned or directly controlled by the town, in whole or in part, including the town's existing stormwater (drainage) facilities, materials, and supplies and any stormwater (drainage) facilities, materials, and supplies hereafter constructed or utilized, and dedicated to the service of benefitted property, including future additions to the system. The Stormwater (drainage) Utility system may also be referred to as a *Utility*.

*Stormwater (drainage) Utility Fee* means the fee or charge established under this Article VI that is levied against a user (Owner or Customer) of a benefitted property for Stormwater (drainage) Utility services provided by the Stormwater (drainage) Utility system. The Stormwater (drainage) Utility Fee may also be referred to as a *Fee*.

*Town* means the Town of Addison, Texas.

*User* means the person who owns or occupies a Benefitted Property.

*Wholly Sufficient and Privately Owned Stormwater (drainage) Utility System* means land and facilities owned and operated by a person other than the town and from which stormwater (drainage) does not discharge, under any storm frequency event or conditions, into a creek, river, slough, culvert, channel or other infrastructure that is part of the Stormwater (drainage) Utility system.

#### **Section 82-265 - Administration.**

(a) *Duty of Director of Public Works.* The Director of Public Works shall administer the Stormwater (drainage) Utility system. The Director shall maintain an accurate record of all benefitted property and the Stormwater (drainage) Utility Fee levied for each such property. The record may be maintained within the town's utility billing system and/or in another record keeping system that may be developed.

(b) *Program Implementation.* By the adoption of this Article, the town makes no representation that all stormwater (drainage) problems may or will be remedied, and the City Council has and retains full discretion in establishing the priorities in expending funds as they become available to meet the town's Stormwater (drainage) Utility needs. The adoption of this Article does not and shall not be construed to relieve private land owners, developers or other

individuals or entities from providing stormwater (drainage) improvements pursuant to the ordinances, rules, codes, and regulations of the town, and federal or State laws and regulations.

(c) *Access to Benefitted Properties.* Town employees shall have access to a benefitted property within the service area to inspect, maintain, repair, or enforce this Article or State laws or regulations relating to stormwater (drainage).

(d) *Governmental Immunity.* The town does not waive any immunity or defense granted or available under any law or otherwise.

### **Section 82-266 - Stormwater (drainage) Utility Fee, Billing Policies, and Procedures.**

(a) *Stormwater (drainage) Utility Rate Classes.* A benefitted property within the service area shall be classified and charged a Stormwater (drainage) Utility Fee based on the Stormwater (drainage) Utility rate determined by the property's rate class and relative size compared to the ERU. Depending on the use of the benefitted property, the property shall be classified as one of the following rate classes:

- (1) Residential property; or
- (2) Non-residential property.

(b) *Responsible Party.*

- (1) A Customer or Owner shall be billed monthly a Stormwater (drainage) Utility Fee for Stormwater (drainage) Utility services. The Stormwater (drainage) Utility Fee shall be levied or charged, along with other municipal services (if any) provided, to the benefitted property, including water, wastewater or solid waste/refuse services.
- (2) The utility bill imposing the Stormwater (drainage) Utility Fee will be mailed to either the Customer or Owner, who is then currently identified by the town as the responsible party for water, wastewater and/or solid waste/refuse service for the benefitted property; and, the Customer or Owner recorded in the town's utility or other billing system shall be responsible for payment of the Stormwater (drainage) Utility Fee.
- (3) If there is no active Customer account for a benefitted property recorded in the town's utility or other billing system, or if a benefitted property is considered by the town to be vacant, either on a temporary or permanent basis, the town may bill the Owner of the benefitted property for the Stormwater (drainage) Utility Fee. The Owner of the benefitted property shall be responsible for payment of fees imposed via a Stormwater Only Account.

- (4) If the town does not bill a benefitted property for water service, wastewater service, or solid waste/refuse service, the Director may establish for that property a “Stormwater Only Account” and bill the Owner or Customer as the Director may determine is appropriate.

(c) *Initial Fee, Rates; Revision of Fee, Rates.* The initial Stormwater (drainage) Utility Fee and Stormwater (drainage) Utility rates are or will be set forth in Division 2 of this Article, below. The City Council has and reserves the right to review the fee and rate schedules at any time and may, by ordinance, increase or decrease the Stormwater (drainage) Utility Fee or rates within the schedule upon a determination that the increase or decrease is warranted.

(d) *Billing Procedures and Policies.*

- (1) Any partial payment of the Stormwater (drainage) Utility Fee shall be applied against the amount due in accordance with the policies and procedures established for utility services provided by the town.
- (2) A late charge and interest may be imposed in accordance with the policies and procedures of the town for established utility services provided by the town.
- (3) A Stormwater (drainage) Utility Fee that is imposed for a period of less than one month shall be prorated on the basis of the proportionate part of the period during which Stormwater (drainage) Utility service was provided.

(e) *Non-Payment.* In addition to any other remedies or penalties provided at law, in the Act, or in this Article, a Customer’s or Owner’s failure to pay promptly when due the Stormwater (drainage) Utility Fee when due shall subject the Customer or Owner to discontinuance of any utility services provided by the town and/or the placement of a lien against the benefitted property that is the subject of such failure to pay to the extent authorized by law and this Article. Additionally, the town may file suit to recover any Stormwater (drainage) Utility Fees, together with maximum interest, attorneys’ fees and other costs and fees allowable under State or federal law, that are not paid when due.

(f) *Allocation of Fee by Residential and Non-Residential Multifamily Properties.* The owner, manager or operator of a residential property or of a non-residential property with a multi-family use, such as an apartment complex or condominium complex that is not individually metered for each dwelling unit, may not bill or collect from its occupants or tenants thereof an amount that, collectively, exceeds the actual Fee imposed on the said property. Any agreement between the owner, manager or operator of such property shall contain a clear written description of the method of calculation of the allocation of the Fee for each of the occupants or tenants. However, the owner, manager or operator may charge an occupant or tenant a fee for late payment of an occupant’s or tenant’s allocated portion of the Fee. The owner, manager, or operator shall maintain adequate records regarding the allocation of the Fee to occupants or

tenants of such property, and shall make such records available for inspection by such occupants or tenants during normal business hours.

**Section 82-267 - Calculation of Stormwater (drainage) Utility Fees.**

(a) *Rates in Accordance with the Act.* The Stormwater (drainage) Utility Fee and rates shall be established in accordance with the provisions of the Act and this Section.

(b) *Fee Calculation.* The Stormwater (drainage) Utility fee shall be based on an inventory of parcels within the service area. The inventory shall evaluate the stormwater runoff potential for improved parcels within the service area and establish a rate for each class of benefitted properties. The stormwater runoff potential shall be equitably and proportionately distributed between classes and among the parcels within each class of benefitted properties relative to the contribution of each class to stormwater (drainage) runoff. Additionally, the stormwater runoff potential within a class may be subdivided into tiers that group together parcels with similarly sized impervious area on the parcel.

(c) *Stormwater Runoff Potential.* For purposes of establishing the stormwater runoff potential for each class of benefitted properties and between classes of benefitted properties, the Director shall calculate the impervious area for parcels within the service area based on data gathered from DCAD, Geographic Information System records, aerial photography, and site plans or plats available. The Director shall then determine the relative stormwater runoff potential for each rate class and among parcels within each rate class. The rate for each class of benefitted properties and for parcels within each class shall be based on the impervious area measured in square feet (SF).

(d) *Property Values.* In calculating the Stormwater (drainage) Utility Fee and rates, property values may not be used.

**Section 82-268 - Stormwater (drainage) Utility Fee Credit.**

(a) Any non-residential property on which stormwater (drainage) runoff mitigation measures or best management practices (BMPs) have been implemented or which has on file with the town an approved individual stormwater (drainage) management permit issued by the Texas Commission on Environmental Quality (TCEQ) may be eligible for a credit to the Stormwater (drainage) Utility Fee.

(b) The Director may adjust the Fee for such properties according to the actual mitigative effect of the measures taken. BMPs that were required as part of development plan approval will not be eligible for such credits.

(c) The credit methodology shall be set forth in an administrative policy to be developed and maintained by the Director.

(d) The application for credit shall be in writing and shall include an engineering report sealed by a Texas licensed professional engineer qualified in civil engineering, and/or other documentation that the Director deems necessary, to properly evaluate the rationale for determining the credit for the approved stormwater (drainage) management techniques. Submitted applications may be reviewed by the Director or by a third-party licensed engineer retained by the town to validate the submitted rationale and methodology. Stormwater (drainage) credits will begin upon completion and inspection of the approved mitigation measures on the property.

(e) Any property served by a private stormwater (drainage) facility that is maintained by the town shall not receive a credit and shall be charged the normal monthly Stormwater (drainage) Utility Fee.

(f) The credit will be only for the impervious area within the total parcel area of the non-residential property that receives the stormwater (drainage) management technique.

(g) The maximum credits available with appropriate documentation and approval by the Director are as follows:

- (1) Mitigation efforts impacting stormwater (drainage) quality are worth up to fifty percent (50%) credit against the original Fee;
- (2) Mitigation efforts impacting stormwater (drainage) quantity are worth up to fifty percent (50%) credit against the original Fee.

(h) The Director will determine the final credit allowance based on all engineering reports and any other documentation that the Director deems necessary to make the determination.

(i) The Director shall have the right to inspect the private stormwater (drainage) infrastructure facility at any reasonable time to determine if it is in compliance with the approved design and continues to be capable of functioning properly. If the facility's performance is affected because it fails to meet the proper operating standards, has been altered, or is in disrepair, the Customer or Owner shall pay the monthly Stormwater (drainage) Utility Fee at the normal rate, without benefit of reduction, until such time that the facility is brought into total compliance as determined by the Director.

### **Section 82-269 – Discontinuance of Utility Service; Collections and Liens.**

(a) *Discontinuance of Municipal Utility Service.* The town shall keep an itemized account of the amounts owed pursuant to this Article. If any account is not fully paid within the time period established by the town for the payment of municipal utility fees for the benefitted property, as outlined in the town's policies and procedures, and the Customer or Owner fails to make other arrangements satisfactory to the town, the town, or its contracted utility service provider at the town's direction, is authorized to discontinue utility services provided by the town pursuant to its normal and customary business practices.

(b) *Notice of Intent to Impose Lien.* If any account as described in paragraph (a) of this section is not fully paid within sixty (60) days following the billing date for the account, the town may send notice to the Customer and the Owner of its intent to impose a lien against the benefitted property to which Stormwater (drainage) Utility service is provided (the “notice of intent”). The notice of intent shall be mailed by certified mail, return receipt requested, to the Customer’s billing address, the Owner, and the property address listed by DCAD, if different from the Owner’s address. The notice of intent shall contain the following:

- (1) The name and mailing address of the Customer or Owner to whom the unpaid utility bills were sent pursuant to this Article;
- (2) The name and mailing address of the Owner;
- (3) The street address and a legal description of the benefitted property;
- (4) A statement of Fees and the balance due, including any late charges, interest, and administrative fees incurred; and
- (5) A statement that the Fees are unpaid and delinquent, and that if, within thirty (30) days following the date the notice of intent is mailed, full payment of the balance due has not been received by the town nor an appeal perfected pursuant to Section 82-270, a lien will be placed upon the benefitted property.

(c) *Notice of Lien Filed in County Records.* If, within the time specified in Section 82-269(b)(5), full payment of the balance due has not been received by the town nor has an appeal pursuant to Section 82-270 been perfected, the town secretary may file a notice of lien in the real property records of Dallas County, Texas. The notice of lien shall contain the following:

- (1) The name and mailing address of the Customer and/or Owner to whom the unpaid utility bills were sent pursuant to this Article;
- (2) The name and mailing address of the Owner;
- (3) The street address and a legal description of the benefitted property; and
- (4) An updated statement of Fees and the balance due, including any late charges and interest, and the account number for the delinquent charges.

(d) *Personal Obligation of Customer, Owner; Lien.* The Fees, late charges, interest and administrative fees incurred by the town as set forth in the notice of lien shall be a personal obligation of both the Customer and the Owner, and shall be a lien against the benefitted property, unless the benefitted property is a homestead as protected by the Texas Constitution, for delinquent bills for Stormwater (drainage) Utility service to the benefitted property. The

Town may bring an action in any court of proper jurisdiction against the Customer or Owner to recover the same and any costs incurred by the town in connection therewith.

(e) *Perfection of Lien; Lien Shall be Valid and Privileged.* The lien shall be perfected by recording in the real property records of Dallas County a notice of lien as described in subsection (c) of this section above. The lien may include penalties, interest, and collection costs. The town's lien is inferior to a bona fide mortgage lien that is recorded before the recording of the lien in the real property records of Dallas County. The lien is superior to all other liens, including previously recorded judgment liens and any liens recorded after the town's lien. The lien shall continue until the assessment and all penalties, interest, and other charges due and payable thereon have been paid.

(f) *Lien Must be Paid.* No utility service, building permit, or certificate of occupancy shall be allowed or issued on any property against which a lien has been imposed until the lien is paid in full and such lien is released by the town.

(g) *Release of Lien.* After the expenses incurred by the town, as set forth in the notice of lien, have been fully paid with interest of ten percent (10%) per annum, the town secretary shall execute a release of lien, which shall be filed in the real property records of Dallas County, Texas.

#### **Section 82-270 - Appeal.**

(a) *Appeal of Fee Calculation or Determination.* An Owner or Customer who has been charged with a Stormwater (drainage) Utility Fee and who believes that the calculation or determination of the Fee is incorrect may appeal such calculation or determination to the Director. Such Owner or Customer will be referred to as "appellant" in this section. During all periods of appeal, the appellant shall be responsible for payment in full of the Stormwater (drainage) Utility Fee and related charges.

An appeal described in subsection (a) of this section shall be processed as follows:

- (1) The appeal shall be in writing and set forth in detail the grounds upon which relief is sought.
- (2) Until October 1, 2013, the Director shall issue a decision on the appeal within four (4) months from the date that the Director receives the appeal. If the Director determines an adjustment is warranted the Director shall authorize an adjustment retroactive to the beginning of billings of the appealed Fee; however, the adjustment period shall not exceed one (1) year.
- (3) From and after October 1, 2013, the Director shall issue a decision on the appeal within thirty (30) days from the date that the Director receives the appeal. An adjustment resulting from such a request shall be prospective

and applied to future billings and may also be retroactive for no more than three (3) months prior to the receipt of the appeal.

(4) The Director shall issue a written decision on an appeal.

(b) *Appeal of Other Matters.*

(1) An Owner or Customer may appeal the following to the Director:

(A) the applicability of a Stormwater (drainage) Utility Fee to a parcel;

(B) the calculation of applicable stormwater runoff potential for a parcel;

(C) the discontinuance of utility service, notice of lien, filing of a lien or other legal action (except for the filing of suit) of the town for non-payment of Stormwater (drainage) Utility Fees.

(2) An appeal described in these subsections (a) and (b) of this section shall be processed as follows:

(A) The Owner or Customer shall file a written appeal to the Director within thirty (30) days following the date of issuance by the town of a notice or information that would give rise to or be the basis of such an appeal. By way of example and not be way of limitation, the date of issuance of a billing statement that includes a Stormwater (drainage) Utility Fee charge would be the date from which to calculate the said 30-day time period for an appeal regarding the applicability of a Stormwater (drainage) Utility Fee to a parcel or regarding the calculation of applicable stormwater runoff potential for a parcel. The Director may extend the time period for filing an appeal for good cause shown.

(B) The appeal shall be in writing and set forth in detail the grounds upon which relief is sought.

(C) The Director shall hear the appeal within sixty (60) days following the Director's receipt of the appeal. Notice of the hearing shall be mailed to the address given in the appeal form, or if no address is given to the address on the utility billing statement at least fourteen (14) days prior to the hearing.

(D) The burden of proof in connection with an appeal shall be on the Owner or Customer to demonstrate that the Fee is not applicable or that the determination of the value of the Fee was not calculated according to the applicable Stormwater (drainage) Utility Fee schedule or the methodologies established for determining the Stormwater (drainage)

Utility Fees. If applicable and if not previously submitted to the Director, the Owner or Customer shall submit with the appeal a report describing the basis for the appeal. The report shall be prepared by a Texas licensed professional engineer qualified in civil engineering. The Director may require the Owner or Customer to provide supplemental information regarding the appeal, including but not limited to survey data sealed by a Texas licensed professional land surveyor, or other documentation or information that the Director deems necessary to properly evaluate the appeal. The failure to submit such a report and/or information shall be considered in determining whether the applicant has met the burden of proof.

(E) If the appeal is accompanied by a bond or other sufficient security satisfactory to the attorney for the town in an amount equal to the original determination of the Stormwater (drainage) Utility Fee due, any discontinued utility services may be reinstated while the appeal is pending.

(F) At the hearing, the Director shall allow testimony from the Owner or Customer filing the appeal, town employees, and other interested persons relevant to the appeal. The hearing may be continued from time to time.

(G) Following the hearing the Director shall consider all evidence and determine whether the appeal should be granted in whole or in part or denied. The Director shall complete the Director's review and make a decision about the appeal within thirty (30) days of the hearing.

(c) *Burden of Proof.* The Owner or Customer filing the appeal shall bear the burden of proving by a preponderance of the evidence for the relief sought in the appeal. By way of example and not limitation, the Owner or Customer shall bear the burden of proving that a Fee does not apply, or that the Fee is calculated in error, or that the rate class assigned to the Owner or Customer is incorrect.

(d) *Review by the City Manager.* An Owner or Customer dissatisfied with the decision of the Director may seek review of the decision with the City Manager by filing a request for review. A written request for review by the City Manager must be filed with the City Secretary within fifteen (15) days following receipt of the decision on appeal from the Director. In connection with a request for review from an appeal filed pursuant to subsection (a) of this section, the process set forth in subsection (a) of this section shall be followed, and in connection with a request for review from an appeal filed pursuant to subsection (b) of this section, the process set forth in subsection (b)(ii) of this section shall be followed, in each instance with "City Manager" substituted as appropriate for "Director." If the Owner or Customer does not file a request for review with the City Manager, the decision of the Director regarding the appeal shall be final. If the Owner or Customer does file a request for review with the City Manager, the decision of the City Manager shall be final.

(e) *Material Change of Circumstances.* No appeal for the same or substantially the same issue on the same parcel shall be allowed. If, however, the Owner or Customer asserts a material change of circumstances on a parcel that was the subject of a previous appeal, the Owner or Customer must perfect a new appeal; and in such an appeal, the Owner or Customer shall bear the burden of proving by a preponderance of the evidence the existence of a material change of circumstances.

**Section 82-271 - Termination of Stormwater (drainage) Utility System.**

If, after at least five (5) years of substantially continuous operation of the Stormwater (drainage) Utility system, the City Council determines that the Stormwater (drainage) Utility system should be discontinued, that the powers under the Act should be revoked, and the provision for financing municipal stormwater (drainage) costs should be made by using other revenues, the City Council may adopt an ordinance, after providing notice and a public hearing as required by the Act, that in effect discontinues the Stormwater (drainage) Utility system.

**Section 82-272 - Stormwater (drainage) Utility Fund.**

(a) *Stormwater (drainage) Utility Fund.* A Stormwater (drainage) Utility fund is established and may consist of one or more accounts. All Stormwater (drainage) Utility Fees shall be deposited as collected and received into this fund and shall be used exclusively for Stormwater (drainage) Utility services as provided in the Act, including, but not limited to the following:

- (1) The prorated cost of the acquisition, whether by eminent domain or otherwise, of land, rights-of-way, options to purchase land, easements, and interests in land relating to structures, equipment, and facilities used in draining the benefitted property;
- (2) The prorated cost of the acquisition, construction, repair, and maintenance of structures, equipment, and facilities used in draining the benefitted property;
- (3) The prorated cost of architectural, engineering, legal, and related services, plans and specifications, studies, surveys, estimates of cost and of revenue, and all other expenses necessary or incident to planning, designing, providing, or determining the feasibility and practicability of structures, equipment, and facilities used in draining the benefitted property;
- (4) The prorated cost of all machinery, equipment, furniture, and facilities necessary or incident to the provision and operation of draining the benefitted property;
- (5) The prorated cost of funding and financing charges and interest arising from construction projects and the start-up cost of a Stormwater (drainage) Utility facility used in draining the benefitted property;

- (6) The prorated cost of debt service and reserve requirements for funding of Stormwater (drainage) Utility infrastructure, equipment and facilities paid with revenue bonds or other securities or obligations issued by the town and supported by pledge of stormwater (drainage) revenues;
  - (7) To the extent permitted by law, the cost of constructing, sampling, monitoring, building, inspecting and maintaining structures needed for the town's compliance with State or federal regulations and permitting requirements for providing stormwater quality improvements for benefitted property; and
  - (8) The administrative costs of the Stormwater (drainage) Utility system.
- (b) *Stormwater (drainage) Utility Fund Accounting.*
- (1) The town shall clearly account for revenues and expenditures authorized for operation of the Stormwater (drainage) Utility system.
  - (2) The revenues collected from Stormwater (drainage) Utility Fees shall be segregated and completely identifiable from other Town funds and accounts.
  - (3) Funds and revenues in the Stormwater (drainage) Utility fund may be transferred to the town's general fund for stormwater (drainage) costs and expenses as allowed by law.

(c) *Stormwater (drainage) Utility Service Deposit.* A deposit shall not be imposed for initiation or continuation of Stormwater (drainage) Utility service.

**Section 82-273 - Exemptions.**

(a) *Mandatory Exemptions.* The following shall be exempt from payment of the Fees established by this Article:

- (1) Entities to which a mandatory exemption under Section 580.003(a) of the Texas Local Government Code applies, including:
  - (A) an agency of the State of Texas;
  - (B) a public or private institution of higher learning.
- (2) Any property to which a mandatory exemption under Section 552.053 of the Act applies, including without limitation:

- (A) Property with proper construction and maintenance of a wholly sufficient and privately owned Stormwater (drainage) Utility system;
- (B) Property held and maintained in its natural state, until such time that the property is developed and all of the public infrastructure constructed has been accepted by the town for maintenance; and
- (C) A subdivided parcel, until a structure or improvement has been built on the subdivided parcel and a certificate of occupancy has been issued by the town, or the town has taken another official action to release the parcel for occupancy.

(b) *Permissible Exemptions.* The following shall be exempt from payment of the fees established by this Article (and the City Council may consider other exemptions to include herein at or after the time of the public regarding this article):

- (1) Town of Addison rights-of-way, including streets, sidewalks, and alleys;
- (2) Airport public area.

(c) *Proof of Exemption.* If the Owner or Customer asserts that a parcel is exempt pursuant to this section or any other applicable law, such Owner or Customer has the burden to assert such exemption by filing notice of eligibility for such exemption and sufficient evidence of entitlement to such exemption with the Director. If the exemption is not granted, the Owner may appeal using the procedures for appeal provided in Section 82-270(b)(2), above.

## Council Agenda Item: #R9

**AGENDA CAPTION:**

**PUBLIC HEARING**, presentation, discussion and consideration of approval of an Ordinance amending the Town of Addison's Code of Ordinances by amending Chapter 82 (Utilities), Article VI (Stormwater (Drainage) Utility System) thereof by adding a new Division II regarding Stormwater (drainage) Utility Fees; establishing monthly Stormwater (drainage) Utility fees for the purpose of funding the Stormwater (drainage) Utility System; and providing for other related matters.

**FINANCIAL IMPACT:**

N/A

**BACKGROUND:**

N/A

**RECOMMENDATION:**

Staff recommends approval

**COUNCIL GOALS:**

Increase Revenues by at least 6% (to \$28.5mm) while holding the tax rate to \$.55 or less and reserves to at least 25%, Mindful Stewardship of Town Resources

**ATTACHMENTS:**

Description:

 [DRAFT Fees Ordinance](#)

Type:

Ordinance

## LEGAL NOTICE

Notice is hereby given that the Town Council of the Town of Addison will hold a public hearing on October 9, 2012 at 7:30 P.M. at the Town of Addison, Town Hall at 5300 Belt Line Rd, Dallas, Texas 75254, (972) 450-7000 to consider the following:

**Conduct a public hearing on and regarding adoption of an ordinance that amends the Town of Addison's Code of Ordinances by amending Chapter 82 (Utilities), Article VI (Stormwater (Drainage) Utility System) (proposed) of the said Code of Ordinances by adding thereto a new Division II regarding Stormwater (drainage) Utility Fees; establishing monthly Stormwater (drainage) Utility fees for the purpose of funding the Stormwater (drainage) Utility System; providing a severability clause; providing a savings clause; providing for publication; and providing an effective date.**

Please see Exhibit "A" for the proposed ordinance (subject to modification prior to adoption). Any interested persons and parties may submit any information they wish to be considered to the City Secretary prior to the date of the public hearings or may appear at the public hearings to be heard, or both.

The facility is wheelchair accessible. If you plan to attend and you have a disability that requires special arrangements, please notify the City Secretary 48 hours in advance of the hearings so that reasonable accommodations can be made. For sign interpretive services, please call 72 hours in advance.

For more information on this Legal Notice, please contact the City Secretary at (972) 450-7000.

Signed this the 30<sup>th</sup> day of August, 2012.

**Chris Terry**  
Town Secretary

**TOWN OF ADDISON, TEXAS**

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

**AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING CHAPTER 82 (UTILITIES), ARTICLE VI (STORMWATER (DRAINAGE) UTILITY SYSTEM) OF THE TOWN CODE OF ORDINANCES, AS AMENDED, BY ADDING THERETO A NEW DIVISION II REGARDING STORMWATER (DRAINAGE) UTILITY FEES; ESTABLISHING MONTHLY STORMWATER (DRAINAGE) UTILITY FEES FOR THE PURPOSE OF FUNDING THE STORMWATER (DRAINAGE) UTILITY SYSTEM; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Addison, Texas (the “City”) is a home rule municipality having the full power of local self-government pursuant to its Charter, Article XI, Section 5 of the Texas Constitution, and Chapter 9 of the Texas Local Government Code; and

**WHEREAS**, the City Council of the Town (“City Council”) heretofore adopted Ordinance No. \_\_\_\_\_ that, among other things, declared adoption of Chapter 552, Subchapter C (entitled “Municipal Drainage Utility Systems”) of the Texas Local Government Code (the “Act”), declared the stormwater (drainage) of the City to be a public utility, and provided for Stormwater (drainage) Utility service for benefitted properties within a designated service area upon payment of Stormwater (drainage) Utility Fees; and

**WHEREAS**, Section 552.045(d) of the Act provides that, after passage of an ordinance adopting the Act, a municipality may levy a schedule of stormwater (drainage) charges following the holding of a public hearing on the charges for which notice was given; and

**WHEREAS**, in accordance with the Act, the City published notices of a public hearing regarding this Ordinance and the City Council held a public hearing regarding the charges (fees) set forth in this Ordinance: and, the City Council, finding that the charges (fees) set forth herein are nondiscriminatory, reasonable, and equitable, now desires to levy the schedule of Stormwater (drainage) Utility Fees for Stormwater (drainage) Utility service set forth in this Ordinance; and

**WHEREAS**, in setting the schedule of Stormwater (drainage) Utility Fees, the Fees are based on an inventory of all parcels within the utility service area; and

**WHEREAS**, the City Council finds that the adoption of this Ordinance is in the best interests of the health, safety and welfare of the citizens of the City.

**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. Establishment of Stormwater (Drainage) Utility Fees. Stormwater (drainage) Utility Fees as set forth herein are hereby established. Stormwater (drainage) Utility Fees shall be levied against all benefitted properties (as defined in Chapter 82, Article VI, Division 1 (“Division 1”) of the Code of Ordinances of the Town of Addison, Texas (the “City”) within the utility service area (as defined in Division 1) unless exempt under Division 1. These Fees shall be imposed and issued with utility billing statements issued on and after October 1, 2012.

Section 3. Amendment. The Code of Ordinances of the City is hereby amended by amending Chapter 82 (Utilities), Article VI (Municipal Stormwater (Drainage) Utility System) thereof by adding thereto a new Division 2 (Stormwater (Drainage) Utility Fees), and all other chapters, articles, sections, subsections, sentences, phrases and words of the Code of Ordinances are not amended hereby. The said Division 2 shall read as follows:

#### DIVISION 2. STORMWATER (DRAINAGE) UTILITY FEES

##### **Section 82-280 - Applicability.**

The City Council hereby establishes the Stormwater (drainage) Utility Fees as set forth herein. A Stormwater (drainage) Utility Fee shall be levied against all benefitted property within the service area unless exempt under Section 82-273, above.

##### **Section 82-281 - Fee calculation.**

(a) *Stormwater (drainage) Utility Fee Calculation.* Stormwater (drainage) Utility Fees shall be calculated based on the total stormwater runoff potential for benefitted properties for all Customers within the service area. The total stormwater runoff potential shall be measured as impervious areas in square feet (“SF”).

(b) *Stormwater (drainage) Utility Fee.* The total stormwater runoff potential for the service area shall be allocated between and among the Customer classes based on the relative amount of impervious area in each class established in Section 82-266(a), in Division 1, above..

(1) *Residential Property Class.* Stormwater (drainage) Utility Fees for the residential property class of Customers shall be as follows:

(A) The equivalent residential unit (“ERU”) is defined as the average impervious area for all single family residential properties within the City and includes the impervious area of the building footprint plus and an allocation for other impervious surfaces on a residential property. The said average impervious area for the ERU is 3,100 square feet (SF).

- (B) Single family residential properties are further allocated into four (4) residential tiers (Tier 1, Tier 2, Tier 3, Tier 4) for the purpose of billing stormwater charges based on their relative impervious area compared to the ERU of 3,100 SF; the ERU also being the same as the average impervious area within Tier 2.
  - (C) The monthly Stormwater (drainage) Fee shall be a flat-rate Fee for each dwelling unit within each defined residential tier.
  - (D) The value that will be used to identify the tier that will be used to determine the Stormwater (drainage) Fee for a particular residential dwelling unit shall be the impervious area of the footprint of the buildings on the parcel is listed below:
    - (i) Tier 1 Residential:
      - a. Building Impervious Area: 1 SF to 1,999 SF
      - b. The average impervious area for each property in Tier 1 is 60% of the ERU of 3,100 SF, or 1,850 SF
    - (ii) Tier 2 Residential:
      - a. Building Impervious Area: 2,000 SF to 3,399 SF
      - b. The average impervious area for each property in Tier 2 is 100% of the ERU of 3,100 SF, or 3,100 SF
    - (iii) Tier 3 Residential:
      - a. Building Impervious Area: 3,400 SF to 4,999 SF
      - b. The average impervious area for each property in Tier 3 is 150% of the ERU of 3,100 SF, or 4,650 SF
    - (iv) Tier 4 Residential:
      - a. Building Impervious Area: 5,000 SF and above
      - b. The average impervious area for each property in Tier 4 is 250% of the ERU of 3,100 SF, or 7,750 SF
  - (E) The monthly, flat-rate Fee for each Tier for each fiscal year is established in the Fee schedule listed in subsection (c)(1), below.
- (2) *Non-Residential Property Class.* Stormwater (drainage) Utility Fees for the non-residential property class of Customers shall be as follows:
- (A) The non-residential rate, set forth in subsection (c)(5) below, are based on the Tier 2 Residential Fee (the said Tier 2 Residential Fee being based on 100% of the ERU of 3,100 SF) and are established per 1,000 SF of impervious area and determined as follows: 1,000 SF divided by the ERU (3,100 SF) times the then applicable Tier 2 Residential Fee and rounded up to the nearest \$0.01.

(B) The Stormwater (drainage) Utility Fee for each non-residential property or allocated portion of a non-residential property shall be equal to the product of (a) the impervious area of such non-residential property or allocated portion measured in 1,000 SF, times (b) the rate established in the rate schedule listed in subsection (c)(5), below.

(c) *Schedule of Monthly Fees and Rates.* The monthly Stormwater (drainage) Utility Fee shall be as follows:

(1) Tier 1 Residential Fee. The monthly Stormwater (drainage) Utility Fee for each residential dwelling unit in Tier 1 shall be as follows for each fiscal year (FY) that begins October 1 and continues through and ends the following September 30, with the first such fiscal year beginning October 1, 2012 and ending September 30, 2013 (and being referred to below as FY2013):

FY2013 shall be \$4.80, FY2014 shall be \$5.10, FY2015 shall be \$5.40, FY2016 shall be \$5.70, FY2017 shall be \$6.00, FY2018 shall be \$6.30, FY2019 shall be \$6.60, FY2020 shall be \$6.90, FY2021 shall be \$7.20, FY2022 shall be \$7.50.

(2) Tier 2 Residential Fees. The monthly Stormwater (drainage) Utility Fee for each residential dwelling unit in Tier 2 shall be as follows for each fiscal year (FY) that begins October 1 and continues through and ends the following September 30, with the first such fiscal year beginning October 1, 2012 and ending September 30, 2013 (and being referred to below as FY2013):

FY2013 shall be \$8.00, FY2014 shall be \$8.50, FY2015 shall be \$9.00, FY2016 shall be \$9.50, FY2017 shall be \$10.00, FY2018 shall be \$10.50, FY2019 shall be \$11.00, FY2020 shall be \$11.50, FY2021 shall be \$12.00, FY2022 shall be \$12.50.

(3) Tier 3 Residential Fees. The monthly Stormwater (drainage) Utility Fee for each residential dwelling unit in Tier 3 shall be as follows for each fiscal year (FY) that begins October 1 and continues through and ends the following September 30, with the first such fiscal year beginning October 1, 2012 and ending September 30, 2013 (and being referred to below as FY2013):

FY2013 shall be \$12.00, FY2014 shall be \$12.75, FY2015 shall be \$13.50, FY2016 shall be \$14.25, FY2017 shall be \$15.00, FY2018 shall be \$15.75, FY2019 shall be \$16.50, FY2020 shall be \$17.25, FY2021 shall be \$18.00, FY2022 shall be \$18.75.

- (4) Tier 4 Residential Fees. The monthly Stormwater (drainage) Utility Fee for each residential dwelling unit in Tier 4 shall be as follows for each fiscal year (FY) that begins October 1 and continues through and ends the following September 30, with the first such fiscal year beginning October 1, 2012 and ending September 30, 2013 (and being referred to below as FY2013):

FY2013 shall be \$20.00, FY2014 shall be \$21.25, FY2015 shall be \$22.50, FY2016 shall be \$23.75, FY2017 shall be \$25.00, FY2018 shall be \$26.25, FY2019 shall be \$27.50, FY2020 shall be \$28.75, FY2021 shall be \$30.00, FY2022 shall be \$31.25.

- (5) Non-residential Fees. The monthly Stormwater (drainage) Utility Fee per 1,000 square feet (SF) of impervious area on each non-residential property or allocated portion of a non-residential property shall be as follows for each fiscal year beginning October 1, 2012 and ending September 30, 2013 (and being referred to below as FY2013):

FY2013 shall be \$2.59 per 1,000 SF, FY2014 shall be \$2.75 per 1,000 SF, FY2015 shall be \$2.91 per 1,000 SF, FY2016 shall be \$3.07 per 1,000 SF, FY2017 shall be \$3.23 per 1,000 SF, FY2018 shall be \$3.39 per 1,000 SF, FY2019 shall be \$3.55 per 1,000 SF, FY2020 shall be \$3.71 per 1,000 SF, FY2021 shall be \$3.88 per 1,000 SF, FY2022 shall be \$4.04 per 1,000 SF.

(d) *Minimum Monthly Stormwater (drainage) Utility Fee.* Notwithstanding the rates set forth above, the minimum monthly Stormwater (drainage) Utility Fee for all Customer accounts shall be the Fee for Tier 1 of the residential class for each fiscal year.

(e) *Revision of Fees or Rates.* The Stormwater (drainage) Utility Fee or the Stormwater (drainage) Utility rate may be revised by the City Council through an ordinance from time to time as permitted by this Article and the Act.

Section 4. 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 5. Severability. The provisions of this Ordinance are severable, and if any phrases, clauses, sentences, paragraphs, sections, subsections, words, or provisions of this Ordinance or the application of any phrases, clauses, sentences, paragraphs, sections, subsections, words, or provisions hereof to any person, firm, corporation, entity, situation or circumstance is for any reason adjudged invalid or held unconstitutional by the valid judgment or decree of any court of competent jurisdiction, the same shall not affect the validity of any other phrases, clauses, sentences, paragraphs, sections, subsections, words, or provisions of this Ordinance or the application of any other phrases, clauses, sentences, paragraphs, sections, subsections, words, or provisions of this Ordinance to any 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 phrases, clauses, sentences, paragraphs, sections, subsections, words or provisions, and to this end the remainder of this Ordinance shall remain in full force and effect.

Section 6. Effective Date. This Ordinance shall be in full force and effect from and after its passage and publication as required by law, including but not limited to the City Charter and ordinances.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Todd Meier, Mayor

ATTEST:

By: \_\_\_\_\_  
Chris Terry, City Secretary

APPROVED AS TO FORM:

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

## **Council Agenda Item: #ES1**

**AGENDA CAPTION:**

Closed (executive) session of the Addison City Council pursuant to Section 551.072, Tex. Gov. Code, to deliberate the lease or value of certain real property located at 4460 Belt Line Road.

**FINANCIAL IMPACT:**

n/a

**BACKGROUND:**

n/a

**RECOMMENDATION:**

n/a

**COUNCIL GOALS:**

N/A

**ATTACHMENTS:**

Description:

Type:

No Attachments Available

## Council Agenda Item: #R1

**AGENDA CAPTION:**

Presentation, discussion and consideration of any action regarding the lease between the Town, as landlord, and Durga Services, LLC, as tenant, of the property located at 4460 Belt Line Road.

**FINANCIAL IMPACT:**

n/a

**BACKGROUND:**

n/a

**RECOMMENDATION:**

n/a

**COUNCIL GOALS:**

N/A

**ATTACHMENTS:**

Description:

Type:

No Attachments Available