



**REGULAR WORK SESSION & MEETING  
OF THE CITY COUNCIL**

**September 13, 2016**

**ADDISON TOWN HALL**

**5300 BELT LINE RD., DALLAS, TX 75254  
5:15 PM DINNER & EXECUTIVE SESSION  
6:00 PM WORK SESSION  
7:30 PM REGULAR MEETING**

Executive Session

- 
1. Closed (executive) session of the Addison City Council pursuant to:

Section 551.071, Tex. Gov. Code, to conduct a private consultation with its attorney on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551, Tex. Gov. Code, pertaining to

- **Addison Grove Incentive Agreement**
- **Open Meetings Act**

Section 551.072, Tex. Gov. Code, to deliberate the purchase, exchange, lease, or value of real property, pertaining to

- **4545 Eddie Rickenbacker**
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2. **RECONVENE INTO REGULAR SESSION:** In accordance with Texas Government Code, Chapter 551, the City Council will reconvene into Regular Session to consider action, if any, on matter discussed in Executive Session.

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## WORK SESSION

3. Present And Discuss The Upcoming Planning & Zoning Commission And Board Of Zoning Adjustment Appointment Process
4. Present And Discuss The Opportunity To Work With Private Service Providers To Increase Broadband Connectivity, Reliability, Speed And Cost To Addison.

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## REGULAR MEETING

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### Pledge of Allegiance

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Announcements and Acknowledgements regarding Town and Council Events and Activities

Discussion of Events/Meetings

5. Public Comment.  
The City Council invites citizens to address the City Council on any topic not on this agenda. Please fill out a **City Council Appearance Card** and submit it to a city staff member prior to Public Participation. Speakers are allowed **up to three (3) minutes per speaker** with **fifteen (15) total minutes** on items of interest or concern and not on items that are on the current agenda. In accordance with the Texas Open Meetings Act, the City Council cannot take action on items not listed on the agenda. The Council may choose to place the item on a future agenda.
6. Present A Proclamation Declaring September 2016 As Blood Cancer Awareness Month In Addison, Texas.

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Consent Agenda:

*All items listed under the Consent Agenda are considered routine by the City Council and will be enacted by one motion with no individual consideration. If individual consideration of an item is requested, it will be pulled from the Consent Agenda and discussed separately.*

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7. Consider **Approval Of The August 15 And August 30, 2016 Meeting Minutes.**
  8. Consider A **Resolution Designating New Signers To Access The Town Of Addison Safe Deposit Box.**
  9. Consider A **Resolution Approving Final Payment For The Early Termination Costs Associated With The Village On The Parkway Lease Agreement For Visit Addison** In An Amount Not To Exceed \$272,922.02.
  10. Consider A **Resolution Authorizing The City Manager To Enter Into A Non-Exclusive Food And Beverage Vending Agreement With The Marriott Quorum And A Resolution Authorizing The City Manager To Enter Into A Non-Exclusive Food And Beverage Vending Agreement With Crown Plaza Hotels To Provide Food And Beverage Services To Event Patrons At Oktoberfest 2016.**
  11. Consider A **Resolution Authorizing The City Manager To Enter Into An Events Sponsorship Agreement With DCO Reality, Inc., For The Purposes Of Sponsoring Events At Vitruvian Park To Include, But Not Limited To, The Vitruvian Nights Live, Vitruvian Salsa Nights And The Vitruvian Holiday Lights Display In An Amount Not To Exceed \$185,000.00 For Fiscal Year 2016.**
  12. Consider Approval Of A **Bid Award To The Christmas Light Company, For The Installation, Maintenance And Removal Of The Holiday Lights For The Vitruvian Park Holiday Light Display** In An Amount Not To Exceed \$146,000.00.
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Regular Items

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13. Hold A Public Hearing, Present, Discuss, And Consider Action Regarding Approval Of An **Ordinance Of The Town of Addison, Texas Approving And Adopting The Town's Annual Budget For The Fiscal Year Commencing October 1, 2016 And Ending September 30, 2017.**

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14. Hold A Public Hearing, Present, Discuss, And Consider Action Regarding Approval Of An **Ordinance Levying Taxes For The Town of Addison, Texas And Fixing And Adopting The Tax Rate For The Town On All Taxable Property For The Fiscal Year Beginning October 1, 2016 And Ending September 30, 2017.**

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15. Present, Discuss, And Consider Action Regarding An **Ordinance Ratifying The Property Tax Increase Reflected In The Town's Annual Budget For The Fiscal Year Commencing October 1, 2016, And Ending September 30, 2017.**

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16. Hold A Public Hearing, Discuss, And Consider Action Regarding **Approval Of An Ordinance Amending An Existing Special Use Permit For A Restaurant And An Existing Special Use Permit For The Sale Of Alcoholic Beverages For On Premises Consumption Only On Property Located At 15175 Quorum Drive.** Case 1741-SUP/Arthur's Restaurant.

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17. Hold A Public Hearing, Discuss And Consider Action Regarding Approval Of An Ordinance **Rezoning The Property Located At 4021 Belt Line, Suite 302 In The Belt Line Square Shopping Center On The Northwest Corner Of Belt Line Road And Runyon Road, Which Is Currently Zoned LR, Local Retail, By Approving A New Special Use Permit For A Restaurant And A New Special Use Permit For The Sale Of Alcoholic Beverages For On-Premises Consumption Only.** Case 1744-SUP /K Grill.

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18. Present, Discuss And Consider Action Regarding A **Resolution Amending And Restating An Incentive Agreement With Beltline Beltway Investments, Ltd. And Urban Intownhomes, LLC For The Addison Grove Redevelopment Project At 4150 Belt Line Road Commonly Known As The Former Sam's Wholesale Club Property And Authorizing The City Manager To Execute The Amended Contract.**

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19. Present, Discuss And Consider Action Regarding Approval Of **A Resolution Authorizing The City Manager To Enter Into A Commercial Real Estate Broker Services Agreement With CBRE, Inc. For The Lease Or Sale Of Properties Owned By The Town of Addison Located At 4460 And 4500 Belt Line Road.**

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20. Present, Discuss And Consider Action Regarding A Resolution **Approving An Interlocal Agreement With The City Of Carrollton, Texas For The Provision Of Jail Services To Addison Arrestees.**

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21. Present, Discuss And Consider Action Regarding Approval Of A **Resolution Approving An Interlocal Agreement With The North Central Texas Council of Governments For The Provision Of Electronic Warrant Payment Services For Addison Municipal Court.**

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23. Present, Discuss, Consider Approval Of A **Resolution To Amend The Finance Committee Bylaws.**

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Adjourn Meeting

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NOTE: The City Council reserves the right to meet in Executive Session closed to the public at any time in the course of this meeting to discuss matters listed on the agenda, as authorized by the Texas Open Meetings Act, Texas Government Code, Chapter 551, including §551.071 (private consultation with the attorney for the City); §551.072 (purchase, exchange, lease or value of real property); §551.074 (personnel or to hear complaints against personnel); §551.076 (deployment, or specific occasions for implementation of security personnel or devices); and §551.087 (economic development negotiations). Any decision held on such matters will be taken or conducted in Open Session following the conclusion of the Executive Session.

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Posted:

Laura Bell, 09/09/2016, no later than 10:00 pm

**THE TOWN OF ADDISON IS ACCESSIBLE TO PERSONS WITH DISABILITIES.  
PLEASE CALL (972) 450-7017 AT LEAST  
48 HOURS IN ADVANCE IF YOU NEED ASSISTANCE.**



AI-1872

1.

**Work Session and Regular Meeting**

**Meeting Date:** 09/13/2016

**Department:** City Manager

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**AGENDA CAPTION:**

Closed (executive) session of the Addison City Council pursuant to:

Section 551.071, Tex. Gov. Code, to conduct a private consultation with its attorney on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551, Tex. Gov. Code, pertaining to

- **Addison Grove Incentive Agreement**
- **Open Meetings Act**

Section 551.072, Tex. Gov. Code, to deliberate the purchase, exchange, lease , or value of real property , pertaining to

- **4545 Eddie Rickenbacker**

**BACKGROUND:**

N/A

**RECOMMENDATION:**

N/A

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AI-1873

2.

**Work Session and Regular Meeting**

**Meeting Date:** 09/13/2016

**Department:** City Manager

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**AGENDA CAPTION:**

**RECONVENE INTO REGULAR SESSION:** In accordance with Texas Government Code, Chapter 551, the City Council will reconvene into Regular Session to consider action, if any, on matter discussed in Executive Session.

**BACKGROUND:**

N/A

**RECOMMENDATION:**

N/A

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AI-1864

3.

**Work Session and Regular Meeting**

**Meeting Date:** 09/13/2016

**Department:** City Secretary

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**AGENDA CAPTION:**

Present And Discuss The **Upcoming Planning & Zoning Commission And Board Of Zoning Adjustment Appointment Process**

**BACKGROUND:**

Planning & Zoning Commission and Board of Zoning Adjustment members are appointed by Council to 2 year terms. These terms run January to December concurrent with the Councilmember who appointed them. 3 members from each board are up for reappointment in December 2016. Councilmembers Angell, Duffy and Walden have the appointments for this term.

Staff created an application process in December 2015 to allow all citizens apply for these positions and for other volunteer opportunities in the Town of Addison. This application will be uploaded to a SurveyMonkey link for citizens to apply online. Paper copies will also be available at Town Hall.

These applications will be used if needed for those Councilmembers whom have the spots open for appointment. It is completely up to the Councilmember to decide if they wish to look at the application. If they have someone in mind and do not need the application process, then that is their choice.

The City Secretary will bring this item back to Council for discussion at the Council meeting in November for direction. A Resolution appointing members will follow at the December Council meeting. The new terms will start in January 2017.

**RECOMMENDATION:**

No action needed. Information only.

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**Attachments**

Application

BZA Member Roster

P & Z Member Roster

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**APPLICATION FOR BOARDS, COMMISSION OR CITIZEN ADVISORY COMMITTEES**

Please PRINT clearly with blue or black ink.

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

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Resident of Addison for \_\_\_\_\_ months/years

Education: \_\_\_\_\_

Job Experience (that may help you serve on a board/commission):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Have you participated in Citizen Academy?      Y or N

Boards/Commission/Volunteer Organizations on which you have previously served:

Name of Board/Commission/Organization	Date Served
_____	_____
_____	_____
_____	_____
_____	_____

Please indicate the Board/Commission on which you have a strong interest in serving.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Would you consider serving on a Citizen Advisory Committee if asked? These committees could be Charter Review Committee, Citizen Advisory Committee for a Council Initiative, Census Count Committee, etc. YES OR NO



**APPLICATION FOR BOARDS, COMMISSION OR CITIZEN ADVISORY COMMITTEES**

List Qualifications you feel make you a good candidate for the particular Board, Commission or Advisory Committee.

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Other information you would like to add:

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Section 552.137 provides that an e-mail address of a member of the public that is provided for the purpose of communication electronically with a governmental body is confidential and not subject to disclosure.

Allow public access to my E-mail:

YES       NO

Section 552.024 of the Texas Public Information Act provides that any appointed official of a government body shall choose whether to allow public access to the information in the custody of the governmental body that relates to the person's home address or telephone number.

Allow public access to my address and phone number:

YES       NO



## **BOARD OF ZONING ADJUSTMENT**

Update 08/03/2016

### **Jeff King**

Term Expires: 12-31-2017 1st Term  
Appointed by: MEIER

### **Juli Branson**

Term Expires: 12-31-2016 1st Term  
Appointed by: ANGELL

### **Burk Burkhalter**

Term Expires: 12-31-2017 3rd Term  
Appointed by: CLEMENS  
Next Appointment: WILCOX

### **Reggie Carney**

Term Expires: 12-31-2017 1st Term  
Appointed by: DEFRANCISCO  
Next Appointment: HUGHES

### **Troy Cooper**

Term Expires: 12-31-2016 2nd Term  
Appointed by: WALDEN

### **Lynn Stofer**

Term Expires: 12-31-2017 1st Term  
Appointed by: ARFSTEN

### **Jan Haas**

Term Expires: 12-31-2016 1st Term  
Appointed by: DUFFY

### **Charles Goff**

#### **Staff Liaison**

P.O. Box 9010  
Addison, TX 75001-9010  
(O) 972-450-7027  
(C) 214-364-4435  
[cgoff@addisontx.gov](mailto:cgoff@addisontx.gov)



## **PLANNING AND ZONING COMMISSION**

as of 8/03/16

### **Jason Ennis**

[jennis@addisontx.gov](mailto:jennis@addisontx.gov)

Term Expires: 12-31-2016 1st Term

Appointed by: DUFFY

### **Marshall (Skip) Robbins - Chair**

[srobbins@addisontx.gov](mailto:srobbins@addisontx.gov)

Term Expires: 12-31-2016 1st Term

Appointed by: ANGELL

### **Randy Smith**

[rsmith@addisontx.gov](mailto:rsmith@addisontx.gov)

Term Expires: 12-31-2016 1st Term

Appointed by: W A L D E N

### **Debra Morgan - Vice Chair**

[dmorgan@addisontx.gov](mailto:dmorgan@addisontx.gov)

Term Expires: 12-31-2017 1st Term

Appointed by: MEIER

### **Tom Schaeffer**

[tschaeffer@addisontx.gov](mailto:tschaeffer@addisontx.gov)

Term Expires: 12-31-2017 1st Term

Appointed by: HUGHES

### **Jim Robinson**

Term Expires: 12-31-2017 1st Term

[jrobinson@addisontx.gov](mailto:jrobinson@addisontx.gov)

Appointed by: CLEMENS

Next Appointment: WILCOX

### **Stacey Griggs**

[sgriggs@addisontx.gov](mailto:sgriggs@addisontx.gov)

Term Expires: 12-31-2017 1st Term

Appointed by: ARFSTEN

### **Charles Goff**

### **Staff Liaison**

P.O. Box 9010

Addison, TX 75001-9010

(O) 972-450-7027

(C) 214-364-4435

[cgoff@addisontx.gov](mailto:cgoff@addisontx.gov)

AI-1768

4.

**Work Session and Regular Meeting**

**Meeting Date:** 09/13/2016

**Department:** Economic Development

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**AGENDA CAPTION:**

Present And Discuss The **Opportunity To Work With Private Service Providers To Increase Broadband Connectivity, Reliability, Speed And Cost To Addison.**

**BACKGROUND:**

Town taff will provide Council with an overview of the current state of broadband connectivity within the Town, interest from local businesses to increase service, and an overview of what Google Fiber is, and what it would take to bring the service to Addison. Increased broadband connectivity to improve service, reliability, speed, and cost has been a focus from City Council to ensure that the community is digitally competitive from an economic development standpoint.

**RECOMMENDATION:**

N/A

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AI-1871

6.

**Work Session and Regular Meeting**

**Meeting Date:** 09/13/2016

**Department:** City Secretary

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**AGENDA CAPTION:**

Present A **Proclamation Declaring September 2016 As Blood Cancer Awareness Month In Addison, Texas.**

**BACKGROUND:**

N/A

**RECOMMENDATION:**

N/A

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AI-1865

7.

**Work Session and Regular Meeting**

**Meeting Date:** 09/13/2016

**Department:** City Secretary

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**AGENDA CAPTION:**

Consider **Approval Of The August 15 And August 30, 2016 Meeting Minutes.**

**BACKGROUND:**

The City Secretary has prepared the minutes for approval.

**RECOMMENDATION:**

Administration recommends approval.

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**Attachments**

August 15 2016 DRAFT Minutes

September 30 2016 DRAFT Minutes

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# OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL WORK SESSION

August 15, 2016

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

6:00 PM Work Session

Present: Mayor Meier; Mayor Pro Tempore Arfsten; Deputy Mayor Pro Tempore Hughes; Councilmember Duffy; Walden; Wilcox

Absent: Councilmember Angell

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## WORK SESSION

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1. Presentation From **The Legacy Foundation Regarding Their Non-Profit Grant Application For FY2017.**

Debra Morgan from the Addison Legacy Foundation made the presentation to Council. She discussed the "Big Idea" which is a project to achieve connectivity from East to West Addison around the Belt Line Road and Tollway intersection. She described the work done to date and the work that still needs to be accomplished.

Ms. Morgan stated that the Foundation has requested a grant from the Town of Addison for \$100,000.00. This grant would go towards a feasibility study for this project.

Council discussed the project and asked Ms. Morgan some follow up questions. Council thanked Ms. Morgan and the Addison Legacy Foundation for their work on this project.

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2. Presentation And Discussion On **Funding For The Addison Grove Incentive Agreement.**

Economic Development Director, Orlando Campos and Interim Chief Financial Officer, Scott Neils, presented the item.

Mr. Campos discussed the economic development aspects of the project and its' history.

Mr. Neils discussed the funding plan for the agreement and budgeting the amount needed.

Council had discussion regarding the installment payments to the developer, how the amount would affect the budget and the options of where the money would come from to fund the payments.

Council thanked staff for their work on the presentation.

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3. Present An **Update On The Midway Road Reconstruction Project.**

Assistant Director Infrastructure Services, Jason Shroyer, presented the item to Council. He stated the presentation would cover the project overview, the bond funding, the design project update, the preliminary costs and the amount funded through bond money and identifying the next steps needed.

Council discussed the information presented including the budget shortfall for this project.

Council directed staff to come back with options for repairing, funding or delaying the project for Council to discuss and consider. Council would also like to know if the work that has already been done and the money already spent will go to waste if the project doesn't move forward as anticipated.

This information will come back at a future meeting.

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## Adjourn Meeting

Mayor Meier adjourned the meeting at 7:55 pm.

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NOTE: The City Council reserves the right to meet in Executive Session closed to the public at any time in the course of this meeting to discuss matters listed on the agenda, as authorized by the Texas Open Meetings Act, Texas Government Code, Chapter 551, including §551.071 (private consultation with the attorney for the City); §551.072 (purchase, exchange, lease or value of real property); §551.074 (personnel or to hear complaints against personnel); §551.076 (deployment, or specific occasions for implementation of security personnel or devices); and §551.087 (economic development negotiations). Any decision held on such matters will be taken or conducted in Open Session following the conclusion of the Executive Session.

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\_\_\_\_\_  
Mayor-Todd Meier

Attest:

\_\_\_\_\_  
City Secretary-Laura Bell

# OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL WORK SESSION

August 30, 2016

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

5:00 PM Budget Work Session

7:30 PM Public Hearing

Present: Mayor Meier; Mayor Pro Tempore Arfsten; Deputy Mayor Pro Tempore Hughes; Councilmember Duffy; Councilmember Walden

Absent: Councilmember Angell; Councilmember Wilcox

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## SPECIAL MEETING

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1. Presentations, Review, Discussion, And Consider Action Needed Regarding The **Proposed Annual Budget For The Town Of Addison For Fiscal Year 2016-2017 (Beginning October 1, 2016 And Ending September 30, 2017), Including But Not Limited To The Utility Fund, Stormwater Fund, Airport Fund, Hotel Fund, Economic Development Fund, Information Technology Fund, Capital Replacement Fund, And The General Fund.**

RECOMMENDATION:

N/A

Council discussed information regarding the budget. Questions were answered from the previous budget discussion.

Council directed staff to include a policy for funding the Economic Development Fund with 2.3716 cents of the M & O portion of the tax rate. Staff will include this in the proposed budget to be voted on September 13.

Mayor Meier recessed the budget discussion at 6:57 pm.  
Mayor Meier reconvened the budget discussion at 7:07 pm.

Council conducted the Public Hearing portion of the meeting at 7:30pm.

Council continued the budget discussion after the Public Hearing was concluded.

Council directed staff to include funding for Metrocrest at the requested \$2000 level in the 2016-2017 budget.

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2. Hold A **Public Hearing Regarding The Town Of Addison's Proposed Property Tax Rate For The Fiscal Year Commencing October 1, 2016 And Ending September 30, 2017.**

RECOMMENDATION:

N/A

Mayor Meier opened the public hearing.

Liz Oliphant, 14700 Marsh Lane, spoke in favor of the proposed tax rate.

Mary Carpenter, 4006 Winter Park, spoke in favor of the proposed tax rate.

Lance Murray, spoke in favor of the proposed tax rate.

John Price, spoke in favor of the proposed tax rate.

There being no other speakers, the Mayor closed the public hearing.

The Mayor reminded citizens that another public hearing for the proposed tax rate and the proposed budget would be held on September 6, 2016 in the Council Chambers.

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NOTE: The City Council reserves the right to meet in Executive Session closed to the public at any time in the course of this meeting to discuss matters listed on the agenda, as authorized by the Texas Open Meetings Act, Texas Government Code, Chapter 551, including §551.071 (private consultation with the attorney for the City); §551.072 (purchase, exchange, lease or value of real property); §551.074 (personnel or to hear complaints against personnel); §551.076 (deployment, or specific occasions for implementation of security personnel or devices); and §551.087 (economic development negotiations). Any decision held on such matters will be taken or conducted in Open Session following the conclusion of the Executive Session.

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Adjourn Meeting

Mayor Meier adjourned the meeting at 8:07 pm.

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\_\_\_\_\_  
Mayor-Todd Meier

Attest:

\_\_\_\_\_  
City Secretary-Laura Bell

AI-1857

8.

**Work Session and Regular Meeting**

**Meeting Date:** 09/13/2016

**Department:** Infrastructure- Development Services

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**AGENDA CAPTION:**

Consider A **Resolution Designating New Signers To Access The Town Of Addison Safe Deposit Box.**

**BACKGROUND:**

Staff has been made aware that there is a Town of Addison safe deposit box at the Bank of America branch at the north east corner of Dallas Parkway and Belt Line Road. The signature card on file with the bank includes three former employees. In order to access the box, the City Council must approve a resolution confirming that the employees on the current signature card no longer work for the Town and designate new signers for the safe deposit box. Staff has drafted a resolution designating the following employees as signers:

- Cheryl Delaney, Deputy City Manager
- Charles Goff, Assistant Director of Development Services and Planning
- Caitlan Smelley, Assistant to the City Manager

Once the box is accessed, staff will determine its contents and assess the need to retain the safe deposit box.

**RECOMMENDATION:**

Administration recommends approval.

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**Attachments**

Resolution

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**TOWN OF ADDISON, TEXAS**

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

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS REMOVING AND AUTHORIZING SIGNATORIES TO ACCESS A TOWN OF ADDISON SAFE DEPOSIT BOX LOCATED AT BANK OF AMERICA FINANCIAL CENTER; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Addison has a safe deposit box located at the Bank of America Financial Center located at 15110 Dallas Parkway, Suite 100A (the “Safe Deposit Box”); and

**WHEREAS**, the Town previously authorized three individuals to access the safe deposit box; and

**WHEREAS**, none of the three previously authorized individuals is currently employed by the Town.

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

**Section 1.** The following individuals are REMOVED as signatories with authority to access the Safe Deposit Box: Randolph Moravec, Sandra Goforth and Ron Whitehead.

**Section 2.** The following individuals are AUTHORIZED as signatories with authority to access the Safe Deposit Box: Cheryl Delaney, Deputy City Manager; Charles Goff, Assistant Director of Development Services; and Caitlan Smelley, Assistant to the City Manager.

**Section 3.** This Resolution shall take effect from and after its date of adoption.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this the 13th day of September, 2016.

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

ATTEST:

By: \_\_\_\_\_  
Laura Bell, City Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Brenda N. McDonald, City Attorney

**Work Session and Regular Meeting**

**Meeting Date:** 09/13/2016

**Department:** Economic Development

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**AGENDA CAPTION:**

Consider A **Resolution Approving Final Payment For The Early Termination Costs Associated With The Village On The Parkway Lease Agreement For Visit Addison** In An Amount Not To Exceed \$272,922.02.

**BACKGROUND:**

The purpose of this resolution is to approve payment of the final costs for the early termination of the lease agreement with Village on the Parkway for Visit Addison. The final amount due is \$272,922.02

In 2010, the Town entered into a ten-year lease agreement with the Village on the Parkway retail center (Center) for 26,513 square feet that became Visit Addison, the physical location that housed the Town's Visitor Services Department and Visitor Services Center. The lease commenced on March 1, 2011 and was slated to end February 28, 2021. The purpose for Visit Addison was for it to be a destination for art and tourists that was be a catalyst assisting the revitalization of the Center.

In 2014, staff constructed a cost-benefit analysis to determine the efficacy of the then current model vs. early termination the lease agreement yielding a healthier fund balance and savings for other hotel fund initiatives. Staff reviewed its findings with the Council in December 9, 2014 and again on April 4, of 2015. Though no formal action was taken on April 4, the Council directed staff to proceed with an early termination and office notice was provided to Village on the Parkway on June 25, 2015. The full term of the lease was for 10 years. The town terminated the lease at the fifth year. The following calculation explains what the cost would have been had the Town maintained the lease for the additional five years for the full term of the lease:

Year 6-10 Lease Costs:

- Gross Lease Costs: \$2,909,801
- Subtenant Lease Revenue: \$ 57,999
- Net Lease Cost: \$2,851,802

Originally the budget for this final payment was \$400,000.00 in the Fiscal Year 2016 budget. Staff received the final invoice on August 3, 2016 and has verified its accuracy against the original lease agreement. With the final invoice presented at \$272,922.02 the Town will have savings in the amount of \$127,077.98.

**RECOMMENDATION:**

Administration recommends approval.

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**Attachments**

Resolution

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**TOWN OF ADDISON, TEXAS**

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

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS AUTHORIZING PAYMENT OF \$272,922.02 TO 5100 BELTLINE ROAD INVESTORS, LLC AS FINAL PAYMENT OF EXPENSES RELATED TO TERMINATION OF THE LEASE FOR THE VISIT ADDISON SPACE IN VILLAGE ON THE PARKWAY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Addison terminated its lease at 5100 Belt Line Road, Suites 400 and 430 effective September 30, 2015; and

**WHEREAS**, there were costs associated with the early termination of the lease that could not be computed until new tenant improvements were completed; and

**WHEREAS**, the new tenant improvements have been completed and the landlord of Village on the Parkway has requested final payment of the costs for early termination.

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

**Section 1.** The City Manager is authorized to make a final payment for expenses related to the Town's early termination of the lease for the premises located at 5100 Belt Line Road, Suite in the amount of \$272,922.02 to 5100 Beltline Road Investors, LLC.

**Section 2.** This Resolution shall take effect from and after its date of adoption.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this the 13th day of September, 2016.

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

ATTEST:

By: \_\_\_\_\_  
Laura Bell, City Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Brenda N. McDonald, City Attorney

AI-1846

10.

**Work Session and Regular Meeting**

**Meeting Date:** 09/13/2016

**Department:** General Services

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**AGENDA CAPTION:**

Consider A **Resolution Authorizing The City Manager To Enter Into A Non-Exclusive Food And Beverage Vending Agreement With The Marriott Quorum And A Resolution Authorizing The City Manager To Enter Into A Non-Exclusive Food And Beverage Vending Agreement With Crown Plaza Hotels To Provide Food And Beverage Services To Event Patrons At Oktoberfest 2016.**

**BACKGROUND:**

The Marriott Quorum and the Crowne Plaza Hotel are the major providers of food and beverages at the Town of Addison's Oktoberfest event. They collect Tasty Buck coupons from patrons who purchase food and beverages from them in the main tent and in satellite tents throughout the event site. The Town redeems their Tasty Bucks after the event and issues the hotel a check for 85% of the sales with the Town to retain 15% of the sales.

The food and beverage sales are expected to be in excess of \$100,000. Due to this number exceeding the signing authority allowed to the City Manager, this item requires Council approval. The Food and Beverage Vending Agreements are attached as an exhibit in the respective Resolutions.

**RECOMMENDATION:**

Staff recommends approval.

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**Attachments**

**Resolution with Crowne Plaza Agreement**

**Resolution with Marriott Quorum Agreement**

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**TOWN OF ADDISON, TEXAS**

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

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A NON-EXCLUSIVE FOOD AND BEVERAGE VENDING CONTRACT BETWEEN THE TOWN OF ADDISON AND CROWNE PLAZA ADDISON FOR MUSIC, BEVERAGE AND FOOD SERVICES DURING OKTOBERFEST, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.**

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

**Section 1.** The Non-Exclusive Food and Beverage Vending Contract between the Town of Addison and Crowne Plaza Addison for music, beverage and food services during Oktoberfest, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved. The City Manager is hereby authorized to execute the contract.

**Section 2.** This Resolution shall take effect from and after its date of adoption.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this the 13<sup>th</sup> day of September, 2016.

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

ATTEST:

By: \_\_\_\_\_  
Laura Bell, City Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Brenda N. McDonald, City Attorney

NON-EXCLUSIVE FOOD & BEVERAGE VENDING CONTRACT

STATE OF TEXAS           #  
COUNTY OF DALLAS       #

THIS CONTRACT is entered into by and between the TOWN OF ADDISON, TEXAS (hereinafter referred to as "Addison"), and CROWNE PLAZA ADDISON (hereinafter referred to as "Hotel"), on the date indicated below.

W I T N E S S E T H

WHEREAS, a special event known as Oktoberfest (hereinafter referred to as "Event") shall take place within the Town of Addison on the following dates: **September 15, 16, 17, and 18, 2016;**

WHEREAS, Addison is sponsoring and hosting the Event in whole or in part; and

WHEREAS, Hotel desires to provide music, beverage and food service to patrons of the Event; and

WHEREAS, the Addison City Manager has heretofore authorized the Addison Director of Special Events to enter into Contracts with Hotels providing terms and conditions such service.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, Addison and Hotel do hereby agree and contract as follows:

1. The term of this Contract shall be for the following days and times:  

<b>September 15, 2016</b>	<b>6:00 pm to 11:00 pm</b>
<b>September 16, 2016</b>	<b>6:00 pm to 12:00 am midnight</b>
<b>September 17, 2016</b>	<b>12:00 pm to 12:00 am midnight</b>
<b>September 18, 2016</b>	<b>12:00 pm to 6:00 pm</b>
  
2. The hours of operation of the Event shall be those scheduled by Addison. Hotel shall have a reasonable amount of time to set up prior to its commencement and to tear down after its conclusion. Addison reserves the right to regulate the hours that the concession(s) remain open. Concession hours shall end each day as follows:

<u>Date</u>	<u>Food Sales</u>	<u>Alcoholic Beverage</u>
Thursday, September 15, 2016	11:00 pm	10:00 pm
Friday, September 16, 2016	Midnight	11:00 pm
Saturday, September 17, 2016	Midnight	11:00 pm
Sunday, September 18, 2016	6:00 pm	5:00 pm

3. Hotel agrees that no representations have been made by Addison or by any of its agents, officers or employees that the preparation of the Event site shall be advanced to any particular stage upon any particular date, or that any warranty is being made as to the opening date of the Event. It is understood that Addison is making every reasonable effort to proceed with preparation of the Event site and construction so that the Event shall open as scheduled, and that Hotel shall have reasonable time prior to this date for the preparation of projects. If the Event does not open as scheduled or at all, Addison shall be under no liability to Hotel for any claims for damages.
  
4. Should the Event be postponed or canceled for an Act of God, public safety, welfare or for whatever reason, Hotel hereby releases Addison from any and all liability and claims for damages which result from such postponement or cancellation.

5. Hotel shall furnish and serve food and beverages to patrons of the Event. In addition, it shall provide decorations and signs appropriate to the Event subject to the provisions contained in paragraph 24. Hotel shall furnish food, food service items and a sufficient number of personnel to perform food service duties. Hotel understands and acknowledges that the rights granted to it hereunder by Addison are not exclusive and that other hotels and groups, including the Marriott Quorum, and certain German groups shall be granted a similar right to sell concessions, food, beverages and merchandise.
7. Hotel shall file with the Addison City Manager or his designee prior to **Friday, August 12, 2016** a detailed outline of the service the Hotel shall provide all staging requirements and all other information required by Addison personnel concerning the Event.
8. Any and all sales of concessions, food, beverages or merchandise shall be made through the use of tickets furnished by Addison. Hotel shall not sell any items for cash but only for tickets issued by Addison. Patrons shall purchase tickets from Addison personnel and redeem them in Hotel's tent(s). No later than (3) days after the close of the Event, Hotel shall present to Addison all tickets received during the Event. Prior to presentation to Addison, Hotel shall remove all stubs and staples from the tickets. Separate 2016 tickets from all other tickets. You do not need to bundle tickets, but please separate tickets from previous years. All tickets must be dry before they are weighed. In exchange for such tickets, Addison shall issue a check to Hotel in the amount of eighty-five percent (85%) of the face value of the tickets turned in, and Addison shall retain fifteen percent (15%) of the face value of tickets sold. Such check shall be mailed to Hotel within thirty (30) working days after the presentation of tickets to Addison.
9. Addison has contracted with Coca Cola (hereinafter referred to as "Coke") to be the official non-alcoholic beverage sponsor of the Event. Coca Cola shall be granted exclusive pouring rights and shall furnish all soft drinks and other non-alcoholic beverages that the Hotel shall offer for sale in their tent(s). Hotel shall sell no non-alcoholic beverages other than those furnished by such sponsor. Hotel shall purchase the Coke products directly from Coke.
10. Addison has contracted with Paulaner HP USA (hereinafter referred to as "Paulaner") to be the primary import beer sponsor of the Event. Through Ben E. Keith distributing, Paulaner shall furnish kegs of Oktoberfest Wiesn, Oktoberfest Märzen and Hefe-Weizen for the Hotel to sell in their tents at the Event. Hotel shall purchase the beverages directly from Ben E. Keith Distributing. Hotel may also purchase souvenir items from Ben E. Keith Distributing. Hotels shall be solely responsible for payment of beer and glassware sold at the Event and Addison shall not in any way be responsible for payment of beer, glassware or either of them. Note that this paragraph does not intend to and does not limit the types of beer that may be sold by Hotel at the Event
11. Addison shall furnish whatever tents, tables and chairs, bandstand, dance floor, utilities, lighting and fans it shall deem necessary. In addition, Addison shall provide police, fire, streets, ticket sales and accounting personnel.
12. Hotel shall not sublet or assign this Contract to any other person, or any of the privileges conveyed herein, except with the prior written approval of Addison. Any approved assignee shall be subject to all the provisions and requirements of this Contract.
13. During the course of the Event, Hotel shall maintain the areas inside their tent(s) and in the main tent seating areas designated to each Hotel for patrons in a clean and sanitary condition. Hotel shall pick-up all trash, food, etc. off of ground and shall keep tables clean ongoing during the Event. Addison shall empty full trash receptacles and remove from the main tent. Addison shall clean and maintain all areas outside the tents during the Event and shall clean the entire site of the Event after the Event has concluded.

14. Hotel agrees that its activities shall be conducted in a clean, orderly, and legitimate manner and in accordance with existing ordinances and laws. No rubbish, glass, or bottles of any kind shall be thrown upon the grounds or in any buildings by Hotel or anyone working under or for Hotel.
15. Addison shall have the right, but not the duty, to supervise the manner of exercising the operation of the activity by Hotel. However, in doing so Addison is expressly not accepting responsibility for such operations and conduct. Hotel shall remain liable for such operations and conduct.
16. Hotel agrees that its employees involved with the Event shall not drink any beer, wine or other alcoholic beverage while in performance of their duties under this Contract, and that all such employees who operate utility carts for the transportation of materials shall exercise the utmost caution when operating the carts.
17. **HOTEL AGREES TO AND SHALL INDEMNIFY ADDISON, TEXAS, ITS OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS AGAINST, AND HOLD ADDISON, ITS OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS HARMLESS FROM, ANY AND ALL CLAIMS, ACTIONS, CAUSES OF ACTION, LAWSUITS, LIABILITY, JUDGMENTS, DAMAGES, INJURIES, PENALTIES, LOSSES, COSTS OR EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES, ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS, AND COSTS OF DEFENSE), FOR PERSONAL INJURY (INCLUDING WITHOUT LIMITATION, SICKNESS, EMOTIONAL AND PSYCHOLOGICAL INJURY, DISEASE OR DEATH), DAMAGE TO OR DESTRUCTION OF ANY PROPERTY (INCLUDING, WITHOUT LIMITATION, LOSS OF USE OF PROPERTY NOT OTHERWISE PHYSICALLY DAMAGED), BREACH OF CONTRACT, BREACH OF THE INSURANCE REQUIREMENTS SET FORTH IN SECTION 21 OF THIS CONTRACT, OR ANY OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR ORGANIZATION, THAT MAY ARISE OUT OF ANY ACT OR OMISSION OF HOTEL, ITS AGENTS, OFFICERS AND EMPLOYEES, INCLUDING WITHOUT LIMITATION ANY SUCH ACT OR OMISSION IN BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, OR ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION, IN THE PERFORMANCE OR UNDER THE PROVISIONS OF THIS CONTRACT (INCLUDING BUT NOT LIMITED TO THE PROVISION OR SERVING OF FOOD, ALCOHOLIC BEVERAGES OR MUSIC.) THIS INDEMNITY IS INTENDED TO PROTECT ADDISON, ITS AGENTS, OFFICERS AND EMPLOYEES. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.**  
  
**HOTEL, ITS OFFICERS, AGENTS AND EMPLOYEES DO HEREBY WAIVE ANY AND ALL CLAIMS FOR DAMAGE, INJURY OR LOSS TO ANY PERSON OR PROPERTY, INCLUDING THE DEATH OF ANY PERSON THAT MAY BE CAUSED, IN WHOLE OR IN PART, BY THE ACT OR FAILURE TO ACT OF ADDISON, ITS OFFICERS, AGENTS OR EMPLOYEES. HOTEL, ITS OFFICERS, AGENTS AND EMPLOYEES ASSUME THE RISK OF ALL CONDITIONS, WHETHER DANGEROUS OR OTHERWISE, IN AND ABOUT THEIR TENTS, AND WAIVE ANY AND ALL SPECIFIC NOTICE OF THE EXISTENCE OF ANY DEFECTIVE OR DANGEROUS CONDITION IN OR ABOUT THEIR TENTS. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE TERMINATION, COMPLETION, OR EXPIRATION OF THIS CONTRACT.**
18. **HOTEL HEREBY RELEASES ADDISON FROM ANY ACTIONS FOR ANY LOSS OR DAMAGE SUSTAINED BY REASON OF ANY DEFECT OF ANY PART OF THE WATER SUPPLY SYSTEM, THE SEWAGE AND DRAINAGE SYSTEM, THE GAS SYSTEM, ELECTRICAL APPARATUS OR WIRING ON THE EVENT SITE OR TENT(S) OR ANY OTHER PREMISES OR BAND STAND, AND FOR ANY LOSS OR DAMAGE RESULTING FROM FIRE, THEFT, WATER, TORNADO, RAIN, SNOW, STRIKES, CIVIL COMMOTION OR RIOT, OR OTHERWISE, UNLESS CAUSED BY THE GROSS NEGLIGENCE OF ADDISON.**
19. **ADDISON ASSUMES NO RESPONSIBILITY FOR ANY PROPERTY PLACED ON THE PREMISES, AND HOTEL HEREBY RELEASES ADDISON, ITS OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS FROM ANY AND ALL LIABILITY FOR ANY LOSS, INJURY OR DAMAGES TO PERSON OR PROPERTY THAT ARE SUSTAINED BY REASON OF THE OCCUPANCY OF THE EVENT SITE UNDER THIS CONTRACT. ALL WATCHMEN OR OTHER PROTECTIVE SERVICE DESIRED BY HOTEL MUST BE ARRANGED FOR BY SPECIAL AGREEMENT WITH ADDISON.**
20. Hotel may begin set up for the Event on **Monday, September 12, 2016 after 10:00 a.m.** All property of Hotel shall be removed from the Event site on or before **Monday, September 19, 2016 at 5:00 p.m.** (the "Time of Removal") or prior to the Time of Removal in the event of termination of this Contract. If any part of the Hotel's tent(s) is not vacated at or before the Time of Removal or within a reasonable time following the termination hereof, then Addison is

authorized to remove from the premises and store, without resorting to any legal proceeding and at the sole expense of Hotel, all property occupying a portion of the Hotel's tent(s) and shall not be liable for any damage to or loss of any property sustained during its removal and storage. Upon termination of this Contract, Hotel shall deliver the Hotel tent(s) area to Addison in as good condition as at the beginning of the terms of this Contract, except for ordinary wear and tear. The terms of this paragraph shall survive the termination of the Contract.

21. For purposes of this Contract and at all times during the Event, Hotel shall provide and maintain the minimum insurance coverages set forth below (and shall show proof of such coverages at the time of the execution of this Contract):
- a) Commercial General Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate for bodily injury and property damage; \$1,000,000 for personal injury and advertising injury; and a \$2,000,000 annual aggregate for products/completed operations. Commercial General Liability coverage must include Premises, Operations, Contractual Liability, Products/Completed Operations, Independent Contractors, and Liquor Liability.
  - b) Workers Compensation insurance at statutory limits, including Employers Liability coverage at minimum limits of \$1,000,000 each-occurrence each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease aggregate.
  - c) Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage.
  - d) Other Provisions.
    1. The required limits may be satisfied by any combination of primary, excess, or umbrella liability insurances, provided the primary policy complies with the above requirements and the excess/umbrella is a "following form" policy, at a minimum.
    2. All insurance policies that name the City as an additional insured must be endorsed to read as primary coverage regardless of the application of other insurance.
    3. The Hotel is solely responsible for maintaining insurance coverage on its personal property.
    4. In the event that the Hotel in any manner employs, hires, or makes use of any sub-contractor in the performance of any of its rights and duties in this Agreement, the Hotel shall require that each and every such sub-contractor maintain the following insurance coverages, and that such coverages are endorsed to include the Hotel and the City as additional insureds:
      - (a) Commercial General Liability coverages written on a standard and approved ISO form, with combined single limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate for bodily injury and property damage; \$2,000,000 for personal injury; and a \$2,000,000 annual aggregate for Products/Completed Operations. Coverage must include Contractual Liability and Products/Completed Operations, and Liquor Liability.
      - (b) Workers' Compensation insurance at statutory limits, including Employers' Liability coverage at minimum limits of \$1,000,000 each occurrence each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease

aggregate.

- (c) Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including Owned, Non-Owned and Hired Car Coverage. This coverage must be written on a standard and approved ISO form.

5. With reference to the foregoing insurance requirements Hotel and its contractors shall specifically endorse applicable insurance policies as follows:

- a) The Town of Addison, Texas shall be named as an additional insured with respect to Commercial General Liability and Automobile Liability.
- b) All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.
- c) A waiver of subrogation in favor of the Town of Addison shall be contained in the Workers Compensation and all liability policies.
- d) All insurance policies shall be endorsed to require the insurer to immediately notify the Town of Addison of any material change in the insurance coverage.
- e) All insurance policies shall be endorsed to the effect that the Town of Addison will receive at least sixty (60) days' notice prior to cancellation or non-renewal of the insurance.
- f) All insurance policies, which name the Town of Addison as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
- g) Required limits may be satisfied by any combination of primary and umbrella liability insurances.
- h) Hotel may maintain reasonable and customary deductibles, subject to approval by the Town of Addison.
- i) Insurance must be purchased from insurers that meet the following requirements:
  - 1. A minimum financial rating of A- VII as currently assigned in *BEST'S KEY RATING GUIDE*.
  - 2. Licensed and admitted to do business by the Texas Department of Insurance. Non-Admitted carriers are acceptable only if the coverage is not available from an admitted carrier and the following criteria are satisfied:
    - (a) The carrier is approved by NAIC or is approved (or has not been disapproved) by the Texas Department of Insurance.
    - (b) The policy must include a Service of Suit Endorsement.
    - (c) All requirements of the Surplus Lines Stamping Office of Texas, including filing of all appropriate policy forms, and payment of all taxes and fees.

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

Insurance, including the Surplus Lines Stamping Office of Texas, if applicable. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting the following:

- a) Sets forth all endorsements and insurance coverages according to requirements and instructions contained herein.
- b) Shall specifically set forth the notice-of-cancellation or termination provisions to the Town of Addison.

Upon request, Hotel shall furnish the City Manager with certified copies of all insurance policies.

The parties acknowledge and agree that in the event that Hotel, by its acts, omissions or conduct causes or contributes to any lapse, cancellation, denial of coverage, or any other prejudice to the applicability of any of the above referenced insurance coverages and requirements, that such acts, omissions, or conduct shall constitute a material breach of the terms of this Agreement.

22. This Contract does not include the use of broadcasting or television facilities or the use of the Hotel's tent(s) for any activities other than those described herein, arrangements for which must be made with Addison. Addison shall advertise and promote the Event at its cost and shall choose the media for such advertisement.
23. Hotel hereby gives to Addison the permission and a limited and non-exclusive license to use any copyrighted material to which Hotel may own a right in connection with the Event. Provided Addison is not in default of this section of the Agreement, then Hotel agrees not to sue Addison for any potential infringement thereof.
24. Hotel shall use and display only those signs which pertain to the Event and which have been approved by Addison prior to **September 1, 2016**. Hotel shall comply with any and all sign permit requirements for the display of such signs. Hotel shall not use or otherwise mention the Event in any advertising or promotion without the prior written consent of Addison.
25. Hotel shall not park any vehicle on or near the location of the Event in other than designated parking areas. Personal vehicles may be used to make deliveries to Hotel tent(s), but must be parked in the designated area immediately after unloading.
26. Hotel agrees to pay promptly all taxes and applicable fees and to take out all permits and licenses, municipal, state or federal, required for the permitted usage. Hotel agrees to furnish Addison, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment of all taxes and fees and showing that all required permits and licenses are in effect.
27. Addison may designate certain of its agents, officers or employees as inspectors and Hotel agrees that the inspectors have the right, at any time and as often as Addison may consider necessary, to inspect any property, services or activities of Hotel on the premises. Hotel shall give the inspectors free access to any space used by Hotel or under its control for the inspection and shall, upon request of an inspector, operate any machinery, mechanical devices, or electrical appliances owned, maintained, or in the possession of Hotel on the premises, or operate any process or activities carried on by Hotel. The police and fire force or other authorized agents of Addison shall be given free access in accordance with the rules and regulations of Addison at any time to any space used by Hotel or under its control, for the purpose of maintaining order and safety or of enforcing any rule or regulation of Addison.

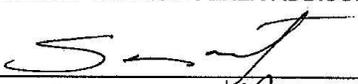
28. Addison reserves the right to (i) control and manage the entire Event location, (ii) enforce all necessary and proper rules for its management and operation, and (iii) have its authorized representatives enter the Hotel's tent(s) at any time and on any occasion. Addison also shall have the right, but not the duty, through its duly appointed representatives, to eject any objectionable person(s) from the Event site and Hotel's tent(s), and Hotel waives any claims for damages against Addison or any of its officers, agents or employees resulting from the reasonable exercise of this authority. Addison reserves the right to manage and control all parking facilities on the Event site.
29. Failure by the Hotel to comply with any of the terms of this Contract shall be sufficient cause for the termination of this contract by Addison. In the event of termination, Hotel shall immediately vacate Event property removing all equipment, materials, and supplies; in addition, Addison shall have other rights and remedies available at law or in equity. Hotel acknowledges that this contract is not a lease but only a revocable license to operate the activity described herein.
30. Hotel acknowledges and understands that the privilege to provide services granted herein is nonexclusive.
31. This Contract contains the entire agreement of Hotel and Addison and may not be amended, modified or altered without the express written consent of Addison and the Hotel.
32. This Contract shall be subject to any and all reasonable rules and regulations imposed by Addison.
33. This Contract shall be interpreted by Texas law and is performable for all purposes in the County of Dallas, State of Texas.
34. 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 acts extending said authority have been duly passed and are now in full force and effect.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 2016.

**TOWN OF ADDISON, TEXAS**

**VENDOR: CROWNE PLAZA ADDISON**

By \_\_\_\_\_

By  \_\_\_\_\_

Title City Manager

Title GENERAL MANAGER

TOWN OF ADDISON, TEXAS

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

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A NON-EXCLUSIVE FOOD AND BEVERAGE VENDING CONTRACT BETWEEN THE TOWN OF ADDISON AND MARRIOTT QUORUM HOTEL FOR MUSIC, BEVERAGE AND FOOD SERVICES DURING OKTOBERFEST, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** The Non-Exclusive Food and Beverage Vending Contract between the Town of Addison and Marriott Quorum Hotel for music, beverage and food services during Oktoberfest, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved. The City Manager is hereby authorized to execute the contract.

**Section 2.** This Resolution shall take effect from and after its date of adoption.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this the 13<sup>th</sup> day of September, 2016.

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

ATTEST:

By: \_\_\_\_\_  
Laura Bell, City Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Brenda N. McDonald, City Attorney

NON-EXCLUSIVE FOOD & BEVERAGE VENDING CONTRACT

STATE OF TEXAS       #  
COUNTY OF DALLAS   #

THIS CONTRACT is entered into by and between the TOWN OF ADDISON, TEXAS (hereinafter referred to as "Addison"), and MARRIOTT QUORUM HOTEL (hereinafter referred to as "Hotel"), on the date indicated below.

W I T N E S S E T H

WHEREAS, a special event known as Oktoberfest (hereinafter referred to as "Event") shall take place within the Town of Addison on the following dates: **September 15, 16, 17, and 18, 2016;**

WHEREAS, Addison is sponsoring and hosting the Event in whole or in part; and

WHEREAS, Hotel desires to provide music, beverage and food service to patrons of the Event; and

WHEREAS, the Addison City Manager has heretofore authorized the Addison Director of Special Events to enter into Contracts with Hotels providing terms and conditions such service.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, Addison and Hotel do hereby agree and contract as follows:

1. The term of this Contract shall be for the following days and times:  

<b>September 15, 2016</b>	<b>6:00 pm to 11:00 pm</b>
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2. The hours of operation of the Event shall be those scheduled by Addison. Hotel shall have a reasonable amount of time to set up prior to its commencement and to tear down after its conclusion. Addison reserves the right to regulate the hours that the concession(s) remain open. Concession hours shall end each day as follows:

<u>Date</u>	<u>Food Sales</u>	<u>Alcoholic Beverage</u>
Thursday, September 15, 2016	11:00 pm	10:00 pm
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3. Hotel agrees that no representations have been made by Addison or by any of its agents, officers or employees that the preparation of the Event site shall be advanced to any particular stage upon any particular date, or that any warranty is being made as to the opening date of the Event. It is understood that Addison is making every reasonable effort to proceed with preparation of the Event site and construction so that the Event shall open as scheduled, and that Hotel shall have reasonable time prior to this date for the preparation of projects. If the Event does not open as scheduled or at all, Addison shall be under no liability to Hotel for any claims for damages.
  
4. Should the Event be postponed or canceled for an Act of God, public safety, welfare or for whatever reason, Hotel hereby releases Addison from any and all liability and claims for damages which result from such postponement or cancellation.

5. Hotel shall furnish and serve food and beverages to patrons of the Event. In addition, it shall provide decorations and signs appropriate to the Event subject to the provisions contained in paragraph 24. Hotel shall furnish food, food service items and a sufficient number of personnel to perform food service duties. Hotel understands and acknowledges that the rights granted to it hereunder by Addison are not exclusive and that other hotels and groups, including the Crowne Plaza, and certain German groups shall be granted a similar right to sell concessions, food, beverages and merchandise.
7. Hotel shall file with the Addison City Manager or his designee prior to **Friday, August 12, 2016** a detailed outline of the service the Hotel shall provide all staging requirements and all other information required by Addison personnel concerning the Event.
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12. Hotel shall not sublet or assign this Contract to any other person, or any of the privileges conveyed herein, except with the prior written approval of Addison. Any approved assignee shall be subject to all the provisions and requirements of this Contract.
13. During the course of the Event, Hotel shall maintain the areas inside their tent(s) and in the main tent seating areas designated to each Hotel for patrons in a clean and sanitary condition. Hotel shall pick-up all trash, food, etc. off of ground and shall keep tables clean ongoing during the Event. Addison shall empty full trash receptacles and remove from the main tent. Addison shall clean and maintain all areas outside the tents during the Event and shall clean the entire site of the Event after the Event has concluded.

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15. Addison shall have the right, but not the duty, to supervise the manner of exercising the operation of the activity by Hotel. However, in doing so Addison is expressly not accepting responsibility for such operations and conduct. Hotel shall remain liable for such operations and conduct.
16. Hotel agrees that its employees involved with the Event shall not drink any beer, wine or other alcoholic beverage while in performance of their duties under this Contract, and that all such employees who operate utility carts for the transportation of materials shall exercise the utmost caution when operating the carts.
17. HOTEL AGREES TO AND SHALL INDEMNIFY ADDISON, TEXAS, ITS OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS AGAINST, AND HOLD ADDISON, ITS OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS HARMLESS FROM, ANY AND ALL CLAIMS, ACTIONS, CAUSES OF ACTION, LAWSUITS, LIABILITY, JUDGMENTS, DAMAGES, INJURIES, PENALTIES, LOSSES, COSTS OR EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES, ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS, AND COSTS OF DEFENSE), FOR PERSONAL INJURY (INCLUDING WITHOUT LIMITATION, SICKNESS, EMOTIONAL AND PSYCHOLOGICAL INJURY, DISEASE OR DEATH), DAMAGE TO OR DESTRUCTION OF ANY PROPERTY (INCLUDING, WITHOUT LIMITATION, LOSS OF USE OF PROPERTY NOT OTHERWISE PHYSICALLY DAMAGED), BREACH OF CONTRACT, BREACH OF THE INSURANCE REQUIREMENTS SET FORTH IN SECTION 21 OF THIS CONTRACT, OR ANY OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR ORGANIZATION, THAT MAY ARISE OUT OF ANY ACT OR OMISSION OF HOTEL, ITS AGENTS, OFFICERS AND EMPLOYEES, INCLUDING WITHOUT LIMITATION ANY SUCH ACT OR OMISSION IN BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, OR ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION, IN THE PERFORMANCE OR UNDER THE PROVISIONS OF THIS CONTRACT (INCLUDING BUT NOT LIMITED TO THE PROVISION OR SERVING OF FOOD, ALCOHOLIC BEVERAGES OR MUSIC.) THIS INDEMNITY IS INTENDED TO PROTECT ADDISON, ITS AGENTS, OFFICERS AND EMPLOYEES. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.  
  
HOTEL, ITS OFFICERS, AGENTS AND EMPLOYEES DO HEREBY WAIVE ANY AND ALL CLAIMS FOR DAMAGE, INJURY OR LOSS TO ANY PERSON OR PROPERTY, INCLUDING THE DEATH OF ANY PERSON THAT MAY BE CAUSED, IN WHOLE OR IN PART, BY THE ACT OR FAILURE TO ACT OF ADDISON, ITS OFFICERS, AGENTS OR EMPLOYEES. HOTEL, ITS OFFICERS, AGENTS AND EMPLOYEES ASSUME THE RISK OF ALL CONDITIONS, WHETHER DANGEROUS OR OTHERWISE, IN AND ABOUT THEIR TENTS, AND WAIVE ANY AND ALL SPECIFIC NOTICE OF THE EXISTENCE OF ANY DEFECTIVE OR DANGEROUS CONDITION IN OR ABOUT THEIR TENTS. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE TERMINATION, COMPLETION, OR EXPIRATION OF THIS CONTRACT.
18. HOTEL HEREBY RELEASES ADDISON FROM ANY ACTIONS FOR ANY LOSS OR DAMAGE SUSTAINED BY REASON OF ANY DEFECT OF ANY PART OF THE WATER SUPPLY SYSTEM, THE SEWAGE AND DRAINAGE SYSTEM, THE GAS SYSTEM, ELECTRICAL APPARATUS OR WIRING ON THE EVENT SITE OR TENT(S) OR ANY OTHER PREMISES OR BAND STAND, AND FOR ANY LOSS OR DAMAGE RESULTING FROM FIRE, THEFT, WATER, TORNADO, RAIN, SNOW, STRIKES, CIVIL COMMOTION OR RIOT, OR OTHERWISE, UNLESS CAUSED BY THE GROSS NEGLIGENCE OF ADDISON.
19. ADDISON ASSUMES NO RESPONSIBILITY FOR ANY PROPERTY PLACED ON THE PREMISES, AND HOTEL HEREBY RELEASES ADDISON, ITS OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS FROM ANY AND ALL LIABILITY FOR ANY LOSS, INJURY OR DAMAGES TO PERSON OR PROPERTY THAT ARE SUSTAINED BY REASON OF THE OCCUPANCY OF THE EVENT SITE UNDER THIS CONTRACT. ALL WATCHMEN OR OTHER PROTECTIVE SERVICE DESIRED BY HOTEL MUST BE ARRANGED FOR BY SPECIAL AGREEMENT WITH ADDISON.
20. Hotel may begin set up for the Event on **Monday, September 12, 2016 after 10:00 a.m.** All property of Hotel shall be removed from the Event site on or before **Monday, September 19, 2016 at 5:00 p.m.** (the "Time of Removal") or prior to the Time of Removal in the event of termination of this Contract. If any part of the Hotel's tent(s) is not vacated at or before the Time of Removal or within a reasonable time following the termination hereof, then Addison is

authorized to remove from the premises and store, without resorting to any legal proceeding and at the sole expense of Hotel, all property occupying a portion of the Hotel's tent(s) and shall not be liable for any damage to or loss of any property sustained during its removal and storage. Upon termination of this Contract, Hotel shall deliver the Hotel tent(s) area to Addison in as good condition as at the beginning of the terms of this Contract, except for ordinary wear and tear. The terms of this paragraph shall survive the termination of the Contract.

21. For purposes of this Contract and at all times during the Event, Hotel shall provide and maintain the minimum insurance coverages set forth below (and shall show proof of such coverages at the time of the execution of this Contract):
- a) Commercial General Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate for bodily injury and property damage; \$1,000,000 for personal injury and advertising injury; and a \$2,000,000 annual aggregate for products/completed operations. Commercial General Liability coverage must include Premises, Operations, Contractual Liability, Products/Completed Operations, Independent Contractors, and Liquor Liability.
  - b) Workers Compensation insurance at statutory limits, including Employers Liability coverage at minimum limits of \$1,000,000 each-occurrence each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease aggregate.
  - c) Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage.
  - d) Other Provisions.
    1. The required limits may be satisfied by any combination of primary, excess, or umbrella liability insurances, provided the primary policy complies with the above requirements and the excess/umbrella is a "following form" policy, at a minimum.
    2. All insurance policies that name the City as an additional insured must be endorsed to read as primary coverage regardless of the application of other insurance.
    3. The Hotel is solely responsible for maintaining insurance coverage on its personal property.
    4. In the event that the Hotel in any manner employs, hires, or makes use of any sub-contractor in the performance of any of its rights and duties in this Agreement, the Hotel shall require that each and every such sub-contractor maintain the following insurance coverages, and that such coverages are endorsed to include the Hotel and the City as additional insureds:
      - (a) Commercial General Liability coverages written on a standard and approved ISO form, with combined single limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate for bodily injury and property damage; \$2,000,000 for personal injury; and a \$2,000,000 annual aggregate for Products/Completed Operations. Coverage must include Contractual Liability and Products/Completed Operations, and Liquor Liability.
      - (b) Workers' Compensation insurance at statutory limits, including Employers' Liability coverage at minimum limits of \$1,000,000 each occurrence each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease

aggregate.

- (c) Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including Owned, Non-Owned and Hired Car Coverage. This coverage must be written on a standard and approved ISO form.

5. With reference to the foregoing insurance requirements Hotel and its contractors shall specifically endorse applicable insurance policies as follows:

- a) The Town of Addison, Texas shall be named as an additional insured with respect to Commercial General Liability and Automobile Liability.
- b) All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.
- c) A waiver of subrogation in favor of the Town of Addison shall be contained in the Workers Compensation and all liability policies.
- d) All insurance policies shall be endorsed to require the insurer to immediately notify the Town of Addison of any material change in the insurance coverage.
- e) All insurance policies shall be endorsed to the effect that the Town of Addison will receive at least sixty (60) days' notice prior to cancellation or non-renewal of the insurance.
- f) All insurance policies, which name the Town of Addison as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
- g) Required limits may be satisfied by any combination of primary and umbrella liability insurances.
- h) Hotel may maintain reasonable and customary deductibles, subject to approval by the Town of Addison.
- i) Insurance must be purchased from insurers that meet the following requirements:
  - 1. A minimum financial rating of A- VII as currently assigned in *BEST'S KEY RATING GUIDE*.
  - 2. Licensed and admitted to do business by the Texas Department of Insurance. Non-Admitted carriers are acceptable only if the coverage is not available from an admitted carrier and the following criteria are satisfied:
    - (a) The carrier is approved by NAIC or is approved (or has not been disapproved) by the Texas Department of Insurance.
    - (b) The policy must include a Service of Suit Endorsement.
    - (c) All requirements of the Surplus Lines Stamping Office of Texas, including filing of all appropriate policy forms, and payment of all taxes and fees.

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

Insurance, including the Surplus Lines Stamping Office of Texas, if applicable. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting the following:

- a) Sets forth all endorsements and insurance coverages according to requirements and instructions contained herein.
- b) Shall specifically set forth the notice-of-cancellation or termination provisions to the Town of Addison.

Upon request, Hotel shall furnish the City Manager with certified copies of all insurance policies.

The parties acknowledge and agree that in the event that Hotel, by its acts, omissions or conduct causes or contributes to any lapse, cancellation, denial of coverage, or any other prejudice to the applicability of any of the above referenced insurance coverages and requirements, that such acts, omissions, or conduct shall constitute a material breach of the terms of this Agreement.

22. This Contract does not include the use of broadcasting or television facilities or the use of the Hotel's tent(s) for any activities other than those described herein, arrangements for which must be made with Addison. Addison shall advertise and promote the Event at its cost and shall choose the media for such advertisement.
23. Hotel hereby gives to Addison the permission and a limited and non-exclusive license to use any copyrighted material to which Hotel may own a right in connection with the Event. Provided Addison is not in default of this section of the Agreement, then Hotel agrees not to sue Addison for any potential infringement thereof.
24. Hotel shall use and display only those signs which pertain to the Event and which have been approved by Addison prior to **September 1, 2016**. Hotel shall comply with any and all sign permit requirements for the display of such signs. Hotel shall not use or otherwise mention the Event in any advertising or promotion without the prior written consent of Addison.
25. Hotel shall not park any vehicle on or near the location of the Event in other than designated parking areas. Personal vehicles may be used to make deliveries to Hotel tent(s), but must be parked in the designated area immediately after unloading.
26. Hotel agrees to pay promptly all taxes and applicable fees and to take out all permits and licenses, municipal, state or federal, required for the permitted usage. Hotel agrees to furnish Addison, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment of all taxes and fees and showing that all required permits and licenses are in effect.
27. Addison may designate certain of its agents, officers or employees as inspectors and Hotel agrees that the inspectors have the right, at any time and as often as Addison may consider necessary, to inspect any property, services or activities of Hotel on the premises. Hotel shall give the inspectors free access to any space used by Hotel or under its control for the inspection and shall, upon request of an inspector, operate any machinery, mechanical devices, or electrical appliances owned, maintained, or in the possession of Hotel on the premises, or operate any process or activities carried on by Hotel. The police and fire force or other authorized agents of Addison shall be given free access in accordance with the rules and regulations of Addison at any time to any space used by Hotel or under its control, for the purpose of maintaining order and safety or of enforcing any rule or regulation of Addison.

28. Addison reserves the right to (i) control and manage the entire Event location, (ii) enforce all necessary and proper rules for its management and operation, and (iii) have its authorized representatives enter the Hotel's tent(s) at any time and on any occasion. Addison also shall have the right, but not the duty, through its duly appointed representatives, to eject any objectionable person(s) from the Event site and Hotel's tent(s), and Hotel waives any claims for damages against Addison or any of its officers, agents or employees resulting from the reasonable exercise of this authority. Addison reserves the right to manage and control all parking facilities on the Event site.
29. Failure by the Hotel to comply with any of the terms of this Contract shall be sufficient cause for the termination of this contract by Addison. In the event of termination, Hotel shall immediately vacate Event property removing all equipment, materials, and supplies; in addition, Addison shall have other rights and remedies available at law or in equity. Hotel acknowledges that this contract is not a lease but only a revocable license to operate the activity described herein.
30. Hotel acknowledges and understands that the privilege to provide services granted herein is nonexclusive.
31. This Contract contains the entire agreement of Hotel and Addison and may not be amended, modified or altered without the express written consent of Addison and the Hotel.
32. This Contract shall be subject to any and all reasonable rules and regulations imposed by Addison.
33. This Contract shall be interpreted by Texas law and is performable for all purposes in the County of Dallas, State of Texas.
34. 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 acts extending said authority have been duly passed and are now in full force and effect.

EXECUTED this 12 day of August, 2016.

TOWN OF ADDISON, TEXAS

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

VENDOR: MARRIOTT QUORUM HOTEL  
 WS MQ Hotel, LLC  
 By: Albridge Hospitality, LLC as agent for Owner

By   
 Title: Vincent F. Cuce  
Authorized Signer

**Work Session and Regular Meeting**

Meeting Date: 09/13/2016

Department: General Services

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**AGENDA CAPTION:**

Consider A **Resolution Authorizing The City Manager To Enter Into An Events Sponsorship Agreement With DCO Reality, Inc., For The Purposes Of Sponsoring Events At Vitruvian Park To Include, But Not Limited To, The Vitruvian Nights Live, Vitruvian Salsa Nights And The Vitruvian Holiday Lights Display In An Amount Not To Exceed \$185,000.00 For Fiscal Year 2016.**

**BACKGROUND:**

The Town of Addison and DCO Reality, Inc., (UDR) the developer/manager of Vitruvian Park entered into an event sponsorship reimbursement agreement in 2012 that is presented to Council for renewal annually. DCO Reality, Inc., desires to conduct and present a variety of public events within the Vitruvian Park area. The Town desires to participate in the public events and activities as a sponsor and as such entered into this agreement with DCO Reality, Inc., for sponsorship reimbursement purposes in the amount of \$185,000.00.

These funds are used as referenced below:

- Vitruvian Christmas Lights Display
- Vitruvian Nights Live
- Vitruvian Salsa Nights
- Additional events as money is available

From 2012 to 2014 the contracting of the vendor to install, maintain and remove the holiday lights component of the events was hired directly by UDR and paid for from the Towns sponsorship funds.

In 2014 the Town Attorney recommended that the Town bid out and hire the lighting contractor for the holiday display directly. As of 2015, the Town no longer reimburses UDR for this event as the Town staff manages the bidding and procurement of the contractor to install, maintain and remove the holiday lights each season and funds it directly from the sponsorship funds before any remaining funds are allocated to UDR.

Other events that are funded from the sponsorship include, but are not limited to the Vitruvian Nights Live and the Vitruvian Salsa Nights. The amount of funds remaining that are available to reimburse UDR for these events may vary from year to year after the Town has paid for the holiday lighting display.

**RECOMMENDATION:**

Administration recommends approval.

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**Attachments**

Resolution with Agreement

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**TOWN OF ADDISON, TEXAS**

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

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING AN EVENTS AGREEMENT BETWEEN TOWN OF ADDISON AND DCO REALTY, INC. FOR THE MANAGEMENT, OPERATION, COORDINATION AND CONTROL OF A VARIETY OF EVENTS AT VITRUVIAN PARK, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT, AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Addison is authorized by Chapter 351 of the Texas Property Tax Code to levy a hotel occupancy tax to be used to directly enhance and promote tourism and the convention and hotel industry; and

**WHEREAS**, the Vitruvian Nights Live, Vitruvian Salsa Festival and other special events conducted by DCO Realty, Inc. within Vitruvian Park bring thousands of visitors and tourists to the Town of Addison, many of whom will stay at Addison hotels.

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

**Section 1.** The Events Agreement between Town of Addison and DCO Realty, Inc. for the management, operation, coordination and control of a variety of events at Vitruvian Park, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved and the City Manager is hereby authorized to execute the agreement.

**Section 2.** This Resolution shall take effect from and after its date of adoption.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this the 13<sup>th</sup> day of September, 2016.

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

ATTEST:

By: \_\_\_\_\_  
Laura Bell, City Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Brenda N. McDonald, City Attorney



STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS       §

**EVENTS AGREEMENT**

This Events Agreement (“Agreement”) is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2016 (“Effective Date”) by and between the Town of Addison, Texas (“City” or “Addison”) and DCO Realty, Inc., a Delaware corporation (“DCO”) (the City and DCO are sometimes referred to herein together as the “parties” and individually as a “party”).

Recitals:

1. Except for properties owned by the City, DCO is the owner, manager, or otherwise has control over that area within the City that is known as Vitruvian Park and that is generally located along each side of Vitruvian Way, south of Spring Valley Road, and east of Marsh Lane.
2. DCO desires to conduct and present a variety of public events and activities within that area as described herein, and the City desires to participate in the public events and activities as set forth in this Agreement.
3. The public events and activities within Vitruvian Park attract individuals from throughout the region to 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 City and DCO do hereby contract and agree as follows:

Section 1. Events; Term. DCO will conduct, present, manage, operate, coordinate, and control a variety of events (including Vitruvian Nights Live and Vitruvian Salsa Festival, or the like) (collectively, the “Events” and each an “Event”) and during the period of time of October 1, 2015 to September 1, 2016 (the “Events Period”). The Events will be conducted at and within that area of the City depicted and described in the attached Exhibit A (“Event Site”). A portion of the Event Site is a public park and open space area generally referred to as Vitruvian Park, which portion is shown on Exhibit A (and is referred to herein as the “Vitruvian Park Portion”). DCO is solely responsible for the Events.

DCO will conduct each Event in accordance and compliance with the terms and conditions hereof and all laws, ordinances, rules, regulations, standards, guidelines, and policies of the City or any other governmental authority having jurisdiction over the Event or the Event Site.

This Agreement shall be effective as of the Effective Date first set forth above and continue in effect through the end of the Events Period, subject, however, to the termination provisions of this Agreement.

Section 2. Sponsorship; Sponsorship Benefits. The City will be a sponsor of the Events as set forth herein. The City shall make available to DCO an annual sponsor fee (the “Sponsor Fee”) in an annual amount of \$185,000.00 to cover the cost of the Events during the

Events Period. . It is understood and agreed that the City will bid, hire and provide payment directly to a lighting contractor for the annual holiday light show (“Light Show”). The cost of the Light Show shall be deducted from the Sponsor Fee; and the remaining balance, if any, shall be submitted to DCO to cover the costs of other Events scheduled during the Events Period.

The Events will be designed to enhance and promote the identity of the Vitruvian Park area of Addison, which will in turn benefit hotels, retail, restaurant and housing providers in that area. The Events will create an entertainment amenity for all Addison residents, for those that live or work in the surrounding area and for regional tourists. In addition to these benefits to the City, for the City’s sponsorship of each Event, DCO will provide the City with the following benefits:

- (a) a listing of the City logo as a sponsor of the Events on collateral pieces, including but not limited to posters, fliers, invitations, admission passes, tickets, brochures, programs, etc.;
- (b) a listing of the City logo as a sponsor of the Events on all print, broadcast, outdoor and electronic advertising, including but not limited to newspaper ads, magazine ads, radio ads, billboards, newsletters, web communications, etc.;
- (c) a listing of the City as a sponsor of the Events in all press releases, and other communications regarding the Events;
- (d) a listing of the City logo as a sponsor on all street banners and signs in connection with the Events;
- (e) the inclusion of the Addison logo on the web site ([www.vitruvianpark.com](http://www.vitruvianpark.com)) and links to the City’s websites ([www.addisontexas.net](http://www.addisontexas.net)); and
- (f) provide recognition of the Town of Addison from the stage at the Events.

Section 3. Event Promotion, Advertising. Any promotion or advertising by, for, or on behalf of DCO or the City of any of the Events that references Addison or the Vitruvian Park Portion shall, before being used for promotion or advertising purposes, first be submitted to Addison or DCO, as applicable, for its prior review and approval (if any), which approval shall not be unreasonably withheld, conditioned or delayed. In the event Addison or DCO, as applicable, fails to disapprove (with specific comments regarding the reason(s) for such disapproval) such promotion or advertising within ten (10) calendar days after the same is submitted (or resubmitted after modifications, as the case may be) to Addison or DCO, as applicable, such promotion or advertising shall be deemed approved. The parties agree that the type of promotions and advertising provided for the same or similar events in the Town of Addison prior to this Agreement are acceptable.

The City will promote the Events and will, among other things, (a) list the Events on the City’s website ([www.addisontexas.net](http://www.addisontexas.net)) with a link to DCO’s website ([www.vitruvianpark.com](http://www.vitruvianpark.com)), (b) display banners (as approved by the City, if at all and in the City’s sole discretion, and subject to availability) across Belt Line Road advertising the Events (which banners, if any, will be supplied by DCO to the City no later than three (3) days prior to display), and (c) promote the Events on the City’s social media sites.

Section 4. Termination.

- (a) Either party may terminate this Agreement if the other party commits a material breach of this Agreement, and
- (i) such breach remains uncured for a period of 10 calendar days after notice thereof (which notice shall specifically identify the breach) is received by the breaching party, or
  - (ii) if the breach cannot with diligence be cured within said 10 day period, if within such period the breaching party provides the non-breaching party written notice of the curative measures which it proposes to undertake, and proceeds promptly to initiate such measures to cure such breach, and thereafter prosecutes the curing of such breach with diligence and continuity, the time within which such failure may be cured shall be extended for such period as may be necessary to complete the curing of such breach with diligence and continuity, not to exceed 30 calendar days following the occurrence of the breach unless otherwise agreed by the parties,

Upon termination of this Agreement by Addison pursuant to this subsection 4(a), Addison will pay to DCO any amounts then due pursuant to this Agreement through the date of such termination, but no further or additional payments will be made (and if any payment has been made for which services have not been provided, DCO will reimburse to Addison proportional amount of such payment equal to the value of the services not received). Upon termination of this Agreement by DCO pursuant to this subsection 4(a), Addison will pay to DCO the then unpaid portion of the Sponsor Fee.

(b) This Agreement may also be terminated by either party hereto for any reason or for no reason upon giving at least thirty (30) days written notice of such termination to the other party hereto. If Addison terminates this Agreement pursuant to this subsection 4(b), Addison will pay to DCO the then unpaid portion of the Sponsor Fee.. If DCO terminates this Agreement pursuant to this subsection 4(b), Addison will pay to DCO any amounts then due pursuant to this Agreement through the date of such termination but no further or additional payments will be made (and if any payment has been made for which services have not been provided, DCO will reimburse to Addison proportional amount of such payment equal to the value of the services not received).

(c) Payment obligations under this Section 4 shall survive termination of this Agreement.

Section 5. Insurance. At all times in connection with this Agreement, DCO shall purchase and maintain in a company or companies lawfully authorized to do business in Texas such insurance coverages set forth in Section 67-16(b)(4) of the Code of Ordinances of the City, a copy of which is attached as Exhibit B to this Agreement (with the addition that the requirement for commercial general liability shall also include coverage for death); provided, however, that the City Manager may waive the requirement of any of such insurance where, in the sole opinion of the City Manager, such insurance is not necessary to cover or protect a function or purpose of this Agreement.

In addition to the provisions of Section 67-16(b)(4), DCO shall specifically endorse applicable insurance policies as follows:

- (i) The Town of Addison, Texas shall be named as an additional insured with respect to General Liability and Automobile Liability.
- (ii) All liability policies shall contain no cross liability exclusions or insured versus insured restrictions applicable to the claims of the Town of Addison, Texas.
- (iii) A waiver of subrogation in favor of the Town of Addison, Texas, its elected officials, its officers, employees, and agents shall be contained in each policy required herein.
- (iv) Reserved.
- (v) All insurance policies shall be endorsed to the effect that the Town of Addison, Texas will receive at least sixty (60) days' notice prior to cancellation or non-renewal of the insurance.
- (vi) All insurance policies, which name the Town of Addison, Texas as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
- (vii) Required limits may be satisfied by any combination of primary and umbrella liability insurances.
- (viii) DCO may maintain reasonable and customary deductibles, subject to approval by the Town of Addison, Texas.
- (ix) Insurance must be purchased from insurers that are financially acceptable to the Town of Addison, Texas and licensed to do business in the State of Texas.

Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, delivered to DCO and the City prior to the commencement of each Event, and shall:

- (i) List each insurance coverage described and required herein. Such certificates will also include a copy of the endorsements necessary to meet the requirements and instructions contained herein.
- (ii) Specifically set forth the notice-of-cancellation or termination provisions to the Town of Addison.

Upon request, DCO shall furnish the Town of Addison with complete copies of all insurance policies certified to be true and correct by the insurance carrier.

Section 6. **Responsibility, Assumption of Risk.** In connection with the Events and this Agreement and for the consideration set forth herein, **DCO agrees to assume and does hereby assume all responsibility and liability for any and all damages or destruction of any property or personal injuries (including death) to any person of whatsoever kind or nature**

caused by, arising out of, or in connection with DCO's conducting, presentation, management, operation, coordination, and control of the Events as set forth in Section 1 of this Agreement or by any act or omission of any DCO Persons (as defined in Section 7, below). Addison assumes, and shall have, no responsibility for any property placed by DCO or by any DCO Persons on the Event Site, and DCO hereby RELEASES Addison and all Addison Persons from any and all claims or liabilities of any kind or nature whatsoever for any loss, injury or damages whatsoever to persons or property that are sustained by reason of the occupancy of the Event Site.

DCO, for itself and the DCO Persons do hereby ASSUME THE RISK of all conditions, whether dangerous or otherwise, in and about the Vitruvian Park Portion, and waive any and all specific notice of the existence of any defective or dangerous condition in or about the same. The provisions of this paragraph shall survive the termination of this Agreement and the Events.

The provisions of this Section shall survive the expiration or termination of this Agreement.

Section 7. **DCO's INDEMNITY OBLIGATION.** FOR THE CONSIDERATION SET FORTH IN THIS AGREEMENT, DCO COVENANTS AND AGREES TO FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS ADDISON, ITS ELECTED AND APPOINTED OFFICIALS, ITS OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS, INDIVIDUALLY OR COLLECTIVELY, IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES (COLLECTIVELY, "**ADDISON PERSONS**" AND EACH AN "**ADDISON PERSON**"), FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITY, 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 OR ANY OTHER ADDISON PERSON, WHETHER DIRECTLY OR INDIRECTLY, (THE "**CLAIMS**"), THAT ARISE OUT OF, RESULT FROM, OR RELATE TO:

- (1) DCO'S CONDUCTING, PRESENTATION, MANAGEMENT, OPERATION, COORDINATION, AND CONTROL OF THE EVENTS AS SET FORTH IN SECTION 1 OF THIS AGREEMENT,
  - (2) REPRESENTATIONS OR WARRANTIES BY DCO UNDER THIS AGREEMENT,
  - (3) ANY PERSONAL INJURIES (INCLUDING BUT NOT LIMITED TO DEATH) TO ANY DCO PERSONS (AS HEREINAFTER DEFINED) ARISING OUT OF OR IN CONNECTION WITH DCO'S CONDUCTING, PRESENTATION, MANAGEMENT, OPERATION, COORDINATION, AND CONTROL OF THE EVENTS, AND/OR
  - (4) ANY OTHER ACT OR OMISSION UNDER, IN CONNECTION WITH, OR IN PERFORMANCE OF THIS AGREEMENT BY
- (1) DCO OR BY ANY OF ITS OWNERS, PARTNERS, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS, REPRESENTATIVES, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INVITEES, OR CONCESSIONAIRES, OR ANY OTHER PERSON OR ENTITY FOR WHOM DCO IS LEGALLY RESPONSIBLE, BY

- (II) ANY AFFILIATE OF DCO OR ANY AFFILIATE'S OWNERS, PARTNERS, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS, REPRESENTATIVES, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INVITEES, OR CONCESSIONAIRES, OR OF ANY OTHER PERSON OR ENTITY FOR WHOM SUCH AFFILIATE IS LEGALLY RESPONSIBLE, AND/OR BY
- (III) THE RESPECTIVE OWNERS, PARTNERS, OFFICERS, MANAGERS, EMPLOYEES, DIRECTORS, AGENTS, REPRESENTATIVES, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES, AND CONCESSIONAIRES OF THE ENTITIES AND PERSONS DESCRIBED IN THE FOREGOING (I) AND (II) (THE ENTITIES AND PERSONS DESCRIBED IN THE FOREGOING (I), (II), AND (III) BEING COLLECTIVELY "DCO PERSONS").

SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE DAMAGES ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF ADDISON AND/OR ANY OTHER ADDISON PERSON, OR CONDUCT BY ANY ADDISON AND/OR ANY OTHER ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, BUT DOES NOT INCLUDE ANY CLAIMS FOUND TO BE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ADDISON AND/OR ANY OTHER ADDISON PERSON. HOWEVER, DCO'S LIABILITY UNDER THIS CLAUSE SHALL BE REDUCED BY THAT PORTION OF THE TOTAL AMOUNT OF THE CLAIMS (INCLUDING 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.

FOR PURPOSES HEREOF, "AFFILIATE" MEANS (A) ALL PERSONS, CORPORATIONS, AND OTHER ENTITIES, IF ANY, CONTROLLED BY DCO, (B) ALL PERSONS, CORPORATIONS, AND OTHER ENTITIES WHICH CONTROL DCO ("PARENT"), AND (C) ALL PERSONS, CORPORATIONS, AND OTHER ENTITIES CONTROLLED BY A PARENT; AND "CONTROL" MEANS THE POSSESSION, DIRECTLY OR INDIRECTLY, OF THE POWER TO DIRECT OR CAUSE THE DIRECTION OF THE MANAGEMENT AND POLICIES OF AN ENTITY, WHETHER THROUGH OWNERSHIP OF VOTING SECURITIES OR PARTNERSHIP INTERESTS, BY CONTRACT, OR OTHERWISE.

EACH PARTY SHALL PROMPTLY ADVISE THE OTHER PARTY IN WRITING OF ANY CLAIM OR DEMAND AGAINST ANY ADDISON PERSON, DCO, OR ANY DCO PERSON RELATED TO OR ARISING OUT OF DCO'S ACTIVITIES UNDER THIS AGREEMENT, AND, TO THE EXTENT REQUIRED UNDER THIS SECTION 7, DCO SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT DCO'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 DCO OF ANY OF ITS OBLIGATIONS HEREUNDER.

THE PROVISIONS OF THIS DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

Section 8. Miscellaneous.

(a) *Notices.* For purposes of this Agreement and except as otherwise provided for in this Agreement, notices and all other communications provided for herein shall be in writing, addressed as provided hereinafter to the party to whom the notice or request is given, and shall be either (i) delivered personally, (ii) sent by United States certified mail, postage prepaid, return

receipt requested, or (iii) placed in the custody of Federal Express Corporation or other nationally recognized carrier to be delivered next business day. Notice shall be deemed given when received if delivered personally or if sent by Federal Express or other nationally recognized carrier; or seventy-two (72) hours after deposit if sent by certified mail.

Addresses for notices and communications are as follows:

<u>To DCO:</u>	<u>To Addison:</u>
c/o UDR, Inc. 1745 Shea Center Drive, Suite 200 Highlands Ranch, CO 80129 Attn: Legal Department	Town of Addison, Texas 5300 Belt Line Road Dallas, Texas 75254 Attn: City Manager

From time to time either party may designate another address within the United States for all purposes of this Agreement by giving the other party not less than ten (10) days advance notice of such change of address in accordance with the provisions hereof.

(b) *Independent Contractors.* This Agreement shall not be deemed to create a joint venture, joint enterprise, partnership, principal-agent, employer-employee or similar relationship between DCO and Addison. DCO and Addison are and shall be acting as independent contractors under this Agreement.

(c) *Assignment; Binding Agreement.* DCO shall not, and has no authority to, assign, sell, pledge, transfer, encumber, or otherwise convey (any of the foregoing, and the occurrence of any of the foregoing, a “Conveyance”) in any manner or form whatsoever (including by operation of law, by merger, or otherwise) all or part of its rights and obligations hereunder without the prior written approval of the City. Any Conveyance of any kind or by any method without the City’s prior written consent shall be null and void. This Agreement shall be binding on and inure to the benefit of the parties, their respective permitted successors and permitted assigns.

(d) *Construction of Terms.* For purposes of this Agreement, (i) “includes” and “including” are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded, and (ii) “day” or “days” means calendar days. The use of any gender in this Agreement shall be applicable to all genders, and the use of singular number shall include the plural and conversely. Article and section headings are for convenience only and shall not be used in interpretation of this Agreement.

(e) *Rights, Remedies; Waiver.* Except as set forth in or otherwise limited by this Agreement, the remedies and rights set forth in this Agreement: (a) are and shall be in addition to any and all other remedies and rights either party may have at law, in equity, or otherwise, (b) shall be cumulative, and (c) may be pursued successively or concurrently as either party may elect. The exercise of any remedy or right by either party shall not be deemed an election of remedies or rights or preclude that party from exercising any other remedies or rights in the future. Any rights and remedies either party may have with respect to the other arising out of this Agreement shall survive the expiration or termination of this Agreement. All waivers must be in writing and signed by the waiving party.

(f) *Entire Agreement; Amendment.* This Agreement represents the entire and integrated agreement between DCO and the City with regard to the matters set forth herein and supersedes all prior negotiations, representations and/or agreements, either written or oral. Any amendment or modification of this Agreement must be in writing and signed by authorized representatives of DCO and the City or it shall have no effect and shall be void.

(g) *No Third Party Benefits.* This Agreement and each of its provisions are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

(h) *Immunity.* 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.

(i) *Severability.* The terms, conditions, and provisions of this Agreement are severable, and if any provision of this Agreement shall be held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

(j) *Governing Law; Venue.* This Agreement and performance hereunder shall be governed by and construed in accordance with the laws of the State of Texas, without regard to choice of laws rules of any jurisdiction. Any and all suits, actions or legal proceedings relating to this Agreement shall be maintained in the state or federal courts of Dallas County, Texas, which courts shall have exclusive jurisdiction for such purpose. Each of the parties submits to the exclusive jurisdiction of such courts for purposes of any such suit, action, or legal proceeding hereunder, and waives any objection or claim that any such suit, action, or legal proceeding has been brought in an inconvenient forum or that the venue of that suit, action, or legal proceeding is improper.

(k) *Recitals; Exhibits.* The Recitals to this Agreement are incorporated into this Agreement and made a part hereof for all purposes. All appendices and exhibits to this Agreement referenced in this Agreement are incorporated herein by reference and made a part hereof for all purposes wherever reference is made to the same.

(l) *Authorized Signatories.* The officers and/or agents of the parties hereto executing this Agreement are the properly authorized officials or representatives and have the necessary authority to execute this Agreement on behalf of each of the respective parties, 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.

(m) *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and same instrument.

**In Witness Whereof**, the parties hereto have executed this Agreement effective as of Effective Date.

**TOWN OF ADDISON, TEXAS**

**DCO REALTY, INC.**

By: \_\_\_\_\_  
Wesley S Pierson, City Manager

Date: \_\_\_\_\_

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

Typed name: Harry G. Alcock

Title: Senior Vice President

Date: \_\_\_\_\_

**EXHIBIT A**



**EXHIBIT B**

**Section 67-16(b)(4), Code of Ordinances**

- (4) *Insurance.* The promoter of a district event or host of a non-district event held on public property and all contractors and subcontractors shall purchase and maintain insurance at their own expense during the event and its setup and teardown in the following minimum amounts:
- a. Statutory limits of workers compensation insurance.
  - b. Employers liability \$1,000,000.00.
  - c. Commercial general liability \$1,000,000.00.
  - d. General aggregate \$2,000,000.00.
  - e. Product/completed operations aggregate \$2,000,000.00.
  - f. Personal injury and advertising \$1,000,000.00.
  - g. Per occurrence \$1,000,000.00.
  - h. Medical coverage \$5,000.00 per person.
  - i. Fire liability \$50,000.00 per fire.
  - j. Liquor liability endorsement \$1,000,000.00 per claim.
  - k. Comprehensive automobile liability \$1,000,000.00 (owned, leased, non-owned and hired automobiles).

The committee shall review the sufficiency of required policies and, based on the nature of the event, request reasonable changes or increases in coverage. Upon such request, the promoter shall immediately increase the limits of such insurance to an amount satisfactory to the town and make other reasonable changes requested. The amount required by the committee shall be commensurate with other events of the nature of the subject event.

Required policies shall be issued by a carrier that is rated "A:-VII" or better by A.M. Best's Key Rating Guide and licensed to do business in the State of Texas, name the Town of Addison as an additional insured on a primary basis in all liability coverages, and include a waiver of the subrogation endorsement in all coverages in favor of Addison.

Certificates of insurance shall be delivered to the special event manager at least 30 days prior to the first day of the district event. Each such certificate must provide that it shall not be canceled without at least 30 days written notice thereof being given to the Town of Addison. Certified copies of insurance policies shall be furnished to the Town of Addison upon request.

AI-1813

12.

**Work Session and Regular Meeting**

**Meeting Date:** 09/13/2016

**Department:** General Services

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**AGENDA CAPTION:**

Consider Approval Of A **Bid Award To The Christmas Light Company, For The Installation, Maintenance And Removal Of The Holiday Lights For The Vitruvian Park Holiday Light Display** In An Amount Not To Exceed \$146,000.00.

**BACKGROUND:**

Vitruvian Lights in Addison is an annual spectacular holiday light display throughout Vitruvian Park. People drive, walk, and wind through the 12-acre park, with millions of sparkling LED lights that are wrapped around approximately 555 glittering trees, creating a magical holiday wonderland.

Upon award, the contractor will begin installation so as to have all lights in place and ready for the opening lighting ceremony on Friday, November 25. The lighting display will be lit nightly until Sunday, January 1, 2017.

The costs for the Vitruvian Lights are funded by the Town from the sponsorship agreement between the Town and DCO Reality, Inc.(UDR), the developer and manager of Vitruvian Park. Requests for bids were issued in accordance with purchasing procedures. Three (3) bids were received. One bid was disqualified due to late submittal. The Christmas Light Company was the best value and received 100 points which was the highest overall score.

**RECOMMENDATION:**

Administration recommends approval

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**Attachments**

Bid Tabulation

Bid Evaluation

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**Bid 16-123 Vitruvian Lights Bid-Tab**

<b>BIDDER</b>		<b>Bid</b>	<b>Total Bid</b>
The Christmas Light Co.		\$146,000.00	\$146,000.00
Southern Lights		\$187,775.00	\$187,775.00
Christmas By Zenith		Disqualified	\$-



IT ALL COMES TOGETHER

**Vitruvian Lights Electrical, Installation & Removal**

Bid Number: 16-123

Summary Evaluation Worksheet

	Maximum Points				
	50	20	20	10	100

Vendor Name	Price	Experience	Qualifications	References	Total
The Christmas Light Co.	50.0	20	20	10	100.0
Southern Lights	35.7	20	20	10	85.7

1. Price - Lowest price receives maximum of 50 points.
2. Experience working on similar projects, maximum 20 points
3. Qualifications, maximum 20 points
4. References, maximum 10 points

The points awarded to this Response were scored in accordance with the established criteria and represent the best judgment of Staff.

**Work Session and Regular Meeting**

Meeting Date: 09/13/2016

Department: Finance

**AGENDA CAPTION:**

Hold A Public Hearing, Present, Discuss, And Consider Action Regarding Approval Of An **Ordinance Of The Town of Addison, Texas Approving And Adopting The Town's Annual Budget For The Fiscal Year Commencing October 1, 2016 And Ending September 30, 2017.**

**BACKGROUND:**

The proposed FY2017 budget provides an appropriation of \$107,151,858 million. Listed below is a breakdown of funds:

<b>Fund</b>	<b>Amount</b>
General	\$35,279,240
Hotel	\$7,735,572
Debt Service Combined	\$8,424,938
Economic Development	\$2,029,769
Infrastructure Investment	\$863,106
Airport	\$6,588,334
Utility	\$15,607,874
Stormwater	\$4,580,012
Combined Replacement	\$3,450,126
Combined Grants	\$34,875
Combined Special Revenues	\$1,177,582
Capital Projects	\$21,380,430
<b>Total</b>	<b>\$107,151,858</b>

Significant items in the proposed budget include:

- Revenues for all funds total approximately \$74.3 million, a net increase of almost \$4.1 million compared to the FY2016 adopted budget. Primary revenue sources are property tax (\$23.8 million), sales tax (\$13.4 million), hotel occupancy tax (\$6 million) and utility service fees (\$10.6 million).
- Staffing level of 275.3 Full-time Equivalent (FTE) position. This is a decrease of 3.8 FTE's over the FY2016 adopted budget.
- Employee compensation allocation of approximately \$825,000 for merit

increases. This provides an average merit increase of 4 percent based on employee performance.

- Modified Service Levels of \$1.4 million. These programs enhance operations and the quality of service provided to the community. Included in this number is the funding for the 5.7 FTE positions mentioned above as well as major facility maintenance to the fire suppression system at the Addison Conference Centre.
- Capital Projects of \$33.6 million. Significant projects include:
  - Completion of Phase 1 of the Belt Line Road Utility Undergrounding Project(\$12.4 million)
  - Midway Road Design (\$1.7 million)
  - Airport Improvements (\$1.6 million)
  - Water and Sewer Utility Improvements (\$4.7 million)
- Establishment of the Addison Grove Incentive Escrow Fund in the amount of \$1 million. This fund accumulates monies for payments due to the developer once established criteria are met. The first payment is expected in FY2018.

The proposed property tax rate for FY2017 is \$0.560472 per \$100 of valuation. This rate exceeds the Effective Tax Rate of \$0.545760. However, the proposed tax rate is \$0.018678 or 3.2% less than last years adopted tax rate of \$0.579150 per \$100 of valuation. This tax rate will generate a total property tax revenue budget of \$23,801,474. These property tax revenues and rates are distributed as follows:

Fund	Property Tax Rate (per \$100 of valuation)	Property Tax Rate Revenues
General Fund	\$0.351298	\$14,826,545
Economic Development Fund	\$0.023716	\$1,000,000
Infrastructure Investment Fund	\$0.006201	\$261,491
Debt Service Fund	\$0.179257	\$7,713,438
Total	\$0.560472	\$23,801,474

Based on the proposed tax rate, the table below breaks down the effect on the average homeowner in Addison.

	Taxable Home Value	Property Tax
FY2017	\$287,033	\$1,608.74
FY2016	\$268,491	\$1,554.97
Difference		\$53.77

The Town Charter requires the Council to state the date and place for a Public Hearing regarding the budget to be placed into the official newspaper of the Town. The Council, in a Council Meeting on August 8, 2016, set the date and time of the Public Hearing to be September 6, 2016 at 7:30 pm in Council Chambers. This notice was published in the Dallas Morning News on Friday August 12, 2016.

An additional Public Hearing on the proposed budget will be held on this date, September 13, 2016.

**RECOMMENDATION:**

Administration recommends approval.

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**Attachments**

Ordinance

Exhibits A through D

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**TOWN OF ADDISON, TEXAS  
ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS APPROVING AND ADOPTING THE ANNUAL BUDGET FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2016 AND ENDING SEPTEMBER 30, 2017, AND MAKING APPROPRIATIONS FOR EACH OFFICE, DEPARTMENT, AGENCY, AND PROJECT OF THE TOWN, PROVIDING THAT SAID EXPENDITURES FOR SAID FISCAL YEAR SHALL BE MADE IN ACCORDANCE WITH SAID BUDGET, UNLESS OTHERWISE AUTHORIZED BY AN ORDINANCE ADOPTED BY THE CITY COUNCIL; PROVIDING FOR EMERGENCY EXPENDITURES AND EXPENDITURES AS OTHERWISE ALLOWED BY LAW; PROVIDING FOR A REPEAL CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, in accordance with the Charter and State law, the City Manager of the Town of Addison, Texas ("City") has heretofore filed with the City Secretary a proposed budget for the City covering the fiscal year beginning October 1, 2016 and ending September 30, 2017, and meeting the requirements set forth in the Charter; and

**WHEREAS**, the City, in accordance with law, posted the proposed budget on its internet website and made the same available for inspection by any person, and held public hearings regarding the proposed budget and provided notice of such public hearings, and during several public hearings on the budget, all interested persons were given the opportunity to be heard for or against any item contained in said budget, and all said persons were heard, after which each of said public hearings was closed; and

**WHEREAS**, the City Council, upon full consideration of the matter, is of the opinion that the budget hereinafter set forth is proper and should be approved and adopted; and

**WHEREAS**, the adoption of the said budget will require raising more revenue from property taxes than in the previous year, and the City Council has ratified (or will ratify), by separate vote, the property tax increase reflected in the said budget.

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

**Section 1.** The above and foregoing recitals are true and correct and are incorporated into this Ordinance and made a part hereof for all purposes.

**Section 2.** That the budget for the Town of Addison, Texas for the Fiscal Year beginning October 1, 2016 and ending September 30, 2017, a true and correct copy of which is attached to this Ordinance as **Exhibit A** through **Exhibit D**, is hereby adopted and approved. As set forth in the said budget, the sum of \$107,151,858 is hereby appropriated for budget expenditures and that expenditures during the fiscal year shall

be made in accordance with the budget approved by this Ordinance unless otherwise authorized by a duly enacted ordinance of the City.

**Section 3.** The budget as adopted hereby shall be deemed the official budget for the Town of Addison, Texas for the said fiscal year and a copy of the same attached hereto and marked as Exhibits A through D shall be filed and kept on file with the City Secretary, shall be posted on the City's internet website, shall be filed with the Dallas County Clerk and the State Comptroller of Public Accounts at Austin in accordance with the Town Charter and state law, and shall be open to inspection by any interested persons. In addition, the record vote of each member of the City Council by name voting on the adoption of the budget shall be posted on the City's internet website until the first anniversary of the date the budget is adopted.

**Section 4.** Pursuant to state law, no expenditure of the funds of the City shall hereafter be made except in compliance with the budget and applicable state law; provided, however, that in case of grave public necessity emergency expenditures to meet unusual and unforeseen conditions, which could not by reasonable, diligent thought and attention have been included in the original budget, may from time to time be authorized by the City Council as amendments to the original budget. Pursuant to the City's Charter and state law, the Council may make emergency appropriations to address a public emergency affecting life, health, property or the public peace and other appropriations as authorized thereby.

**Section 5.** The cover page for the budget attached to this Ordinance, that includes the property tax rates for the current fiscal year, including (a) the property tax rate, (b), the effective tax rate, (c) the effective maintenance and operations tax rate, (d) the rollback tax rate, and (e) the debt rate, shall be and is hereby filed with the City Secretary and shall be posted on the City's internet website.

**Section 6.** That all ordinances of the City in conflict with the provisions of this Ordinance be, and the same are hereby repealed and all other ordinances of the City not in conflict with the provisions of this Ordinance shall remain in full force and effect.

**Section 7.** The sections, paragraphs, sentences, phrases, and words of this Ordinance are severable, and if any section, paragraph, sentence, phrase, or word in this Ordinance or application thereof to any person or circumstance is held invalid, void, unlawful or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares that it would have passed such remaining portions of this Ordinance despite such invalidity, voidness, unlawfulness or unconstitutionality, which remaining portions shall remain in full force and effect.

**Section 8.** This Ordinance shall take effect upon its passage.

DULY PASSED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS  
on this the 13th day of September, 2016.

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Todd Meier, Mayor

ATTEST:

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Laura Bell, City Secretary

APPROVED AS TO FORM:

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Brenda N. McDonald, City Attorney

**TOWN OF ADDISON**  
**COMBINED SUMMARY OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCE**  
**ALL FUNDS SUBJECT TO APPROPRIATION**

*City Council Adopted FY2017 Annual Budget With Comparisons to FY2016 Adopted Budget*

	Special Revenue Funds				Capital Project Funds			Proprietary Funds				TOTAL		
	General Fund	Economic Development	Combined Grants	Combined Other	Combined Debt Service	Infrastructure Investment	Combined Bonds	Airport	Utility	Stormwater	Combined Replacement	2016-17	2015-16	
		Hotel												
BEGINNING BALANCES	\$ 11,896,301	\$ 3,644,081	\$ 660,126	\$ 27,494	\$ 1,327,630	\$ 1,123,736	\$ 3,782,383	\$ 29,217,284	\$ 3,323,963	\$ 10,069,003	\$ 8,481,643	\$ 5,713,948	\$ 79,267,593	\$ 77,918,263
REVENUES:														
Ad valorem tax	14,845,124	-	1,001,252	-	-	7,723,294	261,804	-	-	-	-	-	23,831,474	23,376,200
Non-property taxes	14,660,000	6,000,000	-	-	-	-	-	-	-	-	-	-	20,660,000	18,675,000
Franchise fees	2,870,300	-	-	-	-	-	-	-	-	-	-	-	2,870,300	2,680,000
Licenses and permits	845,800	-	-	-	-	-	-	-	-	-	-	-	845,800	820,200
Intergovernmental	-	-	-	15,901	-	-	-	-	221,293	-	-	-	237,194	50,000
Service fees	1,493,100	2,691,200	67,000	-	-	-	-	-	932,380	10,637,000	1,850,000	1,550,000	19,220,680	18,104,227
Fines and penalties	675,000	-	-	-	109,610	-	-	-	-	75,000	-	-	859,610	903,210
Rental income	175,000	789,240	-	-	-	-	-	-	4,346,485	-	-	-	5,310,725	5,262,022
Interest & other income	140,000	17,000	6,100	200	1,950	12,000	5,000	125,900	24,500	(31,400)	67,700	71,800	440,750	315,385
TOTAL REVENUES	35,704,324	9,497,440	1,074,352	16,101	111,560	7,735,294	266,804	125,900	5,524,658	10,680,600	1,917,700	1,621,800	74,276,533	70,186,244
Transfers from other funds	-	-	973,000	-	1,000,000	711,500	2,020,676	-	-	300,000	-	-	5,005,176	1,272,124
TOTAL AVAILABLE RESOURCES	47,600,625	13,141,521	2,707,478	43,595	2,439,190	9,570,530	6,069,863	29,343,184	8,848,621	21,049,603	10,399,343	7,335,748	158,549,303	149,376,631
EXPENDITURES:														
General Government	9,588,721	-	-	34,875	-	-	-	-	-	-	-	3,450,126	13,073,722	10,898,415
Public Safety	17,098,983	-	-	-	232,082	-	-	-	-	-	-	-	17,331,065	16,693,361
Urban Development	1,386,767	-	-	-	-	-	-	-	-	-	-	-	1,386,767	1,384,293
Streets	1,748,127	-	-	-	-	-	-	-	-	-	-	-	1,748,127	2,060,482
Parks & Recreation	5,456,641	-	-	-	-	-	-	-	-	-	-	-	5,456,641	5,115,813
Tourism & Economic Development	-	7,735,572	2,029,769	-	-	-	-	-	-	-	-	-	9,765,341	7,492,341
Aviation	-	-	-	-	-	-	-	-	4,403,000	-	-	-	4,403,000	4,225,261
Utilities	-	-	-	-	-	-	-	-	-	9,775,516	743,246	-	10,518,762	9,729,536
Debt service	-	-	-	-	-	8,424,938	-	-	587,016	1,070,358	544,266	-	10,626,578	11,109,532
Capital projects and other uses	-	-	-	-	945,500	-	863,106	21,380,430	1,598,317	4,762,000	3,292,500	-	32,841,853	41,108,407
TOTAL EXPENDITURES	35,279,240	7,735,572	2,029,769	34,875	1,177,582	8,424,938	863,106	21,380,430	6,588,334	15,607,874	4,580,012	3,450,126	107,151,858	109,817,441
Transfers to other funds	(2,145,676)	(1,259,500)	-	-	-	(300,000)	(500,000)	-	-	(800,000)	-	-	(5,005,176)	(1,272,124)
Net Change in Fund Balance	(1,720,592)	502,368	17,583	(18,774)	(66,022)	(278,144)	924,374	(21,254,530)	(1,063,676)	(5,427,274)	(2,662,312)	(1,828,326)	(32,875,325)	(39,631,197)
ENDING FUND BALANCES	\$ 10,175,709	\$ 4,146,450	\$ 677,709	\$ 8,720	\$ 1,261,608	\$ 845,592	\$ 4,706,757	\$ 7,962,754	\$ 2,260,287	\$ 4,641,729	\$ 5,819,331	\$ 3,885,622	\$ 46,392,268	\$ 38,287,066

**TOWN OF ADDISON**  
**PROPERTY TAX DISTRIBUTION**  
**CALCULATIONS**  
*City Council Adopted FY2017 Annual Budget*

<b>2016 CERTIFIED TAX ROLL &amp; LEVY:</b>			
Appraised Valuation (100%)			\$4,302,982,597
Rate Per \$100			\$ 0.560472
<b>TOTAL TAX LEVY</b>			<b>\$ 24,117,053</b>
Percent of Current Collection			98.69%
Estimated Current Tax Collections			<u>\$ 23,801,474</u>
<b>SUMMARY OF TAX COLLECTIONS:</b>			
Current Tax			\$ 23,801,474
Delinquent Tax			5,000
Penalty and Interest			25,000
<b>TOTAL 2016-17 TAX COLLECTIONS</b>			<u><u>\$ 23,831,474</u></u>
<b>DISTRIBUTION OF TAX RATE:</b>			
	<u>TAX</u> <u>RATE</u>	<u>% OF</u> <u>TOTAL</u>	<u>AMOUNT</u>
<b>Maintenance &amp; Operations (M&amp;O):</b>			
<u>General Fund:</u>			
Current Tax			14,826,545
Delinquent Tax			3,096
Penalty and Interest			15,483
Total General Fund	\$0.351298	62.68%	<u>14,845,124</u>
<u>Economic Development Fund:</u>			
Current Tax			1,000,000
Delinquent Tax			209
Penalty and Interest			1,043
Total Economic Development Fund	\$0.023716	4.23%	<u>1,001,252</u>
<u>Infrastructure Replacement Fund:</u>			
Current Tax			261,491
Delinquent Tax			52
Penalty and Interest			261
Total Infrastructure Replacement Fund	\$0.006201	1.11%	<u>261,804</u>
Total M&O Portion	<u>\$0.381215</u>	<u>68.02%</u>	<u>16,108,180</u>
<b>Debt Service:</b>			
<u>Debt Service Fund:</u>			
Current Tax			7,713,438
Delinquent Tax			1,643
Penalty and Interest			8,213
Total Debt Service Fund	<u>\$0.179257</u>	<u>31.98%</u>	<u>7,723,294</u>
<b>TOTAL DISTRIBUTION</b>	<u><u>\$0.560472</u></u>	<u><u>100.00%</u></u>	<u><u>\$ 23,831,474</u></u>

**BUDGETED DEPARTMENTAL STAFFING SUMMARY**

*City Council Adopted 2016-17 Annual Budget With Comparisons to 2015-16 Adopted Budget*

	Fiscal Years Ending September 30							Difference 16-17																																																																							
	2008	2009	2013	2014	2015	2016 Adopted	2016 Amended		2017																																																																						
General Fund:																																																																															
City Secretary			-	-	-	-	-	1.0	1.0																																																																						
City Manager	8.5	8.5	7.0	8.5	8.5	7.5	7.5	5.5	(2.0)																																																																						
Finance	10.0	10.0	9.0	9.7	9.7	9.7	13.0	13.0	-																																																																						
General Services	10.0	10.0	5.0	5.0	5.0	5.0	5.0	6.0	1.0																																																																						
Municipal Court	4.7	5.7	5.4	5.7	5.7	5.7	5.7	5.7	-																																																																						
Human Resources	4.7	5.2	5.2	3.3	3.3	3.3	4.0	4.0	-																																																																						
Information Technology	6.0	6.0	7.0	7.0	7.0	7.0	7.0	7.0	-																																																																						
Police	69.3	70.3	73.8	75.3	79.8	79.8	79.8	79.8	-																																																																						
Emergency Communications	12.5	13.5	13.5	14.5	14.5	14.5	-	-	-																																																																						
Fire	55.0	55.0	52.3	55.3	55.3	55.3	55.3	56.0	0.7																																																																						
Development Services	7.0	7.0	7.2	7.2	7.2	7.2	7.2	10.2	3.0																																																																						
Code Enforcement			-	-	2.0	2.0	2.0	-	(2.0)																																																																						
Streets	7.0	7.0	5.0	5.4	5.4	5.4	5.4	6.4	1.0																																																																						
Parks	20.0	21.0	21.0	21.0	21.0	22.0	22.0	22.0	-																																																																						
Recreation	15.6	15.6	14.6	15.1	15.1	15.1	15.1	15.1	-	Total General Fund	230.3	234.8	226.0	233.0	239.5	239.5	229.0	231.7	2.7	Hotel Fund	14.0	14.0	16.0	17.0	14.8	14.3	14.3	16.3	2.0	Economic Development Fund	-	-	2.0	3.0	4.0	4.0	4.0	4.0	-	Airport Fund	2.0	2.0	3.0	3.0	3.0	3.0	3.0	3.4	0.4	Utility Fund			18.0	18.3	16.6	16.6	17.6	17.9	0.3	Stormwater Fund	17.0	18.0	-	1.4	1.7	1.7	1.7	2.0	0.3	<b>TOTAL ALL FUNDS</b>	<b>263.3</b>	<b>268.8</b>	<b>265.0</b>	<b>275.7</b>	<b>279.6</b>	<b>279.1</b>	<b>269.6</b>	<b>275.3</b>	<b>5.7</b>
Total General Fund	230.3	234.8	226.0	233.0	239.5	239.5	229.0	231.7	2.7																																																																						
Hotel Fund	14.0	14.0	16.0	17.0	14.8	14.3	14.3	16.3	2.0																																																																						
Economic Development Fund	-	-	2.0	3.0	4.0	4.0	4.0	4.0	-																																																																						
Airport Fund	2.0	2.0	3.0	3.0	3.0	3.0	3.0	3.4	0.4																																																																						
Utility Fund			18.0	18.3	16.6	16.6	17.6	17.9	0.3																																																																						
Stormwater Fund	17.0	18.0	-	1.4	1.7	1.7	1.7	2.0	0.3																																																																						
<b>TOTAL ALL FUNDS</b>	<b>263.3</b>	<b>268.8</b>	<b>265.0</b>	<b>275.7</b>	<b>279.6</b>	<b>279.1</b>	<b>269.6</b>	<b>275.3</b>	<b>5.7</b>																																																																						

All positions are shown as full-time equivalent (FTE).

**TOWN OF ADDISON**  
**GENERAL FUND**  
**SCHEDULE OF REVENUES BY SOURCE**  
*City Council Adopted FY2017 Annual Budget With Comparisons to FY2016 Adopted Budget*

	Actual 2014-15	Budget 2015-16	Estimated 2015-16	Budget 2016-17
Ad valorem taxes:				
Current taxes	\$ 11,424,738	\$ 13,940,240	\$ 13,581,439	\$ 14,826,545
Delinquent taxes	(71,220)	6,750	(53,255)	3,096
Penalty and interest	25,457	16,720	24,300	15,483
Non-property taxes:				
Sales tax	13,038,912	12,305,000	13,033,701	13,400,000
Alcoholic beverage tax	1,176,643	870,000	1,207,948	1,260,000
Franchise / right-of-way use fees:				
Electric franchise	1,539,972	1,500,000	1,569,000	1,575,000
Gas franchise	273,320	190,000	217,389	217,400
Sanitation franchise				120,000
Telecommunication access fees	593,387	650,000	636,529	636,500
Cable franchise	414,891	335,000	334,796	316,400
Street rental fees	6,850	5,000	7,380	5,000
Licenses and permits:				
Business registration	259,487	170,750	158,541	247,800
Building and construction permits	751,736	649,450	735,860	598,000
Service fees:				
General government	849	500	500	500
Public safety	849,998	886,000	733,305	785,200
Urban development	3,830	3,000	3,000	3,000
Streets and sanitation	400,562	382,600	382,600	282,200
Recreation	72,279	80,300	69,300	73,300
IT Indirect cost recovery	230,000	230,000	230,000	348,900
Court fines	723,931	781,900	719,000	675,000
Interest earnings	20,992	30,000	42,000	70,000
Rental income	236,667	275,000	197,000	175,000
Recycling proceeds	10,403	15,000	15,000	10,000
Other	108,336	43,905	236,317	60,000
<b>TOTAL REVENUES</b>	<b>\$ 32,092,020</b>	<b>\$ 33,367,115</b>	<b>\$ 34,081,650</b>	<b>\$ 35,704,324</b>

**TOWN OF ADDISON**  
**GENERAL FUND**  
**STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES TO FUND BALANCE**  
*City Council Adopted FY2017 Annual Budget With Comparisons to FY2016 Adopted Budget*

	Actual 2014-15	Budget 2015-16	Estimated 2015-16	Budget 2016-17
BEGINNING BALANCE	\$ 15,506,011	\$ 11,201,712	\$ 11,601,861	\$ 11,896,301
REVENUES:				
Ad valorem taxes	11,378,975	13,963,710	13,552,484	14,845,124
Non-property taxes	14,215,555	13,175,000	14,241,649	14,660,000
Franchise fees	2,828,420	2,680,000	2,765,094	2,870,300
Licenses and permits	1,011,223	820,200	894,401	845,800
Service fees	1,507,653	1,582,400	1,418,705	1,493,100
Fines and penalties	725,189	781,900	719,000	675,000
Interest earnings	69,431	30,000	42,000	70,000
Rental income	236,667	275,000	197,000	175,000
Other	118,907	58,905	251,317	70,000
TOTAL REVENUES	<u>32,092,020</u>	<u>33,367,115</u>	<u>34,081,650</u>	<u>35,704,324</u>
TOTAL RESOURCES AVAILABLE	<u>47,598,031</u>	<u>44,568,827</u>	<u>45,683,511</u>	<u>47,600,625</u>
EXPENDITURES:				
General government:				
City Secretary	-	-	-	201,159
City Manager	1,521,976	1,302,565	1,263,988	1,044,171
Finance	1,009,649	1,231,286	1,301,982	1,670,369
General Services	684,803	666,310	815,350	812,135
Municipal Court	502,250	586,428	569,915	614,926
Human Resources	492,879	583,959	599,531	613,588
Information Technology	1,585,509	1,910,708	1,927,669	1,909,265
Combined Services	1,278,768	1,475,980	930,118	2,412,288
Council Projects	578,233	331,879	320,885	310,819
Public safety:				
Police	8,561,703	8,520,606	8,229,429	8,641,004
Emergency Communications	1,383,173	1,318,483	1,565,379	1,410,505
Fire	6,732,790	6,808,772	6,799,686	7,047,475
Development Services	1,090,973	1,211,637	1,116,600	1,386,767
Property Standards	-	172,656	108,050	-
Streets	1,803,135	2,060,482	1,977,129	1,748,127
Parks and Recreation:				
Parks	3,103,939	3,463,320	3,508,930	3,729,590
Recreation	1,651,393	1,652,493	1,660,569	1,727,051
TOTAL EXPENDITURES	<u>31,981,170</u>	<u>33,297,564</u>	<u>32,695,210</u>	<u>35,279,240</u>
OTHER FINANCING SOURCES (USES):				
Transfer from Hotel Fund	-	-	-	-
Transfer to Economic Development Fund	(4,015,000)	(15,000)	(15,000)	(425,000)
TOTAL OTHER FINANCING SOURCES (USES)	<u>(4,015,000)</u>	<u>(15,000)</u>	<u>(15,000)</u>	<u>(425,000)</u>
NET CHANGE IN FUND BALANCE	(3,904,150)	54,551	1,371,440	84
FUND BALANCE	<u>11,601,861</u>	<u>11,256,263</u>	<u>12,973,301</u>	<u>11,896,385</u>
One Time Funding Sources (Uses):				
Transfer to Self-Funded Construction Fund	-	-	(750,000)	-
Transfer to IIF	-	-	-	(1,720,676)
Transfer to PEG Fund	-	-	(327,000)	-
ENDING FUND BALANCE	<u>\$ 11,601,861</u>	<u>\$ 11,256,263</u>	<u>\$ 11,896,301</u>	<u>\$ 10,175,709</u>

Note: Financial statements encompass all assumptions listed on General Fund Long Term Plan (i.e. compensation and insurance adjustments, proposed Modified Levels of Service, etc.)

**TOWN OF ADDISON**  
**HOTEL SPECIAL REVENUE FUND**  
**STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES TO FUND BALANCE**  
**City Council Adopted FY2017 Annual Budget With Comparisons to FY2016 Adopted Budget**

	Actual 2014-15	Budget 2015-16	Estimated 2015-16	Budget 2016-17
BEGINNING BALANCE	\$ 1,194,674	\$ 2,315,028	\$ 2,040,729	\$ 3,644,081
REVENUES:				
Hotel/Motel occupancy taxes	5,512,956	5,500,000	5,884,000	6,000,000
Proceeds from Special Events	1,014,650	2,045,717	1,893,435	2,691,200
Conference Centre rental	638,045	630,000	668,000	678,000
Visitor Centre rental	183,429	-	-	-
Theatre Centre rental	143,248	122,290	80,000	111,240
Interest earnings and other	19,719	10,000	6,025	17,000
TOTAL REVENUES	<u>7,512,047</u>	<u>8,308,007</u>	<u>8,531,460</u>	<u>9,497,440</u>
TOTAL AVAILABLE RESOURCES	<u>8,706,721</u>	<u>10,623,035</u>	<u>10,572,189</u>	<u>13,141,521</u>
EXPENDITURES:				
Visit Addison	765,286	400,000	200,000	-
Conference Centre	959,139	1,216,466	1,145,906	1,449,405
Marketing	872,579	972,224	946,981	1,091,773
Special Events	2,279,533	2,529,296	2,695,657	4,155,275
Addison Theatre Centre	-	-	-	400,003
Performing Arts	542,067	581,385	581,594	447,000
General hotel operations	36,310	107,263	100,845	192,116
TOTAL EXPENDITURES	<u>5,454,912</u>	<u>5,806,634</u>	<u>5,670,984</u>	<u>7,735,572</u>
OTHER FINANCING SOURCES (USES):				
Transfer to General Fund	-	-	-	-
Transfer to other funds	(1,211,082)	(1,257,124)	(1,257,124)	(1,259,500)
TOTAL OTHER FINANCING SOURCES (USES)	<u>(1,211,082)</u>	<u>(1,257,124)</u>	<u>(1,257,124)</u>	<u>(1,259,500)</u>
NET CHANGE IN FUND BALANCE	<u>846,053</u>	<u>1,244,249</u>	<u>1,603,352</u>	<u>502,368</u>
ENDING FUND BALANCE	<u>\$ 2,040,729</u>	<u>\$ 3,559,277</u>	<u>\$ 3,644,081</u>	<u>\$ 4,146,450</u>

Note: Financial statements encompass all assumptions listed on Hotel Fund Long Term Plan  
(i.e. compensation and insurance adjustments, proposed Modified Levels of Service, etc.)

**TOWN OF ADDISON**  
**ECONOMIC DEVELOPMENT FUND**  
**STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES TO FUND BALANCE**  
*City Council Adopted FY2017 Annual Budget With Comparisons to FY2016 Adopted Budget*

	Actual 2014-15	Budget 2015-16	Estimated 2015-16	Budget 2016-17
BEGINNING BALANCE	\$ 477,233	\$ 473,332	\$ 752,819	\$ 660,126
REVENUES:				
Ad valorem taxes:				
Current taxes	973,607	998,800	971,600	1,000,000
Delinquent taxes	(6,062)	480	(3,800)	209
Penalty and interest	2,169	1,190	1,700	1,043
Business licenses and permits	68,395	70,000	68,516	67,000
Interest earnings and other	3,844	10,200	2,400	6,100
TOTAL REVENUES	<u>1,041,953</u>	<u>1,080,670</u>	<u>1,040,416</u>	<u>1,074,352</u>
TOTAL AVAILABLE RESOURCES	<u>1,519,186</u>	<u>1,554,002</u>	<u>1,793,235</u>	<u>1,734,478</u>
EXPENDITURES:				
Personnel services	354,313	381,809	389,735	393,206
Supplies	20,854	29,700	29,700	32,450
Maintenance	62,447	50,541	50,541	57,362
Contractual services	824,881	1,198,076	1,198,076	1,523,745
Capital replacement/lease	19,154	25,581	25,581	23,006
TOTAL EXPENDITURES	<u>1,281,649</u>	<u>1,685,707</u>	<u>1,693,633</u>	<u>2,029,769</u>
OTHER FINANCING SOURCES (USES):				
Transfer from General Fund	15,000	15,000	15,000	425,000
Transfer from Hotel Fund	500,282	545,524	545,524	548,000
TOTAL OTHER FINANCING SOURCES (USES)	<u>515,282</u>	<u>560,524</u>	<u>560,524</u>	<u>973,000</u>
NET CHANGE IN FUND BALANCE	<u>275,586</u>	<u>(44,513)</u>	<u>(92,693)</u>	<u>17,583</u>
ENDING BALANCE	<u>\$ 752,819</u>	<u>\$ 428,819</u>	<u>\$ 660,126</u>	<u>\$ 677,709</u>

Note: Financial statements encompass all assumptions listed on Hotel Fund Long Term Plan  
(i.e. compensation and insurance adjustments, proposed Modified Levels of Service, etc.)

**TOWN OF ADDISON**  
**ADVANCED FUNDING GRANT FUND**  
**STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES TO FUND BALANCE**  
*City Council Adopted FY2017 Annual Budget With Comparisons to FY2016 Adopted Budget*

	Actual 2014-15	Budget 2015-16	Estimated 2015-16	Budget 2016-17
BEGINNING BALANCE	\$ 21,887	\$ 25,858	\$ 23,394	\$ 27,494
REVENUES:				
Intergovernmental	5,421	-	5,400	15,901
Interest earnings and other	99	50	100	200
TOTAL REVENUES	<u>5,520</u>	<u>50</u>	<u>5,500</u>	<u>16,101</u>
TOTAL AVAILABLE RESOURCES	<u>27,407</u>	<u>25,908</u>	<u>28,894</u>	<u>43,595</u>
EXPENDITURES:				
Supplies	-	200	-	500
Contractual services	4,013	5,000	1,400	34,375
TOTAL EXPENDITURES	<u>4,013</u>	<u>5,200</u>	<u>1,400</u>	<u>34,875</u>
OTHER FINANCING SOURCES (USES):				
Transfer to General Fund	-	-	-	-
ENDING BALANCE	<u>\$ 23,394</u>	<u>\$ 20,708</u>	<u>\$ 27,494</u>	<u>\$ 8,720</u>

**TOWN OF ADDISON**  
**PUBLIC SAFETY SPECIAL REVENUE FUND**  
**STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES TO FUND BALANCE**  
*City Council Adopted FY2017 Annual Budget With Comparisons to FY2016 Adopted Budget*

	Actual 2014-15	Budget 2015-16	Estimated 2015-16	Budget 2016-17
BEGINNING BALANCE	\$ 19,185	\$ 23,135	\$ 19,190	\$ 24,040
REVENUES:				
Court awards	-		9,100	-
Interest earnings and other	89	50	50	200
TOTAL REVENUES	<u>89</u>	<u>50</u>	<u>9,150</u>	<u>200</u>
TOTAL AVAILABLE RESOURCES	<u>19,274</u>	<u>23,185</u>	<u>28,340</u>	<u>24,240</u>
EXPENDITURES:				
Supplies	-	5,000	3,100	19,385
Contractual services	84	-	1,200	-
TOTAL EXPENDITURES	<u>84</u>	<u>5,000</u>	<u>4,300</u>	<u>19,385</u>
ENDING BALANCE	<u>\$ 19,190</u>	<u>\$ 18,185</u>	<u>\$ 24,040</u>	<u>\$ 4,855</u>

**TOWN OF ADDISON**  
**PEG FEE SPECIAL REVENUE FUND**  
**STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES TO FUND BALANCE**  
*City Council Adopted FY2017 Annual Budget With Comparisons to FY2016 Adopted Budget*

	Actual 2014-15	Budget 2015-16	Estimated 2015-16	Budget 2016-17
BEGINNING BALANCE	\$ -		\$ -	\$ 327,000
REVENUES:				
Peg Fee Revenues	-		-	72,000
Interest earnings and other	-	-	-	50
TOTAL REVENUES	-	-	-	72,050
TOTAL AVAILABLE RESOURCES	-	-	-	399,050
EXPENDITURES:				
Supplies	-	-	-	-
Contractual services	-	-	-	200,000
TOTAL EXPENDITURES	-	-	-	200,000
OTHER FINANCING SOURCES (USES):				
Transfer In (from General Fund)	-		327,000	-
ENDING BALANCE	\$ -	\$ -	\$ 327,000	\$ 199,050

Note: Fund established in FY2016.

**TOWN OF ADDISON**  
**JUSTICE ADMINISTRATION SPECIAL REVENUE FUND**  
**STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES TO FUND BALANCE**  
*City Council Adopted FY2017 Annual Budget With Comparisons to FY2016 Adopted Budget*

	Actual 2014-15	Budget 2015-16	Estimated 2015-16	Budget 2016-17
BEGINNING BALANCE	\$ 31,898	\$ 33,478	\$ 28,892	\$ 10,992
REVENUES:				
Justice administration fees	1,787	2,410	1,600	2,410
Interest earnings and other	852	100	500	100
TOTAL REVENUES	<u>2,639</u>	<u>2,510</u>	<u>2,100</u>	<u>2,510</u>
TOTAL AVAILABLE RESOURCES	<u>34,537</u>	<u>35,988</u>	<u>30,992</u>	<u>13,502</u>
EXPENDITURES:				
Personnel services	545	-	-	-
Supplies	5,100	2,000	-	-
Maintenance	-	-	20,000	-
Contractual services	-	-	-	10,800
TOTAL EXPENDITURES	<u>5,645</u>	<u>2,000</u>	<u>20,000</u>	<u>10,800</u>
NET CHANGE IN FUND BALANCE	<u>(3,006)</u>	<u>510</u>	<u>(17,900)</u>	<u>(8,290)</u>
ENDING BALANCE	<u>\$ 28,892</u>	<u>\$ 33,988</u>	<u>\$ 10,992</u>	<u>\$ 2,702</u>

**TOWN OF ADDISON**  
**CHILD SAFETY SPECIAL REVENUE FUND**  
**STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES TO FUND BALANCE**  
*City Council Adopted FY2017 Annual Budget With Comparisons to FY2016 Adopted Budget*

	Actual 2014-15	Budget 2015-16	Estimated 2015-16	Budget 2016-17
BEGINNING BALANCE	\$ 101,664	\$ 110,654	\$ 88,479	\$ 91,979
REVENUES:				
Child Safety fees	8,001	8,900	10,000	8,200
Interest earnings and other	289	50	500	600
TOTAL REVENUES	<u>8,290</u>	<u>8,950</u>	<u>10,500</u>	<u>8,800</u>
TOTAL AVAILABLE RESOURCES	<u>109,954</u>	<u>119,604</u>	<u>98,979</u>	<u>100,779</u>
EXPENDITURES:				
Personnel services	-	-	-	-
Supplies	-	-	-	10,000
Maintenance	-	-	-	4,680
Contractual services	-	7,500	7,000	30,800
Signal systems/street lights	21,475	-	-	35,120
TOTAL EXPENDITURES	<u>21,475</u>	<u>7,500</u>	<u>7,000</u>	<u>80,600</u>
NET CHANGE IN FUND BALANCE	<u>(13,185)</u>	<u>1,450</u>	<u>3,500</u>	<u>(71,800)</u>
ENDING BALANCE	<u>\$ 88,479</u>	<u>\$ 112,104</u>	<u>\$ 91,979</u>	<u>\$ 20,179</u>

**TOWN OF ADDISON**  
**COURT TECHNOLOGY SPECIAL REVENUE FUND**  
**STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES TO FUND BALANCE**  
*City Council Adopted FY2017 Annual Budget With Comparisons to FY2016 Adopted Budget*

	Actual 2014-15	Budget 2015-16	Estimated 2015-16	Budget 2016-17
BEGINNING BALANCE	\$ 79,591	\$ 93,111	\$ 77,831	\$ 70,231
REVENUES:				
Court technology fees	16,670	20,000	15,000	14,000
Interest earnings and other	204	50	400	600
TOTAL REVENUES	<u>16,874</u>	<u>20,050</u>	<u>15,400</u>	<u>14,600</u>
TOTAL AVAILABLE RESOURCES	<u>96,465</u>	<u>113,161</u>	<u>93,231</u>	<u>84,831</u>
EXPENDITURES:				
Personnel services	-	-	-	-
Supplies	381	2,000	8,000	16,500
Maintenance	-	4,000	15,000	3,125
Contractual services	-	-	-	23,625
Computer hardware/software	18,253			24,625
TOTAL EXPENDITURES	<u>18,634</u>	<u>6,000</u>	<u>23,000</u>	<u>67,875</u>
NET CHANGE IN FUND BALANCE	<u>(1,760)</u>	<u>14,050</u>	<u>(7,600)</u>	<u>(53,275)</u>
Prior Period Adjustment	-	-		
ENDING BALANCE	<u>\$ 77,831</u>	<u>\$ 107,161</u>	<u>\$ 70,231</u>	<u>\$ 16,956</u>

**TOWN OF ADDISON**  
**BUILDING SECURITY SPECIAL REVENUE FUND**  
**STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES TO FUND BALANCE**  
*City Council Adopted FY2017 Annual Budget With Comparisons to FY2016 Adopted Budget*

	Actual 2014-15	Budget 2015-16	Estimated 2015-16	Budget 2016-17
BEGINNING BALANCE	\$ 65,782	\$ 66,822	\$ 63,788	\$ 53,388
REVENUES:				
Court security fees	12,497	15,000	11,000	13,000
Interest earnings and other	181	50	300	400
TOTAL REVENUES	<u>12,678</u>	<u>15,050</u>	<u>11,300</u>	<u>13,400</u>
TOTAL AVAILABLE RESOURCES	<u>78,460</u>	<u>81,872</u>	<u>75,088</u>	<u>66,788</u>
EXPENDITURES:				
Personnel services	13,826	23,300	20,000	31,557
Supplies	846	-	-	3,000
Maintenance	-	1,700	1,700	2,000
Contractual services	-	-	-	16,865
TOTAL EXPENDITURES	<u>14,672</u>	<u>25,000</u>	<u>21,700</u>	<u>53,422</u>
NET CHANGE IN FUND BALANCE	<u>(1,994)</u>	<u>(9,950)</u>	<u>(10,400)</u>	<u>(40,022)</u>
ENDING BALANCE	<u>\$ 63,788</u>	<u>\$ 56,872</u>	<u>\$ 53,388</u>	<u>\$ 13,366</u>

**TOWN OF ADDISON**  
**GENERAL OBLIGATION DEBT SERVICE FUND**  
**STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES TO FUND BALANCE**  
*City Council Adopted FY2017 Annual Budget With Comparisons to FY2016 Adopted Budget*

	Actual 2014-15	Budget 2015-16	Estimated 2015-16	Budget 2016-17
BEGINNING BALANCE	\$ 1,020,159	\$ 898,304	\$ 831,366	\$ 633,694
REVENUES:				
Ad valorem taxes	7,984,536	8,161,580	7,900,000	7,723,294
Interest earnings and other	9,892	13,740	8,000	9,400
TOTAL REVENUES	<u>7,994,428</u>	<u>8,175,320</u>	<u>7,908,000</u>	<u>7,732,694</u>
TOTAL AVAILABLE RESOURCES	<u>9,014,587</u>	<u>9,073,624</u>	<u>8,739,366</u>	<u>8,366,388</u>
EXPENDITURES:				
Debt service - principal	4,833,152	5,140,150	5,140,150	4,938,331
Debt service - interest	3,347,020	3,030,043	2,721,238	2,771,107
Fiscal fees	3,049	12,000	244,284	4,000
TOTAL EXPENDITURES	<u>8,183,221</u>	<u>8,174,510</u>	<u>8,105,672</u>	<u>7,713,438</u>
NET CHANGE IN FUND BALANCE	<u>(188,793)</u>	<u>810</u>	<u>(197,672)</u>	<u>19,256</u>
Transfer Out to Utility Fund				(300,000)
ENDING BALANCE	<u>\$ 831,366</u>	<u>\$ 899,114</u>	<u>\$ 633,694</u>	<u>\$ 352,950</u>

**TOWN OF ADDISON**  
**HOTEL FUND DEBT SERVICE FUND**  
**STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES TO FUND BALANCE**  
*City Council Adopted FY2017 Annual Budget With Comparisons to FY2016 Adopted Budget*

	Actual 2014-15	Budget 2015-16	Estimated 2015-16	Budget 2016-17
BEGINNING BALANCE	\$ 487,491	\$ 488,691	\$ 488,542	\$ 490,042
REVENUES:				
Interest earnings and other	1,416	1,200	1,500	2,600
TOTAL REVENUES	<u>1,416</u>	<u>1,200</u>	<u>1,500</u>	<u>2,600</u>
TOTAL AVAILABLE RESOURCES	<u>488,907</u>	<u>489,891</u>	<u>490,042</u>	<u>492,642</u>
EXPENDITURES:				
Debt service - principal	640,000	660,000	660,000	680,000
Debt service - interest	70,800	51,300	51,300	31,200
Fiscal fees	365	300	300	300
TOTAL EXPENDITURES	<u>711,165</u>	<u>711,600</u>	<u>711,600</u>	<u>711,500</u>
OTHER FINANCING SOURCES (USES):				
Transfer from Hotel Fund	<u>710,800</u>	<u>711,600</u>	<u>711,600</u>	<u>711,500</u>
NET CHANGE IN FUND BALANCE	<u>1,051</u>	<u>1,200</u>	<u>1,500</u>	<u>2,600</u>
ENDING BALANCE	<u>\$ 488,542</u>	<u>\$ 489,891</u>	<u>\$ 490,042</u>	<u>\$ 492,642</u>

**TOWN OF ADDISON**  
**INFRASTRUCTURE INVESTMENT FUND**  
**STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES TO FUND BALANCE**  
*City Council Adopted FY2017 Annual Budget With Comparisons to FY2016 Adopted Budget*

	Actual 2014-15	Budget 2015-16	Estimated 2015-16	Budget 2016-17
BEGINNING BALANCE	\$ -	\$ 3,485,980	\$ 3,908,975	\$ 3,782,383
REVENUES:				
Ad Valorem tax contribution	226,898	250,440	243,607	261,804
Interest earnings and other	8,088	5,000	16,198	5,000
TOTAL REVENUES	<u>234,986</u>	<u>255,440</u>	<u>259,805</u>	<u>266,804</u>
TOTAL AVAILABLE RESOURCES	<u>234,986</u>	<u>3,741,420</u>	<u>4,168,780</u>	<u>4,049,187</u>
EXPENDITURES:				
Design and Engineering:				
Engineering and contractual services	193,754	30,000	15,003	313,106
Construction and equipment	132,257	925,000	371,394	550,000
TOTAL EXPENDITURES	<u>326,011</u>	<u>955,000</u>	<u>386,397</u>	<u>863,106</u>
OTHER FINANCING SOURCES (USES):				
Transfer in from Utility Fund	4,000,000	-	-	300,000
Transfer in from General Fund				1,720,676
Transfer out to Addison Grove Escrow Fund	-	-	-	(500,000)
	<u>4,000,000</u>	<u>-</u>	<u>-</u>	<u>1,520,676</u>
NET CHANGE IN FUND BALANCE	<u>3,908,975</u>	<u>(699,560)</u>	<u>(126,592)</u>	<u>924,374</u>
ENDING BALANCE	<u>\$ 3,908,975</u>	<u>\$ 2,786,420</u>	<u>\$ 3,782,383</u>	<u>\$ 4,706,757</u>

Note: The balance in this fund is restricted for specific projects. For a detailed listing by project, see Exhibit H.

**TOWN OF ADDISON**  
**CAPITAL PROJECTS FUND**  
**STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES TO FUND BALANCE**  
*City Council Adopted FY2017 Annual Budget With Comparisons to FY2016 Adopted Budget*

	Actual 2014-15	Budget 2015-16	Estimated 2015-16	Budget 2016-17
BEGINNING BALANCE	\$ 45,217,597	\$ 32,859,200	\$ 36,992,655	\$ 29,217,284
REVENUES:				
Intergovernmental	158,253			
Interest earnings and other	207,959	54,000	180,000	125,900
TOTAL REVENUES	<u>366,212</u>	<u>54,000</u>	<u>180,000</u>	<u>125,900</u>
TOTAL AVAILABLE RESOURCES	<u>45,583,809</u>	<u>32,913,200</u>	<u>37,172,655</u>	<u>29,343,184</u>
EXPENDITURES:				
Land Aquision	-	3,000,000	-	-
Engineering and contractual services	4,882,500	1,700,000	90,283	1,653,250
Construction and equipment	3,708,654	26,834,243	7,865,088	19,727,180
TOTAL EXPENDITURES	<u>8,591,154</u>	<u>31,534,243</u>	<u>7,955,371</u>	<u>21,380,430</u>
OTHER FINANCING SOURCES (USES):				
Transfer In	-	-	-	-
Bond issues	-	-	-	-
Transfers Out	-	-	-	-
TOTAL OTHER FINANCING SOURCES/(USES)	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
NET CHANGE IN FUND BALANCE	<u>(8,224,942)</u>	<u>(31,480,243)</u>	<u>(7,775,371)</u>	<u>(21,254,530)</u>
ENDING BALANCE	<u>\$ 36,992,655</u>	<u>\$ 1,378,957</u>	<u>\$ 29,217,284</u>	<u>\$ 7,962,754</u>

Note: The balance in this fund is restricted for specific projects. For detailed listing, see Exhibit H.

**TOWN OF ADDISON**  
**AIRPORT ENTERPRISE FUND**  
**STATEMENT OF INCOME AND CHANGES IN WORKING CAPITAL**  
*City Council Adopted FY2017 Annual Budget With Comparisons to FY2016 Adopted Budget*

	Actual 2014-15	Budget 2015-16	Estimated 2015-16	Budget 2016-17
<b>INCOME STATEMENT</b>				
Operating revenues:				
Operating grants	\$ -	\$ 50,000	\$ 50,000	\$ 50,000
Fuel flowage fees	829,044	791,680	817,368	932,380
Rental	4,248,056	4,234,732	4,375,231	4,346,485
Other income (expense)	512,888	-	-	-
User fees	61,379	161,250	146,099	171,293
<b>Total operating revenues</b>	<b>5,651,367</b>	<b>5,237,662</b>	<b>5,388,698</b>	<b>5,500,158</b>
Operating expenses:				
Town - Personnel services	318,036	361,152	328,437	411,766
Town - Supplies	58,326	41,000	41,000	42,000
Town - Maintenance	88,270	112,910	112,910	116,150
Town - Contractual services	560,906	172,990	172,990	192,455
Town - Capital replacement/lease	1,778,693	19,160	39,160	27,878
Grant - Maintenance	100,000	100,000	100,000	100,000
Operator - Operations and maintenance	675,158	3,004,748	3,153,274	3,125,960
Operator - Service contract	398,061	413,301	403,000	386,792
<b>Total operating expenses</b>	<b>3,977,450</b>	<b>4,225,261</b>	<b>4,350,771</b>	<b>4,403,000</b>
<b>Net operating income</b>	<b>1,673,918</b>	<b>1,012,401</b>	<b>1,037,927</b>	<b>1,097,158</b>
Non-operating revenues (expenses):				
Interest earnings and other	13,588	5,000	10,000	24,500
Interest on debt, fiscal fees and other	(137,468)	(132,691)	(132,691)	(127,016)
Capital contributions	-	-	-	-
<b>Net non-operating revenues (expenses)</b>	<b>(123,880)</b>	<b>(127,691)</b>	<b>(122,691)</b>	<b>(102,516)</b>
<b>Net income (excluding depreciation)</b>	<b>\$ 1,550,038</b>	<b>\$ 884,710</b>	<b>\$ 915,236</b>	<b>\$ 994,641</b>
<b>CHANGES IN WORKING CAPITAL</b>				
<b>Net income (excluding depreciation)</b>	<b>\$ 1,550,038</b>	<b>\$ 884,710</b>	<b>\$ 915,236</b>	<b>\$ 994,641</b>
Sources (uses) of working capital:				
Retirement of long-term debt	(445,000)	(455,000)	(455,000)	(460,000)
Net additions to fixed assets (incl. capital contributions from grants)	(388,195)	(62,000)	(60,500)	(100,966)
Other net additions to fixed assets (non-grant eligible)	-	(60,000)	(60,000)	(1,497,351)
Other	55,706	-	-	-
	-	-	-	-
<b>Net sources (uses) of working capital</b>	<b>(777,489)</b>	<b>(577,000)</b>	<b>(575,500)</b>	<b>(2,058,317)</b>
<b>Net increase (decrease) in working capital</b>	<b>772,549</b>	<b>307,710</b>	<b>339,736</b>	<b>(1,063,676)</b>
<b>Beginning Working Capital</b>	<b>2,211,678</b>	<b>1,783,670</b>	<b>2,984,227</b>	<b>3,323,963</b>
<b>Ending Working Capital</b>	<b>\$ 2,984,227</b>	<b>\$ 2,091,380</b>	<b>\$ 3,323,963</b>	<b>\$ 2,260,287</b>
<b>Percentage of Working Capital to Operating Expense</b>	<b>-75.0%</b>	<b>-49.5%</b>	<b>-76.4%</b>	<b>-51.3%</b>

Note: Financial statements encompass all assumptions listed on Airport Fund Long Term Plan (i.e. compensation and insurance adjustments, proposed Modified Levels of Service, etc.)

**TOWN OF ADDISON**  
**UTILITY ENTERPRISE FUND**  
**STATEMENT OF INCOME AND CHANGES IN WORKING CAPITAL**  
*City Council Adopted FY2017 Annual Budget With Comparisons to FY2016 Adopted Budget*

	Actual 2014-15	Budget 2015-16	Estimated 2015-16	Budget 2016-17
<b>INCOME STATEMENT</b>				
Operating revenues:				
Water sales	\$ 5,678,134	\$ 5,758,909	\$ 5,576,551	\$ 6,040,000
Sewer charges	4,436,230	4,524,621	4,124,431	4,590,000
Tap fees	12,580	7,000	10,280	7,000
Penalties	64,949	75,000	80,000	75,000
Other income	1,200	15,000	20,000	15,000
Total operating revenues	<u>10,193,093</u>	<u>10,380,530</u>	<u>9,811,261</u>	<u>10,727,000</u>
Operating expenses:				
Water purchases	3,223,750	3,459,088	3,159,257	3,700,000
Wastewater treatment	2,496,828	2,298,729	2,634,648	2,590,000
Utility operations	3,046,128	3,419,430	3,299,098	3,485,516
Total operating expenses	<u>8,766,706</u>	<u>9,177,247</u>	<u>9,093,003</u>	<u>9,775,516</u>
Net operating income	<u>1,426,387</u>	<u>1,203,284</u>	<u>718,258</u>	<u>951,484</u>
Non-operating revenues (expenses):				
Interest earnings and other	48,098	(110,510)	18,000	(46,400)
Interest on debt, fiscal fees and other	(504,965)	(541,165)	(285,978)	(493,689)
Net non-operating revenues (expenses)	<u>(456,867)</u>	<u>(651,675)</u>	<u>(267,978)</u>	<u>(540,089)</u>
Net income (excluding depreciation)	<u>\$ 969,520</u>	<u>\$ 551,609</u>	<u>\$ 450,280</u>	<u>\$ 411,395</u>
<b>CHANGES IN WORKING CAPITAL</b>				
Net income (excluding depreciation)	<u>\$ 969,520</u>	<u>\$ 551,609</u>	<u>\$ 450,280</u>	<u>\$ 411,395</u>
Sources (uses) of working capital:				
Retirement of long-term debt	(381,848)	(549,850)	(265,000)	(576,669)
Transfer In from GO Debt Service Fund				300,000
Debt issuance / transfer of debt proceeds	-	-	-	-
Net additions to fixed assets	(1,818,648)	(3,370,164)	(291,114)	(4,705,000)
Net (increase) decrease in other assets	(347,326)	(57,000)	(57,000)	(57,000)
Transfer Out to IIF				(300,000)
Transfer out to Addison Grove Escrow Fund	-	-	-	(500,000)
Net sources (uses) of working capital	<u>(2,547,822)</u>	<u>(3,977,014)</u>	<u>(613,114)</u>	<u>(5,838,669)</u>
Net increase (decrease) in working capital	(1,578,302)	(3,425,405)	(162,834)	(5,427,274)
Beginning Working Capital	<u>11,810,139</u>	<u>9,846,741</u>	<u>10,231,837</u>	<u>10,069,003</u>
Ending Working Capital	<u>\$ 10,231,837</u>	<u>\$ 6,421,336</u>	<u>\$ 10,069,003</u>	<u>\$ 4,641,729</u>

Note: Financial statements encompass all assumptions listed on Utility Fund Long Term Plan  
(i.e. compensation and insurance adjustments, proposed Modified Levels of Service, etc.)

**TOWN OF ADDISON**  
**STORMWATER ENTERPRISE FUND**  
**STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES TO FUND BALANCE**  
*City Council Adopted FY2017 Annual Budget With Comparisons to FY2016 Adopted Budget*

	Actual 2014-15	Budget 2015-16	Estimated 2015-16	Budget 2016-17
<b>INCOME STATEMENT</b>				
Operating revenues:				
Drainage fees	\$ 1,729,899	\$ 1,773,900	\$ 1,800,000	\$ 1,850,000
Other	-	-	-	-
Total operating revenues	<u>1,729,899</u>	<u>1,773,900</u>	<u>1,800,000</u>	<u>1,850,000</u>
Operating expenses:				
Stormwater operations	584,258	552,289	552,289	743,246
Total operating expenses	<u>584,258</u>	<u>552,289</u>	<u>552,289</u>	<u>743,246</u>
Net operating income	<u>1,145,641</u>	<u>1,221,611</u>	<u>1,247,711</u>	<u>1,106,754</u>
Non-operating revenues (expenses):				
Interest earnings and other	39,242	5,000	60,903	67,700
Interest on debt, fiscal fees and other	(266,218)	(274,716)	(274,716)	(269,266)
Net non-operating revenues (expenses)	<u>(226,976)</u>	<u>(269,716)</u>	<u>(213,813)</u>	<u>(201,566)</u>
Net income (excluding depreciation)	<u>\$ 918,665</u>	<u>\$ 951,895</u>	<u>\$ 1,033,898</u>	<u>\$ 905,188</u>
<b>CHANGES IN WORKING CAPITAL</b>				
Net income (excluding depreciation)	<u>\$ 918,665</u>	<u>\$ 951,895</u>	<u>\$ -</u>	<u>\$ 905,188</u>
Sources (uses) of working capital:				
Retirement of long-term debt	(265,000)	(270,000)	(270,000)	(275,000)
Net additions to fixed assets	(109,026)	(5,070,000)	(1,858,400)	(3,292,500)
Other	(4,992)	-	-	-
Transfer out to Addison Grove Escrow Fund	-	-	-	-
Net sources (uses) of working capital	<u>(379,018)</u>	<u>(5,340,000)</u>	<u>(2,128,400)</u>	<u>(3,567,500)</u>
Net increase (decrease) in working capital	539,647	(4,388,105)	(1,094,502)	(2,662,312)
Beginning Working Capital	<u>9,036,498</u>	<u>8,900,014</u>	<u>9,576,145</u>	<u>8,481,643</u>
Ending Working Capital	<u>\$ 9,576,145</u>	<u>\$ 4,511,909</u>	<u>\$ 8,481,643</u>	<u>\$ 5,819,331</u>

Note: Financial statements encompass all assumptions listed on Stormwater Fund Long Term Plan (i.e. compensation and insurance adjustments, proposed Modified Levels of Service, etc.).

**TOWN OF ADDISON**  
**SELF-FUNDED SPECIAL PROJECT FUND**  
**STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES TO FUND BALANCE**  
*City Council Adopted FY2017 Annual Budget With Comparisons to FY2016 Adopted Budget*

	Actual 2014-15	Budget 2015-16	Estimated 2015-16	Budget 2016-17
BEGINNING BALANCE	\$ -	\$ -	\$ -	\$ 750,000
REVENUES:				
Interest earnings and other	-	-	-	-
TOTAL REVENUES	-	-	-	-
TOTAL AVAILABLE RESOURCES	-	-	-	750,000
EXPENDITURES:				
Design and Engineering:				
Engineering and contractual services	-	-	-	745,500
Construction and equipment	-	-	-	-
TOTAL EXPENDITURES	-	-	-	745,500
OTHER FINANCING SOURCES (USES):				
Transfer In from General Fund Savings	-	-	750,000	-
	-	-	750,000	-
NET CHANGE IN FUND BALANCE	-	-	750,000	(745,500)
ENDING BALANCE	\$ -	\$ -	\$ 750,000	\$ 4,500

Note: Fund established in FY2016.

Note: The balance in this fund is restricted for specific projects, with a one-year timeframe. For a detailed listing by project, see Exhibit H.

**TOWN OF ADDISON**  
**ADDISON GROVE ESCROW FUND**  
**STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES TO FUND BALANCE**  
*City Council Adopted FY2017 Annual Budget With Comparisons to FY2016 Adopted Budget*

	Actual 2014-15	Budget 2015-16	Estimated 2015-16	Budget 2016-17
BEGINNING BALANCE	\$ -	\$ -	\$ -	\$ -
REVENUES:				
Interest earnings and other	-	-	-	-
TOTAL REVENUES	-	-	-	-
TOTAL AVAILABLE RESOURCES	-	-	-	-
EXPENDITURES:				
Design and Engineering:				
Incentive Payments	-	-	-	-
Construction and equipment	-	-	-	-
TOTAL EXPENDITURES	-	-	-	-
OTHER FINANCING SOURCES (USES):				
Transfer in from Utility Fund	-	-	-	500,000
Transfer in from Infrastructure Fund	-	-	-	500,000
Transfer in from General Fund	-	-	-	-
Transfer in from Stormwater Fund	-	-	-	-
Net other Financing Sources (Uses):	-	-	-	1,000,000
NET CHANGE IN FUND BALANCE	-	-	-	1,000,000
ENDING BALANCE	\$ -	\$ -	\$ -	\$ 1,000,000

Note: The balance in this fund is restricted for specific incentive projects.

**TOWN OF ADDISON**  
**INFORMATION TECHNOLOGY INTERNAL SERVICE FUND**  
**STATEMENT OF INCOME AND CHANGES IN WORKING CAPITAL**  
*City Council Adopted FY2017 Annual Budget With Comparisons to FY2016 Adopted Budget*

	Actual 2014-15	Budget 2015-16	Estimated 2015-16	Budget 2016-17
<b>INCOME STATEMENT</b>				
Operating revenues:				
Department contributions and other	\$ 750,000	\$ 750,000	\$ 750,000	\$ 750,000
Total operating revenues	<u>750,000</u>	<u>750,000</u>	<u>750,000</u>	<u>750,000</u>
Operating expenses:				
Maintenance and Materials	337	-	-	-
Contractual services	22,809	3,500	3,931	3,126
Capital Outlay	-	-	-	-
Total Operating expenses (excluding depreciation)	<u>23,146</u>	<u>3,500</u>	<u>3,931</u>	<u>3,126</u>
Net operating income (excluding depreciation)	<u>726,854</u>	<u>746,500</u>	<u>746,069</u>	<u>746,874</u>
Non-operating revenues (expenses):				
Interest earnings and other	11,335	6,250	5,300	21,800
Net non-operating revenues	<u>11,335</u>	<u>6,250</u>	<u>5,300</u>	<u>21,800</u>
Net income (excluding depreciation)	<u>\$ 738,189</u>	<u>\$ 752,750</u>	<u>\$ 751,369</u>	<u>\$ 768,674</u>
<b>CHANGES IN WORKING CAPITAL</b>				
Net income (excluding depreciation)	<u>738,189</u>	<u>752,750</u>	<u>751,369</u>	<u>768,674</u>
Sources (uses) of working capital:				
Acquisition of capital hardware/software:	<u>(1,644,659)</u>	<u>(1,636,100)</u>	<u>(616,100)</u>	<u>(1,514,000)</u>
Net sources (uses) of working capital	<u>(1,644,659)</u>	<u>(1,636,100)</u>	<u>(616,100)</u>	<u>(1,514,000)</u>
Net increase (decrease) in working capital	(906,470)	(883,350)	135,269	(745,326)
Beginning working capital	<u>3,236,584</u>	<u>1,722,304</u>	<u>2,330,113</u>	<u>2,465,382</u>
Ending working capital	<u>\$ 2,330,113</u>	<u>\$ 838,954</u>	<u>\$ 2,465,382</u>	<u>\$ 1,720,056</u>

**TOWN OF ADDISON**  
**CAPITAL REPLACEMENT INTERNAL SERVICE FUND**  
**STATEMENT OF INCOME AND CHANGES IN WORKING CAPITAL**  
*City Council Adopted FY2017 Annual Budget With Comparisons to FY2016 Adopted Budget*

	Actual 2014-15	Budget 2015-16	Estimated 2015-16	Budget 2016-17
<b>INCOME STATEMENT</b>				
Operating revenues:				
Department contributions	\$ 800,000	\$ 800,000	\$ 800,000	\$ 800,000
Total operating revenues	<u>800,000</u>	<u>800,000</u>	<u>800,000</u>	<u>800,000</u>
Operating expenses:				
Maintenance and Materials	-	-	-	-
Contractual services	5,504	4,000	4,000	4,000
Capital Outlay	-	-	-	-
Total Operating Expenses	<u>5,504</u>	<u>4,000</u>	<u>4,000</u>	<u>4,000</u>
Net operating income	<u>794,496</u>	<u>796,000</u>	<u>796,000</u>	<u>796,000</u>
Non-operating revenues (expenses):				
Interest earnings and other	14,275	30,000	22,000	30,000
Proceeds from sale of assets	12,000	20,000	20,000	20,000
Net non-operating revenues	<u>26,275</u>	<u>50,000</u>	<u>42,000</u>	<u>50,000</u>
Net income (excluding depreciation)	820,771	846,000	838,000	846,000
<b>CHANGES IN WORKING CAPITAL</b>				
Net Income (excluding depreciation)	<u>820,771</u>	<u>846,000</u>	<u>838,000</u>	<u>846,000</u>
Sources (uses) of working capital:				
Acquisition of capital equipment:	<u>(985,752)</u>	<u>(1,160,500)</u>	<u>(1,160,500)</u>	<u>(1,929,000)</u>
Net sources (uses) of working capital	<u>(985,752)</u>	<u>(1,160,500)</u>	<u>(1,160,500)</u>	<u>(1,929,000)</u>
Net increase (decrease) in working capital	(164,981)	(314,500)	(322,500)	(1,083,000)
Beginning working capital	<u>3,736,048</u>	<u>3,590,228</u>	<u>3,571,066</u>	<u>3,248,566</u>
Ending working capital	<u>\$ 3,571,066</u>	<u>\$ 3,275,728</u>	<u>\$ 3,248,566</u>	<u>\$ 2,165,566</u>

**Work Session and Regular Meeting**

**Meeting Date:** 09/13/2016

**Department:** Finance

**AGENDA CAPTION:**

Hold A Public Hearing, Present, Discuss, And Consider Action Regarding Approval Of An **Ordinance Levying Taxes For The Town of Addison, Texas And Fixing And Adopting The Tax Rate For The Town On All Taxable Property For The Fiscal Year Beginning October 1, 2016 And Ending September 30, 2017.**

**BACKGROUND:**

State law (Section 26.05(b), Tax Code) requires the governing body to adopt a tax rate for this Fiscal Year. State law also provides that the tax rate consists of two components, a Maintenance and Operations (M&O) rate and a Debt Service rate, and that each of those components must be approved separately.

The proposed tax rate breakdown is as follows:

Total Tax Rate	\$0.560472
M&O	\$0.351298
M&O - Economic Development	\$0.023716
M&O - Infrastructure Investment Fund	\$0.006201
Debt Service	\$0.179257

The vote on the ordinance setting a tax rate that exceeds the effective rate must be a record vote. The motion to adopt an ordinance setting a tax rate that exceeds the effective rate must be made in a specific form. The effective tax rate for FY2017 is \$0.545760 and the proposed tax rate is \$0.560472. Based on this proposed rate, the motion must be made as follows:

"I move that the property tax rate be increased by the adoption of a tax rate of \$0.560472, which is effectively a 2.70 percent increase in the tax rate."

State law requires that, if the tax rate exceeds the effective maintenance and operations rate, the ordinance must include the following language regarding the impact the tax levy has on a home valued at \$100,000:

THE TAX RATE WILL EFFECTIVELY BE RAISED BY 7.42 PERCENT AND WILL RAISE TAXES FOR MAINTENANCE AND OPERATIONS ON A \$100,000 HOME BY APPROXIMATELY \$4.50.

Additionally, the state requires specific language that must be included on the home page of the website:

THE TOWN OF ADDISON ADOPTED A TAX RATE THAT WILL RAISE MORE TAXES FOR MAINTENANCE AND OPERATIONS THAN LAST YEAR'S TAX RATE. THIS TAX RATE WILL EFFECTIVELY BE RAISED BY 7.42 PERCENT AND WILL RAISE TAXES FOR MAINTENANCE AND OPERATIONS ON A \$100,000 HOME BY APPROXIMATELY \$4.50.

The City Manager's proposed budget included a total tax rate of \$0.560472, which exceeded the effective tax rate of \$0.545760. At its August 9, 2016 Council meeting, the City Council took a vote of record to consider a tax rate of \$0.590000, which exceeded the rollback rate of \$0.562533. This vote required the Town to conduct two public hearings on the tax rate which were held on August 30, 2016 and September 6, 2016.

See Property Tax Rates Comparison Chart attached.

**RECOMMENDATION:**

Administration recommends approval.

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**Attachments**

Tax Rate Adoption Ordinance

Property Tax Rates Comparison

---

**TOWN OF ADDISON, TEXAS**

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

**AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS FIXING AND LEVYING MUNICIPAL AD VALOREM TAXES FOR THE TOWN FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2016 AND ENDING SEPTEMBER 30, 2017, AND FOR EACH FISCAL YEAR THEREAFTER UNTIL OTHERWISE PROVIDED, AT A RATE OF \$0.560472 PER ONE HUNDRED DOLLARS (\$100.00) ASSESSED VALUATION ON ALL TAXABLE PROPERTY WITHIN THE CORPORATE LIMITS OF THE TOWN OF ADDISON; DIRECTING THE ASSESSMENT THEREOF TO PROVIDE REVENUES FOR THE PAYMENT OF CURRENT OPERATION AND MAINTENANCE EXPENSES AND INDEBTEDNESS OF THE TOWN; APPROVING THE TAX RATE AND LEVY AND NOTIFYING THE PUBLIC THAT THIS TAX RATE WILL RAISE MORE TAXES FOR MAINTENANCE AND OPERATIONS THAN LAST YEAR'S TAX RATE; PROVIDING FOR DUE AND DELINQUENT DATES TOGETHER WITH PENALTIES AND INTEREST; PROVIDING FOR PAYMENT TO THE ASSESSOR/COLLECTOR FOR THE TOWN; PROVIDING A CUMULATIVE CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING PUBLICATION AND EFFECTIVE DATE.**

**WHEREAS**, pursuant to Texas Property Tax Code Sections 26.04 through 26.06, the Tax Assessor-Collector for the Town of Addison, Texas (the "City") has calculated the effective tax rate for the fiscal year 2016-2017 which cannot be exceeded without requisite publications and public hearings; and

**WHEREAS**, the tax rate for the fiscal year 2016-2017 as initially contemplated (proposed) by the City Council did, and as adopted herein does, exceed the said rate calculated by the Tax Assessor-Collector; and

**WHEREAS**, the Town of Addison complied with the State of Texas Truth-in-Taxation laws and advertised the proposed tax rate and conducted two public hearings on the tax rate, and all notices and hearings and other applicable steps required by law as a prerequisite to the passage, approval, and adoption of this Ordinance have been timely and properly given and held; and

**WHEREAS**, Section 26.05(a), Texas Property Tax Code, provides that the tax rate consists of two components (one of which will impose the amount of taxes needed to pay debt service, and the other of which will impose the amount of taxes needed to fund maintenance and operation expenses for the next year), and each of such components must be approved separately, the tax rate set forth herein consists of those two components and they are approved separately; and

**WHEREAS**, upon full review and consideration of the matter, the City Council is of the opinion that the tax rate for the year 2016 set, fixed and adopted herein below is proper.

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

**Section 1.** The above and foregoing recitals are true and correct and are incorporated into this Ordinance and made a part hereof for all purposes.

**Section 2.** That there is hereby levied and ordered to be assessed and collected an ad valorem tax rate of \$0.560472 on each One Hundred Dollars (\$100.00) of assessed valuation for all taxable property located in the Town of Addison on the 1st day of January 2016, and not exempted from taxation by the Constitution and laws of the State of Texas to provide for the expenses of the Town of Addison for the Fiscal Year beginning October 1, 2016 and ending September 30, 2017, and for each fiscal year thereafter until otherwise provided, on all taxable property, real, personal and mixed, situated within the corporate limits of the Town and not exempted by the Constitution of the State, valid State laws or this ordinance, a tax of property. The \$0.560472 ad valorem tax rate is made up of the following:

- (A) \$0.381215 of said taxes shall be for the maintenance and operations of the Town of Addison, of which \$0.351298 of said taxes shall be for the purposes of the General Fund, \$0.023716 shall be for the purposes of economic development, and \$0.006201 shall be for the purposes of the Infrastructure Investment Fund.
- (B) \$0.179257 of said taxes shall be for the purpose of paying interest and principal on the General Obligation and Certificates of Obligation debt for the Town of Addison.

**THIS TAX RATE THAT WILL RAISE MORE TAXES FOR MAINTENANCE AND OPERATIONS THAN LAST YEAR'S TAX RATE.**

**THE TAX RATE WILL EFFECTIVELY BE RAISED BY 7.42 PERCENT AND WILL RAISE TAXES FOR MAINTENANCE AND OPERATIONS ON A \$100,000 HOME BY APPROXIMATELY \$4.50.**

**Section 3.** That the Tax Assessor-Collector or his/her designee is hereby authorized to assess and collect the tax rates and amounts herein levied.

**Section 4.** That the taxes levied by this Ordinance shall be due and payable on October 1, 2016, and shall become delinquent on February 1, 2017. Penalty and interest will attach and accrue on delinquent taxes as provided by Section 33.01 of the Texas Property Tax Code, as amended, to wit: a penalty of six percent (6%) of the amount of the tax for the first calendar month the tax is delinquent plus one percent (1%) for each additional month or portion of a month the tax remains unpaid prior to July 1 of the year in which it becomes delinquent. However, a tax delinquent on July 1 incurs a total penalty of twelve percent (12%) of the amount of the delinquent tax without regard to

the number of months the tax has been delinquent. A delinquent tax continues to incur the penalty provided by law as long as the tax remains unpaid, regardless of whether a judgment for the delinquent tax has been rendered.

**Section 5.** Taxes that are and remain delinquent on July 1, 2017 incur an additional penalty not to exceed twenty percent (20%) of the amount of delinquent taxes, penalty and interest collected; such additional penalty is to defray the costs of collection due pursuant to the contract with the Town’s attorney authorized by Section 6.30 of the Texas Property Tax Code, as amended.

**Section 6.** That this Ordinance shall take effect and be in force from and after its adoption and publication as may be required by applicable law, including the Town Charter.

On the following motion by \_\_\_\_\_: “I move that the property tax rate be increased by the adoption of a tax rate of \$0.560472 per \$100 valuation, which is effectively a 7.42 percent increase in the tax rate”; seconded by \_\_\_\_\_, the above and foregoing ordinance was passed and approved by roll call vote as follows:

- Mayor Todd Meier \_\_\_\_\_
- Mayor Pro Tempore Bruce Arfsten \_\_\_\_\_
- Deputy Mayor Pro Tempore Ivan Hughes \_\_\_\_\_
- Councilmember Al Angell \_\_\_\_\_
- Councilmember Jim Duffy \_\_\_\_\_
- Councilmember Paul Walden \_\_\_\_\_
- Councilmember Dale Wilcox \_\_\_\_\_

\_\_\_\_\_ voted in favor of the motion  
\_\_\_\_\_ voted against the motion

Motion carried \_\_\_\_\_

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas on this 13th day of September, 2016.

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

ATTEST:  
\_\_\_\_\_  
\_\_\_\_\_

Laura Bell, City Secretary

APPROVED AS TO FORM:

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Brenda N. McDonald, City Attorney



# Property Tax Rates Comparison

Proposed Tax Rate (FY2017)	\$0.560472
• M & O Rate	\$0.351298
• M & O Rate: Infrastructure Investment	\$0.006201
• M & O Rate: Economic Development	\$0.023716
• Debt Rate	\$0.179257
Rollback Tax Rate (FY2017)	\$0.562533
Effective Tax Rate (FY2017)	\$0.545760
Adopted Rate (FY2016)	\$0.579150
• M & O Rate	\$0.345750
• M & O Rate: Infrastructure Investment	\$0.006201
• M & O Rate: Economic Development	\$0.024773
• Debt Rate	\$0.202426

\$0.01 = \$430,000

AI-1866

15.

**Work Session and Regular Meeting**

**Meeting Date:** 09/13/2016

**Department:** Finance

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**AGENDA CAPTION:**

Present, Discuss, And Consider Action Regarding An **Ordinance Ratifying The Property Tax Increase Reflected In The Town's Annual Budget For The Fiscal Year Commencing October 1, 2016, And Ending September 30, 2017.**

**BACKGROUND:**

Section 102.007 of the Local Government Code requires a governing body that adopts a budget which raises more revenue from property taxes than in the previous year to ratify, by a separate vote, the property tax increase reflected in the budget. A vote under this subsection is in addition to and separate from the vote to adopt the budget or a vote to set the tax rate required by Chapter 26, Tax Code, or other law. The proposed 2016-2017 budget will require raising more revenue from property taxes than in the previous year, and therefore requires a separate vote of the City Council to ratify the property tax increase reflected in the budget.

**RECOMMENDATION:**

Administration recommends approval.

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**Attachments**

Ordinance

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**TOWN OF ADDISON, TEXAS**

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

**AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS RATIFYING THE PROPERTY TAX INCREASE REFLECTED IN THE FISCAL YEAR 2016-2017 BUDGET; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Section 102.007 of the Texas Local Government Code provides in part that the adoption of a budget that will require raising more revenue from property taxes than in the previous year requires a separate vote of the governing body to ratify the property tax increase reflected in the budget; and

**WHEREAS**, Section 102.007 of the Texas Local Government Code requires that this ratification be in addition to and separate from the vote to adopt the budget or a vote to set the tax rate required by Chapter 26, Tex. Tax Code, or other law; and

**WHEREAS**, the Fiscal Year 2016-2017 Budget, as adopted, requires raising more revenue from property taxes than in the previous year, and the City Council desires by adoption of this Ordinance to ratify the property tax increase reflected in the City's Fiscal Year 2016-2017 Annual Budget.

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

**Section 1.** The above and foregoing premises are true and correct and are incorporated herein and made a part hereof.

**Section 2.** The Addison City Council, as the governing body of the Town of Addison, Texas, having adopted the Fiscal Year 2016-2017 annual Budget that will require raising more revenue from property taxes than in the previous year, hereby ratifies the property tax increase reflected in the Fiscal Year 2016-2017 annual Budget.

**Section 3.** This Ordinance shall be in full force effective from and after its passage and approval.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this 13<sup>th</sup> day of September, 2016.

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

**ATTEST:**

By: \_\_\_\_\_  
Laura Bell, City Secretary

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Brenda McDonald, City Attorney

AI-1795

16.

**Work Session and Regular Meeting**

**Meeting Date:** 09/13/2016

**Department:** Infrastructure- Development Services

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**AGENDA CAPTION:**

Hold A Public Hearing, Discuss, And Consider Action Regarding **Approval Of An Ordinance Amending An Existing Special Use Permit For A Restaurant And An Existing Special Use Permit For The Sale Of Alcoholic Beverages For On Premises Consumption Only On Property Located At 15175 Quorum Drive.**  
Case 1741-SUP/Arthur's Restaurant.

**BACKGROUND:**

The Addison Planning and Zoning Commission, meeting in regular session on August 16, 2016, voted to recommend approval of an ordinance changing the zoning on property located at 15175 Quorum Drive by amending an existing Special Use Permit for a restaurant and an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption, subject to no conditions.

Voting Aye: Ennis, Griggs, Morgan, Robinson, Schaeffer, Smith

Voting Nay: none

Absent: Robbins

SPEAKERS AT THE PUBLIC HEARING: none

Please refer to the attached staff report for additional information on the case.

**RECOMMENDATION:**

Administration recommends approval.

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**Attachments**

1741-SUP Staff Report

1741-SUP Plans

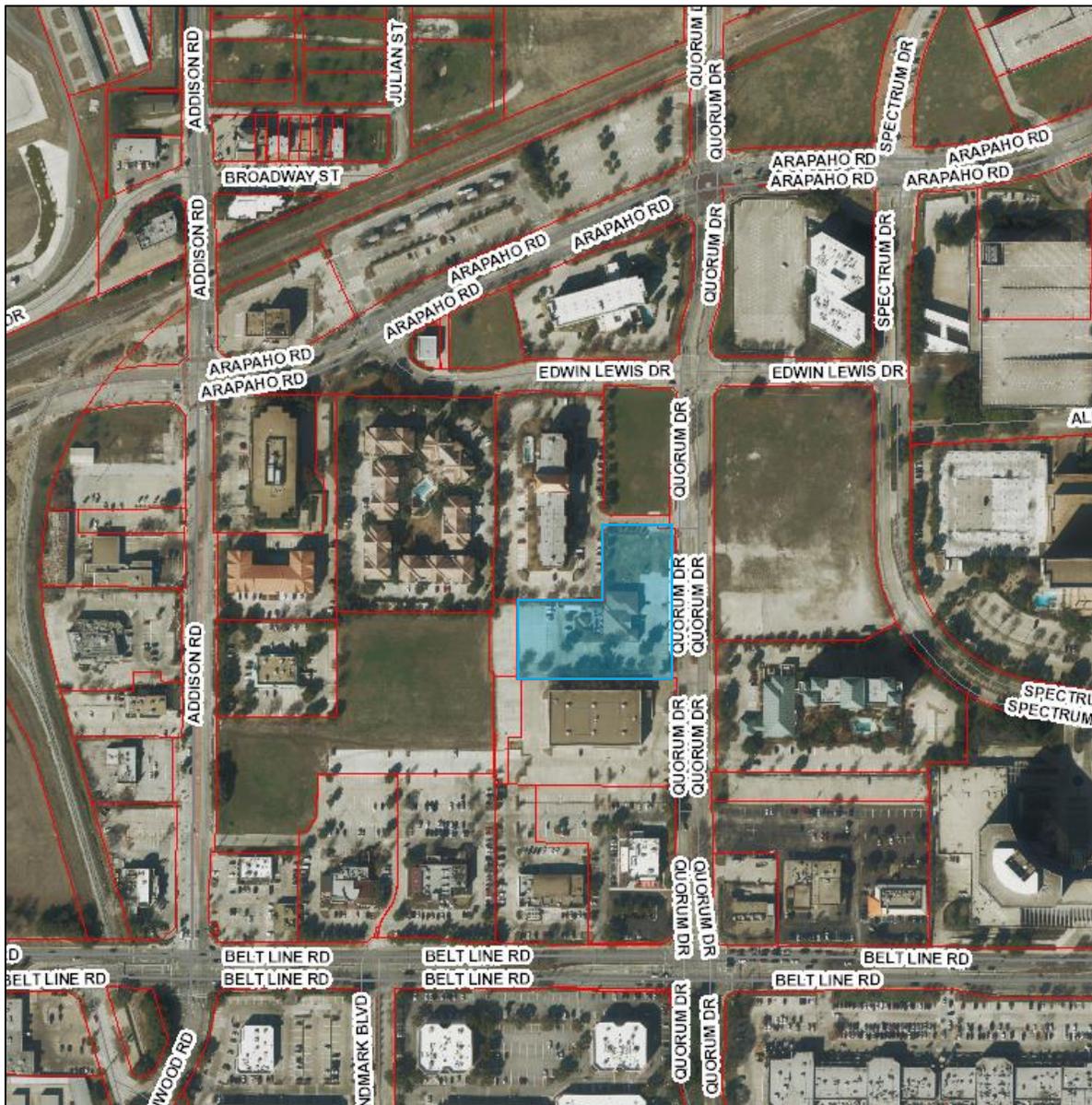
Ordinance

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# 1741-SUP

**PUBLIC HEARING** Case 1741-SUP/Arthur's Restaurant. Public hearing, discussion, and take action on a recommendation regarding an ordinance changing the zoning on property located at 15175 Quorum Drive, which property is currently zoned PD, Planned Development, by amending an existing Special Use Permit for a restaurant and amending an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption only.

## LOCATION MAP





August 12, 2016

**STAFF REPORT**

RE: Case 1741-SUP/Arthur's Restaurant  
LOCATION: 15175 Quorum Drive  
REQUEST: Approval of an amendment to the existing Special Use Permit for a restaurant and an amendment to an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption only.  
APPLICANT: Arthur's restaurant, represented by Mr. Mohsen Heidari

**DISCUSSION:**

Background: The property at 15175 Quorum Drive is zoned as a Planned Development. In 1992, SUPs were approved for Lexi's Restaurant. The site then became the Capital Grille, and eventually, Arthur's. Arthur's has been granted various amendments to their SUPs over the years as the business has expanded and in order to add a patio on the north side of the building.

Proposed Plan: Arthur's is now asking permission to amend their SUPs by revising the building elevations in order to cover the existing 700 square foot patio.

Facades: The applicant is proposing to cover the patio with a metal seam roof supported by steel columns. These columns will be covered in stone. This complies with the masonry requirement in the PD.

Parking: Arthur's currently meets the parking requirement. As no additional square footage is being added, no additional parking is necessary.

Landscaping: The Parks Department will assess the condition of the landscaping during the construction process. Any deficiencies will need to be corrected prior to the issuance of a certificate of occupancy.

**RECOMMENDATION: APPROVAL**

This improvement should help the restaurant maximize the use of their existing patio. Staff recommends approval subject to no conditions.



Case 1741-SUP/Arthur's Restaurant  
August 16, 2016

**COMMISSION FINDINGS:**

The Addison Planning and Zoning Commission, meeting in regular session on August 16, 2016, voted to recommend approval of an ordinance changing the zoning on property located at 15175 Quorum Drive by amending an existing Special Use Permit for a restaurant and an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption, subject to no conditions.

Voting Aye: Ennis, Griggs, Morgan, Robinson, Schaeffer, Smith  
Voting Nay: none  
Absent: Robbins

**SPEAKERS AT THE PUBLIC HEARING:**

For: none  
On: none  
Against: none

# ARTHUR'S RESTAURANT

15175 QUORUM DRIVE

ADDISON, TEXAS

QUORUM CENTRE-EAST 2, LOT 3

EXISTING PATIO COVER

TABLE OF CONTENTS

T-1 TITLE SHEET

C-1 SITE PLAN

C-2 BUILDING ELEVATION

OWNER

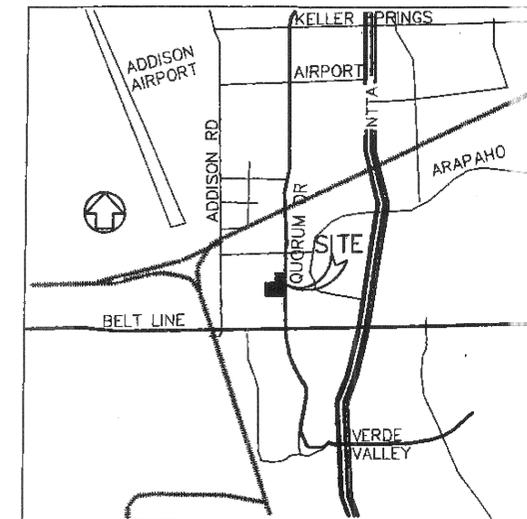
MOHSEN HEIDARI

ARTHUR'S RESTAURANT

15175 QUORUM DR.

ADDISON, TEXAS 75001

972-385-0800



VICINITY MAP  
N.T.S.



R. B. ASSOCIATES, INC.

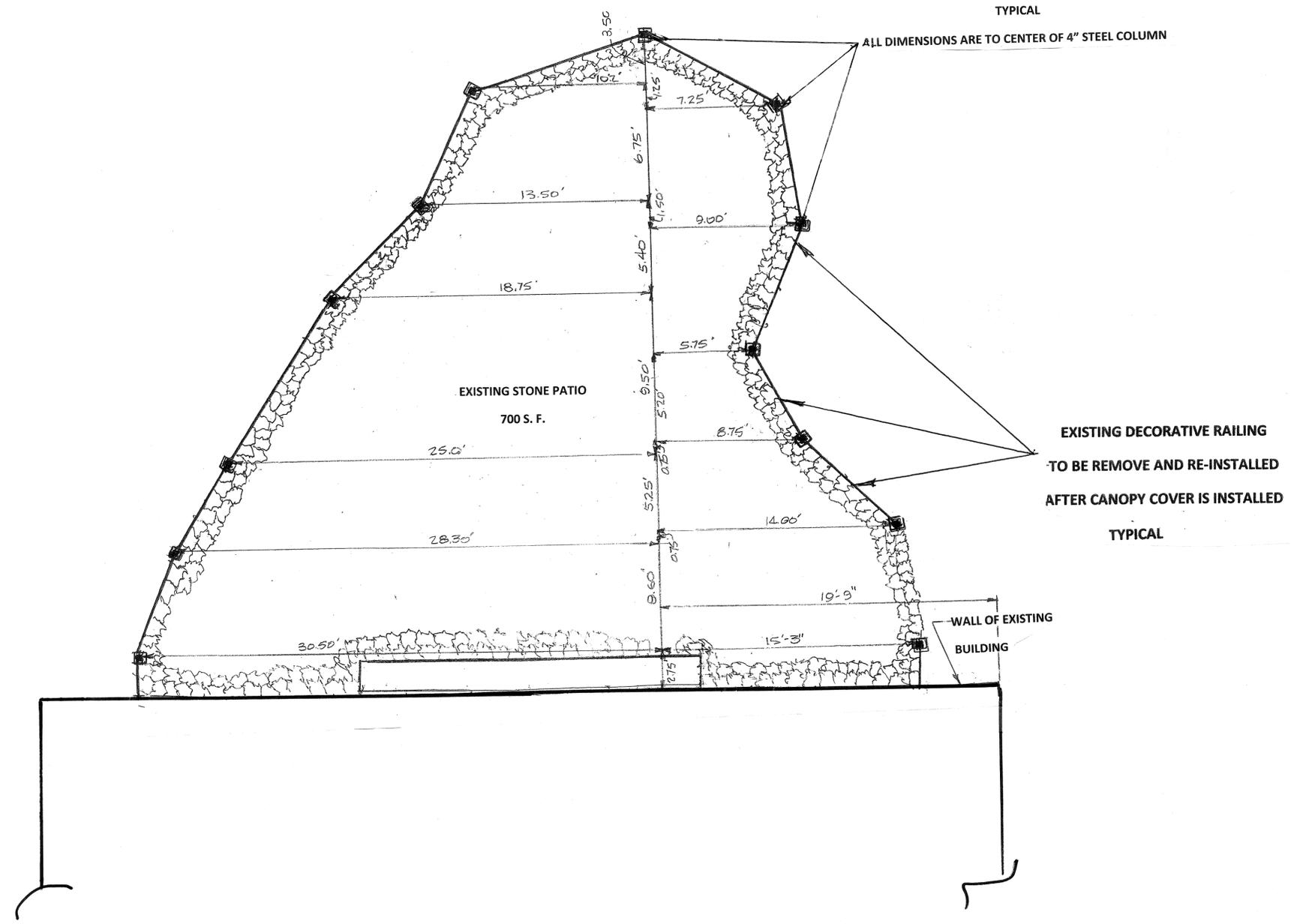
CONSULTING CIVIL ENGINEERS

428 GUNNISON GORGE DR.

WILDWOOD, MO 63011

TEXAS ENGINEERING REGISTRATION F-17903

ARTHUR'S RESTAURANT  
QUORUM DRIVE  
ADDISON, TEXAS



**SITE PLAN**

**Arthur's**  
15175 Quorum Drive  
Addison, TX 75001

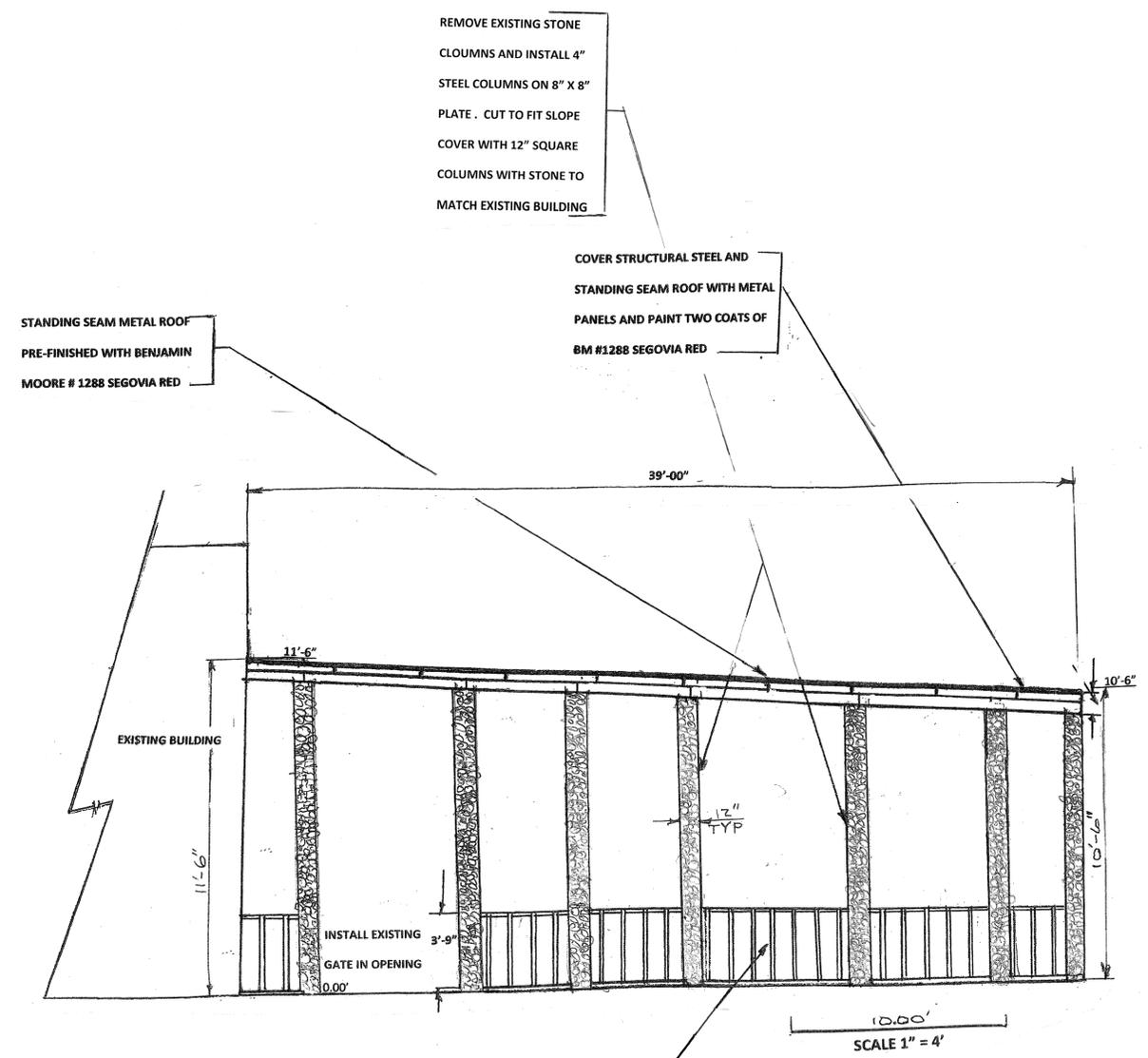
C-1

SCALE 1/4" = 1'-0"

**FACADE PLAN NOTES**

- This Facade Plan is for conceptual purposes only. All building plans require review and approval by Development Services.
- All mechanical units shall be screened from public view as required by the Zoning Ordinance.
- When permitted, exposed utility boxes and conduits shall be painted to match the building.
- All signage areas and locations are subject to approval by Development Services.
- Roof access shall be provided internally, unless otherwise permitted by the Chief Building Official.

MATERIAL TABLE									
ELEVATION	TOTAL AREA	OPEN AREA	PERCENT	MTL PANELS W/DEC RAIL	PERCENT	UPPER METAL TRIM	PERCENT	STONE COLUMNS	PERCENT
EAST ELEVATION	541.0 SF	265.2 SF	49.00%	126.4 SF	23.40%	72.4 SF	13.40%	77.0 SF	14.20%
WEST ELEVATION	577.5 SF	251 SF	43.50%	170.7 SF	29.60%	78.8 SF	13.60%	77.0 SF	13.30%



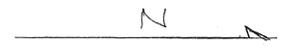
REMOVE EXISTING STONE  
COLUMNS AND INSTALL 4"  
STEEL COLUMNS ON 8" X 8"  
PLATE. CUT TO FIT SLOPE  
COVER WITH 12" SQUARE  
COLUMNS WITH STONE TO  
MATCH EXISTING BUILDING

COVER STRUCTURAL STEEL AND  
STANDING SEAM ROOF WITH METAL  
PANELS AND PAINT TWO COATS OF  
BM #1288 SEGOVIA RED

STANDING SEAM METAL ROOF  
PRE-FINISHED WITH BENJAMIN  
MOORE # 1288 SEGOVIA RED

INSTALL METAL PANELS AND PAINT TWO  
COATS OF BM #1288  
INSTALL EXISTING DECORATIVE RAIL AND  
PAINT BLACK

REMOVE EXISTING STONE  
COLUMNS AND INSTALL 4"  
SQ COLUMN ON AN 8" X 8" PLATE  
AND CUT COLUMN TO MATCH  
SLOPE OF ROOF.  
ALL EXPOSED STEEL COLUMNS  
TO BE COVERED BY MASONRY  
TO MATCH EX BUILDING  
ALL EXPOSED METAL TO BE  
PAINTED BM # 1288 SEGOVIA RED



**BUILDING  
ELEVATION**

**Arthur's**

15175 Quorum Drive  
Addison, TX 75001

SCALE 1/4" = 1'-0"

C-2

**TOWN OF ADDISON, TEXAS**

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

**AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS, AMENDING ORDINANCE NO. O10-023, SO AS TO AMEND A SPECIAL USE PERMIT FOR A RESTAURANT AND A SPECIAL USE PERMIT FOR THE SALE OF ALCOHOLIC BEVERAGES FOR ON-PREMISES CONSUMPTION TO AUTHORIZE A PATIO COVER, ON PROPERTY LOCATED AT 15175 QUORUM DRIVE; PROVIDING A PENALTY NOT TO EXCEED TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00); AND PROVIDING FOR SAVINGS, SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, the property located at 15175 Quorum Drive is zoned PD, Planned Development, with Special Use Permits for a restaurant and for the sale of alcoholic beverages for on premises consumption; and

**WHEREAS**, at its regular meeting held on August 16, 2016, the Planning & Zoning Commission considered and made recommendations on a request for an amendment to an existing Special Use Permit for a restaurant and an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption (Case No.1741-SUP); and

**WHEREAS**, this change of zoning is in accordance with the adopted Comprehensive Plan of the Town of Addison, as amended; and

**WHEREAS**, after due deliberations and consideration of the recommendation of the Planning and Zoning Commission, the information received at a public hearing, and other relevant information and materials, the City Council of the Town of Addison, Texas finds that this amendment promotes the general welfare and safety of this community.

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

**Section 1.** The recitals and findings set forth above are hereby found to be true and correct and incorporated as if fully set forth herein.

**Section 2.** That the Comprehensive Zoning Ordinance of the Town of Addison, Texas, is hereby amended by amending Ordinance O10-023, Section 2, to revise condition 1, to read as follows:

1. That prior to the issuance of a Certificate of Occupancy, said property shall be improved in accordance with the site plan, and building elevations showing a 700 square-foot patio, which are attached hereto in Exhibit A and made a part hereof for all purposes.

**Section 3.** That the Comprehensive Zoning Ordinance of the Town of Addison, Texas, is hereby amended by amending Ordinance O10-023, to add Exhibit A as included in this ordinance.

Ordinance No. \_\_\_\_\_

**Section 4.** The provisions of the Town of Addison Code of Ordinances, as amended, shall remain in full force and effect save and except as amended by this ordinance.

**Section 5.** Any person, firm, corporation, or other business entity violating any of the provisions or terms of this Ordinance shall, in accordance with Article XXVIII (Penalty for Violation) of the Zoning Ordinance, be fined, upon conviction, in an amount of not more than Two Thousand and No/100 Dollars (\$2,000.00), and a separate offense shall be deemed committed each day during or on which a violation occurs or continues.

**Section 6.** The provisions of this Ordinance are severable, and should any section, subsection, paragraph, sentence, phrase or word of this Ordinance, or application thereof to any person, firm, corporation or other business entity or any circumstance, be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of the remaining or other parts or portions of this Ordinance, and the City Council hereby declares that it would have passed such remaining parts or portions of this Ordinance despite such unconstitutionality, illegality, or invalidity, which remaining portions shall remain in full force and effect.

**Section 7.** All ordinances of the City in conflict with the provisions of this Ordinance be, and the same are hereby repealed, and all other ordinances of the City not in conflict with the provisions of this Ordinance shall remain in full force and effect.

**Section 8.** This Ordinance shall become effective from and after its passage and approval and after publication as may be required by law or by the City Charter or ordinance.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS, on this the 13th day of September, 2016.**

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

ATTEST:

\_\_\_\_\_  
Laura Bell, City Secretary

CASE NO: 1741-SUP/Arthur's Restaurant

APPROVED AS TO FORM:

\_\_\_\_\_  
Brenda N. McDonald, City Attorney

PUBLISHED ON: \_\_\_\_\_

Ordinance No. \_\_\_\_\_

**EXHIBIT A**

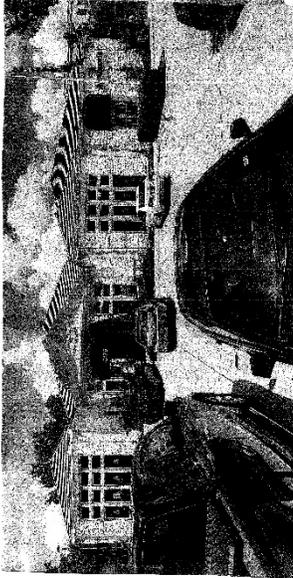
**ARTHUR'S RESTAURANT**  
15175 QUORUM DRIVE  
ADDISON, TEXAS

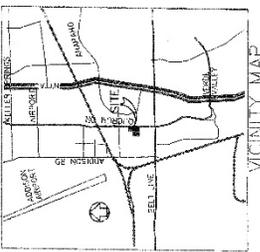
**QUORUM CENTRE-EAST 2, LOT 3  
EXISTING PATIO COVER**

**TABLE OF CONTENTS**

T-1 TITLE SHEET  
C-1 SITE PLAN  
C-2 BUILDING ELEVATION

**OWNER**  
MOHSEN HEIDARI  
ARTHUR'S RESTAURANT  
15175 QUORUM DR.  
ADDISON, TEXAS 75001  
972-385-0800





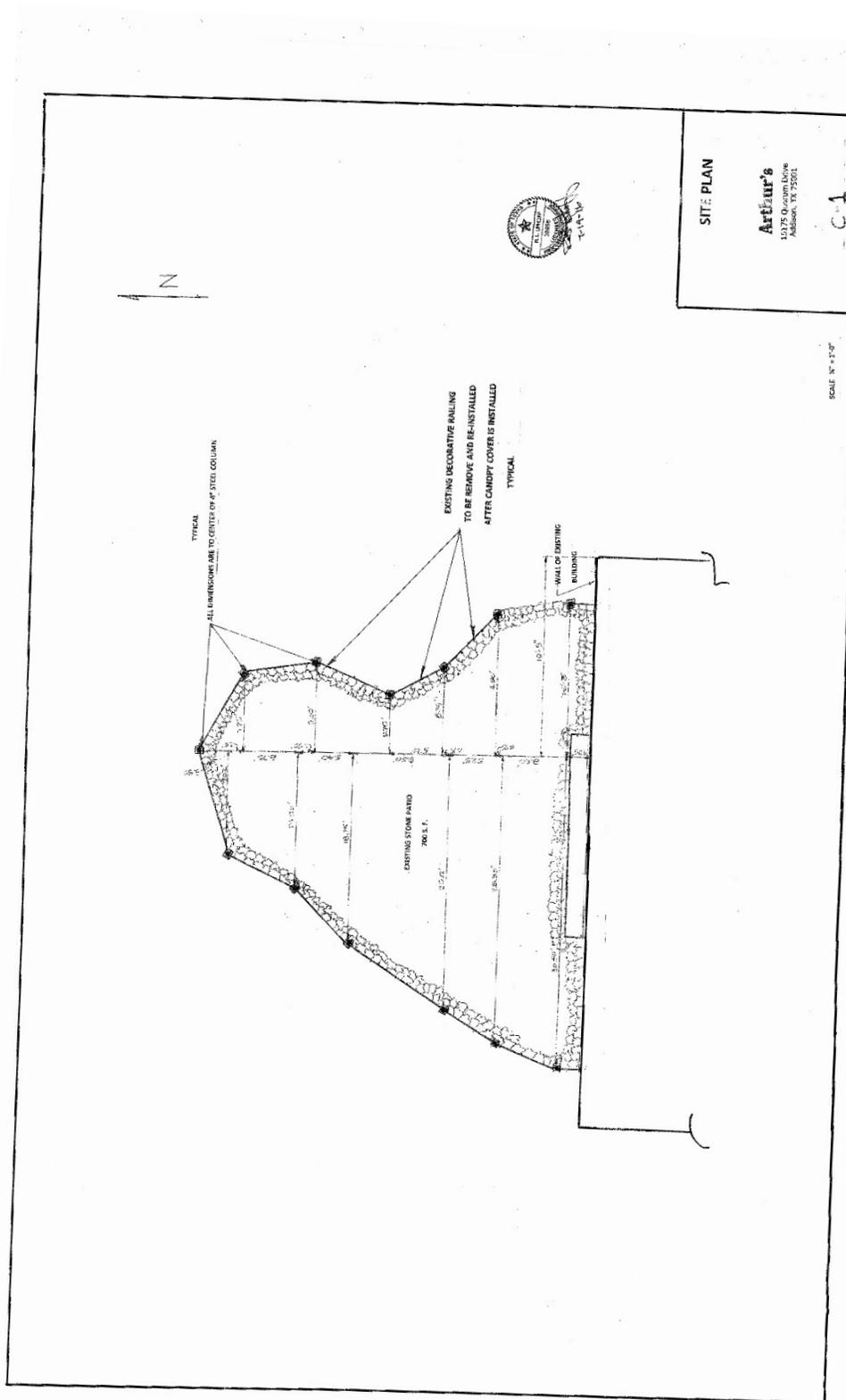
VICINITY MAP  
N.S.



R. E. ASSOCIATES, INC.  
CONSULTING CIVIL ENGINEERS  
425 OAKWOOD CIRCLE  
WASHINGTON, MO 63091  
STATE LICENSE NO. 1798

ARTHUR'S RESTAURANT  
QUORUM DRIVE  
ADDISON, TEXAS

**EXHIBIT A**





AI-1796

17.

**Work Session and Regular Meeting**

**Meeting Date:** 09/13/2016

**Department:** Infrastructure- Development Services

---

**AGENDA CAPTION:**

Hold A Public Hearing, Discuss And Consider Action Regarding Approval Of An Ordinance **Rezoning The Property Located At 4021 Belt Line, Suite 302 In The Belt Line Square Shopping Center On The Northwest Corner Of Belt Line Road And Runyon Road, Which Is Currently Zoned LR, Local Retail, By Approving A New Special Use Permit For A Restaurant And A New Special Use Permit For The Sale Of Alcoholic Beverages For On-Premises Consumption Only**. Case 1744-SUP /K Grill.

**BACKGROUND:**

The Addison Planning and Zoning Commission, meeting in regular session on August 16, 2016, voted to recommend approval of ordinance changing the zoning on property located at 4021 Belt Line Road by approving a Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption, subject to the following condition:

- The applicant shall not use any terms or graphic depictions relating to alcoholic beverages in exterior signage.

Voting Aye: Ennis, Griggs, Morgan, Robinson, Schaeffer, Smith

Voting Nay: none

Absent: Robbins

SPEAKERS AT THE PUBLIC HEARING: none.

Please refer to the attached staff report for additional information on this case.

**RECOMMENDATION:**

Administration recommends approval.

---

**Attachments**

1744-SUP Staff Report

1744-SUP Plans

Ordinance

---

# 1744-SUP

**PUBLIC HEARING** Case 1744-SUP/K Grill. Public hearing, discussion, and take action on a recommendation regarding an ordinance changing the zoning on property located at 4021 Belt Line Road, Suite 302, which property is currently zoned LR, Local Retail, by approving a new Special Use Permit for a restaurant and a new Special Use Permit for the sale of alcoholic beverages for on-premises consumption only.

## LOCATION MAP





August 12, 2016

**STAFF REPORT**

RE: Case 1744-SUP/K Grill  
LOCATION: 4021 Belt Line Road Suite 302  
REQUEST: Approval of a new Special Use Permit for a restaurant and a new Special Use Permit for the sale of alcoholic beverages for on-premises consumption only  
APPLICANT: Aton Enterprises, LLC represented by Choon Tanaka

**DISCUSSION:**

Background: This leased space is part of the Belt Line Square retail center at the corner of Belt Line Road and Runyon Road. The site was originally zoned from Industrial-1 to Local Retail in 1980 and developed in 1981. In 2013, the property was acquired by its current owners and underwent extensive exterior renovations. This suite was originally part of the Jason's Deli space which occupied the center from 1985 until it relocated to Addison Walk in 2011.

K Grill is a fast casual Asian concept. This would be their first location in the area.

Proposed Plan: K Grill will occupy 2,320 square feet of interior space with no patio. The floor plan shows a good sized kitchen and a dining area with seating for 63.

Facades: The applicant is not proposing to adjust the existing facades which are a mix of stone, stucco and painted CMU.

Parking: The center is zoned Local Retail. Since this and the other restaurant uses on the site do not constitute over 40% of the total square footage of the center, this space will receive the mixed use ratio of 1 space per 100 square feet. Given the square footage of the restaurant, the use will require 24 parking spaces. The site has a total of 233 spaces and can accommodate the spaces required for this use.

Landscaping: The Parks Department will assess the condition of the landscaping during the construction process. Any deficiencies will need to be corrected prior to the issuance of a certificate of occupancy.

**RECOMMENDATION: APPROVAL WITH CONDITION**

K Grill is a new concept to Addison. This should help bring additional vibrancy to this retail center. Staff recommends approval subject to the following condition:

- The applicant shall not use any terms or graphic depictions that relate to alcoholic beverages in any exterior signage.

## Land Use Analysis

### Attributes of Success Matrix

K Grill, 4021 Belt Line Road Suite 302

1744-SUP

Attribute	Comment	Score
Competitive	Restaurants west of Midway Road have mixed levels of success. This center is currently mostly vacant. The hope is that this will help catalyze further occupancy in the center.	
Safe	The project will be safe.	
Functional	The site is functional.	
Visually Appealing	The building facades were recently renovated. However, due to its age, the landscaping does not comply with current standards.	
Supported with Amenities	The restaurant will be supported by the adjacent residential and office uses.	
Environmentally Responsible	This use is a good re-use of an existing space.	
Walkable	The pedestrian improvements contemplated in the Belt Line Utility undergrounding will improve pedestrian connectivity by widening the sidewalk.	
<b>Overall Assessment</b>	<b>K Grill is a new concept to Addison that should help add vibrancy to this center and provide another restaurant offering west of Midway.</b>	



Case 1744-SUP/K Grill  
August 16, 2016

**COMMISSION FINDINGS:**

The Addison Planning and Zoning Commission, meeting in regular session on August 16, 2016, voted to recommend approval of ordinance changing the zoning on property located at 4021 Belt Line Road by approving a Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption, subject to the following condition:

- The applicant shall not use any terms or graphic depictions relating to alcoholic beverages in exterior signage.

Voting Aye: Ennis, Griggs, Morgan, Robinson, Schaeffer, Smith

Voting Nay: none

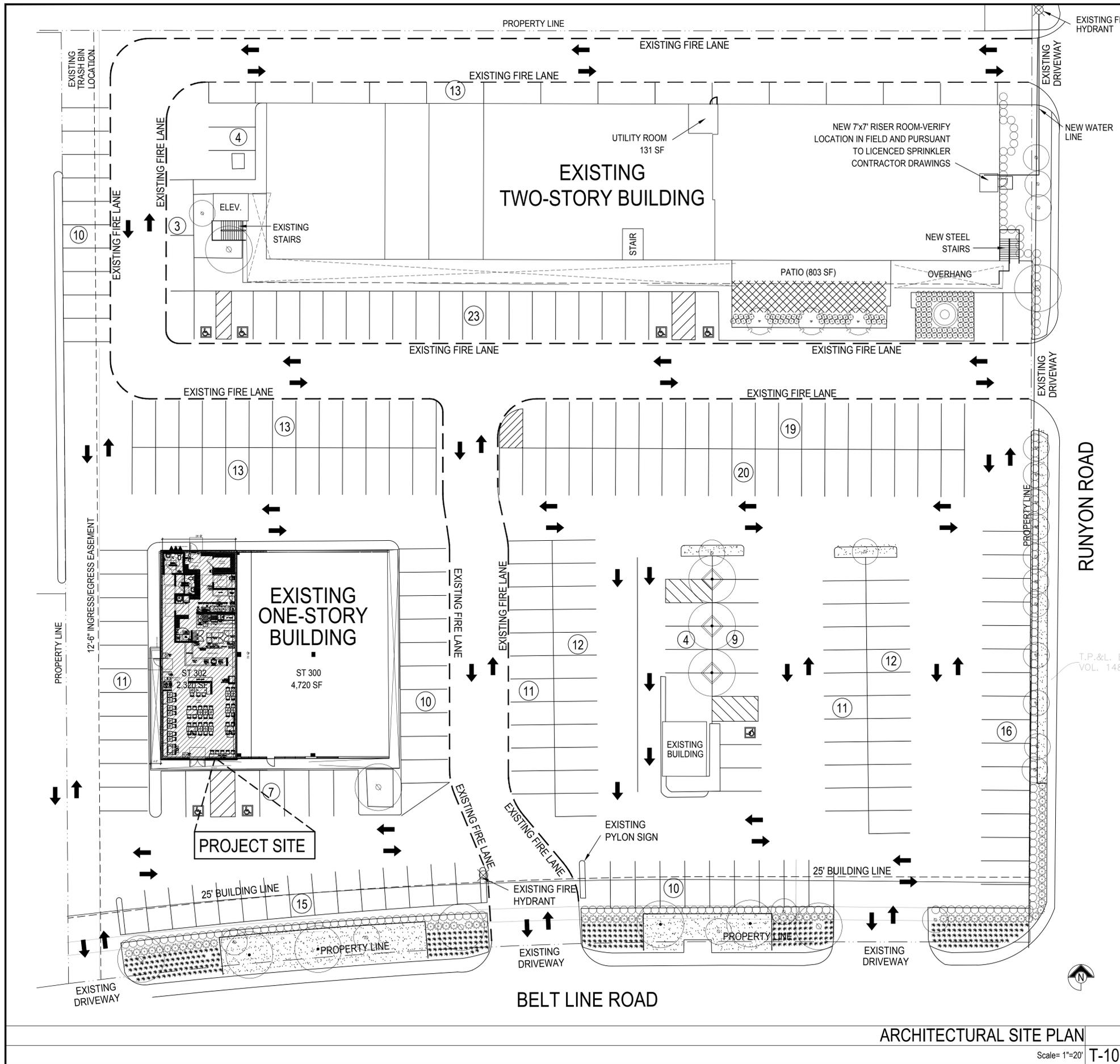
Absent: Robbins

**SPEAKERS AT THE PUBLIC HEARING:**

For: none

On: none

Against: none



TENANT/APPLICANT  
 ATON ENTERPRISES VII, LLC  
 CHOCON TANAKA  
 1881 YON KAMMAN AVE, STE 1170  
 IRVINE, CA 92612  
 T: (714) 319-3510  
 ctanaka@atonent.com

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 GHW ARCHITECTURE  
 DALMAR DURAN  
 1255 CORPORATE CENTER DR  
 STE 8, MONTEREY PARK, CA 91754  
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 dalmar@garywang.com

PLANNING/ZONING  
 TOWN OF ADDISON, TX  
 CHARLES GOFF  
 PO BOX 9010, ADDISON, TX  
 T: (972) 450-7027  
 cgoff@addisontx.gov

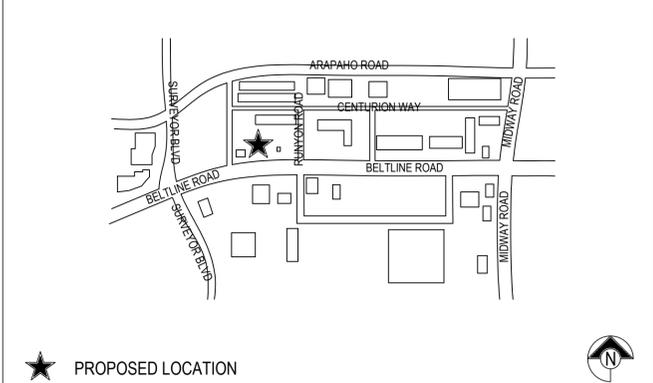
LANDLORD  
 RPI BELTLINE SQUARE  
 TREY HODGE  
 T: (972) 250-1486  
 F: (972) 931-0556  
 mailto:thodge@retailplazas.com



**TEAM DIRECTORY**  
 Scale= NTS T-100

T-100	TITLE SHEET
AS-100	ARCHITECTURAL SITE PLAN/FLOOR PLAN
A-200	BUILDING ELEVATIONS

**SHEET INDEX**  
 Scale= NTS T-100



**VICINITY MAP**  
 Scale= NTS T-100

**PROJECT SUMMARY:**

**PROJECT DESCRIPTION:**  
 PROPOSED TENANT IMPROVEMENT RESTAURANT PROJECT ON AN EXISTING, VACANT 2320 SF SPACE. THE PROPOSED PROJECT WILL HAVE 63 INTERIOR SEATS, TWO SEPARATE RESTROOMS FOR MALE AND FEMALE USE AND AN EXHAUST HOOD.

**EXISTING BUILDING CONSTRUCTION TYPE:** TYPE III (NON-SPRINKLERED)  
**OCCUPANCY:** A-2  
**TENANT GROSS FLOOR AREA:** 2320 SF  
**OCCUPANT LOAD CALCULATION:** DINING AREA: 983 SF/ 15 = 65  
 SERVICE/ PREP AREA: 340 SF/ 200 = 1.7  
 HALLWAY/ RESTROOMS: 880 SF/ 200 = 4.4  
 TOTAL OCCUPANT LOAD: 72

**NUMBER OF EXITS REQUIRED:** 1 EXIT  
**NUMBER OF EXITS PROVIDED:** 3 EXITS

**SITE AREA:** 131,554.40 SF (EXISTING)  
**LANDSCAPE PROVIDED:** 9804 SF (EXISTING)

**CODE ANALYSIS:**

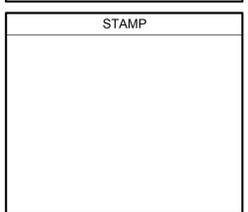
INTERNATIONAL BUILDING CODE, 2012 EDITION  
 INTERNATIONAL MECHANICAL CODE, 2012 EDITION  
 INTERNATIONAL PLUMBING CODE, 2012 EDITION  
 INTERNATIONAL FIRE CODE, 2012 EDITION  
 INTERNATIONAL FUEL AND GAS CODE, 2012 EDITION  
 INTERNATIONAL ENERGY CONSERVATION CODE, 2012 EDITION  
 INTERNATIONAL EXISTING BUILDING CODE, 2012 EDITION  
 2014 NATIONAL ELECTRIC CODE

**PARKING ANALYSIS:**

TENANTS:	USE:	REQUIRED PARKING:
SUITE 101 (2700 SF)	LEFTY'S (RESTAURANT)	1 PER 100 SF = 27 SPACES
SUITE 102 (2160 SF)	VACANT	-
SUITE 107 (5121 SF)	VACANT	-
SUITE 109 (7702 SF INCL. PATIO)	RIO MAMBO (RESTAURANT)	1 PER 100 SF = 78 SPACES
SUITE 200 (1262 SF)	VACANT	-
SUITE 201 (612 SF)	VACANT	-
SUITE 202 (1820 SF)	VACANT	-
SUITE 205 (1200 SF)	BOB SHAW'S TATOO STUDIO (RETAIL)	1 PER 200 SF = 6 SPACES
SUITE 207 (740 SF)	VACANT	-
SUITE 208 (1355 SF)	VACANT	-
SUITE 210 (2201 SF)	VACANT	-
SUITE 300 (4720 SF)	VACANT	-
SUITE 302 (2320 SF)	K GRILL (RESTAURANT)	1 PER 100 SF = 24 SPACES
SUITE 303 (320 SF)	SCOOTER'S COFFEE RETAIL (DRIVE THRU)	1 PER 200 SF = 4 SPACES
<b>TOTAL PARKING REQUIRED:</b>	<b>139 SPACES FOR ALL OCCUPIED TENANT SPACES</b>	
<b>TOTAL PARKING PROVIDED:</b>	<b>246 SPACES</b>	

**SITE ANALYSIS**  
 Scale= NTS T-100

THESE DRAWINGS AND SPECIFICATIONS AND IDEAS, DESIGNS AND ARRANGEMENTS REPRESENTED THEREBY ARE AND SHALL REMAIN THE PROPERTY OF GHW ARCHITECTURE AND NO PART THEREOF SHALL BE COPIED, DISCLOSED TO OTHERS OR USED IN CONNECTION WITH ANY WORK OR PROJECT OTHER THAN THE SPECIFIC PROJECT FOR WHICH THEY HAVE BEEN PREPARED AND DEVELOPED WITHOUT THE WRITTEN CONSENT OF GHW ARCHITECTURE. VISUAL CONTACT WITH THESE DRAWINGS AND SPECIFICATIONS SHALL CONSTITUTE CONCLUSIVE EVIDENCE OF THESE RESTRICTIONS. WRITTEN DIMENSIONS ON THESE DRAWINGS SHALL HAVE PRECEDENCE OVER SCALED DIMENSIONS. CONTRACTORS SHALL VERIFY, AND BE RESPONSIBLE FOR ALL DIMENSIONS AND CONDITIONS ON THE JOB AND THIS OFFICE MUST BE NOTIFIED OF ANY VARIATIONS FROM THE DIMENSIONS AND CONDITIONS SHOWN BY THESE DRAWINGS. SHOP DETAIL MUST BE SUBMITTED TO THIS OFFICE FOR REVIEW BEFORE PROCEEDING WITH THE FABRICATION.



**PROJECT NAME/ADDRESS:**  
**K GRILL RESTAURANT**  
 4021 BELT LINE ROAD, SUITE 302  
 ADDISON, TX

**ISSUE/REVISIONS:**

NO.	DESCRIPTION

**JOB NUMBER**

**DRAWN BY**

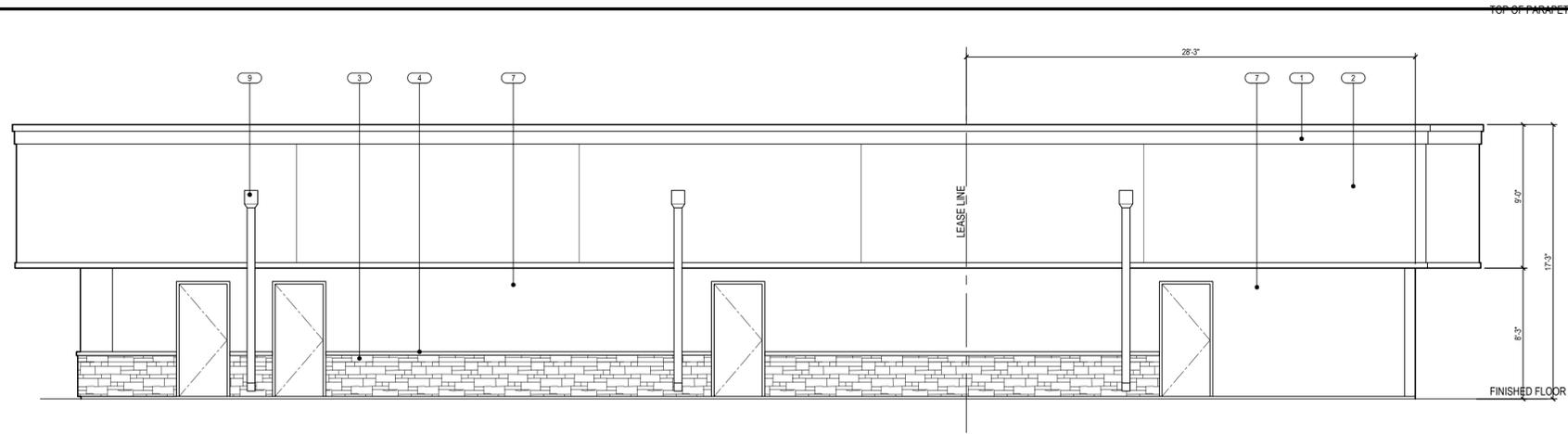
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**SHEET NO**

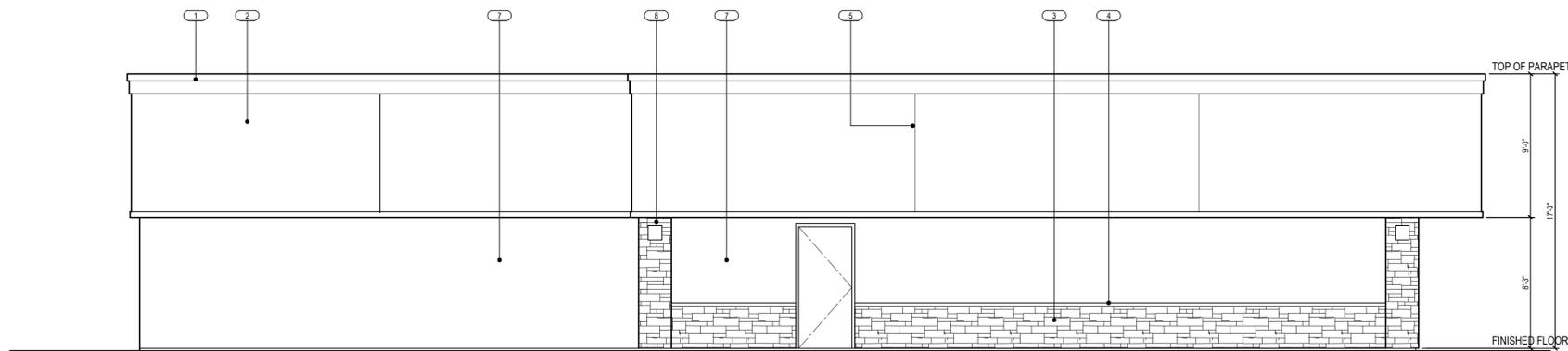
**T-100**  
 GENERAL NOTES

**ARCHITECTURAL SITE PLAN**  
 Scale= 1"=20' T-100

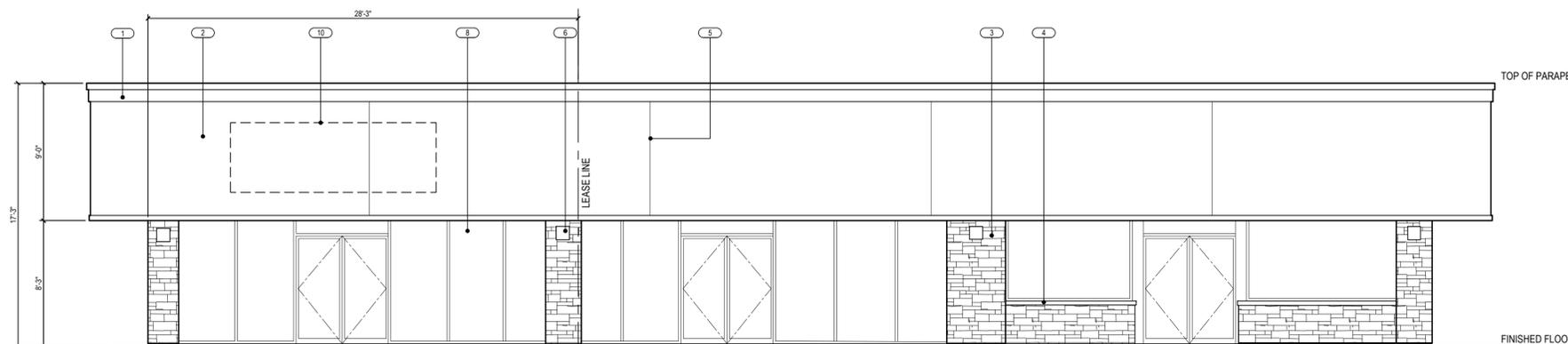




**NORTH ELEVATION (REAR) 3**  
Scale: 3/16" = 1'-0" **A-200**



**WEST ELEVATION (SIDE) 2**  
Scale: 3/16" = 1'-0" **A-200**



**SOUTH ELEVATION (FRONT) 1**  
Scale: 3/16" = 1'-0" **A-200**

EXISTING EXTERIOR FINISH SCHEDULE				
NO	MATERIAL	COLOR	FINISH	NOTES
1	ACRYLIC STUCCO OVER STYRENE FOAM	DARK BROWN	SMOOTH FINISH	EXISTING
2	STUCCO	BEIGE	SMOOTH FINISH	EXISTING
3	CULTURED STONE	BROWN		EXISTING
4	CULTURED STONE WATER TABLE	BROWN		EXISTING
5	CONTROL JOINTS			EXISTING
6	DECORATIVE WALL LIGHT FIXTURES			EXISTING
7	PAINT OVER EXISTING BRICK AND CONCRETE BLOCK WALL	TAN	SMOOTH FINISH	EXISTING
8	EXISTING STOREFRONT SYSTEM TO REMAIN	DARK ANNOXIDIZED ALUMINUM FRAME		EXISTING
9	OVERFLOW SCUPPER AND DOWNSPOUT	DARK BROWN		EXISTING
10	PROPOSED SIGNAGE			ON SEPARATE PERMIT

**MATERIAL SCHEDULES 5**  
Scale = NTS **A-200**

BUILDING MATERIAL TAKE-OFFS:	
<b>SOUTH ELEVATION (FRONT)</b>	TOTAL STOREFRONT AREA: 287 SF = 16.2% OF FACADE TOTAL STUCCO AREA: 134 SF = 7.5% OF FACADE TOTAL STUCCO AREA: 830 SF = 46.8% OF FACADE TOTAL FACADE AREA: 1524 SF
<b>WEST ELEVATION (SIDE)</b>	TOTAL PAINTED CMU AREA: 491 SF = 34% OF FACADE TOTAL STUCCO AREA: 142 SF = 9.9% OF FACADE TOTAL STUCCO AREA: 767 SF = 53.8% OF FACADE TOTAL FACADE AREA: 1431 SF
<b>NORTH ELEVATION (REAR)</b>	TOTAL PAINTED CMU AREA: 422 SF = 27.7% OF FACADE TOTAL STUCCO AREA: 150 SF = 9.8% OF FACADE TOTAL STUCCO AREA: 767 SF = 50.4% OF FACADE TOTAL FACADE AREA: 1522 SF

**MATERIAL TAKE-OFFS 4**  
Scale = NTS **A-200**

ARCHITECT

**GHW**  
architecture

1255 CORPORATE CENTER DRIVE, SUITE 8  
MONTEREY PARK, CA 91754  
T: 626 288 8998  
F: 626 768 7107

THESE DRAWINGS AND SPECIFICATIONS AND IDEAS, DESIGNS AND ARRANGEMENTS REPRESENTED THEREBY ARE AND SHALL REMAIN THE PROPERTY OF GHW ARCHITECTURE AND NO PART THEREOF SHALL BE COPIED, DISCLOSED TO OTHERS OR USED IN CONNECTION WITH ANY WORK OR PROJECT OTHER THAN THE SPECIFIC PROJECT FOR WHICH THEY HAVE BEEN PREPARED AND DEVELOPED WITHOUT THE WRITTEN CONSENT OF GHW ARCHITECTURE. VISUAL CONTACT WITH THESE DRAWINGS AND SPECIFICATIONS SHALL CONSTITUTE CONCLUSIVE EVIDENCE OF THESE RESTRICTIONS. WRITTEN DIMENSIONS ON THESE DRAWINGS SHALL HAVE PRECEDENCE OVER SCALED DIMENSIONS. CONTRACTORS SHALL VERIFY, AND BE RESPONSIBLE FOR ALL DIMENSIONS AND CONDITIONS ON THE JOB, AND THIS OFFICE MUST BE NOTIFIED OF ANY VARIATIONS FROM THE DIMENSIONS AND CONDITIONS SHOWN BY THESE DRAWINGS. SHOP DETAIL MUST BE SUBMITTED TO THIS OFFICE FOR REVIEW BEFORE PROCEEDING WITH THE FABRICATION.

STAMP

PROJECT NAME/ADDRESS:

**K GRILL RESTAURANT**

4021 BELT LINE ROAD, SUITE 302  
ADDISON, TX

ISSUE/REVISIONS:

NO	DATE	DESCRIPTION

JOB NUMBER

DRAWN BY

SHEET CONTENT

SHEET NO

**A-200**

ELEVATIONS

**TOWN OF ADDISON, TEXAS**

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

**AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE TO REPEAL ORDINANCE NO. O85-063 AND ORDINANCE NO. O93-063 AND TO GRANT SPECIAL USE PERMITS FOR A RESTAURANT AND THE SALE OF ALCOHOLIC BEVERAGES FOR ON-PREMISES CONSUMPTION, FOR PROPERTY LOCATED AT 4021 BELT LINE ROAD SUITE 302; PROVIDING A PENALTY NOT TO EXCEED TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00) FOR EACH OFFENSE AND A SEPARATE OFFENSE SHALL BE DEEMED COMMITTED EACH DAY DURING OR ON WHICH A VIOLATION OCCURS OR CONTINUES; SAVINGS, NO SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, the property located at 4021 Belt Line Road is zoned LR - Local Retail; and

**WHEREAS**, at its regular meeting held on August 16, 2016, the Planning & Zoning Commission considered and made recommendations on a request for a Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption (Case No.1744-SUP); and

**WHEREAS**, this change of zoning is in accordance with the adopted Comprehensive Plan of the Town of Addison, as amended; and

**WHEREAS**, after due deliberations and consideration of the recommendation of the Planning and Zoning Commission, the information received at a public hearing, and other relevant information and materials, the City Council of the Town of Addison, Texas finds that this amendment promotes the general welfare and safety of this community.

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

**Section 1.** That the recitals and findings set forth above are hereby found to be true and correct and incorporated as if fully set forth herein.

**Section 2.** That Ordinances No. O85-063 and O93-063 are repealed.

**Section 3.** That a Special Use Permit authorizing a restaurant and a Special Use Permit authorizing the sale of alcoholic beverages for on-premises consumption only, on the property located at 4021 Belt Line Road Suite 302, are hereby granted subject to the following conditions:

- (a) Prior to the issuance of a Certificate of Occupancy, said Property shall be improved in accordance with the site plan, floor plan, and the elevation drawings, which are attached hereto as **Exhibit A** and made a part hereof for all purposes.

Ordinance No. \_\_\_\_\_

- (b) The Special Use Permit granted herein for a restaurant with the sale of alcoholic beverages for on-premises consumption only shall be limited to that particular area designated on the final site plan as encompassing a total area not to exceed 2,320 square feet.
- (c) No signs advertising sale of alcoholic beverages shall be permitted other than those authorized under the Liquor Control Act of the State of Texas, and any sign ordinance of the Town of Addison, Texas.
- (d) The sale of alcoholic beverages under this Special Use Permit shall be permitted in restaurants. Restaurants are hereby defined as establishments which receive at least sixty percent (60%) of their gross revenues from the sale of food.
- (e) Said establishment shall make available to the city or its agents, during reasonable hours its bookkeeping records for inspection, if required, by the city to insure that the conditions of subparagraph (d) above are being met.
- (f) Any use of property considered as a nonconforming use under the Comprehensive Zoning Ordinance of the Town of Addison shall not be permitted to receive a license or permit for the sale of alcoholic beverages.
- (g) If the property for which these Special Use Permits are granted is not used for the purposes for which said permits were granted within one (1) year after the adoption of this ordinance, the City Council may authorize hearings to be held for the purpose of considering a change of zoning and repeal of the Special Use Permits granted herein.
- (h) If a license or permit to sell alcoholic beverages on property covered by this Special Use Permit is revoked, terminated or cancelled by proper authorities, the City Council may authorize hearings to be held for the purpose of considering a change of zoning repeal of the Special Use Permits granted herein.
- (i) The establishment shall not use the term “bar”, “tavern”, or any other terms or graphic depictions that relate to the sale of alcoholic beverages on any signs visible from the exterior of the premises.

**Section 4.** That any person, firm, or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Comprehensive Zoning Ordinance of the city, as heretofore amended, and upon conviction shall be punished by a fine set in accordance with Chapter 1, General Provisions, Section 1.10, General penalty for violations of Code; continuing violations, of the Code of Ordinances for the Town of Addison.

**Section 5.** That it is the intention of the City Council that this ordinance be considered in its entirety, as one ordinance, and should any portion of this ordinance be held to be void or unconstitutional, then said ordinance shall be void in its entirety, and the City Council would not

have adopted said ordinance if any part or portion of said ordinance should be held to be unconstitutional or void.

**Section 6.** That all ordinances of the City in conflict with the provisions of this ordinance be, and the same are hereby repealed and all other ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

**Section 7.** That this Ordinance shall become effective from and after its passage and approval and after publication as may be required by law or by the City Charter or ordinance.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS, on this the 13th day of September, 2016.**

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

ATTEST:

\_\_\_\_\_  
Laura Bell, City Secretary

CASE NO: 1744-SUP/K Grill

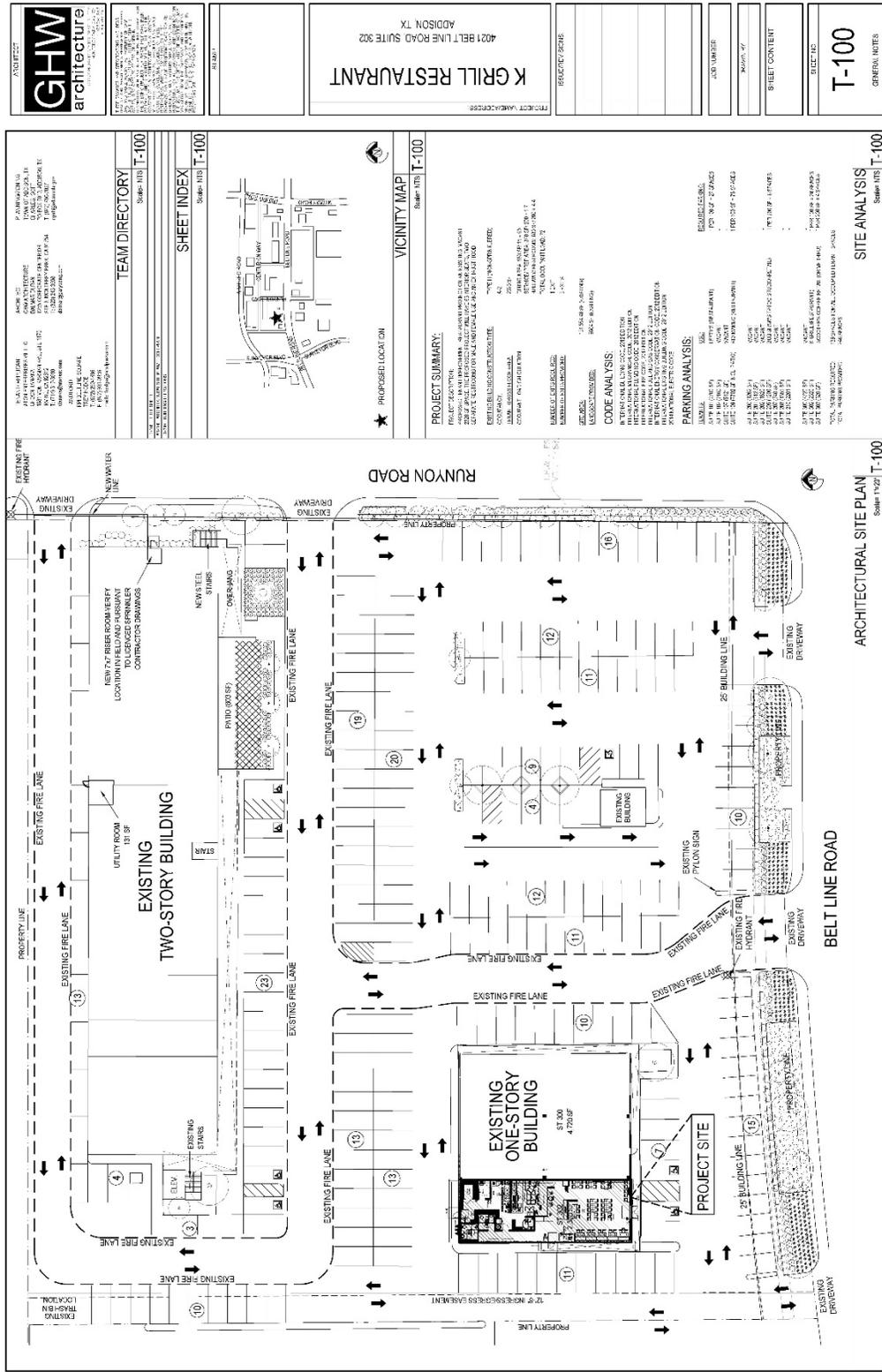
APPROVED AS TO FORM:

\_\_\_\_\_  
Brenda N. McDonald, City Attorney

PUBLISHED ON: \_\_\_\_\_

Ordinance No. \_\_\_\_\_

**EXHIBIT A**



**GHW architecture**  
 ARCHITECTS  
 1100 W. UNIVERSITY BLVD., SUITE 100  
 AUSTIN, TEXAS 78705  
 TEL: 512.476.1000  
 FAX: 512.476.1001  
 WWW.GHWARCHITECTS.COM

PROJECT: K GRILL RESTAURANT  
 LOCATION: 4021 BELT LINE ROAD SUITE 302  
 AUSTIN, TX

**K GRILL RESTAURANT**  
 4021 BELT LINE ROAD SUITE 302  
 AUSTIN, TX

PROJECT NUMBER	1744-SUP
SHEET NUMBER	T-100
SHEET CONTENT	ARCHITECTURAL SITE PLAN
DATE	08/14/2017

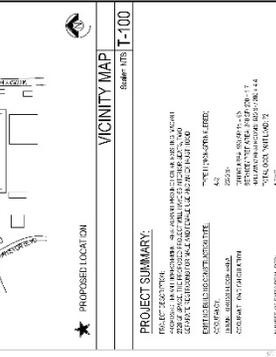
**T-100**  
 GENERAL NOTES

**TEAM DIRECTORY**

ARCHITECT	GHW ARCHITECTS
OWNER	K GRILL RESTAURANT
ENGINEER	...
PLUMBER	...
ELECTRICIAN	...
MECHANICAL	...
PAINTER	...
IRONWORKER	...
CONTRACTOR	...

**SHEET INDEX**

SHEET NO.	T-100
SHEET NO.	T-100
SHEET NO.	T-100



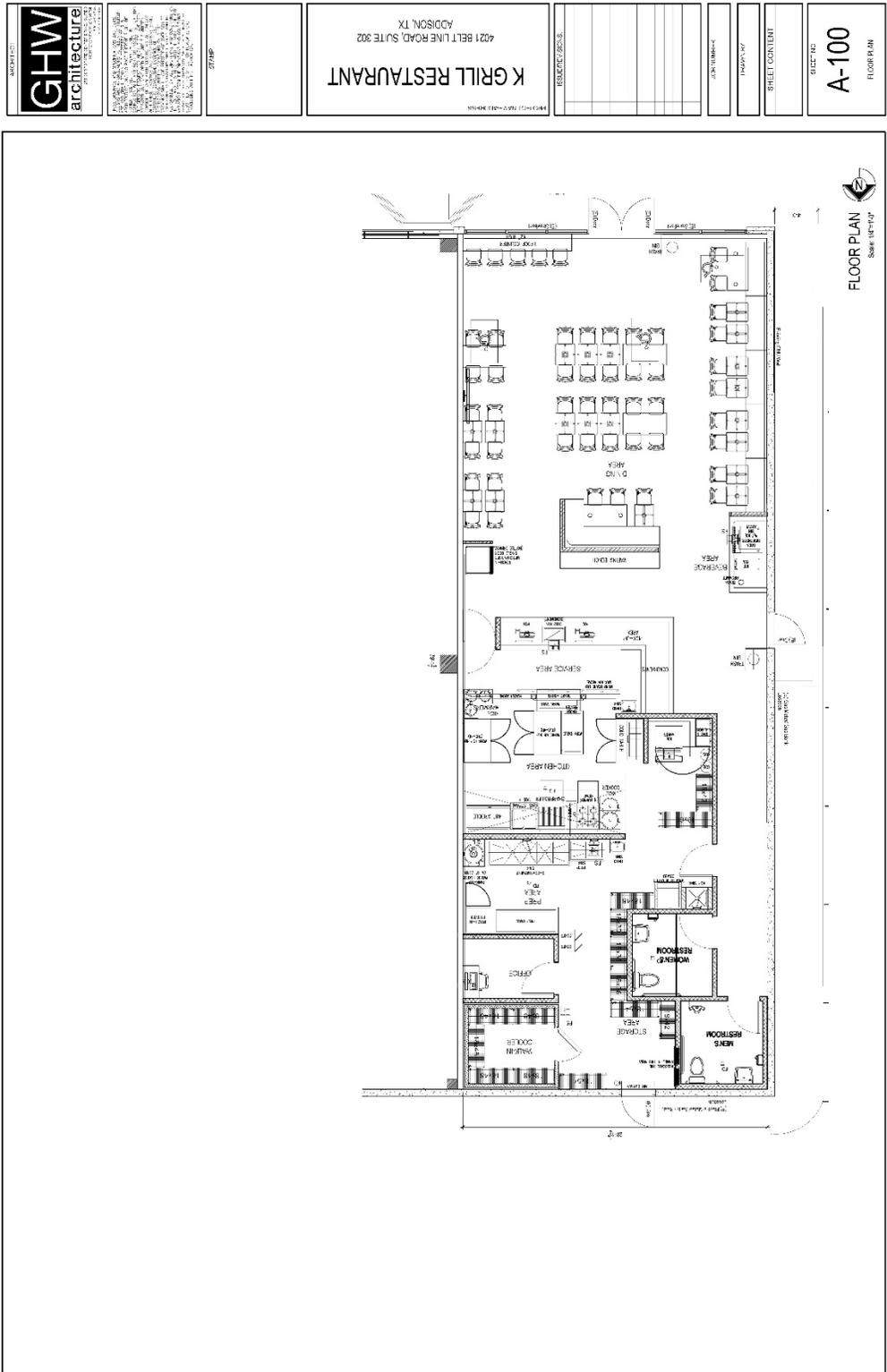
**PROJECT SUMMARY:**  
 PROJECT DESCRIPTION: ARCHITECTURAL SITE PLAN FOR THE PROPOSED K GRILL RESTAURANT, INCLUDING EXISTING AND PROPOSED BUILDING FOOTPRINTS, PARKING SPACES, AND UTILITY LINES. THE PROJECT IS SITUATED ON A 1.23 ACRES PARCEL LOCATED AT 4021 BELT LINE ROAD, SUITE 302, AUSTIN, TEXAS 78705.

**CODE ANALYSIS:**  
 INTERNATIONAL RESIDENTIAL ZONING ORDINANCE (IRZO) SECTION 17.02.01 (COMMERCIAL RESIDENTIAL ZONING) SECTION 17.02.02 (COMMERCIAL ZONING) SECTION 17.02.03 (COMMERCIAL ZONING) SECTION 17.02.04 (COMMERCIAL ZONING) SECTION 17.02.05 (COMMERCIAL ZONING) SECTION 17.02.06 (COMMERCIAL ZONING) SECTION 17.02.07 (COMMERCIAL ZONING) SECTION 17.02.08 (COMMERCIAL ZONING) SECTION 17.02.09 (COMMERCIAL ZONING) SECTION 17.02.10 (COMMERCIAL ZONING) SECTION 17.02.11 (COMMERCIAL ZONING) SECTION 17.02.12 (COMMERCIAL ZONING) SECTION 17.02.13 (COMMERCIAL ZONING) SECTION 17.02.14 (COMMERCIAL ZONING) SECTION 17.02.15 (COMMERCIAL ZONING) SECTION 17.02.16 (COMMERCIAL ZONING) SECTION 17.02.17 (COMMERCIAL ZONING) SECTION 17.02.18 (COMMERCIAL ZONING) SECTION 17.02.19 (COMMERCIAL ZONING) SECTION 17.02.20 (COMMERCIAL ZONING) SECTION 17.02.21 (COMMERCIAL ZONING) SECTION 17.02.22 (COMMERCIAL ZONING) SECTION 17.02.23 (COMMERCIAL ZONING) SECTION 17.02.24 (COMMERCIAL ZONING) SECTION 17.02.25 (COMMERCIAL ZONING) SECTION 17.02.26 (COMMERCIAL ZONING) SECTION 17.02.27 (COMMERCIAL ZONING) SECTION 17.02.28 (COMMERCIAL ZONING) SECTION 17.02.29 (COMMERCIAL ZONING) SECTION 17.02.30 (COMMERCIAL ZONING) SECTION 17.02.31 (COMMERCIAL ZONING) SECTION 17.02.32 (COMMERCIAL ZONING) SECTION 17.02.33 (COMMERCIAL ZONING) SECTION 17.02.34 (COMMERCIAL ZONING) SECTION 17.02.35 (COMMERCIAL ZONING) SECTION 17.02.36 (COMMERCIAL ZONING) SECTION 17.02.37 (COMMERCIAL ZONING) SECTION 17.02.38 (COMMERCIAL ZONING) SECTION 17.02.39 (COMMERCIAL ZONING) SECTION 17.02.40 (COMMERCIAL ZONING) SECTION 17.02.41 (COMMERCIAL ZONING) SECTION 17.02.42 (COMMERCIAL ZONING) SECTION 17.02.43 (COMMERCIAL ZONING) SECTION 17.02.44 (COMMERCIAL ZONING) SECTION 17.02.45 (COMMERCIAL ZONING) SECTION 17.02.46 (COMMERCIAL ZONING) SECTION 17.02.47 (COMMERCIAL ZONING) SECTION 17.02.48 (COMMERCIAL ZONING) SECTION 17.02.49 (COMMERCIAL ZONING) SECTION 17.02.50 (COMMERCIAL ZONING) SECTION 17.02.51 (COMMERCIAL ZONING) SECTION 17.02.52 (COMMERCIAL ZONING) SECTION 17.02.53 (COMMERCIAL ZONING) SECTION 17.02.54 (COMMERCIAL ZONING) SECTION 17.02.55 (COMMERCIAL ZONING) SECTION 17.02.56 (COMMERCIAL ZONING) SECTION 17.02.57 (COMMERCIAL ZONING) SECTION 17.02.58 (COMMERCIAL ZONING) SECTION 17.02.59 (COMMERCIAL ZONING) SECTION 17.02.60 (COMMERCIAL ZONING) SECTION 17.02.61 (COMMERCIAL ZONING) SECTION 17.02.62 (COMMERCIAL ZONING) SECTION 17.02.63 (COMMERCIAL ZONING) SECTION 17.02.64 (COMMERCIAL ZONING) SECTION 17.02.65 (COMMERCIAL ZONING) SECTION 17.02.66 (COMMERCIAL ZONING) SECTION 17.02.67 (COMMERCIAL ZONING) SECTION 17.02.68 (COMMERCIAL ZONING) SECTION 17.02.69 (COMMERCIAL ZONING) SECTION 17.02.70 (COMMERCIAL ZONING) SECTION 17.02.71 (COMMERCIAL ZONING) SECTION 17.02.72 (COMMERCIAL ZONING) SECTION 17.02.73 (COMMERCIAL ZONING) SECTION 17.02.74 (COMMERCIAL ZONING) SECTION 17.02.75 (COMMERCIAL ZONING) SECTION 17.02.76 (COMMERCIAL ZONING) SECTION 17.02.77 (COMMERCIAL ZONING) SECTION 17.02.78 (COMMERCIAL ZONING) SECTION 17.02.79 (COMMERCIAL ZONING) SECTION 17.02.80 (COMMERCIAL ZONING) SECTION 17.02.81 (COMMERCIAL ZONING) SECTION 17.02.82 (COMMERCIAL ZONING) SECTION 17.02.83 (COMMERCIAL ZONING) SECTION 17.02.84 (COMMERCIAL ZONING) SECTION 17.02.85 (COMMERCIAL ZONING) SECTION 17.02.86 (COMMERCIAL ZONING) SECTION 17.02.87 (COMMERCIAL ZONING) SECTION 17.02.88 (COMMERCIAL ZONING) SECTION 17.02.89 (COMMERCIAL ZONING) SECTION 17.02.90 (COMMERCIAL ZONING) SECTION 17.02.91 (COMMERCIAL ZONING) SECTION 17.02.92 (COMMERCIAL ZONING) SECTION 17.02.93 (COMMERCIAL ZONING) SECTION 17.02.94 (COMMERCIAL ZONING) SECTION 17.02.95 (COMMERCIAL ZONING) SECTION 17.02.96 (COMMERCIAL ZONING) SECTION 17.02.97 (COMMERCIAL ZONING) SECTION 17.02.98 (COMMERCIAL ZONING) SECTION 17.02.99 (COMMERCIAL ZONING) SECTION 17.02.100 (COMMERCIAL ZONING)

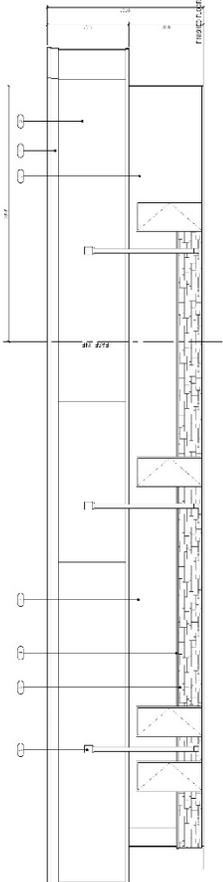
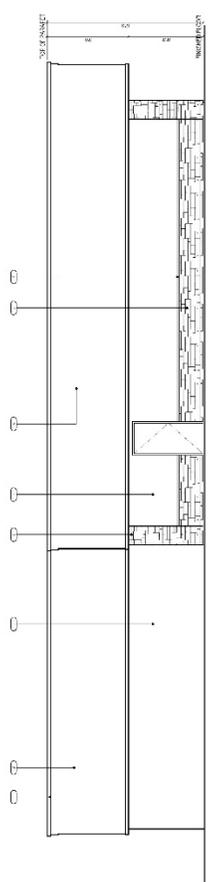
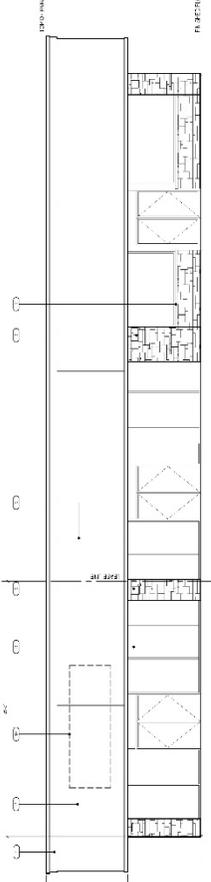
**SITE ANALYSIS**

EXISTING BUILDING	EXISTING ONE-STOREY BUILDING
NEW BUILDING	NEW TWO-STOREY BUILDING
PARKING SPACES	16 SPACES
UTILITIES	EXISTING UTILITY ROOM (131 SF)
LANDSCAPE	EXISTING LANDSCAPE
ADDITIONAL NOTES	...

**EXHIBIT A**



**EXHIBIT A**

		STAMP  	PROJECT NAME/ADDRESS <b>K GRILL RESTAURANT</b> 4021 BELT LINE ROAD SUITE 302 ADDISON, TX	SHEET NUMBER  	DATE  	DRAWN BY  	CHECKED BY  	SCALE  	SHEET CONTENT  	SHEET NO. <b>A-200</b> ELEVATIONS																																																																						
																																																																																
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**Work Session and Regular Meeting****Meeting Date:** 09/13/2016**Department:** Infrastructure- Development Services**AGENDA CAPTION:**

Present, Discuss And Consider Action Regarding A **Resolution Amending And Restating An Incentive Agreement With Beltline Beltway Investments, Ltd. And Urban Intownhomes, LLC For The Addison Grove Redevelopment Project At 4150 Belt Line Road Commonly Known As The Former Sam's Wholesale Club Property And Authorizing The City Manager To Execute The Amended Contract.**

**BACKGROUND:**

On April 26, 2016, the City Council approved an incentive agreement with Beltline Beltway Investments, Ltd. and Urban InTownhomes, LLC (InTown Homes) for public infrastructure for the Addison Grove redevelopment of the former Sam's Club property. In the agreement, the Town committed to reimburse up to \$6.25 million in infrastructure costs and waive up to \$250,000 in permit and other development fees.

In return, the developer made several commitments regarding the development and its on-going operation and maintenance. Primarily, the InTown Homes agreed to give the Town the ability to approve the initial apartment developer and operator. Additional commitments were given in the form of two deed restrictions. First, the developer offered to deed restrict the usage of low income housing tax credits and low income housing subsidies. Second, the developer agreed to place a deed restriction requiring that future apartment operators be of a certain quality as defined in the agreement and that future operators maintain the property in a first-class manner.

Since the time this incentive agreement was approved, InTown Homes has been unable to attract an apartment developer or operator to build the multi-family component of the project due to the deed restriction relating to the use of governmental housing subsidies. Additionally, questions have been raised regarding this deed restriction's conformance with federal fair housing requirements. It was never the Town's intent to place requirements on this project that would discourage quality apartment development or lead to discriminatory housing practices. Accordingly, staff and the developer have prepared an amended and restated agreement removing the deed restriction prohibiting the use of low income housing tax credits and low income housing subsidies. In its place, a new requirement would mandate any apartment operator to perform a criminal background check, income verification, and credit checks on each prospective tenant prior to the execution of a lease. These are standard practices in most multi-family developments.

Staff believes that these changes are an alternate means to achieve the goals mentioned above to promote the long term success of the development, protect the quality of life of all residents, and to reduce the potential for negative impact on adjacent property values.

Attached in this agenda packet are copies of the following:

- Original incentive agreement
- Red line copy of agreement which highlights changes
- First Amended and Restated copy of incentive agreement

**RECOMMENDATION:**

Administration recommends approval.

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**Attachments**

Original Incentive Agreement

Agreement With Redline Changes

Resolution with First Amended and Restated Copy of Incentive Agreement

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## ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT

This Economic Development Program Grant Agreement (“Agreement”) is made and entered into by and between Beltline Beltway Investments, Ltd., a Texas limited partnership company and Urban Intownhomes, LLC, a Texas limited liability company (jointly, “Fenway” or “Company”), and the Town of Addison, Texas, a Texas home rule municipality (“Addison” or the “City”), for the purposes and consideration stated below (Fenway and the City are sometimes referred to herein together as the “Parties” and individually as a “Party”).

**WHEREAS**, Fenway has purchased the 17.0689 acre parcel of land located at 4150 Belt Line Road to redevelop the vacant Sam’s Club property into a mixed use development, to be known as Addison Grove, consisting of approximately 20,000 square feet of retail space, 17 live/work units, 161 townhomes and not more than 330 multi-family units surrounding a parking garage, all in accordance with Ordinance No. O16-003, as amended (the “Project”); and

**WHEREAS**, the total Project cost is estimated to be in excess of \$86,000,000.00 and the total estimated ad valorem tax value is estimated to be in excess of \$121,000,000.00; and

**WHEREAS**, Fenway’s redevelopment of the Sam’s Club property will include the construction of public infrastructure including roads, water lines, sewer lines, and pedestrian and park amenities to be used and enjoyed by the public; and

**WHEREAS**, the Project is an important component of the Town’s desire to stimulate the economic development of retail properties on Belt Line Road, west of Midway Road;

**WHEREAS**, the City is authorized by Section 380.001, Tex. Loc. Gov. Code, to establish and provide for the administration of programs for making loans and grants of public money to promote state or local economic development and to stimulate business and commercial activity in the City, and this Agreement constitutes such a program for promoting and retaining economic development within the City; and

**WHEREAS**, the City has determined that making an economic development grant to Fenway in accordance with this Agreement will further the objectives of the City, will benefit the City and the City’s inhabitants, and will promote local economic development and stimulate business and commercial activity within the City; and

**WHEREAS**, such economic development grant is being paid to Developer for reimbursement of development costs as part of the City's economic development programs.

**NOW, THEREFORE**, for and in consideration of the foregoing, and on the terms and conditions hereinafter set forth, the City and Fenway do hereby agree as follows:

**Section 1. Findings.** The recitals set forth above are true and correct and are incorporated as if fully set forth herein.

**Section 2. Term.**

This Agreement shall be effective as of the last date of execution hereof (the “Effective Date”) and unless otherwise terminated in accordance with the provisions of this Agreement, shall end on the date on which the obligations of the parties under this Agreement shall have been completed (the “Term”).

**Section 3. Program Grant.**

Subject to Fenway’ s satisfaction of and compliance with all of the terms and conditions of this Agreement including without limitation the requirements set forth in Section 4 below, the City agrees, to pay to Fenway a Program Grant in the maximum amount of six million, five hundred thousand and dollars (\$6,500,000.00) (the “Program Grant”) to reimburse Fenway for construction of the public infrastructure for the Project defined as potable water main lines, sanitary sewer main lines, stormwater main lines, public streets, public sidewalks, public parks, and all associated appurtenances, all as identified in **Exhibit A** attached hereto and incorporated herein (the “Public Infrastructure”) and provide certain fee waivers, as follows:

- (a) A maximum of \$4,250,000.00 will be given to reimburse Fenway for the construction of Public Infrastructure items identified in Exhibit A as to be funded from the City’s General Fund; and
- (b) A maximum of \$1,000,000.00 will be given to reimburse Fenway for the construction of Public Infrastructure identified in Exhibit A as qualifying for funding from the City’s Stormwater Fund; and
- (c) A maximum of \$1,000,000.00 will be given to reimburse Fenway for the construction of Public Infrastructure identified in Exhibit A as qualifying for funding from the City’s Utility Fund and; and
- (d) A maximum of \$250,000.00 will be given in the nature of permit and development fee waivers.

It is understood and agreed by the Parties that the line item cost amounts shown in Exhibit A are estimates only and the actual line item amounts may be adjusted up or down within each funding category of Public Infrastructure improvements. However, the maximum Grant payment for each funding category of Public Infrastructure, as listed above, and funds not spent in any funding category are NOT transferrable to reimburse Fenway for expenses in another funding category.

The Grant payments made hereunder shall be paid solely from lawfully available funds that have been appropriated by the City. Under no circumstances shall the City’s obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Consequently, notwithstanding any other provision of this Agreement, the City shall have no obligation or liability to pay any Grant unless the City appropriates funds to make such payment during the budget year in which the Grant is payable; provided that during the Term of this Agreement the City agrees that it will take such steps as are within its power to appropriate funds each year estimated to equal the amount of Grants to be paid the Company for the ensuing fiscal year. Further, the City shall not be obligated to pay any commercial bank, lender or

similar institution for any loan or credit agreement made by the Company. Notwithstanding the foregoing, the Company may pledge or contribute the City's payments, dependent on Company's full compliance with the terms of this Agreement, to assist in securing financing for the Project; but the City will not consent to a requirement to make payments directly to a lender.

#### **Section 4. Conditions to Grant Payments.**

(a) Fenway has offered to permanently and irrevocably deed restrict the multi-family and parking garage portion of the Project as provided in Section 4(c)(i) and (ii) below (the "Deed Restrictions"). The Deed Restrictions shall provide that they may only be removed with the City's consent exercised in its sole discretion. Prior to, and as a condition of the First Grant Payment, Fenway shall submit to the City, a copy of the Deed Restrictions showing a file stamp evidencing filing for record of the document in the Official Public Records of real property of Dallas County, Texas. Fenway's obligations with respect to the requirements of this subsection 4(a) and subsection 4(c) shall be discharged when the Deed Restrictions required herein have been filed for record in the Official Public Records of real property of Dallas County, Texas.

(b) The City's obligation to make the Grant payments shall be conditioned upon Fenway's compliance with and satisfaction of all of the terms and conditions of this Agreement, including without limitation, each of the conditions set forth below:

(i) **First Grant Payment:** The First Grant Payment of one-third (1/3) of the potential Grant payment, or a maximum of two million, eighty-three thousand, three hundred thirty-three dollars, and thirty-three cents (\$2,083,333.33) shall be paid upon the submission of a request for payment with proper documentation of actual expenditures in a form approved by the City in its reasonable discretion and the completion of construction and acceptance by the City of all of the Public Infrastructure. Notwithstanding the foregoing requirement for completion of all of the Public Infrastructure, Fenway may request the First Grant Payment when all of the Public Infrastructure has been accepted by the City with the exception of the following pedestrian amenities as set forth in Exhibit A: pedestrian lighting, concrete sidewalks, trash cans or benches. The City will withhold that portion of the First Grant Payment associated with the incomplete pedestrian amenities until such time as the pedestrian amenities have been completed. Fenway may request release of the withheld funds in amounts not less than two hundred fifty thousand dollars (\$250,000.00).

(ii) **Second Grant Payment:** The Second Grant Payment of one-third (1/3) of the potential Grant payment, or a maximum of two million, eighty-three thousand, three hundred thirty-three dollars, and thirty-three cents (\$2,083,333.33) shall be paid after the First Grant Payment and upon the submission of a request for payment with proper documentation of actual expenditures in a form approved by the City in its reasonable discretion and the completion of 40 percent of the total number of townhomes plus live/work units as shown on the approved development plans for the Project. Such completion shall be evidenced by submission of the final inspection report for each unit.

(iii) Third Grant Payment: The Third Grant Payment of one-third (1/3) of the potential Grant payment, or a maximum of two million, eighty-three thousand, three hundred thirty-three dollars, and thirty-four cents (\$2,083,333.34) shall be paid upon the submission of a request for payment with proper documentation of actual expenditures in a form approved by the City in its reasonable discretion and the completion of 75 percent of the total number of townhomes plus live/work units as shown on the approved development plans for the Project. Such completion shall be evidenced by submission of the final inspection report for each unit.

(c) (i) Fenway has offered to, and now agrees, to permanently and irrevocably deed restrict the multi-family and parking garage portion of the Project to prohibit the use of tax credits specifically for the purpose of providing low income housing or low income housing subsidies either granted or paid to the owner or operator of the multi-family rental units, including but not limited to the voucher program authorized in 42 U.S.C. §1437f as amended, or any similar program, unless compliance with or the existence of such deed restriction is deemed by a court of competent jurisdiction to violate federal, state or local laws. The prohibition contemplated herein does not apply to Veterans Affairs benefits, social security, Medicare or Medicaid payments made to individuals or any other government benefit of similar nature to the foregoing that is paid to individuals but is not in the nature of a housing subsidy based on such individual's low income status. The deed restriction described herein shall give the City the ability to enforce the restriction. In the event that compliance with or the existence of such deed restriction is deemed by a court of competent jurisdiction to violate federal, state or local law, then Fenway may remove such deed restriction within thirty (30) days of the notice of such determination.

(ii) Fenway shall develop the multi-family and garage portion of the Project with an initial apartment developer and operator approved by the City, exercised in its reasonable discretion. The City hereby approves Fenway or an entity controlled by Frank Liu as the initial apartment developer and AMLI Residential Partners, LLC as the initial apartment operator. Fenway shall place a deed restriction on the multi-family portion of the Project requiring that, if at any time after the initial development of the apartments and for a period of 20 years after the date the deed restriction is recorded, the Operator of the apartments is not the Owner of the multi-family portion of the Project, an Affiliate of AMLI Residential Partners, LLC, or an Affiliate of the then-current Owner, the Operator must be a "Qualified Operator", which shall be defined as an Operator who satisfies the following requirements: (A) the Operator manages a minimum of 20 multi-family projects and 2,000 multi-family units, a majority of which are deemed to be luxury properties and units operated in a first-class manner in their market; (B) the Operator is a member in good standing of a nationally-recognized apartments association or the Texas Apartment Association (TAA); and (C) the Operator (or its employee designated as primary manager for the apartments) is either a Certified Apartment Manager, National Apartment Leasing Professional, Certified Apartment Portfolio Supervisor, accredited Residential Manager or has at least 5 years' experience as a community manager with an operator that satisfies (A) and (B) of this

subsection (ii). The deed restriction shall provide that an Owner shall be deemed to be in compliance with the Deed Restriction for so long as the multi-family portion of the Project is consistently maintained in a first-class manner consistent with other luxury multi-family properties in the Addison-North Dallas, Texas submarket. For purposes of this paragraph, an “Operator” is the person or entity charged with day-to-day management, leasing, operation and maintenance of the multi-family portion of the Project; the “Owner” is the then-current owner of fee-simple title to the multi-family portion of the Project; and an “Affiliate” is an entity that directly or indirectly owns an interest in or controls, or is owned or controlled by, or is under common ownership or control with, AMLI Residential Partners, LLC or the applicable Owner. In the event of a dispute regarding whether the multi-family portion of the Project is consistently maintained in a first-class manner, the City will provide the Owner written notice of a dispute and such dispute shall be resolved by the following arbitration process. No later than thirty (30) days following the Owner’s receipt of such notice, the City and Owner shall each appoint one arbitrator who shall, by profession, be a real estate appraiser (with the professional designation of M.A.I. or, if M.A.I. ceases to exist, a comparable designation from an equivalent professional appraisal organization) who shall have been active over the ten (10) year period ending on the date of such appointment in appraisal of similar multi-family properties in the in the Addison-North Dallas, Texas submarket, who shall not have previously been employed by either the City or Owner. The determination of the arbitrators shall be limited solely to the issue of whether the multi-family portion of the Project is consistently maintained in a first-class manner. The two arbitrators so appointed shall, within ten (10) days of the date of the appointment of the last appointed arbitrator, agree upon and appoint a third arbitrator who shall be qualified under the same criteria set forth hereinabove for qualification of the initial two arbitrators. The three arbitrators shall, within thirty (30) days of the appointment of the third arbitrator, reach a decision as to whether the multi-family portion of the Project is consistently maintained in a first-class manner, and shall notify the City and Owner thereof in writing. The decision of the majority of the three arbitrators shall be binding upon the City and Owner and judgment upon such decision may be entered in by any court having jurisdiction over the City and Owner. If the two arbitrators fail to agree upon and appoint a third arbitrator, both arbitrators shall be dismissed and the City and Owner each shall promptly select and appoint one new arbitrator each possessing the qualifications described above therefor. Such new arbitrators shall promptly follow the procedure set forth above. The cost of arbitration shall be paid by the City if the arbitrators determine the multi-family portion of the Project is consistently maintained in a first-class manner and by Owner if the arbitrators determine the multi-family portion of the Project is not consistently maintained in a first-class manner. The deed restriction shall provide Owner with at least one hundred twenty (120) days' notice and cure period. The deed restriction described herein shall give the City the ability to enforce the restriction.

- (d) Fenway shall expend a minimum of \$1,000,000.00 for public park improvements to be reimbursed from the \$4,250,000.00 General Fund category. Such improvements and the expenditure therefore, are subject to reasonable approved by the City.

Notwithstanding anything contained herein to the contrary or any other provision of this Agreement, the Program Grant payment (and/or any portion thereof) shall not be due and payable, and this Agreement may be terminated by the City (that is, without any opportunity for cure by Fenway), if Fenway fails to timely comply with and satisfy to the City's satisfaction any of the conditions to the Program Grant payments (and/or any portion thereof) as set forth in this Section 4, above and if Fenway fails to develop the Property in accordance with Ordinance No. O16-003, as amended. In addition, should Fenway (i) choose an apartment developer or initial operator for the Project that is not approved by the City as required in Section 4(c) above, or (ii) fail to record the Deed Restrictions; then Fenway will forfeit the right to receive any Grant payments under this Agreement and in addition to other remedies set forth in this Agreement, shall immediately return any Grant payments previously received under this Agreement and shall reimburse the City for all permit and development fee waivers that it has received.

Further, notwithstanding any other provision of this Agreement, if Fenway fails to submit its request for a Grant Payment within six (6) months of the date the right to receive the payment accrues and after thirty (30) days' written notice from the City pursuant to Section 12, then Fenway shall not receive the Grant Payment and the City shall have no obligation to make such payment to Fenway and Fenway will have forfeited the right to receive such payment.

#### **Section 5. Additional Economic Incentives.**

In addition to the Grant payments described above, as a part of the incentive and to assist Fenway in its effort to develop the Project, the City will support the process to acquire the right-of-way for Runyon Road, including initiating discussions with the property owners, preparing appraisals and exercising all powers available to it in accordance with Texas law. Fenway shall be responsible for all acquisition costs and shall reimburse the City for all costs of acquisition within 30 days of receipt of a request for reimbursement accompanied by documentation evidencing the expense.

#### **Section 6. Default.**

(a) **Event of Default by the Company.** If, during the Term of this Agreement, the Company breaches any of the terms or conditions of this Agreement or fails to maintain any conditions of the Grant payments, then the Company shall be in default ("Event of Default"). In the event the Company defaults in its performance, then the City shall give the Company written notice of such default, and if the Company has not cured any default within thirty (30) days of such written notice, this Agreement may be terminated by the City. In the event of default by the Company and the continuation of such default for thirty (30) days after the written notice set forth above, the City shall have the following remedies, in addition to all other rights and remedies available at law or in equity:

(i) to nullify Section 3 of this Agreement and immediately seek reimbursement of any and all Grant Payments received by the Company; and/or

(ii) to seek specific enforcement of this Agreement.

(b) **Event of Default by the City.** Upon the occurrence of default by the City, the Company shall give written notice of such default, and if City has not cured the default within thirty (30) days within said written notice, this Agreement may be terminated by the Company. The Company shall have the right to seek specific performance of the City's obligation to make the Grant Payments set forth in Section 4(b) hereof, as its sole and exclusive remedy.

## **Section 7. Termination; Reimbursement.**

This Agreement shall terminate without notice or demand upon the occurrence of any one of the following:

- (a) the execution by both Parties of a written agreement terminating this Agreement; or
- (b) as otherwise provided for in this Agreement, including as set forth in Section 3, above; or
- (c) the expiration of the Term; or
- (d) at the option of either party (the "non-breaching party") in the event the other party (the "breaching party") breaches or fails to comply with any term, condition, or provision of this Agreement and such breach or failure is not cured or remedied to the satisfaction of the non-breaching party within thirty (30) days after written notice thereof from the non-breaching party to the breaching party;
- (e) if Fenway suffers an Event of Bankruptcy or Insolvency, as hereinafter defined, that impairs its ability to perform its obligations under this Agreement; or
- (f) at the City's option, if any taxes or fees owed by Fenway to the City or the State of Texas shall become delinquent (provided, however, that Fenway retains the right to timely and properly protest and contest any such taxes or fees, and the City's right to terminate this Agreement shall be suspended during such protest and contest period) after thirty (30) days' written notice from the City pursuant to Section 12, of such delinquency.

If this Agreement is terminated pursuant to subsection (d), subsection (e), or subsection (f) of this Section, Fenway shall promptly (but in any event within thirty (30) days of the date of termination) reimburse and repay to the City a sum equal amount of Grant payment made by the City up to the date of termination. All repayment and/or reimbursement amounts under this Agreement shall bear and include interest at the rate of 4% per year, compounded, from the date that the payment was initially made to Fenway.

For purposes of this Section, "Event of Bankruptcy or Insolvency" means (i) the

liquidation, dissolution, or termination of Fenway as a going business, (ii) insolvency or a declaration of insolvency of Fenway under any law, (iii) appointment of a receiver for Fenway, (iv) any assignment or conveyance of all or a substantial portion of assets for the benefit of creditors, (v) a transfer in fraud of creditors according to any applicable law, or (vi) the filing of a petition by Fenway for relief, or the filing of a petition against Fenway for involuntary bankruptcy, under the United States Bankruptcy Code or any other present or future federal or state insolvency, bankruptcy, or similar laws.

**Section 8. Representations by the City.**

The City represents that it is a home rule Texas municipal corporation and to the best of its actual knowledge has the power to enter into this Agreement and to carry out its obligations hereunder. However, notwithstanding any other provision of this Agreement, it is understood and expressly agreed by Fenway that the City does not warrant or guarantee that the Program Grant payment (and any part thereof) as described herein will be upheld as valid, lawful, enforceable or constitutional in the event the statutory or other authority for the same or the City's use thereof is challenged by court action or other action or proceeding (including any action or proceeding involving the Texas Attorney General). In the event such court or other action or proceeding related to the legality of this Agreement and the providing of the Program Grant (or any part thereof) is instituted, the Parties shall defend or respond to such action or proceeding at their respective expense. Should such litigation, action or other proceeding result in a determination that this Agreement or the payment of the Program Grant (or any part thereof) was or is prohibited under federal, state or local law (including any constitutional or charter provision), rule or regulation, and so result in the loss of the Program Grant as provided herein, Fenway shall have no recourse against the City or any of its officials, officers, employees, agents, or volunteers, past or present, and Fenway shall promptly repay to the City the Program Grant payment previously made to Fenway by the City.

**Section 9. Representations and Warranties by Fenway.**

Fenway represents and warrants that:

- (a) Fenway is a Texas corporation, has the legal capacity and the authority to enter into and perform its obligations under this Agreement at all times in connection with this Agreement;
- (b) The execution and delivery of this Agreement and the performance and observance of its terms, conditions and obligations have been duly and validly authorized by all necessary action on its part to make this Agreement, and this Agreement is not in contravention of Fenway's Articles of Incorporation or regulations, or any agreement or instrument to which Fenway is a party or by which it may be bound as of the date hereof;
- (c) Fenway has the necessary legal ability to perform its obligations under this Agreement;

(d) No litigation or governmental proceeding is pending, or, to the knowledge of any of Fenway's officers, threatened against or affecting Fenway, which may result in a material adverse change in Fenway's business, properties or operations sufficient to jeopardize Fenway as a going concern; and

(e) This Agreement constitutes a valid and binding obligation of Fenway, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

#### **Section 10. Entire Agreement; Changes and Amendments.**

This Agreement represents the entire and integrated agreement between the City and Fenway with regard to the matters set forth herein and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Agreement may be amended only by written instrument signed by authorized representatives of each of the City and Fenway.

#### **Section 11. Successors and Assigns; No Third Party Beneficiaries.**

Upon the prior written approval of the City, exercised in its reasonable discretion, Fenway may assign, sell, pledge, transfer, encumber or otherwise convey (any of the foregoing, and the occurrence of any of the foregoing, a "Conveyance") its rights and obligations hereunder that does not result in a change in majority ownership or control. Any Conveyance of any kind or by any method (including by operation of law, by merger, or otherwise) without the City's prior written consent shall be null and void.

Any Conveyance approved by the City shall be expressly subject to all of the terms, conditions and provisions of this Agreement. In the event of any such Conveyance approved by the City, Fenway shall obtain a written agreement (the "Assumption Agreement") from each such assignee, transferee, buyer, pledgee, or other person or entity to whom this Agreement is otherwise conveyed whereby each such assignee, transferee, buyer, pledgee, or other person or entity to whom this Agreement is otherwise conveyed agrees to be bound by the terms and provisions of this Agreement.

This Agreement shall be binding on and inure to the benefit of the Parties, their respective permitted successors and permitted assigns. 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.

#### **Section 12. Notice.**

Any notice, statement and/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:

To the City:

Town of Addison, Texas  
5300 Belt Line Road  
Dallas, Texas 75254  
Attention: City Manager

To Fenway:

Beltline Beltway Investments, Ltd.  
Urban Intownhomes, LLC  
1520 Oliver St.  
Houston, Texas 77007  
Attn: Frank Liu

**Section 13. Applicable Law; Venue.**

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 Fenway 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.

**Section 14. Legal Construction/Partial Invalidity of Agreement.**

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.

**Section 15. Miscellaneous.**

(a) Pursuant to Texas Government Code, Chapter 2264 (entitled “Restrictions on Use of Certain Public Subsidies”), Fenway certifies that neither Fenway, nor any branch, division, or department of Fenway, knowingly employs, or will employ, an undocumented worker (as the term “undocumented worker” is defined in Section 2264.001 of the said Chapter 2264, Tex. Gov. Code) in connection with the Leased Premises, the Services provided by Fenway at the Leased Premises, or this Agreement. Fenway agrees that if, during the term of this Agreement and after it receives any payment or funds from the City pursuant to this Agreement, Fenway, or a branch, division, or department of Fenway, is convicted of a violation under 8 U.S.C. Section 1324a(f), Fenway shall repay the amount of all Grant funds paid by the City to Fenway with interest, at the rate of 4% per year, compounded, from the

date that the payment was initially made to Fenway, not later than the 120th day after the date the City notifies Fenway of the violation.

(b) Notwithstanding any other provision of this Agreement, except as expressly provided in Section 6(b) above, 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.

(c) Except as set forth in or otherwise limited by this Agreement, All waivers must be in writing and signed by the waiving party, and the City's waiver of any right, or of Fenway's breach, on one or more occasions will not be deemed a waiver on any other occasion. The City's failure to enforce or pursue any of its rights under or any provision of this Agreement shall not be or constitute a waiver of its rights or provision and shall not prevent the City from enforcing or pursuing that right or provision or any other right under or provision of this Agreement in the future. No custom or practice arising during the administration of this Agreement will waive, or diminish, the City's rights hereunder or to diminish the City's right to insist upon strict compliance by Fenway with this Agreement.

(d) The Parties acknowledge that each of them has been actively involved in negotiating this Agreement and has been represented by competent legal counsel. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting Party will not apply to interpreting this Agreement. In the event of any dispute over the meaning or application of any provision of this Agreement, the provision will be interpreted fairly and reasonably and neither more strongly for nor against any Party, regardless of which Party originally drafted the provision.

(e) This Agreement is not confidential information and may be disclosed to the public.

(f) Any of the representations, covenants, and obligations of the Parties hereto, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination or expiration of this Agreement shall survive termination or expiration.

(g) 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.

(h) The undersigned officers and/or agents of the Parties hereto are the properly authorized persons and have the necessary authority to execute this Agreement on behalf of the Parties hereto.

(i) The City agrees that with respect to this Agreement, no liability shall arise in favor of the City against any officer, director, member, agent or employee of Fenway, but the City shall look solely to the assets of Fenway for satisfaction of Fenway's duties, obligations and liabilities arising under or in connection with the Agreement.

*(SIGNATURES ON NEXT PAGES)*

**EXECUTED** this \_\_\_\_ day of \_\_\_\_\_, 2016.

**TOWN OF ADDISON**

\_\_\_\_\_  
Wesley S. Pierson, City Manager

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Laura Bell, City Secretary

\_\_\_\_\_  
Brenda N. McDonald, City Attorney

**STATE OF TEXAS       §**  
                                  **§**  
**COUNTY OF DALLAS   §**

This instrument was acknowledged before me on the \_\_\_\_\_ day of 2016, by Wesley S. Pierson, City Manager of the Town of Addison, Texas, on behalf of the town.

\_\_\_\_\_  
Notary Public, State of Texas

[SEAL]

**EXECUTED** this \_\_\_\_ day of \_\_\_\_\_, 2016.

**BELTLINE BELTWAY INVESTMENTS, LTD.,**  
a Texas limited partnership

By: Country Lane GP, LLC,  
a Texas limited liability company,  
its general partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**STATE OF TEXAS           §**  
**§**  
**COUNTY OF HARRIS       §**

This instrument was acknowledged before me on the \_\_\_\_\_ day of 2016, by \_\_\_\_\_, \_\_\_\_\_ of Country Lane GP, LLC, a Texas limited liability company, general partner of Beltline Beltway Investments, Ltd., a Texas limited partnership, on behalf of such limited partnership.

\_\_\_\_\_  
Notary Public, State of Texas

[SEAL]

**EXECUTED** this \_\_\_\_ day of \_\_\_\_\_, 2016.

**URBAN INTOWNHOMES, LLC,**  
a Texas limited liability company

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

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

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

**STATE OF TEXAS**           §

§

**COUNTY OF HARRIS**   §

This instrument was acknowledged before me on the \_\_\_\_\_ day of 2016, by \_\_\_\_\_, \_\_\_\_\_ of Urban Intownhomes, LLC, a Texas limited liability company, on behalf of such limited liability company.

\_\_\_\_\_  
Notary Public, State of Texas

[SEAL]

## EXHIBIT A

### ADDISON GROVE APPROVED INFRASTRUCTURE COSTS

Addison Grove Infrastructure	Infrastructure Costs			
	Unit	Quantity	Unit Cost	Ext. Cost
<b>GENERAL FUND - Capped at \$4,250,000</b>				
<b>ROADWAY PAVEMENT - General Fund</b>				
Public Roadway	SY	10,150	\$ 125.00	\$ 1,268,750
			<b>Subtotal</b>	<b>\$ 1,268,750</b>
<b>PEDESTRIAN AMENITIES - General Fund</b>				
Tree Relocation from Private Land to Public Areas	LS	1	\$ 100,000.00	\$ 100,000
Park Improvements	LS	1	\$ 1,000,000.00	\$ 1,000,000
Pedestrian Lighting	EA	79	\$ 2,500.00	\$ 197,500
Concrete Sidewalks	SF	82,500	\$ 4.75	\$ 391,875
Trash Cans	EA	24	\$ 500.00	\$ 12,000
Benches	EA	36	\$ 1,200.00	\$ 43,200
			<b>Subtotal</b>	<b>\$ 1,744,575</b>
<b>RUNYON ROAD PAVEMENT - General Fund</b>				
Remove and Replace Runyon Road Pavement	SY	2,000	\$ 125.00	\$ 250,000
			<b>Subtotal</b>	<b>\$ 250,000</b>
<b>STORMWATER FUND - Capped at \$1,000,000</b>				
<b>STORM DRAINAGE - Stormwater Fund</b>				
Storm Drain Manhole	EA	8	\$ 6,500.00	\$ 52,000
Storm Drain Inlets	EA	20	\$ 5,000.00	\$ 100,000
18" RCP	LF	900	\$ 100.00	\$ 90,000
24" RCP	LF	1,750	\$ 115.00	\$ 201,250
42" RCP	LF	450	\$ 200.00	\$ 90,000
60" RCP Detention Pipe	LF	1,500	\$ 325.00	\$ 487,500
			<b>Subtotal</b>	<b>\$ 1,020,750</b>
<b>UTILITY FUND - Capped at \$1,000,000</b>				
<b>WATER - Utility Fund</b>				
8" Water Line and Typical Fittings	LF	4,200	\$ 80.00	\$ 336,000
Fire Hydrants	EA	17	\$ 3,500.00	\$ 59,500
			<b>Subtotal</b>	<b>\$ 395,500</b>
<b>SANITARY SEWER - Utility Fund</b>				
8" Sanitary Sewer	LF	4,500	\$ 65.00	\$ 292,500
10" Offsite Sanitary Sewer Improvements	LF	1,530	\$ 120.00	\$ 183,600
Sanitary Sewer Manholes	EA	16	\$ 6,000.00	\$ 96,000
			<b>Subtotal</b>	<b>\$ 572,100</b>
<b>ROADWAY PAVEMENT - General Fund</b>				
				\$ 1,268,750
<b>PEDESTRIAN AMENITIES - General Fund</b>				
				\$ 1,744,575
<b>RUNYON ROAD PAVEMENT - General Fund</b>				
				\$ 250,000
<b>STORM DRAINAGE - Stormwater Fund</b>				
				\$ 1,020,750
<b>WATER - Utility Fund</b>				
				\$ 395,500
<b>SANITARY SEWER - Utility Fund</b>				
				\$ 572,100
<b>CONTINGENCY</b>				
				\$ 1,010,351
			<b>GRAND TOTAL</b>	<b>\$ 6,262,026</b>

**FIRST AMENDED AND RESTATED**  
**ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT**

This Economic Development Program Grant Agreement (“Agreement”) is made and entered into by and between Beltline Beltway Investments, Ltd., a Texas limited partnership company and Urban Intownhomes, LLC, a Texas limited liability company (jointly, “Fenway” or “Company”), and the Town of Addison, Texas, a Texas home rule municipality (“Addison” or the “City”), for the purposes and consideration stated below (Fenway and the City are sometimes referred to herein together as the “Parties” and individually as a “Party”).

**WHEREAS**, Fenway has purchased the 17.0689 acre parcel of land located at 4150 Belt Line Road to redevelop the vacant Sam’s Club property into a mixed use development, to be known as Addison Grove, consisting of approximately 20,000 square feet of retail space, 17 live/work units, 161 townhomes and not more than 330 multi-family units surrounding a parking garage, all in accordance with Ordinance No. O16-003, as amended (the “Project”); and

**WHEREAS**, the total Project cost is estimated to be in excess of \$86,000,000.00 and the total estimated ad valorem tax value is estimated to be in excess of \$121,000,000.00; and

**WHEREAS**, Fenway’s redevelopment of the Sam’s Club property will include the construction of public infrastructure including roads, water lines, sewer lines, and pedestrian and park amenities to be used and enjoyed by the public; and

**WHEREAS**, the Project is an important component of the Town’s desire to stimulate the economic development of retail properties on Belt Line Road, west of Midway Road;

**WHEREAS**, the City is authorized by Section 380.001, Tex. Loc. Gov. Code, to establish and provide for the administration of programs for making loans and grants of public money to promote state or local economic development and to stimulate business and commercial activity in the City, and this Agreement constitutes such a program for promoting and retaining economic development within the City; and

**WHEREAS**, the City has determined that making an economic development grant to Fenway in accordance with this Agreement will further the objectives of the City, will benefit the City and the City’s inhabitants, and will promote local economic development and stimulate business and commercial activity within the City; and

**WHEREAS**, such economic development grant is being paid to Developer for reimbursement of development costs as part of the City's economic development programs.

**NOW, THEREFORE**, for and in consideration of the foregoing, and on the terms and conditions hereinafter set forth, the City and Fenway do hereby agree as follows:

**Section 1. Findings.** The recitals set forth above are true and correct and are incorporated as if fully set forth herein.

**Section 2. Term.**

This Agreement shall be effective as of the last date of execution hereof (the “Effective Date”) and unless otherwise terminated in accordance with the provisions of this Agreement, shall end on the date on which the obligations of the parties under this Agreement shall have been completed (the “Term”).

**Section 3. Program Grant.**

Subject to Fenway’s satisfaction of and compliance with all of the terms and conditions of this Agreement including without limitation the requirements set forth in Section 4 below, the City agrees, to pay to Fenway a Program Grant in the maximum amount of six million, five hundred thousand and dollars (\$6,500,000.00) (the “Program Grant”) to reimburse Fenway for construction of the public infrastructure for the Project defined as potable water main lines, sanitary sewer main lines, stormwater main lines, public streets, public sidewalks, public parks, and all associated appurtenances, all as identified in Exhibit A attached hereto and incorporated herein (the “Public Infrastructure”) and provide certain fee waivers, as follows:

- (a) A maximum of \$4,250,000.00 will be given to reimburse Fenway for the construction of Public Infrastructure items identified in Exhibit A as to be funded from the City’s General Fund; and
- (b) A maximum of \$1,000,000.00 will be given to reimburse Fenway for the construction of Public Infrastructure identified in Exhibit A as qualifying for funding from the City’s Stormwater Fund; and
- (c) A maximum of \$1,000,000.00 will be given to reimburse Fenway for the construction of Public Infrastructure identified in Exhibit A as qualifying for funding from the City’s Utility Fund and; and
- (d) A maximum of \$250,000.00 will be given in the nature of permit and development fee waivers.

It is understood and agreed by the Parties that the line item cost amounts shown in Exhibit A are estimates only and the actual line item amounts may be adjusted up or down within each funding category of Public Infrastructure improvements. However, the maximum Grant payment for each funding category of Public Infrastructure, as listed above, and funds not spent in any funding category are NOT transferrable to reimburse Fenway for expenses in another funding category.

The Grant payments made hereunder shall be paid solely from lawfully available funds that have been appropriated by the City. Under no circumstances shall the City’s obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Consequently, notwithstanding any other provision of this Agreement, the City shall

have no obligation or liability to pay any Grant unless the City appropriates funds to make such payment during the budget year in which the Grant is payable; provided that during the Term of this Agreement the City agrees that it will take such steps as are within its power to appropriate funds each year estimated to equal the amount of Grants to be paid the Company for the ensuing fiscal year. Further, the City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by the Company. Notwithstanding the foregoing, the Company may pledge or contribute the City's payments, dependent on Company's full compliance with the terms of this Agreement, to assist in securing financing for the Project; but the City will not consent to a requirement to make payments directly to a lender.

#### **Section 4. Conditions to Grant Payments.**

(a) Fenway has offered to permanently and irrevocably deed restrict the multi-family and parking garage portion of the Project as provided in Section 4(c)~~(i) and (ii)~~ below (the "Deed ~~Restrictions~~Restriction"). The Deed ~~Restrictions~~Restriction shall provide that ~~they~~it may only be removed with the City's consent exercised in its sole discretion. Prior to, and as a condition of the First Grant Payment, Fenway shall submit to the City, a copy of the Deed ~~Restrictions~~Restriction showing a file stamp evidencing filing for record of the document in the Official Public Records of real property of Dallas County, Texas. Fenway's obligations with respect to the requirements of this subsection 4(a) and subsection 4(c) shall be discharged when the Deed ~~Restrictions~~Restriction required herein ~~have~~has been filed for record in the Official Public Records of real property of Dallas County, Texas.

(b) The City's obligation to make the Grant payments shall be conditioned upon Fenway's compliance with and satisfaction of all of the terms and conditions of this Agreement, including without limitation, each of the conditions set forth below:

(i) First Grant Payment: The First Grant Payment of one-third (1/3) of the potential Grant payment, or a maximum of two million, eighty-three thousand, three hundred thirty-three dollars, and thirty-three cents (\$2,083,333.33) shall be paid upon the submission of a request for payment with proper documentation of actual expenditures in a form approved by the City in its reasonable discretion and the completion of construction and acceptance by the City of all of the Public Infrastructure. Notwithstanding the foregoing requirement for completion of all of the Public Infrastructure, Fenway may request the First Grant Payment when all of the Public Infrastructure has been accepted by the City with the exception of the following pedestrian amenities as set forth in Exhibit A: pedestrian lighting, concrete sidewalks, trash cans or benches. The City will withhold that portion of the First Grant Payment associated with the incomplete pedestrian amenities until such time as the pedestrian amenities have been completed. Fenway may request release of the withheld funds in amounts not less than two hundred fifty thousand dollars (\$250,000.00).

(ii) Second Grant Payment: The Second Grant Payment of one-third (1/3) of the potential Grant payment, or a maximum of two million, eighty-three thousand, three hundred thirty-three dollars, and thirty-three cents (\$2,083,333.33) shall be paid after the First Grant

Payment and upon the submission of a request for payment with proper documentation of actual expenditures in a form approved by the City in its reasonable discretion and the completion of 40 percent of the total number of townhomes plus live/work units as shown on the approved development plans for the Project. Such completion shall be evidenced by submission of the final inspection report for each unit.

(iii) Third Grant Payment: The Third Grant Payment of one-third (1/3) of the potential Grant payment, or a maximum of two million, eighty-three thousand, three hundred thirty-three dollars, and thirty-four cents (\$2,083,333.34) shall be paid upon the submission of a request for payment with proper documentation of actual expenditures in a form approved by the City in its reasonable discretion and the completion of 75 percent of the total number of townhomes plus live/work units as shown on the approved development plans for the Project. Such completion shall be evidenced by submission of the final inspection report for each unit.

~~(e) (i) Fenway has offered to, and now agrees, to permanently and irrevocably deed restrict the multi-family and parking garage portion of the Project to prohibit the use of tax credits specifically for the purpose of providing low income housing or low income housing subsidies either granted or paid to the owner or operator of the multi-family rental units, including but not limited to the voucher program authorized in 42 U.S.C. §1437f as amended, or any similar program, unless compliance with or the existence of such deed restriction is deemed by a court of competent jurisdiction to violate federal, state or local laws. The prohibition contemplated herein does not apply to Veterans Affairs benefits, social security, Medicare or Medicaid payments made to individuals or any other government benefit of similar nature to the foregoing that is paid to individuals but is not in the nature of a housing subsidy based on such individual's low income status. The deed restriction described herein shall give the City the ability to enforce the restriction. In the event that compliance with or the existence of such deed restriction is deemed by a court of competent jurisdiction to violate federal, state or local law, then Fenway may remove such deed restriction within thirty (30) days of the notice of such determination.~~

~~(d)(c) (ii)~~ Fenway shall develop the multi-family and garage portion of the Project with an initial apartment developer and operator approved by the City, exercised in its reasonable discretion. The City hereby approves Fenway or an entity controlled by Frank Liu as the initial apartment developer and AMLI Residential Partners, LLC as the initial apartment operator. Fenway shall place a deed restriction on the multi-family portion of the Project requiring that, if at any time after the initial development of the apartments and for a period of 20 years after the date the deed restriction is recorded, the Operator of the apartments is not the Owner of the multi-family portion of the Project, an Affiliate of AMLI Residential Partners, LLC, or an Affiliate of the then-current Owner, the Operator must be a "Qualified Operator", which shall be defined as an Operator who satisfies the following requirements: (A) the Operator manages a minimum of 20 multi-family projects and 2,000 multi-family units, a majority of which are deemed to be luxury properties and units operated in a first-class manner in their market; (B) the Operator is a member in good standing of a nationally-recognized apartments association

or the Texas Apartment Association (TAA); and (C) the Operator (or its employee designated as primary manager for the apartments) is either a Certified Apartment Manager, National Apartment Leasing Professional, Certified Apartment Portfolio Supervisor, accredited Residential Manager or has at least 5 years' experience as a community manager with an operator that satisfies (A) and (B) of this subsection (hc). The deed restriction shall provide that an Owner shall be deemed to be in compliance with the Deed Restriction for so long as the multi-family portion of the Project is consistently maintained in a first-class manner consistent with other luxury multi-family properties in the Addison-North Dallas, Texas submarket. For purposes of this paragraph, an "Operator" is the person or entity charged with day-to-day management, leasing, operation and maintenance of the multi-family portion of the Project; the "Owner" is the then-current owner of fee-simple title to the multi-family portion of the Project; and an "Affiliate" is an entity that directly or indirectly owns an interest in or controls, or is owned or controlled by, or is under common ownership or control with, AMLI Residential Partners, LLC or the applicable Owner. In the event of a dispute regarding whether the multi-family portion of the Project is consistently maintained in a first-class manner, the City will provide the Owner written notice of a dispute and such dispute shall be resolved by the following arbitration process. No later than thirty (30) days following the Owner's receipt of such notice, the City and Owner shall each appoint one arbitrator who shall, by profession, be a real estate appraiser (with the professional designation of M.A.I. or, if M.A.I. ceases to exist, a comparable designation from an equivalent professional appraisal organization) who shall have been active over the ten (10) year period ending on the date of such appointment in appraisal of similar multi-family properties in the in the Addison-North Dallas, Texas submarket, who shall not have previously been employed by either the City or Owner. The determination of the arbitrators shall be limited solely to the issue of whether the multi-family portion of the Project is consistently maintained in a first-class manner. The two arbitrators so appointed shall, within ten (10) days of the date of the appointment of the last appointed arbitrator, agree upon and appoint a third arbitrator who shall be qualified under the same criteria set forth hereinabove for qualification of the initial two arbitrators. The three arbitrators shall, within thirty (30) days of the appointment of the third arbitrator, reach a decision as to whether the multi-family portion of the Project is consistently maintained in a first-class manner, and shall notify the City and Owner thereof in writing. The decision of the majority of the three arbitrators shall be binding upon the City and Owner and judgment upon such decision may be entered in by any court having jurisdiction over the City and Owner. If the two arbitrators fail to agree upon and appoint a third arbitrator, both arbitrators shall be dismissed and the City and Owner each shall promptly select and appoint one new arbitrator each possessing the qualifications described above therefor. Such new arbitrators shall promptly follow the procedure set forth above. The cost of arbitration shall be paid by the City if the arbitrators determine the multi-family portion of the Project is consistently maintained in a first-class manner and by Owner if the arbitrators determine the multi-family portion of the Project is not consistently maintained in a first-class manner. The deed restriction shall provide Owner with at least one hundred twenty (120) days' notice and cure period. The deed restriction shall require every Operator to perform a criminal background check, income verification and credit check on each prospective tenant prior to execution of a residential

apartment lease. The deed restriction described herein shall give the City the ability to enforce the restriction.

~~(e)~~(d) Fenway shall expend a minimum of \$1,000,000.00 for public park improvements to be reimbursed from the \$4,250,000.00 General Fund category. Such improvements and the expenditure therefore, are subject to reasonable approved by the City.

Notwithstanding anything contained herein to the contrary or any other provision of this Agreement, the Program Grant payment (and/or any portion thereof) shall not be due and payable, and this Agreement may be terminated by the City (that is, without any opportunity for cure by Fenway), if Fenway fails to timely comply with and satisfy to the City's satisfaction any of the conditions to the Program Grant payments (and/or any portion thereof) as set forth in this Section 4, above and if Fenway fails to develop the Property in accordance with Ordinance No. O16-003, as amended. In addition, should Fenway (i) choose an apartment developer or initial operator for the Project that is not approved by the City as required in Section 4(c) above, or (ii) fail to record the Deed ~~Restrictions~~Restriction; then Fenway will forfeit the right to receive any Grant payments under this Agreement and in addition to other remedies set forth in this Agreement, shall immediately return any Grant payments previously received under this Agreement and shall reimburse the City for all permit and development fee waivers that it has received.

Further, notwithstanding any other provision of this Agreement, if Fenway fails to submit its request for a Grant Payment within six (6) months of the date the right to receive the payment accrues and after thirty (30) days' written notice from the City pursuant to Section 12, then Fenway shall not receive the Grant Payment and the City shall have no obligation to make such payment to Fenway and Fenway will have forfeited the right to receive such payment.

## **Section 5. Additional Economic Incentives.**

In addition to the Grant payments described above, as a part of the incentive and to assist Fenway in its effort to develop the Project, the City will support the process to acquire the right-of-way for Runyon Road, including initiating discussions with the property owners, preparing appraisals and exercising all powers available to it in accordance with Texas law. Fenway shall be responsible for all acquisition costs and shall reimburse the City for all costs of acquisition within 30 days of receipt of a request for reimbursement accompanied by documentation evidencing the expense.

## **Section 6. Default.**

(a) **Event of Default by the Company.** If, during the Term of this Agreement, the Company breaches any of the terms or conditions of this Agreement or fails to maintain any conditions of the Grant payments, then the Company shall be in default ("Event of Default"). In the event the Company defaults in its performance, then the City shall give the Company

written notice of such default, and if the Company has not cured any default within thirty (30) days of such written notice, this Agreement may be terminated by the City. In the event of default by the Company and the continuation of such default for thirty (30) days after the written notice set forth above, the City shall have the following remedies, in addition to all other rights and remedies available at law or in equity:

- (i) to nullify Section 3 of this Agreement and immediately seek reimbursement of any and all Grant Payments received by the Company; and/or
- (ii) to seek specific enforcement of this Agreement.

(b) **Event of Default by the City.** Upon the occurrence of default by the City, the Company shall give written notice of such default, and if City has not cured the default within thirty (30) days within said written notice, this Agreement may be terminated by the Company. The Company shall have the right to seek specific performance of the City's obligation to make the Grant Payments set forth in Section 4(b) hereof, as its sole and exclusive remedy.

## **Section 7. Termination; Reimbursement.**

This Agreement shall terminate without notice or demand upon the occurrence of any one of the following:

- (a) the execution by both Parties of a written agreement terminating this Agreement; or
- (b) as otherwise provided for in this Agreement, including as set forth in Section 3, above; or
- (c) the expiration of the Term; or
- (d) at the option of either party (the "non-breaching party") in the event the other party (the "breaching party") breaches or fails to comply with any term, condition, or provision of this Agreement and such breach or failure is not cured or remedied to the satisfaction of the non-breaching party within thirty (30) days after written notice thereof from the non-breaching party to the breaching party;
- (e) if Fenway suffers an Event of Bankruptcy or Insolvency, as hereinafter defined, that impairs its ability to perform its obligations under this Agreement; or
- (f) at the City's option, if any taxes or fees owed by Fenway to the City or the State of Texas shall become delinquent (provided, however, that Fenway retains the right to timely and properly protest and contest any such taxes or fees, and the City's right to terminate this Agreement shall be suspended during such protest and contest period) after thirty (30) days' written notice from the City pursuant to Section 12, of such delinquency.

If this Agreement is terminated pursuant to subsection (d), subsection (e), or subsection (f)

of this Section, Fenway shall promptly (but in any event within thirty (30) days of the date of termination) reimburse and repay to the City a sum equal amount of Grant payment made by the City up to the date of termination. All repayment and/or reimbursement amounts under this Agreement shall bear and include interest at the rate of 4% per year, compounded, from the date that the payment was initially made to Fenway.

For purposes of this Section, “Event of Bankruptcy or Insolvency” means (i) the liquidation, dissolution, or termination of Fenway as a going business, (ii) insolvency or a declaration of insolvency of Fenway under any law, (iii) appointment of a receiver for Fenway, (iv) any assignment or conveyance of all or a substantial portion of assets for the benefit of creditors, (v) a transfer in fraud of creditors according to any applicable law, or (vi) the filing of a petition by Fenway for relief, or the filing of a petition against Fenway for involuntary bankruptcy, under the United States Bankruptcy Code or any other present or future federal or state insolvency, bankruptcy, or similar laws.

**Section 8. Representations by the City.**

The City represents that it is a home rule Texas municipal corporation and to the best of its actual knowledge has the power to enter into this Agreement and to carry out its obligations hereunder. However, notwithstanding any other provision of this Agreement, it is understood and expressly agreed by Fenway that the City does not warrant or guarantee that the Program Grant payment (and any part thereof) as described herein will be upheld as valid, lawful, enforceable or constitutional in the event the statutory or other authority for the same or the City's use thereof is challenged by court action or other action or proceeding (including any action or proceeding involving the Texas Attorney General). In the event such court or other action or proceeding related to the legality of this Agreement and the providing of the Program Grant (or any part thereof) is instituted, the Parties shall defend or respond to such action or proceeding at their respective expense. Should such litigation, action or other proceeding result in a determination that this Agreement or the payment of the Program Grant (or any part thereof) was or is prohibited under federal, state or local law (including any constitutional or charter provision), rule or regulation, and so result in the loss of the Program Grant as provided herein, Fenway shall have no recourse against the City or any of its officials, officers, employees, agents, or volunteers, past or present, and Fenway shall promptly repay to the City the Program Grant payment previously made to Fenway by the City.

**Section 9. Representations and Warranties by Fenway.**

Fenway represents and warrants that:

- (a) Fenway is a Texas corporation, has the legal capacity and the authority to enter into and perform its obligations under this Agreement, and the same shall be true and accurate at all times in connection with this Agreement;
- (b) The execution and delivery of this Agreement and the performance and observance of its terms, conditions and obligations have been duly and validly authorized by all necessary action on its part to make this Agreement, and this Agreement is not in contravention of Fenway's Articles of Incorporation or regulations, or any agreement or instrument to which Fenway is a party or by which it may be bound as of the date hereof;
- (c) Fenway has the necessary legal ability to perform its obligations under this Agreement;
- (d) No litigation or governmental proceeding is pending, or, to the knowledge of any of Fenway's officers, threatened against or affecting Fenway, which may result in a material adverse change in Fenway's business, properties or operations sufficient to jeopardize Fenway as a going concern; and
- (e) This Agreement constitutes a valid and binding obligation of Fenway, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws

of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

**Section 10. Entire Agreement; Changes and Amendments.**

This Agreement represents the entire and integrated agreement between the City and Fenway with regard to the matters set forth herein and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Agreement may be amended only by written instrument signed by authorized representatives of each of the City and Fenway.

**Section 11. Successors and Assigns; No Third Party Beneficiaries.**

Upon the prior written approval of the City, exercised in its reasonable discretion, Fenway may assign, sell, pledge, transfer, encumber or otherwise convey (any of the foregoing, and the occurrence of any of the foregoing, a "Conveyance") its rights and obligations hereunder that does not result in a change in majority ownership or control. Any Conveyance of any kind or by any method (including by operation of law, by merger, or otherwise) without the City's prior written consent shall be null and void.

Any Conveyance approved by the City shall be expressly subject to all of the terms, conditions and provisions of this Agreement. In the event of any such Conveyance approved by the City, Fenway shall obtain a written agreement (the "Assumption Agreement") from each such assignee, transferee, buyer, pledgee, or other person or entity to whom this Agreement is otherwise conveyed whereby each such assignee, transferee, buyer, pledgee, or other person or entity to whom this Agreement is otherwise conveyed agrees to be bound by the terms and provisions of this Agreement.

This Agreement shall be binding on and inure to the benefit of the Parties, their respective permitted successors and permitted assigns. 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.

**Section 12. Notice.**

Any notice, statement and/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:

To the City:

Town of Addison, Texas  
5300 Belt Line Road  
Dallas, Texas 75254  
Attention: City Manager

To Fenway:

Beltline Beltway Investments, Ltd.  
Urban Intownhomes, LLC  
1520 Oliver St.  
Houston, Texas 77007  
Attn: Frank Liu

**Section 13. Applicable Law; Venue.**

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 Fenway 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.

**Section 14. Legal Construction/Partial Invalidity of Agreement.**

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.

**Section 15. Miscellaneous.**

(a) Pursuant to Texas Government Code, Chapter 2264 (entitled “Restrictions on Use of Certain Public Subsidies”), Fenway certifies that neither Fenway, nor any branch, division, or department of Fenway, knowingly employs, or will employ, an undocumented worker (as the term “undocumented worker” is defined in Section 2264.001 of the said Chapter 2264, Tex. Gov. Code) in connection with the Leased Premises, the Services provided by Fenway at the Leased Premises, or this Agreement. Fenway agrees that if, during the term of this Agreement and after it receives any payment or funds from the City pursuant to this Agreement, Fenway, or a branch, division, or department of Fenway, is convicted of a violation under 8 U.S.C. Section 1324a(f), Fenway shall repay the amount of all Grant funds paid by the City to Fenway with interest, at the rate of 4% per year, compounded, from the date that the payment was initially made to Fenway, not later than the 120th day after the date the City notifies Fenway of the violation.

(b) Notwithstanding any other provision of this Agreement, except as expressly provided in Section 6(b) above, 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.

(c) Except as set forth in or otherwise limited by this Agreement, the remedies and rights set forth in this Agreement: (a) are and shall be in addition to any and all other remedies and rights either party may have at law, in equity, or otherwise, (b) shall be cumulative, and (c) may be pursued successively or concurrently as either party may elect. The exercise of any remedy or right by either party shall not be deemed an election of remedies or rights or preclude that party from exercising any other remedies or rights in the future. All waivers must be in writing and signed by the waiving party, and the City's waiver of any right, or of Fenway's breach, on one or more occasions will not be deemed a waiver on any other occasion. The City's failure to enforce or pursue any of its rights under or any provision of this Agreement shall not be or constitute a waiver of its rights or provision and shall not prevent the City from enforcing or pursuing that right or provision or any other right under or provision of this Agreement in the future. No custom or practice arising during the administration of this Agreement will waive, or diminish, the City's rights hereunder or to diminish the City's right to insist upon strict compliance by Fenway with this Agreement.

(d) The Parties acknowledge that each of them has been actively involved in negotiating this Agreement and has been represented by competent legal counsel. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting Party will not apply to interpreting this Agreement. In the event of any dispute over the meaning or application of any provision of this Agreement, the provision will be interpreted fairly and reasonably and neither more strongly for nor against any Party, regardless of which Party originally drafted the provision.

(e) This Agreement is not confidential information and may be disclosed to the public.

(f) Any of the representations, covenants, and obligations of the Parties hereto, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination or expiration of this Agreement shall survive termination or expiration.

(g) 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.

(h) The undersigned officers and/or agents of the Parties hereto are the properly authorized persons and have the necessary authority to execute this Agreement on behalf of the Parties hereto.

(i) The City agrees that with respect to this Agreement, no liability shall arise in favor of the City against any officer, director, member, agent or employee of Fenway, but the City shall look solely to the assets of Fenway for satisfaction of Fenway's duties, obligations and liabilities arising under or in connection with the Agreement.

*(SIGNATURES ON NEXT PAGES)*

**EXECUTED** this \_\_\_\_ day of \_\_\_\_\_, 2016.

**TOWN OF ADDISON**

\_\_\_\_\_  
Wesley S. Pierson, City Manager

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Laura Bell, City Secretary

\_\_\_\_\_  
Brenda N. McDonald, City Attorney

**STATE OF TEXAS           §**  
  **§**  
**COUNTY OF DALLAS       §**

This instrument was acknowledged before me on the \_\_\_\_\_ day of 2016, by Wesley S. Pierson, City Manager of the Town of Addison, Texas, on behalf of the town.

\_\_\_\_\_  
Notary Public, State of Texas

[SEAL]

**EXECUTED** this \_\_\_\_ day of \_\_\_\_\_, 2016.

**BELTLINE BELTWAY INVESTMENTS, LTD.,**  
a Texas limited partnership

By: Country Lane GP, LLC,  
a Texas limited liability company,  
its general partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**STATE OF TEXAS**            §  
  §  
**COUNTY OF HARRIS**       §

This instrument was acknowledged before me on the \_\_\_\_\_ day of 2016, by \_\_\_\_\_,  
\_\_\_\_\_ of Country Lane GP, LLC, a Texas limited liability company, general partner of  
Beltline Beltway Investments, Ltd., a Texas limited partnership, on behalf of such limited  
partnership.

\_\_\_\_\_  
Notary Public, State of Texas

[SEAL]

**EXECUTED** this \_\_\_\_ day of \_\_\_\_\_, 2016.

**URBAN INTOWNHOMES, LLC,**  
a Texas limited liability company

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

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

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

**STATE OF TEXAS**           §

§

**COUNTY OF HARRIS**   §

This instrument was acknowledged before me on the \_\_\_\_\_ day of 2016, by \_\_\_\_\_,  
\_\_\_\_\_ of Urban Intownhomes, LLC, a Texas limited liability company, on behalf of  
such limited liability company.

\_\_\_\_\_  
Notary Public, State of Texas

[SEAL]

## EXHIBIT A

### ADDISON GROVE APPROVED INFRASTRUCTURE COSTS

Addison Grove Infrastructure	Infrastructure Costs			
	Unit	Quantity	Unit Cost	Ext. Cost
<b>GENERAL FUND - Capped at \$4,250,000</b>				
<b>ROADWAY PAVEMENT - General Fund</b>				
Public Roadway	SY	10,150	\$ 125.00	\$ 1,268,750
			<b>Subtotal</b>	<b>\$ 1,268,750</b>
<b>PEDESTRIAN AMENITIES - General Fund</b>				
Tree Relocation from Private Land to Public Areas	LS	1	\$ 100,000.00	\$ 100,000
Park Improvements	LS	1	\$ 1,000,000.00	\$ 1,000,000
Pedestrian Lighting	EA	79	\$ 2,500.00	\$ 197,500
Concrete Sidewalks	SF	82,500	\$ 4.75	\$ 391,875
Trash Cans	EA	24	\$ 500.00	\$ 12,000
Benches	EA	36	\$ 1,200.00	\$ 43,200
			<b>Subtotal</b>	<b>\$ 1,744,575</b>
<b>RUNYON ROAD PAVEMENT - General Fund</b>				
Remove and Replace Runyon Road Pavement	SY	2,000	\$ 125.00	\$ 250,000
			<b>Subtotal</b>	<b>\$ 250,000</b>
<b>STORMWATER FUND - Capped at \$1,000,000</b>				
<b>STORM DRAINAGE - Stormwater Fund</b>				
Storm Drain Manhole	EA	8	\$ 6,500.00	\$ 52,000
Storm Drain Inlets	EA	20	\$ 5,000.00	\$ 100,000
18" RCP	LF	900	\$ 100.00	\$ 90,000
24" RCP	LF	1,750	\$ 115.00	\$ 201,250
42" RCP	LF	450	\$ 200.00	\$ 90,000
60" RCP Detention Pipe	LF	1,500	\$ 325.00	\$ 487,500
			<b>Subtotal</b>	<b>\$ 1,020,750</b>
<b>UTILITY FUND - Capped at \$1,000,000</b>				
<b>WATER - Utility Fund</b>				
8" Water Line and Typical Fittings	LF	4,200	\$ 80.00	\$ 336,000
Fire Hydrants	EA	17	\$ 3,500.00	\$ 59,500
			<b>Subtotal</b>	<b>\$ 395,500</b>
<b>SANITARY SEWER - Utility Fund</b>				
8" Sanitary Sewer	LF	4,500	\$ 65.00	\$ 292,500
10" Offsite Sanitary Sewer Improvements	LF	1,530	\$ 120.00	\$ 183,600
Sanitary Sewer Manholes	EA	16	\$ 6,000.00	\$ 96,000
			<b>Subtotal</b>	<b>\$ 572,100</b>
ROADWAY PAVEMENT - General Fund				\$ 1,268,750
PEDESTRIAN AMENITIES - General Fund				\$ 1,744,575
RUNYON ROAD PAVEMENT - General Fund				\$ 250,000
STORM DRAINAGE - Stormwater Fund				\$ 1,020,750
WATER - Utility Fund				\$ 395,500
SANITARY SEWER - Utility Fund				\$ 572,100
CONTINGENCY				\$ 1,010,351
			<b>GRAND TOTAL</b>	<b>\$ 6,262,026</b>

TOWN OF ADDISON, TEXAS

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

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A FIRST AMENDED AND RESTATED ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT BETWEEN THE TOWN OF ADDISON, BELTLINE BELTWAY INVESTMENTS, LTD. AND URBAN INTOWNHOMES, LLC FOR A MIXED USE DEVELOPMENT, TO BE KNOWN AS ADDISON GROVE, LOCATED AT 4150 BELT LINE ROAD, AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT, AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1.** The First Amended and Restated Economic Development Program Grant Agreement between the Town of Addison, Beltline Beltway Investments, Ltd. and Urban Intownhomes, LLC for a mixed use development, to be known as Addison Grove, located at 4150 Belt Line Road, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved. The City Manager is hereby authorized to execute the agreement.

**Section 2.** This Resolution shall take effect from and after its date of adoption.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this the 13<sup>th</sup> day of September, 2016.

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

ATTEST:

By: \_\_\_\_\_  
Laura Bell, City Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Brenda N. McDonald, City Attorney

**FIRST AMENDED AND RESTATED  
ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT**

This Economic Development Program Grant Agreement (“Agreement”) is made and entered into by and between Beltline Beltway Investments, Ltd., a Texas limited partnership company and Urban Intownhomes, LLC, a Texas limited liability company (jointly, “Fenway” or “Company”), and the Town of Addison, Texas, a Texas home rule municipality (“Addison” or the “City”), for the purposes and consideration stated below (Fenway and the City are sometimes referred to herein together as the “Parties” and individually as a “Party”).

**WHEREAS**, Fenway has purchased the 17.0689 acre parcel of land located at 4150 Belt Line Road to redevelop the vacant Sam’s Club property into a mixed use development, to be known as Addison Grove, consisting of approximately 20,000 square feet of retail space, 17 live/work units, 161 townhomes and not more than 330 multi-family units surrounding a parking garage, all in accordance with Ordinance No. O16-003, as amended (the “Project”); and

**WHEREAS**, the total Project cost is estimated to be in excess of \$86,000,000.00 and the total estimated ad valorem tax value is estimated to be in excess of \$121,000,000.00; and

**WHEREAS**, Fenway’s redevelopment of the Sam’s Club property will include the construction of public infrastructure including roads, water lines, sewer lines, and pedestrian and park amenities to be used and enjoyed by the public; and

**WHEREAS**, the Project is an important component of the Town’s desire to stimulate the economic development of retail properties on Belt Line Road, west of Midway Road;

**WHEREAS**, the City is authorized by Section 380.001, Tex. Loc. Gov. Code, to establish and provide for the administration of programs for making loans and grants of public money to promote state or local economic development and to stimulate business and commercial activity in the City, and this Agreement constitutes such a program for promoting and retaining economic development within the City; and

**WHEREAS**, the City has determined that making an economic development grant to Fenway in accordance with this Agreement will further the objectives of the City, will benefit the City and the City’s inhabitants, and will promote local economic development and stimulate business and commercial activity within the City; and

**WHEREAS**, such economic development grant is being paid to Developer for reimbursement of development costs as part of the City's economic development programs.

**NOW, THEREFORE**, for and in consideration of the foregoing, and on the terms and conditions hereinafter set forth, the City and Fenway do hereby agree as follows:

**Section 1. Findings.** The recitals set forth above are true and correct and are incorporated as if fully set forth herein.

**Section 2. Term.**

This Agreement shall be effective as of the last date of execution hereof (the “Effective Date”) and unless otherwise terminated in accordance with the provisions of this Agreement, shall end on the date on which the obligations of the parties under this Agreement shall have been completed (the “Term”).

**Section 3. Program Grant.**

Subject to Fenway’s satisfaction of and compliance with all of the terms and conditions of this Agreement including without limitation the requirements set forth in Section 4 below, the City agrees, to pay to Fenway a Program Grant in the maximum amount of six million, five hundred thousand and dollars (\$6,500,000.00) (the “Program Grant”) to reimburse Fenway for construction of the public infrastructure for the Project defined as potable water main lines, sanitary sewer main lines, stormwater main lines, public streets, public sidewalks, public parks, and all associated appurtenances, all as identified in Exhibit A attached hereto and incorporated herein (the “Public Infrastructure”) and provide certain fee waivers, as follows:

- (a) A maximum of \$4,250,000.00 will be given to reimburse Fenway for the construction of Public Infrastructure items identified in Exhibit A as to be funded from the City’s General Fund; and
- (b) A maximum of \$1,000,000.00 will be given to reimburse Fenway for the construction of Public Infrastructure identified in Exhibit A as qualifying for funding from the City’s Stormwater Fund; and
- (c) A maximum of \$1,000,000.00 will be given to reimburse Fenway for the construction of Public Infrastructure identified in Exhibit A as qualifying for funding from the City’s Utility Fund and; and
- (d) A maximum of \$250,000.00 will be given in the nature of permit and development fee waivers.

It is understood and agreed by the Parties that the line item cost amounts shown in Exhibit A are estimates only and the actual line item amounts may be adjusted up or down within each funding category of Public Infrastructure improvements. However, the maximum Grant payment for each funding category of Public Infrastructure, as listed above, and funds not spent in any funding category are NOT transferrable to reimburse Fenway for expenses in another funding category.

The Grant payments made hereunder shall be paid solely from lawfully available funds that have been appropriated by the City. Under no circumstances shall the City’s obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Consequently, notwithstanding any other provision of this Agreement, the City shall

have no obligation or liability to pay any Grant unless the City appropriates funds to make such payment during the budget year in which the Grant is payable; provided that during the Term of this Agreement the City agrees that it will take such steps as are within its power to appropriate funds each year estimated to equal the amount of Grants to be paid the Company for the ensuing fiscal year. Further, the City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by the Company. Notwithstanding the foregoing, the Company may pledge or contribute the City's payments, dependent on Company's full compliance with the terms of this Agreement, to assist in securing financing for the Project; but the City will not consent to a requirement to make payments directly to a lender.

**Section 4. Conditions to Grant Payments.**

(a) Fenway has offered to permanently and irrevocably deed restrict the multi-family and parking garage portion of the Project as provided in Section 4(c) below (the "Deed Restriction"). The Deed Restriction shall provide that it may only be removed with the City's consent exercised in its sole discretion. Prior to, and as a condition of the First Grant Payment, Fenway shall submit to the City, a copy of the Deed Restriction showing a file stamp evidencing filing for record of the document in the Official Public Records of real property of Dallas County, Texas. Fenway's obligations with respect to the requirements of this subsection 4(a) and subsection 4(c) shall be discharged when the Deed Restriction required herein has been filed for record in the Official Public Records of real property of Dallas County, Texas.

(b) The City's obligation to make the Grant payments shall be conditioned upon Fenway's compliance with and satisfaction of all of the terms and conditions of this Agreement, including without limitation, each of the conditions set forth below:

(i) First Grant Payment: The First Grant Payment of one-third (1/3) of the potential Grant payment, or a maximum of two million, eighty-three thousand, three hundred thirty-three dollars, and thirty-three cents (\$2,083,333.33) shall be paid upon the submission of a request for payment with proper documentation of actual expenditures in a form approved by the City in its reasonable discretion and the completion of construction and acceptance by the City of all of the Public Infrastructure. Notwithstanding the foregoing requirement for completion of all of the Public Infrastructure, Fenway may request the First Grant Payment when all of the Public Infrastructure has been accepted by the City with the exception of the following pedestrian amenities as set forth in Exhibit A: pedestrian lighting, concrete sidewalks, trash cans or benches. The City will withhold that portion of the First Grant Payment associated with the incomplete pedestrian amenities until such time as the pedestrian amenities have been completed. Fenway may request release of the withheld funds in amounts not less than two hundred fifty thousand dollars (\$250,000.00).

(ii) Second Grant Payment: The Second Grant Payment of one-third (1/3) of the potential Grant payment, or a maximum of two million, eighty-three thousand, three hundred thirty-three dollars, and thirty-three cents (\$2,083,333.33) shall be paid after the First Grant Payment and upon the submission of a request for payment with proper documentation of

actual expenditures in a form approved by the City in its reasonable discretion and the completion of 40 percent of the total number of townhomes plus live/work units as shown on the approved development plans for the Project. Such completion shall be evidenced by submission of the final inspection report for each unit.

(iii) Third Grant Payment: The Third Grant Payment of one-third (1/3) of the potential Grant payment, or a maximum of two million, eighty-three thousand, three hundred thirty-three dollars, and thirty-four cents (\$2,083,333.34) shall be paid upon the submission of a request for payment with proper documentation of actual expenditures in a form approved by the City in its reasonable discretion and the completion of 75 percent of the total number of townhomes plus live/work units as shown on the approved development plans for the Project. Such completion shall be evidenced by submission of the final inspection report for each unit.

(c) Fenway shall develop the multi-family and garage portion of the Project with an initial apartment developer and operator approved by the City, exercised in its reasonable discretion. The City hereby approves Fenway or an entity controlled by Frank Liu as the initial apartment developer and AMLI Residential Partners, LLC as the initial apartment operator. Fenway shall place a deed restriction on the multi-family portion of the Project requiring that, if at any time after the initial development of the apartments and for a period of 20 years after the date the deed restriction is recorded, the Operator of the apartments is not the Owner of the multi-family portion of the Project, an Affiliate of AMLI Residential Partners, LLC, or an Affiliate of the then-current Owner, the Operator must be a "Qualified Operator", which shall be defined as an Operator who satisfies the following requirements: (A) the Operator manages a minimum of 20 multi-family projects and 2,000 multi-family units, a majority of which are deemed to be luxury properties and units operated in a first-class manner in their market; (B) the Operator is a member in good standing of a nationally-recognized apartments association or the Texas Apartment Association (TAA); and (C) the Operator (or its employee designated as primary manager for the apartments) is either a Certified Apartment Manager, National Apartment Leasing Professional, Certified Apartment Portfolio Supervisor, accredited Residential Manager or has at least 5 years' experience as a community manager with an operator that satisfies (A) and (B) of this subsection (c). The deed restriction shall provide that an Owner shall be deemed to be in compliance with the Deed Restriction for so long as the multi-family portion of the Project is consistently maintained in a first-class manner consistent with other luxury multi-family properties in the Addison-North Dallas, Texas submarket. For purposes of this paragraph, an "Operator" is the person or entity charged with day-to-day management, leasing, operation and maintenance of the multi-family portion of the Project; the "Owner" is the then-current owner of fee-simple title to the multi-family portion of the Project; and an "Affiliate" is an entity that directly or indirectly owns an interest in or controls, or is owned or controlled by, or is under common ownership or control with, AMLI Residential Partners, LLC or the applicable Owner. In the event of a dispute regarding whether the multi-family portion of the Project is consistently maintained in a first-class manner, the City will provide the Owner written notice of a dispute and such dispute shall be resolved by the following arbitration process. No later than thirty (30) days following the Owner's receipt of such notice, the City

and Owner shall each appoint one arbitrator who shall, by profession, be a real estate appraiser (with the professional designation of M.A.I. or, if M.A.I. ceases to exist, a comparable designation from an equivalent professional appraisal organization) who shall have been active over the ten (10) year period ending on the date of such appointment in appraisal of similar multi-family properties in the in the Addison-North Dallas, Texas submarket, who shall not have previously been employed by either the City or Owner. The determination of the arbitrators shall be limited solely to the issue of whether the multi-family portion of the Project is consistently maintained in a first-class manner. The two arbitrators so appointed shall, within ten (10) days of the date of the appointment of the last appointed arbitrator, agree upon and appoint a third arbitrator who shall be qualified under the same criteria set forth hereinabove for qualification of the initial two arbitrators. The three arbitrators shall, within thirty (30) days of the appointment of the third arbitrator, reach a decision as to whether the multi-family portion of the Project is consistently maintained in a first-class manner, and shall notify the City and Owner thereof in writing. The decision of the majority of the three arbitrators shall be binding upon the City and Owner and judgment upon such decision may be entered in by any court having jurisdiction over the City and Owner. If the two arbitrators fail to agree upon and appoint a third arbitrator, both arbitrators shall be dismissed and the City and Owner each shall promptly select and appoint one new arbitrator each possessing the qualifications described above therefor. Such new arbitrators shall promptly follow the procedure set forth above. The cost of arbitration shall be paid by the City if the arbitrators determine the multi-family portion of the Project is consistently maintained in a first-class manner and by Owner if the arbitrators determine the multi-family portion of the Project is not consistently maintained in a first-class manner. The deed restriction shall provide Owner with at least one hundred twenty (120) days' notice and cure period. The deed restriction shall require every Operator to perform a criminal background check, income verification and credit check on each prospective tenant prior to execution of a residential apartment lease. The deed restriction described herein shall give the City the ability to enforce the restriction.

(d) Fenway shall expend a minimum of \$1,000,000.00 for public park improvements to be reimbursed from the \$4,250,000.00 General Fund category. Such improvements and the expenditure therefore, are subject to reasonable approved by the City.

Notwithstanding anything contained herein to the contrary or any other provision of this Agreement, the Program Grant payment (and/or any portion thereof) shall not be due and payable, and this Agreement may be terminated by the City (that is, without any opportunity for cure by Fenway), if Fenway fails to timely comply with and satisfy to the City's satisfaction any of the conditions to the Program Grant payments (and/or any portion thereof) as set forth in this Section 4, above and if Fenway fails to develop the Property in accordance with Ordinance No. O16-003, as amended. In addition, should Fenway (i) choose an apartment developer or initial operator for the Project that is not approved by the City as required in Section 4(c) above, or (ii) fail to record the Deed Restriction; then Fenway will forfeit the right to receive any Grant payments under this Agreement and in addition to other remedies set forth in this Agreement, shall immediately return any Grant payments previously received under this

Agreement and shall reimburse the City for all permit and development fee waivers that it has received.

Further, notwithstanding any other provision of this Agreement, if Fenway fails to submit its request for a Grant Payment within six (6) months of the date the right to receive the payment accrues and after thirty (30) days' written notice from the City pursuant to Section 12, then Fenway shall not receive the Grant Payment and the City shall have no obligation to make such payment to Fenway and Fenway will have forfeited the right to receive such payment.

**Section 5. Additional Economic Incentives.**

In addition to the Grant payments described above, as a part of the incentive and to assist Fenway in its effort to develop the Project, the City will support the process to acquire the right-of-way for Runyon Road, including initiating discussions with the property owners, preparing appraisals and exercising all powers available to it in accordance with Texas law. Fenway shall be responsible for all acquisition costs and shall reimburse the City for all costs of acquisition within 30 days of receipt of a request for reimbursement accompanied by documentation evidencing the expense.

**Section 6. Default.**

(a) **Event of Default by the Company.** If, during the Term of this Agreement, the Company breaches any of the terms or conditions of this Agreement or fails to maintain any conditions of the Grant payments, then the Company shall be in default ("Event of Default"). In the event the Company defaults in its performance, then the City shall give the Company written notice of such default, and if the Company has not cured any default within thirty (30) days of such written notice, this Agreement may be terminated by the City. In the event of default by the Company and the continuation of such default for thirty (30) days after the written notice set forth above, the City shall have the following remedies, in addition to all other rights and remedies available at law or in equity:

(i) to nullify Section 3 of this Agreement and immediately seek reimbursement of any and all Grant Payments received by the Company; and/or

(ii) to seek specific enforcement of this Agreement.

(b) **Event of Default by the City.** Upon the occurrence of default by the City, the Company shall give written notice of such default, and if City has not cured the default within thirty (30) days within said written notice, this Agreement may be terminated by the Company. The Company shall have the right to seek specific performance of the City's obligation to make the Grant Payments set forth in Section 4(b) hereof, as its sole and exclusive remedy.

**Section 7. Termination; Reimbursement.**

This Agreement shall terminate without notice or demand upon the occurrence of any one of the following:

- (a) the execution by both Parties of a written agreement terminating this Agreement; or
- (b) as otherwise provided for in this Agreement, including as set forth in Section 3, above; or
- (c) the expiration of the Term; or
- (d) at the option of either party (the “non-breaching party”) in the event the other party (the “breaching party”) breaches or fails to comply with any term, condition, or provision of this Agreement and such breach or failure is not cured or remedied to the satisfaction of the non-breaching party within thirty (30) days after written notice thereof from the non-breaching party to the breaching party;
- (e) if Fenway suffers an Event of Bankruptcy or Insolvency, as hereinafter defined, that impairs its ability to perform its obligations under this Agreement; or
- (f) at the City’s option, if any taxes or fees owed by Fenway to the City or the State of Texas shall become delinquent (provided, however, that Fenway retains the right to timely and properly protest and contest any such taxes or fees, and the City’s right to terminate this Agreement shall be suspended during such protest and contest period) after thirty (30) days’ written notice from the City pursuant to Section 12, of such delinquency.

If this Agreement is terminated pursuant to subsection (d), subsection (e), or subsection (f) of this Section, Fenway shall promptly (but in any event within thirty (30) days of the date of termination) reimburse and repay to the City a sum equal amount of Grant payment made by the City up to the date of termination. All repayment and/or reimbursement amounts under this Agreement shall bear and include interest at the rate of 4% per year, compounded, from the date that the payment was initially made to Fenway.

For purposes of this Section, “Event of Bankruptcy or Insolvency” means (i) the liquidation, dissolution, or termination of Fenway as a going business, (ii) insolvency or a declaration of insolvency of Fenway under any law, (iii) appointment of a receiver for Fenway, (iv) any assignment or conveyance of all or a substantial portion of assets for the benefit of creditors, (v) a transfer in fraud of creditors according to any applicable law, or (vi) the filing of a petition by Fenway for relief, or the filing of a petition against Fenway for involuntary bankruptcy, under the United States Bankruptcy Code or any other present or future federal or state insolvency, bankruptcy, or similar laws.

**Section 8. Representations by the City.**

The City represents that it is a home rule Texas municipal corporation and to the best of its actual knowledge has the power to enter into this Agreement and to carry out its obligations hereunder. However, notwithstanding any other provision of this Agreement, it is understood and expressly agreed by Fenway that the City does not warrant or guarantee that the Program Grant payment (and any part thereof) as described herein will be upheld as valid, lawful, enforceable or constitutional in the event the statutory or other authority for the same or the City's use thereof is challenged by court action or other action or proceeding (including any action or proceeding involving the Texas Attorney General). In the event such court or other action or proceeding related to the legality of this Agreement and the providing of the Program Grant (or any part thereof) is instituted, the Parties shall defend or respond to such action or proceeding at their respective expense. Should such litigation, action or other proceeding result in a determination that this Agreement or the payment of the Program Grant (or any part thereof) was or is prohibited under federal, state or local law (including any constitutional or charter provision), rule or regulation, and so result in the loss of the Program Grant as provided herein, Fenway shall have no recourse against the City or any of its officials, officers, employees, agents, or volunteers, past or present, and Fenway shall promptly repay to the City the Program Grant payment previously made to Fenway by the City.

**Section 9. Representations and Warranties by Fenway.**

Fenway represents and warrants that:

- (a) Fenway is a Texas corporation, has the legal capacity and the authority to enter into and perform its obligations under this Agreement, and the same shall be true and accurate at all times in connection with this Agreement;
- (b) The execution and delivery of this Agreement and the performance and observance of its terms, conditions and obligations have been duly and validly authorized by all necessary action on its part to make this Agreement, and this Agreement is not in contravention of Fenway's Articles of Incorporation or regulations, or any agreement or instrument to which Fenway is a party or by which it may be bound as of the date hereof;
- (c) Fenway has the necessary legal ability to perform its obligations under this Agreement;
- (d) No litigation or governmental proceeding is pending, or, to the knowledge of any of Fenway's officers, threatened against or affecting Fenway, which may result in a material adverse change in Fenway's business, properties or operations sufficient to jeopardize Fenway as a going concern; and
- (e) This Agreement constitutes a valid and binding obligation of Fenway, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws

of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

**Section 10. Entire Agreement; Changes and Amendments.**

This Agreement represents the entire and integrated agreement between the City and Fenway with regard to the matters set forth herein and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Agreement may be amended only by written instrument signed by authorized representatives of each of the City and Fenway.

**Section 11. Successors and Assigns; No Third Party Beneficiaries.**

Upon the prior written approval of the City, exercised in its reasonable discretion, Fenway may assign, sell, pledge, transfer, encumber or otherwise convey (any of the foregoing, and the occurrence of any of the foregoing, a "Conveyance") its rights and obligations hereunder that does not result in a change in majority ownership or control. Any Conveyance of any kind or by any method (including by operation of law, by merger, or otherwise) without the City's prior written consent shall be null and void.

Any Conveyance approved by the City shall be expressly subject to all of the terms, conditions and provisions of this Agreement. In the event of any such Conveyance approved by the City, Fenway shall obtain a written agreement (the "Assumption Agreement") from each such assignee, transferee, buyer, pledgee, or other person or entity to whom this Agreement is otherwise conveyed whereby each such assignee, transferee, buyer, pledgee, or other person or entity to whom this Agreement is otherwise conveyed agrees to be bound by the terms and provisions of this Agreement.

This Agreement shall be binding on and inure to the benefit of the Parties, their respective permitted successors and permitted assigns. 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.

**Section 12. Notice.**

Any notice, statement and/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:

To the City:

Town of Addison, Texas  
5300 Belt Line Road  
Dallas, Texas 75254  
Attention: City Manager

To Fenway:

Beltline Beltway Investments, Ltd.  
Urban Intownhomes, LLC  
1520 Oliver St.  
Houston, Texas 77007  
Attn: Frank Liu

**Section 13. Applicable Law; Venue.**

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 Fenway 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.

**Section 14. Legal Construction/Partial Invalidity of Agreement.**

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.

**Section 15. Miscellaneous.**

(a) Pursuant to Texas Government Code, Chapter 2264 (entitled "Restrictions on Use of Certain Public Subsidies"), Fenway certifies that neither Fenway, nor any branch, division, or department of Fenway, knowingly employs, or will employ, an undocumented worker (as the term "undocumented worker" is defined in Section 2264.001 of the said Chapter 2264, Tex. Gov. Code) in connection with the Leased Premises, the Services provided by Fenway at the Leased Premises, or this Agreement. Fenway agrees that if, during the term of this Agreement and after it receives any payment or funds from the City pursuant to this Agreement, Fenway, or a branch, division, or department of Fenway, is convicted of a violation under 8 U.S.C. Section 1324a(f), Fenway shall repay the amount of all Grant funds paid by the City to Fenway with interest, at the rate of 4% per year, compounded, from the date that the payment was initially made to Fenway, not later than the 120th day after the date the City notifies Fenway of the violation.

(b) Notwithstanding any other provision of this Agreement, except as expressly provided in Section 6(b) above, 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.

(c) Except as set forth in or otherwise limited by this Agreement, the remedies and rights set forth in this Agreement: (a) are and shall be in addition to any and all other remedies and rights either party may have at law, in equity, or otherwise, (b) shall be cumulative, and (c) may be pursued successively or concurrently as either party may elect. The exercise of any remedy or right by either party shall not be deemed an election of remedies or rights or preclude that party from exercising any other remedies or rights in the future. All waivers must be in writing and signed by the waiving party, and the City's waiver of any right, or of Fenway's breach, on one or more occasions will not be deemed a waiver on any other occasion. The City's failure to enforce or pursue any of its rights under or any provision of this Agreement shall not be or constitute a waiver of its rights or provision and shall not prevent the City from enforcing or pursuing that right or provision or any other right under or provision of this Agreement in the future. No custom or practice arising during the administration of this Agreement will waive, or diminish, the City's rights hereunder or to diminish the City's right to insist upon strict compliance by Fenway with this Agreement.

(d) The Parties acknowledge that each of them has been actively involved in negotiating this Agreement and has been represented by competent legal counsel. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting Party will not apply to interpreting this Agreement. In the event of any dispute over the meaning or application of any provision of this Agreement, the provision will be interpreted fairly and reasonably and neither more strongly for nor against any Party, regardless of which Party originally drafted the provision.

(e) This Agreement is not confidential information and may be disclosed to the public.

(f) Any of the representations, covenants, and obligations of the Parties hereto, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination or expiration of this Agreement shall survive termination or expiration.

(g) 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.

(h) The undersigned officers and/or agents of the Parties hereto are the properly authorized persons and have the necessary authority to execute this Agreement on behalf of the Parties hereto.

(i) The City agrees that with respect to this Agreement, no liability shall arise in favor of the City against any officer, director, member, agent or employee of Fenway, but the City shall look solely to the assets of Fenway for satisfaction of Fenway's duties, obligations and liabilities arising under or in connection with the Agreement.

*(SIGNATURES ON NEXT PAGES)*

**EXECUTED** this \_\_\_\_ day of \_\_\_\_\_, 2016.

**TOWN OF ADDISON**

\_\_\_\_\_  
Wesley S. Pierson, City Manager

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Laura Bell, City Secretary

\_\_\_\_\_  
Brenda N. McDonald, City Attorney

**STATE OF TEXAS       §**  
                                  **§**  
**COUNTY OF DALLAS   §**

This instrument was acknowledged before me on the \_\_\_\_\_ day of 2016, by Wesley S. Pierson, City Manager of the Town of Addison, Texas, on behalf of the town.

\_\_\_\_\_  
Notary Public, State of Texas

[SEAL]

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 2016.

**BELTLINE BELTWAY INVESTMENTS, LTD.,**  
a Texas limited partnership

By: Country Lane GP, LLC,  
a Texas limited liability company,  
its general partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**STATE OF TEXAS           §**  
  §  
**COUNTY OF HARRIS       §**

This instrument was acknowledged before me on the \_\_\_\_\_ day of 2016, by \_\_\_\_\_,  
\_\_\_\_\_ of Country Lane GP, LLC, a Texas limited liability company, general partner of  
Beltline Beltway Investments, Ltd., a Texas limited partnership, on behalf of such limited  
partnership.

\_\_\_\_\_  
Notary Public, State of Texas

[SEAL]

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 2016.

URBAN INTOWNHOMES, LLC,  
a Texas limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF TEXAS       §  
                                  §  
COUNTY OF HARRIS   §

This instrument was acknowledged before me on the \_\_\_\_\_ day of 2016, by \_\_\_\_\_,  
\_\_\_\_\_ of Urban Intownhomes, LLC, a Texas limited liability company, on behalf of  
such limited liability company.

\_\_\_\_\_  
Notary Public, State of Texas

[SEAL]

**EXHIBIT A**

**ADDISON GROVE APPROVED INFRASTRUCTURE COSTS**

Addison Grove Infrastructure	Infrastructure Costs			
	Unit	Quantity	Unit Cost	Ext. Cost
<b>GENERAL FUND - Capped at \$4,250,000</b>				
<b>ROADWAY PAVEMENT - General Fund</b>				
Public Roadway	SY	10,150	\$ 125.00	\$ 1,268,750
			<b>Subtotal</b>	\$ 1,268,750
<b>PEDESTRIAN AMENITIES - General Fund</b>				
Tree Relocation from Private Land to Public Areas	LS	1	\$ 100,000.00	\$ 100,000
Park Improvements	LS	1	\$ 1,000,000.00	\$ 1,000,000
Pedestrian Lighting	EA	79	\$ 2,500.00	\$ 197,500
Concrete Sidewalks	SF	82,500	\$ 4.75	\$ 391,875
Trash Cans	EA	24	\$ 500.00	\$ 12,000
Benches	EA	36	\$ 1,200.00	\$ 43,200
			<b>Subtotal</b>	\$ 1,744,575
<b>RUNYON ROAD PAVEMENT - General Fund</b>				
Remove and Replace Runyon Road Pavement	SY	2,000	\$ 125.00	\$ 250,000
			<b>Subtotal</b>	\$ 250,000
<b>STORMWATER FUND - Capped at \$1,000,000</b>				
<b>STORM DRAINAGE - Stormwater Fund</b>				
Storm Drain Manhole	EA	8	\$ 6,500.00	\$ 52,000
Storm Drain Inlets	EA	20	\$ 5,000.00	\$ 100,000
18" RCP	LF	900	\$ 100.00	\$ 90,000
24" RCP	LF	1,750	\$ 115.00	\$ 201,250
42" RCP	LF	450	\$ 200.00	\$ 90,000
60" RCP Detention Pipe	LF	1,500	\$ 325.00	\$ 487,500
			<b>Subtotal</b>	\$ 1,020,750
<b>UTILITY FUND - Capped at \$1,000,000</b>				
<b>WATER - Utility Fund</b>				
8" Water Line and Typical Fittings	LF	4,200	\$ 80.00	\$ 336,000
Fire Hydrants	EA	17	\$ 3,500.00	\$ 59,500
			<b>Subtotal</b>	\$ 395,500
<b>SANITARY SEWER - Utility Fund</b>				
8" Sanitary Sewer	LF	4,500	\$ 65.00	\$ 292,500
10" Offsite Sanitary Sewer Improvements	LF	1,530	\$ 120.00	\$ 183,600
Sanitary Sewer Manholes	EA	16	\$ 6,000.00	\$ 96,000
			<b>Subtotal</b>	\$ 572,100
<b>ROADWAY PAVEMENT - General Fund</b>				
				\$ 1,268,750
<b>PEDESTRIAN AMENITIES - General Fund</b>				
				\$ 1,744,575
<b>RUNYON ROAD PAVEMENT - General Fund</b>				
				\$ 250,000
<b>STORM DRAINAGE - Stormwater Fund</b>				
				\$ 1,020,750
<b>WATER - Utility Fund</b>				
				\$ 395,500
<b>SANITARY SEWER - Utility Fund</b>				
				\$ 572,100
<b>CONTINGENCY</b>				
				\$ 1,010,351
			<b>GRAND TOTAL</b>	\$ 6,262,026

**Work Session and Regular Meeting**

Meeting Date: 09/13/2016

Department: Economic Development

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**AGENDA CAPTION:**

Present, Discuss And Consider Action Regarding Approval Of A **Resolution Authorizing The City Manager To Enter Into A Commercial Real Estate Broker Services Agreement With CBRE, Inc. For The Lease Or Sale Of Properties Owned By The Town of Addison Located At 4460 And 4500 Belt Line Road.**

**BACKGROUND:**

On April 12, 2016 City Council considered and denied a request from the owners of Bawarchi Signature Restaurant located at 4460 Belt Line Road to assign the existing lease to a different group of investors. At the time, staff was directed to hire a commercial broker to help the Town maximize the potential of the property. Should a broker be hired, staff was also directed to include the property at 4500 Belt Line Road also owned by the Town and occupied by Chilis Restaurant, and that any compensation to the broker be based on commission. Both leases expire in 2017. In May 2016 Bawarchi Signature Restaurant closed and staff developed a Request for Qualifications (RFQ) to select a commercial broker to assist the Town with the disposition of the properties.

Five proposals were received and two finalists were selected for interviews with a committee made up of Scott Neils, Interim CFO, Charles Goff, Assistant Director of Infrastructure and Development Services, Caitlan Smelley, Assistant to the City Manager, Bill Dyer, Addison Airport Real Estate Manager, Wil Newcomer, Purchasing Manager, and Orlando Campos, Director of Economic Development & Tourism. After careful evaluation of the proposals and interviews, the committee selected CBRE, Inc. to recommend to City Council on representing the Town on the potential sale or lease of the properties.

CBRE Group, Inc. is the world's largest commercial real estate services and investment firm, with 2015 revenues of \$10.9 billion and more than 70,000 employees (excluding affiliate offices). CBRE has been included in the Fortune 500 since 2008, ranking #259 in 2016. It also has been voted the industry's top brand by the Lipsey Company for 15 consecutive years, and has been named one of Fortune's "Most Admired Companies" in the real estate sector for four years in a row. Its shares trade on the New York Stock Exchange under the symbol "CBG."

CBRE offers a broad range of integrated services, including facilities, transaction and project management; property management; investment management; appraisal and

valuation; property leasing; strategic consulting; property sales; mortgage services and development services.

CBRE has extensive knowledge of the Addison retail market and represents several Addison property owners and centers including Addison Walk Shopping Center. There are no existing conflicts that prevent CBRE from representing the Town.

A team from CBRE will work with the Town on the evaluation of the properties owned by the Town. They will help determine market lease rates and potential market sale price for the properties. These findings will be presented to Council in a separate meeting and direction will be sought by staff on whether to continue leasing the properties or to sell the properties. After this decision is made, CBRE will help market the properties, assist with sale/lease negotiations, manage the lease/sale process, and assist with any closings. Compensation will be based on a commission rate as described in the attached contract. Any work outside this scope will be based on a consulting fee. Final contracts for property sales or leases will be brought to Council for approval.

**RECOMMENDATION:**

Administration recommends approval.

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**Attachments**

Resolution

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TOWN OF ADDISON, TEXAS

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

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING THE COMMERCIAL REAL ESTATE BROKER AND BROKER SERVICES INDEFINITE QUANTITY CONTRACT BETWEEN THE TOWN OF ADDISON, TEXAS AND CBRE, INC. FOR PROFESSIONAL BROKERAGE SERVICES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT; AND PROVIDING AN EFFECTIVE DATE.**

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

**Section 1.** The Commercial Real Estate Broker and Broker Services Indefinite Quantity Contract between the Town of Addison, Texas and CBRE, Inc. for professional brokerage services, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved. The City Manager is hereby authorized to execute the contract.

**Section 2.** This Resolution shall take effect from and after its date of adoption.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this the 13<sup>th</sup> day of September, 2016.

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

ATTEST:

By: \_\_\_\_\_  
Laura Bell, City Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Brenda N. McDonald, City Attorney

# EXHIBIT A

**TOWN OF ADDISON  
COMMERCIAL REAL ESTATE BROKER AND  
BROKER SERVICES  
INDEFINITE QUANTITY CONTRACT**

THE STATE OF TEXAS     §  
TOWN OF ADDISON       §

**KNOW ALL MEN BY THESE PRESENTS**, this Contract is made and entered into as of \_\_\_\_\_, for the term of two (2) years, effective upon award of the contract, by and between the **Town of Addison** (hereinafter referred to as the "Town") acting by and through the City Council of the Town and CBRE, Inc., (hereinafter referred to as "Broker") with offices located at 2100 McKinney, Suite 700, Dallas, Texas 75201.

**WITNESSETH:**

**WHEREAS**, Town intends to contract with a professional commercial real estate broker firm for professional services for an initial two (2) year term with the option to extend for three (3) additional one-year terms, on a year to year basis, providing both parties concur; and

**WHEREAS**, the miscellaneous projects to be included in this Contract include the acquisition, disposition, and management of real property owned or leased by the Town; and

**WHEREAS**, all real property and lease transactions will be conducted pursuant to the Texas Local Government Code Chapter 263 through 280; and,

**WHEREAS**, the Town has determined that Broker is the highest qualified provider of commercial real estate services through a competitive solicitation process authorized by the Texas Local Government Code Chapter 262; and,

**WHEREAS**, Town and Broker have agreed upon the fair and reasonable negotiated pricing schedule for services to be provided; and,

**WHEREAS**, the Town has determined that the services of a professional Broker are necessary from time to time for the benefit of the Town; and,

**WHEREAS**, Town desires to contract with Broker for complete commercial real estate services as detailed in any "Work Order" that may be issued under this Contract; and

**WHEREAS**, Town and Broker have agreed to provide commercial real estate services as provided in future mutually agreed Work Orders.

**NOW, THEREFORE**, Town and Broker, in consideration of the terms, covenants and conditions herein contained, Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, do hereby agree and contract as follows:

**ARTICLE 1**

**SCOPE OF SERVICES AND COMPENSATION**

1.1. Broker, as an Independent Contractor and Licensed Broker in its relationship with Town, shall perform all professional services for any Work Order as authorized. The Indefinite Quantity Contract is to be used for a wide variety of Projects and Services. The Services may range from, but are not limited to: acquisition and disposition of real property, identification of potential property for acquisition, assistance with negotiation of pricing or leasing, and other principle lines of business as described in Broker's RFP response, incorporated as Attachment A.

Town will provide Broker with the requirements of all projects in writing as numbered proposed Work Orders, as

described in Article 4, Work Orders. Work Orders shall specify the targeted completion date and negotiated fee for subject project.

- 1.2. Town shall compensate Broker in accordance with the agreed terms and conditions of this Contract and the particular Work Order. All fees must be consistent with and not higher than the recommended practices and fees published by the applicable professional association, if any, and may not exceed any maximum provided by law. Any conflict shall be decided in accordance with Section 28.2 (Order of Precedence).
- 1.3. Broker's Service under this Contract for the purposes of negotiation of Work Orders will be based on the negotiated hourly rates and percentages as indicated in Attachment B to this Contract.
- 1.4. Partial payments will be authorized on a percentage complete basis and may be submitted on a monthly basis. Broker's invoices to Town shall provide complete information and documentation to substantiate Broker's charges and shall be in a form to be specified by Town's Representative. Should additional backup material be requested by the Town Representative, Broker shall comply promptly with such request.
- 1.5. The cost for each project will be negotiated separately for each Work Order issued and will be either Fixed Price (lump sum), success fee, or not-to-exceed hourly contract. The type of cost basis used will be determined according to the requirements of

each project. If the scope of the work is sufficiently defined then a fixed price (lump sum) contract is preferred, however for projects that are not as definitive a not-to-exceed units price (hourly) contract may be used.

- 1.6. **Reimbursable Charges.** In addition to the Professional Fee, not to exceed reimbursable charges may be authorized in the Work Order, including:
  - 1.6.1. Additional unusual vehicle travel (other than normal office to job, office to meeting, office to job site, etc.) will be compensated at the current mileage rate established by the Internal Revenue Service.

## **ARTICLE 2 BROKER'S SERVICES**

- 2.1. Broker's Basic Services consist generally of the categories described below. All services shall be subject to approval of Town through Town's Chief Financial Officer or his designee, hereinafter referred to as "Town Representative". Broker shall perform all work commensurate with the care and skill ordinarily used by members of Broker's profession under the same or similar circumstances at the same time and in the same locality satisfactory and acceptable to Town, as determined by its Town Representative or his designee.
  - 2.1.1. Transaction Management
  - 2.1.2. Leasing Administration
  - 2.1.3. Strategic Planning
  - 2.1.4. Consulting - Project Management

## **ARTICLE 3 TOWN'S RESPONSIBILITIES**

- 3.1. Town shall designate representatives authorized to act in its behalf. All submissions shall be to the Town Representative. Town shall examine documents submitted by Broker and render decisions pertaining thereto promptly to avoid unreasonable delay in the orderly progress of Broker's work. Failure to timely review any document shall not cause damages for delay claim and Broker's only remedy shall be a extension of time reasonable for performance.
- 3.2. Broker shall be entitled to reasonably rely on the accuracy of the information, reports, and materials which Town shall furnish. Broker shall not be liable for damages caused due to erroneous or incorrect data which Town requires or instructs Broker to use.

- 3.3. Any charges which may be assessed for municipal zoning and/or permit fees will be paid by the Town and are to be included by Broker in the specifications for the project. Any charges not included in the specifications will be paid by Town, but only upon prompt written notice by Broker and advance written approval by Town. Approval shall not be unreasonably withheld.
- 3.4. Town will provide Broker with its written requirements for the Project as may be necessary and practicable for the orderly and expeditious process of the work. To the extent practicable, these documents shall be utilized in the preparation of the Contract Documents.
- 3.5. If Town or Broker observes or otherwise becomes aware of any fault or defect in the Project, it shall give prompt written notice thereof to the other.

#### ARTICLE 4 WORK ORDERS

- 4.1. Work performed by the Broker will be authorized by the Town by written Work Order issued prior to work being performed. Each such Work Order shall be incorporated into and made a part of this Contract.
- 4.2. Time is of the essence as to the completion date in each Work Order. Any Work Order issued during the effective term of this Contract and not completed within that period shall be completed by Broker within the time specified in the Work Order, time being of the essence. This Contract shall survive the expiration of the termination date as to such orders and shall govern the Town and Broker's rights and obligations with respect to that order to the same extent as if the order was completed during the term of the Contract, specifically including all insurance and indemnification provisions contain herein. Such continuation of the Contract shall terminate when either the Town shall accept the project as substantially complete or written notice is given to Broker by the Town Representative that Broker's services are no longer required under the Work Order, or termination for cause under Article 9 (Termination, Default, Time of the Essence and Force Majeure), whichever shall first occur.
- 4.3. Each Work Order shall be prepared by the Town and shall include, but not be limited to, the name and number of the project, location of the work to be performed, a description of the work to be performed, any items to be furnished by the Town, any special provision and a completion date for the work. Upon receipt of the proposed Work Order, the Broker shall furnish to the Town a schedule for the work, suggested personnel required for the timely completion of the work based on the Town's completion date, itemized projected Cost of the Work Order based on the negotiated rates as shown in ARTICLE 1 (SCOPE OF SERVICES AND COMPENSATION) and a total, not-to-exceed Cost of the Work Order.
- 4.4. The Town may accept or reject, in whole or in part, such submission. In the event of rejection the parties agree to negotiate in good faith the Work Order items to reach agreement as to each item. Once agreement has been reached, the Work Order will be completed and signed by the Broker. Such Work Order shall be signed by the Town Representative as recommended for approval. The Work Order will then be submitted to the City Council for its consideration. The Work Order is contingent upon and not effective until approved by a formal order of the City Council and notice to proceed has been issued by the Town Representative. Upon approval, the Work Order shall be executed and delivered to the Broker.
- 4.5. Work Orders will be issued at the sole discretion of the Town. There may be no Work Orders issued under this or any subsequent Contract. There is no limit, on the number of Work Orders that may be issued. There is no guarantee of the issuance of any Work Order(s) or any amount of work under this Contract.
- 4.6. Concurrent with the issuance of a Work Order by Town, Broker shall execute an affidavit certifying that there has been no material change in the qualifications of the Broker and Broker remains as fully qualified to perform the services as the date on which the Town considered the response of Broker to the Request for Proposals.

- 4.7. Broker understands that each Work Order Project Performance Schedule is of critical importance and agrees to undertake all necessary efforts to expedite the performance of service required herein, so that services are completed as scheduled. In this regard, Broker shall proceed with sufficient qualified personnel and Brokers necessary to fully and timely accomplish all services required under this Contract, time being of the essence.

**ARTICLE 5  
SUSPENSION OF WORK**

- 5.1 Should the Town desire to suspend the work but not terminate the Contract, the Town will issue a written order to stop work setting out the terms of the suspension. The Broker will stop all work and cease to incur costs during the term of the suspension.
- 5.2 The Broker will resume work when notified to do so by the Town in a written authorization to proceed. Suspension of work does not extend the date of performance for any Work Order or other Contract period. If additional time is required to complete the work because of the suspension, a Work Order amendment will be executed as mutually agreed in writing by Broker and Town.
- 5.3 If Broker is delayed by the Town due to a suspension of work, or otherwise, the Brokers sole and exclusive remedy for delay shall be the right to a time extension for completion of the Work Order and not damages.
- 5.4 If the work is suspended, Broker shall be compensated for all services performed prior to receipt of written notice from Town of such suspension.

**ARTICLE 6  
BROKER'S ACCOUNT RECORDS**

Records of Broker or Broker expenses pertaining to services on any approved Work Order and records of account between Town and Broker shall be kept on a generally recognized accounting basis, shall be maintained in Dallas County for a minimum of one (1) year from the termination date of this Contract and with full and immediate access allowed to authorized representatives of the Town upon request for any purpose including, but not limited to, evaluating compliance with this and other provisions of this Contract. Town or its authorized representative shall have the right to make copies of any and all documents, books, backup documents, or other items either included in the records of account or supporting such records at Town's cost.

**ARTICLE 7  
PAYMENTS TO BROKER**

- 7.1. Payments for each Work Order will be authorized on a percentage complete basis and may be submitted on a monthly basis.
- 7.2. Payments for Additional Services for Broker, as herein above referred to, shall be made following presentation, review and approval of the Broker's detailed invoice.
- 7.3. Broker's invoices to Town shall provide complete information and documentation to substantiate Broker's charges, and shall be in a form to be specified by Town Representative. All payments to Broker shall be made on the basis of the invoices submitted by Broker and approved by Town Representative. Town shall approve all undisputed items in each invoice properly submitted by Broker in accordance with the Prompt Payment Act as set forth below in this Article. Should any items be disputed by Town, additional backup material may be requested by Town Representative to substantiate such disputed items. Broker shall comply promptly with such request. Notwithstanding a request for additional backup materials, Town shall pay all undisputed items in accordance with the Prompt Payment Act. In Town's own discretion, should Town Representative determine it necessary, Broker shall make all its records and books related to this Contract available to Town, Town's

independent auditor or other person or entity authorized by Town in writing, for inspection and auditing purposes.

- 7.4. Town reserves the right to correct any error that may be discovered in any invoice that may have been paid to Broker and to adjust the same to meet the requirements of the Contract. Following approval of invoices, Town will pay Broker in accordance with the Prompt Payment Act.
- 7.5. Prompt Payment Act. Broker agrees that a temporary delay in making payments due to the Town's accounting and disbursement procedures shall not place the Town in default of this Contract and shall not render the Town liable for interest or penalties, provided such delay shall not exceed thirty (30) calendar days after its due date. Any payment not made within thirty (30) calendar days of its due date shall bear interest in accordance with Chapter 2251 of the Texas Government Code.

#### **ARTICLE 8 INDEPENDENT CONTRACTOR**

The Broker at all times shall be an independent contractor and not an agent, servant, joint venturer, joint adventurer, or employee of the Town. The Broker shall be fully responsible for its own acts, forbearance, negligent act(s) or deed(s) and all acts and omissions of its employees and subcontractors in conjunction with the performance of services or work under this agreement and shall be specifically responsible for sufficient supervision and inspection of the work of its subcontractors and suppliers to insure compliance in every respect with the contract requirements. There shall be no contractual relationship between any subcontractor or supplier of the Broker and the Town by virtue of this Contract. No provision of this Contract shall be for the benefit of any party other than the Town and Broker.

#### **ARTICLE 9 TERMINATION, DEFAULT, TIME OF THE ESSENCE AND FORCE MAJEURE**

- 9.1. In connection with the work outlined in this Contract, it is agreed and fully understood by Broker that Town may cancel or indefinitely suspend further work hereunder or terminate this Contract or any Work Order or Work Orders, singularly or in any combination before the end of the term, any extension thereof, or completion date upon seven (7) days written notice to Broker, and upon receipt of said notice all work and labor being performed under this Contract shall cease, as a result of any of the following conditions:
  - 9.1.1. By mutual consent and agreement of both parties hereto.
  - 9.1.2. By the Town, by notice in writing to the Broker as consequence of failure by the Broker to perform the services herein set forth in a satisfactory manner and within the limits provided, in the sole judgment of Town, with proper allowances being made for circumstances beyond the control of the Broker. In such instance, Town shall provide Broker with ten business days notice of default or failure to perform, and demand to cure. Upon failure of Broker to cure any such default or failure to perform, Town shall provide notice of termination described in this paragraph above.
  - 9.1.3. By either party, upon the failure of the other party to fulfill its obligations as set forth in the Contract, Work Order(s), or other incorporated document by giving written notice one to the other establishing the effective date of termination.
  - 9.1.4. By the Town, without cause, for reasons of its own and not subject to the mutual consent of the Broker, upon not less than thirty days written notice to the Broker.
- 9.2. Broker shall invoice Town for all work satisfactorily completed and shall be compensated in accordance with the terms of this Contract for all work accomplished prior to the receipt of said notice. No amount shall be due for lost or anticipated profits. All plans, field surveys, maps, cross sections and other data, design and work related to the Project shall become the property of Town in accordance with Article 10,

"Ownership of Documents", upon the termination of this Contract, and shall be promptly delivered to Town in a reasonably organized form without restriction on future use. Should Town subsequently contract with a new Broker for continuation of services on the Project, Broker shall cooperate in providing information and shall be released or saved harmless from any acts of negligence on the part of other in use of said data.

- 9.3. If the termination of this Contract is due to the failure of the Broker to fulfill its obligations under section 9.1.2 herein,
  - 9.3.1. the Town may take over the project and prosecute the work to completion by contract or otherwise. In such case, the Broker shall be liable to the Town for any actual documented costs the Town may incur, and
  - 9.3.2. the cost to the Town of employing another firm to complete the required work, the time required to do so and other factors which affect the value to the Town of the work performed to the date of default may, at the sole discretion of the Town, be offset against the amount of compensation, if any, to be paid.
- 9.4. Nothing contained in this Article 9 shall require Town to pay for any work which is unsatisfactory as determined by Town Representative or which is not submitted in compliance with the terms of this Contract. Town shall not be required to make any payments to Broker when Broker is in default under this Contract, nor shall this Article constitute a waiver of any right, in law and in equity, which Town may have if Broker is in default, including the right to bring legal action for damages. Default shall include, but not be limited to the failure to complete Broker's work in accordance with the performance schedule and in accordance with ARTICLE 4 (WORK ORDERS).
- 9.5. At the termination of the Contract between Town and Broker, Broker shall furnish to Town a listing of current records pertaining to any outstanding obligations or other records or information required by the Contract, including any Work Order, or requested in writing by Town in either printed or electronic format or both. Broker agrees to furnish such information in an electronic form which is compatible with the Town's computer system and/or the computer system of any subsequent vendor or contractor of Town selected for continuation of the services as described in whole or part herein, including any Work Order, or as may be added by amendment. Broker agrees to cooperate with any subsequent vendor or contractor of Town and to use efforts commensurate with the care and skill ordinarily used by members of Broker's profession under the same or similar circumstances at the same time and in the same locality to insure a transition of services without interruption or degradation of service. This provision will survive the termination of this Contract and shall be a continuing obligation until the transition of services is complete. All items listed or required in this provision shall be furnished by Broker to Town without additional cost or expense to Town.
- 9.6. Broker understands and agrees that time is of the essence and that any failure of Broker to complete the services within the agreed Project Performance Schedule will constitute a material breach of this Contract. Broker shall be fully responsible for its delays or for failures to use its best efforts in accordance with the terms of this Contract. Where damage is caused to the Town due to Broker's failure to perform in these circumstances, Town may withhold, to the extent of such damage, Broker's payments hereunder without waiver of any of Town's additional legal rights or remedies.
- 9.7. Neither Town nor Broker shall be deemed in violation of this Contract if it is prevented from performing any of its obligations hereunder by reasons for which it is not responsible or circumstances beyond its control. However, notice of such impediment or delay in performance must be given with ten (10) days and all reasonable efforts undertaken to mitigate its effects.

**ARTICLE 10  
OWNERSHIP OF DOCUMENTS**

- 10.1. All Broker's work product completed or partially completed specifically in furtherance of this Contract including, but not limited to, estimates, specifications, investigations, studies, and other documents, shall be the property of Town to be used as Town desires, without restriction. Copies may be retained by Broker. Broker shall be liable to Town for any loss or damage to such documents while they are in the possession of, or while being worked upon by Broker or anyone connected with Broker, including agents, employees, Brokers or subcontractors. All documents lost or damaged by Broker shall be replaced or restored by Broker to the extent reasonably possible without cost to Town.
- 10.2. Upon completion of each Work Order, Broker shall prepare, and within thirty (30) calendar days of completion of project, deliver to Town all work product documents created for the Work Order in a format as described by Town Representative.

**ARTICLE 11  
GENERAL, SUPPLEMENTARY AND SPECIAL CONDITIONS:  
CONTRACT ADMINISTRATION**

- 11.1. This Contract shall be administered on behalf of Town by its Town Representative, and Broker shall fully comply with any and all instructions from said Representative. Any dispute arising hereunder shall be submitted to Representative. The decision of the City Council in any dispute arising hereunder shall be final and binding.

**ARTICLE 12  
RESPONSIBILITY FOR WORK: INDEMNIFICATION AND INSURANCE**

- 12.1. Approval by Town shall not constitute nor be deemed a release of the responsibility and liability of Broker, its employees, subcontractors, agents and Brokers for the accuracy and competency of their work; nor shall such approval be deemed to be an assumption of such responsibility by Town for any defect, error or omission in the documents prepared by Broker, its employees, subcontractors, agents and Brokers. IN THIS REGARD, **BROKER SHALL INDEMNIFY TOWN TO THE EXTENT OF BROKER'S NEGLIGENT ACTS, ERRORS OR OMISSIONS FOR DAMAGES RESULTING FROM SUCH ACTS, ERRORS OR OMISSIONS, AND SHALL SECURE, PAY FOR AND MAINTAIN IN FORCE DURING THE TERM OF THIS CONTRACT SUFFICIENT ERRORS AND OMISSIONS INSURANCE IN AN AMOUNT OF NOT LESS THAN ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) SINGLE LIMIT, WITH CERTIFICATES EVIDENCING SUCH COVERAGE TO BE PROVIDED TO TOWN.**
- 12.2. **OTHER THAN FOR PROFESSIONAL LIABILITY CLAIMS, TO THE FULLEST EXTENT ALLOWED BY LAW, BROKER AGREES TO INDEMNIFY AND HOLD HARMLESS TOWN, TOWN TRUSTEES OR OTHER ELECTED OFFICIALS, DIRECTOR, EMPLOYEES, AGENTS AND REPRESENTATIVES, (HEREINAFTER REFERRED TO AS "INDEMNITEES") AGAINST ALL CLAIMS, DEMANDS, ACTIONS, SUITS, LOSSES, DAMAGES, LIABILITIES, COST AND/OR EXPENSE OF EVERY KIND AND NATURE (INCLUDING, BUT NOT LIMITED TO COURT COST, LITIGATION EXPENSE AND ATTORNEYS FEES), PAYING SAME AS THEY ACCRUE, AND ALL RECOVERABLE INTEREST THEREON, INCURRED BY OR SOUGHT TO BE IMPOSED ON INDEMNITEES BECAUSE OF INJURY (INCLUDING DEATH) OR DAMAGE TO PROPERTY (WHETHER REAL, PERSONAL OR INCHOATE), TO THE EXTENT ARISING OUT OF OR IN ANY WAY RELATED (WHETHER DIRECTLY OR INDIRECTLY, CAUSALLY OR OTHERWISE) TO: (1) THE PERFORMANCE OF, ATTEMPTED PERFORMANCE OF, OR FAILURE TO PERFORM, OPERATION OR WORK UNDER THIS CONTRACT BY BROKER,, ITS EMPLOYEES OR AGENTS ITS SUBCONTRACTORS AND/OR ANY OTHER PERSON OR ENTITY; (2) THE PRESENCE ON TOWN REAL PROPERTY, INCLUDING ANY IMPROVEMENTS LOCATED THEREON, OF BROKER, ITS SUBCONTRACTORS, EMPLOYEES, SUPPLIERS, VENDORS OR ANY OTHER PERSON ACTING ON BEHALF OF BROKER. THIS INDEMNIFICATION SHALL APPLY, WHETHER OR NOT ANY SUCH INJURY OR DAMAGE HAS BEEN BROUGHT ON ANY THEORY OF LIABILITY, INCLUDING NEGLIGENCE, INTENTIONAL WRONG DOING, STRICT PRODUCT LIABILITY OR BREACH OF NON-DELEGABLE DUTY. BROKER FURTHER AGREES TO DEFEND (AT THE ELECTION OF ANY INDEMNITEE) AGAINST ANY CLAIM, DEMAND, ACTION OR SUIT FOR WHICH INDEMNIFICATION IS PROVIDED HEREUNDER.**

12.3. IN NO EVENT DOES THE TOWN REQUIRE OR BROKER AGREE TO INDEMNIFY OR HOLD HARMLESS THE TOWN FOR CLAIMS OR LIABILITY RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF THE TOWN OR ITS EMPLOYEES, AGENTS, SUBCONTRACTORS OR OTHER THIRD PARTIES.

12.4. **INSURANCE.** The Broker, at Broker's sole cost, shall additionally purchase and maintain in force the following minimum insurance coverage during the term of this Contract or as otherwise herein provided. Such insurance shall be in the amount and in full compliance with the following terms and conditions:

12.4.1. Within ten (10) days after the Effective Date of this Contract, Town requires and Broker agrees that the following insurance coverage will be met and in effect for the life of the awarded contract, inclusive of any Work Order, prior to any delivery of any service and/or performance of work. Broker agrees to furnish and maintain in effect for the duration of this Contract and any renewal, the insurance listed herein from an insurance company acceptable to Town and authorized to do business in the State of Texas. Broker will submit verification of coverages to the Town Representative showing the Town as the certificate holder. The Town will neither be responsible for nor authorize payments for services rendered without having the applicable certificates on file. Broker, at Broker's sole cost, shall purchase and maintain the following minimum insurance coverage during the Term of this Contract:

12.4.1.1. Workers' Compensation Insurance in the amount and in compliance with the provisions as provided for by Texas Law as established by the Texas Workers Compensation Act, Title 5, Subtitle A, Texas Labor Code for all of his employees assigned to operate or work under this agreement. In the event the Broker elects to sublet any work, Broker shall require subcontractors to provide Workers' Compensation Insurance for all of the latter's employees unless such employees are afforded protection by the Broker.

Any vendor that conducts business with Dallas County, Dallas, whether it is for goods and/or services, must maintain lawful worker's compensation requirements and adequate liability limitations.

- a) workers compensation meeting the acceptable requirements as established by the Texas Workers' Compensation Act, Title 5, Subtitle A, Texas Labor Code; and

**Vendors and/or their freight contractors must be prepared to show coverage verification prior to entering upon Town premises.**

Failure to comply with lawful requirements or adequate liability requirements may result in delay of payments and/or cancellation of the contract. (Court Order 94-1243, August 9, 1994)

The Texas Workers' Compensation Commission has adopted Rule 110.110 effective for public works bids advertised after September 1, 1994 and **this does affect your bid on this project.**

Providing false or misleading certificates of coverage, failing to provide or maintain required coverage, or failing to report any change that materially affects the coverage may subject the contractor(s) or other persons providing services on this project to legal penalties. **THIS AFFECTS YOUR SUBCONTRACTORS.**

According to TWCC, "This rule does not create any duty or burden on anyone which the law does not establish. **Therefore, the Town should not experience any increase in cost because of the need to comply with the Texas Workers' Compensation laws.**

- A. Definitions: TWCC Rule 110.110 Workers' Compensation Insurance Coverage.
1. Certificate of coverage ("Certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement. TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.
  2. Duration of the project - Includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.
  3. Persons providing services on the project ("subcontractor" in Article 406-096) - Includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
- B. The Broker shall provide coverage, based on proper reporting of classification code and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011 (44) for all employees of the Broker providing services on the project, for the duration of the project.
- C. The Broker must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- D. If the coverage period shown on the Broker's current certificate of coverage ends during the duration of the project, and Broker must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
- E. The Broker shall obtain from each person providing services on a project, and provide to the governmental entity.
1. A certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing service on the project; and
  2. No later than seven (7) days after receipt by the Broker, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate ends during the duration of the project.
- F. The Broker shall retain all required certificates of coverage for the duration of the project and for one (1) year thereafter.

- G. The Broker shall notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the Broker knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- H. The Broker shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- I. The Broker shall contractually require each person with whom it contracts to provide services on a project, to:
  - 1. Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011 (44) for all of its employees providing services on the project, for the duration of the project:
  - 2. Provide to the Broker, prior to that person beginning work on the project a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project:
  - 3. Provide the Broker, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project:
  - 4. Obtain from each other person with whom it contracts, and provide to the Broker.
    - A. A certificate of coverage, prior to the other person beginning work on the project; and
    - B. the coverage period, if the coverage period shown on the current certificate of a new certificate of coverage showing extension of coverage, prior to the end of coverage ends during the duration of the project;
  - 5. Retain all required certificates of coverage on file for the duration of the project and for one (1) year thereafter;
  - 6. Notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
  - 7. Contractually require each person with whom it contracts, to perform as required by paragraphs I.1 - I.7, with the certificates of coverage to be provided to the person for whom they are providing services.
- J. By signing this contract to providing or causing to be provided a certificate of coverage, the Broker is representing to the governmental entity that all employees of the Broker who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the

coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Broker to administrative penalties, criminal penalties, civil penalties, or other civil actions.

- K. The Broker's failure to comply with any of these provisions is a breach of contract by the Broker which entitles the governmental entity to declare the contract void if the Broker does not remedy the breach with ten (10) days after receipt of notice of breach from the governmental entity.

This insurance must be endorsed with a Waiver of Subrogation Endorsement, waiving the carrier's right of recovery under subrogation or otherwise from the Town.

- 12.4.1.2. Comprehensive General Liability Insurance, including Contractual Liability - Commercial General Liability Insurance coverage shall carry limits of Five Hundred Thousand and 00/100 Dollars (\$500,000.00) for bodily injury and property damage per occurrence with a general aggregate of Five Hundred Thousand and 00/100 Dollars (\$500,000.00). There shall not be any policy exclusion or limitations for contractual liability covering the Brokers obligations herein; personal injury/advertising liability; medical payments; fire damage legal liability; broad form property damage, and/or liability for independent contractors.

This insurance must be endorsed with a Waiver of Subrogation Endorsement, waiving the carrier's right of recovery under subrogation or otherwise from the Town.

- 12.4.1.3. Comprehensive Automobile Liability - Comprehensive Auto Liability insurance covering all owned, hired and non-owned vehicles used in connection with the work performed under the Contract with limits of liability not less than One Hundred Thousand and 00/100 Dollars (\$100,000.00) each person and Three Hundred Thousand and 00/100 Dollars (\$300,000.00) each accident for bodily injury and One Hundred Thousand and 00/100 Dollars (\$100,000.00) each occurrence for property damage for a combined single limit for bodily injury and property damage liability of not less than Four Hundred Thousand and 00/100 Dollars (\$400,000.00).

This insurance must be endorsed with a Waiver of Subrogation Endorsement, waiving the carrier's right of recovery under subrogation or otherwise from the Town.

- 12.4.1.4. Professional Liability - Insurance Requirements - PROPOSER SHALL INDEMNIFY TOWN FOR DAMAGES RESULTING FROM NEGLIGENT ACTS, ERRORS OR OMISSIONS AND SHALL SECURE, PAY FOR AND MAINTAIN IN FORCE DURING THE TERM OF THE CONTRACT AND THEREAFTER FOR AN ADDITIONAL FIVE (5) YEARS FROM DATE THE PROJECT IS ACCEPTED AS COMPLETE BY THE COMMISSIONERS COURT, SUFFICIENT ERRORS AND OMISSIONS INSURANCE IN AN AMOUNT OF NOT LESS THAN ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) SINGLE LIMIT, WITH CERTIFICATES EVIDENCING SUCH COVERAGE.

- 12.4.2. Broker agrees that, with respect to the above referenced insurance, all insurance contracts will contain following required provisions:

- 12.4.2.1. Name the Town of Addison, Texas as a certificate holder as to all applicable policies.
- 12.4.2.2. Provide for an endorsement that the "other insurance" clause shall not apply to Town where Town is an additional insured on the policy.
- 12.4.2.3. Provide for notice to the Town at the address shown below by registered mail.

- 12.4.2.4. Broker agrees to waive subrogation against Town, its officers and employees for injuries, including death, property damage or any other loss.
- 12.4.2.5. Broker shall provide that all provisions of this Contract concerning liability, duty and standard of care, together with the indemnification provisions, shall be underwritten by contractual liability coverage sufficient to include obligation within applicable policies.
- 12.4.2.6. Broker shall notify Town in the event of any change in coverage and shall give such notices not less than thirty (30) days prior to the change, which notice must be accompanied by a replacement Certificate of Insurance.
- 12.4.3. Approval, disapproval or failure to act by the Town regarding any insurance supplied by Broker shall not relieve Broker of full responsibility or liability for damages and accidents as set forth herein. Neither shall bankruptcy, insolvency or denial of liability by any insurance company exonerate the Broker from liability.
- 12.4.4. Within ten (10) days after the Effective Date of this Contract and prior to and as a condition precedent to the commencement of any work or delivery, the Broker agrees to submit verification of the insurance coverage in the type, amount and meeting all conditions as contained in this Contract, to Town Representative showing Town as the certificate holder (general liability insurance) with coverage dates inclusive to that of the Contract term and each renewal period, if any.
- 12.4.5. Broker will provide to Town notice of cancellation, non-renewal, or reductions in coverage limits of any of the above-listed insurance requirements.
- 12.5 The provisions of this Article will survive termination or expiration of this Contract or any determination that this Contract is any portion of this Contract is void, voidable, invalid, or unenforceable.

**ARTICLE 13  
ASSIGNMENT**

The Parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Contract. Broker shall not assign, sublet or transfer any interest in this Contract without prior written authorization of Town Representative.

**ARTICLE 14  
COMPLIANCE WITH LAWS, ORDINANCES, ETC.**

- 14.1. Broker, its Brokers, agents, employees, and subcontractors shall be familiar with and at all times shall comply with all Federal, State and local laws, statutes, ordinances, codes, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Contract, including, without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations, all local, State and national boards, bureaus and agencies and non-discrimination laws and regulations and safety. When required, the Broker shall furnish the Town satisfactory proof of compliance therewith. **BROKER SHALL INDEMNIFY AND SAVE HARMLESS THE TOWN AND ITS OFFICIAL REPRESENTATIVES AGAINST ANY CLAIM ARISING FROM VIOLATION OF ANY SUCH LAW, ORDINANCE OR REGULATION BY BROKER OR BY BROKER'S CONTRACTORS, SUBCONTRACTORS, SUB-CONSULTANTS, EMPLOYEES, OR AGENTS.**
- 14.2. Broker will pay all taxes, if any, required by laws arising by virtue of the services performed hereunder. Town is qualified for exemption pursuant to the provisions of Article 20.02 (H) of the Texas Limited Sales, Excise and Use Tax Act.
- 14.3. **NONDISCRIMINATION.** As a condition of this Contract, Broker will take all necessary action to insure that, in connection with any work under this Contract, it will not discriminate in the treatment or

employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex or physical handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. In this regard, Broker shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period, following contract completion, of three (3) years, with full access allowed to authorized representatives of Town upon request for purposes of evaluating compliance with this and other provisions of this Contract.

**ARTICLE 15  
ENFORCEMENT, VENUE, GOVERNING LAWS AND NOTICES**

- 15.1. This Contract shall be enforceable in Dallas County, Texas, and if legal action is necessary by either Party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Dallas County, Texas. This Contract shall be governed by and construed in accordance with the laws and court decisions of the State of Texas and is expressly subject to the Town's Sovereign Immunity and Title 5 of the Texas Practice and Civil Remedies Code.
- 15.2. All notices and correspondence to Town by Broker shall be mailed or delivered as follows:

Town of Addison, Texas  
Attn: Wesley S. Pierson  
5300 Bellline Road  
Dallas, Texas 75254

- 15.3. All notices and correspondence from Town to Broker shall be mailed or delivered as follows:

Peter Jansen  
Regional Director | CBRE Public Institutions  
100 Congress Ave, Suite 500  
Austin, TX 78701

OR

[Peter.Jansen@CBRE.com](mailto:Peter.Jansen@CBRE.com)

**ARTICLE 16  
TERM**

- 16.1. This Contract becomes effective when fully executed by both parties (hereinafter, the "Effective Date") and will terminate two (2) years later from that Effective Date, unless termination occurs as otherwise provided hereinafter. The Broker will not begin work or incur Costs until authorized in writing by the County to proceed with the work, as more fully set forth herein.
- 16.2. The Town, in its sole discretion, shall have the right, but not the obligation, to renew this Contract for three (3) periods of one (1) year (total of three (3) additional years) from the termination date, provided that the Broker shall agree in writing.

**ARTICLE 17  
FINANCIAL INTEREST PROHIBITED: CONFIDENTIALITY**

- 17.1. Broker covenants and represents that Broker, its officers, employees, agents, Brokers, and subcontractors will have no financial interest, direct or indirect, in the transactions that will be recommended or required for the completion of Work Orders.
- 17.2. Broker understands that no officer or employee of Town shall have any financial interest, direct or indirect, in any contract with Town, or be financially interested, directly or indirectly, in the sale to Town of any land, materials, supplies, or services, except on behalf of Town as an officer or employee. Any

violation of this prohibition, with the express knowledge of the person or corporation contracting with Town shall render the Contract involved voidable by the City Council.

- 17.3. Broker's reports, evaluations, design, data and all other documentation and work developed by Broker hereunder shall not be disclosed to any third parties without the prior approval of Town Representative.

#### **ARTICLE 18 REPORTING**

- 18.1 The Broker shall promptly advise the Town in writing of events which have significant impact upon the Contract, including but not limited to:

18.1.1. Problems, delays or adverse conditions which will materially affect the ability to meet time schedules or goals or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of any action taken, or contemplated, and any Town assistance needed to resolve the situation.

18.1.2. Favorable developments or events which enable the Broker to meet time schedules and goals sooner than anticipated or to produce more work units than originally projected.

- 18.2 The Broker shall coordinate all work with the Town Representative Department or with such other person as may be designated by Town Representative in writing.

- 18.3 The Broker shall report progress on work undertaken to the designated point-of-contact at not greater than weekly intervals.

#### **ARTICLE 19 BROKER RESOURCES**

The Broker contracts and agrees that the firm has adequate qualified personnel in its employment and all required transportation, equipment, materials, supplies and any and all other goods and services for performance of services required under this Contract including any Work Order, or will be able to obtain such personnel, transportation, equipment, materials supplies and any and all other goods and services from sources other than the Town. Unless otherwise specified, the Broker for the compensation received shall furnish all personnel, transportation, equipment, materials, supplies and any and all other goods and services required to perform the work authorized herein at its sole cost and expense. All employees of the Broker or of any subcontractor shall have all required licenses, knowledge and experience as will enable them to perform the duties assigned to them. Broker contracts and agrees that any employee of the Broker or any subcontractor who, in the opinion of the Town, is incompetent or whose conduct becomes detrimental to the work or whose conduct reflects adversely on the Town shall immediately be removed from association with the project.

#### **ARTICLE 20 SUBCONTRACTS**

- 20.1 The Broker shall not subcontract or otherwise transfer any portion of the work authorized by the Town without prior approval in writing by the Town. Under no circumstances shall the Broker subcontract more than fifty percent (50%) of this Contract.

- 20.2 Subcontractors shall comply with the provisions of this Contract and all Work Orders. No subcontract will relieve the Broker of its responsibility under this Contract.

**ARTICLE 21  
SUCCESSORS AND ASSIGNS**

The Town and the Broker each binds itself, its successors, executors, administrators, assigns and subcontractors in respect to all covenants of this agreement. The Broker shall not assign, subcontract or transfer its interest in this agreement without prior written agreement of the Town.

**ARTICLE 22  
DISPUTES**

The Town Supervisor shall act as referee in all disputes under the terms of this Contract between the parties hereto. The Town Representative and the Broker shall negotiate in good faith toward resolving such disputes. In the event the Town Representative or the Broker are unable to reach an acceptable resolution of disputes concerning the work to be performed under this Contract, the Town Representative shall present unresolved disputes arising under the terms of this Contract to the City Council. The decisions of the City Council as it pertains to unresolved disputes shall be final and binding.

**ARTICLE 23  
NOTIFICATION**

When notice is permitted or required by this Contract, it shall be in writing and shall be presumed delivered when delivered in person or three (3) days subsequent to the date placed, postage prepaid, in the U. S. Mail, Certified or Registered, Return Receipt Requested and addressed to the parties at the following address. All notifications shall be made in writing to the addresses below:

For the Broker:

Peter Jansen  
Regional Director | CBRE Public Institutions  
100 Congress Ave, Suite 500  
Austin, TX 78701

For the Town:

Town of Addison, Texas  
Attn: Wesley S. Pierson, City Manager  
5300 Beltline Road  
Dallas, Texas 75254

Either party hereto may from time to time designate another and different address for receipt of notice of such change of address to the other party.

**ARTICLE 24  
INCORPORATED DOCUMENTS AND ORDER OF PRECEDENCE**

- 24.1 The following documents are incorporated herein as if reproduced herein word for word:
- 24.1.1 Work Orders as mutually agreed upon as set forth in this Contract.
  - 24.1.2 Broker's response to Solicitation Request for Qualifications – Real Estate Consulting Services – RFQ 16-102
  - 24.1.3 Request for Qualifications – Real Estate Consulting Services – RFQ 16-102
- 24.2 In the event of any inconsistency between the provisions of this agreement, the inconsistency shall be resolved by giving precedence in the following order: (1) the Work Orders; (2) this Contract; (3) the RFQ.

**ARTICLE 25  
MISCELLANEOUS GENERAL PROVISIONS**

- 25.1 Applicable Law. This Contract and all matters pertinent thereto shall be construed 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 Contract is expressly made subject to the Town's Sovereign Immunity, Title 5 of Texas Civil Practice and Remedies Code, and all applicable State of Texas and Federal laws.
- 25.2 Entire Agreement. This Contract, including all Work Orders, all exhibits and addendum, 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.
- 25.3 Severability. If any provision of this Contract 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.
- 25.4 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 Contract does not preclude pursuit of other remedies in this Contract or provided by law. Broker shall have a duty to mitigate damages.
- 25.5 Federal or State of Texas Funding. In the event that any Work Order or part thereof is funded by State of Texas or U. S. Government federal 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, Broker agrees to timely comply therewith without additional cost or expense to Town.
- 25.6 Headings. The titles which are used following the number of each paragraph are only for convenience in locating various provisions of this Contract and shall not be deemed to affect the interpretation or construction of such provision.
- 25.7 Number and Gender. Words of any gender used in this Contract 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.
- 25.8 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.
- 25.9 Funding. Notwithstanding any provisions contained herein, this Contract is expressly contingent upon the availability of funding for each item and obligation contained herein for the term of the agreement and any extension thereto. Broker shall have no right of action against the Town in the event that the Town is unable to fulfill its obligations under this Contract as a result of lack of sufficient funding for any item or obligation from any source utilized to fund this Contract or failure to budget or authorize funding for this Contract during the current or future fiscal years. In the event that Town is unable to fulfill its obligations under this Contract as a result of lack of sufficient funding or if funds become unavailable, the Town, at its sole discretion, may, subsequent to execution by Town, provide funds from a separate source or terminate this Contract.

**ARTICLE 26  
APPROVED BROKERS**

The following are the approved Brokers for this Contract:

**CBRE, Inc.  
2100 McKinney, Suite 700  
Dallas, Texas 75201**

**IN WITNESS WHEREOF, THE TOWN OF ADDISON** has caused this Contract to be signed by its City Manager, duly authorized to execute same in its behalf by Resolution No. approved by the City Council on \_\_\_\_\_, 2016, and \_\_\_\_\_, signing by and through its duly authorized representative, thereby binding the parties hereto, their successors, assigns and representatives for the faithful and full performance of the terms and provisions of this Contract.

**ATTEST:**

\_\_\_\_\_  
Wesley S. Pierson, City Manager  
Town of Addison

**ATTEST:**

  
\_\_\_\_\_  
Scott Senese, Senior Managing Director  
CBRE

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**BRENDA N. MCDONALD, TOWN ATTORNEY**

**Work Session and Regular Meeting****Meeting Date:** 09/13/2016**Department:** Police

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**AGENDA CAPTION:**

Present, Discuss And Consider Action Regarding A Resolution **Approving An Interlocal Agreement With The City Of Carrollton, Texas For The Provision Of Jail Services To Addison Arrestees.**

**BACKGROUND:**

The Addison Jail is a 24 hour holding facility located within the Addison Police building. A normal census is 16 male and 4 female prisoners, with a maximum of 24 to 26 under exigent circumstances. Prisoners are usually released, bonded out or transferred within 24 to 48 hours. With the transition to the North Texas Emergency Communications Center (NTECC), the Police department has been able to negotiate an agreement with the City of Carrollton to use the Carrollton Police Department for detention services. In addition to being a cost savings for the Town, this agreement will also reduce liability and increase effectiveness of our patrol operations.

In 1984, the Addison Police Department began operation of its municipal jail with police officers working as jailers. This model remained intact until 1991 when budget reductions forced sending the police officers to patrol operations. To staff the jail, investigators and officers rotated through the jail as part of their daily shift assignments. While the rotation schedule worked for a short time it became a strain on Patrol and Criminal Investigation Department operations. To relieve patrol and investigations from the burden of jail operations, the department began hiring part-time Dallas County jailers to staff the jail. As long as the manpower pool of County employees was strong this staffing solution worked. However, the pool of available part-time employees began to shrink as Dallas County changed their own overtime policies. By 2000, the lack of sufficient part-time employees forced the department to add full-time employees to ensure the jail was staffed.

Current staff now stands at three full-time equivalents (FTEs) out of the six authorized and one supervisor supplemented by part-time employees. The pool of part-time employees has continued to shrink to the point that full-time employees have to work excessive amounts of overtime creating safety concerns. Since most of our part-time employees live a significant distance from Addison, they are unable to fill vacancies on short notice or are unwilling to work unplanned short shifts (three to five hour windows) when needed. Minimum staffing is one FTE; however by practice, we attempt to maintain two FTEs on duty at a time to ensure employee safety and provide the level of service the department requires.

Currently, the Police department spends approximately \$500,000 on jail operations. Of

that amount \$40,000 is for maintenance, computer licenses, food, and supplies; the rest is personnel costs (full and part-time) which includes overtime.

The cost to contract with the City of Carrollton is broken down into two parts: Prisoner Transfer Team and Detention Services Fee.

**Prisoner Transfer Team:** The City of Coppell contracted with the City of Carrollton three years ago for detention services, which brings Carrollton's jail close to their maximum prisoner census. To keep the census down to manageable levels, we agreed to form a transfer team built from Addison's part-time Dallas County Sheriff's officers. Addison will pay the cost of approximately \$105,000 (annually) for 6,000 hours of coverage. By transferring prisoners daily, the jail census will remain low and prisoners will get to the respective county jails quicker, reducing liability exposure.

**Detention Services Fee:** The City of Coppell is currently charged \$106 per prisoner in addition to a \$3,000 annual transfer fee. The City of Carrollton is waiving the transfer fee due to the Prisoner Transfer Team cost paid by Addison and in return, our per prisoner fee will be reduced to \$65. Our estimated cost based on an average of 2,000 annual arrests is approximately \$130,000. This may fluctuate with actual arrests rates.

The total estimated annual cost to contract with the City of Carrollton Police Department for detention services will be \$235,000

**RECOMMENDATION:**

Administration recommends approval.

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**Attachments**

Resolution with Agreement

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TOWN OF ADDISON, TEXAS

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

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING AN INTERLOCAL AGREEMENT WITH THE CITY OF CARROLLTON, TEXAS FOR THE PROVISION OF DETENTION CENTER SERVICES FOR ADDISON INMATES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.**

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

**Section 1.** The Interlocal Agreement for the provision of Detention Center services for Addison inmates, attached as **Exhibit A** and incorporated herein, is hereby approved and the City Manager is authorized to execute the agreement.

**Section 2.** This Resolution shall take effect from and after its date of adoption.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this the 13<sup>th</sup> day of September, 2016.

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

ATTEST:

By: \_\_\_\_\_  
Laura Bell, City Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Brenda N. McDonald, City Attorney

**EXHIBIT A**

STATE OF TEXAS

§  
§  
§

INTERLOCAL AGREEMENT

DALLAS COUNTY

This Interlocal Agreement (“**Agreement**”) is entered into by and between the Town of Addison (“**Addison**”) and the City of Carrollton, Texas (“**Carrollton**”), acting by and through their duly authorized officials. Both Addison and Carrollton are adopting this Agreement upon by and through authorization of their respective governing bodies as provided herein and may be referred to in this Agreement individually as “Addison” or “Carrollton” and collectively as “Parties”; and

**WHEREAS**, Carrollton owns and operates a municipal jail;

**WHEREAS**, Addison desires to contract with Carrollton for the purposes of booking in, processing and housing prisoners arrested by the Addison Police Department; and

**WHEREAS**, Carrollton understands the need and agrees to aid Addison in this matter.

**WHEREAS**, Chapter 791 of the Texas Government Code provides authorization for local governments to contract with one another to provide governmental functions and services; and

**WHEREAS**, police protection and detention services are governmental functions and services pursuant to §791.003, and

**WHEREAS**, Addison and Carrollton find it is in the public interest to enter into this Agreement;

**NOW, THEREFORE**, Addison and Carrollton, for the mutual consideration hereinafter stated, agree and understand as follows:

1. **Definitions.** Whenever used in this Agreement, the following terms shall have the following meaning ascribed to them:

“Effective Date” shall mean the last date of execution hereof.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a Party, as applicable, including, without limitations, acts of God or the public enemy, war, riot, civil commotion, insurrection, adverse weather, government or de facto governmental action or inaction (unless caused by negligence or omissions of such Party), fires, explosions, floods, strikes, slowdowns or work stoppages, shortage of materials or labor, that directly and materially affect a Party’s performance under this Agreement.

“Carrollton” shall mean the City of Carrollton, Texas.

## EXHIBIT A

“Detention Center” shall mean the Carrollton municipal jail located in Carrollton, Texas.

“Addison” shall mean the Town of Addison, Texas.

“Addison Inmates” shall mean persons detained or arrested by the Addison police department and who are to be placed into the Carrollton Detention Center.

2. **Purpose.** The purpose of this Agreement is to provide the terms and conditions under which the City of Carrollton agrees to house and process Addison Inmates and provide other services regarding the operation of the Detention Center for an agreed upon price and services.
3. **Term.** The initial term of this Agreement shall be for one (1) year, beginning on October 1, 2016 and expiring on September 30, 2017.
4. **Termination.** Either party may terminate this Agreement at any time by providing 180 days written notice to the other party.
5. **RIGHTS AND OBLIGATIONS OF CARROLLTON**
  - a. Carrollton shall receive the Addison inmates at the Detention Center when presented by Addison Police Officers and process them with the same intake, book-in, and housing procedures as Carrollton inmates.
  - b. Carrollton shall provide to Addison Inmates, the same Detention Center housing, food and services provided to all Carrollton inmates.
  - c. Carrollton shall collect bond and fine collections and reimbursements for Addison Inmates on behalf of Addison and deliver the Addison funds to the Town of Addison on no less than a weekly basis.
  - d. Carrollton shall provide transportation from the Detention Center to Dallas County Jail for Addison Inmates. Addison Inmates shall be placed in the same priority system and transported in the manner as if they were Carrollton inmates. This does not include transportation to and from the Addison Municipal Court, Dallas County Court or other agencies, courts, or facilities.
  - e. Carrollton shall accept, document, process and store all Detention Center approved personal property of all Addison Inmates in the same manner they do for Carrollton inmates. Carrollton shall use a standardized method of prisoner property intake in conformance with the County Jail requirements.
  - f. Carrollton will provide “Interview Rooms” when needed to interrogate Addison Inmates that are being housed at the Carrollton Detention Center. Access shall be provided at a reasonable time and copies of the digital recordings of the interview shall be provided within reasonable time.
  - g. Carrollton shall provide a monthly report of Addison Inmate statistics and reporting which includes the number of Addison Inmates booked in, the length of stay, book-in date and release date, any urgent or emergency medical or mental health care attention

## EXHIBIT A

- needed or received. Carrollton shall provide individual Addison Inmate information obtained during the book-in and housing of prisoners, including audio and video recordings, when requested by Addison.
- h. If requested, Carrollton shall also provide a report writing area that includes a digital line. Addison shall reimburse Carrollton for the cost of the required digital line. Addison shall provide a computer and hardware for the report writing station.
  - i. Carrollton guarantees to maintain at least three beds available for Addison Inmates at all times.
  - j. Carrollton will hire part-time detention officers (“Transport Officers”) for the transportation of inmates and other jail duties and staffing support as assigned and as required for the processing and detention of Addison Inmates. Carrollton may bill up to one hundred and one thousand dollars \$ 101,000 per annum, to be invoiced on a quarterly basis, for compensation for Transport Officers.
  - k. If an arrestee arrives at the Detention Center with a medical emergency that requires the arrestee being transferred to the emergency room prior to book-in, the arresting agency’s officer will be responsible for accompanying the arrestee. In the event of a medical or mental health care emergency, Carrollton Fire Department (“CFD”) will be summoned and may transport Addison Inmates in accordance with existing CFD protocols. When it is deemed by Detention Center staff that an Addison Inmate is in need of medical or mental health care, Carrollton shall request the Carrollton Fire and/or EMS personnel evaluate such Addison Inmate, and Detention Center personnel shall request an Addison officer be dispatched immediately to take custody of the Addison Inmate. In the event an Addison Inmate is transported for emergency or urgent medical or mental health care and an Addison officer has not arrived to escort and guard the Addison Inmate to the hospital with the ambulance, Carrollton may, if reasonably available, provide an escort and guard role; however, Addison shall assume such responsibility as soon as practical. Once at the destination, Carrollton shall not be responsible for the custody or care of the Addison Inmate. An Addison officer shall meet the arriving ambulance at the destination to take custody of the Addison Inmate if the Addison Inmate was not escorted to the destination by an Addison Officer.
  - l. Carrollton maintains the right to refuse an inmate with an existing medical or mental condition which necessitates immediate transport to a medical facility or jeopardizes the health or safety of the Detention Center staff or other prisoners.
  - m. In instances where an Addison Inmate has not been arraigned and the charges are of a minor and non-violent nature, Addison may opt to authorize the release of a prisoner from custody for medical or mental health care treatment. In such cases the arresting agency will be responsible for authorizing the release for both their charges as well as any warrants confirmed by Addison.
  - n. All billing for Addison inmates, Transport Officers, officer time or other compensation provided for in this Agreement shall be generated by Carrollton and billed quarterly to Addison.

## **EXHIBIT A**

### **6. RIGHTS AND OBLIGATIONS OF ADDISON**

- a. Addison shall pay sixty-five dollars (\$65.00) per Addison Inmate in the Carrollton Detention Center for the duration of this initial agreement.
- b. Addison shall reimburse Carrollton up to \$101,000 per annum for the cost of Transport Officers to assist with daily prisoner transfer details and staffing support in the Carrollton Detention Center. Addison will remit payment directly to Carrollton for the costs of compensation for the Transportation Services.
- c. Addison shall pay the costs of Carrollton's employees who are required to appear in Court on cases filed by the Town of Addison, regarding a Town of Addison Inmate in the Carrollton Detention Center. The amount Addison shall pay should be the same as if the employee was testifying or being required to attend court for a Carrollton case.
- d. Payment or reimbursement for all Addison Inmates, for Transport Officers, or other officer time and compensation as provided for in this Agreement shall be submitted by Addison within thirty (30) days of the receipt date of an invoice for such payment.
- e. Addison shall provide intoxilyzer services related to relevant Addison arrests, including personnel needed at the time of arrest, or other alternative services used for gathering evidence for driving while intoxicated cases.
- f. Addison Officers shall at all times be responsible for submitting the appropriate book-in card to a Carrollton jailer at the time of book-in. The original arrest warrant signed by a magistrate and any probable cause affidavit shall be submitted to the Detention Center no later than 11a.m. daily.
- g. Placement of Addison Inmates in the Detention Center shall comply with all Carrollton rules, procedures, regulations and general orders relating to the detention and jail of inmates at the Detention Center, as amended (the "Carrollton Procedures"). Addison acknowledges it has reviewed and is familiar with the Carrollton Procedures.
- h. Addison officers shall take and maintain possession of dangerous or unapproved prisoner property at the time of book-in.
- i. Addison officers shall provide a listing of any medical conditions, suicidal tendencies, or other special needs of each Addison Prisoner. Addison officers are responsible for providing all Addison Inmate medications available to Addison officers to the Detention Center staff at the time of book-in.
- j. Addison shall be responsible for evidence, chain of custody and storage for all cases in which an Addison Inmate was arrested.
- k. Addison shall be responsible for writing the police case reports for all of the Addison arrests and cases. Addison will be responsible for obtaining, running, and/or managing Addison arrest and court related paperwork.
- l. Addison shall be responsible for arraigning procedures and coordinating the arraignment of Addison Inmates in the Carrollton Detention Center. Addison shall provide one or more magistrates to be available to arraign the Addison Inmates at the Carrollton Facility on a 24/7 basis. Addison shall cause each of the Addison Inmates to be arraigned within 48 hours after detention at the Carrollton Facility. Written confirmation shall be provided to Carrollton as each Addison Prisoner is arraigned. Arraignment of the Addison inmates shall not interfere with or delay the procedures followed for arraignment of Carrollton inmates.

## EXHIBIT A

m. Addison will be responsible for accompanying and guarding Addison Inmates that need medical or mental health care as provided for by Carrollton Procedures and the provisions of this Agreement.

7. **Insurance**

a. Each Party shall, during the term of this Agreement, obtain and maintain insurance coverage required by this section. Limits of insurance required by this section can be in any combination of underlying and excess coverage inclusive of self-insured retention.

1. commercial general liability insurance with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 aggregate;
2. commercial automobile insurance covering any automobile used in performance of this Agreement with a minimum limit of \$1,000,000 per accident;
3. workers' compensation insurance at statutory limits;
4. employers liability insurance with minimum limits of \$1,000,000 per accident, \$1,000,000 each employee by disease and \$1,000,000 policy limit by disease; and
5. Law Enforcement Liability insurance with minimum limits of \$1,000,000 each wrongful act.

b. All insurance and certificate(s) of insurance shall contain the following provisions:

1. name the other Party, its officers, and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance;
2. provide for at least thirty (30) days prior written notice to the other Party for cancellation or non-renewal of the insurance;
3. provide for a waiver of subrogation against the other Party for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance. Each Party shall provide written notice to the other Party of any material change of, or to, the insurance required herein.

c. All insurance companies providing insurance coverage required by this section shall be authorized to transact business in Texas and rated an "A" by AM Best or other equivalent rating service.

d. A certificate of insurance evidencing insurance coverage required by this section shall be submitted by each Party as prescribed in this Agreement.

e. Copies of all endorsements, additional insured endorsement and waiver of subrogation endorsement shall be submitted by each Party as prescribed in this Agreement.

8. **Expenses.**

Ambulance transportation expenses shall be the responsibility of the inmate.

9. **Medical Expenses.**

All medical expenses shall be the responsibility of inmates.

10. **Sovereign Immunity.**

Neither party to this Agreement waives any claim of sovereign immunity because of its participation in this Agreement.

## **EXHIBIT A**

11. **Liability.**

Each Party, to the extent allowed by law and without waiving any rights, defenses or protections provided therein, agrees to be responsible for its own acts of negligence. In the event of joint or concurrent negligence of the Parties, responsibility, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas without, however, waiving any governmental immunity or defense available to any Party individually under Texas law. Carrollton shall be responsible for its sole negligence. Addison shall be responsible for its sole negligence. The provisions of this Agreement are solely for the benefit of the Parties hereto and does not create or grant any rights, contractual or otherwise, to any other person or entity.

12. **Worker's Compensation.**

Each party shall be responsible for its own action and those of its employees and is responsible for complying with the Texas Workers Compensation Act. To the extent permitted by law, and without waiving sovereign immunity, each party shall be responsible for any and all claims, demands, suits, actions, damages and causes for action relating or arising out of or in any way connected with its own actions and the actions of its personnel in performing the responsibilities under this Agreement.

13. **Amendment.** This Agreement may be amended by the mutual written agreement of both parties hereto.

14. **Severability.** In the event anyone 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 the other provisions, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

15. **Governing Law.** The validity of this Agreement and any of its terms and provisions as well as the rights and duties of the parties, shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas.

16. **Force Majeure.** In the event that any party shall be prevented from performing any of its obligations under this Agreement by any act of God, war, riot, civil commotion, strikes, fires, flood or by the occurrence of any event beyond the control of such party, then such party shall be excused from the performance of the obligations under this Agreement but only during such period of Force Majeure.

17. **Entire Agreement.** This Agreement represents the entire agreement among the parties with respect to the subject matter covered by this Agreement. There is no other collateral, oral or written agreement between the parties that in any manner relates to the subject matter of this Agreement.

**EXHIBIT A**

- 18. **Recitals.** The recitals to this Agreement are incorporated herein.
- 19. **Counterparts.** This Agreement may be executed in any number of counterparts, each of whom shall be deemed an original and constitute one and the same instrument.
- 20. **Validity and Enforceability.** If any current or future legal limitations affect the validity or enforceability of a provision of this Agreement, then the legal limitations are made a part of this Agreement and shall operate to amend this Agreement to the minimum extent necessary to bring this Agreement into conformity with the requirements of the limitations, and so modified, this Agreement shall continue in full force and effect.
- 21. **Third Parties.** This Agreement is intended to inure only to the benefit of the Parties hereto. This Agreement is not intended to create, nor shall be deemed or construed to create any rights in third parties.
- 22. **Headings.** The headings at the beginning of the various provisions of this Agreement have been included only in order to make it easier to locate the subject covered by each provision and are not to be used in construing this Agreement.
- 23. **Notices.** Any notice, communication, invoice or report required or permitted pursuant to this Agreement shall be in writing and shall be effective when personally delivered or three (3) days after being mailed by United States Mail, certified, return receipt requested, to the respective parties at the address set forth below:

Addison	TOWN OF ADDISON 5300 Belt Line Road Dallas, Texas 75254 Attention: City Manager
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Carrollton	CITY OF CARROLLTON 1945 E. Jackson Road Carrollton, TX 75006 Attention: City Manager
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Any party may change its address by giving notice to all other parties.

**AUTHORIZED** and approved by the City Council of the City of Carrollton, Texas, at its meeting held on the \_\_\_\_\_ day of \_\_\_\_\_ 2016, and executed by the City Manager.

CITY OR CARROLLTON, TEXAS

\_\_\_\_\_  
Leonard Martin, City Manager

**EXHIBIT A**

ATTEST:

\_\_\_\_\_  
Laurie Garber, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Susan Keller, Assistant City Attorney

**AUTHORIZED** and approved by the City Council of the Town of Addison, Texas, at its meeting held on the \_\_\_\_ day of \_\_\_\_\_ 2016, and executed by the City Manager.

TOWN OF ADDISON, TEXAS

\_\_\_\_\_  
Wesley S. Pierson, City Manager

ATTEST:

\_\_\_\_\_  
Laura Bell, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Brenda N. McDonald, City Attorney

AI-1807

21.

**Work Session and Regular Meeting**

**Meeting Date:** 09/13/2016

**Department:** Police

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**AGENDA CAPTION:**

Present, Discuss And Consider Action Regarding Approval Of A **Resolution Approving An Interlocal Agreement With The North Central Texas Council of Governments For The Provision Of Electronic Warrant Payment Services For Addison Municipal Court.**

**BACKGROUND:**

The North Central Texas Council of Governments (NCTCOG) developed an electronic warrant payment services program as part of its shared services to member organizations. NCTCOG performed a procurement process for electronic warrant payment services for municipalities in which each participating local government will contract directly for these services with Government Payment Services, Inc. The Town wishes to enter into this interlocal agreement and contract, as a result of our agreement with the City of Carrollton to provide detention service; specifically for the payment of court fines and bonds regarding Addison arrestees. Currently, this is the only means by which a person can pay these bonds and fines with a credit card in Carrollton. There is no monetary cost to the Town as a result of this agreement. All fees are paid by the user during the online or over the phone payment process.

**RECOMMENDATION:**

Administration recommends approval.

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**Attachments**

Resolution with Agreement

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TOWN OF ADDISON, TEXAS

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

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING AN INTERLOCAL AGREEMENT WITH THE NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS FOR ELECTRONIC WARRANT PAYMENT SERVICES PROCUREMENT, AND APPROVING THE ENGAGEMENT OF GOVERNMENT PAYMENT SERVICES, INC. TO PROVIDE PAYMENT SERVICES FOR ADDISON INMATES AT THE CARROLLTON JAIL; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT AND ENGAGEMENT LETTER; AND PROVIDING AN EFFECTIVE DATE.**

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

**Section 1.** The Interlocal Agreement for Electronic Warrant Payment Services procurement with the North Central Texas Council of Governments, attached as **Exhibit A** and incorporated herein, is hereby approved and the City Manager is authorized to execute the agreement.

**Section 2.** The Engagement of Government Payment Services, Inc. to provide payment services for Addison inmates being held in the Carrollton jail, attached as **Exhibit B** and incorporated herein, is hereby approved and the City Manager is authorized to execute the letter.

**Section 2.** This Resolution shall take effect from and after its date of adoption.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this the 13<sup>th</sup> day of September, 2016.

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

ATTEST:

By: \_\_\_\_\_  
Laura Bell, City Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Brenda N. McDonald, City Attorney

## **EXHIBIT A**

### **INTERLOCAL AGREEMENT FOR ELECTRONIC WARRANT PAYMENT SERVICES**

**THIS INTERLOCAL AGREEMENT** (“ILA”), made and entered into pursuant to the Texas Interlocal Cooperation Act, Chapter 791, Texas Government Code (the “Act”), is by and between the North Central Texas Council of Governments, hereinafter referred to as “NCTCOG,” having its principal place of business at 616 Six Flags Drive, Arlington, TX 76011, and the Town of Addison, Texas, a local government created and operated to provide one or more governmental functions and services, hereinafter referred to as “Participant,” having its principal place of business at 5300 Belt Line Road, Dallas, TX 75254-7606 .

**WHEREAS**, NCTCOG is a regional planning commission and political subdivision of the State of Texas operating under Chapter 391, Texas Local Government Code; and

**WHEREAS**, in reliance on such authority, NCTCOG has instituted a cooperative purchasing program, hereinafter referred to as “**Shared Services**” under which it contracts with eligible entities under the Act; and

**WHEREAS**, NCTCOG has performed a procurement process for electronic warrant payment services for municipalities; in which each participating local government will contract directly for electronic warrant payment services with Government Payment Service, Inc. (GPS); and

**WHEREAS**, NCTCOG’s Executive Board approved a resolution authorizing the interlocal agreements for procurement of GPS electronic warrant payment services at its December 20, 2012 meeting; and

**WHEREAS**, Participant has represented that it is an eligible entity under the Act, that its governing body has authorized this Agreement on September 13, 2016, and that it desires to contract with NCTCOG on the terms set forth below;

**NOW, THEREFORE**, NCTCOG and the Participant do hereby agree as follows

#### **ARTICLE 1: OBLIGATIONS OF THE PARTIES**

The Participant agrees to execute an engagement letter with GPS with respect to its election to receive various electronic warrant payment services under NCTCOG’s Shared Services Program. A copy of the standard engagement letter is attached hereto as Attachment 1. Participant acknowledges that it shall look solely to GPS for the delivery of the services described in the engagement letter as well as the provisions for payment of fees assessed by GPS.

NCTCOG has developed the electronic warrant payment services program as part of its Shared Services to its member organizations. NCTCOG’s sole responsibility is to coordinate with GPS and its member organizations the procurement of the services and to promote the services to its

## **EXHIBIT A**

members. NCTCOG has no responsibility for (i) the delivery of the services to its members, (ii) the day to day operation of the electronic warrant payment service system or (iii) the resolution of dispute/warranty claims between GPS and the Participants.

### **ARTICLE 2: LEGAL AUTHORITY**

The Participant represents and warrants to NCTCOG that it is eligible to contract with NCTCOG under the Act for the purposes recited herein because it is one of the following: a local government, as defined in the Act as a county, a municipality, a special district, or other political subdivision of the State of Texas or any other state, or a combination of two or more of those entities, a state agency (an agency of the State of Texas as defined in Section 771.002 of the Texas Government Code, or a similar agency of another state), or a non-profit corporation created and operated to provide one or more governmental functions and services, and it possesses adequate legal authority to enter into this Agreement.

### **ARTICLE 3: PERFORMANCE PERIOD**

This Agreement shall be effective when signed by the last party whose signing makes the Agreement fully executed and will remain in full force and effect for one (1) year. This Agreement shall automatically renew for successive one-year terms unless sooner terminated in accordance with Article 6 below. Any modification of this Agreement must comply with the requirements of Article 4 below.

### **ARTICLE 4: CHANGES AND AMENDMENTS**

This Agreement may be amended only by a written amendment executed by both parties, except that any alternations, additions, or deletions to the terms of this Agreement which are required by changes in Federal and State law or regulations are automatically incorporated into this Agreement without written amendment hereto and shall become effective on the date designated by such law or regulation. NCTCOG reserves the right from time to time to make changes in the scope of products and services offered through the **Shared Services** cooperative purchasing program.

### **ARTICLE 5: TERMINATION PROCEDURES**

NCTCOG or the Participant may cancel this Agreement for any reason and at any time upon thirty (30) days written notice by certified mail to the other party to this Agreement. The obligation of the Participant to pay for any Service and/or Products purchased under this Agreement, shall survive such cancellation, as well as any other Participant costs incurred prior to the effective date of the cancellation.

### **ARTICLE 6: APPLICABLE LAWS**

NCTCOG and the Participant agree to conduct all activities under this Contract in accordance with all applicable rules, regulations, and ordinances and laws in effect or promulgated during the term of this Agreement.

### **ARTICLE 7: SEVERABILITY**

All parties agree that should any provision of this Agreement be determined to be invalid or unenforceable, such determination shall not affect any other term of this Agreement, which shall continue in full force and effect.

## **EXHIBIT A**

### **ARTICLE 8: FORCE MAJEURE**

To the extent that either party to this Agreement shall be wholly or partially prevented from the performance within the term specified of any obligation or duty placed on such party by reason of or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident, order of any court, act of God, or specific cause reasonably beyond the party's control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed; provided, however, force majeure shall not excuse an obligation solely to pay funds.

### **ARTICLE 9: WHOLE AGREEMENT**

This Agreement and any attachments/addendums, as provided herein, constitute the complete agreement between the parties hereto, and supersede any and all oral and written agreements between the parties relating to matters herein.

### **ARTICLE 10: DISPUTE RESOLUTION**

The parties to this Agreement agree to the extent possible and not in contravention of any applicable state or federal law or procedure established for dispute resolution, to attempt to resolve any dispute between them regarding this Agreement informally through voluntary mediation, arbitration or any other local dispute mediation process before resorting to litigation.

### **ARTICLE 11: MISCELLANEOUS**

- a. This Agreement has been made under and shall be governed by the laws of the State of Texas. Venue and jurisdiction of any suit or cause of action arising under, or in connection with, this Agreement shall lie exclusively in Tarrant County, Texas.
- b. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective entities.
- c. This Agreement and the rights and obligations contained herein may not be assigned by either party without the prior written approval of the other party to this Agreement.

**THIS INSTRUMENT HAS BEEN EXECUTED IN TWO ORIGINALS BY THE PARTIES HERETO AS FOLLOWS:**

*(Signatures on Next Pages)*

**EXHIBIT A**

**North Central Texas  
Council of Governments  
Shared Services Program  
616 Six Flags Drive  
Arlington, Texas 76011**

\_\_\_\_\_  
NCTCOG Executive Director or Designee

\_\_\_\_\_  
Signature of Executive Director or Designee

Date: \_\_\_\_\_

**Interlocal Agreement  
NCTCOG/Addison  
Electronic Warrant Payment Services – Page 4**

**EXHIBIT A**

**Town of Addison, Texas  
5300 Belt Line Road  
Dallas, Texas 75254-7606**

\_\_\_\_\_  
Wesley S. Pierson, City Manager

Date: \_\_\_\_\_

**Interlocal Agreement  
NCTCOG/Addison  
Electronic Warrant Payment Services – Page 5**

## EXHIBIT B



Date

Client Services Department  
Government Payment Service, Inc.  
7102 Lakeview Parkway West Drive  
Indianapolis, Indiana 46268

To Whom It May Concern:

This letter shall confirm our agreement to become a Participant in the Project and obtain Services as more fully described in the Master Contract Between North Central Texas Council of Governments ("NCTCOG") and Government Payment Service, Inc. ("GPS") ("Master Contract"), dated January 14, 2013 (all capitalized terms not otherwise defined in this letter shall have the definition assigned to them in the Master Contract). We understand and accept that your company's provision and the City's use of the Services are subject to the terms and conditions of the Master Contract, this engagement letter and any interlocal agreement between the City and NCTCOG. In particular, the City agrees to be bound by the Participant's obligations set out in the Master Contract.

The City may at any time (i) authorize you to accept additional types of payments within the scope of the applicable Service Fees; (ii) cancel the processing through your company of any types of payments; (iii) modify the account(s) to which you direct payments to the City; or (iv) add other agencies, departments or sub-agencies within this governmental subunit ("Affiliated Agencies") to, or delete Affiliated Agencies from our use of the Services by specifying all such changes to GPS **in writing**. Any such changes will be subject to your acceptance and confirmation **in writing** and will require reasonable lead time to implement. For purposes of this paragraph, "in writing" shall mean via letter, email, or facsimile to the address included in this letter, or such other address as either of us may provide to each other.

The term of this Engagement Letter shall not exceed the term of the Master Contract, unless the City and your company agree in writing to continue Services beyond such term. We further understand that we may cancel our participation in the Project and the Services, without cause or reason, upon 30 days advance written notice to you via the method defined in the Master Contract. We also agree to send a copy of any cancellation notice to the NCTCOG.

This Engagement Letter together with the Master Contract constitutes the complete agreement between your company and the City, supersedes any and all oral and written agreements between us relating to matters herein and may only be amended in a writing signed by both parties.

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Wesley S. Pierson, City Manager

cc: North Central Texas Council of Governments

**CITY MANAGER'S  
OFFICE**

P.O. Box 9010  
Addison, TX 75001

phone: 972.450.7001  
fax: 972.450.7043

ADDISONTEXAS.NET

IT ALL COMES  
TOGETHER.

**Work Session and Regular Meeting****Meeting Date:** 09/13/2016**Department:** City Manager

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**AGENDA CAPTION:**

Present, Discuss, Consider Approval Of A **Resolution To Amend The Finance Committee Bylaws.**

**BACKGROUND:**

This item reflects the requested change to be incorporated into the Town of Addison Finance Committee bylaws.

At the June 28, 2016 Council Meeting, this item was discussed and a motion to reappoint the three current Finance Committee members (Mayor Meier, Council Member Hughes and Council Member Wilcox) and bring the item back for additional discussion regarding the function and purpose of the Finance Committee. The current committee members would continue to serve until the Council decides otherwise, either through the appointment of other Council Members or dissolution of the Finance Committee.

At the August 9, 2016 Council Meeting, this item was again discussed and a motion made to change the following language in the Finance Committee bylaws:

- The City Manager or designee must be present at all Finance Committee meetings
- Finance Committee provide a quarterly report to council
- That the last sentence of the bylaws to read: "The affirmative vote of a majority of the members of the Committee present at a Committee meeting shall be necessary to make a recommendation to the City Council".

Attached are three documents: 1) Original Finance Committee Bylaws 2) Redline version of Finance Committee Bylaws (which shows the changes made to the bylaw document) 3) Updated Finance Committee bylaws (which reflect the requested changes).

**RECOMMENDATION:**

Administration recommends approval

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**Attachments**

Finance Committee Bylaws-Redline

Finance Committee Bylaws Proposed

## Resolution

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## Finance Committee Bylaws

### PURPOSE

To assist the **City Council** in fulfilling its responsibilities pertaining to the Town's finances in accordance with the City Charter, Code of Ordinances, and applicable laws and regulations. The City Council will, at least one time each year, review whether or not the Finance Committee should be continued, with such review to occur at the first meeting in June or as soon thereafter as practicable.

### RESPONSIBILITIES

The **Finance** Committee shall serve solely in an advisory capacity to the City Council. Among other matters that may be requested from time to time by the Council, the Finance Committee may review and make recommendations to the City Council regarding the following matters:

- quarterly financial reports prepared by the Town's chief financial officer that have been or are to be provided to the City Council;
- the Town's comprehensive financial annual report, the annual audit of the Town's finances, and the Town auditor's management letter or report on internal control, prior to their presentation and submission to the City Council;
- the long term debt capacity of the Town;
- engagement or re-engagement of one or more independent accounting firms to audit the financial statements for the then-current fiscal year or to provide other audit-related services; and  
To
- the adequacy and implementation of any internal audit function.

Review and recommendations regarding the foregoing shall be informed by the financial policies, rules, and regulations of the Town, and by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) framework as applicable. The Committee shall provide quarterly ~~regular~~ reports to the City Council of the activities of the Committee.

It is anticipated that a process will be established to allow reporting by Town employees and third-party contractors of suspected financial fraud within the Town, and that such reporting will be made to the City Attorney. The City Attorney will provide a monthly summary to the chair of the Finance Committee of any reports received.

### COMPOSITION

The **Finance** Committee will consist of three members of the City Council. It is anticipated that members will be appointed to the Committee at the first regular meeting of the City Council in June of each year or as soon thereafter as practicable. Committee membership will be for a period of one year, subject to the member's removal, resignation, or termination of the member's position as a member of the City Council. Members currently serving on the Finance Committee at the time these guidelines are approved by the City Council shall, subject to their removal, resignation, or termination of the member's position as a member of the City Council, continue to serve as members of the Committee until, and may be reappointed to the Committee at, the first regular meeting in June 2015 or as soon thereafter as practicable.



## Finance Committee Bylaws

Each member is to be nominated by the Mayor, and the Council will consider each nomination and vote to approve or disapprove the same. It is the intent of these guidelines that each Committee member be financially literate, with members, if available on the Council, having a demonstrated financial background such as in banking, accounting, and/or finance.

The City Council will make a determination each year as to whether or not the Committee should be continued, which determination shall be made at the first regular meeting of the City Council in June of each year or as soon thereafter as practicable and prior to the Council's annual appointment of Committee members.

The Committee may be terminated or discontinued by the City Council at any time and for any reason or for no reason, at which time the membership of each then-current member shall terminate.

### MEETINGS

The **Finance** Committee will meet at least quarterly (each quarterly meeting being a regular meeting), and may convene additional meetings as it deems appropriate. Such meetings will be on dates and at times as approved by all of the member of the Committee. All Committee members are expected to attend each meeting, in person or via tele- or video-conference, but it is understood that a member may miss a meeting for illness or emergency (as reasonably determined by the Committee member), and may otherwise be excused from a meeting **by the Committee**. The City Manager or designee shall be present at all meetings. The Committee may invite members of management, auditors or others to attend meetings and provide pertinent information, as necessary. Meeting agendas will be prepared and provided in advance to members, along with appropriate briefing materials.

A quorum of the Committee shall consist of a majority of the entire membership of the Committee. The affirmative vote of a majority of the members of the Committee present at a Committee meeting shall be necessary to make a recommendation to the City Council. ~~to adopt or approve any matter or to take any action.~~



## Finance Committee Bylaws

### PURPOSE

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## Finance Committee Bylaws

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**TOWN OF ADDISON, TEXAS**

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

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING AMENDMENTS TO THE TOWN OF ADDISON FINANCE COMMITTEE BYLAWS REQUIRING QUARTERLY REPORTS TO THE CITY COUNCIL, REQUIRING ATTENDANCE OF THE CITY MANAGER, CLARIFYING THE ROLE OF THE COMMITTEE AS A RECOMMENDING BODY AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Addison Finance Committee (the “Finance Committee) was created by the City Council in 2015, and

**WHEREAS**, the City Council desires to amend the Bylaws adopted for the Finance Committee.

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

Section 1. The amended Bylaws for the Finance Committee, attached hereto as **Exhibit A**, are hereby adopted.

Section 2. This Resolution shall take effect upon its passage and approval.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this the 13<sup>th</sup> day of September, 2016.

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

ATTEST:

By: \_\_\_\_\_  
Laura Bell, City Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Brenda N. McDonald, City Attorney

# EXHIBIT A



## Finance Committee Bylaws

### **PURPOSE**

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