

**AGREEMENT
BETWEEN
THE TOWN OF ADDISON, TEXAS (TOWN)
AND
M. ARTHUR GENSLER, JR. AND ASSOCIATES, INC. (CONSULTANT)

FOR

PROFESSIONAL ARCHITECTURAL AND PLANNING
DESIGN SERVICES**

Made as of the 14 day of June in the year 2016,

BETWEEN the Town: The Town of Addison, Texas
 16801 Westgrove Drive
 Addison, Texas 75001
 Telephone: (972) 450-7001

and the Consultant: M. Arthur Gensler, Jr. and Associates, Inc.
 5420 LBJ Freeway, Suite 1100
 Dallas, Texas
 Telephone: (214) 273-1500

for the following Project: Inwood Road Corridor Special Study

The Town and the Consultant agree as set forth below.

THIS AGREEMENT is made and entered by and between the **Town of Addison, Texas**, a Home-Rule Municipal Corporation, hereinafter referred to as "Town," and **M. Arthur Gensler, Jr. and Associates, Inc.**, hereinafter referred to as "Consultant," to be effective from and after the date as provided herein, hereinafter referred to as "Agreement."

WHEREAS, the Town desires to obtain professional architectural and planning design services for the Inwood Corridor ("Project"); and

WHEREAS, the Consultant and its sub consultants are a qualified architecture/planning team with a proven history of providing planning, architecture, management and consulting services specifically involving planning and architecture; and

WHEREAS, the Town desires to engage the Consultant to render such professional architecture and planning design services for the Town upon the terms and conditions provided herein.

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

That for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the parties agree as follows:

ARTICLE 1 CONSULTANT'S SERVICES

- 1.1 **Employment of the Consultant** – The Town hereby agrees to retain the Consultant to perform professional architectural and planning design services in connection with the Project. Consultant agrees to perform such services in accordance with that degree of skill and care exercised by licensed professionals practicing in the same community, under the same or similar circumstances as applied to the terms and conditions of this Agreement (“Standard of Care”).
- 1.2 **Scope of Services** – The parties agree that Consultant shall perform such services as are set forth and described in Exhibit “A,” which is attached hereto and incorporated herein by reference for all purposes. The parties understand and agree that deviations or modifications to the scope of services described in Exhibit “A,” in the form of written change orders, may be authorized from time to time by the Town.
- 1.3 **Schedule of Work** – The Consultant agrees to commence work on July 1, 2016, and to proceed diligently with said work to completion by October 31, 2016.

ARTICLE 2 THE TOWN'S RESPONSIBILITIES

Town shall do the following in a timely manner so as not to delay the services of Consultant:

- 2.1 **Project Data** – The Town shall furnish required information that is currently has in its possession, as expeditiously as necessary for the orderly progress of the work, and the Consultant shall be entitled to rely upon the accuracy and completeness thereof.
- 2.2 **Town Project Manager** – The Town shall designate, when necessary, a representative authorized to act on the Town's behalf with respect to the Project (the “Project Manager”). The Town or such authorized representative shall examine the documents submitted by the Consultant and shall render any required decisions pertaining thereto as soon as practicable so as to avoid unreasonable delay in the progress of the Consultant's services. The Project Manager is not authorized to issue verbal or written change orders for “extra” work or “claims” invoiced as “extra” work.

ARTICLE 3 CONSULTANT'S COMPENSATION

- 3.1 **Compensation for Consultant's Services** – As described in “Article 1, Consultant's Services,” compensation for this Project shall be on a Type of Payment Basis not to exceed **Eighty-Eight Thousand Five Hundred and 00/100 Dollars (\$88,500.00)**, (“Consultant's Fee”) and shall be paid in accordance with Article 3 and the Compensation Schedule / Project Billing / Project Budget as set forth in Exhibit “B.” **The final five percent (5%) of the Consultant's Fee shall not be paid until the Consultant has completed all of the services described in Exhibit “A” and delivered to the Town all of the documents, plans, data, maps, and/or other information required in Exhibit “A.”**
- 3.2 **Direct Expenses** – Direct Expenses are included in the Consultant's Fee and include actual reasonable and necessary expenditures made by the Consultant and the Consultant's employees and subcontractors in the interest of the Project. All submitted Direct Expenses are to be within the amounts as stated in Exhibit “B.” The Consultant shall be solely responsible for review of all Direct Expenses, including the subcontractors, prior to submitting to the Town for reimbursement, and shall be responsible for the accuracy thereof. Any over-payment by the Town for errors in submittals for reimbursement may be deducted from the Consultant's subsequent payment for services; provided, however this shall not be the Town's sole and exclusive remedy for said overpayment.
- 3.3 **Additional Services** – The Consultant shall provide the services as described in the Scope of Services as set forth in Exhibit “A” of this Agreement. If authorized in writing by the Town, the Consultant shall provide additional services, to be compensated on an hourly basis in accordance with this paragraph (“Additional Services”). These services may include, but are not limited to:
- 3.3.1 Additional meetings, hearings, work-sessions, or other similar presentations which are not provided for or contemplated in the Scope of Services described in Exhibit “A.”
- 3.3.2 Additional drafts and revisions to the Project which are not provided for or contemplated in the Scope of Services as described in Exhibit “A.”
- 3.3.3 Additional copies of final reports and construction plans which are not provided for or contemplated in the Scope of Services as described in Exhibit “A.”
- 3.3.4 Photography, professional massing models which are not provided for or contemplated in the Scope of Services as described in Exhibit “A.”
- 3.3.5 Compensation for Additional Services authorized by the Town shall be in addition to the Consultant's Fee and shall be based on direct billable labor rates and expenses.

3.3.6 Compensation for Additional Services authorized by the Town shall be in addition to the Consultant's Fee and shall be based on an hourly basis according to the following personnel rates. The rates set forth in this chart are subject to reasonable change provided prior written notice of said change is given to Town.

Hourly Billable Rates by Position

<i>Position</i>	<i>Hourly Rate</i>
Managing Principals	\$325.00
Principals and Directors	\$160.00-\$310.00
Project Managers	\$ 90.00-\$200.00
Architects	\$ 85.00-\$230.00
Programmers	\$160.00-\$180.00
Consultants	\$ 55.00-\$250.00
Interior Designers	\$ 70.00-\$225.00
Technical Specialists	\$ 60.00-\$195.00
Graphic Designers	\$ 70.00-\$155.00

3.4 **Reimbursable Expenses** – Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by Consultant and additional consultants hired in the interest of the Project, including, but not limited to the following:

- (a) Reproduction, shipping, handling, and delivery.
- (b) Mileage, tolls, cab fares, and parking.
- (c) Renderings, models, mock-ups, and photography.
- (d) Sales taxes and other transactional taxes, and fees paid for securing approval of authorities having jurisdiction over the Project.
- (e) Authorized out-of-town travel, including travel time and out-of-town living expenses.
- (f) Additional insurance coverage or limits requested by Client in excess of that normally provided by Consultant and additional consultants hired.

Compensation for Reimbursable Expenses incurred by Consultant in connection with the Project, including without limitation, reproduction costs for providing copies of the deliverables described in Exhibit "A", shall be based on amounts invoiced to Consultant, plus ten percent (10%).

3.5 **Additional Consultants** – Fees for Subconsultants shall be compensated based on amounts invoiced to Consultant, plus ten percent (10%).

3.6 **Invoices** – No payment to Consultant shall be made until Consultant tenders an invoice to the Town. Invoices are to be mailed to Town immediately upon

completion of each individual task listed in Exhibit “B.” On all submitted invoices, Consultant shall include appropriate background materials to support the submitted charges on said invoice. Such background material shall include, but is not limited to, employee timesheets, invoices for work obtained from other parties, and receipts and/or log information relating to Direct Expenses. All invoices for payment shall provide a summary methodology for administrative markup and/or overhead charges.

- 3.7 **Timing of Payment** – Town shall make payment to Consultant for said invoices within thirty (30) days following receipt and acceptance thereof. The parties agree that payment by Town to Consultant is considered to be complete upon mailing of payment by Town. Furthermore, the parties agree that the payment is considered to be mailed on the date that the payment is postmarked.
- 3.8 **Disputed Payment Procedures** – In the event of a disputed or contested billing by Town, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. Town shall notify Consultant of a disputed invoice, or portion of an invoice, in writing by the twenty-first (21st) calendar day after the date the Town receives the invoice. Town shall provide Consultant an opportunity to cure the basis of the dispute. If a dispute is resolved in favor of the Consultant, Town shall proceed to process said invoice, or the disputed portion of the invoice, within the provisions of Article 3.5. If a dispute is resolved in favor of the Town, Consultant shall submit to Town a corrected invoice, reflecting any and all payment(s) of the undisputed amounts, documenting the credited amounts, and identifying outstanding amounts on said invoice to aid Town in processing payment for the remaining balance. Such revised invoice shall have a new invoice number, clearly referencing the previous submitted invoice. Town agrees to exercise reasonableness in contesting any billing or portion thereof that has background materials supporting the submitted charges.
- 3.9 **Failure to Pay** – Failure of the Town to pay an invoice, for a reason other than upon written notification as stated in the provisions of Article 3.6 to the Consultant within sixty (60) days from the date of the invoice shall grant the Consultant the right, in addition to any and all other rights provided, to, upon written notice to the Town, suspend performance under this Agreement, and such act or acts shall not be deemed a breach of this Agreement. However, Consultant shall not suspend performance under this Agreement prior to the tenth (10th) calendar day after written notice of suspension was provided to Town, in accordance with Chapter 2251, Subchapter “D” (“Remedy for Nonpayment”) of the *Texas Government Code*. The Town shall not be required to pay any invoice submitted by the Consultant if the Consultant breached any provision(s) herein.
- 3.10 **Adjusted Compensation** – If the Scope of the Project or if the Consultant’s services are materially changed due to no error on behalf of Consultant in the performance of services under this Agreement, the amounts of the Consultant’s compensation shall be equitably adjusted as approved by Town. Any additional

amounts paid to the Consultant as a result of any material change to the Scope of the Project shall be authorized by written change order duly executed by both parties before the services are performed.

- 3.11 **Project Suspension** – If the Project is suspended or abandoned in whole or in part for more than three (3) months, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of Town in accordance with the provisions of this Agreement prior to suspension or abandonment. In the event of such suspension or abandonment, Consultant shall deliver to Town all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs, and/or any other items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment. If the Project is resumed after being suspended for more than three (3) months, the Consultant's compensation shall be equitably adjusted as approved by the Town. Any additional amounts paid to the Consultant after the Project is resumed shall be agreed upon in writing by both parties before the services are performed.

ARTICLE 4 OWNERSHIP OF DOCUMENTS

- 4.1 **Documents Property of the Town** – The Project is the property of the Town, and Consultant may not use the documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs, and/or any materials for any other purpose not relating to the Project without Town's prior written consent. Town shall be furnished with such reproductions of the Project, plans, data, documents, maps, and any other information as defined in Exhibit "A." Upon completion of the work, or any earlier termination of this Agreement under Article 3 and/or Article 7, Consultant will revise plans, data, documents, maps, and any other information as defined in Exhibit "A" to reflect changes while working on the Project and promptly furnish the same to the Town in an acceptable electronic format. All such reproductions shall be the property of the Town who may use them without the Consultant's permission for any purpose relating to the Project, including, but not limited to, completion of the Project, and/or additions, alterations, modifications, and/or revisions to the Project.
- 4.2 **Documents Subject to Laws Regarding Public Disclosure** – Consultant acknowledges that Town is a governmental entity and that all documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs, and/or any items prepared or furnished by Consultant (and Consultant's professional associates and/or Sub-Consultants) under this Agreement are instruments of service in respect of the Project and property of the Town and upon completion of the Project shall thereafter be subject to the Texas Public Information Act (*Texas Government Code*, Chapter 552) and any other applicable laws requiring public disclosure of the information contained in said documents.

ARTICLE 5
CONSULTANT'S INSURANCE REQUIREMENTS

- 5.1 **Required Professional Liability Insurance** – Consultant shall maintain, at no expense to Town, a professional liability (errors and omissions) insurance policy with a company that maintains a minimum rating of “A” by A.M. Best’s Key Rating Guide, or other equivalent rating service(s), authorized to transact business in the State of Texas, in an amount not less than One Million and 00/100 Dollars (\$1,000,000.00) for each claim, and Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate. Consultant shall provide written notice to Town at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, or ten (10) days for non-payment of premium, evidenced by return receipt or United States Certified Mail. Consultant shall furnish Town with certificates evidencing such coverage prior to commencing work on the Project.
- 5.2 **Required General Liability Insurance** - Consistent with the terms and provisions of Exhibit “C,” Town of Addison Contractor Insurance Requirements, Consultant shall maintain, at no expense to Town, a general liability insurance policy with a company that maintains a minimum rating of “A” by A.M. Best’s Key Rating Guide, or other equivalent rating service(s), authorized to transact business in the State of Texas, in an amount not less than One Million and 00/100 Dollars (\$1,000,000.00) for each occurrence, and Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate. Such policy shall name the Town, its officers, agents, representatives, and employees as additional insured as to all applicable coverage. Such policy shall provide for a waiver of subrogation against the Town for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance. Consultant shall provide written notice to Town at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, or ten (10) days for non-payment of premium, evidenced by return receipt or United States Certified Mail. Consultant shall furnish Town with certificates evidencing such coverage prior to commencing work on the Project.
- 5.3 **Required Workers Compensation Insurance** – Consistent with the terms and provisions of Exhibit “C,” Town of Addison Contractor Insurance Requirements, Consultant shall maintain, at no expense to Town, all Statutory Workers Compensation Insurance as required by the laws of the State of Texas. Such insurance policy shall be with a company that maintains a minimum rating of “A” by A.M. Best’s Key Rating Guide, or other equivalent service(s), and authorized to transact business in the State of Texas. Such policy shall provide for a waiver of subrogation against the Town for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance. Consultant shall provide written notice to Town at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, or ten (10) days for non-payment of premium, evidenced by return receipt or United States Certified

Mail. Consultant shall furnish Town with certificates evidencing such coverage prior to commencing work on the Project.

- 5.4 **Circumstances Requiring Business Auto** – Consistent with the terms and conditions of Exhibit “C”, Consultant shall maintain, at no expense to the Town, a Business Auto Liability coverage insurance policy with a company that maintains a minimum rating of “A” by A.M. Best’s Key Rating Guide, or other equivalent rating service(s), authorized to transact business in the State of Texas, in an amount of Two Million and 00/100 Dollars (\$2,000,000.00). Such policy shall by blanket endorsement name the Town, its officers, representatives, and employees as additional insured as to all applicable coverage. Such policy shall provide for a waiver of subrogation against the Town for injuries, including death, property damage, or any other loss to the extent that the same is covered by the proceeds of the insurance. Consultant shall provide written notice to the Town at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, or ten (10) days for non-payment of premium, evidenced by return receipt or United States Certified Mail. Consultant shall furnish Town with certificates evidencing such coverage prior to commencing work on the Project.

ARTICLE 6 CONSULTANT’S ACCOUNTING RECORDS

Records of Direct Expenses and expenses pertaining to services performed in conjunction with the Project shall be kept on the basis of generally accepted accounting principles. Invoices will be sent to the Town as indicated in Article 3.4. Copies of employee time sheets, receipts for direct expense items and other records of Project expenses will be included in the monthly invoices.

ARTICLE 7 AUDITS AND RECORDS / PROHIBITED INTEREST / VENDOR DISCLOSURE

The Consultant agrees that during normal business hours and as often as the Town may deem necessary, Consultant shall, following reasonable notice, make available to representatives of the Town for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of the Town to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, and for a period of four (4) years from the date of final settlement of this Agreement or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

The Consultant agrees that it is aware of the prohibited interest requirement of the Town Charter, which is repeated on the Affidavit, attached hereto as Exhibit “D” and incorporated herein for all purposes, and will abide by the same. Further, a lawful representative of Consultant shall execute the Affidavit attached hereto as Exhibit “D”.

Consultant understands and agrees that the existence of a prohibited interest during the term of this Agreement will render the Agreement voidable.

Consultant agrees that it is further aware of the vendor disclosure requirements set forth in Chapter 176, Local Government Code, as amended, and will abide by the same. In this connection, a lawful representative of Consultant shall execute the Conflict of Interest Questionnaire, Form CIQ, attached hereto as Exhibit "E" and incorporated herein for all purposes.

If the Agreement is required to go to the City Council for approval, then the Consultant shall execute and deliver to the Town the Form 1295 Certificate of Interested Parties, as required by section 2252.908, Texas Government Code, as amended, prior to the Town's execution of this Agreement.

ARTICLE 8 TERMINATION OF AGREEMENT / REMEDIES

Town may, upon thirty (30) days written notice to Consultant, terminate this Agreement, for any reason or no reason at all, before the termination date hereof, and without prejudice to any other remedy it may have. If Town terminates this Agreement due to a default of and/or breach by Consultant and the expense of finishing the Project exceeds the Consultant's Fee at the time of termination, Consultant waives its right to any portion of Consultant's Fee as set forth in Article 3 herein and agrees to pay any costs over and above the fee which the Town is required to pay in order to finish the Project. On any default and/or breach by Consultant, Town may elect not to terminate the Agreement, and in such event it may make good the deficiency in which the default consists, and deduct the costs from the Consultant's Fee due Consultant as set forth in Article 3 herein. If Town terminates this Agreement and Consultant is not in default of the Agreement, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of the Town in accordance with the provisions of this Agreement prior to termination.

In the event of any termination, Consultant shall deliver to Town all finished and/or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs and/or any items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment.

The rights and remedies provided by this Agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its rights to use any or all other remedies. These rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

ARTICLE 9 DISPUTE RESOLUTION / MEDIATION

In addition to all remedies at law, the parties may resolve/mediate any controversy, claim or dispute arising out of or relating to the interpretation or performance of this Agreement, or breach thereof, by voluntary mediation to be conducted by a mutually acceptable mediator.

ARTICLE 10 INDEMNITY

CONSULTANT SHALL HEREBY COVENANT AND CONTRACT TO WAIVE ANY AND ALL CLAIMS (BUT NOT DEFENSES), RELEASE, INDEMNIFY AND HOLD HARMLESS TOWN AND ITS TOWN COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES FROM AND AGAINST ALL DAMAGES, INJURIES (INCLUDING DEATH), INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS (INCLUDING PATENT, COPYRIGHT AND TRADEMARK INFRINGEMENTS), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEYS' FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY), TO THE EXTENT CAUSED BY THE NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONSULTANT, ITS OFFICERS, AUTHORIZED AGENTS, REPRESENTATIVES, EMPLOYEES, SUBCONSULTANTS, LICENSEES, INVITEES, OR ANY OTHER ENTITY OVER WHICH THE CONSULTANT EXERCISES CONTROL, IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT TO THE EXTENT CAUSED BY THE PROFESSIONAL SERVICES PROVIDED BY CONSULTANT PURSUANT TO THIS AGREEMENT, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF THE TOWN (HEREINAFTER "CLAIMS"). THIS INDEMNIFICATION SHALL EXTEND TO THE REIMBURSEMENT OF THE TOWN'S REASONABLE ATTORNEY'S FEES AND ASSOCIATED COSTS, COURT COSTS, AND SETTLEMENT COSTS IN PROPORTION TO THE CONSULTANT'S LIABILITY.

CONSULTANT SHALL PROMPTLY NOTIFY TOWN OF THE DEFENSE COUNSEL RETAINED BY CONSULTANT IN FULFILLING ITS OBLIGATION HEREUNDER, AND TIMELY NOTIFY TOWN OF ANY AND ALL LEGAL ACTIONS TAKEN BY THE DEFENSE COUNSEL REGARDING ANY AND ALL CLAIMS.

THIS ARTICLE SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

ARTICLE 11 NOTICES

Consultant agrees that all notices or communications to Town permitted or required under this Agreement shall be delivered to Town at the following addresses:

Charles Goff
Assistant Director of Development Services and Planning
Town of Addison
16801 Westgrove Drive
Addison, Texas 75001

Town agrees that all notices or communication to Consultant permitted or required under this Agreement shall be delivered to Consultant at the following addresses:

Barry Hand, AIA, LEED AP BD+C
Principal, Studio Director
M. Arthur Gensler, Jr. and Associates, Inc.
5420 LBJ Freeway, Suite 1100
Dallas, Texas

Any notice provided in writing under the terms of this Agreement by either party to the other shall be in writing and may be effected by registered or certified mail, return receipt requested.

All notices or communication required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is postmarked by the sending party. Each party may change the address to which notice may be sent to that party by giving notice of such change to the other party in accordance with the provisions of this Agreement.

ARTICLE 12

MISCELLANEOUS

- 12.1 **Complete Agreement** – This Agreement, including the exhibits hereto labeled “A” through “E,” all of which are incorporated herein for all purposes, constitute the entire Agreement by and between the parties regarding the subject matter hereof and supersedes all prior and/or contemporaneous written and/or oral understandings. This Agreement may not be amended, supplemented, and/or modifies except by written agreement duly executed by both parties. The following exhibits are attached below and made a part of this Agreement:
- 12.1.1 Exhibit “A,” Scope of Services.
 - 12.1.2 Exhibit “B,” Compensation Schedule
 - 12.1.3 Exhibit “C,” Town of Addison Contractor Insurance Requirements.
 - 12.1.4 Exhibit “D,” Affidavit.
 - 12.1.5 Exhibit “E”, Conflict of Interest Questionnaire, Form CIQ.

- 12.2 **Assignment and Subletting** – The Consultant agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the Town. The Consultant further agrees that the assignment or subletting or any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Consultant of its full obligations to the Town as provided by this Agreement. All such approved work performed by assignment or subletting shall be billed through Consultant, and there shall be no third party billing.
- 12.3 **Successors and Assigns** – Town and Consultant, and their partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives, and administrators are hereby bound to the terms and conditions of this Agreement.
- 12.4 **Severability** – In the event of a term, condition, or provision of this Agreement is determined to be invalid, illegal, void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect as if such invalid, illegal, void, unenforceable or unlawful provision had never been contained herein.
- 12.5 **Venue** – This entire Agreement is performable in Dallas County, Texas and the venue for any action related directly or indirectly, to this Agreement or in any manner connected therewith shall be in Dallas County, Texas, and this Agreement shall be construed under the laws of the State of Texas.
- 12.6 **Execution / Consideration** – This Agreement is executed by the parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.
- 12.7 **Authority** – The individuals executing this Agreement on behalf of the respective parties below represent to each other that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for an on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the other party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.
- 12.8 **Waiver** – Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.

- 12.9 **Headings** – The headings of the various sections of this Agreement are included solely for convenience of reference and are not to be full or accurate descriptions of the content thereof.
- 12.10 **Multiple Counterparts** – This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.
- 12.11 **Sovereign Immunity** – The parties agree that the Town has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.
- 12.12 **Additional Representations** – Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had the opportunity to confer with its counsel.
- 12.13 **Miscellaneous Drafting Provisions** – This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply.
- 12.14 **No Third Party Beneficiaries** -- Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the latest day as reflected by the signatures below.

Effective Date: _____

TOWN:

Town of Addison, Texas

By: _____

Wesley S. Pierson, City Manager

Date: _____

CONSULTANT:

M. Arthur Gensler, Jr. and Associates, Inc.

By: _____

Ted Kollaja, FAIA, Principal

Date: _____

STATE OF TEXAS

§
§
§

COUNTY OF DALLAS

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **Wesley S. Pierson**, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration expressed, and in the capTown therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____, 2016.

Notary Public In and For the State of Texas
My commission expires: _____

STATE OF _____

§
§
§

COUNTY OF _____

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purpose and consideration expressed, and in the capTown therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____, 2016.

Notary Public In and For the State of Texas
My commission expires: _____

Exhibit “A”
Scope of Services
Agreement by and between the Town of Addison (Town)
And M. Arthur Gensler, Jr. and Associates, Inc. (Consultant)
to perform Professional Architectural and Planning Design Services for
INWOOD CORRIDOR

I. PROJECT DESCRIPTION/SCOPE OF SERVICES

A. PROJECT

A.1 Project Description

The project includes analysis, enhancement visioning, and planning for the approximately 45-acre Inwood Corridor in Addison, Texas bounded by Inwood Road (to the east), Belt Line Road (to the north), Beltway Drive (to the west), and the freight rail spur to the south (the “Project”), only for those areas within the Town limits – see attached map of the approximate project area.

A.2 Project Roles

Prior to commencement of Services, Client and Gensler will each provide the names of their key Project team members, including the primary contact person and the person authorized to make decisions for Gensler and the Client:

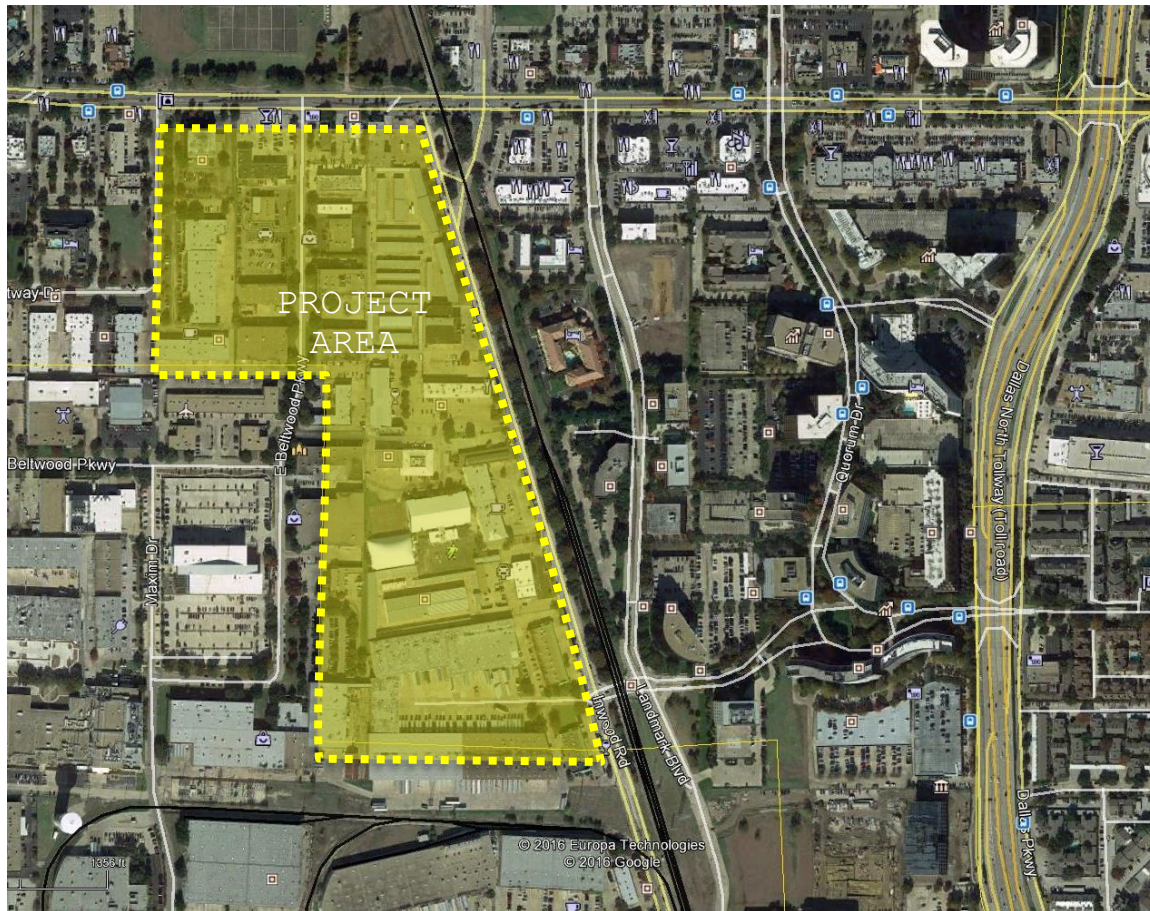
- a) Gensler’s Basic Services will include analysis, community visioning and enhancement planning services.
- b) Client will engage separate consultants to provide the following design services, if required for the Project: civil, traffic, public relations. Gensler will provide backgrounds of Gensler’s drawings to Client’s consultants, showing the locations of architectural design elements that influence the layout of engineering and other systems.

A.3 Project Schedule

Gensler will develop a Project Schedule of important milestones for Client’s review and approval. During design, Gensler and Client will monitor the Project for conformance with the Schedule, and Gensler will notify Client of any necessary changes in the Schedule. The following milestones are presently projected:

- Phase 1 – Discovery & Visioning6 weeks
- Phase 2 – Redevelopment Opportunities4 weeks
- Phase 3 – Redevelopment Master Plan4 weeks

Project Area



B. SCOPE OF SERVICES PROVIDED BY GENSLER

The Project will be conducted over the following three Phases:

B.1 Phase 1 – Discovery

B.1.1 Project Kickoff – Upon Client’s authorization to proceed, key representatives of Client and Gensler, as well as the appropriate consultants, will meet to kick off the Project. The purpose of the meeting is to establish the parties’ mutual understanding of the Project objectives, schedule, budget, and delivery process. The agenda may include, but is not limited to the following:

- a) Introduction of key team members, including the primary contacts and the person authorized to make decisions for each party;
- b) Discussion of Project performance targets;

- c) Discussion of project calendar and schedule milestones, including process/durations for Client review/approval;
- d) Discussion of the process for establishing the Project Budget and developing check estimates at key design milestones;
- e) Review and discussion of existing site conditions;
- f) Discussion of communication protocols;
- g) Identification of key personnel and protocols for invoicing and payment;
- h) Discussion of LEED or other sustainability objectives and any specialty consultants to be engaged to provide related services.

B.1.2 Review Previous Planning Documents – Gensler will review relevant studies, reports and plans as provided by the Client for recommendations or conclusions that will impact the development of redevelopment concepts for the Project.

B.1.3 Base Mapping/Data Collection & Analysis – The Client will provide Gensler with existing current base maps for the Project area (electronic files and/or hard copies), including up to a quarter-mile area surrounding the Project site.

B.1.4 Existing Data Collection – The Client will provide Gensler with available data (electronic files and/or hard copies as available) of existing studies, proposals, transportation studies and mapping data which may include but not be limited to the following:

- a) Current land use and zoning;
- b) Existing natural features (topography, hydrology, vegetation, etc.);
- c) Existing utility system main lines, including water, sanitary sewer, storm sewer, and other utilities as appropriate for a planning level effort;
- d) Existing built structures, parcel lines and ownership, and taxing jurisdictions;
- e) Existing underutilized and vacant properties;
- f) Existing administrative lines, rights-of-way and streets;
- g) Existing and planned major facilities, trails, sidewalks bike ways, etc.;
- h) Existing environmental, planning or development guidelines/restrictions;
- i) Current aerial photography of the Project area;
- j) Current or future long-range transportation plans (including non-motorized plans and commitments); and,
- k) Other information as applicable.

B.1.5 Existing Condition Analysis – Using the base mapping information provided above by the Client, Gensler will document the existing site conditions as noted above. Gensler will visit the Project site to verify

reasonably observable conditions. Client acknowledges that pre-existing, latent conditions may be revealed during the course of the Project, which may require Additional Services and/or modifications to the Project Budget and/or Schedule.

- B.1.6 Project Area Tour with Client – Gensler will also participate in a tour of the Project area with Town Staff to discuss preliminary observations of opportunities and constraints related to the area.
- B.1.7 Opportunities and Constraints Analysis – Gensler will document through maps and photos the corridor's existing character including existing buildings, major vegetation areas, waterways and features, public facilities, transportation system, utilities and installations, landmarks, blighted areas and structures, underutilized lands and potential opportunities for redevelopment or additional development.
- B.1.8 General Market Analysis – Gensler will conduct a brief analysis of the Project area and of the real estate submarket to determine what – if any – the opportunities for and constraints facing redevelopment will be. “Who is there. Why they are there. What they will do.”
- B.1.9 Community Meeting #1 – Gensler will conduct a collaborative town hall meeting for the public and present a summary overview of the Phase 1 Discovery. Gensler will facilitate an open discussion of opportunities and constraints to future corridor development – including a Visual Preference Survey. The session will explore Facts, Concepts and Goals in order to identify/evaluate possibilities for "What Stays. What Goes. What Gets Improved".

Phase 1 Deliverables – Gensler will provide the Phase 1 Report which documents the above activities (B.1.1 through B.1.9) in text and graphic format. This report will inform the Phase 2 scope. Five (5) hardcopies and One (1) electronic copy (PDF format) will be provided.

B.2 Phase 2 – Visioning & Redevelopment Opportunities

- B.2.1 Charrette #1: Visioning – Gensler will present the preliminary findings of the above tasks (B.1.1 through B.1.9) and lead a discussion of what the Client envisions as a potential future for the Project area. This may also include key stakeholders (property owners, residents, business association representatives, elected and appointed officials, and others). The Client will coordinate pertinent meeting logistics including location, time, and notification.

In this meeting Gensler will develop concepts for overall corridor development, potential catalyst development sites, urban design

opportunities, and overall implications to infrastructure and transportation. The work session will allow team members to develop consensus on the direction for the Project Development Plan

B.2.2 Alternative Redevelopment Scenarios – Gensler will develop up to three (3) Alternative Redevelopment Scenarios for the Project area. These will include various approaches to land use, access and circulation, parking, natural and developed areas, and similar considerations.

B.2.3 Charrette #2: Alternative Redevelopment Scenarios – Gensler will lead a public work session to discuss the Alternative Redevelopment Scenarios developed in Task B.2.2 and lead a discussion of what the Client sees as the desirable approach (or approaches) to developing the Project area. This public meeting may also include key stakeholders (property owners, residents, business association representatives, elected and appointed officials, and others). The Client will coordinate pertinent meeting logistics including location, time, and notification.

Phase 2 Deliverables – Gensler will provide a Phase 2 Report which documents the above activities (B.2.1 through B.2.3) in text and graphic format. This report will inform the Phase 3 scope. Five (5) hardcopies and One (1) electronic copy (PDF format) will be provided.

B.3 Phase 3 – Master Redevelopment Plan

B.3.1 Draft Master Redevelopment Plan – Based upon the input and direction received in Task B.2, Gensler will prepare a Draft Master Redevelopment Plan which may also contain components of one or more of the Alternative Redevelopment Scenarios prepared above. The Draft Master Plan will include plans, sketch renderings, graphics, market analysis, and text to support the proposed approach.

B.3.2 Community Meeting #2: Draft Redevelopment Plan – Gensler will lead this final public work session to present the Draft Master Redevelopment Plan developed in Tasks B.3.1; and to receive additional direction and comment from key stakeholders – including property owners, residents, business association representatives, elected and appointed officials, and others. The Client will coordinate pertinent meeting logistics including location, time, and notification.

B.3.3 Wrap-up Work Session with Staff – Gensler and the Client will meet to review Draft Master Redevelopment Plan and provide content and direction for any necessary revisions.

B.3.4 Final Master Redevelopment Plan – Gensler will incorporate additional comment and revisions as directed by the Client and prepare the final

version of the Master Redevelopment Plan. This report will be used for action/adoption by Council.

Phase 3 Deliverables – Gensler will provide the Phase 3 Report which documents the above activities (B.3.1 through B.3.4) in text and graphic format. Five (5) hardcopies and One (1) electronic copy (PDF format) will be provided.

B.4 Meetings

Gensler will provide the following meetings and contacts as part of the Basic Services described in Sections B.1 through B.3:

- a) Weekly Email Project Updates (14 maximum) to keep Client staff informed as to the most current status of the Project;
- b) Bi-monthly Progress/Coordination Meetings (5 maximum) to discuss and coordinate project progress, schedule, budget and billings. These may be held via teleconference if desired; and,
- c) Charrettes and Public Meetings (4 maximum) to gather information and input from the Client, key stakeholders (property owners, residents, business association representatives, elected and appointed officials, and others)

B.5 Optional/Additional Services

Gensler will provide services beyond Basic Services described in Sections B.1 through B.4 if requested by Client and confirmed in writing by Gensler.

Additional Services may include, but are not limited to, the following:

- a) Digital fly-through animations of the Project area;
- b) Photo-real digital renderings beyond process renderings provided above;
- c) Additional charrettes, work sessions, community meetings, or similar meetings;
- d) Detailed catalyst or sub-district concept plans;
- e) Detailed revised text for zoning and other regulatory developmental guidelines;
- f) Visual preference survey beyond what is identified in Basic Services; and/or,
- g) Estimates for development and construction;
- h) Proposed capital improvement projects;
- i) Other services not described above.

Exhibit "B"
Agreement by and between the Town of Addison (Town)
And M. Arthur Gensler, Jr. and Associates, Inc. (Consultant)
to perform Professional Architectural and Planning Design Services for
INWOOD CORRIDOR

I. COMPENSATION SCHEDULE

The project is hourly per Client's schedule however we anticipate approx. \$27,500/month thru the 3 ½ month schedule until completion.

**EXHIBIT “C”
TOWN OF ADDISON PROFESSIONAL SERVICES
INSURANCE GUIDELINES**

REQUIREMENTS *(The use of “City of Addison” herein is synonymous with the use of “Town of Addison” elsewhere.)*

Consultants performing services on CITY OF ADDISON property or public right-of-way shall provide the CITY OF ADDISON a certificate of insurance or a copy of their insurance policy(s) (and including a copy of the endorsements necessary to meet the requirements and instructions contained herein) evidencing the coverages and coverage provisions identified herein within ten (10) days of request from CITY OF ADDISON. Consultants shall provide CITY OF ADDISON evidence that all subconsultants performing services on the project have the same types and amounts of coverages as required herein or that the subconsultants are included under the contractor’s policy. Work shall not commence until insurance has been approved by CITY OF ADDISON.

All insurance companies and coverages must be authorized by the Texas Department of Insurance to transact business in the State of Texas and must have a A.M. Best’s rating A-:VII or greater.

Listed below are the types and minimum amounts of insurances required and which must be maintained during the term of the contract. CITY OF ADDISON reserves the right to amend or require additional types and amounts of coverages or provisions depending on the nature of the work.

	TYPE OF INSURANCE	AMOUNT OF INSURANCE	PROVISIONS
1.	Workers’ Compensation Employers’ Liability to include: (a) each accident (b) Disease Policy Limits (c) Disease each employee	Statutory Limits per occurrence Each accident \$1,000,000 Disease Policy Limits \$1,000,000 Disease each employee \$1,000,000	CITY OF ADDISON to be provided a <u>WAIVER OF SUBROGATION AND 30 DAY NOTICE OF CANCELLATION</u> or material change in coverage. Insurance company must be A-:VII rated or above.
2.	Commercial General (Public) Liability to include coverage for: a) Bodily Injury b) Property damage c) Independent Contractors d) Personal Injury e) Contractual Liability	Bodily Injury/Property Damage per occurrence \$1,000,000, General Aggregate \$2,000,000 Products/Completed Aggregate \$2,000,000, Personal Advertising Injury per occurrence \$1,000,000, Medical Expense 5,000	CITY OF ADDISON to be listed as <u>ADDITIONAL INSURED</u> and provided <u>30 DAY NOTICE OF CANCELLATION</u> or material change in coverage. Insurance company must be A-:VII rated or above.
3.	Business Auto Liability to include coverage for: a) Owned/Leased vehicles b) Non-owned vehicles c) Hired vehicles	Combined Single Limit \$1,000,000	CITY OF ADDISON to be listed as <u>ADDITIONAL INSURED</u> and provided <u>30 DAY NOTICE OF CANCELLATION</u> or material change in coverage. Insurance company must be A-:VII-rated or above.

Certificate of Liability Insurance forms (together with the blanket endorsements necessary to meet the requirements and instructions contained herein) may be **faxed** to the Purchasing Department: **972-450-7074** or **emailed to: purchasing@addisontx.gov**. Questions regarding required insurance should be directed to the Purchasing Manager.

With respect to the foregoing insurance,

1. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions applicable to the claims of the City of Addison.
2. Consultant shall provide notice to the City of Addison, Texas of any material change in the insurance coverage.
3. Consultant shall provide notice to the City of Addison, Texas at least thirty (30) days prior to cancellation or non-renewal of the insurance.
4. All insurance policies, which name the City of Addison, Texas as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
5. Insurance must be purchased from insurers that are financially acceptable to the City of Addison and licensed to do business in the State of Texas.

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

This form must be signed and returned with your quotation. You are stating that you do have the required insurance and if selected to perform work for CITY OF ADDISON, will provide the certificates of insurance (and endorsements) with the above requirements to CITY OF ADDISON within 10 working days.

A CONTRACT/PURCHASE ORDER WILL NOT BE ISSUED WITHOUT EVIDENCE AND APPROVAL OF INSURANCE.

AGREEMENT

I agree to provide the above described insurance coverages within 10 working days if selected to perform work for CITY OF ADDISON. I also agree to require any subcontractor(s) to maintain insurance coverage equal to that required by the Contractor. It is the responsibility of the Contractor to assure compliance with this provision. The City accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.

Project/Bid# _____

Company: _____

Printed Name: _____

Signature: _____ **Date:** _____

EXHIBIT "D"
AFFIDAVIT

THE STATE OF TEXAS

§

THE COUNTY OF DALLAS

§

§

I, _____, a member of the _____, make this affidavit and hereby on oath state the following:

I, and/or a person or persons related to me, have the following interest in a business entity, other than M. Arthur Gensler Jr. & Associates Inc., that would be affected by the work or decision on the Project (Check all that apply):

_____ Ownership of 10% or more of the voting shares of the business entity.

_____ Ownership of Twenty Five Thousand and 00/100 Dollars (\$25,000.00) or more of the fair market value of the business entity.

_____ Funds received from the business entity exceed ten percent (10%) of my income for the previous year.

_____ Real property is involved, and I have an equitable or legal ownership with a fair market value of at least Twenty Five Thousand and 00/100 Dollars (\$25,000.00).

_____ A relative of mine has substantial interest in the business entity or property that would be affected by my business decision of the public body of which I am a member.

_____ Other: _____.

None of the Above.

Upon filing this affidavit with the Town of Addison, Texas, I further affirm that no relative of mine, in the first degree by consanguinity or affinity, as defined in Chapter 573 of the Texas Government Code, is a member of a public body which took action on the agreement.

Signed this _____ day of _____, 2016.

Signature of Official / Title

BEFORE ME, the undersigned authority, this day personally appeared _____ and on oath stated that the facts hereinabove stated are true to the best of his / her knowledge or belief.

Sworn to and subscribed before me on this _____ day of _____, 2016.

Notary Public in and for the State of Texas
My commission expires: _____

EXHIBIT "E"
CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

FORM CIQ CONFLICT OF INTEREST QUESTIONNAIRE For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session. This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a). By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code. A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

OFFICE USE ONLY

Date Received

1. Name of person who has a business relationship with local governmental entity.

2. Check this box if you are filing an update to a previously filed question

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3. Name of local government officer with whom filer has employment or business relationship.

Name of Local Government Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

- A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire? Yes No
- B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity? Yes No
- C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more? Yes No

D. Describe each employment or business relationship with the local government officer named in this section.

EXHIBIT "E"
CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

4. Signature of person doing business with the governmental entity Date:

Signature

Date

Local Government Officers Town of Addison, Texas

For purposes of completion of the required Conflict of Interest Questionnaire for the Town of Addison Texas (required by all Vendors who submit bids/proposals), Local Government Officers are:

Mayor: Todd Meier

Council
Members: Bruce Arfsten, Mayor Pro Tem
 Ivan Hughes, Deputy Mayor Pro Tem
 Al Angell, Council Member
 Jim Duffy, Council Member
 Paul Walden, Council Member
 Dale Wilcox, Council Member

City Manager: Wesley S. Pierson