



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

December 11, 2018

ADDISON TOWN HALL

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

1. Call Meeting to Order

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

Section 551.074, Tex. Gov. Code, to deliberate the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee, pertaining to:

- **City Manager Annual Evaluation**

-
3. **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 matters discussed in Executive Session.
-
-

WORK SESSION

4. Present and Discuss **Policy Guidelines Regarding the Town of Addison's Use of Data Obtained Through the License Plate Recognition System and Optical Cameras.**

REGULAR MEETING

Pledge of Allegiance

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.

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.

6. Consider Action to Approve the **November 27, 2018 Work Session and Regular Meeting Minutes.**
7. Consider Action to Approve a **Resolution for a Professional Services Agreement with Jacobs Engineering Group, Inc. for the Development of Costs Associated with the Street Projects that may be Proposed in a 2019 Bond Program and Authorize the City Manager to Execute the Agreement** in an Amount not to Exceed \$131,387.

-
8. Consider Action to Approve a **Resolution for a Professional Services Agreement with Garver, LLC. for the Design, Bid and Construction Phase Services Associated with the Water Chlorination Improvements Project and Authorize the City Manager to Execute the Agreement** in an Amount not to Exceed \$248,104.
-
9. Consider Action to Approve a **Resolution for a Contract Agreement for Turnkey Landscape & Irrigation Maintenance for Vitruvian Park, Surveyor Water Tower & Demonstration Gardens along with Medians on Spring Valley Road, Belt Line Road, Midway Road, Arapaho Road and Dallas Parkway Rights-of-Ways to Carruther's Landscape Management, Inc. and Authorize the City Manager to Execute the Agreement** in an Amount not to Exceed \$96,000.
-
10. Consider Action to Approve a **Resolution Adopting the 2019 Legislative Priorities for the Town of Addison, Texas** and Directing the City Manager or His Designee to Act with Regard to the Town's 2019 Legislative Priorities.
-
11. Consider Action to Approve a **Resolution for the Purchase of One 2018 Frazer Ambulance, from Frazer Ambulance, Under the Town's Interlocal Agreement with Texas Local Government Purchasing Cooperative Known as Houston Galveston Area Council (HGAC)** in an Amount not to Exceed \$271,636.74.
-
12. Consider Action to Approve a **Resolution for the Purchase of Two 2019 Ford Interceptor SUVs, Four 2018 Ford 1/2 Ton Trucks, One 2019 Ford 2 Ton Truck, and Two 2019 Ford 1 Ton Trucks, from Sam Packs Five Star Ford, Under the Town's Interlocal Agreement with the Texas Local Government Purchasing Cooperative Known as Texas SmartBuy** in an Amount Not to Exceed \$362,520.32.
-
13. Consider Action to Approve a **Resolution for the Purchase of One 2018 Dodge Caravan and One 2018 Dodge 1 Ton Truck, from Dodge City, Under the Town's Interlocal Agreement with the Texas Local Government Purchasing Cooperative Known as BuyBoard** in an Amount Not to Exceed \$55,377.
-

14. Consider Action to Approve a **Resolution for the Purchase of Six Life Fitness Treadmills, and One Life Fitness Insignia Weight Circuit, from Life Fitness Under the Town's Interlocal Agreement with Texas Local Government Purchasing Cooperative Known as Texas Multiple Award Schedule (TXMAS)** in an Amount to Not Exceed \$117,934.30.
-

Regular Items

15. Hold a Public Hearing, Discuss, and Consider Action to Approve an **Ordinance Changing the Zoning on the Property Located at 4550 Excel Parkway, by Amending the Use Regulations of Planned Development (PD) District 085-073, as Previously Amended by Ordinances 095-054, 096-006, 099-025, and 007-007, to Allow the Production, Assembly, and Distribution of Spinal Fixation Systems.** Case 1788-Z/CTL Medical.
-
16. Present, Discuss, and Consider Action on a **Resolution for Appointments to the Community Bond Advisory Committee for a Potential November 2019 Bond Program Election.**
-
17. Present, Discuss, and Consider Action on an **Ordinance Approving a Boundary Adjustment Agreement with the City of Farmers Branch for a Portion of Midway Road from Spring Valley Road to the Addison City Limits Located North of W. Beltwood Parkway, Approving the Annexation of the Area Within Midway Road that is Released by the City of Farmers Branch, Approving a Service Plan for the Annexed Area and Approving an Easement for Utilities to the City of Farmers Branch for Utilities Lying Under the Exchanged Portion of Midway Road, and Authorizing the City Manager to Execute all Necessary Documents Related to These Matters.**
-
18. Present, Discuss, and Consider Action on a **Resolution to Approve a Ground Lease Agreement with Black Forest Aviation RE, LLC, and a Resolution for a Public Fuel Dispensing License Agreement, for a Fixed Base Operator Development at the southeast corner of Addison Airport, adjacent to Addison Road and Authorize the City Manager to Execute the Agreements.**
-

19. Present, Discuss and Consider Action on an **Ordinance Authorizing the Issuance of Town of Addison, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2018 in the Approximate Aggregate Principal Amount of \$13,500,000 to Fund the Construction of a New Building for U.S. Customs and Border Patrol and Airport Administrative Offices and Various Water and Wastewater Capital Improvement Projects.**

Adjourn Meeting

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.

Posted: _____

Irma G. Parker, City Secretary

Date: Thursday, December 13, 2018

Time: 6:30 pm

**THE TOWN OF ADDISON IS ACCESSIBLE TO PERSONS WITH
DISABILITIES. PLEASE CALL (972) 450-7090 AT LEAST
48 HOURS IN ADVANCE IF YOU NEED ASSISTANCE.**

Work Session and Regular Meeting

4.

Meeting Date: 12/11/2018

Department: Police

Pillars: Gold Standard in Public Safety

Milestones: Maximize use of cutting edge technology to enhance public safety

AGENDA CAPTION:

Present and Discuss **Policy Guidelines Regarding the Town of Addison's Use of Data Obtained Through the License Plate Recognition System and Optical Cameras.**

BACKGROUND:

Based on Council direction to explore technologies that assist Addison's public safety efforts, the police department identified two key technologies; License Plate Recognition (LPR) and optical cameras to mitigate criminal activity and assist investigations when a crime does occur.

The Addison Police Department receives approximately 75-80% of its calls for service out of the business community. On a busy day, or night, our officers may not be able to spend the time within our residential areas that many of our citizens expect or desire. Not being able to meet that expectation may lead some residents to perceive a lack of safety within their neighborhoods. Envisioned to be a force multiplier for the police department, these technologies will assist officers in keeping the community safe. This will happen two ways. First, by alerting Addison Police when a criminal enters an area protected by the system. Second, providing valuable forensic evidence should a crime occur.

To build and maintain trust within the community we serve, it is essential the Town develop a set of guiding principles to protect and govern the use of the data derived from the LPR and optical camera systems. When researching other organizations use of these types of technologies, it is clear there are many strong opinions on both sides of the privacy debate. By gathering reasonable recommendations and guidelines from all sides, the Town can develop policies that balance personal privacy with effective law enforcement practices. For example, the six recommended policy principles below are derived from the American Civil Liberties Union's recommendations surrounding the use of LPR technology. These principles will act as policy guidelines for the police department as they develop and implement their standard operating procedures. Transparency and accountability for these systems is incredibly important and at the forefront of all our decision-making processes.

Below are six recommended policy principles regarding the use of data collected by these technologies:

1. LPR systems should be used by the police department only for legitimate law enforcement purposes investigating hits and other circumstances in which law enforcement officers reasonably believe that the plate data are relevant to an ongoing criminal investigation.
2. The Town should not store data about innocent people for any lengthy period. Unless plate data has been flagged, retention periods should be measured in days or weeks, not months and years.
3. Citizens should be able to find out if plate data of vehicles registered to them are contained in the data base used by the police department.
4. The Town will not share plate data with non-law enforcement, third-parties. The Town will also not share data with other law enforcement agencies that do not follow proper retention and access policies or do not have clear policies in place to ensure such practices are followed.
5. The police department will report our data usage publicly and on an annual basis.
6. The Town will not collect personally identifiable information.

RECOMMENDATION:

Staff requests direction from Council.

Attachments

Public Safety Data Management Policy

Presentation - Public Safety Data Management Policy

Title: Town of Addison Public Safety Data Management Policy

Policy Statement: These principles will act as policy guidelines for the police department as they develop and implement their standard operating procedures. Transparency and accountability for these systems is incredibly important and at the forefront of all our decision-making processes. Cooperation between law enforcement and the community it serves is the key to any programs success. These policy guidelines serve that purpose. Giving clear direction and boundaries, from the community, regarding how the police department will manage data collected via license plate recognition and optical cameras.

It shall be the policy of the Town of Addison that the data collected by License Plate Recognition and Optical Camera technologies be managed according to the following principles:

1. License Plate Recognition systems will be used by the police department for legitimate law enforcement purposes only investigating circumstances in which law enforcement officers reasonably believe that the plate data are relevant to an ongoing criminal investigation.
2. Unless plate data has been flagged, retention periods should be measured in days and weeks, not months and years. The Town will not store data about innocent people for more than 45 days and will only keep flagged data when it is necessary for legitimate law enforcement investigative purposes.
3. Citizens will be able to find out if plate data of vehicles registered to them are contained in the data base used by the police department.
4. The Town will not share plate data with non-law enforcement, third-parties. The Town will also not share data with other law enforcement agencies that do not follow proper retention and access policies or that do not have clear policies in place to ensure such practices are followed.
5. The police department will report data usage publicly and on an annual basis.
6. The Town will not collect personally identifiable information.



Policy Guidelines Discussion

Data Obtained through License Plate Recognition
and Optical Cameras

1

Introduction

- To build and maintain trust within the community we serve, it is essential the Town develop a set of guiding principles to protect and govern the use of the data derived from the License Plate Recognition (LPR) and optical camera systems
- These principles will act as policy guidelines for the police department as they develop and implement their standard operating procedures.
- Transparency and accountability for these systems is incredibly important and at the forefront of all our decision-making processes.



2

Introduction

- Cooperation between law enforcement and the community it serves is the key to any programs success.
- These policy guidelines serve that purpose. Giving clear direction and boundaries, from the community, regarding how the police department will manage data collected via license plate recognition and optical cameras.



3

Guiding Principles

1. LPR systems should be used by the police department only for *legitimate law enforcement purposes* investigating hits and other circumstances in which law enforcement officers reasonably believe that the plate data are relevant to an ongoing criminal investigation.
 - A “HIT” means a plate that was previously entered by a law enforcement agency; i.e. stolen vehicle, vehicle associated with a criminal offense or wanted person.
 - Legitimate law enforcement purposes only? What circumstance would not be a legitimate law enforcement purpose?



4

Guiding Principles

2. The Town should not store data about innocent people for any lengthy period. Unless plate data has been flagged, retention periods should be measured in days or weeks, not months and years.
 - Staff recommendation is 45 days
 - Flagged vs. non-flagged data: How they are retained differently?
 - Process regarding data management.

A blue circular logo with the word "ADDISON" in white capital letters.

5

Guiding Principles

3. Citizens should be able to find out if plate data of vehicles registered to them are contained in the data base used by the police department.
 - Citizens may conduct a request for statistics through police records for their information.

A blue circular logo with the word "ADDISON" in white capital letters.

6

Guiding Principles

4. The Town will not share plate data with non-law enforcement, third-parties. The Town will also not share data with other law enforcement agencies that do not follow proper retention and access policies or do not have clear policies in place to ensure such practices are followed.
 - The police department will have an Memorandum of Understanding in place for each agency prior to sharing any of our data. We control the process.

A blue circular logo with the word "ADDISON" in white capital letters.

7

Guiding Principles

5. The police department will report our data usage publicly and on an annual basis.
 - The police department will include this information in the annual report presented to council.

A blue circular logo with the word "ADDISON" in white capital letters.

8

Guiding Principles

6. The Town will not collect personally identifiable information.



9

Discussion



10

Work Session and Regular Meeting

6.

Meeting Date: 12/11/2018

Department: City Secretary

AGENDA CAPTION:

Consider Action to Approve the **November 27, 2018 Work Session and Regular Meeting Minutes.**

BACKGROUND:

The City Secretary has prepared the minutes for approval.

RECOMMENDATION:

Administration recommends approval.

Attachments

Minutes - 11-27-2018

DRAFT

OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL WORK SESSION

November 27, 2018

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

5:00 p.m. Executive Session & Work Session

7:30 Regular Meeting

Present: Mayor Joe Chow; Mayor Pro-Tempore Paul Walden; Deputy Mayor Pro-Tempore Tom Braun; Council Member Ivan Hughes; Council Member Guillermo Quintanilla; Council Member Lori Ward; Council Member Marlin Willesen

1. **Call Meeting to Order:** Mayor Chow called the meeting to order at 5:10 pm.

-
2. **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:

- **Budget Suites of America located at 15130 Marsh Lane, Addison, Texas, 75001**

Mayor Chow convened the City Council into Closed Executive Session at 5:10 pm.

-
3. **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 matters discussed in Executive Session.

Mayor Chow reconvened the Addison City Council into Regular Session at 6:37 pm. No action taken. A recess was called prior to the Work Session by Mayor Chow.

WORK SESSION

4. **Present and Discuss the Town of Addison's Legislative Priorities for the 86th Texas Legislative Session.**

Presentation: *City Manager Wes Pierson; Consultant Fred Hill* – City Manager Pierson presented this item introducing a list of topics that outline priorities for the Town. Priorities included policies that grow the economy, attract investment, and protect local decision making authority. No additional items were added to the list by Council. Consultant Fred Hill addressed the City Council. He provided insight into issues relevant to local governments in general including tax caps, school finance reform and the makeup of the 86th Legislature. COUNCIL COMMENTS: The final Legislative Priorities for the Town will be presented at a future meeting for Council action.

5. **Present and Discuss Strategies for Regulating Dockless Vehicles Including Bikeshare and Electric Scootershare Programs in Addison.**

Presentation: *Assistant Director of Development Services Charles Goff* – The Town does not currently have regulations in place to govern the Bike and Electric Scooter share programs. As these forms of transportation have increased in popularity in the DFW Metroplex staff asked the City Council if they would like to regulate these programs in Addison. A summary of the rules/regulations from the cities of Dallas, Coppell, Plano, University Park and Highland Park were presented to Council. Staff presented results from the 2016 Master Transportation Plan dealing with bike ridership. Council and Staff discussed how the programs might be part of the Town's strategy for moving people from the rail station throughout the community with the impending service on the Cotton Belt Regional Rail Line. COUNCIL COMMENTS: Staff to craft a pilot program to effectively regulate bike and electric scooter share programs that will allow flexibility for potential future growth as the Cotton Belt Regional Rail Line comes online. The pilot program will be brought for discussion at a future meeting.

REGULAR MEETING

Pledge of Allegiance

Announcements and Acknowledgements regarding Town and Council Events and Activities

Discussion of Events/Meetings

6. **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.

No citizens appeared to address the City Council on a topic not on this agenda.

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.*

7. **Consider Action to Approve the November 13, 2018 Work Session and Regular Meeting Minutes.**
8. **Consider Action to Approve a Resolution Authorizing the City Manager to Submit an Amendment Application to Water Use Permit No. 5383a with the Texas Commission on Environmental Quality for the well at Vitruvian Park.**
9. **Consider Action to Approve a Resolution for an Agreement Between the Town of Addison and Garver, LLC for Airport On-Call Engineering Services and Authorize the City Manager to Execute the Agreement in an Amount not to Exceed \$138,000.**
10. **Consider Action to Approve a Resolution Accepting the Resignation of Thaddeus Iwuji as an Alternate Judge for the Addison Municipal Court.**
11. **Consider Action to Approve a Resolution Approving an Interlocal Agreement with the City of Carrollton, Texas for the Provision of Detention Center Services for Addison Inmate and Authorizing the City Manager to Execute the Agreement.**

Mayor Chow called for any requests to remove any item from the Consent Agenda to discuss separately. There were no requests, therefore Mayor Chow called for a motion.

MOTION: Motion to approve made by Mayor Pro-Tempore Paul Walden. Seconded by Council Member Ivan Hughes. Motion carried unanimously.

Resolution No. R18-104: Amended Water Use Permit No. 5383a Application - TCEQ

Resolution No. R18-105: Airport On-Call Engineering Services – Garver, LLC

Resolution No. R18-106: Accept Resignation Alternate Judge – Thaddeus Iwuji

Resolution No. R18-107: Interlocal Agreement for Detention Center Services – City of Carrollton

Regular Items

12. **Present and Discuss the Establishment of a Community Bond Advisory Committee for a Proposed November 2019 Bond Program Election.**

Director of Infrastructure and Development Services Lisa Pyle presented criteria for establishment of the Community Bond Advisory Committee for the development of a potential bond program for 2019. Staff presented an overview of a draft committee meeting timeline with the committee expected to do its work between January and April 2019, with a final report delivered to the Council in May 2019. The mission of the committee will be to review and prioritize future capital projects, make recommendations to Council concerning what projects should be included in a future bond election, and to serve as community advocates for the bond program election. Notification soliciting citizen and business representatives to serve on the advisory committee was announced in the Town's weekly newsletter and website. Staff recommended Council consider appointing between 21-28 committee members at the Tuesday, December 11, 2018 meeting. A consensus of Council requested that the deadline for applications be moved to Friday, December 5, 2018. Discussion only no action taken.

13. **Present, Discuss and Consider Action on a Resolution Amending the Spruill Dog Park Naming and Recognition Policy to Modify the Minimum Requirement for a Business Contribution.**

Director of Parks & Recreation Janna Tidwell presented amendments to the Spruill Dog Park Naming and Recognition Policy which was originally approved at the February 28, 2017 Council Meeting. The 2017 policy included naming elements limited to the dog's name, individual or family name, or a dog-centric business name. A dog-centric business was defined as accommodating dogs or dog owners and/or provide supplies, services and care for dogs with a minimum donation of \$1,000. At the April 10, 2018 meeting, Council removed the dog-centric requirement from the policy. The current policy allows for two levels of recognition:

1. Brick Paver – Individuals who donate a minimum of \$100 and
2. Individual Flagstone – Individuals or businesses who donate a minimum of \$1,000.

At the request of the Legacy Foundation, Council was asked to amend the Policy to allow businesses to donate and receive recognition for a Brick Paver at the \$100 level and striking the requirement for the minimum business donation of \$1,000. Staff Section 3 "Naming Nomenclature" was also discussed as it relates to the addition of telephone numbers. Council consensus was to leave the naming elements i.e. Dog Name, Individual or Family Name, Business Name as currently written.

MOTION: Council Member Hughes moved to approve the change as submitted in the Staff recommendation. Council Member Ward seconded the motion. Motion carried 6 to 1, with Council Member Willesen voting against.

Resolution No. R18-108: Spruill Dog Park Naming & Recognition Policy

14. **Present and Discuss the Oktoberfest 2018 Operations and Financial Reconciliation.**

Director of Special Events Jasmine Lee and Ashley Boatright presented this item. Staff discussed the impact of a historic rain event and severe flooding had on event attendance and revenue. The poor weather resulted in a loss of \$404,113 to the Town. The overall attendance and revenue was severely impacted with an early event closure on the 21st and cancellation of the 22nd.

Staff discussed ways to prepare the venue for extreme weather events by using of high capacity pumps to drain the Park and, re-arranging of festival site to accommodate improve drainage. In addition, Staff is in conversation with insurance carriers for purchase of event cancellation insurance that will cover lost revenues in the event of weather-related closures.

Staff presented suggested changes to the Tasty Bucks program for the 2019 special events. A new customer-friendly Point-of-Sale system will be implemented that will reduce customer wait times, enhance the overall experience, and strengthen the financial reconciliation and internal controls processes. If any attendee still has Tasty Bucks, they will be honored.

Mayor Pro-Tempore Walden suggested that festival hours on Sunday be expanded. Presented for information only, no action taken.

15. **Present and Discuss the Finance Department Quarterly Financial Report of the Town for the Quarter Ended September 30, 2018.**

Budget Manager Terri Doby presented the Fourth Quarter Financial Report to the City Council. The report covered the financial performance for the fourth quarter of Fiscal Year 2018 i.e. July 1, 2018 to September 30, 2018 along with detailed exhibits to demonstrate the current financial position for the following funds: General, Hotel, Airport, Economic Development, Utility and Storm Water.

Council Member Hughes asked if the investment policy is in line with state regulations and in keeping with that the Town's policies. Staff responded in the affirmative. All funds adhere to the 25% fund balance requirement. Presented for information only, no action taken.

Adjourn Meeting

There being no further business to come before the Council, Mayor Chow adjourned the meeting.

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

Irma G. Parker, City Secretary

Work Session and Regular Meeting

7.

Meeting Date: 12/11/2018

Department: Infrastructure- Development Services

Pillars: Excellence in Transportation Systems

Milestones: All roads in an acceptable condition and well maintained

AGENDA CAPTION:

Consider Action to Approve a **Resolution for a Professional Services Agreement with Jacobs Engineering Group, Inc. for the Development of Costs Associated with the Street Projects that may be Proposed in a 2019 Bond Program and Authorize the City Manager to Execute the Agreement** in an Amount not to Exceed \$131,387.

BACKGROUND:

As part of the Fiscal Year 2019 budget, Council approved a decision package for the development of estimated costs of improvements to several streets that may be included in a future bond program.

Program level cost estimates will be developed for street improvement projects identified in the Town's Street Maintenance Program, pavement condition assessment, and the Asset Management Plan. Estimates will also be developed for new streets identified in the Town's Master Transportation plan. This information will be provided to the Community Bond Advisory Committee for their use in prioritizing potential bond projects. The streets that will be assessed are:

Existing Street Reconstruction	New Street Construction
Keller Springs Road (Dallas North Tollway (DNT) to Addison Road)	Beltway Drive to Gillis Road
Airport Parkway (DNT to Addison Road)	Landmark Boulevard to DNT
Addison Road (Northern Town limits to Arapaho Road)	North Beltwood Parkway to Inwood Road
Quorum Drive (DNT to Cotton Belt Rail Road)	Beltway Drive to Inwood Road
Montfort Drive (Belt Line Road to Paladium Drive)	Artist Way to Addison Road
Ledgemont Lane (Keller Springs Road to Westgrove Drive)	Beltway Drive to Arapaho Road

Jacobs Engineering Group, Inc. was selected through a Request for Qualifications process to provide various engineering services for the Town. Jacobs has a long history of providing cost estimating services for municipalities and can deliver the information within the required schedule. Jacobs' scope will include:

- Data collection - Jacobs will collect all available, existing project data including record drawings, plans, survey information, geotechnical information, utility information and the Town's Master Transportation Plan
- Field reconnaissance - Jacobs will visit the project locations to document and photograph existing site conditions
- Develop typical roadway sections - Jacobs will develop typical roadway sections for each project. These sections will include information such as slopes, number of lanes, retaining wall locations, sidewalk locations, shoulder and right-of-way widths. These typical sections will be utilized to determine where additional right-of-way may be needed.
- Develop program costs - Jacobs will develop program level cost estimates for each project. These estimates will include costs for: construction, design, survey, project management, right-of-way acquisition, construction management and geotechnical and materials testing. Estimates will be developed using local data for similar, municipal projects in both size and complexity. Local contractors will also be contacted to provide cost information.
- Right-of-way Acquisition - Jacobs will provide cost estimates associated with the acquisition of right-of-way necessitated by the roadway project. These estimates will include all associated costs for acquisition including: the land, appraisals, improvement value and the cost to cure to mitigate the loss of parking and/or landscaping.

- Project Summary Report - Jacobs will develop a program summary report for each project. The report will document all of the assumptions that were made during the development of the cost estimates. They will also provide corridor maps for each project.

The total cost for this project is \$131,387. The Self-Funded Special Project Fund includes \$150,000 for this project. The project is expected to take 4 months to complete.

The costs of other potential projects such as those related to the Athletic Club, Park, or Facilities will be developed separately.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution - Professional Services Agreement with Jacobs Engineering Group

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING THE AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES BETWEEN THE TOWN OF ADDISON AND JACOBS ENGINEERING GROUP, INC., FOR THE DEVELOPMENT OF COSTS ASSOCIATED WITH THE PROPOSED STREET 2019 BOND PROGRAM IN AN AMOUNT NOT TO EXCEED \$131,387.00, 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 Agreement for Professional Engineering Services between the Town of Addison and Jacobs Engineering Group Inc., for the development of costs associated with the proposed street 2019 Bond Program in an amount not to exceed \$131,387.00, 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 27th day of November 2018.

Joe Chow, Mayor

ATTEST:

By: _____
Irma Parker, City Secretary

APPROVED AS TO FORM:

By: _____
Brenda N. McDonald, City Attorney

EXHIBIT A

**AGREEMENT
BETWEEN
THE TOWN OF ADDISON, TEXAS (TOWN)
AND
Jacobs Engineering Group Inc (CONSULTANT)
FOR
PROFESSIONAL ENGINEERING SERVICES**

Made as of the __9th__ day of __November__ in the year 2018,

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

and the Consultant: Jacobs Engineering Group Inc
 1999 Bryan Street, Ste 1200
 Dallas, Texas 75201
 Telephone: (214) 638-0145

for the following Project: Future Streets Bond Program Development

The Town and the Consultant agree as set forth below.

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

WHEREAS, the Town desires to engage the services of the Consultant to provide professional services which shall include, but not be limited to, scoping potential street bond projects to be included in a future bond program within the Town of Addison, Texas; hereinafter referred to as "Project"; and

WHEREAS, the Consultant desires to render such professional engineering services for the Town upon the terms and conditions provided herein.

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

EXHIBIT A

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

ARTICLE 1 CONSULTANT'S SERVICES

- 1.1 **Employment of the Consultant** – The Town hereby agrees to retain the Consultant to perform professional engineering services in connection with the Project. Consultant agrees to perform such services in accordance with the terms and conditions of this Agreement. The standard of care for all professional service performed or furnished by Consultant under this Agreement will be the skill and care used by members of Consultant's profession practicing under similar circumstances at the same time and in the same locality.
- 1.2 **Scope of Services** – The parties agree that Consultant shall perform such services as are set forth and described in Exhibit "A," which is attached hereto and incorporated herein by reference for all purposes. The parties understand and agree that deviations or modifications to the scope of services described in Exhibit "A," in the form of written change orders, may be authorized from time to time by the Town.
 - 1.2.1 **Requirement of Written Change Order** – "Extra" work, or "claims" invoiced as "extra" work, or "claims" which have not been issued as a duly executed, written change order by the Addison Town Manager, will not be authorized for payment and/or shall not become part of the subcontracts. A duly executed written change order shall be preceded by the Addison Town Council's authorization for the Addison Town Manager to execute said change order.
 - 1.2.2 **DO NOT PERFORM ANY EXTRA WORK AND/OR ADDITIONAL SERVICES WITHOUT A DULY EXECUTED WRITTEN CHANGE ORDER ISSUED BY THE ADDISON TOWN MANAGER.** Project Managers, Superintendents, and/or Inspectors of the Town are not authorized to issue verbal or written change orders.
- 1.3 **Schedule of Work** – The Consultant agrees to commence work immediately upon the execution of this Agreement and receipt of written Notice to Proceed, and to proceed diligently with said work to completion as described in the Compensation Schedule / Project Billing / Project Budget attached hereto as **Exhibit "B"** and incorporated herein by reference for all purposes, but in no event shall the Project be completed any later than as identified in **Exhibit "A"**.

EXHIBIT A

- 1.4 **Failure to Meet Established Deadlines** – Consultant acknowledges that time is of the essence in the performance of services under this Agreement as set forth in the Compensation Schedule / Project Billing / Project Budget attached hereto as Exhibit "B."

ARTICLE 2 THE TOWN'S RESPONSIBILITIES

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

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

ARTICLE 3 CONSULTANT'S COMPENSATION

- 3.1 **Compensation for Consultant's Services** – As described in "Article 1, Consultant's Services," compensation for this Project shall be on a Lump Sum Type of Payment Basis not to exceed One Hundred and Thirty One Thousand Three Hundred and Eighty Seven and 00/100 Dollars (\$131,387.00), ("Consultant's Fee") and shall be paid in accordance with Article 3 and the Compensation Schedule / Project Billing / Project Budget as set forth in Exhibit "B." **The final five percent (5%) of the Consultant's Fee, or Six Thousand Five Hundred and Sixty Nine and 35/100 Dollars (\$6,569.35), shall not be paid until the Consultant has completed all of the services described in Exhibit "A" and delivered to the Town all of the documents, plans, data, maps, and/or other information required in Exhibit "A."**
- 3.1.1 **Completion of Final Report** – Town and Consultant agree that the Final Report shall be completed, submitted to, and accepted by the Town prior to payment of the **final five percent (5%) of the Consultant's Fee, or Six Thousand Five Hundred and Sixty**

EXHIBIT A

Nine and 35/100 Dollars (\$6,569.35). The electronic formatting shall be consistent with the standards established in Town of Addison Guidelines for Computer Aided Design and Drafting ("CADD"). Completion of the Record Documents and/or "As-Built" documents, if any, shall be included in the Consultant's Fee and considered to be within the Scope of Services defined under this Agreement.

3.1.2 Disputes between Town and Construction Contractor – If the Project involves the Consultant performing Construction Administration Services relating to an agreement between a Construction Contractor (the "Contractor") and the City, and upon receipt of a written request by City, Consultant shall research previous and existing conditions of the Project, and make a determination whether or not to certify that sufficient cause exists for the City to declare the Contractor in default of the terms and conditions of the agreement. Consultant shall submit his findings in writing to the City, or submit a written request for a specific extension of time (including the basis for such extension), within fifteen (15) calendar days of receipt of the written request from the City. City and Consultant agree that if requested by the City, completion of this task shall be included in the Consultant's Fee and considered to be within the Scope of Services as defined under this Agreement.

3.1.3 Consultation and Approval by Governmental Authorities and Franchised Utilities – Consultant shall be responsible for identifying and analyzing the requirements of governmental agencies and all franchise utilities involved with the Project, and to participate in consultation with said agencies in order to obtain all necessary approvals and/or permissions. The Consultant shall be responsible for preparation and timely submittal of documents required for review, approval, and/or recording by such agencies. The Consultant shall be responsible for making such changes in the Construction Documents as may be required by existing written standards promulgated by such agencies at no additional charge to City.

3.2 Direct Expenses – Direct Expenses are included in the Consultant's Fee as described in Article 3.1 and include actual reasonable and necessary expenditures made by the Consultant and the Consultant's employees and subcontractors in the interest of the Project. All submitted Direct Expenses are to be within the amounts as stated in the Compensation Schedule / Project Billing / Project Budget set forth in Exhibit "B," and consistent with Exhibit "C," Town of Addison Guidelines for Direct Expenses, General and Administrative Markup, and Travel and

EXHIBIT A

Subsistence Expenses. The Consultant shall be solely responsible for the auditing of all Direct Expenses, including the subcontractors, prior to submitting to the Town for reimbursement, and shall be responsible for the accuracy thereof. Any over-payment by the Town for errors in submittals for reimbursement may be deducted from the Consultant's subsequent payment for services; provided, however this shall not be the Town's sole and exclusive remedy for said overpayment.

- 3.3 **Additional Services** – The Consultant shall provide the services as described in the Scope of Services as set forth in Exhibit "A" of this Agreement. If authorized in writing by the Town, the Consultant shall provide additional services, to be compensated on an hourly basis in accordance with this paragraph ("Additional Services"). These services may include, but are not limited to:
- 3.3.1 Additional meetings, hearings, work-sessions, or other similar presentations which are not provided for or contemplated in the Scope of Services described in Exhibit "A."
 - 3.3.2 Additional drafts and revisions to the Project which are not provided for or contemplated in the Scope of Services as described in Exhibit "A." Drafts or revisions required as the result of errors or omissions by the Consultant shall not be considered Additional Services, but shall fall within the Scope of Services.
 - 3.3.3 Additional copies of final reports and construction plans which are not provided for or contemplated in the Scope of Services as described in Exhibit "A."
 - 3.3.4 Photography, professional massing models which are not provided for or contemplated in the Scope of Services as described in Exhibit "A."
 - 3.3.5 Compensation for Additional Services authorized by the Town shall be in addition to the Consultant's Fee and shall be based on direct billable labor rates and expenses.
 - 3.3.6 Compensation for Additional Services authorized by the Town shall be in addition to the Consultant's Fee and shall be based on an hourly basis according to the following personnel rates. The rates set forth in this chart are subject to reasonable change provided prior written notice of said change is given to Town.

EXHIBIT A

Role	Rate
Project Manager	\$163.00
Senior Engineer	\$184.00
Project Engineer	\$142.00
EIT	\$102.00
Clerical	\$ 81.00

- 3.4 **Direct Expenses and Invoices** – No payment to Consultant shall be made until Consultant tenders an invoice to the Town. Invoices are to be mailed to Town immediately upon completion of each individual task listed in Exhibit "B." On all submitted invoices, Consultant shall include appropriate background materials to support the submitted charges on said invoice. Such background material shall include, but is not limited to, employee timesheets, invoices for work obtained from other parties, and receipts and/or log information relating to Direct Expenses. All invoices for payment shall provide a summary methodology for administrative markup and/or overhead charges.
- 3.5 **Timing of Payment** – Town shall make payment to Consultant for said invoices within thirty (30) days following receipt and acceptance thereof. The parties agree that payment by Town to Consultant is considered to be complete upon mailing of payment by Town. Furthermore, the parties agree that the payment is considered to be mailed on the date that the payment is postmarked.
- 3.6 **Disputed Payment Procedures** – In the event of a disputed or contested billing by Town, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. Town shall notify Consultant of a disputed invoice, or portion of an invoice, in writing by the twenty-first (21st) calendar day after the date the Town receives the invoice. Town shall provide Consultant an opportunity to cure the basis of the dispute. If a dispute is resolved in favor of the Consultant, Town shall proceed to process said invoice, or the disputed portion of the invoice, within the provisions of Article 3.5. If a dispute is resolved in favor of the Town, Consultant shall submit to Town a corrected invoice, reflecting any and all payment(s) of the undisputed amounts, documenting the credited amounts, and identifying outstanding amounts on said invoice to aid Town in processing payment for the remaining balance. Such revised invoice shall have a new invoice number, clearly referencing the previous submitted invoice. Town agrees to exercise reasonableness in contesting any billing or portion thereof that has background materials supporting the submitted charges.
- 3.7 **Failure to Pay** – Failure of the Town to pay an invoice, for a reason other than upon written notification as stated in the provisions of Article 3.6 to the Consultant within sixty (60) days from the date of the invoice shall

EXHIBIT A

grant the Consultant the right, in addition to any and all other rights provided, to, upon written notice to the Town, suspend performance under this Agreement, and such act or acts shall not be deemed a breach of this Agreement. However, Consultant shall not suspend performance under this Agreement prior to the tenth (10th) calendar day after written notice of suspension was provided to Town, in accordance with Chapter 2251, Subchapter "D" ("Remedy for Nonpayment") of the *Texas Government Code*. The Town shall not be required to pay any invoice submitted by the Consultant if the Consultant breached any provision(s) herein.

- 3.8 **Adjusted Compensation** – If the Scope of the Project or if the Consultant's services are materially changed due to no error on behalf of Consultant in the performance of services under this Agreement, the amounts of the Consultant's compensation shall be equitably adjusted as approved by Town. Any additional amounts paid to the Consultant as a result of any material change to the Scope of the Project shall be authorized by written change order duly executed by both parties before the services are performed.
- 3.9 **Project Suspension** – If the Project is suspended or abandoned in whole or in part for more than three (3) months, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of Town in accordance with the provisions of this Agreement prior to suspension or abandonment. In the event of such suspension or abandonment, Consultant shall deliver to Town all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs, and/or any other items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment. If the Project is resumed after being suspended for more than three (3) months, the Consultant's compensation shall be equitably adjusted as approved by the Town. Any additional amounts paid to the Consultant after the Project is resumed shall be agreed upon in writing by both parties before the services are performed.

ARTICLE 4 OWNERSHIP OF DOCUMENTS

- 4.1 **Documents Property of the Town** – The Project is the property of the Town, and Consultant may not use the documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs, and/or any materials for any other purpose not relating to the Project without Town's prior written consent. Town shall be furnished with such reproductions of the Project, plans, data, documents, maps, and any other information as defined in Exhibit "A." Upon completion of the work, or any earlier termination of this Agreement under Article 3 and/or Article 7, Consultant

EXHIBIT A

will revise plans, data, documents, maps, and any other information as defined in Exhibit "A" to reflect changes while working on the Project and promptly furnish the same to the Town in an acceptable electronic format. All such reproductions shall be the property of the Town who may use them without the Consultant's permission for any purpose relating to the Project, including, but not limited to, completion of the Project, and/or additions, alterations, modifications, and/or revisions to the Project, to which Consultant shall not be held liable for any Town changes thereafter.

- 4.2 **Documents Subject to Laws Regarding Public Disclosure** – Consultant acknowledges that Town is a governmental entity and that all documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs, and/or any items prepared or furnished by Consultant (and Consultant's professional associates and/or Sub-consultants) under this Agreement are instruments of service in respect of the Project and property of the Town and upon completion of the Project shall thereafter be subject to the Texas Public Information Act (*Texas Government Code*, Chapter 552) and any other applicable laws requiring public disclosure of the information contained in said documents.

ARTICLE 5 CONSULTANT'S INSURANCE REQUIREMENTS

- 5.1 **Required Professional Liability Insurance** – Consultant shall maintain, at no expense to Town, a professional liability (errors and omissions) insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), authorized to transact business in the State of Texas, in an amount not less than One Million and 00/100 Dollars (\$1,000,000.00) for each occurrence, and Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate. Such policy shall require the provision of written notice to Town at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, or ten (10) days for non-payment of premium, evidenced by return receipt or United States Certified Mail. Consultant shall furnish Town with certificates evidencing such coverage prior to commencing work on the Project.
- 5.2 **Required General Liability Insurance** - Consistent with the terms and provisions of Exhibit "D," Town of Addison Contractor Insurance Requirements, Consultant shall maintain, at no expense to Town, a general liability insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), authorized to transact business in the State of Texas, in an amount not less than One Million and 00/100 Dollars

EXHIBIT A

(\$1,000,000.00) for each occurrence, and Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate. Such policy shall name the Town, its officers, agents, representatives, and employees as additional insured as to all applicable coverage. Such policy shall provide for a waiver of subrogation against the Town for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance. Such policy shall require the provision of written notice to Town at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, or ten (10) days for non-payment of premium, evidenced by return receipt or United States Certified Mail. Consultant shall furnish Town with certificates evidencing such coverage prior to commencing work on the Project.

- 5.3 **Required Workers Compensation Insurance** – Consistent with the terms and provisions of Exhibit "D," Town of Addison Contractor Insurance Requirements, Consultant shall maintain, at no expense to Town, all Statutory Workers Compensation Insurance as required by the laws of the State of Texas. Such insurance policy shall be with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent service(s), and authorized to transact business in the State of Texas. Such policy shall provide for a waiver of subrogation against the Town for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance. Such policy shall require the provision of written notice to Town at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, or ten (10) days for non-payment of premium, evidenced by return receipt or United States Certified Mail. Consultant shall furnish Town with certificates evidencing such coverage prior to commencing work on the Project.

- 5.4 **Circumstances Requiring Umbrella Coverage or Excess Liability Coverage** – If Project size and scope warrant, Town of Addison Contractor Insurance Requirements, Consultant shall maintain, at no expense to the Town, an umbrella coverage or excess liability coverage insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), authorized to transact business in the State of Texas, in an amount of Two Million and 00/100 Dollars (\$2,000,000.00). Consistent with the terms and provisions of Exhibit "F," such policy shall name the Town, its officers, agents, representatives, and employees as additional insured as to all applicable coverage. Such policy shall provide for a waiver of subrogation against the Town for injuries, including death, property damage, or any other loss to the extent that the same is covered by the proceeds of the insurance. Such policy shall require the provision of written notice to the Town at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, or ten (10) days for

EXHIBIT A

non-payment of premium, evidenced by return receipt or United States Certified Mail. Consultant shall furnish Town with certificates evidencing such coverage prior to commencing work on the Project.

ARTICLE 6 CONSULTANT'S ACCOUNTING RECORDS

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

ARTICLE 7 AUDITS AND RECORDS / PROHIBITED INTEREST / VENDOR DISCLOSURE

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

The Consultant agrees that it is aware of the prohibited interest requirement of the Town Charter, which is repeated on the Affidavit, attached hereto as Exhibit "E" and incorporated herein for all purposes, and will abide by the same. Further, a lawful representative of Consultant shall execute the Affidavit attached hereto as Exhibit "E". Consultant understands and agrees that the existence of a prohibited interest during the term of this Agreement will render the Agreement voidable.

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

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

ARTICLE 8 TERMINATION OF AGREEMENT / REMEDIES

EXHIBIT A

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

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

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

ARTICLE 9 DISPUTE RESOLUTION / MEDIATION

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

ARTICLE 10

INDEMNITY

CONSULTANT SHALL HEREBY COVENANT AND CONTRACT TO WAIVE ANY AND ALL CLAIMS, RELEASE, INDEMNIFY AND HOLD HARMLESS TOWN AND ITS TOWN COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES FROM AND AGAINST ALL DAMAGES, INJURIES (INCLUDING DEATH), INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS (INCLUDING PATENT, COPYRIGHT AND TRADEMARK INFRINGEMENTS), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEYS' FEES AND EXPENSES INCURRED IN ENFORCING THIS

EXHIBIT A

INDEMNITY), CAUSED OR RESULTING FROM THE NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONSULTANT, ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES, OR ANY OTHER ENTITY OVER WHICH THE CONSULTANT EXERCISES CONTROL, IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT AND/OR ARISING OUT OF PROFESSIONAL SERVICES PROVIDED BY CONSULTANT PURSUANT TO THIS AGREEMENT, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF THE TOWN (HEREINAFTER "CLAIMS"). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM "CLAIMS" IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST TOWN BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN CONSULTANT AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE CONSULTANT, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE. THIS INDEMNIFICATION SHALL EXTEND TO THE PAYMENT OR REIMBURSEMENT OF THE TOWN'S REASONABLE ATTORNEYS FEES AND ASSOCIATED COSTS, COURT COSTS, AND SETTLEMENT COSTS IN PROPORTION TO THE CONSULTANT'S LIABILITY.

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

THIS ARTICLE SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

ARTICLE 11 NOTICES

EXHIBIT A

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

Assistant Director of Infrastructure Services

Town of Addison
16801 Westgrove Drive
Addison, Texas 75001

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

Jacobs Engineering Group Inc

1999 Bryan Street, Ste 1200
Dallas, Texas 75201
Telephone: (214) 638-0145

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

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

ARTICLE 12 MISCELLANEOUS

- 12.1 **Complete Agreement** – This Agreement, including the exhibits hereto labeled "A" through "F," all of which are incorporated herein for all purposes, constitute the entire Agreement by and between the parties regarding the subject matter hereof and supersedes all prior and/or contemporaneous written and/or oral understandings. This Agreement may not be amended, supplemented, and/or modifies except by written agreement duly executed by both parties. The following exhibits are attached below and made a part of this Agreement:

12.1.1 Exhibit "A," Scope of Services.

12.1.2 Exhibit "B," Compensation Schedule / Project Billing / Project Budget.

12.1.3 Exhibit "C," Town of Addison Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses.

EXHIBIT A

12.1.6 Exhibit "D," Town of Addison Contractor Insurance Requirements.

12.1.7 Exhibit "E," Affidavit.

12.1.8 Exhibit "F", Conflict of Interest Questionnaire, Form CIQ.

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

EXHIBIT A

authorized and binding agreement on the other party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

- 12.8 **Waiver** – Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.
- 12.9 **Headings** – The headings of the various sections of this Agreement are included solely for convenience of reference and are not to be full or accurate descriptions of the content thereof.
- 12.10 **Multiple Counterparts** – This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.
- 12.11 **Sovereign Immunity** – The parties agree that the Town has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.
- 12.12 **Additional Representations** – Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had the opportunity to confer with its counsel.
- 12.13 **Miscellaneous Drafting Provisions** – This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply.
- 12.14 **No Third Party Beneficiaries** -- Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.
- 12.15 **No Boycott – Israel** -- Pursuant to Texas Government Code Chapter 2270, Organization's execution of this Agreement shall serve as verification that the Organization does not presently boycott Israel and will not boycott Israel during the term of this Agreement.

EXHIBIT A

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

Effective Date: _____

TOWN:

Town of Addison, Texas


By: _____

Lisa Pyles, Director of Infrastructure and Development Services

Date: _____

CONSULTANT:

Jacobs Engineering Group Inc

By:  _____
Scott Bussell, Vice President

Date: 11/9/18

EXHIBIT A

STATE OF TEXAS

§
§
§

COUNTY OF DALLAS

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____, 2018.

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

STATE OF

Texas

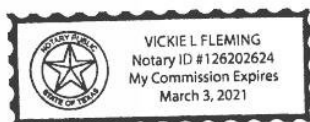
§
§
§

COUNTY OF

Dallas

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 9th day of November, 2018.



Vickie Fleming
Notary Public In and For the State of Texas
My commission expires: March 3, 2021

EXHIBIT A

EXHIBIT A

SERVICES TO BE PROVIDED BY THE ENGINEER

PROJECT DESCRIPTION

Contract No.:

Project: Town of Addison Street Bond Program Development Support

JACOBS (hereafter called the ENGINEER) will provide the Town of Addison following services:

TASK 100 - STREET BOND PROJECT DEVELOPMENT

The ENGINEER shall assist the Town of Addison with scoping potential street bond projects to be included in a future street bond program. The work is intended to provide the Town with an understanding of the work elements and program level costs associated with potential road projects to be included in a future street bond program. Road projects to be evaluated consist of:

1. Keller Springs Road from DNT to Addison Road (0.5 miles)
2. Airport Parkway from DNT to Addison Road (0.5 miles)
3. Addison Road from Addison City Limits (northern) to Arapaho Road (2 miles)
4. Quorum Drive from DNT to DART RR ROW (1 mile)
5. Montfort Drive from Belt Line Road to Paladium Drive
6. Ledgemont Lane from Keller Springs to Westgrove Drive (0.5 miles)
7. Beltway Drive to Gillis Road (0.3 miles). Extend Beltway Drive to the south to connect with Gillis Road.
8. Landmark Boulevard to Dallas North Tollway (0.1 miles). Extend Landmark Boulevard to the east to connect with DNT.
9. North Beltwood Parkway to Inwood Road (0.2 miles). Extend North Beltwood Parkway to the east to connect with Inwood Road.
10. Beltway Drive to Inwood Road (0.24 miles). Extend Beltway Drive to the east to connect with Inwood Road.
11. Addison Road to Artist Way (0.1 miles). Extend Artist Way to the west to connect with Addison Road.
12. Beltway Drive to Arapaho Road (0.17 miles). Extend Beltway Drive north across Belt Line Road and tie into Arapaho Road.

TASK 100.1 – PROJECT MANAGEMENT

The ENGINEER shall provide general administration of the contracted work including preparing monthly invoices and progress reports and administering a Quality Control program for all work produced.

EXHIBIT A

TASK 100.2 – DATA COLLECTION

The ENGINEER shall collect pertinent project data available from the TOWN including plans, as-builts, survey information, utility plans and other reports. This shall include review of the Town's Master Transportation Plan. The ENGINEER shall not perform any topographic or aerial surveys for use in determining program levels costs for any potential street bond projects.

TASK 100.3 – FIELD RECONNAISSANCE

The ENGINEER shall visit potential street bond project sites to record and photograph existing project conditions.

TASK 100.4 – DEVELOP TYPICAL SECTIONS

The ENGINEER shall prepare typical sections, in accordance with the Town's Master Transportation Plan, which represent both the existing and proposed conditions. The typical sections shall include representations of the various conditions proposed, such as slopes, number of lanes, retaining wall locations (if applicable), shoulder widths, clear zones, border width and right-of-way width. This list is not all inclusive, and other information shall be added as needed to clarify the intent and purpose of the typical sections. Based upon the typical sections, the ENGINEER shall identify potential locations where additional right-of-way may be required.

TASK 100.5 – DEVELOP PROGRAM COSTS

Based upon available data described in task 100.2 and from input received from the Town, the ENGINEER shall develop preliminary cost opinions for overall program costs on a per street basis. Cost opinions will be an order of magnitude cost for determining a planning level budget for the projects. The cost prepared is the opinion of expected construction costs including program costs, including, but not limited to, fees for a Design Engineer, Survey, Owners Representative, and Construction Management services which includes inspection and material testing services. The developed cost is a program level budget, but is not a guarantee of the actual costs. The actual costs may vary from the planning level costs depending on the final scope of the project and other items such as the cost of materials and labor at the time the project is under construction. When developing cost estimates, the ENGINEER will utilize available local data for similar projects in size and complexity including readily available bid tabulations from other local city projects, local county projects, as well as similar state projects. The ENGINEER will provide costs in current year values but include an escalation factor, based upon industry data, to estimate costs in future years. Utility costs, ROW costs, and other cost associated with Master Transportation plans will also be estimated.

TASK 100.6 – ROW ACQUISITION

The ENGINEER shall make visual inspections from public rights of way of all parcels to ascertain visible and latent improvements to be acquired, or possibly damaged, by the proposed project improvements or parcel area. The

EXHIBIT A

ENGINEER shall gather comparable land sales data in the neighborhood/area through real estate brokers and appraisers, review each sale to reach conclusions as to its relevance to the cost estimate, analyze the data to determine base land values or unit costs per square foot for the land to be acquired and apply the adjusted unit cost to the proposed land area of each parcel. The adjusted unit costs will be identified following adjustments applied to the base land value based on site characteristics (such as, but not limited to: location, size, shape, market conditions/timing, corner/non-corner, etc.). Local cost sources, the *Marshall Valuation Service*, Dallas County Appraisal District Records and other available sources, will be used to estimate the contributory value of the improvements acquired and the cost of improvements which may be affected/impacted and may need to be replaced. The ENGINEER shall review town ordinances/requirements dealing with, but not limited to: landscaping, fire lanes and parking ratios. Discuss with town staff the permissible degree of non-conformance for the remainders and what events would trigger conformity and costs to cure. If non-conforming status is possible, estimate the cost to cure to restore the remainders to a functional condition similar to that which existed before the proposed acquisition. If remainders must conform to parking and landscape ordinance requirements or other town requirements, estimate the incurable loss in value associated with the remainder's non-conforming status.

The total estimated cost for the real estate will be the sum of the land value, contributory value of improvements acquired, cost of appraisal, cost of improvements required to be replaced and the cost to cure to mitigate loss of parking and/or landscaping, or the incurable loss in value associated with non-conforming status.

The ENGINEER shall consider an appropriate condemnation rate for North Dallas County, consider an appropriate estimated increase in real estate costs associated with litigation and consider an appropriate factor for contingencies and add to right of way costs. The total estimated cost for the right of way will be the sum of the real estate costs, the estimated contingencies and the increase in costs associated with litigation.

Notes:

The scope does not include the following: cost to relocate underground utilities (including private utilities, any potential relocation assistance costs, demolition of existing structures costs, if these costs are necessary. However, a utility relocation allowance estimate will be included along with addressing any additional infrastructure needs identified in the various master plans.

The final right of way cost estimate will include assumptions and limiting conditions, such as:

EXHIBIT A

- no environmental contamination is present which might increase project costs
- the land areas provided for the parcel right of way acquisitions are assumed correct
- data obtained from published sources and outside sources such as real estate brokers and appraisers is assumed to be correct

TASK 100.7 – DEVELOP PROGRAM SUMMARY REPORT

The ENGINEER shall organize work performed into a project summary report. This report shall include assumptions made and include the estimated program level costs of street bond projects evaluated. It shall also include corridor maps of all potential street bond projects. These maps shall include available aerial imagery, basic planimetric features, proposed typical sections, and overall limits. The intent of the corridor maps is to provide a visual depiction of the proposed project.

DELIVERABLES

The ENGINEER shall:

1. Attend five (5) coordination meetings with the Town.
2. Conduct field reconnaissance and collect data of notable existing features.
3. Develop typical sections for all evaluated projects
4. Prepare program level costs for all evaluated projects
5. Develop a preliminary and final Program Summary Report for review by the Town

EXHIBIT A

EXHIBIT "B" COMPENSATION SCHEDULE / PROJECT BILLING / PROJECT BUDGET

I. COMPENSATION SCHEDULE / PROJECT BILLING SUMMARY.

EXHIBIT A

JACOBS ENGINEERING GROUP, INC.

Exhibit B
Fee Schedule
Lump Sum

PRIME PROVIDER NAME: JACOBS ENGINEERING GROUP, INC.

TASK	DESCRIPTION	JACOBS	HALFF	TOTAL
100	STREET BOND PROJECT DEVELOPMENT	694	-	694
		\$ 89,564.00	\$ 41,400.00	\$ 130,964.00
	DIRECT EXPENSES	-	-	-
		\$ 423.00	\$ -	\$ 423.00
SUB TOTALS	LABOR HOURS	694	-	694
	COST	\$ 89,987.00	\$ 41,400.00	\$ 131,387.00

EXHIBIT A

JACOBS Fee Proposal Bond Program Support Services

JACOBS	Project Manager	Senior Engineer	Project Engineer	EIT	Clerical	Total
Rate	\$163.00	\$184.00	\$142.00	\$102.00	\$81.00	
Task 100 - STREET BOND PROJECT DEVELOPMENT						
100.1 PROJECT MANAGEMENT						
Administration of the Contract Work	6					6
Monthly Invoices and Progress Reports (5)	14			7	13	34
Attend five (5) meetings with the Town	30		20			50
Project Coordination	30					30
QA/QC	4	26			3	33
100.2 DATA COLLECTION						
Collect Data	4			13		17
100.3 FIELD RECONNAISSANCE						
Field Reconnaissance	32		32	32		96
100.4 DEVELOP TYPICAL SECTIONS						
Develop Typical Sections for Each Potential Project	6		13	39		58
Identify Approximate ROW Needs	9		14	44		67
100.5 DEVELOP PROGRAM COSTS						
Develop Cost Opinions for Each Potential Project	8		40	61		109
100.7 DEVELOP PROGRAM SUMMARY REPORT						
Develop Draft Report	13		56	56	17	142
Develop Final Report	7		13	26	6	52
Task 100 Totals	163	26	188	278	39	694
Total Labor Hours	163	26	188	278	39	694
Total Labor Costs	\$26,569	\$4,784	\$26,696	\$28,356	\$3,159	\$89,564
Reimbursable Direct Expenses						
8.5" x 11" Copies			Unit	Quantity	Rate	Total
			EA	1,000	\$0.15	\$150
Mileage			MILE	500	\$0.55	\$273
Total Reimbursable Direct Expenses						\$423
Total JACOBS FEE						\$89,987

EXHIBIT A

HALFF
Fee Proposal
Bond Program Support Services

HALFF	Total
Task 100 - STREET BOND PROJECT DEVELOPMENT	
100.6 ROW ACQUISITION	
Gillis Road/Beltway Drive	\$7,500
Landmark Boulevard	\$3,000
Beltwood Parkway	\$8,500
Beltway Drive	\$9,500
Marcus Road Connection (Artist Way)	\$9,000
Land Only Appraisal	\$3,900
Task 100 Totals	\$41,400
Total Labor Costs	\$41,400
Total HALFF FEE	\$41,400

EXHIBIT A

EXHIBIT "C"

TOWN OF ADDISON GUIDELINES FOR DIRECT EXPENSES; GENERAL AND ADMINISTRATIVE MARKUP; TRAVEL AND SUBSISTENCE EXPENSES

- I. **CONSULTANT'S RESPONSIBILITY**. The Consultant shall be solely responsible for the auditing of all direct expense, approved markup (general and/or administrative), and approved travel and/or subsistence charges, including those to be included under a sub-contract, prior to the Town for reimbursement, and Consultant shall be responsible for the accuracy thereof. Any overpayment by the Town for errors in submittals for reimbursement may be deducted from the Consultant's subsequent payment(s) for services; however, this shall not be the Town's sole and exclusive remedy for said overpayment.

II. **GUIDELINES FOR DIRECT EXPENSES**.

- A. **Local Transportation** – Transportation in connection with the Project, when such transportation is not a function of routine performance of the duties of the Consultant in connection with the Project, and when such transportation exceeds beyond fifty (50) miles from the Project site, shall be reimbursed at a standard mileage rate consistent with that as issued, and periodically revised, by the United States Internal Revenue Service (IRS). Under no circumstances shall Town reimburse Consultant at a higher standard mileage rate or pay additional markup on charges for local transportation. Completion of Town's Standard Mileage Log is required for submittal of these charges for reimbursement, including justification for each submitted expense.

Under no circumstances are charges associated with rental cars for local transportation eligible for reimbursement by Town. Toll road subscriptions or toll plaza receipts are not reimbursable. Consultant agrees to place these standards in all subcontracts for work on the Project.

- B. **Supplies, Material, Equipment** – Town shall reimburse the actual cost of other similar direct Project-related expenses, which are duly presented in advance and approved by Town's Project Manager in writing.
- C. **Commercial Reproduction** – Town shall reimburse the actual cost of reproductions, specifically limited to progress prints prepared for presentation to Town at each phase of progress, and final Construction Documents prepared for distribution at bidding phase, provided that the Consultant has duly obtained at least three (3) quotations from commercial firms and has chosen the best value for the Town. Consultant shall provide such documentation to Town for review prior to submitting these expenses for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.
- D. **In-House Reproduction** - Consultant shall make arrangements with the Town for prior approval of in-house reproduction rates prior to submitting these expenses for reimbursement. Town shall provide Consultant with a standard format for documenting these charges. Completion of the Town's reproduction log is required as a prerequisite for payment, including the number or reproductions, the

EXHIBIT A

date, time, description, the approved standard rate, and a justification for each submitted expense for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.

- E. **Commercial Plotting** – Town shall reimburse the actual cost of plots, specifically limited to final documents, provided the Consultant has duly obtained at least three (3) quotations from commercial firms and has chosen the best value for the Town. Consultant shall provide such documentation to Town for review prior to submitting these expenses for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.
- F. **In-House Plotting** – Consultant shall make arrangements with Town for prior written approval of in-house plotting rates prior to submitting these charges for reimbursement. Town shall provide Consultant with a standard format for documenting these charges. Completion of the Town's reproduction log is required as a prerequisite for payment, including the number of plots, the date, time, description, the approved standard rate, and a justification for each submitted charge for reimbursement.
- G. **Communications** – Reimbursement for expenses relating to electronic communications shall be limited to long-distance telephone or fax toll charges specifically required in the discharge of professional responsibilities related to the Project. Telephone service charges including office or cellular phones, WATTS, or Metro line services or similar charges are not reimbursable.
- H. **Postage, Mail, and Delivery Service** – Town shall reimburse the actual cost of postage and delivery of Instruments of Service, provided the Consultant duly considers all circumstances (including available time for assured delivery) of the required delivery and selects the best value for the Town, which may require comparison of delivery costs offered by three (3) or more sources or methods of delivery, which at a minimum shall include U.S. Mail. Courier service is acceptable only in circumstances requiring deadline-sensitive deliveries and not for the convenience of the Consultant and/or the Consultant's employees. Consultant agrees to place these standards in all subcontracts for work on the Project.
- I. **Meals and Other Related Charges** – Meals or any other related expenses are not reimbursable unless incurred outside a fifty (50) mile radius of the Project, and then only reimbursable for the actual cost subject to compliance with the Town's currently adopted policy. Non-allowable costs include, but are not limited to, charges for entertainment, alcoholic beverages, and gratuities.

III. **GUIDELINES FOR GENERAL AND ADMINISTRATIVE MARKUP.**

EXHIBIT A

1. **Requirement of Prior Approval** – Consultant may be allowed to charge a General and/or Administrative Markup on work completed if Consultant can clearly define to Town specifically what costs are included in the markup calculation. To apply General and/or Administrative Markup, Consultant must also document to Town what costs would be considered direct costs. Town shall issue approval in writing to allow Consultant to charge General and/or Administrative Markup. Town reserves the right to reject any and all requests for General and/or Administrative Markup.

IV. **GUIDELINES FOR TRAVEL AND SUBSISTENCE EXPENSES.**

1. **Adherence to Currently Adopted Town Travel Policy** – Unless otherwise stated within this Agreement, reimbursements shall be governed by the same travel policies provided for Town employees according to current adopted policy. All lodging and meals are reimbursed in accordance with IRS rules and rates as shown on the U.S. General Services Administration website for the Town: <http://www.gsa.gov/portal/category/21287>.
2. Prior to the event, Consultant shall request, and the Town shall provide the provisions and the restrictions that apply to out-of-town reimbursements.

EXHIBIT A

EXHIBIT "D" TOWN OF ADDISON PROFESSIONAL SERVICES/CONSULTANT INSURANCE GUIDELINES

REQUIREMENTS

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

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

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

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

Certificate of Liability Insurance forms (together with the endorsements necessary to meet the requirements and instructions contained herein) may be faxed to the Purchasing Department:

EXHIBIT A

972-450-7074 or emailed to: purchasing@addisontx.gov. Questions regarding required insurance should be directed to the Purchasing Manager.

With respect to the foregoing insurance,

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

All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Upon request, Contractor shall furnish the City of Addison with complete copies of all insurance policies certified to be true and correct by the insurance carrier.

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

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

AGREEMENT

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

Project/Bid# _____

Company: _____

Printed Name: _____

Signature: _____ Date: _____

EXHIBIT A

EXHIBIT "E" AFFIDAVIT

THE STATE OF TEXAS

§
§
§

THE COUNTY OF DALLAS

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

I, and/or a person or persons related to me, have the following interest in a business entity that would be affected by the work or decision on the Project (Check all that apply):

- _____ Ownership of 10% or more of the voting shares of the business entity.
- _____ Ownership of Twenty Five Thousand and 00/100 Dollars (\$25,000.00) or more of the fair market value of the business entity.
- _____ Funds received from the business entity exceed ten percent (10%) of my income for the previous year.
- _____ Real property is involved, and I have an equitable or legal ownership with a fair market value of at least Twenty Five Thousand and 00/100 Dollars (\$25,000.00).
- _____ A relative of mine has substantial interest in the business entity or property that would be affected by my business decision of the public body of which I am a member.
- _____ Other: _____
- X None of the Above.

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

Signed this 9th day of November, 2018.

Scott Russell
Signature of Official / Title

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

Sworn to and subscribed before me on this 9th day of November, 2018.



Vickie Fleming
Notary Public in and for the State of Texas
My commission expires: March 3, 2021

EXHIBIT A

EXHIBIT "F" CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

FORM CIQ CONFLICT OF INTEREST QUESTIONNAIRE For vendor or other person doing business with local governmental entity	
This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session. This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a). By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code. A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.	OFFICE USE ONLY Date Received
1. Name of person who has a business relationship with local governmental entity.	
2. Check this box if you are filing an update to a previously filed question <input type="checkbox"/> (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)	
3. Name of local government officer with whom filer has employment or business relationship. _____ Name of Local Government Officer This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary. A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire? Yes <input type="checkbox"/> No <input type="checkbox"/> B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity? Yes <input type="checkbox"/> No <input type="checkbox"/> C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more? Yes <input type="checkbox"/> No <input type="checkbox"/> D. Describe each employment or business relationship with the local government officer named in this section. _____ _____ _____ _____ _____	

EXHIBIT A

EXHIBIT "F" CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

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

Signature

Date

Local Government Officers Town of Addison, Texas

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

Mayor: Joe Chow

Council
Members: Marlin Willesen, Council Member
Guillermo Quintanilla, Council Member
Lori Ward, Council Member
Paul Walden, Council Member
Ivan Hughes, Council Member
Tom Braun, Council Member

City Manager: Wesley S. Pierson

Work Session and Regular Meeting

8.

Meeting Date: 12/11/2018

Department: Infrastructure- Development Services

Pillars: Excellence in Asset Management

AGENDA CAPTION:

Consider Action to Approve a **Resolution for a Professional Services Agreement with Garver, LLC. for the Design, Bid and Construction Phase Services Associated with the Water Chlorination Improvements Project and Authorize the City Manager to Execute the Agreement** in an Amount not to Exceed \$248,104.

BACKGROUND:

In 2017, the Town completed a comprehensive Water Distribution System Assessment that included a Capital Improvements Program (CIP) that made recommendations for the replacement of and improvements to water lines, as well as other water quality improvements. One of the water quality improvement recommendations is the addition of chlorination injection equipment to the Town's water distribution system.

The Town purchases potable water from Dallas Water Utilities. Dallas Water Utilities provides disinfected water with a chlorine residual at two entry points in town, Celestial Ground Storage Tank and Surveyor Ground Storage Tank. Because the Town does not have the ability to disinfect the water once it enters the distribution system, there is no way to inject more chlorine should the residuals fall below a safe level. The addition of a chlorine injection system provides several benefits to the water system.

- Provides for operational redundancy in the event that Dallas Water Utilities cannot provide potable water at the regulatory required chlorine residual rate due to an equipment failure, main break, or other reason.
- Provides enhanced, more consistent water quality throughout the Town's water distribution system.
- Reduces the need for flushing water lines due to low chlorine residuals in the system, particularly during the summer months. This also reduces the amount of non-revenue producing water the Town uses.
- Reduces the number of customer complaints regarding water taste, color, or odor.
- Provides an increased level of operational flexibility in water distribution system management.
- Increases the life of water system infrastructure components such as pipes, valves, and meters.

Garver was qualified through a Request for Qualifications process in 2017 to perform design, project management, and construction management related services for the Town. Garver has a long history of performing water quality improvement projects for governmental agencies. They come very highly recommended by their references and staff finds them capable of performing this work.

Garver's scope of work will include design, bid and construction phase services for this project. A more detailed breakdown of their scope of services is included below:

- Data collection and review - Engineer will obtain all necessary documents including current water distribution system models, pumping records, water storage facility as-built records, water flushing records, monthly operating reports, GIS (geographical information system) maps, previous engineering reports and records and distribution system SCADA (Supervisory Control and Data Acquisition) data.
- Design and dosage requirements - Engineer will identify the most appropriate injection site locations and prepare dosing requirements based on current water quality information. Two sites will be selected. They will prepare design documents for the chlorine equipment and housing structures. They will also prepare designs for all associated electrical and instrumentation controls to fully

integrate and automate the system into the Town's existing SCADA system. They will also develop the ongoing operational costs associated with the selected chlorine booster system.

- Regulatory Coordination - Engineer will submit plans and specifications to the Texas Commission of Environmental Quality (TCEQ) for approval. They will respond to comments and questions from TCEQ, and provide any necessary supplemental information for construction plan approval.
- Bid phase services - Garver will prepare and issue a biddable set of construction plans and specifications for the project. They will respond to questions, participate in the pre-bid meeting, issue addendum and evaluate bids for the recommendation of award.
- Construction phase services - Engineer will evaluate and respond to construction material submittals and shop drawings, respond to contractor RFI's, review pay applications, perform periodic site visits to evaluate contractor performance and prepare the final project punch list.

A detailed breakdown of Garver's proposal is provided below:

Service	Fee
Design Phase	\$197,060
Bid Phase	\$9,048
Construction Phase	\$41,996
Total	\$248,104

Design is expected to take 5 months to complete. The total cost for these engineering services is \$248,104, and it will be paid from the Water System Improvements project in the Utility Capital Improvements Program budget. The budget for this design is \$350,000.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution - Garver Chlorine Booster Station Design

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING THE AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES BETWEEN THE TOWN OF ADDISON AND GARVER, LLC., FOR DESIGN, BID, AND CONSTRUCTION PHASE SERVICES ASSOCIATED WITH THE WATER CHLORINATION IMPROVEMENTS PROJECT IN AN AMOUNT NOT TO EXCEED \$248,104.00, 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 Agreement for Professional Engineering Services between the Town of Addison and Garver, LLC., for design, bid, and construction phase services associated with the Water Chlorination Improvements Project in an amount not to exceed \$248,104.00, 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 11th day of December 2018.

Joe Chow, Mayor

ATTEST:

By: _____
Irma Parker, City Secretary

APPROVED AS TO FORM:

By: _____
Brenda N. McDonald, City Attorney

EXHIBIT A

**AGREEMENT
BETWEEN
THE TOWN OF ADDISON, TEXAS (TOWN)
AND
GARVER, LLC (CONSULTANT)
FOR
PROFESSIONAL ENGINEERING SERVICES**

Made as of the _____ day of _____ in the year 2018,

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

and the Consultant: Garver, LLC
 3010 Gaylord Parkway
 Suite 190
 Frisco, Texas 75034
 Telephone: 972-377-7480

for the following Project: Professional Engineering Services for Chloramine Booster Station

The Town and the Consultant agree as set forth below.

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

WHEREAS, the Town desires to engage the services of the Consultant to provide professional services which shall include, but not be limited to, professional engineering services for the Chloramine Booster Station within the Town of Addison, Texas; hereinafter referred to as "Project"; and

WHEREAS, the Consultant desires to render such professional engineering services for the Town upon the terms and conditions provided herein.

EXHIBIT A

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

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

ARTICLE 1 CONSULTANT'S SERVICES

- 1.1 **Employment of the Consultant** – The Town hereby agrees to retain the Consultant to perform professional engineering services in connection with the Project. Consultant agrees to perform such services in accordance with the terms and conditions of this Agreement. The standard of care for all professional services performed or furnished by Consultant under this Agreement will be the skill and care used by members of Consultant's profession practicing under similar circumstances at the same time and in the same locality.
- 1.2 **Scope of Services** – The parties agree that Consultant shall perform such services as are set forth and described in Exhibit "A," which is attached hereto and incorporated herein by reference for all purposes. The parties understand and agree that deviations or modifications to the scope of services described in Exhibit "A," in the form of written change orders, may be authorized from time to time by the Town.
 - 1.2.1 **Requirement of Written Change Order** – "Extra" work, or "claims" invoiced as "extra" work, or "claims" which have not been issued as a duly executed, written change order by the Addison Town Manager, will not be authorized for payment and/or shall not become part of the subcontracts. A duly executed written change order shall be preceded by the Addison Town Council's authorization for the Addison Town Manager to execute said change order.
 - 1.2.2 **DO NOT PERFORM ANY EXTRA WORK AND/OR ADDITIONAL SERVICES WITHOUT A DULY EXECUTED WRITTEN CHANGE ORDER ISSUED BY THE ADDISON TOWN MANAGER.** Project Managers, Superintendents, and/or Inspectors of the Town are not authorized to issue verbal or written change orders.
- 1.3 **Schedule of Work** – The Consultant agrees to commence work immediately upon the execution of this Agreement and receipt of written Notice to Proceed, and to proceed diligently with said work to completion as described in the Compensation Schedule / Project Billing / Project Budget attached hereto as **Exhibit "B"** and incorporated herein by reference for all purposes, but in no event shall the Project be completed any later than as identified in **Exhibit "A"**.
- 1.4 **Failure to Meet Established Deadlines** – Consultant acknowledges that time is of the essence in the performance of services under this Agreement as set forth in

EXHIBIT A

the Compensation Schedule / Project Billing / Project Budget attached hereto as Exhibit "B," and Town and Consultant acknowledge and agree that Consultant shall complete its obligations herein as expeditiously as possible.

ARTICLE 2 THE TOWN'S RESPONSIBILITIES

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

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

ARTICLE 3 CONSULTANT'S COMPENSATION

- 3.1 **Compensation for Consultant's Services** – As described in "Article 1, Consultant's Services," compensation for this Project shall be on a lump sum amount not to exceed **Two-hundred forty-eight thousand one hundred four and 00/100 Dollars (\$ 248,104.00)**, ("Consultant's Fee") and shall be paid in accordance with Article 3 and the Compensation Schedule / Project Billing / Project Budget as set forth in Exhibit "B."
 - 3.1.1 **Completion of Final Report** – Town and Consultant agree that each task shall be completed, submitted to, and accepted by the Town prior to payment for each task. **The Town will not make final payment until the completion of each project task.** The electronic formatting shall be consistent with the standards established in Town of Addison Guidelines for Computer Aided Design and Drafting ("CADD"). Completion of the Record Documents and/or "As-Built" documents, if any, shall be included in the Consultant's Fee and considered to be within the Scope of Services defined under this Agreement.
 - 3.1.2 **Disputes between Town and Construction Contractor** – intentionally omitted.

EXHIBIT A

3.1.3 Consultation and Approval by Governmental Authorities and Franchised Utilities – intentionally omitted.

- 3.2 **Direct Expenses** – Direct Expenses are included in the Consultant's Fee as described in Article 3.1 and include actual reasonable and necessary expenditures made by the Consultant and the Consultant's employees and subcontractors in the interest of the Project. All submitted Direct Expenses are to be within the amounts as stated in the Compensation Schedule / Project Billing / Project Budget set forth in Exhibit "B," and consistent with Exhibit "C," Town of Addison Guidelines for Direct Expenses, General and Administrative Markup, and Travel and Subsistence Expenses. The Consultant shall be solely responsible for the auditing of all Direct Expenses, including the subcontractors, prior to submitting to the Town for reimbursement, and shall be responsible for the accuracy thereof. Any overpayment by the Town for errors in submittals for reimbursement may be deducted from the Consultant's subsequent payment for services; provided, however this shall not be the Town's sole and exclusive remedy for said overpayment.
- 3.3 **Additional Services** – The Consultant shall provide the services as described in the Scope of Services as set forth in Exhibit "A" of this Agreement. If authorized in writing by the Town, the Consultant shall provide additional services, to be compensated on an hourly basis in accordance with this paragraph ("Additional Services"). These services may include, but are not limited to:
- 3.3.1 Additional meetings, hearings, work-sessions, or other similar presentations which are not provided for or contemplated in the Scope of Services described in Exhibit "A."
- 3.3.2 Additional drafts and revisions to the Project which are not provided for or contemplated in the Scope of Services as described in Exhibit "A." Drafts or revisions required as the result of errors or omissions by the Consultant shall not be considered Additional Services, but shall fall within the Scope of Services.
- 3.3.3 Additional copies of final reports and construction plans which are not provided for or contemplated in the Scope of Services as described in Exhibit "A."
- 3.3.4 Photography, professional massing models which are not provided for or contemplated in the Scope of Services as described in Exhibit "A."
- 3.3.5 Compensation for Additional Services authorized by the Town shall be in addition to the Consultant's Fee and shall be based on direct billable labor rates and expenses.
- 3.3.6 Compensation for Additional Services authorized by the Town shall be in addition to the Consultant's Fee and shall be based on an hourly basis

EXHIBIT A

according to the following personnel rates. The rates set forth in this chart are subject to reasonable change provided prior written notice of said change is given to Town.

Hourly Billable Rates by Position	
Classification	Rates
Engineers / Architects	
E-1.....	129.00
E-2.....	153.00
E-3.....	180.00
E-4.....	213.00
E-5.....	262.00
E-6.....	324.00
E-7.....	372.00
Planners / Environmental Specialist	
P-1.....	157.00
P-2.....	187.00
P-3.....	212.00
Designers	
D-1.....	117.00
D-2.....	132.00
D-3.....	157.00
D-4.....	184.00
Technicians	
T-1.....	100.00
T-2.....	129.00
T-3.....	140.00
Construction Observation	
C-1.....	110.00
C-2.....	139.00
C-3.....	168.00
C-4.....	217.00
Management/Administration	
X-1.....	75.00
X-2.....	96.00
X-3.....	153.00
X-4.....	181.00
X-5.....	191.00
X-6.....	232.00
X-7.....	270.00

EXHIBIT A

- 3.4 **Invoices** – No payment to Consultant shall be made until Consultant tenders an invoice to the Town. Consultant shall mail or email monthly invoices for Services rendered, based upon the actual percentage of work complete at the time the invoice is prepared, or upon completion of each individual task listed in Exhibit “B”. On all submitted invoices, Consultant shall include appropriate background materials to support the submitted charges on said invoice. Such background material shall include, but is not limited to, employee timesheets, invoices for work obtained from other parties, and receipts and/or log information relating to Direct Expenses. All invoices for payment shall provide a summary methodology for administrative markup and/or overhead charges.
- 3.5 **Timing of Payment** – Town shall make payment to Consultant for said invoices within thirty (30) days following receipt and acceptance thereof. The parties agree that payment by Town to Consultant is considered to be complete upon mailing of payment by Town. Furthermore, the parties agree that the payment is considered to be mailed on the date that the payment is postmarked.
- 3.6 **Disputed Payment Procedures** – In the event of a disputed or contested billing by Town, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. Town shall notify Consultant of a disputed invoice, or portion of an invoice, in writing by the twenty-first (21st) calendar day after the date the Town receives the invoice. Town shall provide Consultant an opportunity to cure the basis of the dispute. If a dispute is resolved in favor of the Consultant, Town shall proceed to process said invoice, or the disputed portion of the invoice, within the provisions of Article 3.5. If a dispute is resolved in favor of the Town, Consultant shall submit to Town a corrected invoice, reflecting any and all payment(s) of the undisputed amounts, documenting the credited amounts, and identifying outstanding amounts on said invoice to aid Town in processing payment for the remaining balance. Such revised invoice shall have a new invoice number, clearly referencing the previous submitted invoice. Town agrees to exercise reasonableness in contesting any billing or portion thereof that has background materials supporting the submitted charges.
- 3.7 **Failure to Pay** – Failure of the Town to pay an invoice, for a reason other than upon written notification as stated in the provisions of Article 3.6 to the Consultant within sixty (60) days from the date of the invoice shall grant the Consultant the right, in addition to any and all other rights provided, to, upon written notice to the Town, suspend performance under this Agreement, and such act or acts shall not be deemed a breach of this Agreement. However, Consultant shall not suspend performance under this Agreement prior to the tenth (10th) calendar day after written notice of suspension was provided to Town, in accordance with Chapter 2251, Subchapter “D” (“Remedy for Nonpayment”) of the *Texas Government Code*. The Town shall not be required to pay any invoice submitted by the Consultant if the Consultant breached any provision(s) herein.

EXHIBIT A

- 3.8 **Adjusted Compensation** – If the Scope of the Project or if the Consultant's services are materially changed due to no error on behalf of Consultant in the performance of services under this Agreement, the amounts of the Consultant's compensation shall be equitably adjusted as approved by Town. Any additional amounts paid to the Consultant as a result of any material change to the Scope of the Project shall be authorized by written change order duly executed by both parties before the services are performed.
- 3.9 **Project Suspension** – If the Project is suspended or abandoned in whole or in part for more than three (3) months, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of Town in accordance with the provisions of this Agreement prior to suspension or abandonment. In the event of such suspension or abandonment, Consultant shall deliver to Town all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs, and/or any other items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment. If the Project is resumed after being suspended for more than three (3) months, the Consultant's compensation shall be equitably adjusted as approved by the Town. Any additional amounts paid to the Consultant after the Project is resumed shall be agreed upon in writing by both parties before the services are performed.

ARTICLE 4 OWNERSHIP OF DOCUMENTS

- 4.1 **Documents Property of the Town** – The Project is the property of the Town, and Consultant may not use the documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs, and/or any materials for any other purpose not relating to the Project without Town's prior written consent. Town shall be furnished with such reproductions of the Project, plans, data, documents, maps, and any other information as defined in Exhibit "A." Upon completion of the work, or any earlier termination of this Agreement under Article 3 and/or Article 8, Consultant will revise plans, data, documents, maps, and any other information as defined in Exhibit "A" to reflect changes while working on the Project and promptly furnish the same to the Town in an acceptable electronic format. All such reproductions shall be the property of the Town who may use them without the Consultant's permission for any purpose relating to the Project, including, but not limited to, completion of the Project, and/or additions, alterations, modifications, and/or revisions to the Project.
- 4.2 **Documents Subject to Laws Regarding Public Disclosure** – Consultant acknowledges that Town is a governmental entity and that all documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs, and/or any items prepared or furnished by Consultant (and Consultant's professional associates and/or Sub-consultants) under this Agreement are instruments of service in respect of the Project and property of the Town and upon completion of the Project shall thereafter be subject to the Texas Public Information Act (Texas

EXHIBIT A

Government Code, Chapter 552) and any other applicable laws requiring public disclosure of the information contained in said documents.

ARTICLE 5 CONSULTANT'S INSURANCE REQUIREMENTS

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

EXHIBIT A

any other loss to the extent that same is covered by the proceeds of the insurance. Such policy shall require the provision of written notice to Town at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, or ten (10) days for non-payment of premium, evidenced by return receipt or United States Certified Mail. Consultant shall furnish Town with certificates evidencing such coverage prior to commencing work on the Project.

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

ARTICLE 6 CONSULTANT’S ACCOUNTING RECORDS

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

ARTICLE 7 AUDITS AND RECORDS / PROHIBITED INTEREST / VENDOR DISCLOSURE

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

EXHIBIT A

Agreement or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

The Consultant agrees that it is aware of the prohibited interest requirement of the Town Charter, which is repeated on the Affidavit, attached hereto as Exhibit "E" and incorporated herein for all purposes, and will abide by the same. Further, a lawful representative of Consultant shall execute the Affidavit attached hereto as Exhibit "E". Consultant understands and agrees that the existence of a prohibited interest during the term of this Agreement will render the Agreement voidable.

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

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

ARTICLE 8 TERMINATION OF AGREEMENT / REMEDIES

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

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

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

EXHIBIT A

ARTICLE 9 DISPUTE RESOLUTION / MEDIATION

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

ARTICLE 10 INDEMNITY

CONSULTANT SHALL HEREBY COVENANT AND CONTRACT TO WAIVE ANY AND ALL CLAIMS, RELEASE, INDEMNIFY AND HOLD HARMLESS TOWN AND ITS TOWN COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES FROM AND AGAINST ALL DAMAGES, INJURIES (INCLUDING DEATH), INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS (INCLUDING PATENT, COPYRIGHT AND TRADEMARK INFRINGEMENTS), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEYS' FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY), CAUSED OR RESULTING FROM THE NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONSULTANT, ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES, OR ANY OTHER ENTITY OVER WHICH THE CONSULTANT EXERCISES CONTROL, IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT AND/OR ARISING OUT OF PROFESSIONAL SERVICES PROVIDED BY CONSULTANT PURSUANT TO THIS AGREEMENT, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF THE TOWN (HEREINAFTER "CLAIMS"). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM "CLAIMS" IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST TOWN BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN CONSULTANT AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE CONSULTANT, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE. THIS INDEMNIFICATION SHALL EXTEND TO THE

EXHIBIT A

PAYMENT OR REIMBURSEMENT OF THE TOWN'S REASONABLE ATTORNEYS FEES AND ASSOCIATED COSTS, COURT COSTS, AND SETTLEMENT COSTS IN PROPORTION TO THE CONSULTANT'S LIABILITY.

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

THIS ARTICLE SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

ARTICLE 11 NOTICES

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

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

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

Garver, LLC
Jeff Sober, PE, - Vice President
3010 Gaylord Parkway, Suite 190
Frisco, Texas, 75034

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

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

ARTICLE 12 MISCELLANEOUS

- 12.1 **Complete Agreement** – This Agreement, including the exhibits hereto labeled "A" through "F," all of which are incorporated herein for all purposes, constitute the entire Agreement by and between the parties regarding the subject matter hereof and supersedes all prior and/or contemporaneous written and/or oral

EXHIBIT A

understandings. This Agreement may not be amended, supplemented, and/or modifies except by written agreement duly executed by both parties. The following exhibits are attached below and made a part of this Agreement:

12.1.1 Exhibit "A," Scope of Services.

12.1.2 Exhibit "B," Compensation Schedule / Project Billing / Project Budget.

12.1.3 Exhibit "C," Town of Addison Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses.

12.1.6 Exhibit "D," Town of Addison Contractor Insurance Requirements.

12.1.7 Exhibit "E," Affidavit.

12.1.8 Exhibit "F", Conflict of Interest Questionnaire, Form CIQ.

- 12.2 **Assignment and Subletting** – The Consultant agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the Town. The Consultant further agrees that the assignment or subletting or any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Consultant of its full obligations to the Town as provided by this Agreement. All such approved work performed by assignment or subletting shall be billed through Consultant, and there shall be no third party billing.
- 12.3 **Successors and Assigns** – Town and Consultant, and their partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives, and administrators are hereby bound to the terms and conditions of this Agreement.
- 12.4 **Severability** – In the event of a term, condition, or provision of this Agreement is determined to be invalid, illegal, void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect as if such invalid, illegal, void, unenforceable or unlawful provision had never been contained herein.
- 12.5 **Venue** – This entire Agreement is performable in Dallas County, Texas and the venue for any action related directly or indirectly, to this Agreement or in any manner connected therewith shall be in Dallas County, Texas, and this Agreement shall be construed under the laws of the State of Texas.
- 12.6 **Execution / Consideration** – This Agreement is executed by the parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.

EXHIBIT A

- 12.7 **Authority** – The individuals executing this Agreement on behalf of the respective parties below represent to each other that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for an on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the other party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.
- 12.8 **Waiver** – Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.
- 12.9 **Headings** – The headings of the various sections of this Agreement are included solely for convenience of reference and are not to be full or accurate descriptions of the content thereof.
- 12.10 **Multiple Counterparts** – This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.
- 12.11 **Sovereign Immunity** – The parties agree that the Town has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.
- 12.12 **Additional Representations** – Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had the opportunity to confer with its counsel.
- 12.13 **Miscellaneous Drafting Provisions** – This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply.
- 12.14 **No Third Party Beneficiaries** -- Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.
- 12.15 **No Boycott - Israel** - Pursuant to Texas Government Code Chapter 2270, Organization's execution of this Agreement shall serve as verification that the Organization does not presently boycott Israel and will not boycott Israel during the term of this Agreement.

EXHIBIT A

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

Effective Date: _____

TOWN:

Town of Addison, Texas

By: _____
Wesley S. Pierson, City Manager

Date: _____

CONSULTANT:

Garver, LLC

By:  _____
Jeff Sober, Vice President

Date: October 25, 2018

EXHIBIT A

STATE OF TEXAS

§
§
§

COUNTY OF DALLAS

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____, 2018.

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

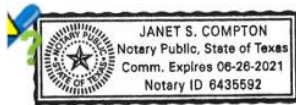
STATE OF Texas

§
§
§

COUNTY OF Collin

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 25th day of October, 2018.



Notary Public In and For the State of Texas
My commission expires: June 26, 2021

EXHIBIT A

EXHIBIT "A" SCOPE OF SERVICES

Agreement by and between the Town of Addison, Texas (Town) and Garver, LLC (Consultant) to perform Professional Engineering Services for Chloramine Booster Station

1.1 General

Generally, the scope of services includes conceptual evaluation, design, and construction services for improvements to the Town of Addison's (Owner's) water distribution system. Currently the Owner does not have the ability to boost chloramine within their distribution system. However, the Owner is planning to implement booster chloramination at two strategic locations within the distribution system to improve water quality. This scope of services will identify the most optimal location for booster chloramination, coordination with TCEQ, coordination with skid-mounted chemical feed system suppliers, as well as general guidance for installation of the systems. This scope of services will also include final design, bid phase, and construction services for permanent booster chloramination facilities.

1.2 Data Collection and Review

The goal of this task is to obtain and analyze the pertinent existing water quality and distribution system data. Garver will prepare a formal data request, which will include but is not limited to the following data requests:

- Current water distribution system modeling files
- Conveyance, distribution, pumping and storage infrastructure record drawings
- Pump curves for existing water distribution pumps
- Existing nitrification action plan and associated water quality test results
- Ancillary GIS data base (if available) to include land use, roadways, parcels, structures, topography, water/wastewater and other utility infrastructure
- Flushing records
- Previous Master Plans or Engineering Reports related to the water system
- Current Water CIP
- Monthly Operating Reports for the potable water system from the last three years, including water quality parameters.
- Distribution system SCADA historian data for the last 12 months

Once all initial data is received Garver will prepare a list of data deficiencies and meet with the Owner to develop a plan to obtain remaining data or develop a basis of assumptions from which to proceed. Garver will summarize and document all above information as necessary to establish existing system baseline.

Scope Item Assumptions:

- Current water distribution system modeling files are available
- SCADA historian data water flow information is available in electronic format
- Previous sampling and testing results are in electronic format
- Record drawing files will be provided in electronic (.DWG, .PDF or .JPEG) format
- Engineering reports will be provided in electronic (.PDF) format.

Meetings:

- One (1) workshop for review of data received and establish assumptions or to develop a plan for obtaining remaining information

Deliverables:

- Data request letter transmitted electronically in PDF format.

EXHIBIT A

EXHIBIT "A" SCOPE OF SERVICES

1.3 Field Visits and Staff Interviews

Garver will perform a field investigation to develop an accurate understanding of condition and service of the booster pump stations and storage tanks within the water distribution system. Garver will document information regarding the summer and winter operations as well as the extent of influence of each water distribution pump station and any practices to increase water quality such as system flushing. Garver will also interview Owner staff at each location to document operational challenges. Garver will review water distribution system maps with Owner staff to develop an understanding of water quality issues and customer complaints.

Scope Item Assumptions:

- Field investigation of each facility is not a full condition assessment.
- Site visits for all facilities will be performed in one day.

Meetings:

- One (1) site visit to each facility that may have need for a booster chloramination facility.

Deliverables:

- One PDF memorandum documenting the findings of the site visits.

1.4 Siting Evaluation and Dose Requirements

The goal of this task is to identify the most-appropriate feed point(s) for booster chloramination within the Owner's water distribution system, identify the type and volume of chemicals to be dosed, and to anticipate a dosage rate of each chemical. Liquid sodium hypochlorite and liquid ammonium sulfate, or liquid sodium hypochlorite alone are anticipated to be the selected chemicals. Additionally, Garver will determine minimum chemical storage requirements to be maintained during high and low chemical dosing times of the year. Garver will review the previous water distribution system model, system maps, water quality data, and staff interview reports to site the booster facilities and develop dose and feed rate requirements for each site. The potential booster sites will be limited to those that are currently owned by the Town of Addison and that have the facilities available to support the installation of booster chloramination facilities. At a minimum, each site should have available power and the ability to tie into the City's SCADA system.

Garver will document the findings and recommendations in a Draft Technical Memorandum. Following receipt of Owner's review comments, Garver will incorporate the comments and produce a Final Technical Memorandum.

Scope Item Assumptions:

- Development of a new water distribution model is not included in this task
- Population and flow projections are not included in this task
- Demand allocation and/or development of diurnal demand curves are not included in this task
- No new water age evaluations will be conducted – the water age evaluations conducted by a separate consultant will be utilized along with Nitrification Action Plan and other sampling data to determine water age/ chloramine decay issues within the existing system.
- Proposed location/s will be based on review of available information
- Two sites will be selected and evaluated
- Feed rates and storage requirements for each site will be evaluated
- Dosage ranges based on influent water quality and operational goals will be evaluated

Meetings:

- One (1) workshop to review findings of booster chemical feed siting evaluation following delivery of the Draft Technical Memorandum.

EXHIBIT A

EXHIBIT "A" SCOPE OF SERVICES

Deliverables:

- One (1) PDF and three (3) hard copies of Draft Technical Memorandum documenting findings for siting the booster chemical feed facilities
- One (1) PDF and three (3) hard copies of Final Technical Memorandum documenting findings for siting the booster chemical feed facilities

1.5 Conceptual Design of Chemical Feed Booster Facilities

The goal of this task is to develop conceptual designs for booster chemical feed facilities to meet immediate needs for improving combined chlorine residual within the distribution system. After completion of Tasks 1.2, 1.3, and 1.4, conceptual design of chloramine or chlorine booster facilities will be initiated. In general, the conceptual design documents will include the following:

- Process flow diagram for each booster chloramination system location which will identify number of tanks, containment, metering pumps, injection points, mixers, sample taps and analyzer locations
- Overall site plans to identify space and delivery requirements for each booster chloramination location
- Scope of supply for manufacturer's skid mounted system
- Feed rates and storage requirements for each site
- Dosage adjustment procedures based on influent water quality and operational goals
- An overall OPCC for the improvements (does not include chemical cost estimates)

Scope Item Assumptions:

- Up to two facility locations will be identified
- One small storage shed at each location is anticipated, to house the feed pumps, chemical storage, and any ancillary control panels. The exterior of the sheds will resemble other buildings at the selected locations.
- A minimum of two manufacturers will be coordinated
- Bid phase services are not included in this task
- Installation or construction administration services beyond three site visits to coordinate installation are not included in this task
- Chlorine gas systems will not be considered in this evaluation

Meetings:

- One (1) workshop to review conceptual design and OPCC of temporary facilities

Deliverables:

- One (1) PDF and three (3) hard copies of conceptual design documents.
- One (1) final set of conceptual documents in a PDF format.

1.6 Final Design

After confirmation of chloramine booster facility locations and design parameters, the design for permanent facilities will be initiated. Chloramine booster facilities will be designed to include the following major components:

- Pre-fabricated storage and spill containment for chemical totes (no bulk storage facilities will be designed)
- Packaged chemical feed pumps, analyzers, and control panels
- Chemical injectors and mixers
- Associated electrical and instrumentation/controls for a fully automated system that can be controlled through the Owner's SCADA system

EXHIBIT A

EXHIBIT "A" SCOPE OF SERVICES

- No air conditioning will be included for chemical storage facilities.

It is assumed that a new storage shed will be required for each location, and will resemble other buildings at the surrounding area. No major site modifications are anticipated with the implementation of the storage sheds.

Meetings:

- One (1) workshop to review 90% design of the booster chloramination facilities

Deliverables:

- One electronic (.PDF format) copy and three (3) hard copies of the 90% plans (11x17), technical specifications, and opinion of probable construction cost
- One electronic (.PDF format) copy and three (3) hard copies of the 100% plans (11x17), technical specifications, and opinion of probable construction cost
- One electronic (.PDF format) copy of the meeting minutes from the design review workshop

1.7 Regulatory Coordination

Garver will provide TCEQ with plans and specifications, answer questions via telephone which may arise during the review process, and provide supplemental information to support the design.

Assumptions:

- This subtask assumes one submittal is required to TCEQ. No additional permitting is included with this scope.

Deliverables:

- One electronic (.PDF format) and one printed copy of plans and specifications to TCEQ

1.8 Bid Phase Services

During the bidding phase of the project, Garver will:

- Prepare and submit Advertisement for bids to newspaper(s) for publication as directed by the Owner. Owner will pay advertising costs outside of this contract.
- Support the contract documents by preparing addenda as appropriate.
- Participate in a pre-bid meeting.
- Attend the bid opening
- Prepare bid tabulation.
- Evaluate bids and recommend award.

1.9 Construction Phase Services

During the construction phase of work, Garver will accomplish the following:

1. Issue a Notice to Proceed letter to the Contractor and attend preconstruction meeting.
2. Attend up to two (2) progress/coordination meetings with the Owner/Contractor.
3. Evaluate and respond to construction material submittals and shop drawings. Corrections or comments made by Garver on the shop drawings during this review will not relieve Contractor from compliance with requirements of the drawings and specifications. The check will only be for review of general conformance with the design concept of the project and general compliance with the information given in the contract documents. The Contractor will be responsible for confirming and correlating all quantities and dimensions, selecting fabrication processes and

EXHIBIT A

EXHIBIT "A" SCOPE OF SERVICES

techniques of construction, coordinating his work with that of all other trades, and performing his work in a safe and satisfactory manner. Garver's review shall not constitute approval of safety precautions or constitute approval of construction means, methods, techniques, sequences, procedures, or assembly of various components. When certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, either directly or implied for a complete and workable system, Garver shall be entitled to rely upon such submittal or implied certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

4. Issue instructions to the Contractor on behalf of the Owner and issue necessary clarifications (respond to RFIs) regarding the construction contract documents.
5. Review the Contractor's monthly progress payment requests based on the actual quantities of contract items completed and accepted, and will make a recommendation to the Owner regarding payment. Garver's recommendation for payment shall not be a representation that Garver has made exhaustive or continuous inspections to (1) check the quality or exact quantities of the Work; (2) to review billings from Subcontractors and material suppliers to substantiate the Contractor's right to payment; or (3) to ascertain how the Contractor has used money previously paid to the Contractor.
6. Based upon Owner and Contractor redlines, prepare and furnish record drawings.
7. Provide one electrical observation site visit by one Garver personnel during the construction contract performance time. If the Owner wishes to increase the frequency of the observation, the Owner will pay Garver an additional fee agreed to by the Owner and Garver.
8. When authorized by the Owner, prepare up to one change order for changes in the work from that originally provided for in the construction contract documents. If redesign or substantial engineering or surveying is required in the preparation of these change order documents, the Owner will pay Garver an additional fee to be agreed upon by the Owner and Garver.
9. Participate in final project inspection, prepare punch list, review final project closing documents, and submit final pay request.

In performing construction observation services, Garver will endeavor to protect the Owner against defects and deficiencies in the work of the Contractor(s); but Garver cannot guarantee the performance of the Contractor(s), nor be responsible for the actual supervision of construction operations or for the safety measures that the Contractor(s) takes or should take. However, if at any time during construction Garver observes that the Contractor's work does not comply with the construction contract documents, Garver will notify the Contractor of such non-compliance and instruct him to correct the deficiency and/or stop work, as appropriate for the situation. Garver will also record the observance, the discussion, and the actions taken. If the Contractor continues without satisfactory corrective action, Garver will notify the Owner immediately, so that appropriate action under the Owner's contract with the Contractor can be taken.

The contract duration is anticipated to extend for 120 days. If construction duration extends beyond 120 days and additional involvement from Garver is warranted, the additional involvement will be considered Extra Work.

1.10 Extra Work

The following items are not included under this agreement but will be considered as extra work:

- Additional time that would be encountered due to stoppages/delays in the design
- Water quality sampling and testing
- Site visits for flow/pressure testing
- Flow projections or population projections
- Operations manuals
- Clean up of contaminated materials

EXHIBIT A

EXHIBIT "A" SCOPE OF SERVICES

- Funding assistance
- Flow monitoring beyond existing meter data
- Geocoding of any water meters
- Bulk storage of chemicals
- HVAC design or structural design
- Public outreach
- Impact fee determination
- Emergency response planning
- Hazard mitigation planning
- Asbestos or lead paint removal
- Advanced restoration features
- Arc Flash Analysis
- SCADA/PLC programming
- Staff training
- Energy certification/commissioning- LEED, USGBC, Energy Star, etc.
- Building energy modeling reports
- Utility cost modeling or rate studies
- Start-up and commissioning
- Additional visits during start-up and operation of the facilities
- RPR inspection services

Extra Work will be as directed by the Owner in writing for an additional fee as agreed upon by the Owner and Garver.

1.11 Schedule

Garver shall begin work under this Agreement within ten (10) days of a Notice to Proceed and shall complete the work within 270 calendar days. This is contingent upon receiving requested information within a timely manner. Work shall be in accordance with the schedule below:

Phase Description	Calendar Days
Data Collection and Review	14 days upon receipt of data
Field Visits and Staff Interviews	21 days
Siting Evaluation and Dose Requirements	30 days
Conceptual Design	45 days
Final Design	45 days
Regulatory Coordination	Upon completion of Final Design
Bidding Services	30 days from approval of Final Design
Construction Services	120 days from Notice to Proceed to the Contractor

EXHIBIT A

EXHIBIT "B" PROFESSIONAL ENGINEERING SERVICES FEE SUMMARY

Agreement by and between the Town of Addison (Town)
and Garver, LLC (Consultant)
to perform Professional Engineering Services for
Chloramine Booster Station

I. COMPENSATION SCHEDULE / PROJECT BILLING SUMMARY.

FEE SUMMARY

Title I Services	Estimated Fees
Preliminary Design	\$101,094.00
Final Design	\$95,966.00
Bid Phase Services	\$9,048.00
Construction Phase Services	\$41,996.00
Subtotal for Title I Services	\$248,104.00

EXHIBIT A

EXHIBIT "C" TOWN OF ADDISON GUIDELINES FOR DIRECT EXPENSES; GENERAL AND ADMINISTRATIVE MARKUP; TRAVEL AND SUBSISTENCE EXPENSES

- I. **CONSULTANT'S RESPONSIBILITY**. The Consultant shall be solely responsible for the auditing of all direct expense, approved markup (general and/or administrative), and approved travel and/or subsistence charges, including those to be included under a sub-contract, prior to the Town for reimbursement, and Consultant shall be responsible for the accuracy thereof. Any overpayment by the Town for errors in submittals for reimbursement may be deducted from the Consultant's subsequent payment(s) for services; however, this shall not be the Town's sole and exclusive remedy for said overpayment.
- II. **GUIDELINES FOR DIRECT EXPENSES**.
 - A. **Local Transportation** – Transportation in connection with the Project, when such transportation is not a function of routine performance of the duties of the Consultant in connection with the Project, and when such transportation exceeds beyond fifty (50) miles from the Project site, shall be reimbursed at a standard mileage rate consistent with that as issued, and periodically revised, by the United States Internal Revenue Service (IRS). Under no circumstances shall Town reimburse Consultant at a higher standard mileage rate or pay additional markup on charges for local transportation. Completion of Town's Standard Mileage Log is required for submittal of these charges for reimbursement, including justification for each submitted expense.

Under no circumstances are charges associated with rental cars for local transportation eligible for reimbursement by Town. Consultant agrees to place these standards in all subcontracts for work on the Project.
 - B. **Supplies, Material, Equipment** – Town shall reimburse the actual cost of other similar direct Project-related expenses, which are duly presented in advance and approved by Town's Project Manager in writing.
 - C. **Commercial Reproduction** – Town shall reimburse the actual cost of reproductions, specifically limited to progress prints prepared for presentation to Town at each phase of progress, and final Construction Documents prepared for distribution at bidding phase, provided that the Consultant has duly obtained at least three (3) quotations from commercial firms and has chosen the best value for the Town. Consultant shall provide such documentation to Town for review prior to submitting these expenses for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.
 - D. **In-House Reproduction** - Consultant shall make arrangements with the Town for prior approval of in-house reproduction rates prior to submitting these expenses for reimbursement. Town shall provide Consultant with a standard format for documenting these charges. Completion of the Town's reproduction log is required as a prerequisite for payment, including the number or reproductions, the date, time, description, the approved standard rate, and a justification for each

EXHIBIT A

submitted expense for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.

- E. **Commercial Plotting** – Town shall reimburse the actual cost of plots, specifically limited to final documents, provided the Consultant has duly obtained at least three (3) quotations from commercial firms and has chosen the best value for the Town. Consultant shall provide such documentation to Town for review prior to submitting these expenses for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.
- F. **In-House Plotting** – Consultant shall make arrangements with Town for prior written approval of in-house plotting rates prior to submitting these charges for reimbursement. Town shall provide Consultant with a standard format for documenting these charges. Completion of the Town's reproduction log is required as a prerequisite for payment, including the number of plots, the date, time, description, the approved standard rate, and a justification for each submitted charge for reimbursement.
- G. **Communications** – Reimbursement for expenses relating to electronic communications shall be limited to long-distance telephone or fax toll charges specifically required in the discharge of professional responsibilities related to the Project. Telephone service charges including office or cellular phones, WATTS, or Metro line services or similar charges are not reimbursable.
- H. **Postage, Mail, and Delivery Service** – Town shall reimburse the actual cost of postage and delivery of Instruments of Service, provided the Consultant duly considers all circumstances (including available time for assured delivery) of the required delivery and selects the best value for the Town, which may require comparison of delivery costs offered by three (3) or more sources or methods of delivery, which at a minimum shall include U.S. Mail. Courier service is acceptable only in circumstances requiring deadline-sensitive deliveries and not for the convenience of the Consultant and/or the Consultant's employees. Consultant agrees to place these standards in all subcontracts for work on the Project.
- I. **Meals and Other Related Charges** – Meals or any other related expenses are not reimbursable unless incurred outside a fifty (50) mile radius of the Project, and then only reimbursable for the actual cost subject to compliance with the Town's currently adopted policy. Non-allowable costs include, but are not limited to, charges for entertainment, alcoholic beverages, and gratuities.

III. **GUIDELINES FOR GENERAL AND ADMINISTRATIVE MARKUP.**

- 1. **Requirement of Prior Approval** – Consultant may be allowed to charge a General and/or Administrative Markup on work completed if Consultant can clearly define to Town specifically what costs are included in the markup calculation. To apply General and/or Administrative Markup, Consultant must also document to Town

EXHIBIT A

what costs would be considered direct costs. Town shall issue approval in writing to allow Consultant to charge General and/or Administrative Markup. Town reserves the right to reject any and all requests for General and/or Administrative Markup.

IV. GUIDELINES FOR TRAVEL AND SUBSISTENCE EXPENSES.

1. **Adherence to Currently Adopted Town Travel Policy** – Unless otherwise stated within this Agreement, reimbursements shall be governed by the same travel policies provided for Town employees according to current adopted policy. All lodging and meals are reimbursed in accordance with IRS rules and rates as shown on the U.S. General Services Administration website for the Town: <http://www.gsa.gov/portal/category/21287>.
2. Prior to the event, Consultant shall request, and the Town shall provide the provisions and the restrictions that apply to out-of-town reimbursements.

EXHIBIT A

EXHIBIT "D" TOWN OF ADDISON PROFESSIONAL SERVICES/CONSULTANT INSURANCE GUIDELINES

REQUIREMENTS

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

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

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

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

Certificate of Liability Insurance forms (together with the endorsements necessary to meet the requirements and instructions contained herein) may be **faxed** to the Purchasing Department:

EXHIBIT A

972-450-7074 or emailed to: purchasing@addisontx.gov. Questions regarding required insurance should be directed to the Purchasing Manager.

With respect to the foregoing insurance,

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

All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Upon request, Contractor shall furnish the City of Addison with complete copies of all insurance policies certified to be true and correct by the insurance carrier.

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

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

AGREEMENT

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

Project/Bid# Chloramine Booster Station - 17088170

Company: Garver, LLC

Printed Name: Jeff Sober, PE

Signature:  Date: October 25, 2018

EXHIBIT A

EXHIBIT "E" AFFIDAVIT

THE STATE OF TEXAS

§

§

THE COUNTY OF DALLAS

§

I, Jeffrey Sober, a member of Garver, LLC, make this affidavit and hereby on oath state the following:

I, and/or a person or persons related to me, have the following interest in a business entity that would be affected by the work or decision on the Project (Check all that apply):

- _____ Ownership of 10% or more of the voting shares of the business entity.
- _____ Ownership of Twenty Five Thousand and 00/100 Dollars (\$25,000.00) or more of the fair market value of the business entity.
- _____ Funds received from the business entity exceed ten percent (10%) of my income for the previous year.
- _____ Real property is involved, and I have an equitable or legal ownership with a fair market value of at least Twenty Five Thousand and 00/100 Dollars (\$25,000.00).
- _____ A relative of mine has substantial interest in the business entity or property that would be affected by my business decision of the public body of which I am a member.
- _____ Other: _____.
- X _____ None of the Above.

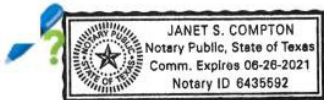
Upon filing this affidavit with the Town of Addison, Texas, I further affirm that no relative of mine, in the first degree by consanguinity or affinity, as defined in Chapter 573 of the Texas Government Code, is a member of a public body which took action on the agreement.

Signed this 25th day of October, 2018.

Jeffrey Sober, Vice President
Signature of Official / Title

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

Sworn to and subscribed before me on this 25th day of October, 2018.



Janet Compton
Notary Public in and for the State of Texas
My commission expires: June 26, 2021

EXHIBIT A

EXHIBIT "F" CONFLICT OF INTEREST QUESTIONNAIRE / FORM CIQ

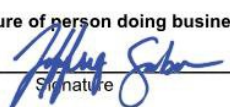
FORM CIQ CONFLICT OF INTEREST QUESTIONNAIRE For vendor or other person doing business with local governmental entity	
This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session. This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a). By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code. A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.	OFFICE USE ONLY
1. Name of person who has a business relationship with local governmental entity.	Date Received
2. Check this box if you are filing an update to a previously filed question <input type="checkbox"/>	
(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)	
3. Name of local government officer with whom filer has employment or business relationship. _____ Name of Local Government Officer This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary. A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire? Yes <input type="checkbox"/> No <input type="checkbox"/> B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity? Yes <input type="checkbox"/> No <input type="checkbox"/> C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more? Yes <input type="checkbox"/> No <input type="checkbox"/> D. Describe each employment or business relationship with the local government officer named in this section. _____ _____ _____ _____	
4. Signature of person doing business with the governmental entity Date:  _____ Signature October 25, 2018 Date	

EXHIBIT A

EXHIBIT "F" CONFLICT OF INTEREST QUESTIONNAIRE / FORM CIQ

Local Government Officers Town of Addison, Texas

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

Mayor:	Joe Chow
Council Members:	Paul Walden, Mayor Pro Tempore Tom Braun, Deputy Mayor Pro Tempore Ivan Hughes, Council Member Guillermo Quintanilla, Council Member Lori Ward, Council Member Marlin Willesen, Council Member
City Manager:	Wesley S. Pierson

Work Session and Regular Meeting

9.

Meeting Date: 12/11/2018

Department: Parks & Recreation

Pillars: Excellence in Asset Management

Milestones: Maximize use of cutting edge technology to enhance public safety

AGENDA CAPTION:

Consider Action to Approve a **Resolution for a Contract Agreement for Turnkey Landscape & Irrigation Maintenance for Vitruvian Park, Surveyor Water Tower & Demonstration Gardens along with Medians on Spring Valley Road, Belt Line Road, Midway Road, Arapaho Road and Dallas Parkway Rights-of-Ways to Carruther's Landscape Management, Inc. and Authorize the City Manager to Execute the Agreement** in an Amount not to Exceed \$96,000.

BACKGROUND:

The Parks department manages the contract for the landscape maintenance of Vitruvian Park, Belt Line Road (between Marsh and the Dallas North Tollway) and the Surveyor Water Tower & Demonstration Gardens. The existing contract for this work expires December 31, 2018. The Parks department rebid the contract and also included additional areas in the bid. Those additional areas include the landscape maintenance of medians on Spring Valley Road, Belt Line Road (from North Dallas Tollway to Preston Road), Midway Road and Arapaho Road along with the landscape maintenance for the Dallas Parkway Right-of-Way. The additional areas added to the landscape maintenance contract are funded from the reallocation of a Groundskeeper III position to maintenance contracts. The scope of work includes turnkey landscape maintenance for all lawn, trees, shrubs, turf, ground cover, annuals, perennials and irrigation.

A bid was posted to Bidsync October 11, 2018 and was closed on November 6, 2018. Two (2) vendors submitted bids:

Vendor	Bid Amount
Carruther's Landscape Management, Inc.	\$96,000
Greener Pastures Landscape, LLC	\$693,922

Carruther's Landscape Management was the lowest responsible bidder. The Town inquired of Greener Pastures why their bid was significantly higher than the current contract the Town has in place. Greener Pastures informed the Town that they miscalculated their bid. Carruther's currently maintains other landscape areas for the Town and has a good working relationship with the Town. Staff recommends awarding the contract to Carruther's Landscape Maintenance, Inc.

This is an annual renewable contract that can be extended for five (5) twelve-month periods under the same terms and conditions as the original contract.

The total annual cost will not exceed \$96,000. The budgeted amount for this item is \$106,650 in the Parks Department Budget in the General Fund.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution - Contract Agreement with Carruthers Landscape Management
Bid Packet - Landscape and Irrigation Maintenance

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A CONTRACT AGREEMENT BETWEEN THE TOWN OF ADDISON AND CARRUTHERS LANDSCAPE MANAGEMENT, INC., FOR TURNKEY LANDSCAPE / IRRIGATION MAINTENANCE OF THE VITRUVIAN PARK, SURVEYOR WATER TOWER & DEMONSTRATION GARDENS ALONG WITH MEDIANS ON SPRING VALLEY ROAD, BELT LINE ROAD, MIDWAY ROAD, AND ARAPAHO ROAD AND INCLUDING DALLAS PARKWAY RIGHT-OF-WAY IN AN AMOUNT NOT TO EXCEED \$96,000.00 ANNUALLY, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT, AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. The Contract Agreement between the Town of Addison and Carruthers Landscape Management, Inc. for turnkey Landscape / Irrigation Maintenance of Vitruvian Park, Surveyor Water Tower & Demonstration Gardens along with medians on Spring Valley Road, Belt Line Road, Midway Road, Arapaho Road and Dallas Parkway Rights-of-Way in an amount not to exceed \$96,000.00 annually, a copy of which is attached to this Resolution as **Exhibit A** and which incorporates the Town of Addison's General and Specific Conditions for construction contracts, and the Advertisement for Bids, Instruction to Bidders, General Provisions, Special Provisions, Plans and other bid documents, 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 11th day of December, 2018.

Joe Chow, Mayor

ATTEST:

By: _____
Irma Parker, City Secretary

APPROVED AS TO FORM:

By: _____
Brenda N. McDonald, City Attorney

EXHIBIT A
CONTRACT
AGREEMENT

STATE OF TEXAS

COUNTY OF DALLAS

THIS AGREEMENT is made and entered into this 11th day of December, 2018, by and between the Town of Addison, of the County of Dallas and State of Texas, acting through its City Manager, thereunto duly authorized so to do, Party of the First Part, hereinafter termed the OWNER, and Carruther's Landscape Management, Inc., of the City of Dallas, County of Dallas, State of Texas, Party of the Second Part, hereinafter termed CONTRACTOR.

WITNESSETH: That for and in consideration of the payment and agreement hereinafter mentioned, to be made and performed by the OWNER, the said CONTRACTOR hereby agrees with the said OWNER to commence and complete the services of your response to our bid:

Maintenance for Vitruvian Park & Other Areas 19-07

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

The OWNER agrees to pay the CONTRACTOR \$ 96,000.00, in current funds for the performance of the Contract in accordance with the Bid submitted thereof, subject to additions and deductions, as provided in the General Provisions, and to make payments of account thereof as provided therein.

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

TOWN OF ADDISON
(OWNER)

ATTEST:

By: _____
Wesley S. Pierson, City Manager

City Secretary

Date: _____

Carruther's Landscape Management, Inc.

(CONTRACTOR)

By: [Signature]

Printed Name: BEN CANTONIS

Title: PRESIDENT

Date: Nov. 30, 2018

ATTEST:

By: [Signature]

Printed Name: Devin Lamotta

Title: Account Manager

Date: 11-30-18

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

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

Signed: [Signature]

Corporate Seal

Solicitation 19-07

Maintenance for Vitruvian Park & Other Areas

Bid Designation: Regional



Town of Addison

Bid 19-07

Maintenance for Vitruvian Park & Other Areas

Bid Number	19-07
Bid Title	Maintenance for Vitruvian Park & Other Areas
Bid Start Date	Oct 11, 2018 9:42:41 AM CDT
Bid End Date	Nov 6, 2018 2:00:00 PM CST
Question & Answer End Date	Nov 1, 2018 12:00:00 PM CDT
Bid Contact	Wil Newcomer Purchasing Manager
Bid Contact	Ron Lee
Bid Contact	Michele Womack Accounting Specialist Finance
Contract Duration	1 year
Contract Renewal	5 annual renewals
Prices Good for	1 year
Pre-Bid Conference	Oct 23, 2018 10:00:00 AM CDT Attendance is optional Location: Town of Addison Service Center 16801 Westgrove Dr., Addison, TX 75001
Bid Comments	Turnkey maintenance of Vitruvian Park, Spring Valley Road Medians, Belt Line Road Medians, Midway Road Medians, Arapaho Road Medians, Dallas Parkway Rights-Of-Ways, and Surveyor Water Tower & Demonstration Gardens. *NO FAX OR EMAIL SUBMITTALS ACCEPTED.

Item Response Form

Item	19-07--01-01 - Vitruvian Park
Quantity	1 month
Unit Price	<input type="text"/>
Delivery Location	Town of Addison <u>Addison Finance Building</u> 5350 Belt Line Road Dallas TX 75254 Qty 1

Description

Turnkey professional maintenance of the landscaping at Vitruvian Park while strictly adhering to the bid specifications.

Item **19-07--01-02 - ALTERNATE - Spring Valley Road Medians**

Quantity **1 month**

Unit Price

Delivery Location **Town of Addison**

Addison Finance Building

5350 Belt Line Road

Dallas TX 75254

Qty 1

Description

Turnkey professional maintenance of landscaping on the medians in the center of Spring Valley Rd. while strictly adhering to the bid specifications.

Item **19-07--01-03 - ALTERNATE - Belt Line Road Medians**

Quantity **1 month**

Unit Price

Delivery Location **Town of Addison**

Addison Finance Building

5350 Belt Line Road

Dallas TX 75254

Qty 1

Description

Turnkey professional maintenance of the landscaping on the medians in the center of Belt Line Rd. while strictly adhering to the bid specifications.

Item **19-07--01-04 - ALTERNATE - Midway Road Medians**

Quantity **1 month**

Unit Price

Delivery Location **Town of Addison**

Addison Finance Building

5350 Belt Line Road

Dallas TX 75254

Qty 1

Description

Turnkey professional maintenance of the landscaping on the medians in the center of Midway Rd. while strictly adhering to the bid specifications.

Item **19-07--01-05 - ALTERNATE - Arapaho Road Medians**

Quantity **1 month**

Unit Price

Delivery Location **Town of Addison**

Addison Finance Building

5350 Belt Line Road

Dallas TX 75254

Qty 1

Description

Turnkey professional maintenance of the landscaping on the medians in the center of Arapaho Rd. while strictly adhering to the bid specifications.

Item	19-07--01-06 - ALTERNATE - Dallas Parkway Right-Of-Ways
Quantity	1 month
Unit Price	<input type="text"/>
Delivery Location	Town of Addison
	<u>Addison Finance Building</u>
	5350 Belt Line Road
	Dallas TX 75254
	Qty 1

Description

Turnkey professional maintenance of the landscaping of the Dallas Pkwy. Rights-of-ways while strictly adhering to the bid specifications.

Item	19-07--01-07 - Surveyor Water Tower & Demonstration Gardens
Quantity	1 month
Unit Price	<input type="text"/>
Delivery Location	Town of Addison
	<u>Addison Finance Building</u>
	5350 Belt Line Road
	Dallas TX 75254
	Qty 1

Description

Turnkey professional maintenance of the landscaping at the Surveyor Water Tower and Demonstration Gardens while strictly adhering to the bid specifications.

Item	19-07--01-08 - Hourly Rate - Irrigation
Quantity	1 each
Unit Price	<input type="text"/>
Delivery Location	Town of Addison
	<u>Addison Finance Building</u>
	5350 Belt Line Road
	Dallas TX 75254
	Qty 1

Description

Provide an hourly rate while strictly adhering to the bid specifications for irrigation repairs not included in the scope of services within the bid document.

Item	19-07--01-09 - Hourly Rate - Planting
Quantity	1 each
Unit Price	<input type="text"/>
Delivery Location	Town of Addison
	<u>Addison Finance Building</u>
	5350 Belt Line Road
	Dallas TX 75254
	Qty 1

Description

Provide an hourly rate while strictly adhering to the bid specifications for the installation of requested replacement plantings.



FINANCE DEPARTMENT / PURCHASING DIVISION 5350 Belt Line Road
(972) 450-7071 – Facsimile (972) 450-7074 Post Office Box 9010 Addison, Texas 75001

INVITATION TO BID

The Town of Addison is accepting bids from all interested parties for:

Bid No: 19-07

Bid Name: **Vitruvian Park, Spring Valley Road Medians, Belt Line Road Medians,
Midway Road Medians, Arapaho Road Medians, Dallas Parkway Rights-Of-Ways,
and Surveyor Water Tower & Demonstration Gardens
– Turnkey Landscape/Irrigation Maintenance-**

Voluntary

Pre- Bid: Tuesday, October 23, 2018 at 10:00 am
Town of Addison Service Center, 1st Floor Breakroom
16801 Westgrove Drive
Addison, Texas 75001

Bids Closing: Tuesday, November 6, 2018 at 2:00 pm
Purchasing Division
Town of Addison Finance Building
5350 Belt Line, Dallas, Texas 75254

SCOPE OF WORK:

The work involves providing the highest quality turnkey professional landscape and irrigation maintenance at the specified locations while strictly adhering to the bid specifications. All work to be performed within the scope of these specifications shall be strictly managed, executed and performed by experienced personnel using only sound horticultural and irrigation practices.

Take special note of the area designated as Organic Only for the use of the organic products specified for the maintenance of one property in this contract and the 'Alternates' pricing for the maintenance of all the medians within these bid specifications along with other pricing requests.

Since Bidsync.com maintains the vendor files for the Town of Addison, bidders do not need to notify the Town if they do not intend to bid on this project. For vendors that would like to be removed from the bidder's list, please notify the Town of Addison in writing.

Please pay particular attention to Receipt and Preparation of the bid.

Questions concerning the bidding process shall be posted through BidSync. Questions will be answered in a timely manner. All participating vendors will be able to see all answers.

**VITRUVIAN PARK, SPRING VALLEY ROAD MEDIANS, BELT LINE ROAD MEDIANS, MIDWAY ROAD MEDIANS,
ARAPAHO ROAD MEDIANS, DALLAS PARKWAY RIGHTS-OF-WAYS, AND SURVEYOR WATER TOWER &
DEMONSTRATION GARDENS
-TURNKEY LANDSCAPE/IRRIGATION MAINTENANCE-**

BID #19-07

PART 1 - GENERAL

1.1 STATEMENT OF INTENT

The Maintenance Contractor is hereby made aware that the Owner anticipates that the landscape and irrigation maintenance at the sites to follow shall be of the highest quality. All work to be performed within the scope of these specifications shall be strictly managed, executed, and performed by experienced personnel using only sound horticultural and irrigation practices.

Take special note of the area designated as Organic Only for the use of the organic products specified for the maintenance of one property in this contract. Also take note of the specific mowing requirements of the turf in the landscape enhanced areas at Vitruvian Park between the concrete trail and the water's edge.

Note: Pricing for 'Alternates' shall be requested with this bid. The 'Alternates' may be taken in whole or in part.

All 'Alternates' shall adhere to the non-organic specification within this bid.

Note: Subcontractors shall not be allowed under this contract.

1.2 AWARD OF CONTRACT

The Town of Addison reserves the right to reject any or all bids, reject any particular item on a bid, and to waive immaterial formalities. The contract will be awarded to the lowest responsible bidder whose bid is most advantageous to the city, price and other factors considered.

1.3 CONTRACT PERIOD

The first term of the contract shall be for a period of twelve (12) months beginning on the date of contract award. The contract term may be extended for up to five (5) additional one (1) year periods under the same terms and conditions, provided such extensions are acceptable to the Owner and the Contractor. The Contractor shall confirm or deny contract renewals in writing by a minimum of ninety (90) days prior to the expiration of the contract. A price increase based upon the Consumer Price Index (CPI) - Dallas area for each twelve (12) month extension period will be considered for approval during each year of contract renewal not to exceed 4% per twelve (12) month period. Request for a CPI price increase must be received in writing a minimum of thirty (30) days prior to the contract renewal date.

1.4 SCOPE OF WORK

A. The Landscape and Irrigation Maintenance specifications shall include the complete care as defined within these specifications, of all planted trees, shrubs, turf, groundcover, perennials, irrigation, paved median noses and intersection traffic island, decomposed granite, etc. within the limits of work for the following general areas:

- 1. Vitruvian Park:** 3958 Vitruvian Way– Approximately 12.2 acres of turf, beds and trees, concrete trails, etc. within the confines of the park which is located behind the Vitruvian development Savoye 1 and 2 and Fiori buildings along Vitruvian Way extending from the Park Rd. parking lot to the Bella Ln. Bridge. The park is located on both side of the Farmers Branch Creek waterway. (See photos on pages 31-33 and 37-40) Beginning May 2019 the grass areas between the pond edge and sidewalk must be kept at a height between 4" – 8" and additional native grasses will be seeded into the turfgrass. See the attached exhibit.
- 2. Spring Valley Rd. Medians** – Trees, turf, and beds on the medians in the middle of Spring Valley Rd. from the first median east of Vitruvian way to Midway Rd.
- 3. Belt Line Rd. Medians** – Trees and beds on the medians in the middle of Belt Line Rd. from

Marsh Ln. to Preston Rd. (See photos page 36)

4. **Midway Rd. Medians** – Trees and beds on the medians in the middle of Midway Rd. from Keller Springs Rd. to Spring Valley Rd.
Note: Midway Rd. south of Belt Line Rd. is currently being redesigned and may undergo a major renovation in 3-5 years. During construction maintenance will be removed from the contract and the contractor will be allowed to re-bid this scope of work prior to resuming maintenance within the medians of Midway.
5. **Arapaho Rd. Medians** – Turf, trees, and beds on the medians in the middle of Arapaho Road from Quorum Drive to Marsh Lane
6. **Dallas Pkwy. Rights-of-ways** – Turf, trees and beds on the rights-of-way along the Tollway side of Dallas Pkwy. from Westgrove Dr. to the Dallas North Tollway exit drive south of Quorum Dr./Verde Valley Ln. on the southbound side and from Verde Valley Ln. to the railroad tracks north of Arapaho Rd. on the northbound side.
7. **Surveyor Water Tower Demonstration Garden:** 4000 Arapaho Rd. ***Designated Organic Only Property** – Approximately 1.50 acres of turf, beds, trees, decomposed granite pathways, etc. located at the southeast corner of Arapaho Rd. and Surveyor Blvd. (See photos on pages 34-35 and 41-43)

NOTE: MAJOR PRUNING, CANOPY THINNING AND RAISING, ARE INCLUDED IN THE SCOPE OF SERVICES FOR THIS CONTRACT. Reference Section 3.4 ‘Pruning’ for what tree work will be required under this contract.

NOTE: MAJOR LEAF AND ACORN REMOVAL IS INCLUDED IN THE SCOPE OF SERVICES FOR THIS CONTRACT. Reference Section 3.14 ‘Leaf, Acorn, and Debris Removal’.

NOTE: Line item pricing for certain aspects of this bid will be requested. Such pricing will be used to determine monetary payments for additional work requested by the owner and performed by the contractor or for monetary deduction of work not performed by the contractor.

NOTE: Pricing for ‘Alternates’ shall be requested with this bid. The ‘Alternates’ may be taken in whole or in part. All ‘Alternates’ shall adhere to the non-organic specification within this bid.

NOTE: There are specific requirements for the mowing height of the turf between the concrete trail and the water’s edge in the landscape enhanced areas at Vitruvian Park. Reference Section 3.10 ‘Mowing’.

- B. The Contractor shall provide all materials, equipment, and labor required and/or inferred to professionally perform all tasks identified within these specifications.
- C. The work under this contract includes, but is not limited to, watering, fertilization, pruning, spraying of pesticides, weeding, herbicide applications, bed cultivation, mowing, edging, line trimming, irrigation checks and repairs, litter removal (**including pet waste**) and emptying and relining of trash cans, edge trenching, aeration of all turf areas once during the growing season, leaf and acorn removal, litter and debris removal within waterways and adjacent landscape areas, and replacement of unit cost plant material as so directed. **Note:** *All horticultural practices at the water tower site only shall adhere to the most up to date accepted organic methods and adhere to the ‘Organic Landscape Maintenance’ section to follow.*

1.5 GUARANTEE

- A. The Contractor shall immediately replace, at the Contractor's expense, all plant material, that, in the opinion of the Owner, fails to maintain a healthy, vigorous condition as a result of the Contractor's negligence or failure to perform the work specified herein.
- B. It is the responsibility of the Contractor to notify the Town of Addison Parks Department of any

conditions beyond the control of the Contractor or scope of work of these specifications that may result in the damage and/or loss of plant material. This responsibility includes, but is not limited to, notifying the owner of the following:

1. Damage by others to the irrigation system.
2. Vandalism and/or other abuse of the property that result in damage to the plant material.
3. Areas of the site that continually hold water or are excessively wet.
4. Areas of the site that appear too dry.

(Note: The contractor shall be responsible for notifying the Town of Addison Parks Department verbally immediately upon observation, and in writing on a weekly basis, of conditions where the site is either too wet or too dry. This shall apply to damaged irrigation, vandalism and graffiti as well.)

The Contractor shall list any such items on the Landscape Management Report, along with recommended solutions and related costs. Failure of the Contractor to report such items shall cause the Contractor to incur full responsibility and costs for repairs of such items. A copy of the required Landscape Management Report is included with these specifications.

1.6 SPECIAL CONDITIONS

- A. All services herein provided shall be done in a courteous and orderly manner with a minimum of inconvenience to the businesses, residents, and to the Owner's representatives. All maintenance personnel shall be qualified and proficient in the operations of the landscape industry and be appropriately and neatly dressed, in clearly identifiable uniforms that are the same color and bearing the company logo, at all times while on the property. Shirts must be worn at all times. Gym shorts and tank tops are not appropriate dress. Sturdy, safe footwear must also be worn along with safety vests when required. No music will be allowed to be played by Contractor's personnel while on property.
- B. The Contractor shall provide a qualified English-speaking supervisor/foreman on-site with each crew at all times during any maintenance activity to be responsible for the progress of the work and the conduct of the Contractor's personnel and to answer any questions that may arise. Any time the Contractor's work force is divided between two (2) or more sites, a qualified English-speaking supervisor shall be present at each site. **The supervisors/foremen on-site must have read and be familiar with these specifications and have a means with which to be contacted on-site by the Owner.**
- C. The personnel performing the services described herein shall be under the sole responsibility and the employ of the turf mowing Contractor and shall be constantly supervised and shall be competent, experienced, skilled lawn and plant maintenance-oriented people. All of the Contractor's employees shall be authorized to work in the United States as required by the Immigration Reform and Control Act of 1986. All Contractor personnel shall maintain their appearance and behavior in a professional manner at all times while on property.
- D. All materials and equipment brought to the site are the full responsibility and liability of the Contractor. Vehicles on the sites must bear the company's logo and be clearly identified. Vehicles shall also be in good working order and appear professional in nature and condition.
- E. While on site, the Contractor's representative shall take directions from the Owner's designated representative. Should the need arise, scheduled grounds-keeping activities may be preempted by the Owner's representative in order to respond to other landscaping priorities.
- F. The Contractor shall provide the Owner's representative with a check list of items completed at the end of each working day (Daily Work Report). Such reports may be either faxed to (972) 450-2834 or emailed to rlee@addisontx.gov.
- G. The Contractor is responsible for immediately notifying the Owner regarding any damages to public or private property, dry/wet areas, or problems related to the site irrigation system.

- H. The Contractor shall supervise and direct the work, using his best skill and attention. The Contractor shall be responsible for all maintenance methods, techniques, and procedures and for coordinating all portions of the work under the contract.
- I. Unless otherwise specifically noted, the Contractor shall provide and pay for all labor, material, equipment, tools, transportation, and other facilities and services necessary for the proper execution and turnkey completion of the work specified in this contract.
- J. The Contractor shall at all times enforce strict discipline and good order among his employees. The Contractor shall only utilize workmen who are, in the opinion of the Owner, satisfactory and sufficiently skilled for the efficient performance of all work under this contract.
- K. The Contractor shall give all notices and comply with all laws, ordinances, rules, regulation, and orders of any public authority in connection with the performance of the work.
- L. The Contractor shall be responsible for the acts and omissions of all his employees and his agents.
- M. The Contractor shall be responsible for initiating, maintaining and supervising appropriate safety precautions and programs in connection with his work. He shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to (1) all employees on the project and other persons, pets, or wildlife who may be affected thereby, (2) the project and all materials and equipment to be incorporated therein, and (3) other property at the site or adjacent thereto.
- N. The Contractor shall instruct his employees to use caution while operating mowers, edgers and line trimmers near trees, shrubs and ground covers to prevent damage. Damage to trees, shrubs, or ground covers will not be tolerated. The Owner shall make routine inspections of each site to inspect for mower or line trimmer damage. Signs of damage to trees by mowers or by line trimmers may be grounds for termination of this contract or the issuing of a replacement plant material value to be assessed by the Owner to the Contractor. The Contractor shall be responsible for seeing that his employees are taking every precaution to protect trees, shrubs, and ground covers from damage.
- O. The Contractor shall be responsible for immediate notification of any and all damage to property, including, but not limited to the sprinkler system components, metal edging, lighting, windows, fences, trees, shrubs, etc. of all sites caused by the Contractor and/or his employees. The Contractor shall be liable for any and all damages to Town owned public property, adjacent private property, or vehicles while executing the provisions of the contract.
- P. Any labor, services, or materials over and above the scope of this contract must be approved by Owner's designated representative.
- Q. The Contractor shall provide warning signs and traffic cones at points along all street medians and R.O.W.'s to protect workers and safeguard all traffic. All warning signs and cone layouts shall be provided and maintained in accordance with the requirements of the Town of Addison traffic control regulations and the Texas Manual on Uniform Traffic Control Devices.
- R. The scope of services for sites may change during the contract term and the Town will negotiate prices with the chosen Contractor for any such occurrences. Sites may also be added or deleted. Savings to the Town for deletions shall be based upon the number of visits remaining times the contract cost for each.
- S. **Pet waste must be removed prior to mowing any and all properties.**
- T. No subcontracting of any portion of the services under this contract shall be allowed.

1.7 SCHEDULING

A. Timing

1. The Contractor shall determine scheduling of maintenance visits based on input from the Town of Addison and Vitruvian development management personnel. The Town of Addison shall be

contacted as soon as possible but not less than twenty-four (24) hours in advance when service cannot be performed on schedule and an alternate time shall be determined.

2. The Town of Addison may at any time request alterations or additions to the general maintenance service provided that the Contractor can accomplish the request without additional equipment, labor, or man-hours. Such requests may occur during the special event season.

1.8 LANDSCAPE MAINTENANCE INSPECTION

A. Weekly Inspections by the Contractor

The Contractor shall be responsible for a weekly inspection of the entire property for the performance of all items required and referred to in these specifications.

B. Monthly Inspections by the Contractor and Town of Addison Representative

The Contractor shall be responsible for a monthly inspection of the property in the company of a Town of Addison designated Representative and to review compliance with the specifications, identify problem areas, and to check for the performance of all items required and referred to in these specifications.

C. Landscape Maintenance Report

The Contractor shall be responsible for notifying the Town of Addison via the Landscape Maintenance Report of any problems. This worksheet must be provided to the offices of the Town of Addison Parks Department on the day of the maintenance. Faxed or emailed copies with a signature are acceptable (Fax 972/450-2834; Email rlee@addisontx.gov). These forms are very important in protecting both the Owner and Contractor when discrepancies or any issues arise. The Contractor shall use the form provided in these specifications.

D. Frequency Chart

All items listed on the Maintenance Frequency Chart must be executed as specified unless an alternate schedule is approved by the Town in writing. If the Contractor does not perform any item listed, that item shall then be deducted from that month's billing.

1.9 ADDITIONAL REQUIRED CONTRACTOR REPORTING

A. Pesticide Application Reports

Written notification to the Town of Addison and the Vitruvian development maintenance staff and posting of Chemical Application for applications at Vitruvian Park, by law, must occur within forty-eight (48) hours of application for the property. All such notifications must conform to the State of Texas Structural Pest Control Board (SPCB) requirements.

All applications must adhere to all SPCB regulations and standards.

Applications may be confined to certain times of the day and/or week. At Vitruvian Park, particular applications may be required after hours or on weekends. Timing of an application must receive prior authorization from the Town of Addison.

A completed Chemical Application Report shall be submitted to the Town within twenty-four (24) hours following all pesticide or fertilizer applications. This report shall contain, but not be limited to, pertinent weather conditions, exact time of application, chemicals and dilution rates used, MSDS sheets, as well as, the signature of the Applicator involved. Only current SPCB forms shall be used for such reporting.

For fertilization reporting, always include the total number of pounds of fertilizer applied per area and indicate an approximate percentage of completion, if the task is not completed within a single day.

B. Irrigation Reports

All irrigation system inspections shall include an Irrigation Report submitted to the Town of Addison within twenty-four (24) hours following the completion of each inspection. This report shall contain the following information:

1. Inspection date and duration, in time, of the inspection.
2. List by controller and zone number of the type and number of repairs made or problems found.
3. Status of controller program after completion (on, off, rain mode, etc.). **All controller programming shall be done by and coordinated through a Town of Addison Parks Irrigation Technician.**
4. Repairs or replacements performed due to Contractor damage.

C. Required Notifications

The Contractor shall notify the Town of Addison in writing at least forty-eight (48) hours in advance of the performance of the following activities:

1. Pesticide, herbicide, fungicide, or fertilizer applications.
2. Irrigation system inspections.

D. Situations requiring immediate notification to the Town of Addison by the Contractor include:

- I. All situations affecting safety or health, and/or any property damage.
2. All situations involving issues with electric or water utilities where an immediate response is needed.
3. Changes to the Contractor's schedule.
4. Breaks in the irrigation system mainline piping, hung valves, etc., where water is continually running.

1.10 CONTRACTOR'S GENERAL PERFORMANCE

A. Personnel Requirements

1. All maintenance personnel shall be uniformed and neat in appearance.
2. An English-speaking Foreman/Supervisor must be present on site at all times. If multiple locations are being serviced by multiple crews, an English-speaking Foreman must be present with each.
3. Appropriate safety equipment shall be utilized at all times.
4. All lunch and break periods taken by maintenance personnel shall be within areas approved by the Town. Litter is to be removed and no music shall be allowed.
5. While on site, all personnel must behave in a professional manner
6. The Contractor shall have emergency response personnel available 24 hours per day, seven days per week. The Contractor shall provide the Owner with "after hours" contact names and numbers.

B. Maintenance and Support Equipment

1. Only the appropriate equipment, in proper working order and properly maintained, shall be utilized for maintenance operations.

2. Repair, servicing or fueling of equipment is not permitted within landscaped areas.
3. Equipment shall be operated in a safe and effective manner at all times.
4. Do not operate equipment within close proximity to pedestrians, cyclists, pets, or wildlife.
5. Mower blades shall be sharp and set to the proper heights, and decks level.
6. Due to the heavy volume of traffic on Belt Line Rd., Midway Rd., Arapaho Rd., Spring Valley Rd., and Dallas Pkwy., coning, signing and barricading in accordance with TXDOT standards shall be required. The Contractor is urged to utilize a portable arrow board for traffic control. To lessen the impact on traffic, work on these medians and rights-of-ways shall be restricted to Monday-Friday from 9:00 a.m. to 11:00 a.m. and 1:00 p.m. to 4:00 p.m.

PART 2 - PRODUCTS

2.1 FERTILIZER:

1. See section 3.3 below.

2.2 HERBICIDES:

FOR VITRUVIAN PARK, MEDIANS, AND RIGHTS-OF-WAYS ONLY. *THE SURVEYOR WATER TOWER SITE SHALL CONFORM TO THE 'ORGANIC LANDSCAPE MAINTENANCE' SECTION TO FOLLOW.*

- A. Weed control in, but no limited to, turf areas, ornamental beds, mulched areas, decomposed granite areas, and native grass areas at Vitruvian Park shall include:
 1. Post-emergent weed control: As needed (to include manual removal in native grass areas)
Note: 'Roundup' shall not be allowed to be utilized under this contract.
 2. Pre-emergent weed control: The Contractor shall control weeds with a year-round liquid pre-emergent program. See Section 3.6 A below for specified products.
 3. Pre-emergent applications shall not be combined with fertilization unless approved by the Town of Addison.
 4. All herbicides must be approved for use by the Town of Addison Representative.
 5. All herbicides applied in close proximity to the waterways must strictly adhere to SPCB guidelines and requirements. Extreme caution must be exercised.
 6. The use of herbicides at the Surveyor Water Tower shall comply with the 'Organic Landscape Maintenance' section to follow.

2.3 PESTICIDES/FUNGICIDES

FOR VITRUVIAN PARK, MEDIANS, AND RIGHTS-OF-WAYS ONLY. *THE SURVEYOR WATER TOWER SITE SHALL CONFORM TO THE 'ORGANIC LANDSCAPE MAINTENANCE' SECTION TO FOLLOW.*

- A. Provide as needed for the safe control of insect and/or disease problems.
- B. All products must be approved for use by the Town of Addison Representative.
- C. All pesticides applied in close proximity to the waterways must strictly adhere to all SPCB IPM guidelines and requirements. Extreme caution must be exercised.
- D. The use of pesticides/fungicides at the Surveyor Water Tower shall comply with the 'Organic Landscape Maintenance' section to follow.

2.4 MULCH

- A. Landscape Beds and Tree Rings: Use twice ground premium grade shredded hardwood bark mulch as supplied by Living Earth Technology Co. or approved equal. Apply 1 time per year in March/April with additional applications as needed to maintain mulch at three (3) inches of depth minimally at all times. **The Town of Addison shall inspect the quality of the mulch prior to distribution.**
- B. Trenching of curbs and sidewalks prior to mulching shall take place to provide a lip for mulch retention.

PART 3 - EXECUTION

3.1 NOTIFICATION/REPORTING

- A. Notification for applications of herbicides, pesticides, fungicides, fertilizers, etc., shall be required using current SPCB forms and in conformance with SPCB standards.
 - 1. Vitruvian Development
 - a. Notice of application must be provided to the Vitruvian development maintenance personnel per current SPCB guidelines and requirements. Application signage must be provided at the time of the application either notifying the general public of re-entry times or to stay off until dry depending on the product being utilized.

3.2 IRRIGATION SYSTEM AND WATERING

- A. Irrigation System Inspection and Maintenance:
 - 1. Monthly inspection by the Town's Representative and the Contractor's **licensed irrigation technician(s)** shall be performed on all zones of the irrigation system. Controllers shall be operated and a visual inspection performed to verify proper operation and repair of all system components.
 - 2. Maintenance and repair activities to be performed as needed include:
 - a. Head and box (valves, QCV, flow meter, etc.) height adjustments.
 - b. Head and/or riser repair, including nipples, and replacements.
 - c. Unclogging, adjustment, and replacement of nozzles.
 - d. Adjustments to flow control devices on electric valves.
 - e. Replacement of damaged and missing valve boxes and/or covers and lids.
 - f. Adjustments to irrigation controller settings or programs (coordinated with the Town).
 - g. Elimination of any pests such as ants, spiders, geckos, mice, etc. from controller cabinets and/or valve, DCA, flow meter, meter boxes, etc.
 - h. Repair of main lines, lateral lines, drip lines, and fittings within confines of maintenance areas.
 - i. Repair of ball and station valves, to include but not limited to, solenoids and diaphragms.
 - j. Any repair not outlined in 'a-i' above, such as wiring repairs, shall be on a time and materials basis. **Note: No mark up of wholesale prices of materials is allowed. – There is a line item on the bid to supply an hourly rate.**
 - 3. Only irrigation repairs of the highest quality shall be accepted. This includes renovation of disturbed landscape/turf areas to their existing or better condition following repairs.
 - 4. Repairs found to be needed outside the scope of inspection, maintenance, and repairs shall be reported to the Town of Addison immediately. A written cost estimate for such repairs must be supplied to the Town's Representative for approval prior to commencement of any work.
 - 5. All damages to irrigation system components caused by the Contractor's operations shall be repaired immediately at the contractor's expense.
 - 6. All damages to other components, such as lighting, landscapes, etc. caused by the Contractor's

operations shall be repaired within seventy-two (72) hours.

7. All irrigation repair work must be performed by an individual licensed in the State of Texas as a repair technician or irrigator and be completed within forty-eight (48) hours of an inspection.
8. All irrigation repairs and products shall conform with the current Town of Addison Irrigation Specifications.
9. All irrigation repairs must be inspected by a Town of Addison Irrigation Technician prior to backfilling.

B. Irrigation System - Controller Programming:

1. The Contractor shall make recommendations for controller programming as conditions warrant.
2. Controller programs shall take into consideration specific site conditions as well as seasonal needs and anticipated weather conditions along with adhering to any water restrictions.
3. Landscape areas should minimally receive an inch of water, including rainfall, per week.
4. The Contractor shall provide the Representative with written documentation of initial irrigation programming and updates to this programming when changes are needing to be made.
5. The Contractor is responsible for coordinating, with the Town of Addison Representative, all required manual operations of irrigation controllers, such as turning off controllers prior to freezing or rainy periods, as well as the adjustments required in conjunction with chemical and fertilization applications and turf aeration. A rainy period will be defined as one (1) day of continuous rain or one (1) inch of rainfall within twenty-four (24) hours and freezing conditions shall be actual or forecasted temperatures of thirty-five (35) degrees or less.

B. Plant Material & Tree Watering:

1. Hand water as needed. Water those trees and/or plantings showing heat or drought stress. Be alert to over watering and discontinue applications if warranted.
2. Areas needing supplemental hand watering due to an irrigation malfunction or extreme drought conditions shall be watered by the Contractor on an as needed basis to maintain plant health and vigor.

D. Turf, Shrub, Perennial, and Groundcover Automatic Watering:

1. Monitor and notify the Town's Representative, in writing, of needed adjustments.

3.3

FERTILIZER

FOR VITRUVIAN PARK, MEDIANS, AND RIGHTS-OF-WAYS ONLY. THE SURVEYOR WATER TOWER SITE SHALL CONFORM TO THE 'ORGANIC LANDSCAPE MAINTENANCE' SECTION TO FOLLOW.

A. Trees:

1. Fertilize all trees two (2) times per year in September and again in March according to the following specifications:
 - a. One 40-pound bag of ARBOR-GREEN fertilizer as manufactured by Lesco, Inc., per 200 gallons of water,
 - b. One gallon of Chelated Micro-Mix, as manufactured by Lesco, Inc., per 200 gallons of water.

The two products shall be mixed together in a tank no smaller than 200-gallon capacity. The tank shall have mechanical agitation. The pump shall be able to supply a minimum operating pressure of 150 psi.

 - c. The solution shall be applied to the trees at a rate of one gallon per caliper inch. Injections

shall be made every 36" equally spaced around the drip line of the tree or according to the manufacturer recommendations.

B. Shrubs, perennials, and Groundcover:

1. Fertilize in April, mid-June and the first part of September. The contractor shall use Lesco brand fertilizer or its equivalent that has a 15-0-0 element percentage with a minimum 7% sulfur and 4% iron plus trace elements applied at 1.0 pound of actual nitrogen per 1000 square feet of application. The nitrogen source shall be a minimum of at least a 50% slow release formulation. If requested, the Contractor shall return empty bags of fertilizer to verify quantities applied. **Fertilizer ratios are subject to change and shall be pre-approved by the Town of Addison Parks Department.**

C. Turf

1. Use Lesco brand, or approved equal, product to fertilize the first part of April, mid-June, and the first part of September with a nitrogen only fertilizer, such as 15-0-0, with iron and sulfur at 1.0 pounds of actual nitrogen per 1000 square feet of application. The Nitrogen source shall be at least a 50% slow release formulation. If requested, the Contractor shall return empty bags of fertilizer to verify quantities applied. **Fertilizer ratios are subject to change and shall be pre-approved by the Town of Addison Parks Department.**

3.4 PRUNING

A. Shade and Ornamental Trees:

1. Tree Care Pruning: Winter pruning shall be done during the months of December and January and possibly into February. Depending upon the temperatures, this time frame may vary. During winter pruning, the Contractor shall remove all diseased, dead, or dying branches. Additionally, crossing branches not consistent with standard form, low hanging or broken limbs, any limbs posing a safety hazard, and limbs promoting poor light and air penetration shall be removed/thinned by the contractor. Pruning may also need to occur to allow for dispersion of street lighting and for signage and/or building clearance. Ordinance requirements are for clearance of 9' over sidewalks and 14' over roadways.

Note: Major winter pruning, canopy raising and thinning, are a part of this contract.

Red Oaks and Live Oaks shall not be pruned during the months of March through May.

Pruning techniques shall be in accordance with the latest edition of *Tree Pruning Guidelines published by the International Society of Arboriculture and the American National Standards (A.N.S.I) A300 – Pruning Standards.*

Broken limbs, dead wood, suckers, water sprouts, and limbs contacting, in close proximity to, or coming into contact during stormy or windy conditions with lighting systems (light poles), regulatory signs, awnings, windows, balconies, any portion of structures, electrical lines, etc., or hinders visibility of regulatory signage, shall be removed as detected or when brought to the Contractor's attention and such removal is authorized at any time. If such removals are on Oaks during the months of March through May, a pruning paint approved by the Town's Representative must be applied to all cuts 1" in diameter or greater immediately at the time of pruning.

2. When pruning, the Contractor shall not apply pruning paint to cuts, except during the months of March through May on Oaks only.
3. Flush cuts are not permitted or acceptable nor are leaving stubs.

B. Shrubs:

1. Selectively prune all shrubs as needed to encourage healthy growth and to create a natural appearance based upon the plant placement and plant growth.

C. Groundcovers:

1. Trim edges of beds and any errant growth as needed during the growing season. DO NOT use line edgers to trim groundcovers. DO NOT trim vertically. Cut at a 45-degree angle. Keep appropriate groundcovers 'topped' to promote lateral growth. However, exercise care not to trim too low. The use of growth retardants is acceptable with prior approval by the Parks Representative. Prior approval of the product to be utilized must also occur.

3.5 PESTICIDES

FOR VITRUVIAN PARK, MEDIANS, AND RIGHTS-OF-WAYS ONLY. THE SURVEYOR WATER TOWER DEMONSTRATION GARDEN SITE SHALL CONFORM TO THE 'ORGANIC LANDSCAPE MAINTENANCE' SECTION TO FOLLOW.

- A. Provide insect, fire ant and disease control on an as needed basis. Supply the Town with a minimum forty-eight (48) hour written notice prior to any applications. All pesticides applied in close proximity to waterways must strictly adhere to all SPCB IPM guidelines and requirements and requirements. Extreme caution must be exercised. Certain applications may need to be done late in the day or on weekends. All pesticides to be used must receive prior approval by the Town of Addison Representative. Follow SPCB guidelines and post appropriately. **All pesticides shall be applied only by a Texas Structural Pest Control licensed applicator.**

B. Fire Ant Control:

1. ***Total control of fire ants is of the utmost importance.***
2. All areas (including but not limited to beds, mulch areas and turf) shall receive one spring application of 'TopChoice' as a preventative treatment for fire ants. The Town will consider alternative products for fire ant control.
3. Use Orthene, or approved equal, for individual mound treatment on an as-needed basis.
Note: Injections may be deemed necessary if immediate control is needed, especially if special events are closely scheduled.

3.6 HERBICIDES

FOR VITRUVIAN PARK, MEDIANS, AND RIGHTS-OF-WAYS ONLY. THE SURVEYOR WATER TOWER DEMONSTRATION GARDEN SITE SHALL CONFORM TO THE 'ORGANIC LANDSCAPE MAINTENANCE' SECTION TO FOLLOW.

Supply the Town with a minimum forty-eight (48) hour written notice prior to any applications. All herbicides applied in close proximity to waterways must strictly adhere to all SPCB guidelines and requirements. Extreme caution must be exercised. Certain applications may be required to be done late in the day or on weekends. All herbicides must receive prior approval by the Town of Addison Representative. Follow SPCB Guidelines and post appropriately. **All herbicides shall be applied only by a Texas Structural Pest Control licensed applicator.**

A. Pre-emergent:

1. The Contractor shall control weeds with a year-round pre-emergent program. Apply a liquid mix of Gallery for broadleaf weeds and Barricade for grassy weeds at the manufacturer's recommended rates. Substitution of other chemicals must be submitted in writing for approval by the Town of Addison.

B. Post-emergent:

1. Apply post-emergent herbicides according to label instructions and as needed to control weeds in beds, lawns, crushed granite, walkway joints, mulched areas, etc. All herbicides to be used must be approved by the Town of Addison.
2. **Note: 'Roundup' shall not be allowed to be utilized under this contract.**

C. All liquid pre-emergent herbicide applications shall contain a water-soluble dye (blue or green) used in a

strength adequate for visual verification. Care shall be taken to avoid excessive overspray of dyed solutions onto walks, curbs, walls, signs, or other features. Any overspray shall be removed from these areas by the Contractor immediately at his own expense.

- D. All post-emergent herbicides shall be applied with a suitable surfactant additive mixed uniformly in solution.
- E. Use chemical means to maintain all pavement joints and paver areas in a weed free condition.

3.7 MULCHING/TRENCHING

- A. Mulch all shrub beds and tree rings as needed to maintain a three (3) inch depth of twice ground premium hardwood bark mulch. Shrub bed and tree ring mulching shall routinely occur in early spring (March - April) and year-round as often as needed to maintain at 3" in depth. Mulch is to be spread such that none of the previously laid mulch is visible. Do not pile mulch up on the base of plantings.

3.8 WEEDING/CULTIVATING

- A. Remove weeds as needed to maintain all areas in a weed free condition. Hand weeding of the native areas at Vitruvian Park is included within this contract. Cultivate beds only prior to application of pre-emergent herbicide. DO NOT cultivate beds after pre-emergent herbicide has been applied.

3.9 LITTER CONTROL (*Includes Pet Waste and Cleaning of Waterways*)

- A. The contractor shall be responsible for picking up trash (*including pet waste, trash/debris in and along waterways, etc.*) during each site visit and prior to mowing operations. Removal of trash and debris from all beds, tree wells, paved median noses, intersection traffic islands, turf, etc. is required under this contract. Trash receptacles in the parks and along streetscape sidewalks shall be emptied and relined with heavy duty and appropriately sized plastic bags during each visit.

3.10 MOWING

FOR VITRUVIAN PARK, MEDIANS, AND RIGHTS-OF-WAYS ONLY. THE SURVEYOR WATER TOWER DEMONSTRATION GARDEN SITE SHALL CONFORM TO THE 'ORGANIC LANDSCAPE MAINTENANCE' SECTION TO FOLLOW.

- A. The contractor shall be responsible for mowing the turf areas within this contract approximately thirty-five (35) times during the year.
- B. Mowing shall be done using mulching rotary-type mowers only. Any excess grass clumps shall be removed after each mowing and all sidewalks, streets, etc. shall be blown clean. Do Not allow grass clippings to enter into the waterways. Any grass clippings doing so must be immediately and totally removed by the Contractor using pool type dip nets.
- C. Do Not blow any organic material or debris into the waterways, streets, private drives, parking lots, area drain inlets or storm sewer inlets. Any material entering the waterways must be immediately and totally removed by the Contractor using pool type dip nets. Blowing of debris into storm sewer inlets or into the street is a violation of Town of Addison Ordinance and is subject to fine. Blowing of such material into the surrounding landscape beds or fountains is also strictly forbidden.
- D. **Note:** Some of the islands in the Vitruvian Park waterway are not readily accessible from land. A Contractor supplied portable ramp will have to be used to allow access across the approximately 8' wide gap between island and shore for mowing and maintenance purposes.
- E. Exercise care when performing operations in close proximity to pedestrians, cyclist, pets, wildlife, etc.
- F. **Note:** Mowing is weather dependent and the number of mowings and/or frequency may be more or less than that in 'A' above.
- G. DO NOT mow during wet conditions to eliminate rutting and tracking.

- H. Line trimming and spraying of weeds within the concrete/paver noses of medians and traffic islands at the median intersections is required under this contract.
- I. ***Note: Specific mowing height requirements shall be strictly adhered to for the Vitruvian Park turf in the landscape enhanced areas between the concrete trail and the water's edge. These requirements do not apply to the 'natural area' located downstream of the Ponte Ave. bridge. The minimal height of the mowing of the turf in these areas shall be four (4) inches. This height may change at any time at the discretion of the Town of Addison.***

3.11 TURF AERATION

- A. All turf areas shall be thoroughly aerated once during the growing season utilizing core-type units. Aeration shall be accomplished in a minimum of two different directions at 90-degrees to each other.
- B. The contractor shall flag all irrigation heads, valve boxes, obstacles, etc. to prevent damage. Coordinate this activity with the Town's irrigators.
- C. The Contractor is responsible for any damages that occur during this process.

3.12 NOISE ORDINANCE

- A. The Town of Addison Ordinances do not allow the starting or operation of any motorized equipment prior to 8:00 a.m. and after 5:00 p.m. during any day of the week. This statute will be strictly enforced and failure to comply may result in the issuance of citations.
- B. Work may begin at 7:00 a.m. and extend to 7:00 p.m. so long as no noise is created.

3.13 BLOWERS

- A. For the same reasons as stipulated in 3.12 A. above, the use of blowers is restricted from 8:00 a.m. **(9:00 a.m. for Vitruvian Park)** to 5:00 p.m. during any day of the week. No variance will be made for these restrictions.

Do Not blow any organic material or debris into the waterways, streets, private drives, parking lots, area drain inlets or storm sewer inlets. Any material entering the waterways must be immediately and totally removed by the Contractor using pool type dip nets. Blowing of debris into storm sewer inlets or into the street is a violation of Town of Addison Ordinance and is subject to fine. Blowing of such material into the surrounding landscape beds or fountains is also strictly forbidden.

3.14 LEAF, ACORN AND DEBRIS REMOVAL

- A. The contractor shall remove leaves, trash, debris and acorns from walks, lawns, and planting beds during each visit.
- B. **During heavy leaf/acorn drop:** For a minimum of three (3) times per week during the fall months for deciduous trees and spring months for Live Oaks, removal of the large volume of leaf and/or acorn accumulations from pathways, decks, overlooks, landscaped areas, etc. during times of high leaf/acorn drop shall be required within Vitruvian Park. In other areas, such service shall be provided a minimum of once (1) per week. Typically, such leaf drop for deciduous trees begins the month of September and extends through the month of November and for Live Oaks during the months of March into May but all are climate dependent. Typically, acorn drop occurs during the fall months of September into November, but this too is climate dependent.

For the purpose of this bid, use ten (10) weeks as the number of weeks for deciduous tree major leaf and for all acorn removal and six (6) weeks for Live Oak major leaf removal.

Note: Provide a unit cost per visit task for major leaf/acorn removal. This will be used for billing purposes if the number of visits exceeds those listed above. See the line item in the bid to include this pricing.

- C. Accomplish leaf and acorn removals by mechanical means or gas-powered equipment. If blowers are utilized, do not run them under full power adjacent to residences.
- D. ***Do Not blow grass clippings, leaves, acorns, trash, or debris into the storm sewer inlets or into the street at any time as this is a violation of Town of Addison Ordinance and is subject to fine. Blowing of such material into the surrounding landscape beds or fountains is also strictly forbidden.***
- E. **Note: As a part of this bid, requests for line item pricing are provided for a per each visit for leaf and acorn removal. A line item will be provided for just Vitruvian Park and a separate line item for all of the other sites under the contract.**

3.15 CLEANING OF WATERWAY AND ADJACENT AREAS AT VITRUVIAN PARK

- A. The Contractor shall remove all trash and debris from all areas within the park and waterways during each visit.
- B. Following a significant rain event, the Contractor shall be responsible for visiting the site within twenty-four (24) hours to remove trash and debris from the waterway and adjacent landscape areas of the entire Vitruvian Park. Special events or other situations may necessitate a quicker response time.
- C. Twenty-four (24) significant rain event occurrences shall be included in this bid. Any additional cleanings will be paid for on a per each basis. A separate line item is provided on the bid form for a per each additional cleaning price.

3.16 PLANT INSTALLATION

- A. Provide and install replacement trees, shrubs, perennials, or groundcovers at an hourly rate. Any such installation shall be on a time and materials basis only. **See the bid line item to supply an hourly labor rate for such work.**
Note: No mark up of wholesale prices of plant materials is allowed.
- B. Note: All plantings shall carry a ninety (90) day guarantee.

3.17 RESTRICTED WORK HOURS (Medians and Rights-of-ways only)

- A. To lessen the impact on traffic, work on the medians and rights-of-ways of Belt Line Rd., Midway Rd., Arapaho Rd., Spring Valley Rd., and Dallas Pkwy. shall be restricted to Monday-Friday from 9:00 a.m. to 11:00 a.m. and 1:00 p.m. to 4:00 p.m.

PART 4 - PAYMENT

Payment processing for an invoice shall only begin upon receipt of a 'verified invoice' from the contractor. An invoice shall only be accepted for payment once the work has been verified by the Town's representative that all work stipulated for payment on the invoice has been satisfactorily completed. Thirty (30) days from the receipt of a verified invoice shall be allowed for the processing of each invoice. Payment to the contractor shall be mailed out to the address supplied by the contractor. No checks shall be made available for pick up by the contractor.

PART 5 - ALTERNATES

- 4.1 Provide turnkey pricing for each of the following "Alternates" while strictly adhering to the non-organic bid specifications within this contract.
 - A. Belt Line Road Medians between Marsh Lane and Preston Road
 - B. Midway Road Medians from Keller Spring Road to Spring Valley Road
 - C. Arapaho Road Medians from Quorum Drive to Marsh Lane
 - D. Spring Valley Road Medians from the 1st median east of Vitruvian Way to Midway Road
 - E. Dallas Parkway Rights-of-way
 - 1. Northbound from Verde Valley Lane to the railroad tracks north of Arapaho Road

2. Southbound from Westgrove Drive to the Dallas North Tollway exit ramp south of Quorum Drive/Verde Valley Lane

LANDSCAPE MAINTENANCE FREQUENCY CHART

**FOR VITRUVIAN PARK, MEDIANS, AND RIGHT-OF-WAYS ONLY. SURVEYOR WATER TOWER SITE
SHALL CONFORM TO APPENDIX 'B' OF THE 'ORGANIC LANDSCAPE MAINTENANCE' SECTION.**

GENERAL SITE MAINTENANCE

FREQUENCY PER YEAR

- | | | |
|----|---|---|
| A. | Trash, pet waste, debris, leaf, acorn removal * | Each visit |
| A. | Vitruvian Park/Major acorn leaf removal | Min. 3 times per week during specified times |
| B. | All other locations Major Leaf/Acorn Removal | Min. 1 time per week during specified times |
| C. | Cleaning of waterways and adjacent areas | While on site; up to 24 following significant rain events |
| D. | Grounds Inspections | 12 |
| E. | Turf Aeration | All turf areas once during the growing season |

TURF, SHRUB, PERENNIAL AND GROUND COVER CARE

FREQUENCY PER YEAR

- | | | |
|----|-----------------------------|--------------------------------|
| A. | Weed/Insect control | Minimal weekly and as needed |
| B. | Ground cover control/edging | Monthly and/or as needed |
| C. | Pruning/Trimming | Monthly and/or as needed |
| D. | Mulch Application | As needed to maintain 3" depth |
| E. | Fertilizer applications | 3 |
| F. | Pre-emergent | 2 |

TREE CARE

FREQUENCY PER YEAR

- | | | |
|----|--|--|
| A. | Pruning: Clearance, sucker growth, water sprouts | As needed |
| B. | Pruning: Winter pruning | 1 (December-January; possibly into February) |
| C. | Mulch application | 1 and as needed to maintain 3" depth |
| D. | Fertilizer applications | 2 |
| E. | Removal of dead or broken limbs | As needed |

MOWING

FREQUENCY PER YEAR

- | | | |
|----|-------------------------------|----|
| A. | Mowing, edging, line trimming | 35 |
|----|-------------------------------|----|

IRRIGATION

FREQUENCY PER YEAR

- | | | |
|----|---------------------------------|-----------|
| A. | Irrigation Inspections | 12 |
| B. | Irrigation Maintenance & Repair | As needed |

*** Trash pickup and removal shall consist of emptying trash and placing liners in trash receptacles, and removing litter, pet waste and debris within the confines of the landscaped areas of this contract to include the waterways.**

LANDSCAPE MANAGEMENT REPORT

(Required to be completed after each visit)

Drop form by Parks Dept., 16801 Westgrove, 2nd floor
or Fax to (972) 450-2834 or Email to rllee@addisontx.gov

Date: _____ Location _____ Inspected by: _____

General Site Maintenance

- Trash, Debris, Leaf, Acorn, Debris, & Pet Waste Removal ☐ _____
- Major Leaf/Acorn/Debris Removal ☐ _____
- Cleaning of Waterways & Adjacent Areas While on Site and Following Significant Rain Events ☐ _____
- Grounds Inspections ☐ _____

Turf, Shrub, Perennials & Groundcover Care

- Weed/Pest Control ☐ _____
- Fertilizer Application ☐ _____
- Groundcover Control/Edging ☐ _____
- Pruning/Trimming ☐ _____
- Mulch Application ☐ _____
- Pre-Emergent Application ☐ _____

Tree Care

- Pruning: Clearance, Suckers & Water Sprouts ☐ _____
- Pruning: Winter Pruning ☐ _____
- Mulch Application ☐ _____
- Fertilizer Applications ☐ _____
- Dead/Broken Limb Removal ☐ _____

Mowing, Edging, Line Trimming☐ _____**Aeration of Turf**☐ _____**Irrigation**

- Head height adjustment ☐ _____
- Head - repair/replace ☐ _____
- Nozzles unclog/adjust/replace ☐ _____
- Adjust flow control devices on electric valves ☐ _____
- Replace damaged/missing valve box/covers ☐ _____
- Adjust controller settings/programs (coordinate with Town) ☐ _____
- Eliminate pests in controller cabinets ☐ _____
- Lateral line piping/fittings repair ☐ _____
- Mainline piping repair ☐ _____
- Valve repair/replace ☐ _____
- Station wiring repair ☐ _____

ORGANIC LANDSCAPE MAINTENANCE
FOR SURVEYOR WATER TOWER DEMONSTRATION GARDEN ONLY

PART 1 GENERAL

1.1 SCOPE

- A. Furnish all work and materials, appliances, tools, equipment, facilities, transportation, and services necessary for and incidental to performing all monitoring, adjustment and minor repair of sprinkler irrigation system, cleaning of drip irrigation filters and checking pipe, inspect drip irrigation pipe for damage, irrigation scheduling and monitoring, weeding of mulched beds, mulching of beds, weeding and occasional mowing of buffalo grass areas, pruning of trees, shrubs and groundcovers, cutting back or ornamental grasses, deadheading of perennials, application of organic fertilizers, insecticides, and herbicides, sweeping of aggregates, general site clean-up, removal of trash and products of maintenance, relining of trash cans, submittal to Owner of maintenance schedule as specified herein, etc. When the term “Contractor” is used in this section, it shall refer to the Maintenance Contractor. When the term “Representative” is used in this section, it shall refer to the Owner’s designated representative.

1.2 REQUIREMENTS OF REGULATORY AGENCIES

Perform work in accordance with all applicable laws, codes, and regulations required by authorities having jurisdiction over such work and provide for all permits required by local authorities.

1.3 CONTRACTOR RESPONSIBILITIES

1. Sprinkler Irrigation System: The Contractor’s maintenance of the sprinkler irrigation system shall consist of monitoring and adjustment of the duration and frequency of the watering schedule, adjustment of heads for coverage and elevation, repair of leaks in both mains and lateral lines, and all other work required to maintain a complete working sprinkler irrigation system.
2. Drip Irrigation System: The Contractor’s maintenance of the drip irrigation system shall consist of maintenance per manufacturer’s instructions and as addressed in Section 3.8.
3. Trees: The Contractor’s maintenance of trees shall consist of watering, cultivating, weeding, re-staking, resetting to proper grades or upright position, pruning any dead or diseased wood, pruning any rangy/errant growth, restoration of the planting saucer, and furnishing and applying such TORC (Texas Organic Research Center), OMRI (Organic Materials Review Institute), or approved equal sprays and invigorants as are necessary to keep the plantings free of insects and disease and in a thriving condition. See Appendix B for frequency.
4. Lawns: The Contractor’s maintenance of lawns shall be per Section 3.6 and per frequency as shown in Appendix B.

PART 2 PRODUCTS

2.1 MATERIALS

- A. No synthetic fertilizers of toxic chemical pesticides or products are allowed.
- B. Only products equal or acceptable to the Texas Organic Research Center are allowed to be used. Refer to Appendix “A” for Acceptable Organic Soil Amendment and Fertilizer Products, Unacceptable Fertilizer Products, Organic/Natural Pest Control Products, and Unacceptable Pest Control Products.

2.2 FERTILIZERS (all plantings)

- A. Fertilizer samples are to be submitted for approval by the Owner prior to use.
- B. Use acceptable organic fertilizers such as corn gluten meal, Garden-Ville, Bioform, Nature’s Guide, Medina, dry molasses and GreenSense. Use TORC, OMRI, or equal approved products.

2.3 HERBICIDES

- A. Contact post-emergent herbicides: Vinegar based products. Mixture of 1 gallon of 10% (pickling) vinegar plus 2 ounces of orange oil plus 1 drop of an organic liquid soap such as Dr. Broenner's Peppermint Oil Soap (with coconut and olive oils) for use in wicking onto weeds to reduce contact with permanent plant materials.
- B. Pre-emergent weed control: Corn gluten meal. Use TORC, OMRI, or equal approved products.

2.4 ANT CONTROL

- A. Apply organic mound treatments such as Garden-Ville Feugo and GreenSense Soil Drench, or equal approved products.
- B. Apply beneficial nematodes to the site.

2.5 WOUND PAINT: Shall not be used.

2.6 MACHINERY AND EQUIPMENT: Machinery requirements listed under this Section are NOT intended to be restriction of specific manufacturers or models, unless so stated. Specific mention of a manufacturer is intended as a guide to illustrate the final product of the maintenance operations desired. All equipment used shall be and maintained in top working condition at all times.

- A. Pruning tools shall be maintained in safe, working condition, cutting edges shall be sharp at all times.
- B. Granular material spreaders shall be the cyclone type. The Contractor shall be responsible for any grade, plant material (trees, shrubs, etc.), or hardscape amenity damage caused by the spreader and the application process. Spreaders shall be in a safe working condition at all times.
- C. Pesticide sprayers for application of organic products shall be of the hand-held or backpack type. The Contractor shall be responsible for any grade, plant material (trees, shrubs, etc.), or hardscape amenity damage caused by the sprayer and the application process. Sprayers shall be in a safe working condition at all times.
- D. All carts, wheelbarrows, and similar wheeled conveyances used in or on any portion of the existing landscape or amenities shall be equipped with pneumatic tires.
- E. No fueling or repair of equipment is permitted within the landscaped areas.

PART 3 EXECUTION

3.1 WATERING

- A. General:
 - 1. Maintenance procedures shall assure the proper operation of the irrigation system. The irrigation components (valves, heads and nozzles, drip components, controller, etc.) shall be inspected, cleaned, repaired, and adjusted bi-weekly.
 - 2. Adjust the system's timing in accordance with the general weather conditions. Improper watering procedures causing the decline of the permanent good health and appearance of plant material shall be replaced with the same variety of equal size and form at the cost of the Contractor.
 - 3. Promptly repair any damage to the irrigation system caused by the maintenance operations, vandalism, excavation by others resulting in broken heads, risers, pipe, etc. or other similar damage; replace with the same part and manufacturer.
- B. All planting areas shall be watered as necessary to provide the proper moisture levels. Adjust watering practices to match water requirements of species in planting beds, and allow for wind and sun exposure. Maintain uniform moisture in all planting areas during the winter months – particularly when a freeze is predicted. Hand water as needed to maintain proper moisture levels especially during drought situations or during times of automatic irrigation failure.
- C. Avoid over- and under-watering and notify Owner immediately if drainage problems appear.

3.2 FERTILIZATION: (all planting areas)

- A. February – Organic fertilizer

- B. June – Organic fertilizer – corn gluten meal
- C. September – Organic fertilizer – corn gluten meal
 - 1. Fertilize all shrubs, groundcover, and perennial beds with organic fertilizer or corn gluten meal fertilizer at 20 pounds per 1,000 square feet.
 - 2. Apply three times per year in February, June and September. February and September applications shall be corn gluten meal. June application shall be Garden-Ville 6-2-2, GreenSense 6-2-4, Bioform 5-3-4, or other approved product.
 - 3. All plants shall be sprayed with Garrett Juice or approved compost tea monthly.

3.3 TREES

- A. Any fire ant mounds around or on top of a tree root zone shall be treated immediately with products as specified. Do not allow the mound to build on the tree trunk as this will cover the tree root flare and possibly cause injury or death.
- B. Trees: Prune only as needed rather than on a regular schedule. However, oak trees are not to be pruned between the months of March and May. Experienced pruning personnel shall carry out pruning.
 - 1. Prune to remove damaged limbs and water sprouts; remove crossing branches; and maintain the natural shape of each species.
 - 2. Remove sucker growth and water sprouts as needed.
 - 3. Prune to eliminate diseased or damaged growth. Treat cuts with Tree Goop only per 3.7 F.
 - 4. Sterilize pruning tools with alcohol or hydrogen peroxide between individual plants.
 - 5. Use no line trimmer or edgers within 15” of any tree. Should the need for trimming be necessary near tree trunks, it shall be done so by hand trimming only.

3.4 SHRUBS, GROUNDCOVERS AND PERENNIALS

- A. Thin to remove dead wood when necessary. Remove dead wood and freeze damaged leaves in the spring.
- B. **In no case should any shrub be sheared.** Shrubs shall be selectively pruned.
- C. All water sprouts and sucker type growth shall be pruned and trimmed continuously. Pruning and trimming of any shrub shall be done so in a manner as to retain the natural character and habit of the plant.
- D. All shrub, groundcover, ornamental grass, and perennial beds shall be hand edged and weeded weekly during the growing season.
- E. Cultivate the beds (break soil and loosen) see Appendix “B”.
- F. Always prune out dead, broken, and diseased wood. All cuts shall be properly made; flush cuts and stubs are not acceptable.
- G. All damaged, dead, and thin areas in groundcover beds shall be replanted at the direction of the Owner’s Representative. Replacement of plant material not due to the Contractor’s negligence shall be at the Owner’s expense and upon receipt of written authorization to proceed.
- H. Re-mulch beds with mulch topping as necessary to maintain a full 3” depth to prohibit weed growth.
- I. Perennials shall be continuously inspected for signs of pests and diseases. Identify pests and diseases and treat with appropriate methods. Refer to Appendix “B” for specific maintenance schedule.
- J. Remove spent flowers, and dead leaves and stems from plants as they appear. Take care not to damage plants.

- K. All pruning debris and limbs shall be removed completely and immediately from the site.
- L. All groundcover beds shall be sheared only as necessary to remove old growth (liriope) or woody growth. This shall be done in the early spring prior to the growing season. Groundcover beds bordering on paved surfaces must be edged as needed to retain a neat edge. DO NOT trim vertically so as to expose the stems; cut at a 45-degree angle.

3.5 ORNAMENTAL GRASS

- A. The ornamental grasses used in the project are herbaceous perennials, dormant in the winter. The foliage, flowers and seed plumes die with the onset of freezing weather but persist throughout the winter. The dead but standing foliage retains its form and is one of the main aesthetic values of these plants. Maintenance activities in or around these plants must be performed carefully during the fall and winter to avoid damage to the standing foliage. If damaged, the foliage will not completely regenerate until the following summer.
- B. The ornamental grasses are sensitive to over-fertilization and to over-watering. Over-fertilization and over-watering causes the plants to become “top-heavy”, resulting in foliage and flowers that do not stand upright, but fall over in wind or rain. This destroys the fall and winter value of the plants, and may cause decreased cold-hardiness.
- C. Trim ornamental grasses only once each year as shown on attached Appendix “A”. Trimming shall be done in late winter or early spring just before spring growth starts. Trim by cutting all dead foliage and flowers with hedge shears or other tools, leaving a neat, even mound of dead stalks at 6” above finished grade. Take care not to damage the living crown of the plant. Trim ornamental grasses at the following heights:

- 1. Ornamental Grasses – 1/3 height of plant

3.6 MOWING OF BUFFALO GRASS

(Note: The mowing frequency may fluctuate due to weather conditions.)

- A. Contractor shall note that irrigation heads are located in these areas.
- B. Do not scalp the grass or cut more than one-third (1/3) the existing top growth in any one (1) mowing.
- C. Mow grass areas as shown on attached Appendix “B”.
- D. Hand trim around irrigation boxes, edging, signs, meter & backflow device boxes, utility poles, fire hydrants, etc.
- E. No weed-eaters or edgers are to be used in close proximity to plantings. Hand trim only as necessary.
- F. Mulching mowers shall be used. **Do not bag clippings.**
- G. When the turf becomes dormant in the fall, consult with the Representative to determine the need for final clean-up mowing.
- H. Turf Mowing:
 - 1. During periods of cool weather:
Mow Buffalo turf varieties at 2-3” in height.
 - 2. During periods of warm and hot weather:
Mow Buffalo turf varieties at 3” of height.

3.7 PEST AND DISEASE CONTROL: **As required** for safe control of the particular disease or insects.

- A. Assess level of damage caused by insects and diseases regularly. Minor, visually unimportant damage does not need to be treated, as long as the long-term health of the planting is not affected.
- B. Carefully identify any pest that causes significant damage. Do not attempt control until pest organism has been properly identified.

- C. After clear identification, choose the least toxic control measure possible. Read and observe all label precautions. If the least toxic control measure is not effective, use the next least hazardous biological or pest-specific control measures. In pest outbreaks, review cultural practices to determine the underlying cause, and correct.
- D. Specific directions are as follows:
1. Insects
 - a. Aphids – spray Garden-Ville Auntie Feugo or equal orange-based product plus the release of ladybeetles. Neem products can also be used.
 - b. Armyworms, cankerworms, leaf rollers, tent caterpillars, sod webworms, webworms, and other larvae of moths and butterflies – Treat when insects are active with *Bacillus thuringiensis* products. Add 2 oz. molasses per gallon of spray.
 - c. Bagworms – Release trichogramma wasps at spring leaf emergence. Spray BT in spring during feeding with molasses if necessary. Once bags have formed, hand removal is the only solution.
 - d. Borers – Active borers in trunks can be treated with Tree Trunk Goop or beneficial nematodes. To prevent their return apply the Sick Tree Treatment or approved equal.
 - e. Chinch bugs – Treat the soil with natural diatomaceous earth during dry weather, spray with citrus-based product such as Garden-Ville Auntie Fuego, or approved equal, at other times. Healthy turf will not have this pest.
 - f. Cucumber and other destructive beetles – Spray plants with Neem or citrus (orange oil or d-limonene) – based products. Apply beneficial nematodes to the soil.
 - g. Fire ants – Treat mounds with citrus-based product such as Garden-Ville Auntie Feugo or GreenSense Soil Drench, or Woodstream Safer Fire Ant Killer. Apply beneficial nematodes and horticultural cornmeal as needed.
 - h. Galls – Normally not a problem requiring treatment. For heavy infestations spray Neem products and apply the Sick Tree Treatment, or approved equal. Exposing root flares can often reduce heavy populations.
 - i. Grasshoppers – Treat the site in the spring with Nolo Bait. Treat adult insects that are feeding with Surround WP or other kaolin clay or particle film products if necessary in summer. Follow label directions.
 - j. Grubworms – The microbe stimulating nature of the organic soil amendments, fertilizers, and the organic program in general usually controls the harmful grubs. For unusual outbreaks of pest grubs, apply beneficial nematodes.
 - k. Lacebugs – Treat at first sign of infestation with horticulture oil, Neem or citrus-based products such as Garden-Ville Auntie Feugo, or approved equal.
 - l. Leaf miners – Treat with Neem or garlic-pepper teas when first symptoms appear or on leave usually in summer months.
 - m. Mites – Spray Garrett Juice plus garlic-pepper teas. Horticultural oil can be used as a last resort. Any product that contains seaweed will help control them.
 - n. Scale – Treat infestations with horticultural oil or orange oil product. Follow the temperature restrictions for use of horticultural oil or orange oil/d-limonene insect control product.
 - o. Twig girdlers – Treatment is unnecessary. These interesting insects are only a temporary cosmetic problem.
 2. Beneficial Insect Release

Release ladybugs (2,000 per 1,000 square feet) directly on plants infested with aphids. Adjust as needed depending on the troublesome insect population. Spray plant with molasses at 2 ounce per gallon prior to release.

 - a. March – May: Release trichogramma wasps @ 10,000 eggs per acre weekly. Begin release when the leaves start to emerge.
 - b. April: Release green lacewings @ 2,000 eggs per acre weekly for four weeks.
 - c. May - September: Release green lacewings @ 1,000 eggs per acre every two weeks.

For more information on organic insect control, see Malcolm Beck and Howard Garrett's book: [Texas Bug Book](#).
 3. Disease Control – Trees, Shrubs, Groundcovers, Perennials and Vines
 - a. Powdery Mildew – Treat when present with Garrett Juice plus Remedy (potassium bicarbonate), or approved equal. Treat soil with horticultural cornmeal at 20 lbs. per 1,000 square feet.
 - b. Rust – Treat with Garrett Juice plus Remedy or other potassium bicarbonate. Use at one ounce per gallon or per label instructions.
 - c. Leaf spot – Treat when present with Garrett Juice plus potassium bicarbonate. Use at one ounce per gallon or per label instructions.

- d. Fungal leaf spot – Treat when present with Garrett Juice plus potassium bicarbonate or approved equal. Apply horticultural cornmeal to the soil at 20 pounds per 1,000 square feet.
- e. All other fungal diseases – Spray with Garrett Juice plus potassium bicarbonate or approved equal product. Apply horticultural cornmeal at 20 pounds per 1,000 square feet.
- f. All other bacterial diseases – Spray with Garrett Juice plus Consan 20 or hydrogen peroxide.
- g. Note: Other compost tea products such as GreenSense Foliar Juice and others can be substituted for Garrett Juice.
- h. All fungal diseases including Pythium Blight, Rust, Helminthosporium, Take-All Patch, Fusarium Blight, Brown Patch, Gray Leaf Spot – Apply horticultural cornmeal at 20 pounds per 1,000 square feet at first sign of disease. Spray potassium bicarbonate product at 1 oz. per gallon.

E. Sick Tree Treatment (for borers):

1. Step 1: Remove Excess Soil from above the Root Ball
A very high percentage of trees have been planted too low or have had fill soil or eroded soil added on top of the root flare and roots. Soil on top of the root ball reduces oxygen availability and leads to circling and girdling roots. Soil, or even heavy mulch, on trunks keeps the bark constantly moist which can rot or girdle trees. Many new trees are too low in their containers. Excess soil and circling and girdling roots must be removed before plantings. Removing soil from the root flares of tree should be done professionally with a tool called an air spade.
2. Step 2: Aerate the Root Zone Heavily
Don't rip, till or plow the soil. That destroys all the feeder roots. Punch holes (with core aerators or ag devices such as the Air-Way) heavily throughout the root zone. Start between the drip line and the trunk and go far out beyond the drip line. 6-8" deep holes are ideal, but any depth is beneficial. An alternative is to spray the root zone with a living organism product or bio-stimulant such as an aerated compost tea.
3. Step 3: Apply Organic Amendments
Apply Texas greensand at about 40-80 lbs. /1,000 sq. ft., lava sand at about 80-120 lbs. /1,000 sq. ft., horticultural cornmeal at about 20-30 lbs. /1,000 sq. ft. and dry molasses at about 10-20 lbs. /1,000 sq. ft. Cornmeal is a natural disease fighter and molasses is a carbohydrate source to feed the microbes in the soil. Expanded shale applied at ½" is also very helpful if the budget allows this step. Apply a 1" layer of compost followed by a 3" layer of shredded native tree trimmings; however, do not pile mulch up on the root flare or the trunk. Shredded native cedar is the best source for mulch in bare areas. In turf, use a 1" layer of horticultural cedar flakes. Smaller amounts of these materials can be used where budget restrictions exist.
4. Step 4: Spray Tree and Soil
Spray the ground, trunks, limbs, twigs and foliage of trees with compost tea or the entire Garrett Juice Mixture. Do this monthly or more often if possible. Adding garlic oil tea or cornmeal juice to the spray is also beneficial for disease control while the tree is in trouble. Cornmeal juice is a natural fungal control that is made by soaking horticultural or whole ground cornmeal in water at one cup per 5 gallons of water. Screen out the solids and spray without further dilution. Cornmeal juice can be mixed with compost tea, Garrett Juice or any other natural foliar feeding spray. It can also be used as a soil drench for the control of soil borne diseases.

F. Tree Goop (for Borers):

1. Mix 1/3 part diatomaceous earth, 1/3 part rock phosphate, and 1/3 part manure compost together with enough water to make a thick paste that can be painted onto the trunks of trees. Use for control of borers and other troublesome pests that move between the soil and tree.

G. Garrett Juice:

1. Mix: Compost tea – label directions, use 1 cup/gallon, Seaweed – 1 ounce/gallon, Molasses – 1 ounce/gallon and Apple cider vinegar – 1 ounce/gallon

3.8 IRRIGATION SYTEM

- A. Landscape Irrigation System: The Contractor shall be totally responsible for the operation of all irrigation systems, both manual and automatic, temporary and permanent, as well as programming the automatic controlling devices to produce optimum moisture levels in all plant, vegetation and tree areas. Keys shall be provided to the Contractor for all irrigation controllers. It shall be the Contractor's sole responsibility to keep plants watered properly. If there are problems with the irrigation system that prevent proper watering procedures, the Contactor shall effectuate all repairs and hand water to keep plants thriving until such repairs are completed.
 1. If possible, except as dictated by extenuating circumstances (when unusual circumstance occur as necessitated by special events, etc.) irrigation cycles shall be set to take place during night-time hours.

2. If there is more than one irrigation controller on the water source, do not program controllers to water during the same time period, as an overdraft of water line source will result, resulting in diminished efficiency of system. Set controllers so that one finishes its watering cycle before the next starts its watering cycle. During periods of high rainfall, set controllers to the manual or rain mode until irrigation is needed. Do not switch controller to "off".
 3. Operation of the irrigation system shall be monitored by the Contractor on bi-monthly basis (in conjunction with service cycle) to insure proper coverage or areas and operation of system – for example, proper running of controller, the setting of turf/groundcover/perennial heads at the proper height, the straightening of heads, and cleaning/adjusting nozzles and heads to prevent water spray onto windows or buildings, to reset drip line, etc. When adjusting nozzles, the Contractor shall remember to avoid excessive watering of hard surface areas (parking lots, walks, drive-ways, etc.); placing emphasis on this need at all times, but particularly so during winter months. Do not rely on a nozzle's flow control for adjustment; use the right nozzle for the space.
 4. Maintenance of drip irrigation system shall consist of removing the disc stack, rinsing with water and replacing every 6 months, comparing the controller run/times and frequency to the application rate for the Techline tubing used at the spacing installed, and if the amount of water in inches/hour is insufficient or exceeds the requirement of the plant, adjust accordingly. Refer to "Techline Design Manual" by netafimusa.com.
 5. During cold weather, the Contractor shall be responsible to monitor the weather closely and to turn the irrigation system to manual or rain mode to prevent the icing of sidewalks, driveways, vehicular lanes and grounds, and any associated damage to plants. When weather conditions dictate, the Contractor shall drain the irrigation system so that minimum freeze damage occurs to the system.
 6. The project is equipped with rain/freeze sensor for the site area landscaping. In maintaining the irrigation system, the Contractor shall have the use of, and be responsible for the operation of these devices, keeping in mind the +/- variable factor in factory settings of freeze sensors.
 7. Any damage caused by the Contractor, (heads, bubblers, valves, wiring, etc.), shall be repaired at no cost to the Owner. Replacement of equipment shall be of the same type, model, and manufacturer. No substitutions shall be accepted unless a particular replacement part is out of production.
- B. The Contractor shall perform maintenance on the irrigation system to ensure that the system is working properly. The Contractor shall be responsible for the supply and/or replacement of all sprinkler heads, broken, missing, or otherwise, damaged during routine scheduled service and/or vandalism of site. Contractor shall be prepared to respond immediately to reports of irrigation problems occurring.
- C. A minimum of bi-weekly check the systems for continuous trouble-free operation.
- D. Adjust all heads and bubblers to maintain proper coverage. This includes height adjustments.
- E. Immediately repair and replace any equipment damaged as a result of maintenance operations, at the Contractor's expense and as directed by the Owner's Representative.
- F. Accidental damage not resulting from Contractor's negligence shall be reported promptly to the Owner's Representative along with an estimate of cost for correction for Owner's Representative approval.
- G. The Owner's Representative shall be notified, within twenty-four (24) hours, of any damage caused by accident, vandalism, theft, or acts of God.
- 3.9 FERTILIZING: Refer to Appendix "A" for approved organic fertilizers. Refer to maintenance schedule Appendix "B" for application dates.
- 3.10 MULCHING: Apply coarsely shredded, slightly decomposed, hardwood mulch in planter beds and at the bases of trees as needed to maintain a minimum depth of three (3) inches. Hold mulch back from root flare of plant at least four (4) inches or tree by at least eight (8) inches. Hold compost and mulch back from root flare of all plants and trees. Remove any mulch, compost, leaf debris and ant piles at the root flare base of a tree to keep roots fully exposed.
- 3.11 WEED REMOVAL: Remove weeds weekly during growing season and as required for safe control and elimination of weeds and to prevent reseeding and spreading of noxious and aggressive weeds. The Contactor shall familiarize himself with the plants that are to be maintained.
- A. Weeds in aggregates – Hand pull on a regular basis; spray with vinegar-based herbicides only if needed.

- B. Weeds in shrub beds, groundcover beds, ornamental grass beds, perennial beds and grass - Hand pull on a regular basis; spray with vinegar-based herbicides only if needed, or apply vinegar, orange oil/soap mixture with a wick for contact to specific weeds.
- C. Weeds in paving – Apply non-selective organic herbicide on regular basis

3.12 LITTER REMOVAL: Maintain all grass, groundcovers, shrubs, perennials, ornamental grasses, mulch, aggregates, paved areas, etc. as required to be free of litter and debris. The frequency is shown on the Appendix “B”. Litter control shall be performed weekly on all portions of areas involved with this contract. Extremely high visitation, i.e. special events, may increase intensity. Pick up all litter and debris in trash receptacles and on the grounds, including pet waste, and haul away and dispose of in an appropriate and legal manner. Reline trash cans with heavy duty properly sized plastic bags. Hand rake or use pneumatic blower to remove acorns from the site including grass areas and beds.

3.13 HAZARD REMOVAL: Pick up and remove any and all broken glass from planters and lawn areas as necessary, but at least once per week. Any hazardous conditions shall be reported to the Owner’s Representative immediately upon discovery. Hazardous conditions are defined as natural or man-made feature within the physical boundaries of the contracted property (plant, structure, equipment, furniture, or any real property) which is in such a condition that it may not be utilized safely in its original or designated capacity and efficiency.

3.14 DRAINAGE LINES:

- A. All on-grade drainage lines shall be kept clear, clean, and free of any and all debris, at all times for those. Check sub drainage structures below top drain inlet to ensure that sediments have not blocked any of the drainage. Clean by hand or flush with water as necessary to remove sediments and algae. As needed, use hydrogen peroxide to kill algae from drain surface. Do not use chlorine bleach.
- B. The Contractor shall make routine monthly inspection of all drainage inlets AND after any form of precipitation (rain, snow, etc.) to insure that the flow lines and grates are free of obstructions.

3.15 GRAVEL AND AGGREGATE BEDS

Pneumatically blow or hand rake/sweep all stone surfaces to remove litter and debris. Repair and restore all aggregate areas to final grades by filling and leveling to remove ruts or uneven areas. Clean adjacent paving by sweeping aggregate material back into its proper bed areas for appearance.

3.16 MAINTENACE SCHEDULE

Refer to Appendix “B” for summary of maintenance activities.

APPENDIX A ACCEPTABLE/UNACCEPTABLE PRODUCTS

TEXAS ORGANIC RESEARCH CENTER

In general:

Toxic synthetic pesticides are specifically prohibited, i.e., neurotoxins including carbamates, organophosphates, pyrethroids, organochlorines and all products containing piperonyl butoxide (PBO). The following lists present acceptable and unacceptable landscape products. The lists are not exclusive and are intended to present representative products that are acceptable or unacceptable. Alternate products are available per OMRI – Organic Materials Research Institute – www.omri.org/index.html, (541) 343-7600, or approved equal products. Products that are not included below must be submitted for approval by the Representative prior to use on this site.

Acceptable Organic Soil Amendment and Fertilizer Products

Alliance Milling Products	Garrett Juice
Apple cider vinegar	GreenSense Products
Bioform Products	Hou-Actinite
Biosolids	Humates
Bradfield Products	Humic acid products
Compost	Hu-More Products
Compost Tea	Lava sand
Corn gluten meal	Manure compost
Cornmeal products	Medina Products
Cottonseed meal	Molasses
Diatomaceous earth (natural)	Native cedar products
Dry molasses	Seaweed products
Earth's Fortune	Texas greensand
Earthworm castings	Urea in small amounts in organic products
Fish emulsion and fish meal	Volcanite
Garden-Ville Products	Wheat bran products
Garden-Ville Soil Conditioner	Zeolite

Unacceptable Fertilizer Products

Ammonium nitrate	Synthetic fertilizers
Ammonium sulfate	Synthetic growth regulators
Osmocote	Synthetic weed and feed fertilizers
Peters 20-20-20	Urea except in small amounts in organic fertilizers

Organic/Natural Pest Control Products

Bactimos briquettes	Eco PCO Exempt
Baking soda	Eugene oil
Beneficial insects	Garden-Ville Soil Conditioner
Beneficial nematodes	Garlic tea products
Bioblast	Glue traps
Biological products	Horticultural oil
Bora-Care	Hydrogen peroxide
Borate products	Insecticidal soap
Boric Acid	Live traps
Cedar-Cide	Mosquito Dunks
Cinnamon Products	Niban
Citrex	Orange oil
Citric acid products	Pepper products
Clove oil	Rock phosphate (natural) – for use in Tree Goop
Cornmeal products	Spinosad
Diatomaceous earth (natural)	Tim-Bor
Eco PCO D	Tree Trunk Goop

Unacceptable Pest Control Products

2,4-D	Ironite
Amdro	Lindane
Atrazine	Manage
Bayleton	Merit
BHA	Miracle Gro
BHT	MSMA
BR-61	Onyx
Broadleaf herbicides	Orthene
Copper products	Orthonex
Daconil	PBO
Diazinon	Piperonyl butoxide
DSMA	Rotenone
Dursban	Round Up
Ethoxyquin	Silica gel
Finale	SU herbicides
Funginex	Synthetic fungicide

Acceptable Herbicide Products

Citrus oil
 Citrus products
 Dr. Broenner's Peppermint Oil Soap (with coconut and olive oils)
 Pickling vinegar (10%)
 Vinegar products

APPENDIX B
ORGANIC LANDSCAPE MAINTENANCE FREQUENCY CHART – SURVEYOR WATER TOWER DEMONSTRATION GARDEN

Activity	Frequency												Total Visits
	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec	
Fertilize trees		1				1			1				3
Apply compost tea	1	1	1	1	1	1	1	1	1	1	1	1	12
Fertilize all planting bed areas		1				1			1				3
Hand weed beds	1	1	2	4	4	5	4	4	5	4	2	1	37
Tree pruning and maintenance	*	*	*	*	*	*	*	*	*	*	*	*	*
Shrub pick-pruning	*	*	*	*	*	*	*	*	*	*	*	*	*
Dead head perennials												1	1
Trim ornamental grasses		1											1
Ant control	*	*	*	*	*	*	*	*	*	*	*	*	*
Applications of organic pesticides & fungicides	*	*	*	*	*	*	*	*	*	*	*	*	*
Apply mulch, cultivate beds	1						1						2
Litter and left removal	5	4	4	4	4	5	4	4	5	4	5	4	52
Mowing	*	*	2	2	2	1	1	1	1	1	1	*	12
Irrigation check	1	1	1	1	1	1	1	1	1	1	1	1	12
Drip irrigation – clean filters/ remove debris			1						1				2
Drainage systems – check and clean	1		1		1		1		1		1		6
Clean , repairs gravel areas	5	4	4	4	4	5	4	4	5	4	5	4	52
Visit w/ Owner's Representative	1	1	1	1	1	1	1	1	1	1	1	1	12

IRRIGATION REPORT

(Required to be submitted with 24 hours of inspection)

Drop form by Parks Dept., 16801 Westgrove, 2nd floor
or Fax to (972) 450-2834 or Email to rlee@addisontx.gov

Date: _____ Location: _____ Applicator: _____ TX Irrigator lic# _____

Duration in time: _____

Controller	Zone	Repairs/Problems/Comments	Controller Status (on, off, rain mode, etc.)

Repairs/replacement performed due to Contractor damage:

PESTICIDE/FERTILIZER APPLICATION REPORT

(Required to be submitted within 24 hours of pesticide or fertilizer application)

Drop form by Parks Dept., 16801 Westgrove, 2nd floor
or Fax to (972) 450-2834 or Email to rlee@addisontx.gov

Date: _____ Location: _____ Applicator: _____ SPCB# _____

Weather conditions: _____

Exact time of application: _____

Chemical and dilution rates used: _____

Fertilizer: Ratio _____ # of lbs applied _____ % of completion _____

Comments:

Vitruvian Park Aerial View



Vitruvian Park Aerial View



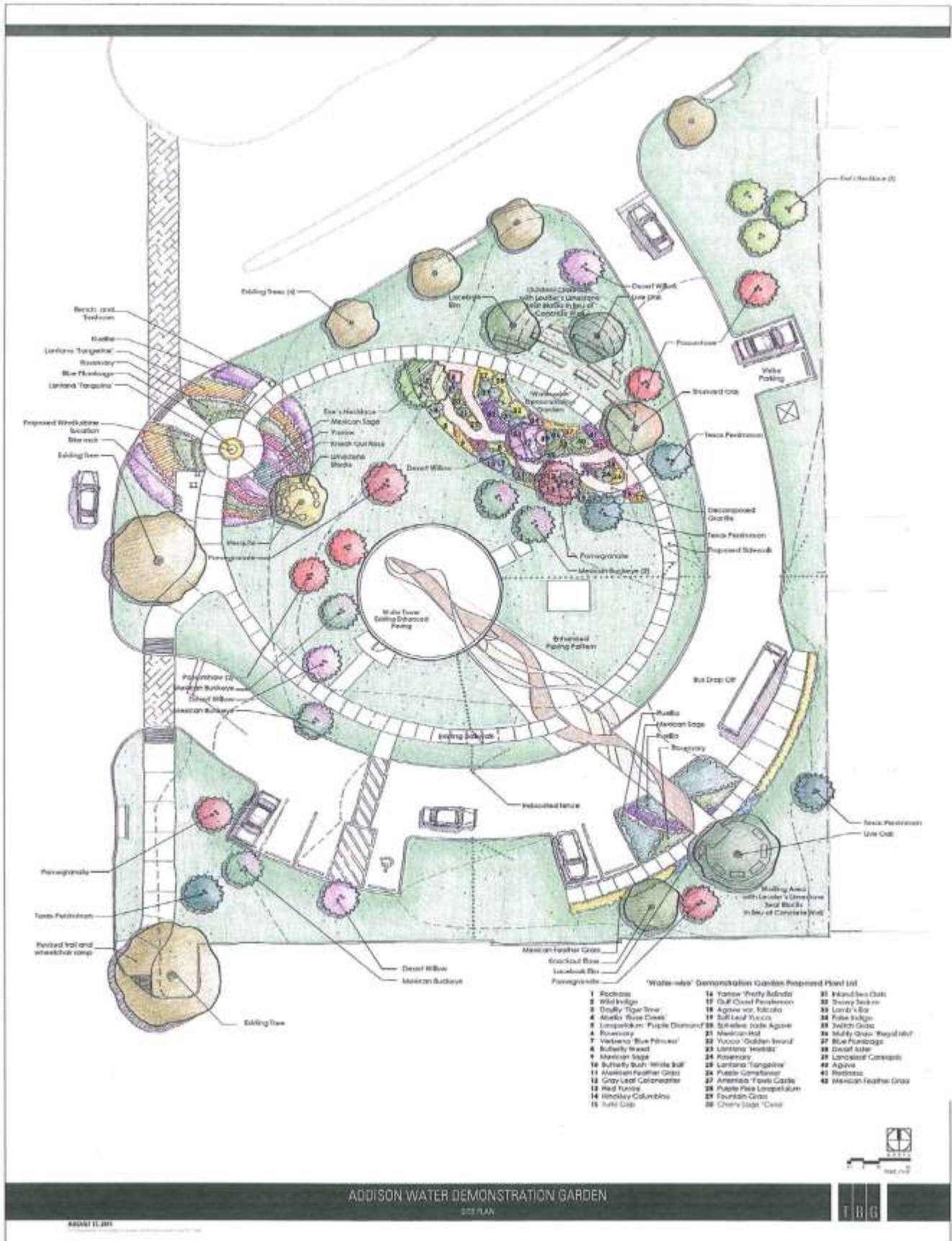
View of Vitruvian Park Looking Towards Ponte Ave. Bridge



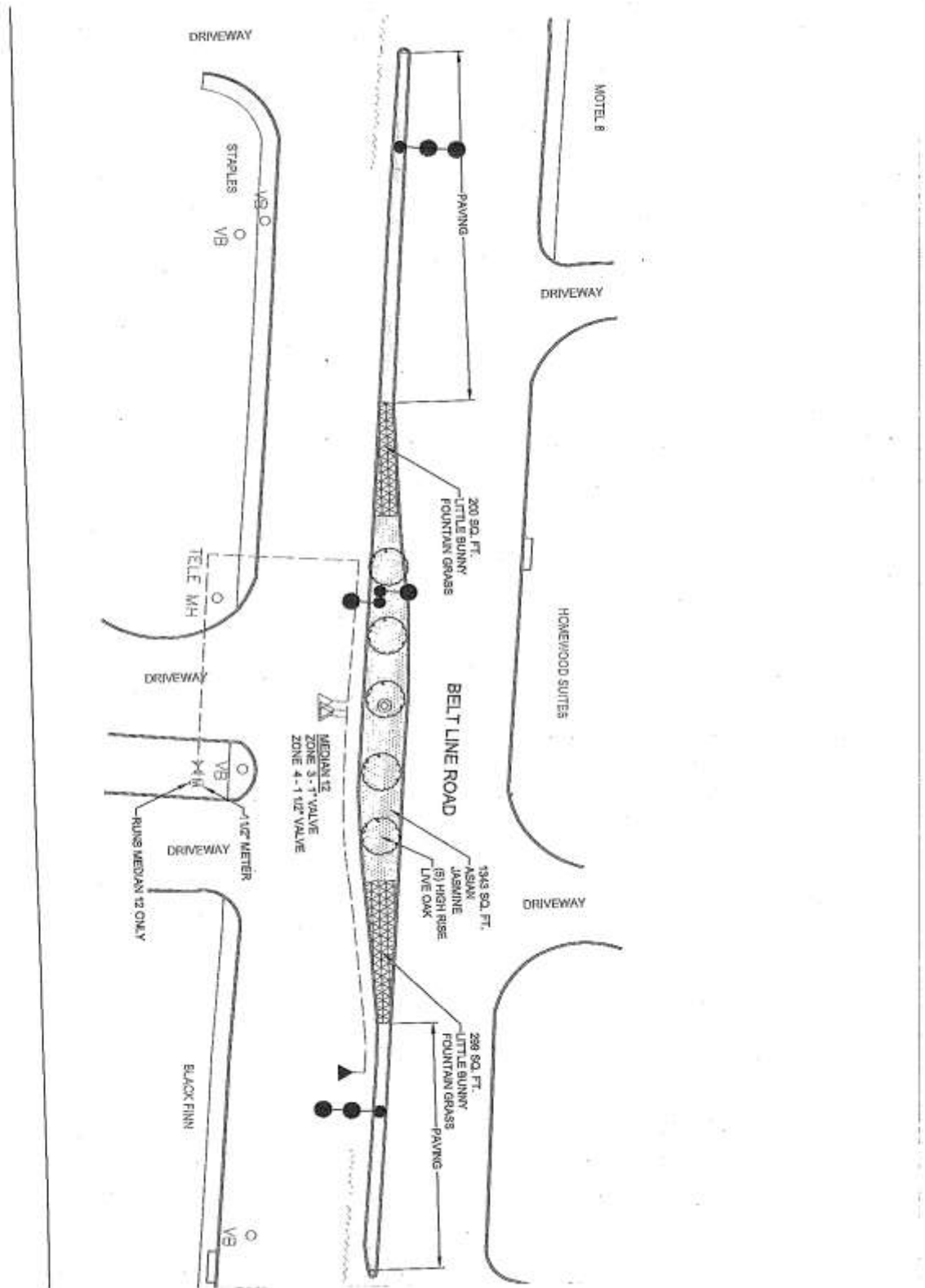
Surveyor Road Water Tower Demonstration Garden Aerial View



Surveyor Water Tower Demonstration Garden Planting Plan – Highlighting Texas Native Perennials, Shrubs, Succulents and Trees



Typical Belt Line Road Landscape Median with Irrigation – Marsh Lane to Preston Road



View of Vitruvian Park Looking Upstream from Wildlife Observation Deck



View From Observation Deck of Vitruvian Park Islands in Farmers Branch Creek



View Downstream of Vitruvian Park 'Natural Area'



View Downstream of Vitruvian Park from the Bella Bridge



View of Landscaping on South Side of Surveyor Water Tower



View of Landscaping on North Side of Surveyor Water Tower



View of Landscaping Behind Security Fencing – Southeast Corner of Surveyor Water Tower



QUALIFICATION AND REFERENCE STATEMENT**BIDDER:** **COMPANY INFORMATION:**Number of years in business? Number of years at current location? Do you maintain a permanent commercial business office? Have you or any present partners or officers failed to complete a contract: If yes, give name of owner and/or surety?

<input type="text"/>

Can you be reached 24 hours a day (in an emergency)? Pager# Cell Phone# Answer Svc# Other# **CUSTOMER REFERENCES**

Please provide 3 to 5 users you have provided with this product or service. Use comparable projects and government entities, if any;

Company Name	Contact Name	Phone	Email
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Town of Addison
GENERAL TERMS AND CONDITIONS

By submitting an Offer in response to the Solicitation, the Contractor/Seller (hereafter called Seller) agrees the Contract/Purchase Order shall be governed by the following terms and conditions for goods and services.

1. Applicability: These General Terms and Conditions and the Terms and Conditions, Specifications, Drawings and other requirements included in the Town of Addison's Request for Bid (collectively, "Terms and Conditions") are applicable to Contracts/Purchase Orders issued by the Town of Addison (hereinafter referred to as the "Town" or "Buyer") and the Seller (herein after referred to as the "Seller"). Any deviations must be in writing and signed by a representative of the Town's Purchasing Department and the Seller. No terms and conditions contained in the Seller's Proposal, Invoice or Statement shall modify the Terms and Conditions. If there is a conflict between the Terms and Conditions and Seller's response to the Town's request for bids or proposals documents (including the provisions of the Seller's form of contract/purchase order), the Terms and Conditions will take precedence and control.
2. Official Solicitation Notification: The Town utilizes the following for official notifications of solicitation opportunities: www.bidsync.com and the Dallas Morning News of Dallas County. These are the only forms of notification authorized by the Town for notifications of solicitation opportunities. The Town is not responsible for receipt of notifications or information from any source other than those listed. It shall be the Seller's responsibility to verify the validity of all solicitation information received from any source other than the Town. There will be NO COST to the Seller for using BidSync to respond to Town of Addison solicitations.
3. Seller to Package Goods: Seller shall package goods in accordance with good commercial practice. Each shipping container, shall be clearly and permanently marked as follows: (a) Seller's name and address; (b) consignee's name, address and purchase order or purchase change order number; (c) container number and total number of containers, e.g., "box 1 of 4 boxes"; and (d) number of the container bearing the packing slip. Seller shall bear cost of packaging unless otherwise provided and agreed to in writing by Buyer. Goods shall be suitably packed to secure lowest transportation costs and to conform to requirements of common carriers and any applicable specifications. Town's count or weight shall be final and conclusive on shipments not accompanied by packing list. Unless otherwise stated in the Town's solicitation, all goods will be new, not used, rebuilt, reconditioned or recycled, will be in first class condition, and will be in containers suitable for site.
4. Shipment Under Reservation Prohibited: Seller is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of goods.
5. Title and Risk of Loss: Title and risk of loss of the goods will not pass to the Town until the Town actually receives, takes possession of, and inspects and accepts the goods at the point or points of delivery.

6. Delivery Terms and Transportation Charges: Goods shall be shipped F.O.B. point of delivery; prices bid and quoted shall be F.O.B. point of delivery, and shall include all freight, delivery and packaging costs. Town shall have the right to designate what method of transportation shall be used to ship the goods. Town assumes and shall have no liability for goods damaged while in transit and or delivered in a damaged condition or that otherwise don't conform to the Terms and Conditions. Seller shall be responsible for and handle all claims with carriers, and in case of damaged or non-conforming goods shall ship replacement goods immediately upon notification by the Town of the same, and the Town may return such damaged or non-conforming goods at Seller's sole cost and expense, including costs and expense for freight, delivery, packaging, and shipping.

7. Right of Inspection and Rejection; Backorders: The Town shall have the right, and expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the goods at delivery before accepting them, and to reject defective or non-conforming goods. Backorders delayed beyond a reasonable period of time, as determined by the Town Purchasing Manager, may be cancelled by the Town without liability of any kind whatsoever, and payment will not be made for such cancellations.

8. Acceptance of Incomplete or Non-Conforming Goods: If, instead of requiring immediate correction or removal and replacement of defective or non-conforming goods, Town prefers to accept such goods, Town may do so. Seller shall pay all claims, costs, losses and damages attributable to Town's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, Town may deduct such amounts as are necessary to compensate Town for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to Town by Seller.

9. Substitution: Every delivery of goods by the Seller must comply with all provisions of this bid including the specifications, delivery schedule, quantity and quality, and the Terms and Conditions. Any delivery which does not conform to the Buyer's requirements shall constitute a breach of contract. Seller does not have authorization to make or tender substitute goods unless it is agreed to in writing by the Buyer and signed by an authorized representative of Buyer.

10. Payment:

(a) All proper invoices received by the Town will be paid within thirty (30) days of the Town's receipt and acceptance of the goods or of the invoice, whichever is later, unless other terms are specified on the face of the purchase order in the original printing. If payment is not timely made, interest shall accrue on the unpaid balance at the lesser of one percent per month or the maximum lawful rate; except, if payment is not timely made for a reason for which the Town may withhold payment hereunder, interest shall not accrue until ten (10) days after the grounds for withholding payment have been resolved.

(b) If partial shipments or deliveries are authorized by the Town, Seller will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.

(c) The Town may withhold or set off the entire payment or part of any payment otherwise due Seller to such extent as may be necessary on account of: (i) delivery of defective or non-conforming goods by Seller, or (ii) failure of the Seller to submit proper invoices with all required attachments and supporting documentation, or (iii) failure of Seller to deliver quantity of goods ordered (payment will be made for actual quantities delivered).

(d) The Town's payment obligations are payable only and solely from funds appropriated, budgeted, and available for the purpose of this purchase. The absence of appropriated and budgeted or other lawfully available funds shall render the Contract/Purchase Order null and void to the extent funds are not appropriated and budgeted or available and any goods delivered but unpaid shall be returned to Seller. The Town shall provide the Seller written notice of the failure of the Town to make an adequate appropriation and budget for any fiscal year to pay the amounts due under the Contract/Purchase Order, or the reduction of any appropriation to an amount insufficient to permit the Town to pay its obligations under the Contract/Purchase Order.

11. Invoicing: Send ORIGINAL INVOICE to address indicated on the purchase order. If invoice is subject to cash discounts the discount period will begin on the day invoices are received. So that proper cash discount may be computed, invoice should show amount of freight as a separate item, if applicable; otherwise, cash discount will be computed on total amount of invoice.

12. Taxes - Exemption: All quotations are required to be submitted LESS Federal Excise and State Sales Taxes. Tax Exemption Certificate will be provided by the Town for the successful Seller

13. Warranty - Price:

(a) Seller warrants the prices quoted in its bid are no higher than Seller's current prices on orders by others for like goods under similar terms of purchase.

(b) Seller certifies that the prices in Seller's bid have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

(c) In the event of any breach of this warranty, the prices of the items will be reduced to Seller's current prices on orders by others, or in the alternative, the Town may cancel this Contract/Purchase Order without liability to Seller of any kind whatsoever. In addition to any other remedy available, the Town may deduct from any amounts owed to Seller, or otherwise recover, any amounts paid for items in excess of Seller's current prices on orders by others for like goods under similar terms of purchase.

14. Warranty – Title: Without limiting any provision of law, Seller warrants that it has good and indefeasible title to all goods furnished hereunder, and that the goods are free and clear of all liens, claims, security interests and encumbrances. **Seller shall indemnify and hold the Town harmless from and against all adverse title claims to the goods.**

15. Warranty (goods): If goods are sold and furnished to Seller in connection with these Terms and Conditions, Seller represents and warrants that the goods sold and furnished to the Town will be (i) free from defects in design, manufacture, materials and workmanship, (ii) be of merchantable quality and fit for ordinary use, (iii) be in full conformance with Buyer's specifications, drawings and data, with Seller's samples or models furnished in connection herewith, with Seller's express warranties, and with the terms and conditions of the Town's solicitation, and (iv) conform to all applicable Federal, State, and local laws, ordinances, rules, regulations, codes, and to all applicable standards and industry codes and standards. These warranties are in addition to all others given to the Buyer by the Seller or by law. Seller shall not limit, disclaim, or exclude these warranties or any implied warranties, and any attempt to do so shall render this Contract/Purchase Order voidable at the option of the Buyer, and any such limitations, disclaim, or exclusions shall be void and without force or effect.

Unless otherwise specified in a Contract/Purchase Order and approved by the Town in writing, the warranty period shall be at least one year from the date of acceptance of the goods or from the date of acceptance of any replacement goods. If during the warranty period, one or more of the above warranties are breached, Seller shall promptly upon receipt of demand either repair the defective or non-conforming goods, or replace the non-conforming or defective goods with fully conforming and non-defective goods, at the Town's option and at no additional cost to the Town. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by Seller. The Town shall endeavor to give Seller written notice of the breach of warranty within thirty (30) days of discovery of the breach of warranty, but failure to give timely notice shall not impair the Town's rights hereunder.

If Seller is unable or unwilling to repair or replace defective or non-conforming goods as required by Town, then in addition to any other available remedy, Town may reduce the quantity of goods it may be required to purchase under the Contract/Purchase Order from Seller, and purchase conforming goods from other sources. In such event, Seller shall pay to Town upon demand the increased cost, if any, incurred by the Town to procure such goods from another source.

If Seller is not the manufacturer, and the goods are covered by a separate manufacturer's warranty, Seller shall transfer and assign such manufacturer's warranty to Town. If for any reason the manufacturer's warranty cannot be fully transferred to Town, Seller shall assist and cooperate with Town to the fullest extent to enforce such manufacturer's warranty for the benefit of Town.

16. Warranty (services): If services are provided to Seller in connection with these Terms and Conditions, Seller represents and warrants that all services to be provided to the Town will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of this Contract/Purchase Order, and all applicable Federal, State and local laws, ordinances, rules, regulations and codes. These warranties are in addition to all others given to the Buyer by the Seller or by law. Seller shall not limit, disclaim, or exclude these warranties or any implied warranties, and any attempt to

do so shall render this Contract/Purchase Order voidable at the option of the buyer, and any such limitations, disclaim, or exclusions shall be void and without force or effect.

Unless otherwise specified in the Contract/Purchase Order, the warranty period shall be at least one year from the date of final acceptance of the services by the Town. If during the warranty period, one or more of the above warranties are breached, Seller shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the Town. All costs incidental to such additional performance shall be borne by the Seller. The Town shall endeavor to give the Seller written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the Town's rights under this section.

If the Seller is unable or unwilling to perform its services in accordance with the above standard as required by the Town, then in addition to any other available remedy, the Town may reduce the amount of services it may be required to purchase under the Contract/Purchase Order from the Seller, and purchase conforming services from other sources. In such event, the Seller shall pay to the Town upon demand the increased cost, if any, incurred by the City to procure such services from another source.

17. Right to Assurance: Whenever one party to the Contract/Purchase Order in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of this Contract/Purchase Order.

18. Default: Seller shall be in default under this Contract/Purchase Order if Seller (a) fails to fully, timely and faithfully perform any of its material obligations under this Contract/Purchase Order (whether or not an obligation is "material" shall be determined by the Town), (b) fails to provide adequate assurance of performance as provided for herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States, or (d) makes a material misrepresentation in Seller's offer or response to Buyer's solicitation, or in any report or deliverable required to be submitted by Seller to the Town.

19. Termination for Cause or Convenience: The Town, at any time, by 30 days written notice to the Seller, has the absolute right to terminate this Contract/Purchase Order, in whole or in part, for cause or for convenience (that is, for any reason or for no reason whatsoever). "Cause" means the Seller's refusal or failure to perform or complete its obligations under this Contract/Purchase Order within the time specified and to the Town's satisfaction, or failure to meet the specifications, quantities, quality and/or other requirements specified in the Contract/Purchase Order. If the Town terminates this Contract/Purchase Order for cause, the Seller shall be liable for any damages suffered by the Town. If the agreement is terminated for convenience, the Seller has no further obligation under this Contract/Purchase Order. Upon receipt of a notice of termination, Seller shall promptly cease all further work pursuant to the Contract/Purchase Order, with such exceptions, if any, specified in the notice of termination. Payment shall be made to cover the cost of goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

20. Delay: Town may delay scheduled delivery or other due dates by written notice to Seller if the Town deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract/Purchase Order, the Town and the Seller shall negotiate an equitable adjustment for costs incurred by Seller in the Contract/Purchase Order price and execute an amendment to the Contract/Purchase Order. Seller must assert its right to an adjustment within thirty (30) days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse Seller from delaying the delivery as notified. For purposes of these Terms and Conditions, "days" means calendar days.

21. **SELLER'S INDEMNITY OBLIGATION; INSURANCE**: See attached Town of Addison minimum requirements.

22. Gratuity: Town may, by written notice to Seller, cancel this Contract/Purchase Order without liability to Town if it is determined by Town that any gratuity, in the form of entertainment, gifts, or otherwise, was offered or given by Seller, or any officer, employee, agent or representative of Seller, to any officer, employee, or representative of Town with a view toward securing a contract or securing favorable treatment with regard to the awarding or amending, or the making or any determinations with respect to the performance of, a contract. In the event this Contract/Purchase Order is canceled by the Town pursuant to this provision, the Town shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Seller in providing such gratuities.

23. Notices: Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under this Contract/Purchase Order shall be in writing and shall be deemed delivered upon being hand-delivered or upon three (3) business days after postmarked if sent by U.S. Postal Service certified or registered mail, return receipt requested. Notices to Seller shall be sent to the address as specified by Seller. Notices to the Town shall be addressed to Town at 5300 Belt Line Road, Dallas, Texas 75254 and marked to the attention of the Town Finance Director.

24. No Warranty By Town Against Infringement: Seller represents and warrants to the Town that: (i) Seller shall provide the Town good and indefeasible title to all goods being sold and/or supplied to the Town, and (ii) such goods in accordance with the specifications in this Contract/Purchase Order will not infringe, directly or indirectly, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of such goods and the Seller does not know of any valid basis for any such claims. The Town's specifications regarding the goods shall in no way diminish Seller's warranties or obligations under this paragraph, and the Town makes no warranty that the production, development, or delivery of goods according to the specifications will not give rise to such a claim or will not will not impact such warranties of Seller, and in no event will Town be liable to Seller, its officers, employees, or agents (together, "Seller Parties") for indemnification or otherwise if Seller Parties or any of them is sued on the grounds of infringement or the like. If Seller is of the opinion that an infringement or the like will or may result, Seller shall promptly notify Town of that opinion. If Seller in good

faith ascertains, prior to production of the goods, that production of the goods according to the specifications will result in infringement or the like, this Contract/Purchase Order will be null and void, and neither Town nor Seller shall have any liability one to the other.

25. Assignment and Successors: The successful Seller shall not assign, transfer, pledge, subcontract, or otherwise convey (collectively, “assign” or “assignment”), in any manner whatsoever, any rights, duties, obligations, or responsibilities of Seller under or in connection with this Contract/Purchase Order, in whole or in part, without the prior written consent of the Town of Addison (and any such assignment without the prior written consent of the Town shall be null and void). Any person or entity to whom Seller assigns any right, duty or obligation shall, as a condition of such assignment, agree to comply with and abide by all provisions of this Contract/Purchase Order, and Seller shall promptly give the Town a true and correct copy of such agreement.

This Contract/Purchase Order shall be binding upon and inure to the benefit of the City and the Seller and their respective successors and authorized assigns, provided however, that no right or interest in the Contract/Purchase Order shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. This Contract/Purchase Order does not and is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to this Contract/Purchase Order.

26. Waiver, Rights, Remedies: All waivers must be in writing and signed by the waiving party. The rights or remedies under this Agreement are cumulative to any other rights or remedies, which may be granted by law.

27. Modifications: This contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any Seller invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of this Contract/Purchase Order.

28. Independent Contractor: Seller shall operate hereunder as an independent contractor and not as an officer, agent, servant or employee of the Town. Seller shall have exclusive control of, and the exclusive right to control, the details of its operations hereunder, and all persons performing same, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants.

29. Interpretation: This Contract/Purchase Order is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in this Contract/Purchase Order. Although the Contract/Purchase Order may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in this contract, the UCC definition shall control, unless otherwise defined in this Contract/Purchase Order.

30. Competitive Pricing: It is the intent of the Town to consider Interlocal Cooperative Agreements and State/Federal contracts in determining the best value for the Town.

31. Interlocal Agreement: Successful bidder (Seller) agrees to extend prices for the goods and/or services to be provided by Seller described in this Contract/Purchase Order to all entities that have entered into or will enter into joint purchasing interlocal cooperation agreements with the Town. The Town is a participating member of several interlocal cooperative purchasing agreements. As such, the Town has executed interlocal agreements, as permitted by law, including under Chapter 791 of the Texas Government Code, with certain other political subdivisions, authorizing participation in a cooperative purchasing program. The successful bidder (Seller) may be asked by the Town to provide products/services based upon the bid price to any other participant to a cooperative purchasing agreement, and the Seller agrees to do so (such provision will be pursuant to an agreement between Seller and such other participant, and the Town will have no liability or responsibility in connection therewith).

32. Right to Audit: The city shall have the right to examine and audit after reasonable notice any and all books and records, in any form or format whatsoever (including electronic), of Seller that may relate to this Contract/Purchase Order including, without limitation, the performance of Seller, its employees, agents, and subcontractors. Such books and records will be maintained in accordance with generally accepted accounting principles and shall, upon request and at the Town's request, be made available at a location designated by the Town. Seller shall, except for copying costs, otherwise bear all costs of producing such records for examination and copying by the Town. Unless otherwise agreed by the Town, such books and records must be made available to the Town within five business days after the Seller's receipt of a written notice from the Town requesting the same. The provisions of this paragraph shall survive the termination of this agreement. Seller shall retain all such books and records for a period of three (3) years after final payment on this Contract/Purchase Order or until all audit and litigation matters that the Town has brought to the attention of the Seller are resolved, whichever is longer. The Seller agrees to refund to the Town any overpayments disclosed by any such audit. The Seller shall include a similar audit right on behalf of the Town in all subcontractor agreements entered into in connection with this Contract/Purchase Order.

33. Correspondence: The Bid number must appear on all correspondence and inquiries pertaining to the Request for Bid or to quotes. The Purchase Order number must appear on all invoices or other correspondence relating to the Contract/Purchase Order.

34. Easement Permission: The contractor shall not enter or use private property except as allowed by easements shown on the contract documents or if the contractor obtains specific written permission from the property owner.

35. Alternates - Samples: If bidding on other than the item solicited by the Town, Seller's bid must identify the item's Trade Name, Manufacturer's Name and/or Catalog Number, and certify the item offered is equivalent to the item solicited by the Town. Descriptive literature must be submitted with alternate brands. Samples shall be furnished free of expense to the Town and if requested, may be returned at bidder's expense.

36. Error - Quantity: Bids must be submitted in units of quantity specified, extended, and totaled. In the event of discrepancies in extension, the unit prices shall govern.

37. Acceptance: The right is reserved to the Town to accept or reject all or part of the bid, and to accept the offer considered most advantageous to the Town by line item or total bid.

38. Term Contracts: Except as otherwise provided herein, prices must remain firm for the entire Contract/Purchase Order period, including any periods of extension or renewal. At the time of any renewal or extension of the Contract/Purchase Order, the Town or the Seller may request a price adjustment based upon the economy. All requests for a price adjustment must include detailed documentation and rationale to support the requested adjustment. The party to whom a request for price adjustment is made may, in its sole discretion, accept or reject the request. Any price adjustment must be mutually agreed upon in writing by the parties, and shall be effective for the applicable renewal term.

39. Term Contract Quantities: The quantities (if any) in the request for bid are estimated requirements and the Town reserves the right to increase or decrease the quantities or cancel any item to be furnished. The successful bidder (Seller) shall have no claim against the Town for anticipated profits for quantities diminished or deleted.

40. Term Contract Shipments: The Seller will make shipments under this Contract/Purchase Order only when requested and only in the quantities requested. Seller shall comply with minimum shipments or standard packaging requirements (if any) included in the Contract/Purchase Order.

41. Contract Renewal Options: In the event a clause for option to renew for an additional period is included in the request for bid, all renewals will be based solely upon the option and agreement between the Town and the Seller. Either party dissenting will terminate the Contract/Purchase Order in accordance with its initial specified term.

42. Electronic Signature – Uniform Electronic Transactions Act: The Town adopts Texas Business and Commerce Code Chapter 322, Uniform Electronic Transactions Act, allowing individuals, companies, and governmental entities to lawfully use and rely on electronic signatures.

43. Funding Out Clause: This Contract/Purchase Order may be terminated by the Town without notice and without penalty or liability in the event that (1) the Town lacks sufficient funds for this Contract/Purchase Order; (2) funds for this Contract/Purchase Order are not appropriated and/or budgeted by the City Council of the Town; and (3) funds for this Contract/Purchase Order that are or were to be provided by grant or through a third party are withheld, denied or are otherwise not available to the Town.

44. Dispute Resolution: Pursuant to subchapter I, Chapter 271, Texas Local Government Code, Seller agrees that, prior to instituting any lawsuit or other proceeding arising from any dispute or claim of breach under this Contract/Purchase Order (a "Claim"), the parties will first attempt to resolve the Claim by taking the following steps: (i) A written notice substantially describing the factual and legal basis of the Claim shall be delivered by the Seller to the Town within one-hundred eighty (180) days after the date of the event giving rise to the Claim, which notice shall request a

written response to be delivered to the Seller not less than fourteen (14) business days after receipt of the notice of Claim; (ii) if the response does not resolve the Claim, in the opinion of the Seller, the Seller shall give notice to that effect to the Town whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in a effort to resolve the Claim; (iii) if those persons cannot or do not resolve the Claim, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the Claim.

45. Disclosure of Certain Relationships: Chapter 176 of the Texas Local Government Code requires that any person, as defined in the statute, considering doing business with a local government entity disclose in the Questionnaire Form CIQ, the person's affiliation or business relationship that might cause a conflict of interest with a local government entity. By law, this questionnaire must be filed with the Records Administrator of the Town not later than the 7th business day after the later of (a) the date the person (i) begins discussions or negotiations to enter into a contract with the local governmental entity, or (b) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity, or (b) the date the person becomes aware (i) of an employment or other business relationship with a local government officer, or a family member of the officer, described by the statute, or (ii) that the person has given one or more gifts described in the statute. See Section 176.006, Local Government Code. A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor. The questionnaire may be found at www.ethics.state.tx.us/forms/CIQ.pdf By submitting a response to this request, Seller represents that it is in compliance with the requirements of Chapter 176 of the Texas Local Government Code.

46. Force Majeure: To the extent either the Town or Seller shall be wholly or partially prevented or delayed from the performance of this Contract/Purchase Order or of any obligation or duty under this Contract/Purchase Order placed on such party, by reason of or through work strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, court judgment, act of God, or other specific cause reasonably beyond the party's control and not attributable to its malfeasance, neglect or nonfeasance, then in such event, such party shall give notice of the same to the other party (specifying the reason for the prevention) and the time for performance of such obligation or duty shall be suspended until such disability to perform is removed.

47. BAFO: During evaluation process Town reserves the right to request a best and final offer upon completion of negotiations.

48. Silence of Specifications: The apparent silence of these specifications as to any detail or to the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.

49. Applicable Law: This agreement shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted by the State of Texas (excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction), as effective and in force on the date of this Contract/Purchase Order, without regard

to its conflict of laws rules or the conflict of law rules of any other jurisdiction. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive or any other relief from any competent authority as contemplated herein.

50. Venue: This Contract/Purchase Order is performable in Dallas County, Texas, and venue for any suit, action, or legal proceeding under or in connection with this Contract/Purchase Order shall lie exclusively in Dallas County, Texas. Seller submits to the exclusive jurisdiction of the courts in Dallas County, Texas for purposes of any such suit, action, or proceeding hereunder, and 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.

51. Cost of Response: Any cost incurred by the Seller in responding to the Request for Proposal is the responsibility of the Seller and cannot be charged to the Town.

52. Prohibition Against Personal Interest in Contracts: No Town of Addison officer or employee shall have a direct or indirect financial interest in any contract with the Town, or be directly or indirectly financially interested in the sale of land, materials, supplies or services to the Town.

53. Prior or Pending Litigation or Lawsuits: Each Seller must include in its proposal a complete disclosure of any alleged significant prior or ongoing contract failures, any civil or criminal litigation or investigation pending which involves the Seller or in which the Seller has been judged guilty or liable.

54. Severability: The invalidity, illegality, or unenforceability of any provision of this Contract/Purchase Order shall in no way affect the validity or enforceability of any other portion or provision of this Contract/Purchase Order. Any void or invalid provision shall be deemed severed from this Contract/Purchase Order and the balance of the Contract/Purchase Order shall be construed and enforced as if the Contract/Purchase Order did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract/Purchase Order to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract/Purchase Order from being void should a provision which is the essence of the Contract/Purchase Order be determined to be void.

55. Headings; "Includes": The headings of this Contract/Purchase Order are for convenience of reference only and shall not affect in any manner any of the terms and conditions hereof. The words "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.

56. Conflict: When there is a conflict between the this purchase order (including, without limitation, these Terms and Conditions) and the Seller's invoice, this purchase order shall prevail.

57. Response Contractual Obligation; Waiver: This response, submitted documents, and any negotiations, when properly accepted by the Town, shall constitute a contract equally binding

between the successful Seller and the Town. No different or additional terms will become part of this Contract/Purchase Order except as properly executed in an addendum or change order. **By submitting a bid, Seller waives any claim it has or may have against the Town, its officials, officers, employees, and agents, arising out of or in connection with the administration, evaluation, or recommendation of any bid, acceptance or rejection of any bid, and the award of a contract.**

58. No Waiver of Immunity. Notwithstanding any other of this Contract/Purchase Order, nothing in this Contract/Purchase Order 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 Town, its officials, officers, employees, representatives, and agents are or may be entitled, including, without limitation, any waiver of immunity to suit.

59. No Boycotting Israel. The entity contract with the Town of Addison does not boycott Israel and will not boycott Israel during the term of the contract. Reference HB 89 as it relates to Chapter 2270 of the Texas Government Code. Boycott Israel means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

TOWN OF ADDISON, TEXAS
CONTRACTOR INSURANCE REQUIREMENTS & AGREEMENT

REQUIREMENTS

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

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

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

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

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

With respect to the foregoing insurance,

1. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions applicable to the claims of the Town of Addison.

2. All insurance policies shall be endorsed to require the insurer to immediately notify the Town of Addison, Texas of any material change in the insurance coverage.
3. All insurance policies shall be endorsed to the effect that the Town of Addison, Texas will receive at least thirty (30) days' notice prior to cancellation or non-renewal of the insurance.
4. 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.
5. Insurance must be purchased from insurers that are financially acceptable to the Town of Addison and licensed to do business in the State of Texas.

All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Upon request, Contractor shall furnish the Town of Addison with complete copies of all insurance policies certified to be true and correct by the insurance carrier.

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

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

AGREEMENT

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

Project/Bid# _____

Company: _____

Printed Name: _____

Signature: _____ **Date:** _____

Town of Addison

Indemnification Agreement

Contractor's Indemnity Obligation. Contractor covenants, agrees to, and shall DEFEND (with counsel reasonably acceptable to Owner), INDEMNIFY, AND HOLD HARMLESS Owner, its past, present and future elected and appointed officials, and its past, present and future officers, employees, representatives, and volunteers, individually or collectively, in both their official and private capacities (collectively, the "Owner Persons") and each being an "Owner Person"), from and against any and all claims, liabilities, judgments, lawsuits, demands, harm, losses, damages, proceedings, suits, actions, causes of action, liens, fees (including attorney's fees), fines, penalties, expenses, or costs, of any kind and nature whatsoever, made upon or incurred by Owner and/or Owner Person, whether directly or indirectly, (the "Claims"), that arise out of, result from, or relate to: (i) the services to be provided by Contractor pursuant to this Agreement, (ii) any representations and/or warranties by Contractor under this Agreement, (iii) any personal injuries (including but not limited to death) to any Contractor Persons (as hereinafter defined) and any third persons or parties, and/or (iv) any act or omission under, in performance of, or in connection with this Agreement by Contractor or by any of its owners, directors, officers, managers, partners, employees, agents, contractors, subcontractors, invitees, patrons, guests, customers, licensees, sublicensees, or any other person or entity for whom Contractor is legally responsible, and their respective owners, directors, officers, directors, officers, managers, partners, employees, agents, contractors, subcontractors, invitees, patrons, guests, customers, licensees, sublicensees (collectively, "Contractor Persons"). SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF OWNER OR ANY OTHER OWNER PERSON, OR CONDUCT BY OWNER OR ANY OTHER OWNER PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

Contractor shall promptly advise Owner in writing of any claim or demand against any Owner Person related to or arising out of Contractor's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Contractor's sole cost and expense. The Owner Persons shall have the right, at the Owner Persons' option and own expense, to participate in such defense without relieving Contractor of any of its obligations hereunder. This defense, indemnity, and hold harmless provision shall survive the termination or expiration of this Agreement.

The provisions in the foregoing defense, indemnity and hold harmless are severable, and if any portion, sentence, phrase, clause or word included therein shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, void, or unenforceable in any respect, such invalidity, illegality, voidness, or unenforceability shall not affect any other provision thereof, and this defense, indemnity and hold harmless provision shall be considered as if such invalid, illegal, void, or unenforceable provision had never been contained in this Agreement. **In that regard, if the capitalized language included in the foregoing indemnity is so determined to be void or unenforceable, the parties agree that:**

(i) the foregoing defense, indemnity, and hold harmless obligation of Contractor shall be to the extent Claims are caused by, arise out of, or result from, in whole or in part, any act or omission of Contractor or any Contractor Persons; and

(ii) notwithstanding the provisions of the foregoing subparagraph (i), to the fullest extent permitted by law, Contractor shall INDEMNIFY, HOLD HARMLESS, and DEFEND Owner and Owner Persons from and against all Claims arising out of or resulting from bodily injury to, or sickness, disease or death of, any employee, agent or representative of Contractor or any of its subcontractors, regardless of whether such Claims are caused, or are alleged to be caused, in whole or in part, by the negligence, or any act or omission, of Owner or any Owner Persons, it being the expressed intent of Owner and Contractor that IN SUCH EVENT THE CONTRACTOR'S INDEMNITY, HOLD HARMLESS, AND DEFENSE OBLIGATION SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF OWNER OR ANY OTHER OWNER PERSON, OR CONDUCT BY OWNER OR ANY OTHER OWNER PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND. The indemnity obligation under this subparagraph (ii) shall not be limited by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor under workers compensation acts, disability benefit acts, or other employee benefit acts.

I understand that the indemnification provisions are required of all Town of Addison Contracts. I have read the provisions and agree to the terms of these provisions.

Project/Bid#:

Company Name:

Signature:

Date:



Interested Parties

In 2015, the Texas Legislature adopted [House Bill 1295](#), which added section 2252.908 of the Government Code. The law states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The law applies only to a contract of a governmental entity or state agency that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (2) has a value of at least \$1 million. The disclosure requirement applies to a contract entered into on or after January 1, 2016.

The Texas Ethics Commission was required to adopt rules necessary to implement that law, prescribe the disclosure of interested parties form, and post a copy of the form on the commission's website. The commission adopted the Certificate of Interested Parties form (Form 1295) on October 5, 2015. The commission also adopted new rules (Chapter 46) on November 30, 2015, to implement the law.

Filing Process

On January 1, 2016, the commission made available on its website a new filing application that must be used to file Form 1295. A business entity must use the application to enter the required information on Form 1295 and print a copy of the completed form, which will include a certification of filing that will contain a unique certification number. An authorized agent of the business entity must sign the printed copy of the form and have the form notarized. The completed Form 1295 with the certification of filing must be filed with the governmental body or state agency with which the business entity is entering into the contract.

The governmental entity or state agency must notify the commission, using the commission's filing application, of the receipt of the filed Form 1295 with the certification of filing not later than the 30th day after the date the contract binds all parties to the contract. The commission will post the completed Form 1295 to its website within seven business days after receiving notice from the governmental entity or state agency.

Information regarding how to use the filing application will be available on this site by January 1, 2016. https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm, please follow Instructional Video for Business Entities.

Information and Instruction Form

RESPONSES THAT DO NOT CONTAIN THIS COMPLETED FORM WILL NOT BE COMPLIANT

Section I Company Profile

Name of Business:

Business Address:

	5
	6

Contact Name:

Phone#:

Fax#:

Email:

Name(s) Title of Authorized Company Officers:

	5
	6

Federal ID #: W-9 Form: A W-9 form will be required from the successful bidder.

DUN #:

Remit Address: If different than your physical address:

	5
	6

Section II Instructions to Bidders

Electronic Bids: The Town of Addison uses BidSync to distribute and receive bids and proposals. There will be **NO COST** to the Contractor/Supplier for Standard bids or proposals. For **Cooperative Bids and Reverse Auctions ONLY**, the successful contractor/supplier agrees to pay BidSync a transaction fee of one percent (1%) of the total amount of all contracts for goods and/or services. **Cooperative Bids and Reverse Auctions** will be clearly marked on the bid documents. To assure that all contractors/suppliers are treated fairly, the fee will be payable whether the bid/proposal is submitted electronically, or by paper means. Refer to www.bidsync.com for further information.

Contractor/Supplier Responsibility: It is the contractor/suppliers responsibility to check for any addenda or questions and answers that might have been issued before bid closing date and time. Contractors/Suppliers will be notified of any addenda and Q&A if they are on the invited list, they view the bid, or add themselves to the watch list.

Acknowledgement of Addenda: #1 ☐ #2 ☐ #3 ☐ #4 ☐ #5 ☐

Delivery of Bids: For delivery of paper bids our physical address is:

Town of Addison

5350 Beltline Road

Addison, TX 75001

Attn: Purchasing Department

Contractor/Supplier Employees: No Contractor/Supplier employee shall have a direct or indirect financial interest in any contract with the town, or be directly or indirectly financially interested in the sale of land, materials, supplies or services to the town.

Deliveries: All deliveries will be F.O.B. Town of Addison. All Transportation Charges paid by the contractor/supplier to Destination.

Payment Terms: A Prompt Payment Discount of % is offered for Payment Made Within Days of Acceptance of Goods or Services. If Prompt Payments are not offered or accepted, payments shall be made 30 days after receipt and acceptance of goods or services or after the date of receipt of the invoice whichever is later.

Delivery Dates: Delivery Dates are to be specified in Calendar Days from the Date of Order.

Bid Prices: Pre-Award bid prices shall remain Firm and Irrevocable for a Period of Days.

Exceptions: ☐ Contractor/Supplier does not take Exception to Bid Specifications or Other Requirements of this Solicitation.

☐ Contractor/Supplier take the following Exception(s) to the Bid Specifications or Other Requirements of this Solicitation (Explain in Detail).



Historically Underutilized Business (HUB): It is the policy of the Town of Addison to involve HUBs in the procurement of goods, equipment, services and construction projects. Prime Contractors/Suppliers are encouraged to provide HUBs the opportunity to compete for sub-contracting and other procurement opportunities. A listing of HUBs in this area may be accessed at the following State of Texas Website. <http://www.window.state.tx.us/procurement/cmb1/cmb1hub.html>.

HUB Owned Business Yes ☐ No ☐ Include a current copy of your HUB certification with your response or insert
Certification number and expire date

Other Government Entities: Would bidder be willing to allow other local governmental entities to participate in this contract, if awarded under the same Terms and Conditions? Yes ☐ No ☐

Bid Bond: Is Bid Bond attached if applicable? Yes ☐ No ☐

Termination: The town at any time after issuance of this agreement, by 30 days written notice, has the absolute right to terminate this agreement for cause or convenience. Cause shall be the contractor/supplier's refusal or failure to satisfactorily perform or complete the work within the time specified, or failure to meet the specifications, quantities, quality and/or other requirements specified in the contract/purchase order. In such case the supplier shall be liable for any damages suffered by the town. If the agreement is terminated for convenience, the supplier has no further obligation under the agreement. Payment shall be made to cover the cost of material and work in process or "consigned" to the town as of the effective date of the termination.

Bidder Compliance: Bidder agrees to comply with all conditions contained in this Information and Instruction Form and the additional terms and conditions and specifications included in this request. The undersigned hereby agrees to furnish and deliver the articles or services as specified at the prices and terms herein stated and in strict accordance with the specifications and conditions, all of which are made a part of your offer. Your offer is not subject to withdrawal after the award is made.

The Town of Addison reserves the right to reject all or part of the offer and to accept the offer considered most advantageous to the town by item or total bid.

The Town of Addison will award to the lowest responsible bidder or to the bidder who provides goods or services at the best value for the Town.

I hereby certify that all of the information provided in sections I and II are true and accurate to the best of my knowledge.

Signature: Date:

Title:

Signature certifies no changes have been made to the content of this solicitation as provided by the Town of Addison.

1/29/13

Question and Answers for Bid #19-07 - Maintenance for Vitruvian Park & Other Areas

Overall Bid Questions

There are no questions associated with this bid.

Work Session and Regular Meeting

10.

Meeting Date: 12/11/2018

Department: Infrastructure- Development Services

AGENDA CAPTION:

Consider Action to Approve a **Resolution Adopting the 2019 Legislative Priorities for the Town of Addison, Texas** and Directing the City Manager or His Designee to Act with Regard to the Town's 2019 Legislative Priorities.

BACKGROUND:

The 86th session of the Texas legislature will begin in January 2019. The goal of the Town's legislative efforts is to use the Town's legislative priorities as a guide to protect and enhance the Town's municipal interests. The City Council last adopted legislative priorities in 2014 and 2016.

At their November 27, 2018 meeting, the City Council reviewed and discussed the Town's legislative priorities for 2019. Based on those discussions, staff has prepared a resolution formally adopting the legislative priorities. These priorities will be used to communicate with state legislators regarding the Town's position on topics that impact the Town of Addison. Prominent topics include: local control, revenue and expenditure caps, transportation funding, and education funding.

The Town's legislative efforts will be coordinated with our legislative consultant and state delegation members.

Additionally, the Town will coordinate efforts when interests are aligned with partners including but not limited to: Texas Municipal League, Texas Coalition of Cities for Utility Issues, North Central Texas Council of Government, Dallas Area Rapid Transit, Texas Civil Service Cities Coalition, and the Texas Municipal Retirement System. Most of the Town's efforts will be dedicated to defeating legislation that would negatively affect the Town.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution - Legislative Priorities 2019

TOWN OF ADDISON
RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON,
TEXAS ADOPTING THE TOWN'S 2019 LEGISLATIVE PRIORITIES;
DIRECTING THE CITY MANAGER OR HIS DESIGNEE TO ACT WITH
REGARD TO THE CITY'S LEGISLATIVE PRIORITIES; AND
PROVIDING AN EFFECTIVE DATE.**

WHEREAS, Legislative activities are ongoing in Congress and the State Legislature; and

WHEREAS, it is anticipated that many legislative issues affecting local government will be considered; and

WHEREAS, the City Council has reviewed the recommended 2019 Legislative Priorities and is of the opinion that such legislative priorities are in the best interest of the Town and its citizens, should be adopted, and should be forwarded for consideration by the Legislature; and

WHEREAS, the City Council is of the further opinion that the City Council, the Town's legislative consultant and the City Manager and his designees should be directed to take action with regard to the legislative priorities as outlined below.

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

Section 1. The Town of Addison 2019 Legislative Priorities, attached hereto as **Exhibit A** is hereby adopted and approved as the 2019 Legislative Priorities for the Town.

Section 2. The City Council and each of its members, the Town's legislative consultants and the City Manager or his designees are directed to communicate the items included in the Town's 2019 Legislative Priorities to members of Congress, the Texas Legislature, in general, and/or to the appropriate legislative committees, committee members and others as appropriate.

Section 3. For those items designated as "support," the City Manager or his designees are directed to actively pursue passage of the appropriate legislation if it is introduced by some other entity. The City Manager's efforts to obtain passage of the legislation may include drafting appropriate legislation, seeking a sponsor, and actively pursuing passage of such legislation by providing testimony and through other means.

Section 4. For those items designated as "oppose," the City Manager or his designees are directed to attempt to impede the passage of any such legislation.

Section 5. It is recognized that Addison's legislative priorities will often be implemented in the context of great numbers of legislative proposals being considered within short time periods. City representatives, under the direction of the City Manager, shall be authorized to act on behalf of the City consistent with the necessary broad policy concerns set forth in this list of priorities.

Section 6. This Resolution shall become effective immediately upon its passage.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this 11th day of December, 2018.

Joe Chow, Mayor

ATTEST:

Irma Parker, City Secretary

APPROVED AS TO FORM:

Brenda N. McDonald, City Attorney

Exhibit A



Town of Addison 2019 Legislative Priorities

The Town of Addison supports public policies that grow our economy, attract investment, and allow local governments to govern their affairs in accordance with the desires and priorities of local communities as represented by the duly elected members of their respective governing bodies. The Town of Addison recommends the following:

Generally

- Oppose legislation that would erode municipal authority in any way, would impose an unfunded mandate, or would otherwise be detrimental to cities.
- Oppose legislation that would provide for state preemption of municipal authority in general.
- Oppose legislation that would require candidates for city office to declare party affiliation to run for office.

Revenue, Finance, and Budget

- Support local responsibility for property taxation decisions and appraisals.
- Oppose legislation that would impose a revenue and/or tax cap of any type, including a reduced rollback rate, mandatory tax rate ratification elections, lowered rollback petition requirements, limitations on overall city expenditures, exclusion of the new property adjustment in effective rate and rollback rate calculations, or legislation that lowers the rollback rate and gives a city council the option to re-raise the rollback rate.
- Oppose legislation that would negatively expand appraisal caps.
- Oppose legislation that would erode the ability of a city to issue debt.
- Oppose any legislation that would limit local governments from adopting budgets that they deem appropriate for their respective communities or that would require voter approval for increases in expenditures.
- Support a bill that provides Cost of Living Adjustment (COLA) relief options to cities for the Texas Municipal Retirement System.
- Oppose state or federal legislation that would erode the authority of a city to be adequately compensated for the use of its rights-of-way and/or erode municipal authority over the management and controls of rights-of-way.

Economic Development

- Support the continuation of economic tools such as Tax Code Chapters 311 (Tax Increment Financing) 312 (Property Tax Abatement) and Local Government Code Chapters 380 and 381 (Economic Development Incentives) 313 tax abatements and other economic development incentives to promote job creation and capital-intensive investment.
- Oppose the elimination or reduction of economic development tools currently available to local governments to promote job creation and capital-intensive investment.

Exhibit A

Education & Workforce

- Support legislation that would improve the public education finance system so that local independent school districts are not required to raise tax revenue to compensate for decreases in state funding.
- Support continued local control independent school districts.
- Oppose efforts to tie improvements to the public education finance system to revenue/tax/appraisal caps on local governments (i.e. cities, counties, independent school districts, etc.).

Regulation of Development

- Oppose legislation that would erode municipal authority related to development matters, including with respect to the following issues: (1) annexation, (2) eminent domain, (3) zoning, (4) regulatory takings; (5) building codes, (6) tree preservation, and (7) short-term rentals.

Transportation

- Support legislation that would: (1) allow for greater flexibility by cities to fund local transportation projects; (2) amend or otherwise modify state law to help cities fund transportation projects; or (3) provide cities with additional funding options and resources to address transportation needs that the state and federal governments are unable or unwilling to address.
- Support legislation that would: (1) provide additional funding to the Texas Department of Transportation for transportation projects that would benefit cities; and (2) provide local, state, and federal transportation funding for rail as one component of transportation infrastructure.
- Support increased funding to foster airport development for public use and general aviation airports to meet future demands.
- Support TxDOT aviation funding increase.

Work Session and Regular Meeting**11.****Meeting Date:** 12/11/2018**Department:** General Services**Pillars:** Excellence in Asset Management

AGENDA CAPTION:

Consider Action to Approve a **Resolution for the Purchase of One 2018 Frazer Ambulance, from Frazer Ambulance, Under the Town's Interlocal Agreement with Texas Local Government Purchasing Cooperative Known as Houston Galveston Area Council (HGAC)** in an Amount not to Exceed \$271,636.74.

BACKGROUND:

Through the Capital Equipment Replacement Fund (CERF) the Town budgets for large vehicle and equipment purchases, by each department contributing funds annually to replace that department's items. The amount each department contributes is based on their vehicle or equipment replacement needs as well as the depreciation schedule of each type of item. This assures that funding will be available when that item has reached the end of its useful life and is in need of replacement.

The Town of Addison is a member of several purchasing cooperatives. These cooperatives bid out products and services for its members to provide the leverage needed to achieve the best pricing on products, equipment, and services. For this purchase the Houston Galveston Area Council (HGAC) cooperative pricing will be used.

The following item used by the Fire Department has reached the end of useful life and is recommended to be replaced with a new model:

Equipment	Vendor	Cooperative Agency	Amount
1 2018 Frazer Ambulance	Frazer Ambulance	Houston Galveston Area Council	\$271,636.74
Total Estimated CERF Cost FY 2019			\$271,636.74

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution- Frazer Ambulance 2019 Purchase

Frazer Pricing Sheet

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING THE PURCHASE OF ONE (1) AMBULANCE FROM FRAZER AMBULANCE THROUGH HOUSTON GALVESTON AREA COUNCIL COOPERATIVE IN AN AMOUNT NOT TO EXCEED \$271,636.74, AUTHORIZING THE CITY MANAGER TO EXECUTE THE PURCHASE ORDER, AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. The purchase of one (1) ambulance from Frazer Ambulance, through Houston Galveston Area Council, in an amount not to exceed \$271,636.74 is hereby approved. The City Manager is hereby authorized to execute the Purchase Order.

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 11th day of December, 2018.

Joe Chow, Mayor

ATTEST:

By: _____
Irma Parker, City Secretary

APPROVED AS TO FORM:

By: _____
Brenda N. McDonald, City Attorney



Defining the future of Mobile Healthcare.™

Replacing

0217

Customer Quote

Order No: Q444-00001

Quote Date: 4/30/2018

Expiration Date: 7/3/2018

Invoice To:

Addison Fire & EMS
Town of Addison
P. O. Box 9010
Addison TX 75001
TX

Attention:

Deputy Fire Chief
Michael Thomson
mthomson@addisontx.gov

Salesperson: Kasey Gillum

kgillum@frazerbilt.com

No. Item	Quantity	U/M	Unit Price	Net Amount
1 MODULE Type I 14' Module	1.000	EA	\$ 197,850.00	\$ 197,850.00
2 CHASSIS 2018/19 RAM 4500 Diesel Aluminum Wheels	1.000	EA	\$ 51,850.00	\$ 51,850.00
3 14389-BLK Bin-Hang/Stack, Large, Black	12.000	EA	\$ 18.00	\$ 216.00
4 14390-BLK Bin-Hang/Stack, Small, Black	48.000	EA	\$ 12.54	\$ 601.92
5 14109 Regulator-Oxygen, Preset 50 PSI	1.000	EA	\$ 238.82	\$ 238.82
6 TM-100-20-UN Surface Base-STANDARD SIZE	1.000	EA	\$ 605.00	\$ 605.00
7 TM-500-00-PFXT Stretcher-Cot System, Stryker	1.000	EA	\$ 1,365.00	\$ 1,365.00
8 STRYKER POWER- PRO XT Cot-Stryker Power-PRO XT 6506	1.000	EA	\$ 24,000.00	\$ 24,000.00
9 HGAC-NEW	1.000	EA	\$ 1,000.00	\$ 1,000.00

Completed Quotes.



Defining the future of Mobile Healthcare.™

Customer Quote

Order No: Q444-00001

Quote Date: 4/30/2018

Expiration Date: 7/3/2018

No. Item	Quantity	U/M	Unit Price	Net Amount
HGAC Fee for a New Unit				

10 CONTINGENCY	1.000	EA	\$ 5,000.00	\$ 5,000.00
Contingency for 5/15/18 Price Increase				

Remit To:

Per TMVCC, we are quoting this through our licensed franchise dealer, Mac Haik Dodge Chrysler Jeep.

Mac Haik Dodge Chrysler Jeep
11000 I-45 North Freeway
Houston TX 77037

Sale Amount:	282,726.74
Order Disc(3.9225%):	-11,090.00
Sales Tax:	0.00
Total Amount:	271,636.74

Payment Terms: Net 30 Days

Special Instructions:

Email this quote along with your PO to sales@frazerbilt.com.
Graphics pricing includes two hours' design time in the base price.
More extensive graphics or multiple changes will be billed at \$100/hr.

Work Session and Regular Meeting**12.****Meeting Date:** 12/11/2018**Department:** General Services**Pillars:** Excellence in Asset Management**AGENDA CAPTION:**

Consider Action to Approve a **Resolution for the Purchase of Two 2019 Ford Interceptor SUVs, Four 2018 Ford 1/2 Ton Trucks, One 2019 Ford 2 Ton Truck, and Two 2019 Ford 1 Ton Trucks, from Sam Packs Five Star Ford, Under the Town's Interlocal Agreement with the Texas Local Government Purchasing Cooperative Known as Texas SmartBuy** in an Amount Not to Exceed \$362,520.32.

BACKGROUND:

Through the Capital Equipment Replacement Fund (CERF) the Town budgets for large vehicle and equipment purchases, by each department contributing funds annually to replace that department's items. The amount each department contributes is based on their vehicle or equipment replacement needs as well as the depreciation schedule of each type of item. This assures that funding will be available when that item has reached the end of its useful life and is in need of replacement.

The Utility Department utilizes the Utility Fund to budget for large vehicles and equipment purchases, by this department contributing funds, they are able to annually replace items. The amount the Utility Fund contributes is based on their vehicle or equipment replacement needs as well as the depreciation schedule of each item.

The Town of Addison is a member of several purchasing cooperatives. These cooperatives bid out products and services for its members to provide the leverage needed to achieve the best pricing on products, equipment, and services. For this purchase the Texas SmartBuy cooperative pricing will be used.

The following items are used by the Police, Parks, Infrastructure Development and Utility Departments and have reached the end of their useful life and are recommended to be replaced with new models.

Capital Equipment Replacement Fund Purchases:

Equipment	Vendor	Cooperative Agency	Amount
2 2019 Ford Interceptor Police Patrol Vehicle (PPV)	Sam Pack's Five Star Ford	Texas SmartBuy	\$57,634.80
1 2018 Ford F-150 Extended Cab	Sam Pack's Five Star Ford	Texas SmartBuy	\$27,017.00
1 2018 Ford F-150 Crew Cab	Sam Pack's Five Star Ford	Texas SmartBuy	\$33,170.35
1 2018 Ford F-550	Sam Pack's Five Star Ford	Texas SmartBuy	\$73,067.75
1 2019 Ford F-350 Crew Cab	Sam Pack's Five Star Ford	Texas SmartBuy	\$35,421.50
1 2019 Ford F-250 Crew Cab	Sam Pack's Five Star Ford	Texas SmartBuy	\$41,077.13

Total Estimated CERF Cost FY 2019			\$267,388.53
--	--	--	---------------------

Utility Fund Purchases:

Equipment	Vendor	Cooperative Agency	Amount
1 2019 Ford F-250	Sam Pack's Five Star Ford	Texas SmartBuy	\$46,607.30
1 2019 Ford F-350	Sam Pack's Five Star Ford	Texas SmartBuy	\$48,524.49
Total Estimated Utilities Fund Cost FY 2019			\$95,131.79

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution- Sam Pack's Five Star Ford 2019 Purchase
Sam Packs Five Star Ford Pricing Sheet

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING THE PURCHASE OF NINE (9) VEHICLES FROM SAM PACKS FIVE STAR FORD THROUGH TEXAS SMARTBUY IN AN AMOUNT NOT TO EXCEED \$362,520.32, AUTHORIZING THE CITY MANAGER TO EXECUTE THE PURCHASE ORDER, AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. The purchase of nine (9) vehicles from Sam Packs Five Star Ford, through Texas SmartBuy, in an amount not to exceed \$362,520.32 is hereby approved. The City Manager is hereby authorized to execute the Purchase Order.

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 11th day of December, 2018.

Joe Chow, Mayor

ATTEST:

By: _____
Irma Parker, City Secretary

APPROVED AS TO FORM:

By: _____
Brenda N. McDonald, City Attorney

Sam Pack's Five Star Ford
1635 S. IH 35E Carrollton Texas, 75006
(888) 8 FLEET 9 (888-835-3389) - FAX 972-245-5278 - bidtx@spford.com

CUSTOMIZED PRODUCT PRICING SUMMARY BASED ON CONTRACT

Cars and Light Trucks

Team Members -- Kevin Moore - Alan Rosner

Contract Name: State of Texas 071-072-AT 2017 - Texas Smartbuy Contract

End User: TOWN OF ADDISON

Sam Pack's Rep:

KEVIN MOORE

Contact: TIFFANY BISSETT

Date:

6.14.18 revised

Contact TN/Email

PHONE

972-450-2846

Product Description:

2019 POLICE INTERCEPTOR UTILITY

Exterior Color /
Interior

white

A. Bid Series: 466BLE (K8A)

Base Price:

\$ 25,988.00

B. Published Options (Itemize Each Below)

Code	Description	Bid Price	Code	Description	Bid Price
446	AUTO TRANS	Included		GOOD TILL OCT 31ST 2018	
	Power Group	Included			
	Speed Control	Included			
	2 YEAR STATE INSPECTION FREE	Included			
	DELIVERY FREE	Included			
9W	CLOTH FRONT/VINYL REAR	Included			
	SYNC SYSTEM	Included			
	DUAL A/C	Included			
87R	CAMERA IN REAR VIEW MIRROR	Included			

Total of B. - Published Options

\$ -

C. Ford Factory Published Options

Code	Description	Bid Price	Code	Description	Bid Price
549	POWER/SPOTTER/HEATED MIRROR	\$ 60.00			
60A	WIRING GRILL/LAMP/SIREN/SPK	\$ 50.00			
55F	KEYLESS REMOTE NO PAD	\$ 395.00			
17T	CARGO DOME LAMP RED/WHITE	\$ 50.00			
76R	REVERSE SENSING SYSTEM	\$ 275.00			
86P	FRONT HEAD LIGHT PKG	\$ 125.00			
86T	TAIL LAMP PREP	\$ 60.00			
43D	DARK CAR FEATURE	\$ 20.00			
51R	DRIVERS SIDE LED SPOT LAMP	\$ 395.00			
60R	NOISE SUPPRESSION BOND STRAPS	\$ 100.00			

Total of C. - Dealer Published Options

\$ 1,530.00

D. Fleet Quote

Code	Description	Bid Price	Code	Description	Bid Price
	GOOD TILL AUGUST 31ST AFTER ADD 5%	\$1,299.40			

Total of D. - Off Menu Options

\$ 1,299.40

F. Delivery Charges

0 Miles @ \$2.45/mile

\$ -

G. Option Discounts

\$ -

H. Total of A + B + C + D + E = F

\$ 28,817.40

I. Floor Plan Assistance

\$0.00

J. Lot Insurance Coverages

\$0.00

K. Quantity Ordered

2

X F =

\$ 57,634.80

L. Administrative Fee

\$ -

M. Non-Equip Charges & Credits

\$ -

N. TOTAL PURCHASE PRICE INCLUDING ADMIN FEE

\$57,634.80

not updated

F.	Delivery Charges	0 Miles @ \$2.45/mile	\$ -
G.	Option Discounts		\$ -
H.	Total of A + B + C + D + E = F		\$ 27,017.00
I.	Floor Plan Assistance		\$0.00
J.	Lot Insurance Coverages		\$0.00
K.	Quantity Ordered	1 X F =	\$ 27,017.00
L.	Administrative Fee		\$ -
M.	Non-Equip Charges & Credits		
N.	TOTAL PURCHASE PRICE INCLUDING ADMIN FEE		\$27,017.00

F.	Delivery Charges	_____	0 Miles @ \$2.45/mile	\$	0
G.	Option Discounts	_____		\$	0
H.	Total of A + B + C + D + E = F			\$	33,170.35
I.	Floor Plan Assistance	_____		\$	0.00
J.	Lot Insurance Coverages	_____		\$	0.00
K.	Quantity Ordered	1	X P =	\$	33,170.35
L.	Administrative Fee	_____		\$	0
M.	Non-Equip Charges & Credits	_____		\$	0
N.	TOTAL PURCHASE PRICE INCLUDING ADMIN FEE				\$33,170.35

F.	Delivery Charges		0 Miles @ \$2.45/mile	\$ -
G.	Option Discounts			\$ (4.38)
H.	Total of A + B + C + D + E = F			\$ 41,077.13
I.	Floor Plan Assistance			\$0.00
J.	Lot Insurance Coverages			\$0.00
K.	Quantity Ordered	1	X F =	\$ 41,077.13
L.	Administrative Fee			\$ -
M.	Non-Equip Charges & Credits			\$ -
N.	TOTAL PURCHASE PRICE INCLUDING ADMIN FEE			\$41,077.13

N.	TOTAL PURCHASE PRICE INCLUDING ADMIN FEE	\$35,421.60
----	--	-------------

N.	TOTAL PURCHASE PRICE INCLUDING ADMIN FEE	
----	--	--

	\$46,607.30
--	-------------

Work Session and Regular Meeting**13.****Meeting Date:** 12/11/2018**Department:** General Services**Pillars:** Excellence in Asset Management

AGENDA CAPTION:

Consider Action to Approve a **Resolution for the Purchase of One 2018 Dodge Caravan and One 2018 Dodge 1 Ton Truck, from Dodge City, Under the Town's Interlocal Agreement with the Texas Local Government Purchasing Cooperative Known as BuyBoard** in an Amount Not to Exceed \$55,377.

BACKGROUND:

Through the Capital Equipment Replacement Fund (CERF) the Town budgets for large vehicle and equipment purchases, by each department contributing funds annually to replace that department's items. The amount each department contributes is based on their vehicle or equipment replacement needs as well as the depreciation schedule of each type of item. This assures that funding will be available when that item has reached the end of its useful life and is in need of replacement.

The Airport utilizes the Airport Fund to budget for large vehicles and equipment purchases, by this department contributing funds, they are able to annually replace items. The amount the Airport contributes is based on their vehicle or equipment replacement needs as well as the depreciation schedule of each item.

The Town of Addison is a member of several purchasing cooperatives. These cooperatives bid out products and services for its members to provide the leverage needed to achieve the best pricing on products, equipment, and services. For this purchase the BuyBoard cooperative pricing will be used.

The following items are used by the Police Department and the Airport and have reached the end of their useful life and are recommended to be replaced with new models.

Equipment	Vendor	Cooperative Agency	Amount
1 2018 Dodge Caravan	Dodge City	BuyBoard	\$27,513
1 2018 Dodge 1 Ton Truck	Dodge City	BuyBoard	\$27,864
Total Estimated CERF Cost FY 2019			\$55,377

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution- Dodge City 2019 Purchase
Dodge City Pricing Sheet

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING THE PURCHASE OF TWO (2) VEHICLES FROM DODGE CITY THROUGH BUYBOARD IN AN AMOUNT NOT TO EXCEED \$55,377.00, AUTHORIZING THE CITY MANAGER TO EXECUTE THE PURCHASE ORDER, AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. The purchase of two (2) vehicles from Dodge City, through Buy Board, in an amount not to exceed \$55,377.00 is hereby approved. The City Manager is hereby authorized to execute the Purchase Order.

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 11th day of December, 2018.

Joe Chow, Mayor

ATTEST:

By: _____
Irma Parker, City Secretary

APPROVED AS TO FORM:

By: _____
Brenda N. McDonald, City Attorney

DODGE CITY

QUOTE

GRAB LIFE!!

321 NORTH CENTRAL SUITE# 240
MCKINNEY, TX. 75070
PHONE : 972-569-9650



DATE: 07/12/2018
INVOICE #

Bill To:
TOWN OF ADDISON

Ship To:

Comments or Special Instructions:

Replacement of 1608

*Bury Board
521-16*

SALESPERSON	P.O. NUMBER	SHIP DATE	SHIP VIA	STATE ORDER #	TERMS
JEFF Y			Best Way		
QUANTITY	DESCRIPTION			UNIT PRICE	AMOUNT
1	2018 RAM 1500 CREW CAB TRADESMAN 4X2			\$29,064.00	\$29,064.00
1	5.7L V-8 ENGINE				
1	8-SPD TRANSMISSION				
1	CLOTH 40/20/40 BENCH SEAT				
1	POPULAR EQUIPMENT GROUP				
1	ANTI-SPIN DIFF				
1	CARPET FLOOR COVERING {CAN DELETE AT NO CHARGE}				
1	REMOTE KEYLESS ENTRY				
1	UCONNECT 3 WITH 5" DISPLAY				
1	LT265/70R17E BSW A/T TIRES				
1	32 GALLN FUEL TANK				
1	FRONT AND REAR RUBBER FLOOR MATS				
1	RAMBOX CARGO MANAGEMENT SYSTEM				
1	CREDIT PER JEFF			(\$1,200.00)	(\$1,200.00)
				SUBTOTAL	\$ 27,864.00
				TAX RATE	0.00%
				SALES TAX	-
				SHIPPING AND HANDLING	
				TOTAL	\$ 27,864.00

Use Dace lights from old Dodge.

DODGE CITY

QUOTE

GRAB LIFE!!

321 NORTH CENTRAL SUITE# 240
MCKINNEY, TX. 75070
PHONE : 972-569-9650



DATE: 07/12/2018
INVOICE #

Bill To:
TOWN OF ADDISON

Ship To:

Replacement of ⁰³⁴⁰~~0338~~
Replacement of Sedan

Comments or Special Instructions:

SALESPERSON	P.O. NUMBER	SHIP DATE	SHIP VIA	STATE ORDER #	TERMS
JEFF Y			Best Way		
QUANTITY	DESCRIPTION			UNIT PRICE	AMOUNT
1	2018 DODGE GRAND CARAVAN UP TIM SXT			\$27,513.00	\$27,513.00
1	3.6L V-6 ENGINE				
1	COMPACT SPARE TIRE				
1	PREM. SEATS WITH INSERTS				
1	RADIO WITH NAVIGATION				
1	SECOND ROW SEATS FOLD IN FLOOR				

Dodge McKinney
Commercial Sales

844-298-0813

Jeff Yarbrough.

Yarbrough, jeff &
hotmail.com

White

TAX RATE	27,513.00
SALES TAX	0.00%
SHIPPING AND HANDLING	-
TOTAL	\$ 27,513.00

Work Session and Regular Meeting**14.****Meeting Date:** 12/11/2018**Department:** General Services**Pillars:** Excellence in Asset Management

AGENDA CAPTION:

Consider Action to Approve a **Resolution for the Purchase of Six Life Fitness Treadmills, and One Life Fitness Insignia Weight Circuit, from Life Fitness Under the Town's Interlocal Agreement with Texas Local Government Purchasing Cooperative Known as Texas Multiple Award Schedule (TXMAS)** in an Amount to Not Exceed \$117,934.30.

BACKGROUND:

Through the Capital Equipment Replacement Fund (CERF) the Town budgets for large vehicle and equipment purchases, by each department contributing funds annually to replace that department's items. The amount each department contributes is based on their vehicle or equipment replacement needs as well as the depreciation schedule of each type of item. This assures that funding will be available when that item has reached the end of its useful life and is in need of replacement.

The Town of Addison is a member of several purchasing cooperatives. These cooperatives bid out products and services for its members to provide the leverage needed to achieve the best pricing on products, equipment, and services. For this purchase the TXMAS cooperative pricing will be used.

The following items are used at the Athletic Club and have reached the end of their useful life and are recommended to be replaced with new models.

Equipment	Vendor	Cooperative	Amount
6 Life Fitness Treadmills	Life Fitness	TXMAS	\$38,824.68
1 Life Fitness Weight Circuit	Life Fitness	TXMAS	\$79,109.62
Total Estimated CERF Cost FY 2019			\$117,934.30

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution - Life Fitness Equipment 2019 Purchase

Life Fitness Pricing Sheet

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING THE PURCHASE OF FITNESS EQUIPMENT FROM LIFE FITNESS THROUGH TEXAS MULTIPLE AWARD SCHEDULE IN AN AMOUNT NOT TO EXCEED \$117,934.30 AUTHORIZING THE CITY MANAGER TO EXECUTE THE PURCHASE ORDER, AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. The purchase of fitness equipment from Life Fitness, through Texas Multiple Award Schedule, in an amount not to exceed \$117,934.30 is hereby approved. The City Manager is hereby authorized to execute the Purchase Order.

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 11th day of December, 2018.

Joe Chow, Mayor

ATTEST:

By: _____
Irma Parker, City Secretary

APPROVED AS TO FORM:

By: _____
Brenda N. McDonald, City Attorney

Quote#**3247472 - 1R***LifeFitness***HAMMER
STRENGTH****SCYBEX****Date** 05-DEC-2018 **Expires** 27-DEC-2018**INDOOR CYCLING**
GROUP**SCIFIT****BRUNSWICK**
MADE IN AMERICA

Page 1/2

Ship ToTOWN OF ADDISON
3900 BELT WAY DR
ADDISON, DALLAS
TX 75001
United States**Contact :****O:****M:****F:****Email:****Bill To**TOWN OF ADDISON
3900 BELT WAY DR
ADDISON, DALLAS
TX 75001
US**Contact :****O:****M:****F:****Email:****Sales Representative**

MICHELLE KESTERSON

O: 940.206.4876**M:****F:****Email:** Michelle.Kesterson@lifefitness.com**Life Fitness****Phone:** Main (847) 288-3300

Toll Free (800) 735-3867

Life Fitness

9525 Bryn Mawr Avenue

Rosemont, IL 60018

USA

Line	Item	Qty	Unit Price	Unit Discount	Unit Price Selling	Total Price Selling
1	95TSE ELEVATION W/ SE3HD TREADMILL - Silver Base/SE3HD 21In TR WLAN ATSC/QAM/NTSC/	6	6,811.00	0.00	6,811.00	40,866.00
2	TRADE ITEM Additional Allowance for Life Fitness Trade in Product	1	-100.00	-4,700.00	-4,800.00	-4,800.00

Quote#

3247472 - 1R

LifeFitness

HAMMER
STRENGTH

CYBEX

Date 05-DEC-2018 Expires 27-DEC-2018

INDOOR CYCLING
GROUP

SCIFIT

BRUNSWICK

Page 2/2

PO Number		Subtotal	
Payment Type		List Price	40,766.00
Payment Terms	NET 30	Total Adjustment	-4,700.00
Freight Terms		Selling Price	36,066.00
FOB			
Freight/Fuel/Installation			2,758.68
Tax			TAXES AS APPLICABLE
Total(USD)			38,824.68

Notes:

TXMAS-17-7801

ADDITIONAL TERMS OF SALE:

Manufacturer REQUIRES that the following products be secured to the floor to stabilize and eliminate rocking or tipping over: any HD Elite Half Rack Short Base, any Synrgy 360 unit (except the 360XL), any Synrgy BlueSky unit, and any of the following units if they will be used for body weight strap training; any Cable Motion unit (CMDAP, OSDAP, CMACO, CMFCO), any Jungle (MJ), any Smith machine (SSM, HSSM, OSSM), any HD Elite Rack (HDE) and Athletic Series Racks (ASPR, HDHR). Some units will require a dynamic bolt to properly secure the unit to the floor, and the dynamic bolt requires a minimum of 4.4 inches of concrete subfloor. FOB Life Fitness' dock. Invoice will issue on shipment. Life Fitness may ship partial orders. Terms and Conditions of Sale which appear on purchaser's document (including Purchase orders) and which are inconsistent with these terms shall be voided. Orders canceled after shipment (or after product starts for Built-To-Order products) are subject to a 20% restocking fee. Delays in delivery at customer request may result in storage fees. Prices are good for 30 days. All invoices will be in U.S. dollars and will reflect Exchange Rate at time of shipment. Payment terms and credit lines are subject to Life Fitness credit approval.

Further, until any Products are paid for in full, Customer hereby grants to, and Life Fitness shall retain, a security interest in and lien on all Products sold to Customer and all proceeds arising out of the sale of the Products by Customer and all discounts, rebates and other funds on Customer's account payable by Life Fitness. Upon Life Fitness' request, a Customer shall execute such documents that may be necessary or reasonable to protect Life Fitness' security interest. When accepted, this quote may be processed, fulfilled, and/or invoiced by Life Fitness and its affiliated companies including Cybex or Brunswick Corporation. By accepting this quote, you agree to make any required payments to the Life Fitness, Cybex, or Brunswick entity that issued the invoice.

Subscription Services purchased pursuant to this quote will automatically renew for a Subscription Term equivalent in length to the then expiring Subscription Term at LF's then current Subscription Charges unless otherwise provided by LF in writing. Either Life Fitness or Buyer may elect to terminate any Buyer Subscription Services account at the end of Buyer's then current Subscription Term by providing notice in compliance with the Subscription Agreement, on or prior to the date thirty (30) days preceding the end of such Subscription Term.

Financing Options are available through Life Fitness Leasing. For more information, please contact Michelle Caruso at 847-288-3620 or leasing@lifefitness.com.

This is a draft quote and not a contract - Subject to management approval

Quote#**3243772 - 1R***LifeFitness***HAMMER
STRENGTH****SCYBEX****Date** 06-DEC-2018 **Expires** 15-DEC-2018**INDOOR CYCLING**
GROUP**SCIFIT****BRUNSWICK**
MADE IN AMERICA

Page 1/5

Ship ToTOWN OF ADDISON
3900 BELT WAY DR
ADDISON, DALLAS
TX 75001
United States**Contact :****O:****M:****F:****Email:****Bill To**TOWN OF ADDISON
3900 BELT WAY DR
ADDISON, DALLAS
TX 75001
US**Contact :****O:****M:****F:****Email:****Sales Representative**

MICHELLE KESTERSON

O: 940.206.4876**M:****F:****Email:** Michelle.Kesterson@lifefitness.com**Life Fitness****Phone:** Main (847) 288-3300
Toll Free (800) 735-3867Life Fitness
9525 Bryn Mawr Avenue
Rosemont, IL 60018
USA

Line	Item	Qty	Unit Price	Unit Discount	Unit Price Selling	Total Price Selling
1	CMACO CABLE MOTION ADJUSTABLE CABLE CROSSOVER - Platinum Frame/GLB/Rear Shroud/	1	3,381.00	0.00	3,381.00	3,381.00
2	CMDAP CM DUAL ADJ PULLEY Platinum Frm Rear Shroud Handle	2	3,855.00	0.00	3,855.00	7,710.00
3	SS-AB INSIGNIA SERIES ABDOMINAL - Platinum Clear Frame/English/C-LB Weight Stack/Full Shroud/L Trim/Black Uph Total 2,985.00	1	2,732.00	0.00	2,732.00	2,732.00
	L Trim	1	184.00	0.00	184.00	184.00
	C-LB Weight Stack	1	69.00	0.00	69.00	69.00
4	SS-ADC INSIGNIA SERIES ASSIST DIP CHIN - Platinum Clear Frame/English/C-LB Weight Stack/Full Shroud/L Trim/Black Uph Total 3,250.00	1	2,997.00	0.00	2,997.00	2,997.00
	L Trim	1	184.00	0.00	184.00	184.00
	C-LB Weight Stack	1	69.00	0.00	69.00	69.00
5	SS-BC INSIGNIA SERIES BICEPS CURL - Platinum Clear Frame/English/C-LB Weight Stack/Full Shroud/L Trim/Black Uph Total 2,985.00	1	2,732.00	0.00	2,732.00	2,732.00
	L Trim	1	184.00	0.00	184.00	184.00
	C-LB Weight Stack	1	69.00	0.00	69.00	69.00

This is a draft quote and not a contract - Subject to management approval

Quote#

3243772 - 1R

LifeFitness

HAMMER
STRENGTH

SCYBEX

Date 06-DEC-2018 Expires 15-DEC-2018

INDOOR CYCLING
GROUP

SCIFIT

BRUNSWICK

Page 2/5

Line	Item	Qty	Unit Price	Unit Discount	Unit Price Selling	Total Price Selling
6	SS-BE INSIGNIA SERIES BACK EXTENSION - Platinum Clear Frame/English/C-LB Weight Stack/Full Shroud/L Trim/Black Uph Total 3,088.00	1	2,835.00	0.00	2,835.00	2,835.00
	L Trim	1	184.00	0.00	184.00	184.00
	C-LB Weight Stack	1	69.00	0.00	69.00	69.00
7	SS-CE INSIGNIA SERIES CALF EXTENSION - Platinum Clear Frame/English/C-LB Weight Stack/Full Shroud/L Trim/Black Uph Total 2,947.00	1	2,694.00	0.00	2,694.00	2,694.00
	L Trim	1	184.00	0.00	184.00	184.00
	C-LB Weight Stack	1	69.00	0.00	69.00	69.00
8	SS-CP INSIGNIA SERIES CHEST PRESS - Platinum Clear Frame/English/C-LB Weight Stack/Full Shroud/L Trim/Black Uph Total 3,250.00	1	2,997.00	0.00	2,997.00	2,997.00
	L Trim	1	184.00	0.00	184.00	184.00
	C-LB Weight Stack	1	69.00	0.00	69.00	69.00
9	SS-FLY INSIGNIA SERIES FLY/REAR DELT - Platinum Clear Frame/English/C-LB Weight Stack/Full Shroud/L Trim/Black Uph Total 3,213.00	1	2,960.00	0.00	2,960.00	2,960.00
	L Trim	1	184.00	0.00	184.00	184.00
	C-LB Weight Stack	1	69.00	0.00	69.00	69.00
10	SS-GL INSIGNIA SERIES GLUTE - Platinum Clear Frame/English/C-LB Weight Stack/Full Shroud/L Trim/Black Uph Total 2,985.00	1	2,732.00	0.00	2,732.00	2,732.00
	L Trim	1	184.00	0.00	184.00	184.00
	C-LB Weight Stack	1	69.00	0.00	69.00	69.00
11	SS-HAB INSIGNIA SERIES HIP ABDUCTION - Platinum Clear Frame/English/C-LB Weight Stack/Full Shroud/L Trim/Black Uph Total 2,947.00	1	2,694.00	0.00	2,694.00	2,694.00
	L Trim	1	184.00	0.00	184.00	184.00
	C-LB Weight Stack	1	69.00	0.00	69.00	69.00
12	SS-HAD INSIGNIA SERIES HIP ADDUCTION - Platinum Clear Frame/English/C-LB Weight Stack/Full Shroud/L Trim/Black Uph Total 2,947.00	1	2,694.00	0.00	2,694.00	2,694.00
	L Trim	1	184.00	0.00	184.00	184.00

This is a draft quote and not a contract - Subject to management approval

Quote#

3243772 - 1R

LifeFitness

HAMMER
STRENGTH

SCYBEX

Date 06-DEC-2018 Expires 15-DEC-2018

INDOOR CYCLING
GROUP

SCIFIT

BRUNSWICK

Page 3/5

Line	Item	Qty	Unit Price	Unit Discount	Unit Price Selling	Total Price Selling
	C-LB Weight Stack	1	69.00	0.00	69.00	69.00
13	SS-LC INSIGNIA SERIES LEG CURL - Platinum Clear Frame/English/C-LB Weight Stack/Full Shroud/L Trim/Black Uph Total 2,985.00	1	2,732.00	0.00	2,732.00	2,732.00
	L Trim	1	184.00	0.00	184.00	184.00
	C-LB Weight Stack	1	69.00	0.00	69.00	69.00
14	SS-LE INSIGNIA SERIES LEG EXTENSION - Platinum Clear Frame/English/C-LB Weight Stack/Full Shroud/L Trim/Black Uph Total 3,213.00	1	2,960.00	0.00	2,960.00	2,960.00
	L Trim	1	184.00	0.00	184.00	184.00
	C-LB Weight Stack	1	69.00	0.00	69.00	69.00
15	SS-LR INSIGNIA SERIES LATERAL RAISE - Platinum Clear Frame/English/C-LB Weight Stack/Full Shroud/L Trim/Black Uph Total 2,985.00	1	2,732.00	0.00	2,732.00	2,732.00
	L Trim	1	184.00	0.00	184.00	184.00
	C-LB Weight Stack	1	69.00	0.00	69.00	69.00
16	SS-PD INSIGNIA SERIES PULLDOWN - Platinum Clear Frame/English/C-LB Weight Stack/Full Shroud/L Trim/Black Uph Total 3,088.00	1	2,835.00	0.00	2,835.00	2,835.00
	L Trim	1	184.00	0.00	184.00	184.00
	C-LB Weight Stack	1	69.00	0.00	69.00	69.00
17	SS-RW INSIGNIA SERIES ROW - Platinum Clear Frame/English/C-LB Weight Stack/Full Shroud/L Trim/Black Uph Total 2,985.00	1	2,732.00	0.00	2,732.00	2,732.00
	L Trim	1	184.00	0.00	184.00	184.00
	C-LB Weight Stack	1	69.00	0.00	69.00	69.00
18	SS-SLC INSIGNIA SERIES SEATED LEG CURL - Platinum Clear Frame/English/C-LB Weight Stack/Full Shroud/L Trim/Black Uph Total 3,276.00	1	3,023.00	0.00	3,023.00	3,023.00
	L Trim	1	184.00	0.00	184.00	184.00
	C-LB Weight Stack	1	69.00	0.00	69.00	69.00
19	SS-SLP INSIGNIA SERIES SEATED LEG PRESS - Platinum Clear Frame/English/C-LB Weight Stack/Full Shroud/L Trim/Black Uph Total 4,599.00	1	4,346.00	0.00	4,346.00	4,346.00

This is a draft quote and not a contract - Subject to management approval

Quote#

3243772 - 1R

LifeFitness

HAMMER
STRENGTH

SCYBEX

Date 06-DEC-2018 Expires 15-DEC-2018

INDOOR CYCLING
GROUP

SCIFIT

BRUNSWICK
AMERICA

Page 4/5

Line	Item	Qty	Unit Price	Unit Discount	Unit Price Selling	Total Price Selling
	L Trim	1	184.00	0.00	184.00	184.00
	C-LB Weight Stack	1	69.00	0.00	69.00	69.00
20	SS-SP INSIGNIA SERIES SHOULDER PRESS - Platinum Clear Frame/English/C-LB Weight Stack/Full Shroud/L Trim/Black Uph Total 2,985.00	1	2,732.00	0.00	2,732.00	2,732.00
	L Trim	1	184.00	0.00	184.00	184.00
	C-LB Weight Stack	1	69.00	0.00	69.00	69.00
21	SS-TP INSIGNIA SERIES TRICEPS PRESS - Platinum Clear Frame/English/C-LB Weight Stack/Full Shroud/L Trim/Black Uph Total 2,947.00	1	2,694.00	0.00	2,694.00	2,694.00
	L Trim	1	184.00	0.00	184.00	184.00
	C-LB Weight Stack	1	69.00	0.00	69.00	69.00
22	SS-TR INSIGNIA SERIES TORSO ROTATION - Platinum Clear Frame/English/C-LB Weight Stack/Full Shroud/L Trim/Black Uph Total 3,150.00	1	2,897.00	0.00	2,897.00	2,897.00
	L Trim	1	184.00	0.00	184.00	184.00
	C-LB Weight Stack	1	69.00	0.00	69.00	69.00
23	TRADE ITEM Allowance for Non Life Fitness Trade in Product	1	-100.00	-6,900.00	-7,000.00	-7,000.00

This is a draft quote and not a contract - Subject to management approval

Quote#

3243772 - 1R

LifeFitness

HAMMER
STRENGTH

CYBEX

Date 06-DEC-2018 Expires 15-DEC-2018

INDOOR CYCLING
GROUP

SCIFIT

BRUNSWICK

Page 5/5

PO Number		Subtotal	
Payment Type		List Price	73,801.00
Payment Terms	NET 30	Total Adjustment	-6,900.00
Freight Terms		Selling Price	66,901.00
FOB			
Freight/Fuel/Installation			12,208.62
Tax			TAXES AS APPLICABLE
Total(USD)			79,109.62

Notes:

TXMAS-17-7801

ADDITIONAL TERMS OF SALE:

Manufacturer REQUIRES that the following products be secured to the floor to stabilize and eliminate rocking or tipping over: any HD Elite Half Rack Short Base, any Synrgy 360 unit (except the 360XL), any Synrgy BlueSky unit, and any of the following units if they will be used for body weight strap training; any Cable Motion unit (CMDAP, OSDAP, CMACO, CMFCO), any Jungle (MJ), any Smith machine (SSM, HSSM, OSSM), any HD Elite Rack (HDE) and Athletic Series Racks (ASPR, HDHR). Some units will require a dynamic bolt to properly secure the unit to the floor, and the dynamic bolt requires a minimum of 4.4 inches of concrete subfloor. FOB Life Fitness' dock. Invoice will issue on shipment. Life Fitness may ship partial orders. Terms and Conditions of Sale which appear on purchaser's document (including Purchase orders) and which are inconsistent with these terms shall be voided. Orders canceled after shipment (or after product starts for Built-To-Order products) are subject to a 20% restocking fee. Delays in delivery at customer request may result in storage fees. Prices are good for 30 days. All invoices will be in U.S. dollars and will reflect Exchange Rate at time of shipment. Payment terms and credit lines are subject to Life Fitness credit approval.

Further, until any Products are paid for in full, Customer hereby grants to, and Life Fitness shall retain, a security interest in and lien on all Products sold to Customer and all proceeds arising out of the sale of the Products by Customer and all discounts, rebates and other funds on Customer's account payable by Life Fitness. Upon Life Fitness' request, a Customer shall execute such documents that may be necessary or reasonable to protect Life Fitness' security interest. When accepted, this quote may be processed, fulfilled, and/or invoiced by Life Fitness and its affiliated companies including Cybex or Brunswick Corporation. By accepting this quote, you agree to make any required payments to the Life Fitness, Cybex, or Brunswick entity that issued the invoice.

Subscription Services purchased pursuant to this quote will automatically renew for a Subscription Term equivalent in length to the then expiring Subscription Term at LF's then current Subscription Charges unless otherwise provided by LF in writing. Either Life Fitness or Buyer may elect to terminate any Buyer Subscription Services account at the end of Buyer's then current Subscription Term by providing notice in compliance with the Subscription Agreement, on or prior to the date thirty (30) days preceding the end of such Subscription Term.

Financing Options are available through Life Fitness Leasing. For more information, please contact Michelle Caruso at 847-288-3620 or leasing@lifefitness.com.

This is a draft quote and not a contract - Subject to management approval

Work Session and Regular Meeting

15.

Meeting Date: 12/11/2018

Department: Infrastructure- Development Services

AGENDA CAPTION:

Hold a Public Hearing, Discuss, and Consider Action to Approve an Ordinance Changing the Zoning on the Property Located at 4550 Excel Parkway, by Amending the Use Regulations of Planned Development (PD) District 085-073, as Previously Amended by Ordinances 095-054, 096-006, 099-025, and 007-007, to Allow the Production, Assembly, and Distribution of Spinal Fixation Systems. Case 1788-Z/CTL Medical.

BACKGROUND:

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on November 20, 2018, voted to recommend approval of an ordinance changing the zoning on an 11.163-acre property located at 4550 Excel Parkway, by amending the use regulations of the existing Planned Development (PD) district, zoned through Ordinance 085-073, as previously amended by Ordinances 095-054, 096-006, 099-025, and 007-007, by allowing the production, assembly, and distribution of spinal fixation systems, without conditions.

Voting Aye: Catalani, Dougan, Groce, Meleky, Resnik, Souers, Wheeler

Voting Nay: none

Absent: none

SPEAKERS AT THE PUBLIC HEARING: none

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

RECOMMENDATION:

Administration recommends approval.

Attachments

Ordinance - 1788-Z

1788-Z Staff Report

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE, BY AMENDING ORDINANCE 085-073, AS PREVIOUSLY AMENDED BY ORDINANCES 095-054, 096-006, 099-025, AND 007-007, ON 11.163-ACRE PROPERTY LOCATED AT 4550 EXCEL PARKWAY, TO ADD ADDITIONAL USES; 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 Town of Addison, Texas (the “City”) is a home rule municipality having full power of local self-government pursuant to Article 11, Section 5 of the Texas Constitution and its Home Rule Charter; and

WHEREAS, at its regular meeting held on November 20, 2018, the Planning & Zoning Commission considered and made recommendations on a request to amend Planned Development District 085-073, as amended by Ordinances 095-054, 096-006, 099-025, and 007-007, to bring an existing nonconforming use into compliance. (Case No.1788-Z); 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 Section 2, Subsection 1, Use Regulations, Lot 2 Uses, of Ordinance 085-073, as amended by Ordinances 095-054, 096-006, 099-025, and 007-007, shall be amended to include the production, assembly, and distribution of spinal fixation systems in addition to all other uses permitted under the existing Planned Development District.

Section 3. 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 4. 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 5. 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 6. 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 11th day of December, 2018.

Joe Chow, Mayor

ATTEST:

Irma Parker, City Secretary

CASE NO: 1788-Z/CTL Medical

APPROVED AS TO FORM:

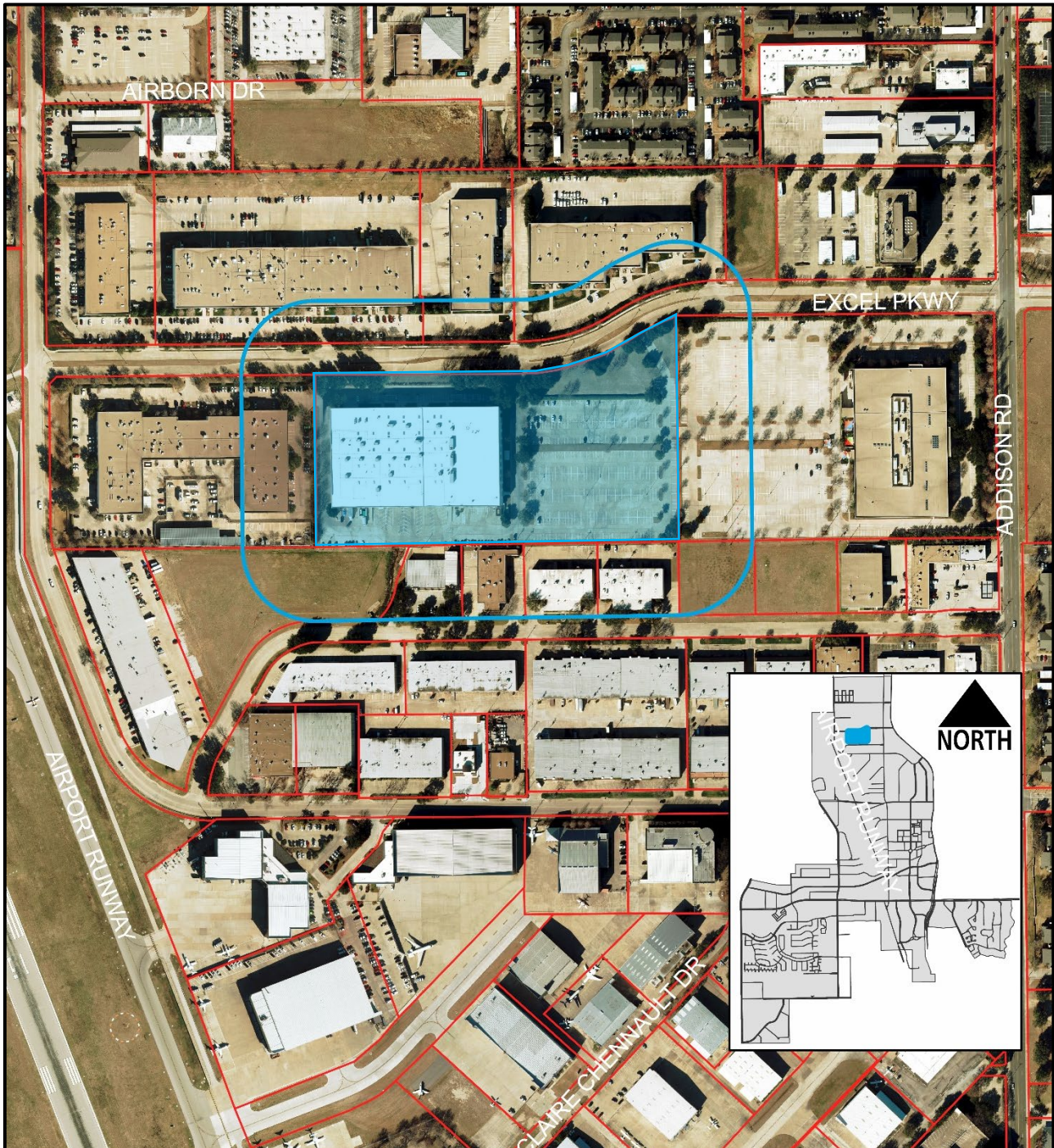
Brenda N. McDonald, City Attorney

PUBLISHED ON: _____

1788-Z

PUBLIC HEARING Case 1788-Z/CTL Medical. Public hearing, discussion, and take action on a recommendation regarding an ordinance changing the zoning on property located at 4550 Excel Parkway, which property is currently zoned Planned Development (PD), through Ordinance 085-073, as amended by Ordinances 095-054, 096-006, 007-007, to a new Planned Development (PD) zoning district allowing for light manufacturing, assembly, and distribution of FDA approved medical devices.

LOCATION MAP





November 15, 2018

STAFF REPORT

RE: Case 1788-Z/CTL Medical

LOCATION: 4550 Excel Parkway

REQUEST: Approval of a zoning change from an existing Planned Development (PD) zoning district, through Ordinance 085-073, as amended by Ordinances 095-054, 096-006, 007-007, to a new Planned Development (PD) zoning district to allow production, assembly, and distribution of spinal fixation systems.

APPLICANT: Fiona Lazarow with CTL Medical

DISCUSSION:

Background: The property located at 4550 Excel Parkway occupies 11.163 acres and is zoned as a Planned Development District (PD) through Ordinance 085-073, as amended by Ordinances 095-054, 096-006, and 007-007. The PD allows all uses permitted in the Commercial-1 (C-1) district plus all distribution and warehouse uses related to light assembly of paper goods, computer products, or similar materials. The ordinance specifically excludes the manufacture of goods and materials and defines light assembly as the process and procedures for the assimilation, packaging, and distribution of finished goods and materials. Originally housing the Excel Telecommunications operations, the building has been subdivided into six suites, generally occupied by businesses using the spaces as a combination of office, warehouse, and light assembly.

In 2016, CTL Medical, a medical device design, development, and production company filed a Certificate of Occupancy application for their operations on this property. On the application, CTL listed the proposed use as “medical devices.” In processing the application, administrative staff with the Town input the proposed use into the Town’s permitting software as an “office” use. Therefore, when the Zoning Administrator reviewed the Certificate of Occupancy request, they believed that they were reviewing an office use and approved the request, when in fact that was not the totality of the proposed use. At that same time, the CTL Medical also received approval from Building Inspections staff to renovate the space and install machinery for the production of spinal fixation systems.

The space is currently used for testing, production, assembly and distribution of medical device implants used in the spine industry. Titanium, stainless steel, and PEEK (Polyether Ether Ketone) are used in the production process, which occurs in three vertical machining centers and four Swiss style lathes. In addition to the production operation, the space is used for the company's administrative functions such as customer service, sales and marketing, accounting, and regulatory and human resources.

In October 2018, CTL Medical reached out to staff to inquire about expanding their operations, by increasing the production space and moving the administrative functions to a new suite within the same building. Their intent is to introduce a new production process using Silicone Nitride. This would include additional machines and more employees on site.

Because of the processing error made in 2016, the existing use is considered nonconforming, and expanding the use would not be permitted. Therefore, to allow CTL Medical to expand their production operations, this property would need to be rezoned to allow for the use.

Proposed Plan: CTL Medical is proposing to rezone the property to a new Planned Development (PD) district, reflecting all the existing requirements, but adding to the list of allowed uses "the production, assembly, and distribution of spinal fixation systems."

Site Plan: There are no site plan changes proposed as part of this request.

Landscaping: Rezoning typically requires that property be brought up to current requirements. The property originally developed prior to the Town's current landscape standards but appears to meet or be close to the 20% landscape coverage requirement. The site does not meet some minor landscape requirements such as interior landscaping for the parking lot. Given the unusual circumstances necessitating this request, staff believes that the property owner should not be required to invest in such improvements at this time.

Building Elevations: There are no building elevation changes proposed as part of this request.

RECOMMENDATION: **APPROVAL**

CTL Medical has been successfully operating within the Town for over two and a half years. CTL Medical uses minimal plastics, low risk chemicals, and produces no air pollution in creating their finished products. Additionally, many uses on this block are mainly office/warehouse spaces and would not be impacted by the allowance of this type of use. Therefore, staff recommends approval without conditions.



Case 1788-Z/CTL Medical

November 20, 2018

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on November 20, 2018, voted to recommend approval of an ordinance changing the zoning on an 11.163-acre property located at 4550 Excel Parkway, by amending the use regulations of the existing Planned Development (PD) district, zoned through Ordinance 085-073, as previously amended by Ordinances 095-054, 096-006, 099-025, and 007-007, by allowing the production, assembly, and distribution of spinal fixation systems, without conditions.

Voting Aye: Catalani, Dougan, Groce, Meleky, Resnik, Souers, Wheeler

Voting Nay: none

Absent: none

SPEAKERS AT THE PUBLIC HEARING:

For: none

On: none

Against: none

Work Session and Regular Meeting

16.

Meeting Date: 12/11/2018

Department: Infrastructure- Development Services

Pillars: Excellence in Asset Management
Excellence in Transportation Systems

AGENDA CAPTION:

Present, Discuss, and Consider Action on a **Resolution for Appointments to the Community Bond Advisory Committee for a Potential November 2019 Bond Program Election.**

BACKGROUND:

Preparations are underway for the development of a bond program for a potential election to be held in November 2019. Community input is critical in the formation of the program and in the success of any bond program. Therefore, staff recommends the establishment of a Community Bond Advisory Committee (BAC) that will provide public input into the bond project evaluation process. Staff recommends that the committee be made up of both residents and business representatives.

At the November 27, 2018, the Council received a briefing on the proposed bond process, the role of the advisory committee, the proposed schedule for the committee meetings, as well as critical dates if the Council decides to hold a bond election in November 2019. The Council was asked to begin thinking of residents and business members that might have an interest in serving on the BAC. An application packet was provided through Survey Monkey to be used by interested residents or members of the business community, pending Council's direction. The deadline for the submission on the applications was extended to December 5, 2018. The applications that were received have been made available to the Council for their consideration.

Should the Council desire to take action, the attached resolution allows for Council to appoint members to the Community Bond Advisory Committee for the applications that have been received.

RECOMMENDATION:

Staff requests direction from Council.

Attachments

Resolution - Appointing Members to the Community Bond Advisory Committee

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS
CREATING THE ADDISON COMMUNITY BOND ADVISORY COMMITTEE AND
APPOINTING MEMBERS.**

WHEREAS, public participation in the development of bond programs is essential to the strength and success of the program; and

WHEREAS, the City's timely and adequate investment in public infrastructure and other public facilities, improvements, and property will facilitate the future development and redevelopment of the City and support its continue growth and viability; and

WHEREAS, in order to accommodate and encourage such growth and development, the City Council desires, through the establishment and appointment of a bond advisory committee, to initiate a process to review and make recommendations to the City Council regarding future capital projects and other needs of and opportunities for the City, with an eye toward the possibility of financing the same through the issuance of bonds approved at a future bond election; and

WHEREAS, the purpose of the bond advisory committee will be to receive information about proposed projects and the estimated costs thereof, to discuss any other projects initiated by the committee, and to make a recommendation to Council as to the final bond program list, should Council make the decision to call a bond election.

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

Section 1. The City Council hereby creates the Addison Community Bond Advisory Committee to provide input regarding projects to be included in a future bond program election. The committee will be comprised of the following individuals:

Names to be filled once individuals are appointed by the City Council.

Section 2. The Committee shall be advisory in nature and shall be dissolved upon delivery of the Addison Community Bond Advisory Committee final report.

Section 3. This resolution shall be effective from and after the date of passage.

OFFICE OF THE CITY SECRETARY

RESOLUTION NO. _____

**DULY PASSED BY THE CITY COUNCIL OF THE TOWN OF ADDISON,
TEXAS, this the 11th day of December, 2018.**

Joe Chow, Mayor

ATTEST:

APPROVED AS TO FORM:

Irma Parker, City Secretary

Brenda N. McDonald, City Attorney

OFFICE OF THE CITY SECRETARY

RESOLUTION NO. _____

Meeting Date: 12/11/2018

Department: Infrastructure- Development Services

AGENDA CAPTION:

Present, Discuss, and Consider Action on an **Ordinance Approving a Boundary Adjustment Agreement with the City of Farmers Branch for a Portion of Midway Road from Spring Valley Road to the Addison City Limits Located North of W. Beltwood Parkway, Approving the Annexation of the Area Within Midway Road that is Released by the City of Farmers Branch, Approving a Service Plan for the Annexed Area and Approving an Easement for Utilities to the City of Farmers Branch for Utilities Lying Under the Exchanged Portion of Midway Road, and Authorizing the City Manager to Execute all Necessary Documents Related to These Matters.**

BACKGROUND:

A portion of Midway Road, generally described as the easternmost lane from the intersection with Spring Valley Road to just north of W. Beltwood Parkway, is within the city limits of the City of Farmers Branch. The remainder of the 6-lane roadway from the intersection of Spring Valley Road to the northern city limits at the intersection with Keller Springs Road is in the city limits of Addison.

As a part of the Farmers Branch Creek settlement with the City of Farmers Branch and in order to facilitate the reconstruction of Midway Road, it is proposed that the city limits of the City of Farmers Branch and the Town of Addison be adjusted so that the entire roadway is within the city limits of the Town of Addison. The City of Farmers Branch will release the portion of the roadway to be annexed into the Town of Addison. There are no residents or businesses that are directly affected by the change, as such there will be no impact on the residents or businesses of either city, nor is there any loss of ad valorem or sales tax base by either city.

The City of Farmers Branch will reserve a utility easement for the purpose of maintaining, repairing, removing, and replacing its water and sanitary sewer lines, storm sewer and drainage structures within the easement area. The Town of Addison agrees not to construct any improvements in the easement area that would interfere with the City of Farmers Branch's use of the easement without the prior written consent of the City of Farmers Branch. The City of Farmers Branch agrees to repair and replace, to the Town of Addison's then-existing standards at the City of Farmers Branch's sole expense, all paving, curbing, fencing, walls, shrubbery, trees and landscaping located in the easement and the

adjacent Midway Road right-of-way, to the extent that such is damaged by the City of Farmers Branch's use of the easement area.

The Town of Addison will be responsible for and will provide municipal services such as police and fire protection, solid waste services, maintenance of the roadway, installation and maintenance of the lighting system, storm drainage, capital improvements, and code enforcement for the newly annexed area.

The proposed Ordinance includes the Boundary Adjustment Agreement, the Municipal Service Plan, and the Easement for the City of Farmers Branch's utilities.

RECOMMENDATION:

Administration recommends approval.

Attachments

Ordinance - Boundary Adjustment Agreement for Midway Road

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS, MODIFYING ITS CORPORATE BOUNDARIES IN ACCORDANCE WITH A CERTAIN BOUNDARY ADJUSTMENT AGREEMENT ENTERED INTO WITH THE CITY OF FARMERS BRANCH; FINDING THAT ALL NECESSARY AND REQUIRED LEGAL CONDITIONS HAVE BEEN SATISFIED; PROVIDING THAT SUCH AREA AS DESCRIBED IN EXHIBIT “A” OF SAID BOUNDARY AGREEMENT SHALL BE INCORPORATED INTO THE CITY OF THE TOWN OF ADDISON FOR INCLUSION WITHIN ITS CORPORATE LIMITS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City Council of the Town of Addison, Texas (the “Town or City”), pursuant to the Municipal Annexation Act, Texas Local Government Code, §43.001 et seq., as amended (specifically, Tex. Loc. Govt. Code §43.031) and Section 1.04 of the Addison City Charter, desires to adjust its corporate boundaries in accordance with a certain Boundary Adjustment Agreement (the “Agreement”) between the Town and the City of Farmers Branch (“Farmers Branch”) , as described in Attachment “1” hereto; and

WHEREAS, the Town is a duly constituted Home Rule City pursuant to Article XI, Section 5 of the Texas Constitution, as amended; and

WHEREAS, all conditions established by law have been satisfied with respect to the approval of the adjustment to the corporate boundaries between the Town and Farmers Branch in accordance with the Agreement.

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

SECTION 1. The City Manager is hereby authorized, on behalf of the Town, to sign the Agreement, attached hereto as Attachment “1” and made a part hereof for all purposes, which is hereby adopted.

SECTION 2. The property described in Exhibit “A” of the Agreement (“the Annexed Area”) shall be and is hereby annexed into the Town of Addison city limits for all purposes and that same shall hereafter be included within the territorial limits of the town and said land and the inhabitants thereof shall be hereafter entitled to all rights and privileges of all other citizens of the Town of Addison, Texas, and shall be bound by the ordinances, resolutions, acts and regulations of the Town. A Service Plan for the Annexed Area is attached as Attachment “2” and is incorporated herein.

SECTION 3. The annexation authorized in Section 2, above, is subject to Farmers Branch's reservation of a general utility easement in the Annexed Area in accordance with the provisions set forth in that certain Easement for Utilities ("the Easement"), the form of which is attached hereto as Attachment "3" and incorporated herein by reference.

SECTION 4. The official map and boundaries of the Town, heretofore adopted and amended shall be and is hereby amended so as to reflect the boundary adjustments described in the Agreement.

SECTION 5. The City Manager is hereby directed and authorized to perform or cause to be performed all acts necessary to correct the official map of the Town to reflect the boundary adjustments described in the Agreement, as required by law.

SECTION 6. The City Secretary is hereby authorized to send a certified copy of this ordinance to the Office of the County Clerk of Dallas County, Texas.

SECTION 7. If any section, subsection, sentence, phrase, or word of this ordinance be found to be illegal, invalid or unconstitutional, or if any portion of said property is incapable of being annexed by the City, for any reason whatsoever, the adjudication shall not affect any other section, sentence, phrase, word, paragraph or provision of this ordinance or the application of any other section, sentence, phrase, word, paragraph or provision of any other ordinance of the City. The City Council declares that it would have adopted the valid portions and the applications of this ordinance and would have annexed the valid property without the invalid part, and to this end the provisions of this ordinance are declared severable.

SECTION 8. Every ordinance or parts of ordinances found to be in conflict herewith are hereby repealed.

SECTION 9. This Ordinance shall take on the effect on the last of (i) the date of its passage and publication of the caption in accordance with the provisions of the Charter of the Town of Addison, and it is accordingly so ordained, (ii) the effective date of a like ordinance approved by the City of Farmers Branch, Texas, releasing from the corporate limits of the City of Farmers Branch, the property described in Exhibit "A" to Attachment "1" hereto, (iii) the date of execution of the Agreement by authorized representatives of the Town and Farmers Branch, and (iv) the date of execution of the Easement by authorized representatives of the Town and Farmers Branch and delivery of the original Easement in recordable form to Farmers Branch.

DULY PASSED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS, ON THE 11th DAY OF DECEMBER, 2018.

Joe Chow, Mayor

ATTEST:

Irma Parker, City Secretary

APPROVED AS TO FORM:

Brenda N. McDonald, City Attorney

ORDINANCE NO. ____
Attachment 1 – Boundary Adjustment Agreement

STATE OF TEXAS §
 § **BOUNDARY ADJUSTMENT AGREEMENT**
COUNTY OF DALLAS §

This **Boundary Adjustment Agreement** (“Agreement”) is made by and between the **Town of Addison** (“Addison”) and the **City of Farmers Branch** (“Farmers Branch”), both being Texas home rule municipalities (collectively referred to as “Cities”), acting by and through their authorized representatives.

Recitals:

WHEREAS, the segment of Midway Road from its intersection with Spring Valley Road on the south to its intersection with Belt Line Road on the north is a six-lane boulevard major arterial street; and

WHEREAS, a segment of the city limit line between Addison and Farmers Branch lies within a segment of the northbound travel lanes of Midway Road from its intersection with Spring Valley Road and running northerly to a point north of W. Beltway Parkway approximately located at Longitude -96.83870/Latitude 32.951204 where it intersects the city limits boundary of Addison (“the Farmers Branch Midway Segment”); and

WHEREAS, Addison desires to reconstruct and maintain the entire pavement width of Midway Road as well have jurisdiction over traffic enforcement and other matters relating to the control, operation and maintenance of public streets, including the Farmers Branch Midway Segment; and

WHEREAS, Farmers Branch owns and maintains public utilities under the pavement of the Farmers Branch Midway Segment within the Released Area, hereinafter defined; and

WHEREAS, the Cities desire that Farmers Branch release from its city limits, the area of land between its current city limit line area described and depicted in Exhibit “A” attached hereto and incorporated herein by reference (the “Released Area”); and

WHEREAS, Addison desires to incorporate the Released Area into its city limits; and

WHEREAS, Farmers Branch desires to reserve a general utility easement for the purpose of the maintaining, repairing, removing, and replacing its water and sanitary sewer lines and related appurtenances within the Released Area; and

WHEREAS, all of the land affected by the boundary adjustments described above is uninhabited and owned by either Addison or Farmers Branch such that there will be no impact on residents of either City nor any loss of ad valorem or sales tax base by either City; and

WHEREAS, the Cities desire to enter into an agreement providing for the adjustment of their boundaries pursuant to Tex. Loc. Govt. Code §43.031, as amended; and

ORDINANCE NO. ____
Attachment 1 – Boundary Adjustment Agreement

WHEREAS, the boundary adjustment proposed by this Agreement is exempt from the requirements of Tex. Loc. Govt. Code §43.052.

NOW THEREFORE, in exchange for the mutual covenants set forth herein and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Cities agree as follows:

1. **Intent of Cities.** It is the intent of the Cities to modify their mutual boundary in accordance with this Agreement.
2. **Release and Annexation of Territory.** Subject to the retention of a utility easement as set forth herein, upon the Effective Date, Farmers Branch hereby disannexes from Farmers Branch's incorporated limits and grants, releases, and apportions unto Addison for inclusion within Addison's incorporated limits, the Released Area. Upon the Effective Date and subject to the utility easement retained by Farmers Branch, Addison hereby annexes the Released Area into Addison's incorporated limits.
3. **Retention of Utility Easement.** Farmers Branch hereby retains a public utility easement within the Released Area, such easement to be in the form of **Exhibit B** attached hereto and separately filed of record in Dallas County.
4. **Waiver of Extraterritorial Jurisdiction.** Farmers Branch does hereby waive all of its extraterritorial jurisdiction rights, if any, within the Released Area. It is expressly agreed and understood that this waiver shall operate only in favor of Addison and shall not constitute a waiver of any right, including extraterritorial jurisdiction rights, which Farmers Branch may be able to assert against any other municipality.
5. **Service Plan.** Upon ratification and adoption of this Agreement by an ordinance adopted by the City Council of the Town of Addison, Addison does hereby agree to immediately begin implementation into the affected area of the service plan attached hereto and made a part of this Agreement as **Exhibit C** with respect to the Released Area.
6. **Miscellaneous Provisions.**
 - a. **Severability.** Should any provision of this Agreement be declared void by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect.
 - b. **Effective Date.** The boundary adjustment set forth in this Agreement shall take effect only upon ratification and adoption by the governing bodies of each City pursuant to an ordinance adopted by each of the Cities to which an executed copy of this Agreement is attached as an exhibit.
 - c. **Jurisdiction and Venue.** This Agreement shall be construed under the laws of the State of Texas and venue shall lie exclusively in the courts of Dallas County, Texas.

ORDINANCE NO. ____
Attachment 1 – Boundary Adjustment Agreement

SIGNED AND AGREED this _____ day of December, 2018.

TOWN OF ADDISON, TEXAS

By: _____
Wesley S. Pierson, City Manager

ATTEST:

Irma Parker, City Secretary

APPROVED AS TO FORM AND LEGALITY:

Brenda N. McDonald, City Attorney

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY DALLAS §

This instrument was acknowledged before me on the _____ day of December, 2018, by Wesley S. Pierson, City Manager of the Town of Addison, Texas, a Texas home rule municipality for and on behalf of said municipality.

Notary Public, State of Texas

[Seal]

ORDINANCE NO. ____
Attachment 1 – Boundary Adjustment Agreement

SIGNED AND AGREED this ____ day of December, 2018.

CITY OF FARMERS BRANCH, TEXAS

By: _____
Charles S. Cox, City Manager

ATTEST:

Amy Piukana, City Secretary

APPROVED AS TO FORM:

Kevin B. Laughlin, Attorney for the City

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the ____ day of December, 2018, by Charles S. Cox, as City Manager of the City of Farmers Branch, a Texas home rule municipality, on behalf of said municipality.

Notary Public, State of Texas

[Seal]

ORDINANCE NO. _____
Attachment 1 – Boundary Adjustment Agreement

EXHIBIT "A"
Metes and Bounds Description and Map Exhibit of the Released Area

PROPOSED FARMERS BRANCH CITY LIMIT LINE
ELISHA FIKE SURVEY, ABSTRACT NO. 478
CITY OF FARMERS BRANCH, DALLAS COUNTY, TEXAS.

BEING 33,943.20 square feet of part of Midway Road, situated in the Elisha Fike Survey, Abstract No. 478, City of Farmers Branch, Dallas County, Texas, and said tract being more particularly described as follows:

BEGINNING at the northwest corner of that same tract of land annexed to the City of Farmers Branch, Texas by City Ordinance No. 125, dated March 16, 1959;

THENCE S 89°50'47" E, 9.05' along the north line of said annexed tract by City Ordinance No. 125 to a point for corner in the easternmost back of curb of Midway Road;

THENCE S 00°05'22" E, 3,494.68' along the easternmost back of curb of Midway Road to a point for corner;

THENCE S 01°50'04" E, 58.00' along the easternmost back of curb of Midway Road to a point for corner;

THENCE S 01°11'49" E, 192.65' along the easternmost back of curb of Midway Road to a point for corner;

THENCE S 01°41'14" E, 61.00' along the easternmost back of curb of Midway Road to a point for corner;

THENCE S 00°05'22" E, 334.32' along the easternmost back of curb of Midway Road to a point for corner in the extension of the City Limit line for the City of Addison and Farmers Branch;

THENCE S 89°47'48" W, 16.59' along said extension to a point for corner in Midway Road and the City Limit line for the City of Addison and Farmers Branch;

THENCE NORTH, 2,546.19' along Midway Road and the City Limit line for the City of Addison and Farmers Branch to a point for corner;

THENCE N 00°13'11" W, 1,594.45' along Midway Road and the City Limit line for the City of Addison and Farmers Branch to the Point of Beginning and containing 33,943.20 square feet or 0.7792 acres of land.

 12/05/18

Scott Davis, Registered Professional Land Surveyor No. 5111



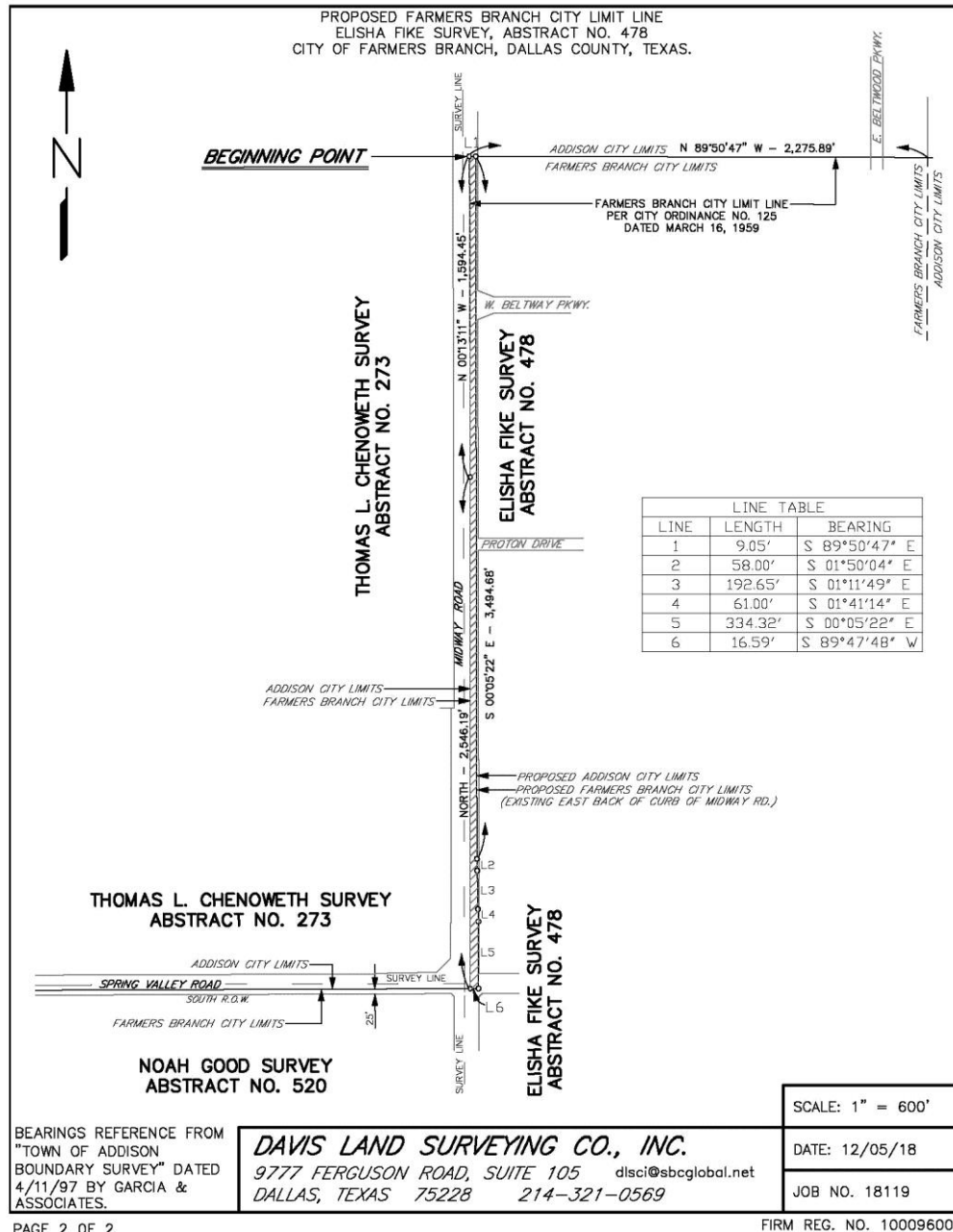
BEARINGS REFERENCE FROM
"TOWN OF ADDISON
BOUNDARY SURVEY" DATED
4/11/97 BY GARCIA &
ASSOCIATES.

DAVIS LAND SURVEYING CO., INC.
9777 FERGUSON ROAD, SUITE 105 disci@sbclabel.net
DALLAS, TEXAS 75228 214-321-0569

DATE: 12/05/18

JOB NO. 18119

ORDINANCE NO. _____
Attachment 1 – Boundary Adjustment Agreement



ORDINANCE NO. ____
Attachment 1 – Boundary Adjustment Agreement

EXHIBIT “B”
FORM OF EASEMENT FOR UTILITIES

After Recording Return To:
City of Farmers Branch, Texas
Attn: City Secretary
13000 William Dodson Parkway
Farmers Branch, Texas 75234

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

EASEMENT FOR UTILITIES

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

DATE: December 11, 2018

GRANTOR: Town of Addison, Texas
5300 Belt Line Road
Dallas, Texas 75254
(Dallas County, Texas)

GRANTEE: City of Farmers Branch, Texas
13000 William Dodson Parkway
Farmers Branch, Texas 75234
(Dallas County, Texas)

CONSIDERATION:

Ten Dollars (\$10.00) in hand paid by Grantee, the receipt and sufficiency of which is acknowledged by Grantor, and other good and valuable consideration.

EASEMENT PROPERTY:

See Exhibit A and attached hereto and incorporated herein by reference.

EASEMENT PURPOSE: The construction, installation, operation, improvement, use, inspection, repair, maintenance, reconstruction, replacement, relocation and removal of public utilities (including, without limitation, water, sanitary sewer, storm sewer, drainage) together with all and singular related rights and appurtenances, facilities, equipment and attachments

ORDINANCE NO. ____
Attachment 1 – Boundary Adjustment Agreement

thereto, including, without limitation, lines, pipelines, valves, manholes, manhole vents, lateral line connections, and junction boxes (collectively, the "Facilities").

RESERVATIONS FROM CONVEYANCE: None.

EXCEPTIONS TO WARRANTY:

Grantor warrants only those rights it has received from Grantee in that certain Boundary Adjustment Agreement dated of even date herewith.

GRANT OF EASEMENT: Grantor, for the Consideration described above and subject to the Reservations from Conveyance and the Exceptions to Warranty, GRANTS, SELLS, and CONVEYS to Grantee and Grantee's successors and assigns an easement and right-of-way on, in, over, under, through, and across the Easement Property, together with all and singular the rights and appurtenances thereto in any way belonging (collectively, the "Easement"), TO HAVE AND TO HOLD the Easement to Grantee and Grantee's successors and assigns forever. Grantor binds Grantor and Grantor's successors and assigns to WARRANT AND FOREVER DEFEND the title to the Easement in Grantee and Grantee's successors and assigns against every person whomsoever lawfully claiming or to claim the Easement or any part of the Easement, except as to the Reservations from Conveyance and the Exceptions to Warranty.

TERMS AND CONDITIONS:

1. *Character of Easement.* The Easement is exclusive and irrevocable. The Easement is for the benefit of Grantee and Grantee's successors and assigns.
2. *Duration of Easement.* The duration of the Easement is perpetual.
3. *Reservation of Rights.* Grantor reserves for Grantor and Grantor's successors and assigns the right to use all or part of the Easement Property in conjunction with Grantee as long as such use by Grantor and Grantor's successors and assigns do not interfere with the use of the Easement Property by Grantee and Grantee's successors and assigns.
4. *Improvement and Maintenance of Easement Property.* Grantor agrees, for the consideration set forth herein, not to construct or place within the Easement Property any buildings, structures, fences, or other improvements of any nature whatsoever, or any shrubs, trees or other growth of any kind, or otherwise interfere with the Easement, without the prior written consent of Grantee. Grantee shall have the right to remove, and keep removed, all or parts of any building, structure, fence, or other improvement, or any shrub, tree, or other growth, of any character, except the Midway Road paving and concrete curb that exists or is constructed, that is located within the Easement Property and which, in the judgment of Grantee, may endanger or in any way interfere with the construction, efficiency, or convenient and safe operation and maintenance of the Easement or the Facilities described herein or the exercise of Grantee's rights hereunder. Grantee, its successors and assigns and its officers, employees, contractors, and licensees shall at all times have the right and privilege to access the Easement Property for the Easement Purpose.

ORDINANCE NO. ____
Attachment 1 – Boundary Adjustment Agreement

Grantee shall repair and replace, to Grantor's then-existing standards as set forth in Grantor's then current ordinances and adopted construction standards for public streets at Grantee's sole expense, all paving, curbing, fencing, walls, shrubbery, trees and landscaping located on the Easement Property and the adjacent Midway Road right-of-way, to the extent that any of the same is disturbed or damaged by Grantee's use of the Easement Property.

5. *Equitable Rights of Enforcement.* This Easement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties or to those benefited by this agreement; provided, however that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law, in equity, or otherwise.

6. *Binding Effect.* This Easement for Utilities binds and inures to the benefit of the Grantor and Grantor's successors and assigns and the Grantee and Grantee's successors and assigns.

7. *Choice of Law.* This Easement for Utilities agreement shall be construed under the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. Venue for all suits, matters, claims, or proceedings hereunder lies exclusively in Dallas County, Texas.

8. *Waiver of Default.* It is not a waiver of or consent to default if the nondefaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any rights or remedies set forth in this Easement for Utilities agreement does not preclude pursuit of any other rights or remedies in this Easement for Utilities agreement or provided by law, in equity, or otherwise.

9. *Integration.* This Easement for Utilities contains the complete agreement of the parties with respect to the matters set forth herein and cannot be varied except by written agreement of the parties. The parties agree that there are no oral agreements, representations or warranties that are not expressly set forth in this Easement for Utilities agreement.

10. *Legal Construction.* If any provision of this Easement for Utilities is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this Easement for Utilities agreement will be construed as if the unenforceable provision had never been a part of the agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this Easement for Utilities agreement are for reference only and are not intended to restrict or define the text of any section. This Easement for Utilities agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

11. *Notices.* Any notice, demand, request or communication required or permitted under this Easement for Utilities agreement shall be in writing, addressed as provided hereinafter

ORDINANCE NO. ____
Attachment 1 – Boundary Adjustment Agreement

to the party to whom the notice or request is given, and shall be either (i) delivered personally, (ii) sent by United States certified mail, postage prepaid, return receipt requested, or (iii) placed in the custody of Federal Express Corporation or other nationally recognized carrier to be delivered overnight. Notice shall be deemed given: when received if delivered personally; forty-eight (48) hours after deposit if sent by mail; and twenty-four (24) hours after deposit if sent by Federal Express or other nationally recognized carrier. Address for notice are as follows:

To Grantor:

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

To Grantee:

City of Farmers Branch, Texas
13000 William Dodson Parkway
Farmers Branch, TX 75234
Attn: City Manager

From time to time either party may designate another address within the 48 contiguous states of the United States of America for all purposes of this Easement for Utilities 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.

12. *Third Party Beneficiaries.* This Easement for Utilities and all of its provisions are solely for the benefit of the parties hereto and their respective heirs, successors, and assigns.

13. *Authorized Persons.* The undersigned persons are the properly authorized representatives of each of the respective parties and have the necessary authority to execute this Easement for Utilities on behalf of the parties hereto.

When the context requires it, singular nouns and pronouns include the plural.

(Two Signature Pages to Follow)

ORDINANCE NO. _____
Attachment 1 – Boundary Adjustment Agreement

EXECUTED effective as of the date first written above.

GRANTOR:
Town of Addison, Texas

By: _____
Wesley S. Pierson, City Manager

ACKNOWLEDGMENT

STATE OF TEXAS §

COUNTY OF DALLAS §

Before me, the undersigned authority, on this day personally appeared Wesley S. Pierson, City Manager of the Town of Addison, Texas, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office this _____ day of December, 2018.

Notary Public, State of Texas

[SEAL]

ORDINANCE NO. _____
Attachment 1 – Boundary Adjustment Agreement

GRANTEE:

City of Farmer Branch, Texas

By: _____
Charles S. Cox, City Manager

STATE OF TEXAS §

COUNTY OF DALLAS §

Before me, the undersigned authority, on this day personally appeared Charles S. Cox, City Manager of the City of Farmers Branch, Texas, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of December, 2018.

Notary Public, State of Texas

[SEAL]

ORDINANCE NO. _____
Attachment 1 – Boundary Adjustment Agreement

EXHIBIT "A"
Description of Easement Property

PROPOSED FARMERS BRANCH CITY LIMIT LINE
ELISHA FIKE SURVEY, ABSTRACT NO. 478
CITY OF FARMERS BRANCH, DALLAS COUNTY, TEXAS.

BEING 33,943.20 square feet of part of Midway Road, situated in the Elisha Fike Survey, Abstract No. 478, City of Farmers Branch, Dallas County, Texas, and said tract being more particularly described as follows:

BEGINNING at the northwest corner of that same tract of land annexed to the City of Farmers Branch, Texas by City Ordinance No. 125, dated March 16, 1959;

THENCE S 89°50'47" E, 9.05' along the north line of said annexed tract by City Ordinance No. 125 to a point for corner in the easternmost back of curb of Midway Road;

THENCE S 00°05'22" E, 3,494.68' along the easternmost back of curb of Midway Road to a point for corner;

THENCE S 01°50'04" E, 58.00' along the easternmost back of curb of Midway Road to a point for corner;

THENCE S 01°11'49" E, 192.65' along the easternmost back of curb of Midway Road to a point for corner;

THENCE S 01°41'14" E, 61.00' along the easternmost back of curb of Midway Road to a point for corner;

THENCE S 00°05'22" E, 334.32' along the easternmost back of curb of Midway Road to a point for corner in the extension of the City Limit line for the City of Addison and Farmers Branch;

THENCE S 89°47'48" W, 16.59' along said extension to a point for corner in Midway Road and the City Limit line for the City of Addison and Farmers Branch;

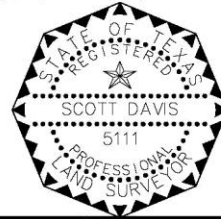
THENCE NORTH, 2,546.19' along Midway Road and the City Limit line for the City of Addison and Farmers Branch to a point for corner;

THENCE N 00°13'11" W, 1,594.45' along Midway Road and the City Limit line for the City of Addison and Farmers Branch to the Point of Beginning and containing 33,943.20 square feet or 0.7792 acres of land.

Scott Davis

12/05/18

Scott Davis, Registered Professional Land Surveyor No. 5111



BEARINGS REFERENCE FROM
"TOWN OF ADDISON
BOUNDARY SURVEY" DATED
4/11/97 BY GARCIA &
ASSOCIATES.

DAVIS LAND SURVEYING CO., INC.
9777 FERGUSON ROAD, SUITE 105 disc@dbcglobal.net
DALLAS, TEXAS 75228 214-321-0569

DATE: 12/05/18

JOB NO. 18119

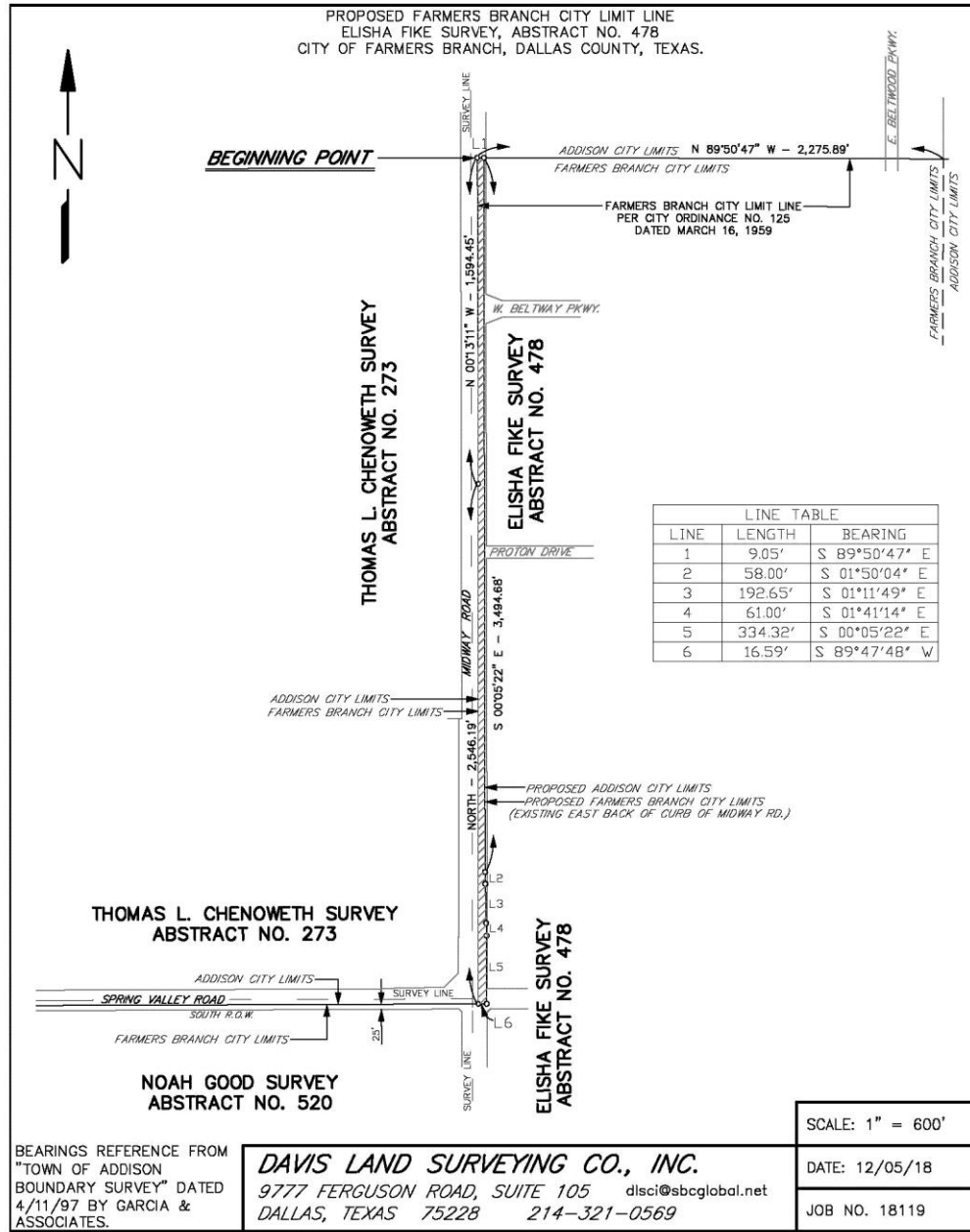
PAGE 1 OF 2

FIRM REG. NO. 10009600

TOWN OF ADDISON/ CITY OF FARMERS BRANCH
BOUNDARY ADJUSTMENT AGREEMENT

EXHIBIT B – PAGE 1

ORDINANCE NO. _____
Attachment 1 – Boundary Adjustment Agreement



PAGE 2 OF 2

FIRM REG. NO. 10009600

**TOWN OF ADDISON/ CITY OF FARMERS BRANCH
BOUNDARY ADJUSTMENT AGREEMENT**

EXHIBIT B – PAGE 2

ORDINANCE NO. ____
Attachment 1 – Boundary Adjustment Agreement

EXHIBIT “C”
TOWN OF ADDISON SERVICE PLAN

As required by Texas Local Government Code Section 43.065, following is the Service Plan for the property more particularly described and identified as the “Released Area.”

As the result of a series of negotiations, the Town of Addison and the City of Farmers Branch have agreed to a boundary adjustment covering the property described and identified as the Released Area in the Boundary Adjustment Agreement.

The following Municipal Services will be provided by the Town of Addison to the Released Area upon the effective date of the Town of Addison ordinance approving and ratifying this Agreement:

A. Police Protection

Existing Services: The area is in the current service area and under the jurisdiction of the City of Farmers Branch.

Services to be provided: Police services to the Released Area will be provided by the Town of Addison.

B. Fire Protection (including emergency ambulance)

Existing Services: The area is in the current service area of the City of Farmers Branch.

Services to be provided: Fire suppression and emergency response will be provided by the Town of Addison.

C. Solid Waste Collection

If solid waste collection is necessary, the Town of Addison will provide it through its franchised waste hauler.

D. Water Service

No extension of water service is anticipated to be necessary. If needed, the Town of Addison will provide it, with extensions being subject to current ordinances, resolutions, regulations and Certificate of Convenience and Necessity.

E. Sanitary Sewer Service

No extension of sanitary sewer service is anticipated to be necessary. If needed, the Town of Addison will provide it, with extensions being subject to current ordinances, resolutions, regulations and Certificate of Convenience and Necessity.

ORDINANCE NO. ____
Attachment 1 – Boundary Adjustment Agreement

F. Maintenance of Roads and Streets

Provided by the Town of Addison.

G. Parks and Recreation

Not applicable since there are no residents to serve within the Released Area.

H. Street Lighting

Street lights to serve the Released Area are currently located in the median of Midway Road and are provided by the Town of Addison.

I. Traffic Engineering

Provided by the Town of Addison.

K. Planning and Zoning

Provided by the Town of Addison.

L. Storm Drainage (including flood plain regulations)

Provided by the Town of Addison.

M. Capital Improvements

Provided by the Town of Addison.

N. Miscellaneous

General municipal administrative and code enforcement services of the Town of Addison will be provided.

ORDINANCE NO. ____
Attachment 2 – Service Plan

TOWN OF ADDISON, TEXAS
MUNICIPAL SERVICE PLAN

SECTION 1

POLICE

Services to be provided: Police services to the area to be annexed will be provided effective on the date of annexation by the Town of Addison, Police Department.

FIRE

Services to be provided: Fire suppression will be available to the area upon annexation. Fire response will be provided at a level consistent with current methods and procedures presently provided to similarly situated areas within the City by the Town of Addison, Fire Department.

EMERGENCY MEDICAL SERVICES

Services to be provided: Emergency medical services shall be provided to the area of annexation upon annexation at a level consistent with current methods and procedures presently provided to similar areas within the City by the Town of Addison, Fire Department.

SOLID WASTE SERVICES

Services to be provided: Solid waste collection services shall be available upon annexation. Private solid waste collection service may continue to provide their existing service for up to two years in accordance with the TEXAS LOCAL GOVERNMENT CODE.

WATER SERVICE

Services to be provided: Water service to the area will be provided by the CCN holder in the same manner that such service is provided to the other similarly situated areas within the corporate limits of the City. In some instances, the City may acquire CCN rights and become the new water and/or sewer provider.

SANITARY SEWER SERVICE

Services to be provided: Sanitary sewer service to the area will be provided in the same manner that such service is provided to the other similarly situated areas within the corporate limits of the City and in accordance with applicable codes and departmental policy.

ORDINANCE NO. ____
Attachment 2 – Service Plan

STREET

Services to be provided: Public street maintenance will be provided by the Town of Addison upon the effective date of the annexation.

STREET LIGHTING

Services to be provided: Street lighting is currently provided by the Town of Addison.

BUILDING INSPECTION

Services to be provided: The Town of Addison will provide Code Enforcement and Building Inspection services upon annexation. This includes issuing building, electrical and plumbing permits for any new construction and remodeling, and enforcing all other applicable codes which regulate building construction within the Town of Addison. The Town will also provide inspection services associated with public or private construction.

PLANNING AND ZONING

Services to be provided: The Town of Addison will provide planning and land use regulation through the administration of the Town's zoning ordinance which will extend to this area on the effective date of the annexation. The annexed area will be included in the next Comprehensive Plan update. The area will also be regulated under the requirements of the Town of Addison's Subdivision Ordinance.

PARKS AND RECREATION FACILITIES

Services to be provided: Upon the effective date of annexation, residents within the annexed area may utilize all park and recreation facilities of the City.

PUBLICLY OWNED FACILITIES

Services to be provided: Upon the effective date of annexation, any publicly owned facility, building or service located within the annexed area, and not otherwise owned or maintained by another governmental entity, shall be maintained by the Town of Addison.

MISCELLANEOUS

All other applicable municipal services will be provided to the area in accordance with the Town of Addison's established policies governing extension of municipal services to newly annexed areas.

ORDINANCE NO. ____
Attachment 2 – Service Plan

SECTION 2

Nothing in this plan shall require the Town of Addison to provide a uniform level of full municipal services to each area of the City, including annexed area, if different characteristics of topography, land use, and population density are considered a sufficient basis for providing different levels of service.

SECTION 3

This service plan shall be valid for a term of ten (10) years. Renewal of the service plan shall be at the discretion of the City Council.

SECTION 4

This service plan may be amended if the City Council determines at a public hearing that changed conditions or subsequent occurrences make this service plan unworkable or obsolete. The City Council may amend the service plan to conform to the changed conditions or subsequent occurrences pursuant to TEXAS LOCAL GOVERNMENT CODE, Section 43.056.

SECTION 5

If any annexed tracts of land are subdivided and/or further developed, then the developer(s) of such tracts shall be required to comply with the City's Subdivision Regulations. The City requires that the developer(s) construct, at its (their) sole expense, all required valves, fire hydrants, lines, and capital improvements, etc., necessary to provide adequate water service, including adequate water pressure for fire service, within the new subdivision(s).

SECTION 6

Any improvements which may be placed, constructed or installed on any portion of a development shall conform to the minimum specifications as called for in the Building Code, the Fire Code, applicable engineering standards, and other City regulations, as to size, quality of materials, height, and strength of improvements. For the purpose of the foregoing, the following shall be considered improvements: water lines, fire hydrants, and sanitary sewer systems, or any similar improvement designed to ensure the health and safety of the public, residents, employees, or customers. In the event private drives or streets are constructed for the development of the property, they shall conform to the Fire Code, and applicable engineering standards for their construction, to assure that Fire Department vehicles may safely use them. Developers or landowners shall not permit occupancy and the City shall not issue occupancy permits for any buildings or portions thereof until such private improvements are fully completed to serve the developed area, including compliance with City regulations.

SECTION 7

Extension and provision of City services to the annexed area, and the construction, inspection and maintenance of all improvements necessary to provide such services shall be in

ORDINANCE NO. ____
Attachment 2 – Service Plan

accordance with standards contained in the City's subdivision regulations or engineering manuals, or other standard specifications, as may be amended, except as expressly provided herein to the contrary.

SECTION 8

In accordance with state law and the City's land development and subdivision ordinances and regulations, any division of the annexed area into two or more tracts or parcels for the purposes of sale will require the filing of a subdivision plat. Developers and landowners shall complete those portions of the public improvements which the City may require in order to ensure contiguity and proper service for the public improvements to the portion of the annexed property for which plat approval may be sought.

ORDINANCE NO. ____
Attachment 3 – Form of Easement for Utilities

After Recording Return To:
City of Farmers Branch, Texas
Attn: City Secretary
13000 William Dodson Parkway
Farmers Branch, Texas 75234

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

EASEMENT FOR UTILITIES

STATE OF TEXAS §
§
COUNTY OF DALLAS §

DATE: December 11, 2018

GRANTOR: Town of Addison, Texas
5300 Belt Line Road
Dallas, Texas 75254
(Dallas County, Texas)

GRANTEE: City of Farmers Branch, Texas
13000 William Dodson Parkway
Farmers Branch, Texas 75234
(Dallas County, Texas)

CONSIDERATION:

Ten Dollars (\$10.00) in hand paid by Grantee, the receipt and sufficiency of which is acknowledged by Grantor, and other good and valuable consideration.

EASEMENT PROPERTY:

See **Exhibit A** and attached hereto and incorporated herein by reference.

EASEMENT PURPOSE: The construction, installation, operation, improvement, use, inspection, repair, maintenance, reconstruction, replacement, relocation and removal of public utilities (including, without limitation, water, sanitary sewer, storm sewer, drainage) together with all and singular related rights and appurtenances, facilities, equipment and attachments thereto, including, without limitation, lines, pipelines, valves, manholes, manhole vents, lateral line connections, and junction boxes (collectively, the "Facilities").

TOWN OF ADDISON/ CITY OF FARMERS BRANCH
EASEMENT FOR UTILITIES

PAGE 1
(kbl:12/5/18:104750)

ORDINANCE NO. ____
Attachment 3 – Form of Easement for Utilities

RESERVATIONS FROM CONVEYANCE: None.

EXCEPTIONS TO WARRANTY:

Grantor warrants only those rights it has received from Grantee in that certain Boundary Adjustment Agreement dated of even date herewith.

GRANT OF EASEMENT: Grantor, for the Consideration described above and subject to the Reservations from Conveyance and the Exceptions to Warranty, GRANTS, SELLS, and CONVEYS to Grantee and Grantee's successors and assigns an easement and right-of-way on, in, over, under, through, and across the Easement Property, together with all and singular the rights and appurtenances thereto in any way belonging (collectively, the "Easement"), TO HAVE AND TO HOLD the Easement to Grantee and Grantee's successors and assigns forever. Grantor binds Grantor and Grantor's successors and assigns to WARRANT AND FOREVER DEFEND the title to the Easement in Grantee and Grantee's successors and assigns against every person whomsoever lawfully claiming or to claim the Easement or any part of the Easement, except as to the Reservations from Conveyance and the Exceptions to Warranty.

TERMS AND CONDITIONS:

1. *Character of Easement.* The Easement is exclusive and irrevocable. The Easement is for the benefit of Grantee and Grantee's successors and assigns.
2. *Duration of Easement.* The duration of the Easement is perpetual.
3. *Reservation of Rights.* Grantor reserves for Grantor and Grantor's successors and assigns the right to use all or part of the Easement Property in conjunction with Grantee as long as such use by Grantor and Grantor's successors and assigns do not interfere with the use of the Easement Property by Grantee and Grantee's successors and assigns.
4. *Improvement and Maintenance of Easement Property.* Grantor agrees, for the consideration set forth herein, not to construct or place within the Easement Property any buildings, structures, fences, or other improvements of any nature whatsoever, or any shrubs, trees or other growth of any kind, or otherwise interfere with the Easement, without the prior written consent of Grantee. Grantee shall have the right to remove, and keep removed, all or parts of any building, structure, fence, or other improvement, or any shrub, tree, or other growth, of any character, except the Midway Road paving and concrete curb that exists or is constructed, that is located within the Easement Property and which, in the judgment of Grantee, may endanger or in any way interfere with the construction, efficiency, or convenient and safe operation and maintenance of the Easement or the Facilities described herein or the exercise of Grantee's rights hereunder. Grantee, its successors and assigns and its officers, employees, contractors, and licensees shall at all times have the right and privilege to access the Easement Property for the Easement Purpose.

Grantee shall repair and replace, to Grantor's then-existing standards as set forth in Grantor's then current ordinances and adopted construction standards for public streets at Grantee's sole expense, all paving, curbing, fencing, walls, shrubbery, trees and landscaping

ORDINANCE NO. ____
Attachment 3 – Form of Easement for Utilities

located on the Easement Property and the adjacent Midway Road right-of-way, to the extent that any of the same is disturbed or damaged by Grantee's use of the Easement Property.

5. *Equitable Rights of Enforcement.* This Easement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties or to those benefited by this agreement; provided, however that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law, in equity, or otherwise.

6. *Binding Effect.* This Easement for Utilities binds and inures to the benefit of the Grantor and Grantor's successors and assigns and the Grantee and Grantee's successors and assigns.

7. *Choice of Law.* This Easement for Utilities agreement shall be construed under the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. Venue for all suits, matters, claims, or proceedings hereunder lies exclusively in Dallas County, Texas.

8. *Waiver of Default.* It is not a waiver of or consent to default if the nondefaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any rights or remedies set forth in this Easement for Utilities agreement does not preclude pursuit of any other rights or remedies in this Easement for Utilities agreement or provided by law, in equity, or otherwise.

9. *Integration.* This Easement for Utilities contains the complete agreement of the parties with respect to the matters set forth herein and cannot be varied except by written agreement of the parties. The parties agree that there are no oral agreements, representations or warranties that are not expressly set forth in this Easement for Utilities agreement.

10. *Legal Construction.* If any provision of this Easement for Utilities is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this Easement for Utilities agreement will be construed as if the unenforceable provision had never been a part of the agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this Easement for Utilities agreement are for reference only and are not intended to restrict or define the text of any section. This Easement for Utilities agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

11. *Notices.* Any notice, demand, request or communication required or permitted under this Easement for Utilities agreement 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

ORDINANCE NO. ____
Attachment 3 – Form of Easement for Utilities

delivered overnight. Notice shall be deemed given: when received if delivered personally; forty-eight (48) hours after deposit if sent by mail; and twenty-four (24) hours after deposit if sent by Federal Express or other nationally recognized carrier. Address for notice are as follows:

To Grantor:

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

To Grantee:

City of Farmers Branch, Texas
13000 William Dodson Parkway
Farmers Branch, TX 75234
Attn: City Manager

From time to time either party may designate another address within the 48 contiguous states of the United States of America for all purposes of this Easement for Utilities 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.

12. *Third Party Beneficiaries.* This Easement for Utilities and all of its provisions are solely for the benefit of the parties hereto and their respective heirs, successors, and assigns.

13. *Authorized Persons.* The undersigned persons are the properly authorized representatives of each of the respective parties and have the necessary authority to execute this Easement for Utilities on behalf of the parties hereto.

When the context requires it, singular nouns and pronouns include the plural.

(Two Signature Pages to Follow)

ORDINANCE NO. ____
Attachment 3 – Form of Easement for Utilities

EXECUTED effective as of the date first written above.

GRANTOR:
Town of Addison, Texas

By: _____
Wesley S. Pierson, City Manager

ACKNOWLEDGMENT

STATE OF TEXAS §

COUNTY OF DALLAS §

Before me, the undersigned authority, on this day personally appeared Wesley S. Pierson, City Manager of the Town of Addison, Texas, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office this _____ day of December, 2018.

Notary Public, State of Texas

[SEAL]

ORDINANCE NO. ____
Attachment 3 – Form of Easement for Utilities

GRANTEE:

City of Farmer Branch, Texas

By: _____
Charles S. Cox, City Manager

STATE OF TEXAS §

COUNTY OF DALLAS §

Before me, the undersigned authority, on this day personally appeared Charles S. Cox, City Manager of the City of Farmers Branch, Texas, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of December, 2018.

Notary Public, State of Texas

[SEAL]

ORDINANCE NO. ____
Attachment 3 – Form of Easement for Utilities

EXHIBIT "A"
Description of Easement Property

PROPOSED FARMERS BRANCH CITY LIMIT LINE
ELISHA FIKE SURVEY, ABSTRACT NO. 478
CITY OF FARMERS BRANCH, DALLAS COUNTY, TEXAS.

BEING 33,943.20 square feet of part of Midway Road, situated in the Elisha Fike Survey, Abstract No. 478, City of Farmers Branch, Dallas County, Texas, and said tract being more particularly described as follows:

BEGINNING at the northwest corner of that same tract of land annexed to the City of Farmers Branch, Texas by City Ordinance No. 125, dated March 16, 1959;

THENCE S 89°50'47" E, 9.05' along the north line of said annexed tract by City Ordinance No. 125 to a point for corner in the easternmost back of curb of Midway Road;

THENCE S 00°05'22" E, 3,494.68' along the easternmost back of curb of Midway Road to a point for corner;

THENCE S 01°50'04" E, 58.00' along the easternmost back of curb of Midway Road to a point for corner;

THENCE S 01°11'49" E, 192.65' along the easternmost back of curb of Midway Road to a point for corner;

THENCE S 01°41'14" E, 61.00' along the easternmost back of curb of Midway Road to a point for corner;

THENCE S 00°05'22" E, 334.32' along the easternmost back of curb of Midway Road to a point for corner in the extension of the City Limit line for the City of Addison and Farmers Branch;

THENCE S 89°47'48" W, 16.59' along said extension to a point for corner in Midway Road and the City Limit line for the City of Addison and Farmers Branch;

THENCE NORTH, 2,546.19' along Midway Road and the City Limit line for the City of Addison and Farmers Branch to a point for corner;

THENCE N 00°13'11" W, 1,594.45' along Midway Road and the City Limit line for the City of Addison and Farmers Branch to the Point of Beginning and containing 33,943.20 square feet or 0.7792 acres of land.

Scott Davis

12/05/18

Scott Davis, Registered Professional Land Surveyor No. 5111



BEARINGS REFERENCE FROM
"TOWN OF ADDISON
BOUNDARY SURVEY" DATED
4/11/97 BY GARCIA &
ASSOCIATES.

DAVIS LAND SURVEYING CO., INC.
9777 FERGUSON ROAD, SUITE 105 disci@sbglobal.net
DALLAS, TEXAS 75228 214-321-0569

DATE: 12/05/18

JOB NO. 18119

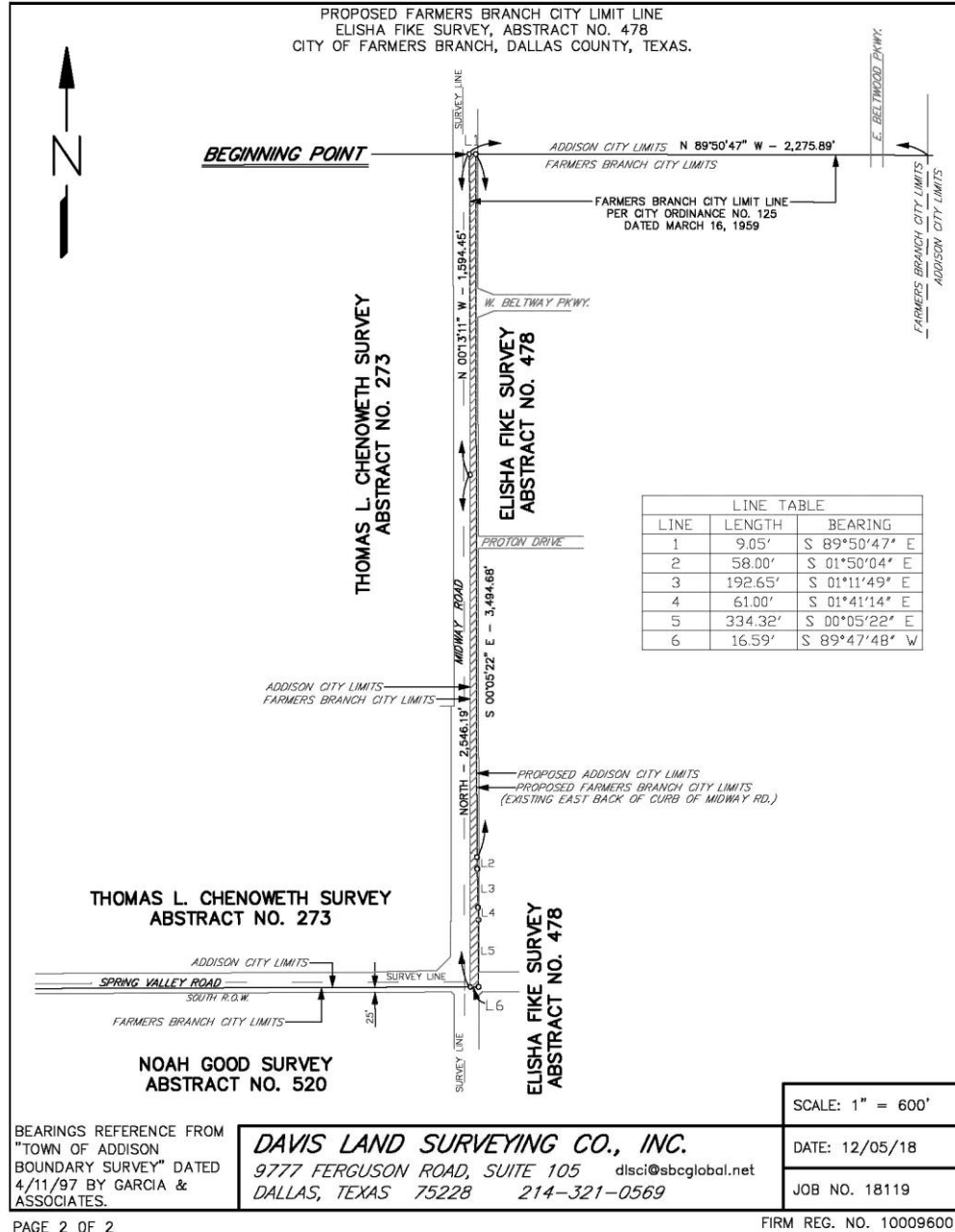
PAGE 1 OF 2

FIRM REG. NO. 10009600

TOWN OF ADDISON/ CITY OF FARMERS BRANCH
EASEMENT FOR UTILITIES

PAGE 1
(kbl:12/5/18:104750)

ORDINANCE NO. _____
Attachment 3 – Form of Easement for Utilities



Work Session and Regular Meeting

18.

Meeting Date: 12/11/2018

Department: Infrastructure- Development Services

Pillars: Excellence in Asset Management
Excellence in Transportation Systems

Milestones: Create a specific channel to receive input from the business commun

AGENDA CAPTION:

Present, Discuss, and Consider Action on a **Resolution to Approve a Ground Lease Agreement with Black Forest Aviation RE, LLC, and a Resolution for a Public Fuel Dispensing License Agreement, for a Fixed Base Operator Development at the southeast corner of Addison Airport, adjacent to Addison Road and Authorize the City Manager to Execute the Agreements.**

BACKGROUND:

In November 2014, the Town issued a Request for Proposals for the redevelopment of a 16-acre site at the southeast corner of Addison Airport that is adjacent to Addison Road. A lease agreement with a developer who proposed to develop the site as a Fixed Base Operator (FBO), was executed. That developer, however, was not able to find an operator for the fixed base operation that would agree to their terms and, therefore, the lease agreement with that developer was terminated. Interest in the site, however, was heightened through the process of the developer trying to find an operator for the business.

After the lease agreement with the initial developer was terminated, several entities contacted Staff expressing interest in developing on the site. Staff then asked several potential developers to submit a proposal for a new development on the site. Those developers were, Black Forest Ventures, Jet Aviation, JexEx, Sheltair, US Jet Center, One Two Right, LLC, Cutter Aviation, and US Sport Aviation. Four developers submitted proposals as outlined below:

<u>Developer</u>	<u>Proposed Use</u>
Black Forest RE, LLC	Fixed Base Operator
Sheltair	Fixed Base Operator
U.S. Jet Center	Fixed Base Operator
One Two Right, LLC	Corporate Air-Park Hangar Complex

A selection committee of Town and Airport staff met with each potential developer to discuss their plans and to request additional information where needed. Prior to the final selection, one developer, One Two Right, LLC withdrew their proposal. Black Forest RE, LLC, (Black Forest) was chosen by the selection committee as the preferred developer for the site.

Since that time, Town, Airport, and legal staff have been negotiating the final terms of the ground lease and the companion fuel dispensing agreement for the proposed development.

A ground lease agreement is proposed between the Town and Black Forest Aviation RE, LLC, for the 15.68 acre parcel of unimproved land at the southeast quadrant of the Airport. The proposed Ground Lease Agreement is a 40-year lease agreement, with the following terms:

1. **Effective Date:** The date the Ground Lease Agreement is executed by the Town.
2. **Commencement Date:** The first day of the calendar month following Substantial Completion of the Building Improvements as those terms are defined in the Ground Lease.
3. **Expiration Date:** The statutory limit of 40 years (480 full calendar months) following the Commencement Date, unless otherwise earlier terminated.
4. **Demised Premises:** Approximately 15.68 acres located in the southeastern portion of Addison Airport
5. **Inspection Period:** First 120 calendar days from the Ground Lease Effective Date
6. **Base Rental:** \$488,360 per annum payable in 12 monthly installments of \$40,697
7. **Initial Rent:** \$1,000,000 as defined in the Ground Lease is due payable upon Tenant's acceptance of the Demised Premises. Initial Rent becomes earned and non-refundable.
8. **Adjustment of Base Rent:** Base Rent remains constant for the first ten years of the Term, thereafter Base Rent increases a fixed 3% over the remaining Term
9. **Additional Rent:** Should tenant elect to transfer title of the Building Improvements to Landlord upon Substantial Completion, Tenant shall pay Additional Rent as defined in the Ground Lease annually over the Term. Additional Rent is a variable amount subject to annual calculation set forth in the Ground Lease.
10. **Permitted Use:** For public fixed based operations (FBO) including but not limited to aircraft storage, sale of aircraft and parts, aircraft maintenance and repair, aircraft charter and management, aircraft rental, retail concessions and concierge services, and other related services.
11. **Building and Aircraft Apron Improvements:** Approximately 20,000 sq. ft.

FBO Facility with three 39,000 sq. ft. hangars with additional lean-to office/shop space, over 200,000 sq. ft. of aircraft ramp, and related automobile parking.

12. **Environmental Remediation:** At the Town's expense, if any, subject to an accepted Remediation Plan as provided for in the Ground Lease
13. **Demolition and Site Preparation:** Tenant's duty and obligation at Tenant's sole expense
14. **Construction Value of Building Improvements:** To exceed no less than Fifteen Million Dollars (\$15,000,000) (separate and apart from the cost of design).
15. **Maintenance and Repair Standards:** The proposed Ground Lease includes the "Tenant's Leasehold Minimum Maintenance and Repair Standards and Practices" Addendum.

The terms of the Public Fuel Dispensing License Agreement are summarized below:

1. **Fuel Tanks:** 50,000 gallon Jet-A rated tanks and 15,000 gallon rated AvGas tank.
2. **Term:** Sixty (60) months from the time Black Forest is given permission to begin fueling operations. The License can be extended for additional 5-year terms, as provided for in the Agreement.
3. **Tank Rental:** \$41,392 per year comprised of the Base Fee of \$.3078 per gallon capacity per year (\$20,007 payable in monthly installments of \$1,667), plus the Additional Fee of \$.3290 per gallon of tank capacity (\$21,385, per year payable in monthly installments of \$1,782), subject to adjustment as provided for in the Agreement.
4. **Permitted Use:** As Public Fixed Base Operator - for the detail delivery of aviation fuel at the Airport.
5. **Minimum Standard to Operate Fuel Tanks:** The receipt of at least 320,000 gallons of jet aviation fuel per any consecutive 6-month, as required in the License Agreement
6. **Fuel Flowage Rate:** Fourteen cents (\$.14) per gallon received into the Fuel Tanks paid one-month in arrears as set forth in the License Agreement.
7. **Term Extensions:** Four consecutive terms of sixty (60) months each with a stepped up Base Rate, as set forth in the Exhibit "D" of the Agreement.

The combined annual revenue to the Airport from the ground lease, the public fuel dispensing license for the tank rental, and the fuel flowage fee can be summarized as shown below:

<u>Description</u>	<u>Annual Revenue</u>	<u>Estimated Value</u>
Initial Rent (single installment)		\$1,000,000

Minimum Construction Value of Building Improvement		\$15,000,000
Annual Ground Rental	\$488,360	
Annual Fuel Tank Rental	\$41,392	
Minimum Estimated Fuel Flowage	\$179,200	
Total Annual Revenue	\$708,952	
Estimate Revenue Over Term	\$36,753,000	
Estimated Net Present Value @ 8% discount rate		\$8,851,000
Total Estimated Development Impact (Today's Dollar)		\$24,851,000

The proposed development supports the Town's strategic objectives for the Airport by enhancing the overall value of the Airport with new development, increased revenue, and an enhanced tax base. The proposed use is consistent with the Airport's 2016 Airport Master Plan Update.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution - Ground Lease

Resolution - Fuel License

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING THE GROUND LEASE BETWEEN THE TOWN OF ADDISON AND BLACK FOREST AVIATION RE LLC FOR COMMERCIAL AVIATION USE ON APPROXIMATELY 15.68 ACRES OF UNIMPROVED LAND LOCATED AT THE ADDISON AIRPORT, AUTHORIZING THE CITY MANAGER TO EXECUTE THE FOURTH AMENDMENT TO THE GROUND LEASE, AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. The Ground Lease between the Town of Addison and Black Forest Aviation RE LLC for commercial aviation use on approximately 15.68 acres of unimproved land located at the Addison Airport, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved. The City Manager is hereby authorized to execute the Ground Lease.

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 11th day of December, 2018.

Joe Chow, Mayor

ATTEST:

By: _____
Irma Parker, City Secretary

APPROVED AS TO FORM:

By: _____
Brenda N. McDonald, City Attorney

EXHIBIT A

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

GROUND LEASE AGREEMENT

This Ground Lease Agreement (this "Lease" or "Ground Lease") is made and entered into as of _____, 2018 (the "Effective Date"), by and among the Town of Addison, Texas, a Texas home-rule municipality (hereinafter sometimes referred to as "Landlord" or the "City"), and Black Forest Aviation RE LLC, a Texas limited liability company (hereinafter referred to as "Tenant") (Landlord and Tenant are sometimes referred to herein together as the "Parties").

Summary of Exhibits

- Exhibit 1: Legal Description of Addison Airport
- Exhibit 2: Boundary Survey of Demised Premises
- Exhibit 3: Legal Description of Demised Premise
- Exhibit 4: Intentionally Left Blank
- Exhibit 5: General Description of Building Improvements and Approved Site Plan
- Exhibit 6: Form of Letter of Credit
- Exhibit 7: Master Landlord Sublease Consent Form
- Exhibit 8: Memorandum of Ground Lease
- Addendum #1 – Tenant's Leasehold Minimum Maintenance

WITNESSETH:

WHEREAS, the City is the record title owner of the Addison Airport, a description of which is set forth in Exhibit "1" attached hereto and incorporated herein (the "Airport"); and

WHEREAS, the Airport is operated and managed for and on behalf of the City by AECOM Energy & Construction, Inc., an Ohio corporation and SAMI Management, Inc., a Texas corporation (collectively the "Airport Manager"), pursuant to their respective management agreements each effective October 1, 2010 by and between the City and Airport Manager, and such Airport management may be changed by the City from time to time; and

WHEREAS, Tenant desires to lease from the City, and the City desires to lease to Tenant a portion of the Airport generally described as a certain approximate 15.68 acre (approximately 683,021 gross square feet) parcel of unimproved land located at the Airport as shown on Exhibit "2" – Boundary Survey of Demised Premises and being more particularly described on Exhibit "3" – Legal Description of Demised Premises, each attached hereto and incorporated herein, together with the non-exclusive right to use the Common Facilities as defined in Section 17 below (which parcel is referred to herein as the "Demised Premises") according to the terms and conditions set forth in this Lease.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

Section 1. Demise of the Premises:

A. In consideration of and subject to the terms, covenants and conditions set forth in this Lease, Landlord does hereby lease to Tenant, and Tenant does hereby lease from Landlord, the Demised Premises.

B. This Lease is given and entered into subject to (i) all federal, state, and local laws, statutes, constitutional provisions, charters, ordinances, codes, rules, regulations, directives, policies, permits, standards, and orders (including, without limitation, court orders) of any governmental authority, entity, or agency (including, without limitation, the Town of Addison, Texas, the State of Texas, the Federal Aviation Administration (FAA), and the Texas Department of Transportation) whether in existence or hereafter enacted, adopted or imposed, and including, without limitation, any and all grant agreements or grant assurances, the "Airport Governing Documents," as defined in Section 18 below, now existing or as hereafter agreed to, adopted or imposed, (ii) all restrictive covenants affecting the Demised Premises, (iii) all restrictions, easements, and other encumbrances on or matters affecting the Demised Premises, whether of record or not or which could be revealed by a survey of the Demised Premises, and (iv) and all of the terms, conditions, and provisions of this Lease. In furtherance of the foregoing, Landlord represents to Tenant that, to the best of Landlord's actual knowledge, there are no mortgages, deeds of trust or monetary liens affecting the Demised Premises which are not filed of record.

Section 2. Term, Preliminary and Inspection Periods:

A. Subject to the termination and all other provisions of this Lease, the term hereof (the "Term") shall commence on the first day of the first calendar month following Substantial Completion of the Building Improvements (as such term is defined in Section 6.B.10 below) (the "Commencement Date"), and shall end on the last day of the Four Hundred Eightieth (480th) full calendar month following the Commencement Date (and including the month of the Commencement Date) (the "Expiration Date").

B. The period of time beginning upon the Effective Date and ending upon the Commencement Date is herein referred to as the "Preliminary Period". Any entry upon and/or use of occupancy of the Demised Premises by Tenant during the Preliminary Period shall be subject to all of the terms and conditions of this Lease.

C. Beginning on the Effective Date and continuing for a period of time (the "Inspection Period") ending on the later to occur of (i) one hundred twenty (120) consecutive calendar days, or (ii) the date ("Remediation Plan Acceptance Date") a Remediation Plan (as defined in Section 6.1 below) is agreed to and accepted by both Parties. Notwithstanding the foregoing, however, after such one hundred twenty (120)-calendar day period, each of the Parties shall have the right to terminate this Lease by giving the other Party written notice of such termination until the occurrence of the Remediation Plan Acceptance Date, if applicable; if either Party delivers a termination notice to the other Party as provided in this sentence, then the Lease shall terminate *ab initio* with neither Party having any further obligation to the other. Neither Party may terminate this Lease pursuant to the preceding sentence after the Remediation Plan Acceptance Date. On the date of the expiration of the Inspection Period (subject to any termination of the Lease pursuant to this Section 2), Tenant shall be deemed to have accepted the Demised Premises subject to the City's completed remediation of the Demised Premises pursuant to the Remediation Plan.

During the Inspection Period Tenant shall be allowed to perform, at its sole cost and expense, commercially reasonable due diligence including, but not be limited to, property

condition assessments, environmental site assessments, geotechnical investigations, property appraisals, obtain and review property survey, ad valorem (real and personal property) and sales tax impact studies, title exceptions, utility availability, drainage, local zoning laws, building codes, ordinances and regulations affecting the Demised Premises, preliminary project cost estimations (e.g. demolition and other site preparation estimates), test marketing, pre-leasing, and site planning and design. Except as otherwise agree to in writing between the parties, Tenant shall retain full interest in, right to, and ownership of all assessments, studies, reports, appraisals, surveys, and other documentation related to the due diligence Tenant conducts or has conducted on its behalf ("Tenant Inspection Reports"). Tenant shall make Tenant Inspection Reports available to Landlord for review upon request; however, Landlord may only utilize the content of Tenant Inspection Reports for Landlord's own knowledge and information, unless otherwise authorized by the Tenant in advance and in writing. Tenant has not made and does not make any warranty or representation regarding the truth or accuracy of the Tenant Inspection Reports. For the purpose of Tenant completing its inspection and due diligence of the Demised Premises, Landlord agrees to grant Tenant limited access to the "Collins Hangars" located at 4726 and 4730 George Haddaway during the Inspection Period provided: (i) Tenant gives Landlord no less than 48-hours advance written notice of such inspection; (ii) such inspection and due diligence by Tenant, in the sole discretion of Landlord, will not create a nuisance or operational/business disruption of Landlord's existing tenants or, (iii) in the sole discretion of Landlord, such inspection and due diligence by Tenant does not cause Landlord to breach or potentially breach any other agreement Landlord may have with any other third party, if any affecting same.

D. During the first forty-five (45) days of the Inspection Period ("Tenant's Qualification Period"), Landlord shall have the right to qualify and perform any and all due diligence deemed necessary, related to the Tenant's creditworthiness, financial condition and organizational structure. During the Tenant's Qualification Period, Landlord shall have the right to perform any and all due diligence deemed necessary, including but not limited to performing environmental assessments and remediation planning pursuant to Section 6.1 below.

Landlord shall request, and the Tenant shall timely remit to Landlord such documentation and information deemed necessary and appropriate by Landlord in order for it to make a determination as to the Tenant's and its guarantors, if any, creditworthiness, financial condition, organizational structure and governance suitability and capacity required to fulfill the terms and conditions of this Lease. Provided Tenant has timely complied with all of Landlord's requests under this Section 2.D., and with good faith consultation by and between Landlord and Tenant, Landlord shall either accept or reject Tenant on or before the expiration of the Tenant's Qualification Period by giving written notice to Tenant of Landlord's determination. If Landlord does not provide written notice to Tenant that Landlord has rejected Tenant on or before the end of the Tenant's Qualification Period, Landlord shall be deemed to have accepted Tenant. If Landlord rejects Tenant pursuant to this Section 2.D., upon the delivery of Landlord's written notice to Tenant, this Lease shall immediately terminate and the Parties shall have no further obligation to the other hereunder.

E. If Tenant is unsatisfied with its findings resulting from its due diligence during the Inspection Period for any reason (or no reason at all), Tenant shall have the right, in its sole and absolute discretion, to terminate the Lease by giving written notice to Landlord on or before the

expiration of the Inspection Period, in which case this Lease shall terminate and the Parties shall have no further obligation hereunder.

F. During the Inspection Period, Landlord and Tenant shall work together to have a Boundary Survey prepared by a licensed surveyor in the state of Texas describing the Demised Premises, which shall reflect, among other things, the legal description and depiction of the Demised Premises and to give the total acreage and gross square feet contained therein (the "Boundary Survey"). The Boundary Survey shall be attached hereto and incorporated herein as Exhibit "2" and Exhibit "3" as provided for herein. The Boundary Survey shall be prepared at Landlord's sole cost and expense. In contemplation of receipt of the Boundary Survey, attached hereto in Exhibit "2" is a preliminary boundary plan for the parties' general reference; the preliminary boundary plan shall be replaced and superseded by the Boundary Survey immediately upon receipt and prior to any public recordation of the executed Lease. Promptly after the end of the Inspection Period, the parties agree to execute, deliver, and record a Memorandum of Lease in the form attached hereto as Exhibit "8".

Section 3. Rental:

A. Subject to adjustment as provided for below in Section 4, Tenant agrees to and shall pay to Landlord, without notice, demand, offset or deduction, rent each month over the Term for the Demised Premises as set forth below:

1. **Base Rent:** Tenant agrees to and shall pay Landlord the following rent for the Demised Premises in accordance with the following:

(a) One Million Dollars (\$1,000,000.00) ("Initial Rent Payment") upon Tenant's acceptance of the Demised Premises pursuant to Section 2 and Section 6 below, which shall be due and payable on or before the expiration of the Inspection Period as defined herein. The Initial Rent Payment shall be deemed fully earned and non-refundable except as otherwise provided for herein; and

(b) Annual rent for the Demised Premises in the amount of Four Hundred Eighty Eight Thousand Three Hundred and Sixty Dollars (\$488,360.00) (Note: Base Rent is calculated at \$0.715 per gross square foot of land located within the Demised Premises as determined by the Boundary Survey prepared in accordance with Section 2.F above), which amount shall be paid by Tenant in twelve equal monthly installments in advance on the first day of each calendar month (the "Base Rent", which shall be adjusted as set forth herein). The first monthly payment or installment of Base Rent under this subsection (b) in the amount of Forty Thousand Six Hundred Ninety-Six Dollars and Sixty-Seven Cents (\$40,696.67) is due and payable on or before the Commencement Date. Thereafter, another payment or installment of the Base Rent shall be due and payable on the first day of each calendar month during the Term. Except as provided for payment of the amount specified in subsection (a) above, all Rent is due on the first of each month and is delinquent after the 10th day of each month, subject to the provisions of Section 23 and Section 39 herein.

2. In the event the Commencement Date is a date other than the first day of a calendar month, the monthly Base Rent specified in Section 3(A)(1)(b) for any partial month at the

beginning of the Term shall equal the product of the Base Rent multiplied by a fraction, the numerator of which is the number of days in the partial month (beginning with the Commencement Date and ending with the last day of the partial month) and the denominator of which is the number of days in such full calendar month. Payment of Base Rent for any fractional calendar month at the end of the Term shall be similarly prorated.

3. For purposes of this Lease, the term “Rent” means the Initial Rent Payment, Base Rent, additional rent, and other sums that Tenant may owe to Landlord or otherwise be required to pay under this Lease. Landlord shall have the same rights and remedies for nonpayment of any Rent as for non-payment of Base Rent.

B. Additional Rent: Provided Landlord holds title to the Building Improvements made to the Demised Premises pursuant to Section 28.B, hereinbelow, the Building Improvements may be deemed to be exempt from statutory ad valorem taxes. If the Building Improvements are exempt from the City’s ad valorem taxes, then:

1. Tenant shall pay as Additional Rent the product of the City’s published tax rate per \$100 of assessed value as of October 1 of each calendar year during the Term times the gross appraised value as determined by the Dallas County Appraisal District (“DCAD”) (e.g., if the City ad valorem tax rate for Year 20XX is \$.52 per \$100 and the assessed value of all the Building Improvements) is \$1,000,000, then the Additional Rent amount is $[(\$52/100) * \$1,000,000] = \$5,200.00$).

2. If at any time during the Term Tenant’s Building Improvements are not appraised by DCAD for ad valorem tax purposes, the Additional Rental shall be based upon the DCAD’s current valuation of all appraised ground leased properties at Addison Airport divided by the total gross building square feet assessed. The resulting average assessed value per building square foot rate shall then be multiplied by the City’s published property tax rate per \$100 valuation. The resulting product is then multiplied by Tenant’s gross building square feet held exempt from ad valorem taxation¹.

a. In the event any portion of Tenant’s Building Improvements are found not to be exempt from the City’s ad valorem taxes, the Additional Rental amount shall be reduced by that percentage of the Building Improvements deemed non-exempt to Tenant’s total gross building area².

3. Based upon the methodology described herein, Landlord shall calculate and invoice Tenant the Additional Rent amount, if any, on or about the first day of October each calendar year over the Term. Additional Rent is due payable by Tenant within fifteen (15)

¹ For example: DCAD’s total valuation of all existing ground leases at Addison Airport for Year 20XX is determined to be \$39,488,318 affecting 1,393,869 gross building square feet (per DCAD). Average Tax Value/BSF = \$28.33. City of Addison Tax Rate /\$100 = \$.0055 (\$.55/100). The product of the Average Tax Value of \$28.33 and the City Tax Rate of \$.0055 = \$.1558/BSF. This rate shall then be multiplied by the Tenant’s gross building square feet held exempt from ad valorem taxation to determine the Additional Rental owed (150,000 BSF x \$.1558 = \$23,370 due payable as Additional Rent).

² For Example: Continuing from the example above, twenty-five percent (25%) of Tenant’s building improvements are held not to be exempt from ad valorem taxes, the Additional Rent would be \$17,527.50 $[(1.00-.25)*\$23,370]$.

days after Tenant's receipt of Landlord's invoice for such Additional Rent together with Landlord's calculation of such Additional Rent.

4. Additional Rent, if any, shall be pro-rated the first and last year of the Lease Term if the Commencement Date or Expiration Date is other than January 1.

Section 4. Adjustment of Base Rent:

A. Commencing on the eleventh (11th) anniversary of the Commencement Date and on every anniversary thereafter (hereinafter referred to as the "Adjustment Date"), the annual Base Rent shall be increased by three percent (3%) above the amount of annual Base Rent for the preceding year.

Section 5. Use of Demised Premises:

During the Term, the Demised Premises shall be used and occupied by Tenant as set forth below:

A. **Permitted Uses:** The Demised Premises shall be used and occupied by Tenant only for the following purposes:

1. Sale of aircraft and aircraft parts;
2. Aircraft maintenance and repair, aircraft storage;
3. Aircraft training, aircraft management and charter;
4. Aircraft rentals;
5. Fixed Base Operations ("FBO"): being the sale of aircraft goods and services to the public including, the dispensing of aviation fuel in accordance with and subject to the ordinances and regulations issued by the Town of Addison from time to time and/or the Airport Governing Documents;
6. Constructing, owning and operating hangar facilities, public terminal, and restaurant(s), used directly in support of and in connection with the FBO services;
7. Office or administrative space used strictly in support of aeronautical operations or services, such as corporate flight operations offices and/or corporate aircraft management and charter services;
8. The storage of corporate aircraft owned, leased or exclusively controlled (i.e. the right to fly or possession of the power to directly or indirectly sell or otherwise dispose of said aircraft) by Tenant;
9. The storage of corporate aircraft owned, leased or exclusively controlled (i.e. the right to fly or possession of the power to directly or indirectly sell or otherwise dispose of said aircraft) by any sub-tenant under separate written agreement with Tenant;

10. Incidental support and services of various types in connection with aircraft stored or based at the Demised Premises and such aircraft's users, including general aircraft maintenance and repair as well as "auto spa" type services such as automobile detailing and storage;
11. Ground transportation for rent or hire (including taxi and limousine service);
12. Retail services including food sales; barber and valet services, alcoholic beverage sales, sales of pilot supplies; newsstands and gifts;
13. Hosting special events in support of Tenant, subtenants, their clientele, or charitable organizations subject to the Rules and Regulations, which may be amended from time to time pursuant to Section 18 below, and those ordinances, rules, standards and regulations of the Town of Addison as may be adopted from time to time governing same; and
14. Private parking garages, subject to prior written approval of Landlord as part of the design plan approval, for automobiles used by Tenant, subtenants, their invitees and guests.
15. Other uses as authorized in advance and in writing by Landlord.

B. Prohibited or Restricted Use of Demised Premises: The Demised Premises shall not, under any circumstance be used for any activity that (i) constitutes a violation of any federal, state, or local laws, ordinances, orders, directives, charters, rules, regulations, standards or policies), (ii) in Landlord's opinion creates or would create a nuisance or waste, or unreasonably disturb, annoy or interfere with other tenants or users of the Airport, (iii) increases insurance costs for Landlord, or (iv) would result in the Landlord being in violation of its grant assurances obligations to the federal government.

C. Tenant acknowledges that Landlord is bound by, and this Lease is subject to, the terms and conditions of any and all Federal Aviation Administration ("FAA"), Texas Department of Transportation ("TxDOT"), and other grant agreements, grant assurances and regulations regarding the Airport, including, without limitation, any grant, loan, regulation, or agreement under Section 22.055 of the Texas Transportation Code, as amended or superseded, whether now existing or made in the future. Tenant agrees not to act or fail to act in any way or manner that would cause Landlord to be in violation of any of the foregoing.

D. Tenant for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (i) no person on the grounds of race, creed, color, national origin, sex, age or of a qualifying disability shall be excluded from participation in, denied the benefits of or be otherwise subjected to discrimination in the use of the Demised Premises; (ii) that in the construction of any improvements on, over or under the Demised Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, national origin, sex, age, or qualifying disability shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination; and (iii) that the Tenant shall use the Demised Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 and as said Regulations may be amended.

E. The Tenant agrees to furnish service on a fair, equal, and not unjustly discriminatory basis to all users thereof and to charge fair, reasonable, and not unjustly discriminatory prices for each unit or service, provided that the Tenant may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

F. Tenant shall not at any time leave the Demised Premises vacant, but shall in good faith continuously throughout the term of this Lease conduct and carry on in the entire Demised Premises the type of operations or use for which the Demised Premises are leased, except during periods in which the Demised Premises may not be occupied as a result of fire or other casualty or condemnation, or during any commercially reasonable period necessary for making repairs and alterations, all such repairs and alterations to be diligently pursued to completion.

Section 6. Construction of Improvements:

A. Demolition and Site Preparation:

1. During the Inspection Period, Tenant shall procure at its sole cost and expense a Phase II Environmental Site Assessment together with an Asbestos Survey of the Demised Property (the “ESA”). The ESA shall be written and published for the use and reliance of both Landlord and Tenant. Should the ESA identify the existence of any Hazardous Materials (as defined in Section 22.A below), Tenant shall give written notice to Landlord within fifteen (15) days of the issuance of the ESA requesting Landlord to remediate and remove the reported Hazardous Materials identified in the ESA.

2. Upon the receipt of said notice, Landlord shall order, at its sole cost and expense, from a qualified licensed engineer a comprehensive environmental remediation plan to remove the Hazardous Materials identified by the ESA and Tenant’s written notice of same (the “Remediation Plan”). The Remediation Plan shall include a detailed written scope of work sufficient to be relied upon for the purpose of soliciting a qualified environmental remediation specialist pursuant to the City’s customary procurement procedures. The Remediation Plan shall also include an engineer’s opinion of probable cost estimate (“EOPC”) to complete the remediation and removal of the Hazardous Materials from the Demised Premises pursuant to the Remediation Plan.

3. Within fifteen (15) business days of Landlord’s receipt of Remediation Plan with the EOPC, Landlord shall deliver a copy of the Remediation Plan to Tenant together with its written statement the Landlord is prepared and agreeable to execute and implement the Remediation Plan at its sole cost and expense upon Tenant’s acceptance of the Demised Premises subject to the Landlord completing the Remediation Plan. Upon receipt, Tenant shall have ten (10) business days to review and accept Landlord’s Remediation Plan. Tenant may request, in writing, any modifications to the Remediation Plan during Tenant’s review period, and Landlord shall then have ten (10) business days from Tenant’s written request to amend or modify the Remediation Plan, at its sole and absolute discretion, on or before the expiration of Landlord’s period of time to consider and incorporate Tenant’s recommended modifications or changes, if any, to the Remediation Plan. Landlord shall then deliver to Tenant its final version of the Remediation Plan together with its written statement that

Landlord is prepared and agreeable to execute and implement the Remediation Plan, at its sole cost and expense, subject to: (i) Tenant's written acceptance of the Remediation Plan; and (ii) Tenant's acceptance of the Demised Premises subject to Landlord completing the Remediation Plan.

4. Any time during the one-hundred and twenty (120) day Inspection Period Landlord may deliver to Tenant and Tenant may accept by its written acceptance of Landlord's Remediation Plan in accordance with the timeline above, and Tenant shall maintain the benefit of the remainder of the one-hundred and twenty (120) day Inspection Period to complete other due diligence prior to Tenant's acceptance or rejection of the Demised Premises pursuant to Section 2 above. If the one-hundred and twenty (120) day Inspection Period has expired and the Landlord's Remediation Plan remains outstanding, then the Inspection Period is extended as provided for in Section 2.C. above. In such case, if and when Tenant intends to accept Landlord's Remediation Plan, Tenant shall indicate in writing that Tenant also accepts the Demised Premises and delivers to Landlord together with its written notice of acceptance payment of the Initial Rent as provided for in Section 3.A.1, and the Inspection Period is then concluded for both Parties and becomes no longer in effect.

5. Should Landlord determine, in its sole and absolute discretion, that it is not in the City's best interest to implement the Remediation Plan, then Landlord shall deliver to Tenant a copy of the Remediation Plan and written notice to Tenant within five (5) calendar days after making such determination. Tenant shall then have sixty (60) calendar days from the date of said notice to either: (i) elect to execute the Remediation Plan at its sole cost, expense and risk; or (ii) request Landlord to amend the Demised Premises to include only the Phase I Land (as defined below) with the option to add the Phase II Land (as defined below) in the future if the Remediation Plan is implemented and completed by Landlord; or (iii) terminate the Ground Lease by giving written notice to Landlord terminating the Lease *ab initio* with neither Party having any further obligation to the other.

6. Should Tenant give written notice to Landlord of its acceptance of the Demised Premises subject to Landlord's implementation and completion of the Remediation Plan, Landlord shall: (i) give one-hundred twenty (120) day written notice to its subtenants, if any, to vacate the Demised Premises; and (ii) commence the solicitation of bids for qualified third-party environmental service companies to perform the prescribed scope of work pursuant to the Remediation Plan. Such solicitation shall be in accordance to the City's customary procurement and approval procedures. The contract for the remediation and removal of the Hazardous Materials shall require work to commence no later than one-hundred and fifty (150) calendar days from the date of Tenant's written notice of acceptance of the Demised Premises (or other such date mutually agreed to by the Parties).

7. For the purpose of subsection 6 above Landlord hereby delegates in its sole and absolute discretion to its City Manager the duty and responsibility to determine whether the remediation and removal of Hazardous Materials pursuant to the Final Remediation Plan is in the City's best interests provided the EOPC for such remediation and removal does not exceed One Million Dollars (\$1,000,000.00). Any remediation and removal of the Hazardous

Materials pursuant to the Final Remediation Plan with an EOPC in excess of One Million Dollars (\$1,000,000.00) shall require the prior consideration and consent of the City Council.

8. Phase I Land: Provided Tenant has accepted the Demised Premises and is prepared to take possession of that portion of the Demised Premises indicated on the Boundary Survey as "Phase I" and Landlord has completed its remediation and removal of the Hazardous Materials in accordance with the Remediation Plan and Tenant's acceptance of same, if any, then Landlord shall deliver and Tenant shall accept the Phase I Land in its "AS-IS, WHERE-IS CONDITION" pursuant to the terms and conditions of this Lease.

9. Phase II Land: Provided (i) Tenant has accepted and taken possession of the Phase I Land; (ii) Landlord has completed the remediation and removal of the Hazardous Materials pursuant to the Remediation Plan for the Phase II Land; and (iii) Tenant has given its written acceptance of same, then Landlord shall deliver and Tenant shall accept the Phase II Land to Tenant vacant and free and clear of any other lease, sublease, or other occupancy right, with all building improvements thereon in a vacated, generally clean and broom swept condition with all public utilities and services terminated and disconnected, air conditioning systems vacated of any coolant gases or liquids and the building improvements rendered in to a condition commercially ready and acceptable for demolition.

10. Upon Tenant's taking possession of the Phase II Land, Tenant shall then, at Tenant's sole cost and expense, demolish or cause to be demolished the building improvements on the Phase II Land in accordance with a Demolition Plan prepared by a licensed engineer and with prior written approval by the Landlord.

11. The Parties hereby agree and acknowledge time is of the essence for Landlord to complete its Remediation Plan and to deliver the Demised Premises timely to Tenant. Tenant shall diligently complete the Phase II demolition in accordance with its Demolition Plan. Both Landlord and Tenant shall cooperate with one another with respect to such remediation and demolition activities.

B. Building Improvements:

1. In connection with the use and occupancy of the Demised Premises by Tenant, Tenant shall cause to be constructed on the Demised Premises buildings and other improvements (together, the "Building Improvements"), at Tenant's sole cost, expense and risk (except as may be otherwise agreed to between Landlord and Tenant in accordance with the Design Plan (as defined below). "Building Improvements" shall mean those improvements generally described in Exhibit "5"– General Description of Building Improvements attached hereto and incorporated herein. Except as provided for in this Lease, Tenant may not construct, locate, install, place or erect any other improvements upon the Demised Premises without the prior written consent of Landlord. The Parties hereby agree the expected construction cost or value (separate and apart from the cost of design) of the Building Improvements shall exceed Fifteen Million Dollars (\$15,000,000.00) (the "Construction Value"), and Tenant shall submit to Landlord within ten (10) days after Landlord's written request evidence of such Construction Value ("Construction Value Evidence"); such Construction Value Evidence shall include true

and correct copies of all approved construction draws, receipts or other documents or records indicating the nature of the construction work performed, the cost thereof and the amount paid for such construction work. The Parties hereby acknowledge and agree it is in Tenant's best interests to seek and pursue engineered cost savings, therefore it is the intent herein for the Construction Value to serve as a guideline to the Parties of the intended scope and quality of the Building Improvements without there being a material deviation to the approved Design Plan without Landlord's prior written consent.

2. The Building Improvements shall be constructed on the Demised Premises in accordance with plans and specifications signed and stamped by an architect and/or engineer selected by Tenant (the "Design Plan"), which Design Plan shall be submitted to Landlord and approved in writing by Landlord by the issuance of a Building Permit or other means as determined by Landlord. If Tenant fails to submit the Design Plan to the Landlord for application of a valid Building Permit within six (6) full calendar months following the acceptance of the Demised Premises, Landlord may, at its sole discretion, terminate this Lease by giving written notice to Tenant, which upon the receipt of said notice Tenant shall, at its sole cost and expense and as demanded by Landlord promptly restore the physical condition of the Demised Premises, if required, to the same condition found immediately prior to the Effective Date of this Ground Lease. If demolition of the Collin Hangars has commenced prior to receipt of Landlord's notice of termination by Tenant, Tenant shall complete the Collins Hangar demolition in accordance with the approved demolition plan. If the Collins Hangar demolition is complete in accordance with the approved demolition plan and accepted by Landlord, said condition shall be deemed the same or equivalent of being the same condition found immediately prior to the Effective Date of this Ground Lease. Unless otherwise provided for herein, Tenant shall vacate the Demised Premises within ten (10) calendar days (or as otherwise mutually agreed to by the parties) following Tenant's receipt of Landlord's written notice. Provided Tenant vacates the Demised Premises as required herein, this Lease shall be declared null and void with no further obligation of one party to the other.

Any architect or engineer shall be duly licensed to practice architecture or engineering, as the case may be, in the State of Texas. Such construction shall be performed in a first class, workmanlike manner and in compliance with all applicable building codes, standards and ordinances, as set out in more detail, below. Tenant agrees to promptly pay and discharge all costs, expenses, damages (including incidental, special, and consequential damages) or injury (including, without limitation, claims for personal injury or death, or property damage or destruction, or economic loss), liens and any and all other liabilities and obligations which arise in connection with such construction. **TENANT SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS LANDLORD AND MANAGER, AND THEIR RESPECTIVE OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS (IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES) (THE "INDEMNIFIED PARTIES") FROM AND AGAINST ANY AND ALL SUCH COSTS, EXPENSES, CLAIMS, DAMAGES, PENALTIES, FINES, LIENS LIABILITIES, AND OBLIGATIONS DESCRIBED IN THE PRECEDING SENTENCE (TOGETHER, FOR PURPOSES OF THIS SUBSECTION, THE "DAMAGES"), INCLUDING SUCH COSTS, EXPENSES, CLAIMS, DAMAGES, PENALTIES, FINES, LIENS LIABILITIES, AND OBLIGATIONS WHICH ARE ALLEGED OR FOUND TO HAVE BEEN CAUSED BY OR RESULT FROM, IN WHOLE OR IN PART, THE NEGLIGENCE OF ANY OF THE**

INDEMNIFIED PARTIES (BUT NOT THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE INDEMNIFIED PARTIES), OR CONDUCT BY THE INDEMNIFIED PERSONS THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, OR THE VIOLATION OF ANY TERM OF THE LEASE WITHOUT LIMITATION. HOWEVER, TO THE EXTENT GROSS NEGLIGENCE AND/OR WILLFUL MISCONDUCT ARE ALLEGED SIMULTANEOUSLY WITH CLAIMS REQUIRING DEFENSE AND INDEMNITY HEREIN, TENANT SHALL DEFEND ALL CLAIMS ALLEGED AGAINST THE INDEMNIFIED PARTIES. TENANT'S LIABILITY UNDER THIS INDEMNITY OBLIGATION SHALL BE REDUCED BY THAT PORTION OF THE TOTAL AMOUNT OF THE DAMAGES (EXCLUDING DEFENSE FEES AND COSTS) EQUAL TO THE INDEMNIFIED PARTIES' PROPORTIONATE SHARE OF THE NEGLIGENCE, OR CONDUCT THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, THAT CAUSED THE DAMAGES. LIKEWISE, TENANT'S LIABILITY FOR THE INDEMNIFIED PARTIES' DEFENSE COSTS AND ATTORNEYS' FEES SHALL BE REDUCED BY A PORTION OF THE DEFENSE COSTS AND ATTORNEYS' FEES EQUAL TO THE INDEMNIFIED PARTIES' PROPORTIONATE SHARE OF THE NEGLIGENCE, OR CONDUCT THAT WOULD GIVE RISE TO THE STRICT LIABILITY OF ANY KIND, THAT CAUSED THE DAMAGES. THIS INDEMNIFICATION SHALL SURVIVE THE TERMINATION OF THIS LEASE. It is expressly understood and agreed that Tenant's construction of the Building Improvements shall include the finish-out in accordance with the Design Plan and any plans and specifications for the finish-out of the Building Improvements as submitted by Tenant to Landlord and approved in writing by Landlord.

3. Landlord's approval of the Design Plan or any other plans and/or specifications does not impose on Landlord any responsibility whatsoever, including, without limitation, any responsibility for the conformance of the plans and specifications with any governmental regulations, building codes, and the like, for which Tenant and its contractors shall have full and complete responsibility.

4. Construction of the Building Improvements shall commence within three (3) full calendar months after Landlord gives its approval of the Design Plan and Tenant obtains all pre-construction permits and approvals (the date of such commencement, as described in subsection B.5 of this Section, below, being the "Construction Commencement Date"). If Tenant fails to commence construction as required herein within twelve (12) full calendar months after the Effective Date, then Landlord may terminate this Lease by giving written notice to Tenant and this Lease shall be and become null and void ("Pre-Construction Termination"), except:

(a) Tenant shall restore or cause to restore, at its sole costs and expense, the Demised Premises to a condition similar (as commercially practical) as the Demised Premises were immediately prior to the date Tenant took possession of the Demised Premises. If demolition of the Collins Hangars has already commenced, Tenant shall complete the Collins Hangar demolition in accordance with the approved demolition plan. If the Collins Hangar demolition is already complete in accordance with the approved demolition plan and accepted by Landlord, said condition shall be deemed to be the same as when Tenant took possession of the Demised Premises. Unless otherwise provided for herein, Tenant shall vacate the Demised Premises within ten (10) calendar days (or as otherwise mutually agreed to by the parties) following Tenant's receipt of Landlord's written notice; and

(b) Tenant shall pay any accrued but unpaid Rent pursuant to the terms and conditions of this Lease.

Provided, however, that said twelve (12) full-month deadline shall be extended day by day for any delays resulting from events of Force Majeure or Tenant's inability to obtain permits or approvals from the Town of Addison or the FAA, provided Tenant's actions are not the result of the delay in permitting or approvals, as determined by the Landlord. Landlord and Tenant agree to work together in good faith to expeditiously apply for and process all permits or approvals needed from the Town of Addison.

Tenant shall make payment to Landlord within ten (10) business days following Tenant's receipt of Landlord's invoice. Any obligation of Tenant set forth in this Section 6.B.4 shall survive the Lease expiration or its termination.

5. For purposes hereof, the Construction Commencement Date shall be deemed to be the date when the last of the following events has occurred:

(a) Landlord and Tenant have agreed on the Design Plan; and

(b) Tenant has been issued the required approvals, building permit(s) or licenses necessary to construct the Building Improvements on the Demised Premises; and

(c) The Date of Tenant's Taking Possession – Phase I Demised Premises has occurred; and

(d) Tenant has received (and has provided a true and correct copy to the City of) the FAA's determination to Tenant's filing of Form 7460 Notice of Proposed Construction or Alteration; and

(e) Tenant has executed a contract with a qualified general contractor; and

(f) Tenant has provided to Landlord proof of the Builder's Risk Insurance Policy required under Section 13.D.1 and Payment and Performance Bond or irrevocable standing letter of credit as required under Section 13.D.2 below, and

(g) Tenant has mobilized construction equipment on the Demised Premises (and evidence of each of such items has been provided to Landlord that is reasonably satisfactory to Landlord).

The Parties shall execute a document confirming the Construction Commencement Date.

6. After the Construction Commencement Date, Tenant shall complete construction of the Building Improvements with reasonable diligence, without material deviation from the Design Plan, and any material deviation from the Design Plan shall be subject to the prior review and approval of Landlord. If (i) construction of the Building Improvements is not Substantially Complete ("Substantial Completion" being defined in subsection 10. of this Section 6) on or before eighteen (18) full calendar months after the Construction Commencement Date, subject to events of Force Majeure (the "Substantial Completion

Date”) and/or (ii) Final Completion (“Final Completion” being defined in subsection 10. of this Section 6) is not achieved within three (3) full calendar months after Substantial Completion, then:

- (a) Tenant shall pay Landlord One Thousand Three Hundred Dollars (\$1,300.00) as Additional Rent for each and every day thereafter until Substantial Completion is achieved.
- (b) If “Final Completion,” as defined in Section 6.B.10 below, has not occurred within three (3) full calendar months after the Substantial Completion Date (the “Final Completion Date”), then Tenant shall pay Landlord Fifty Hundred Dollars (\$100.00) as Additional Rent for each and every day thereafter until Final Completion is achieved.
- (c) If Substantial Completion has not occurred within twenty-four (24) full calendar months after the Construction Commencement Date, subject to events of Force Majeure, then Landlord may terminate this Lease by written notice to Tenant and the Lease shall terminate, any provisions of this Lease regarding the condition of the Demised Premises (including all improvements thereon) upon the expiration or termination of this Lease, (iii) any provisions of this Lease regarding any obligations or provisions that survive the Lease expiration or termination (including obligations regarding indemnity and environmental matters). Provided, however, that said twenty-four (24) full-calendar-month deadline shall be extended day by day due to any delays in Construction that are a result of delays caused by the FAA or acts or omissions of the Town of Addison, that are not the fault of Tenant. In such event, neither Party shall have any further rights one against the other, except that Landlord shall return to Tenant any deposits, if any, made to Tenant within five (5) business days following such termination and Tenant shall at Landlord's written demand remove any portion of the Building Improvements requested by Landlord and the applicable provisions of Section 28.C, below, shall apply to such removal.

7. Tenant agrees that any construction or modification of the Building Improvements or any other improvements which may be authorized by Landlord, which authorization, if any, shall be in writing, on or within the Demised Premises shall comply with all standards, codes, and rules adopted by Landlord or Manager, including, but not limited to: (i) any rules relating to building construction and maintenance standards and specifications, shall (ii) comply with the Town of Addison, Texas building and related codes and zoning requirements, and will (iii) meet or exceed all applicable State and Federal standards (including, without limitation, Title III of the Americans With Disabilities Act of 1990, any state laws governing access for the disabled or architectural barriers, and all rules, regulations, and guidelines promulgated under such laws, as amended from time to time). Tenant recognizes that such construction/maintenance standards and specifications, Town of Addison building and related codes and zoning requirements, and all applicable State and Federal standards (including, without limitation, Title III of the Americans With Disabilities Act of 1990, any state laws governing access for the disabled or architectural barriers, and all rules, regulations, and guidelines promulgated under such laws, as amended from time to time) may be modified or

at the time of a particular construction or modification of improvements after the initial construction of the Building Improvements pursuant to the approved Design Plan.

8. Tenant will properly and timely submit to the FAA, TxDOT and any other governmental authority, entity or agency having jurisdiction regarding Addison Airport, a Notice of Proposed Construction or Alteration, when and as required, and such other forms and information as may be required by the FAA, TxDOT, or other governmental entity or agency having jurisdiction over Addison Airport. Landlord shall cooperate and support Tenant with any necessary FAA or TxDOT forms and other information and shall assist where possible in expediting any associated applications.

9. Tenant further agrees that the Landlord shall be authorized at all times during any project of construction to enter upon the Demised Premises, and all parts thereof, in order to observe the performance of such construction. Tenant shall provide the Landlord a construction schedule setting out the time of commencement, final completion and completion of significant elements of the construction, which schedule shall be delivered to Landlord prior to the start of any construction project on the Demised Premises.

10. "Substantial Completion of the Building Improvements" or "Substantial Completion" shall be deemed to have occurred upon the issuance by the Town of Addison of a certificate of temporary or final occupancy for the Building Improvements. "Final Completion" of the construction of the Building Improvements shall be deemed to occur upon the issuance by Tenant's architect who designed the Building Improvements of such documentation as may be necessary to establish the final completion (closeout) of the construction of the Building Improvements and the delivery by Tenant to Landlord of comprehensive As-Built drawings and documentation reviewed by Tenant's architect reflecting all approved changes and modifications to the originally approved Design Plan.

11. Failure of Tenant to observe and comply with the requirements of this Section shall be an Event of Default subject to Landlord's written notice and Tenant cure period specified in Section 23.

Section 7. Acceptance of Demised Premises:

TENANT ACKNOWLEDGES THAT UPON THE DATE OF TENANT'S TAKING POSSESSION OF THE DEMISED PREMISES, THE TENANT WILL BE DEEMED TO HAVE FULLY INSPECTED THE DEMISED PREMISES AND TO HAVE ACCEPTED THE DEMISED PREMISES AND THAT THE DEMISED PREMISES ARE LEASED TO TENANT "AS IS, WHERE IS, AND WITH ALL FAULTS AND PATENT AND LATENT DEFECTS", AND LANDLORD HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS, ANY REPRESENTATION, PROMISE, COVENANT, AGREEMENT, GUARANTY OR WARRANTY OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, AS TO THE QUANTITY, QUALITY, CONDITION, SUITABILITY, HABITABILITY, OR FITNESS OF THE DEMISED PREMISES INCLUDING WITHOUT LIMITATION THE DEMISED PREMISES AND THE IMPROVEMENTS THEREON, FOR ANY PURPOSE

WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION REGARDING SOIL CONDITIONS, AVAILABILITY OF UTILITIES [SUBJECT TO SECTION 16], DRAINAGE, ZONING LAWS, ENVIRONMENTAL LAWS, OR ANY OTHER FEDERAL, STATE OR LOCAL STATUTES, CODES, REGULATIONS OR ORDINANCES. TENANT ALSO ACKNOWLEDGES AND AGREES THAT UPON THE DATE OF TENANT'S TAKING POSSESSION – PHASE I DEMISED PREMISES TENANT'S INSPECTION AND INVESTIGATION OF THE DEMISED PREMISES WILL BE DEEMED TO HAVE BEEN ADEQUATE TO ENABLE TENANT TO MAKE TENANT'S OWN DETERMINATION WITH RESPECT TO THE SUITABILITY OR FITNESS OF THE DEMISED PREMISES, INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO SOIL CONDITIONS, AVAILABILITY OF UTILITIES [SUBJECT TO SECTION 16], DRAINAGE, ZONING LAWS, ENVIRONMENTAL LAWS, AND ANY OTHER FEDERAL, STATE OR LOCAL STATUTES, CODES, REGULATIONS OR ORDINANCES. TENANT ACKNOWLEDGES THAT THE DISCLAIMERS, AGREEMENTS AND OTHER STATEMENTS SET FORTH IN THIS PARAGRAPH ARE AN INTEGRAL PORTION OF THIS LEASE AND THAT LANDLORD WOULD NOT AGREE TO LEASE THE DEMISED PREMISES TO TENANT AS SET FORTH HEREIN WITHOUT THE DISCLAIMERS, AGREEMENTS AND OTHER STATEMENTS SET FORTH IN THIS PARAGRAPH. TENANT FURTHER ACKNOWLEDGES THAT TENANT IS NOT IN A DISPARATE BARGAINING POSITION WITH RESPECT TO LANDLORD. TENANT ACKNOWLEDGES AND AGREES FURTHER THAT THIS LEASE IS SUBJECT TO ANY AND ALL CURRENTLY EXISTING TITLE EXCEPTIONS OR OTHER MATTERS OF RECORD OR ANY MATTER OR ITEM VISIBLE OR APPARENT FROM AN INSPECTION AFFECTING THE DEMISED PREMISES. TENANT WAIVES ANY EXPRESS OR IMPLIED WARRANTIES OF SUITABILITY, HABITABILITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND FURTHER WAIVES ALL CLAIMS BASED ON ANY DEFECT IN THE DEMISED PREMISES WHETHER OR NOT SUCH DEFECT COULD HAVE BEEN DISCOVERED BY TENANT'S REASONABLE INSPECTION. TENANT, AT ITS COST, SHALL BE ENTITLED TO PERFORM A PHASE I ENVIRONMENTAL STUDY, PROVIDING A COPY THEREOF TO LANDLORD, ALL AS MAY BE SPECIFIED IN MORE DETAIL IN SECTION 22.D, BELOW. THERE IS NO WARRANTY, EXPRESS OR IMPLIED, OF SUITABILITY, MERCHANTABILITY, HABITABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE GIVEN IN CONNECTION WITH THIS LEASE.

In accepting the Demised Premises, Tenant acknowledges that this Lease shall be construed to provide rent to Landlord on a Net Return Basis, as set out in Section 32 below.

Section 8. Securing Governmental Approvals and Compliance with Law; Noise Abatement:

A. Tenant at Tenant's sole cost and expense shall obtain any and all governmental licenses, permits and approvals necessary for the construction of improvements and for the use and occupancy of the Demised Premises. This Lease is subject to and Tenant shall comply at all times with all laws, ordinances, rules, regulations, directives, permits, or standards of any governmental

authority, entity, or agency (including, without limitation, the Town of Addison, Texas, the State of Texas, the FAA, the Texas Department of Transportation, the United States Environmental Protection Agency, and the Texas Commission on Environmental Quality) applicable or related to, whether directly or indirectly the use and occupancy of the Demised Premises and whether in existence or hereafter enacted, adopted or imposed. Tenant shall promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances in or upon, or connected with, the Demised Premises, all at Tenant's sole cost and expense, and shall comply with and be subject to (and this Lease is made and entered into subject to) any and all grant agreements or grant assurances now existing or as hereafter agreed to, adopted or imposed.

Tenant agrees that any new construction or modification of existing improvements on the Demised Premises will comply with the Town of Addison building and related codes and zoning requirements or any other laws, ordinances, permits, rules, regulations, or policies of the Town of Addison, Texas, and will meet or exceed all applicable State and Federal standards, permits, laws, rules, or regulations. Tenant recognizes that the Town of Addison building and related codes and zoning requirements and other laws, ordinances, permits, rules, regulations or policies, and all applicable State and Federal standards, laws, rules, or regulations may be modified or amended from time to time and that compliance will be measured by such standards in effect at the time of a particular construction or modification of improvements after the initial construction of the Building Improvements pursuant to the Design Plan.

B. Tenant shall comply with all noise abatement standards at the Airport at all times, and shall notify any employee, guest or invitees including any aircraft operator, using any portion of the Demised Premises of such standards and shall ensure compliance with such standards by such third party.

Section 9. Assignment, Subletting and Mortgaging of Leasehold Estate; Stored Aircraft Information:

A. Without the prior written consent of Landlord, Tenant shall have no power to and shall not either voluntary or involuntary, by operation of law or otherwise, (i) assign, sell, pledge, encumber, mortgage, license, transfer, or otherwise convey (each being referred to herein as "assign" or "assignment," and the person or entity to whom an assignment is made being an "assignee") this Lease or any rights, duties, liabilities, or obligations of Tenant hereunder or any part of the Demised Premises, (except to a "Permitted Transferee", as defined below, a "Tenant Affiliate" as defined below, a "Laukien Affiliate" as defined below, and a leasehold mortgagee as hereinbelow provided and in accordance with and subject to all of the terms and conditions of this Lease) or (ii) sublet the whole or any part of the Demised Premises (except as provided in Section 9.D), and any such assignment shall be null and void and may be deemed by Landlord (in Landlord's sole discretion) a default under Section 23 of this Lease. If consent by Landlord to an assignment is required, then Tenant shall request, in writing, Landlord's consent to a proposed assignment and such request must include (among other information and materials as Landlord may request): (i) the name of the proposed assignee; (ii) the nature and character of the assignee's business; (iii) all material terms of the proposed assignment; and (iv) audited financial statements or other evidence of the proposed assignee's creditworthiness and ability to assume Tenant's obligations. An assignment will be deemed to occur if the person or persons who own or have

control of more than 50% of Tenant on the Effective Date of this Lease cease to own or have control of more than 50% of Tenant at any time during the Term; provided that any such person shall have the unencumbered right to make from time to time gifts, sales or other transfers, upon death and/or *inter vivos* of part or all of his or its ownership interest in the Tenant to a Permitted Transferee. A “Permitted Transferee” for purpose of this Lease, shall mean: (i) a person who is a parent or descendant of the transferor; (ii) a trust, the primary beneficiaries of which are relatives of the transferor as described in (i) above; (iii) an entity, the voting or financial control of which is owned by the transferor and/or his relatives as described in (i) above; and (iv) a trust, the primary beneficiary of which is such transferor; and such transfer shall not be considered an event deemed to be an “assignment” hereunder. Tenant shall have the right to assign this Lease or sublease all or a portion of the Demised Premises without Landlord’s consent to any person or entity that is under the direct control of Tenant (“Tenant Affiliate”). The term “direct control” means the Tenant has possession of the authority, direct or indirect, or the power to direct or cause the direction of the management and policies of a person, trust, corporation, limited liability company, partnership or other entity, whether through the ownership of voting securities, by agreement or otherwise. Tenant shall provide to Landlord from time to time, promptly after written request by Landlord, a written certification as to the ownership and/or control of Tenant. For purposes hereof, “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.

Further notwithstanding the general prohibition, Tenant shall be permitted to freely assign or sublet all or portions of the Demised Premises to one or more Laukien Affiliates, each of whom shall be deemed a Permitted Transferee. As used herein, “Laukien Affiliate” means (i) Dirk Laukien, a currently a resident of Montgomery County, Texas, (ii) any person that is a spouse or child of

Dirk Laukien, (iii) the trustee of any trust principally for the benefit of Dirk Laukien or any person described in (ii) preceding, (iv) any corporation, partnership, limited liability company, or other entity of which the controlling person or persons are any one or more of the persons or trustees described in (i), (ii), or (iii) preceding, or (iv) any venture or other entity of which the controlling person or persons are any one or more of the persons, trustees, or entities described in in (i), (ii), or (iii) preceding. The term “controlling persons” in the preceding sentence means the parties having the possession of the authority, direct or indirect, or the power to direct or cause the direction of the management and policies of a person, trust, corporation, limited liability company, partnership or other entity, whether through the ownership of voting securities, by agreement or otherwise.

B. Without limitation as to other grounds for Landlord withholding consent, Landlord may, in Landlord’s sole discretion, withhold its consent to any assignment of the Lease or sublease of the Premises for which Landlord’ consent is required when any one or more of the following apply:

(i) the proposed assignee is of a character or of a reputation or is engaged in a business, which is not consistent with the master or strategic plan of Addison Airport as determined by Landlord;

(ii) the proposed assignee has not demonstrated sufficient financial responsibility or creditworthiness to the satisfaction of Landlord in light of the duties, obligations, and responsibilities of the Tenant under this Lease at the time when the consent is requested;

(iii) the proposed assignee's intended use of the Demised Premises is inconsistent with the Lease;

(iv) the proposed assignment would cause Landlord to be in violation of another lease or agreement to which Landlord is a party or to which Landlord or the Addison Airport is subject (including, without limitation, any grant agreements or grant assurances of the Federal Aviation Administration or any other governmental entity or agency);

(v) if at any time consent is requested or at any time prior to the granting of consent, Tenant is in default under the Lease or would be in default under the Lease but for the pendency of a grace or cure period; or

(vi) the proposed assignee does not intend to occupy the entire Demised Premises as described in the Lease and conduct its business there from for a substantial portion of the then remaining term of the Lease.

C. Any assignment or subletting shall be expressly subject to all the terms and provisions of this Lease, including the provisions of Section 6 pertaining to the use of the Demised Premises. Tenant shall not assign this Lease or any right, duty, liability or obligation of Tenant hereunder or sublet the Demised Premises or any portion of the Demised Premises without first (i) obtaining a written agreement, with respect to an assignment, from each such assignee whereby each such transferee agrees to and shall be bound by and comply with all the terms and provisions of this Lease (and Tenant shall provide a copy of such written agreement to Landlord), or (ii) with respect to a sublease, each such sublessee agreeing in its sublease not to cause a breach of any the terms and provisions of this Lease. No assignment or subletting shall constitute a novation. In the event of the occurrence of an Event of Default while the Demised Premises are assigned or sublet, Landlord, in addition to any other remedies provided herein or by law, in equity, or otherwise, may at Landlord's option, collect directly from such assignee or subtenant all rents becoming due under such assignment or subletting and apply such rent against any sums due to Landlord hereunder. No direct collection by Landlord from any such assignee, transferee, pledge, or person or entity to whom this Lease is otherwise conveyed or to such subtenant shall release Tenant from the payment or performance of Tenant's obligations hereunder. Landlord's consent to any assignment or subletting will not act as a waiver of any rights or remedies granted to or retained by Landlord under this Lease and shall not act as an election of remedies nor shall it prohibit Landlord from exercising its rights and remedies with respect to any other actual or proposed assignment or subletting, and Landlord's consent to any assignment shall not relieve Tenant of any liability to Landlord under this Lease or otherwise.

D. Landlord shall have the right to sublease the Demised Premises to Galaxy FBO Holdings, L.L.C. ("Galaxy") without the consent of Landlord provided Galaxy subleases and takes possession of the entirety of the Demised Premises. Any other sublease shall require Landlord's prior written consent pursuant to the "Master Landlord Sublease Consent" to be substantially in the form attached hereto and incorporated herein by reference as Exhibit "7" to this Lease. Notwithstanding the foregoing, Landlord hereby acknowledges and consents to the subletting (if by Tenant) or sub-subletting (if by Galaxy) of the Demised Premises for the purpose of renting

aircraft storage and related office space only if evidenced by written agreement (to be made available for Landlord's review and inspection upon Landlord's written request within 3 business days), signed and executed by Tenant or Galaxy, and the sublessee or sub-sublessee (each if which is a "Sublessee") as the case may be and fairly states:

1. each Sublessee agrees not to cause a breach of any of the terms and provisions of this Ground Lease, including, without limitation, the provisions of Section 6 pertaining to the use of the Demised Premises, and in the event of any conflict between the terms of the Lease and the terms of the sublease, the terms of the Ground Lease shall control;
2. no subletting shall constitute a novation;
3. in the event of occurrence of an Event of Default while the Demised Premises are sublet, Landlord, in addition to any other remedies provided herein or by law, in equity, or otherwise, may at Landlord's option, collect directly from such subtenant all rents becoming due under such subletting and apply such rent against any sums due to Landlord hereunder;
4. Sublessee shall be obligated to obtain Landlord's consent to any action as to which Tenant is obligated to obtain such consent under the Lease;
5. any such sublease is to automatically terminate upon termination of this Ground Lease notwithstanding any other provision of the sublease to the contrary;
6. Landlord shall have no responsibility or obligation for the performance by Tenant of its obligations under the sublease;
7. neither this consent, the exercise by Landlord of its rights hereunder, nor the sublease or any other instrument shall give Sublessee any rights directly or indirectly against Landlord or create or impose any obligation, duty, responsibility, or liability of Landlord in favor of or for the benefit of Sublessee;
8. Furthermore, Tenant agrees that in no way does any sublease or sub-sublease release Tenant from any of its covenants, agreements, liabilities and duties under this Ground Lease; that this consent does not constitute approval by Landlord of the terms of any such sublease; that nothing herein contained shall be deemed a waiver or release of any of the Landlord's rights under the Ground Lease; that Tenant shall remain fully liable for the performance of each and every term, provision, covenant, duty and obligation of the Tenant under the Ground Lease, including, without limitation, the duty to make any and all payments of Rent; that any violation of any terms and conditions of this Ground Lease by a Sublessee may constitute a default under the Ground Lease.

E. Tenant shall have the right to mortgage the leasehold estate of Tenant created hereby in order to secure a mortgage loan for the purpose of (i) obtaining funds for the construction of the improvements described in Section 6, or (ii) for other construction upon the Demised Premises approved from time to time by Landlord in writing, or (iii) for any other purpose which may be approved from time to time by Landlord in writing. In the event that Tenant, pursuant to mortgages or deeds of trust, mortgages the leasehold estate of Tenant created hereby, the leasehold mortgagee

shall in no event become personally liable to perform the obligations of Tenant under this Lease unless and until said mortgagee becomes the owner of the leasehold estate pursuant to foreclosure, transfer in lieu of foreclosure, or otherwise, and thereafter said leasehold mortgagee shall remain liable for such obligations only so long as such mortgagee remains the owner of the leasehold estate. Notwithstanding the foregoing, it is specifically understood and agreed that no such mortgaging by Tenant and/or any actions taken pursuant to the terms of such mortgage shall ever relieve Tenant of Tenant's obligation to pay the rent due hereunder and otherwise fully perform the terms and conditions of this Lease.

F. All mortgages or deeds of trust whereby Tenant mortgages the leasehold estate of Tenant created hereby shall contain provisions (i) requiring the leasehold mortgagee to give Landlord at least fifteen (15) days written notice prior to accelerating the debt of Tenant to such mortgagee and/or initiating foreclosure proceedings under said mortgages or deeds of trust and (ii) allowing Landlord during such fifteen (15) day notice period to cure Tenant's default and prevent said acceleration and/or foreclosure proceedings.

G. Landlord agrees, if and so long as the leasehold estate of Tenant is encumbered by a leasehold mortgage and written notice to such effect has been given to Landlord, to give the holder of such leasehold mortgage at such address or addresses as may be specified in such written notice to Landlord for the giving of notices to the leasehold mortgagee, or as otherwise may be specified by the leasehold mortgagee to Landlord in writing, written notice of any default hereunder by Tenant, simultaneously with the giving of such notice to Tenant, and the holder of any such leasehold mortgage shall have the right, for a period of fifteen (15) days after its receipt of such notice or within any longer period of time specified in such notice, to take such action or to make payment as may be necessary or appropriate to cure any such default so specified, it being the intention of the Parties hereto that Landlord shall not exercise Landlord's right to terminate this Lease without first giving any such leasehold mortgagee the notice provided for herein and affording any such leasehold mortgagee the right to cure such default as provided for herein.

H. Landlord further agrees to execute and deliver to any proposed leasehold mortgagee of Tenant a "Non-Disturbance Agreement" wherein Landlord agrees that Landlord will (i) recognize such mortgagee and its successor and assigns after foreclosure, or transfer in lieu of foreclosure, as Tenant hereunder, and (ii) continue to perform all of Landlord's obligations hereunder so long as such mortgagee or its successors and assigns performs all of the obligations of Tenant hereunder; provided, however, that notwithstanding the foregoing or any other provision of this Lease, such mortgagee shall not and does not have the right and shall not and does not have the power to assign, sell, transfer, pledge, encumber, mortgage, license, or otherwise convey this Lease, or any right, interest, obligation, or liability hereunder, or any part of the Demised Premises or sublet the whole or any part of the Demised Premises without the prior written approval of the Landlord, and any such assignment, sale, transfer, pledge, encumbrance, mortgage, license, or other conveyance and any such subletting without the prior written consent of the Landlord shall be null void and may be deemed a default under Section 22.B. of this Lease, it being the intent of this provision that such mortgagee shall have no greater right to assign, sell, transfer, pledge, encumber, mortgage, license, or to sublet the Demised Premises (or any portion thereof), or to use the Demised Premises. Landlord also agrees to consider the execution and delivery to such proposed leasehold mortgagee of any other documents which such proposed leasehold mortgagee

may reasonably request concerning the mortgaging by Tenant of the leasehold estate created hereby; provided, however, that Landlord shall never be required to subordinate Landlord's interest in the Demised Premises to the mortgage of such proposed leasehold mortgagee.

I. Upon written request, Tenant shall promptly provide to Landlord the names and addresses of any subtenants and the make, model, aircraft type and "N" number of any aircraft stored, located or generally regarded to be "based" on or in the Demised Premises.

Section 10. Property Taxes and Assessments:

Tenant shall pay, before they become delinquent, any and all property taxes or assessments, and any other governmental charges, fees or expenses (collectively, the "Taxes"), levied or assessed on any improvements on the Demised Premises, the personal property and fixtures on the Demised Premises, and, if applicable, upon the leasehold estate of Tenant created hereby. Upon the request of Landlord, Tenant shall from time to time furnish to Landlord "paid receipts" or other written evidence that all such taxes have been paid by Tenant. In the event Tenant fails to pay any such taxes, assessments, or charges prior to delinquency, Landlord shall have the right to pay (but not the obligation) or may cause all taxes, assessments, or charges to be paid and the reasonable costs thereof expended by Landlord plus interest thereon as provided in Section 39 of this Lease shall be paid by Tenant on demand. Subject to the payment of any outstanding Taxes, Tenant may protest, appeal or institute other formal proceedings to effect a reduction or abatement of real estate taxes and assessments with respect to real estate taxes and assessments levied against the improvements on the Demised Premises and/or the Tenant's leasehold interest in the Lease for any tax fiscal year that ends after the Commencement Date of this Lease. Such protest, appeal or other proceedings may be conducted only in the name of Tenant. To this end and at Tenant's expense, Tenant shall give Landlord written notice of any such protest or appeal and resolution thereof.

Section 11. Maintenance and Repair of Demised Premises:

A. Tenant shall, throughout the term hereof, maintain the Demised Premises and all improvements made thereto (including the Building Improvements and any other constructed or added Building Improvement made thereto in the future), fixtures, equipment and personal property in good repair and in a first-class condition. Furthermore, Tenant shall over the Term continue to maintain the Demised Premises in accordance with all applicable ordinances, codes, rules and regulations of or adopted by the City of Addison, Texas or any other agency with regulatory oversight of any or all portions of the Demised Premises and any buildings, improvements, fixtures, equipment and personal property on the Demised Premises. Tenant's failure to keep the Demised Premises and all buildings, improvements, fixtures, equipment and personal property situated thereon in good repair and condition and compliant with all regulations, codes and ordinances as required by this Section 11 or elsewhere provided for in the Lease is an Event of Default, subject to Landlord's written notice and Tenant cure period specified in Section 23, under this Lease (the foregoing is not intended to limit any remedies outside of this Lease that the City has to enforce violations of its ordinances). In the event Tenant shall fail to so maintain the Demised Premises and the buildings, improvements, fixtures, equipment and personal property (excluding aircraft stored in the Building Improvements) situated thereon, after notice and an opportunity to cure as provided in Section 23 below, in addition to its other rights and remedies,

Landlord shall have the right (but not the obligation), in accordance with Section 24, to enter the Demised Premises without liability to Tenant to repair or cause to be repaired all such deficiencies and, or perform or cause to be performed such maintenance necessary to remedy such conditions; and all reasonable costs therefore expended by Landlord plus interest thereon as provided for in Section 39 shall be paid by Tenant upon demand.

B. Notwithstanding the foregoing, set forth as “Lease Addendum #1” attached hereto and incorporated herein by reference and made a part hereof, are “Tenant’s Leasehold Minimum Maintenance and Repair Standards and Practices,” which are intended as maintenance and repair standards and practices Landlord expects of Tenant. Tenant (and any of its successors or assigns) hereby agrees to meet or exceed the Tenant Leasehold Minimum Maintenance and Repair Standards and Practices throughout the Term. Notwithstanding the foregoing, as provided in Section 18 below, Landlord reserves the right, in its sole discretion, to introduce and adopt other regulations deemed appropriate and necessary by Landlord for the purpose, among other things, protection of the property of Landlord. In the event Landlord should formally adopt similar leasehold maintenance and repair standards governing such practices of all ground leaseholds at Addison Airport (“Replacement Maintenance Standards”), such encompassing regulations and practices shall supersede and replace Lease Addendum #1 in its entirety upon the effective date of such Replacement Maintenance Standards for the duration of the Term.

Section 12. Alterations, Additions and Improvements:

After completion of the Building Improvements, Tenant shall not create any openings in the roof or exterior walls, or make any alterations, additions or improvements to the Demised Premises or any improvements thereon or modifications thereto without the prior written consent of Landlord or Airport Manager. Consent for any such alterations, additions or improvements shall not be unreasonably withheld by Landlord or Airport Manager. Tenant shall have the right, without Landlord’s consent, to erect or install shelves, bins, machinery, air conditioning or heating equipment and trade fixtures, or to move demising walls within the Demised Premises, provided that Tenant complies with all applicable governmental laws, ordinances and regulations (including, without limitation and as may be required by law, obtaining a building permit).

All alterations, modifications, additions and improvements in and to the Demised Premises shall be performed in a first class, workmanlike manner, shall comply with all the standards and requirements set out above, and in Section 6 and Section 8, and Tenant shall promptly pay and discharge all costs, expenses, damages (including incidental, special, and consequential damages), liens and any and all other liabilities and obligations which arise in connection therewith (AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS LANDLORD AND AIRPORT MANAGER, AND THEIR RESPECTIVE OFFICIALS, OFFICERS, EMPLOYEES, AND AGENTS, FROM AND AGAINST ANY AND ALL SUCH COSTS, EXPENSES, CLAIMS, LIENS, LIABILITIES, AND OBLIGATIONS AS SET FORTH IN SECTION 21).

Section 13. Insurance and Bonds

A. At all times in connection with this Lease and during the Term hereof, Tenant, or its subtenant, shall purchase and maintain at its sole cost and expense, or, as appropriate, shall

cause its subtenants to purchase and maintain, at their sole cost and expense, and in a company or companies lawfully authorized to do business in Texas such insurance coverages relating to the Demised Premises as follows:

1. Insurance against loss or damage to improvements by fire, lightning, and all other risks from time to time included under standard extended coverage policies, and sprinkler, vandalism and malicious mischief, all in amounts sufficient to prevent Landlord or Tenant from becoming co-insurers of any loss under the applicable policies but in any event in amounts not less than one hundred percent (100%) of the full insurable value of the Demised Premises and any and all improvements thereon. The term "full insurable value" as used herein means actual replacement value at the time of such loss. Upon request, such replacement value shall be determined by a qualified appraiser, a copy of whose findings shall be submitted to Landlord, and, thereafter, proper adjustment in the limits of insurance coverage shall be effected.
2. Commercial General Liability insurance at minimum combined single limits of \$1,000,000 per occurrence and \$1,000,000 general aggregate for bodily injury, death or property damage or destruction occurring on, in or about the Demised Premises, which coverage shall include products/completed operations (\$1,000,000 products/completed operations aggregate). Coverage for products/completed operations must be maintained for at least two (2) years after construction work has been completed. Coverage must include contractual liability.
3. Statutory limits of workers compensation insurance and employer's liability with limits of liability of not less than \$1,000,000.00 the occurrence of each accident and by disease; \$1,000,000.00 by disease aggregate.
4. If applicable, boiler and pressure vessel insurance on all steam boilers and air compressors, parts thereof and appurtenances attached or connected thereto which by reason of their use or existence are capable of bursting, erupting, collapsing, imploding or exploding, in the minimum amount of \$500,000.00 for damage to or destruction of property resulting from such perils.
5. In connection with the design and construction of any improvements on the Demised Premises, architects, engineers, and constructions managers, including design/build contractors used by Tenant, shall carry professional liability insurance at minimum limits of \$250,000.00; this coverage must be maintained for at least two (2) years after the improvements are completed, and if coverage is written on a claims-made basis, a policy retroactive date equivalent to the inception date of this Lease (or earlier) must be maintained.
6. Hangarkeepers Legal Liability insurance, at limits of \$1,000,000.00 per occurrence is required if Tenant is engaged in maintenance, repair, or servicing of aircraft belonging to a third party, or if Tenant is otherwise involved in any operation in which Tenant has care, custody, or control of an aircraft that belongs to a third party.

7. Aircraft liability insurance against third party bodily injury or death and property damage or destruction at minimum limits required by regulatory agencies having jurisdiction at the Airport and which are acceptable to Landlord, but in any event not less than \$1,000,000.00 each occurrence (applies to the ownership, operation or use of aircraft by Tenant or any subtenant). Policy shall include non-owned aircraft liability with a minimum of \$1,000,000 and medical expense coverage with a limit of \$5,000 for any one person.

8. Business Automobile Liability insurance for all Tenant owned and non-owned vehicles being operated on the Airport with a minimum combined single limit of \$1,000,000 for bodily injury and property damage.

9. If there is fueling of aircraft at the Airport related to the Demised Premises pursuant to a fueling permit or license issued by the City, there shall be maintained a minimum of \$1,000,000 in Pollution Liability Insurance coverage.

10. Such other insurance in such amounts and against such other insurable hazards, which at the time are commonly obtained within the aeronautical industry for similar types of building improvements and other improvements that may be located on the Demised Premises and Tenant's permitted use of the Demised Premises.

B. Tenant, or its subtenant, shall cause all such policies of insurance to comply with the following and be specifically endorsed as follows:

1. The City of Addison, Texas, and the Airport Manager and their respective past and present officials, officers, employees and agents shall be named as additional insureds, or loss payees as the case may be, except with respect to the professional liability policies and workers compensation insurance;

2. All liability insurance policies which name the Town of Addison, Texas and the Airport Manager (and their respective past and present officials, officers, employees and agents) as additional insureds must be endorsed to read as primary coverage and non-contributory regardless of the application of other insurance;

3. A waiver of subrogation in favor of the Town of Addison, Texas and the Airport Manager (and their respective past and present officials, officers, employees and agents) shall be contained in each policy required herein;

4. All insurance policies shall be endorsed to the effect that the Town of Addison, Texas and Airport Manager will receive at least thirty (30) days written notice prior to cancellation or non-renewal of the insurance (except that if such insurance is canceled for non-payment of premium, such notice shall be ten (10) days.);

5. All insurance policies shall be endorsed to require the insurer to immediately notify the City and the Airport Manager of any material change in the insurance coverages;

6. All liability policies shall contain no cross-liability exclusions or insured versus insured restrictions applicable to the claims of the Town of Addison or the Airport Manager;

7. Tenant may maintain reasonable and customary deductibles subject to approval by Landlord; and

8. Insurance must be purchased from insurers that are financially acceptable to Landlord, maintain during the policy term a "General Policyholder's Rating" of at least A- and a financial rating of at least "Class VII" as set forth in the most recent edition of "Best Insurance Reports" or similar rating by another rating agency, and are licensed to do business in the State of Texas.

C. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of insurance, satisfactory to Landlord, evidencing all coverage above, shall be prepared and executed by the insurance company or its authorized agent, promptly delivered to Landlord and updated as may be appropriate, and shall:

1. List each insurance coverage described and required herein. Such certificates will also include a copy of the endorsements necessary to meet the requirements and instructions contained herein; and

2. Specifically set forth the notice-of-cancellation or termination provisions to the Town of Addison and the Airport Manager.

D. In connection with any construction on the Demised Premises:

1. During any period of construction, a Builder's Risk Completed Value policy with an all risks endorsement in an amount equal to the greater of the full-completed value or the amount of the construction contract including any amendments or change orders thereto. The policy shall provide "All Risk" Builder's Risk Insurance (extended to include the perils of wind, collapse, vandalism/malicious mischief, and theft, including theft of materials whether or not attached to any structure). The deductible shall not exceed \$10,000.00.

2. Provided Tenant elects not to reject the Demised Premises and early terminates the Lease on or before the expiration of the Inspection Period, Tenant shall obtain and keep in full force and effect at its sole cost and expense a Performance Bond and a Payment Bond guaranteeing, respectively, the faithful performance of all construction work and the payment of all obligations arising during the construction (including, without limitation, the payment of all persons performing labor or providing materials under or in connection with the Building Improvements), in the penal sum of one-hundred percent (100%) of the construction costs, but in no event less than the Construction Value without Landlord's prior written consent. Tenant shall pay or cause to have paid the premiums for such bonds and have delivered to Landlord prior to the expiration of the Inspection Period. Bonds shall be issued by a surety company satisfactory to the Landlord, licensed by the State of Texas

to act as a Surety, and listed on the current U.S. Treasury Listing of Approved Sureties. All forms shall be made on a form complying with the requirements of the laws of the State of Texas and satisfactory to Landlord. Such bonds shall be in conformance with the provisions of Chapter 2253, Tex. Gov. Code, and any successor statute thereto. Tenant and Landlord shall be named as joint obligees of all such bonds. Alternatively, and at Tenant's election, Tenant shall cause to be issued in favor of Landlord, at Tenant's sole cost and expense, and kept in full force and effect at all times during any period of construction, an irrevocable, stand-by letter of credit to secure the faithful performance of all construction work and the payment of all obligations arising during the construction (including, without limitation, the payment of all persons performing labor or providing materials under or in connection with the Building Improvements), in the amount of one hundred percent (100%) of the construction costs, but in no event less than the Construction Value without Landlord's prior written consent (the "Letter of Credit"). Such Letter of Credit to be drawn upon by site draft conditioned only upon the certification of the Landlord that an Event of Default has occurred under this Lease with respect to the construction of the Building Improvements. The form of such Letter of Credit is attached hereto and incorporated herein as Exhibit "6". Tenant shall cause the original executed Letter of Credit to be delivered to Landlord prior to Landlord granting its notice to Tenant it may proceed with construction. Upon written approval by Landlord on not less than ten (10) days written notice to Landlord from Tenant, Tenant shall have the right to reduce the amount of the Letter of Credit on a calendar quarterly basis by an amount equal to the construction costs incurred and paid by Tenant during the immediately preceding calendar quarter as demonstrated by the Construction Value Evidence submitted to Landlord.

E. Landlord reserves the right to review the insurance requirements contained herein and to reasonably adjust coverages and limits in accordance with the Airport Governing Documents.

Section 14. Casualty Damage or Destruction:

A. In case of any damage to or destruction of the buildings, structures, equipment, or any other improvements on or at the Demised Premises (including the Building Improvements), or any part thereof, Tenant will promptly give written notice thereof to Landlord, generally describing the nature and extent of such damage and/or destruction.

B. In case of any damage to or destruction of any building, structure, equipment, or other improvements (including the Building Improvements) on or at the Demised Premises, or any part thereof, Tenant, whether or not the insurance proceeds, if any, payable on account of such damage and/or destruction shall be sufficient for such purpose, at Tenant's sole cost, risk and expense will promptly and diligently commence and complete the restoration, repair and replacement of said building, structure, equipment, or other improvements as nearly as possible to their value, condition and character immediately prior to such damage and/or destruction and with at least as good workmanship and quality as such building, structure, equipment, or other improvements on or at the Demised Premises being repaired or replaced, with such alterations in and additions thereto as may be approved in writing by Landlord (hereinafter sometimes referred to as the "Restoration"). All Restoration plans (whether design, architectural, or otherwise) shall

be approved in writing by Landlord prior to the commencement of construction. All such design and construction shall comply with other Sections of this Lease concerning the design and construction of buildings and other improvements on or at the Demised Premises, including without limitation Sections 6, 8, and 13 hereof.

C. All insurance proceeds, if any, payable on account of such damage to or destruction of the buildings, structures and equipment on the Demised Premises shall be held by an escrow agent mutually acceptable to Landlord and Tenant (all costs of escrow agent are to be paid from the insurance proceeds). Landlord shall be protected, and fully indemnified in accordance with Section 6 and Section 21 hereof and other relevant provisions of this Lease, in acting upon any endorsed certificate believed by Landlord to be genuine and to have been executed by the proper party and shall receive such certificate as conclusive evidence of any fact or as to any matter therein set forth. Such certificate shall be full warranty, authority and protection to Landlord in acting thereon and Landlord shall be under no duty to take any action other than as set forth in this Section 14.

D. Insurance proceeds held by the escrow agent on account of any damage to or destruction of the buildings, structures and equipment on the Demised Premises, or any part thereof (less the costs, fees and expenses incurred by Landlord and Tenant in the collection thereof, including, without limitation, adjuster's and attorney's fees and expenses) ("Net Insurance Proceeds") shall be applied as follows:

1. Net Insurance Proceeds shall be paid to Tenant or as Tenant may direct from time to time as Restoration progresses to pay (or reimburse Tenant for) the cost of Restoration, upon written request of Tenant to Landlord and escrow agent accompanied by (a) certificate of a supervising architect or engineer approved by Landlord, describing in reasonable detail the work and material in question and the cost thereof, stating that the same were necessary or appropriate to the Restoration and constitute a complete part thereof, and that no part of the cost thereof has theretofore been reimbursed, and specifying the additional amount, if any, necessary to complete the Restoration, and (b) lien waivers or an opinion of counsel satisfactory to Landlord that there exist no mechanics', materialmen's or similar lien for labor or materials except such, if any, as are discharged by the payment of the amount requested.

2. Upon receipt by Landlord of the certificate and opinion or lien waivers required by the foregoing clauses 1 (a) and (b) that Restoration has been completed and the cost thereof paid in full, and that there are no mechanics', materialman's or similar liens for labor or materials supplied in connection therewith, the balance, if any, of such proceeds shall be paid to Tenant or as Tenant may direct.

E. In the event Tenant does not promptly commence Restoration within a reasonable period of time, or after commencement Tenant does not diligently proceed to the completion of same, Landlord shall have the right to commence or complete Restoration. Landlord's right to commence or complete Restoration shall begin after Landlord has given Tenant at least thirty (30) days written notice requesting (i) the commencement of Restoration, or (ii) that Tenant diligently proceed to the completion of Restoration, and Tenant during such thirty (30) day period fails to commence or fails to proceed to diligently complete Restoration. In such event, Landlord shall be

entitled to obtain the insurance proceeds, and Tenant shall promptly pay any deficiency if such proceeds are not sufficient for Restoration.

F. In the event of termination of this Lease by Landlord as a result of Tenant's failure to commence or complete (as the case may be) the Restoration, this Lease shall terminate and come to an end upon Landlord's termination as aforesaid as though the date of such termination by Landlord were the date of expiration of the term of this Lease, and all insurance proceeds shall be paid to Landlord.

Section 15. Condemnation:

A. If during the term hereof, any part of the Demised Premises shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, or are sold to a condemning authority under threat of condemnation, and after such taking by or sale to said condemning authority the remainder of the Demised Premises is not susceptible to efficient and economic occupation and operation by Tenant, this Lease shall automatically terminate as of the date that said condemning authority takes possession of the Demised Premises, and Landlord shall refund to Tenant any prepaid but unaccrued rental less any sum then owing by Tenant to Landlord.

B. If after such taking by or sale to said condemning authority the remainder of the Demised Premises is susceptible to efficient and economic occupation and operation by Tenant, this Lease shall not terminate but the rental due hereunder shall be adjusted so that Tenant shall be required to pay for the remainder of the Term the sum obtained by multiplying each monthly rental installment due hereunder, as adjusted from time to time pursuant to Section 4, by a fraction, the numerator of which shall be the number of square feet remaining in the Demised Premises after the taking by or sale to said condemning authority and denominator of which shall be the square footage originally contained in the Demised Premises. The rental adjustment called for herein shall not commence until said condemning authority actually takes possession of the condemned portion of the Demised Premises.

C. If this Lease is not terminated pursuant to Section 15.A, above, Tenant shall promptly restore any building and any other improvements on the Demised Premises, and the condemnation proceeds to which Landlord and Tenant are entitled shall be awarded and paid first to cover the costs and expenses for restoring the remaining portion of the Demised Premises to a condition susceptible to efficient and economic occupation and operation by Tenant, and any remaining proceeds to which Landlord and Tenant are entitled shall be awarded and paid to Landlord and Tenant, as their interest may appear. If this Lease is terminated pursuant to Section 15.A, condemnation proceeds to which Landlord and Tenant are entitled shall be awarded and paid to Landlord and Tenant as their interests may appear.

Section 16. Utilities:

Tenant shall be responsible at Tenant's sole cost and expense for obtaining all utility connections at or for the Demised Premises and Tenant shall pay all charges for water, electricity, gas, sewer, storm water fees, telephone or any other utility connections, tap-in fees, impact fees, and services furnished to the Demised Premises during the term hereof. Tenant agrees to contact all utility

service providers prior to any excavation or digging on the Demised Premises. Landlord shall in no event be liable or responsible for any cessation or interruption in any such utility services.

Section 17. Common Facilities:

A. Tenant and Tenant's employees, agents, servants, customers and other invitees shall have the non-exclusive right to use all common facilities, improvements, equipment and services which may now exist or which may hereafter be provided by Landlord for the accommodation and convenience of Landlord's customers and tenants, including landing and takeoff facilities, means of ingress and egress to the Demised Premises, other Airport installations, and all other reasonable services which may be provided with or without charge from time to time by Landlord in operating the Airport ("Common Facilities"). All such Common Facilities shall at all times be under the exclusive control, operation and management of Landlord and may be rearranged, modified, changed, altered, removed, or terminated from time to time at Landlord's sole discretion. Landlord shall use its best efforts to prevent such rearrangement, modification, change, alteration, removal or termination from materially impairing Tenant's access between the Demised Premises and the taxiways and runways of the Airport.

Section 18. Rules and Regulations:

Landlord has adopted *Addison Airport Minimum Standards and Requirements for Commercial Aeronautical Service Providers* ("Minimum Standards") and the *Addison Airport Rules and Regulations* ("Rules and Regulations") (collectively the "Airport Governing Documents") which govern the Tenant's use of the Demised Premises and all Common Facilities, a copy of each has been furnished to Tenant. The Airport Governing Documents are incorporated by reference as if written verbatim herein, and Tenant agrees to comply fully at all times with these governing documents. Landlord, in its sole discretion, may amend, modify and alter the Airport Governing Documents from time to time in a reasonable manner or may introduce other regulations as deemed necessary for the purpose of assuring the safety, welfare, convenience and protection of property of Landlord, Tenant and all other tenants and customers of the Airport.

Section 19. Signs and Equipment:

A. After first securing Landlord's prior written approval, Tenant shall have the right from time to time to install and operate signs depicting Tenant's name and operate radio, communications, meteorological, aerial navigation and other equipment and facilities in or on the Demised Premises that may be reasonably necessary for the operation of Tenant's business, provided such signs and equipment are installed and maintained in compliance with all applicable governmental laws, rules, and regulations, including the Town of Addison's sign ordinance, and do not interfere with the operation of any navigation facilities or Airport communications (including, without limitation, navigation facilities or Airport communications used or operated by the FAA).

B. The Parties mutually agree to work together to develop directional signage and street lighting standards for the Demised Premises, which would be suitable and appropriate for use elsewhere on or about the Airport.

Section 20. Landlord's Right of Entry:

Landlord and Landlord's authorized representatives shall have the right, during normal business hours, to enter only the public portions (e.g. public terminal area) of the Demised Premises without any duty of giving Tenant advance notice of Landlord's intended entry. With no less than 24 hours' advance notice to Tenant, Landlord and Landlord's authorized representatives shall have the right, during normal business hours (except in the case of emergencies) to enter the Demised Premises to (i) inspect the general condition and state of repair thereof, and (ii) make repairs permitted under this Lease. In addition, during the final one hundred eighty (180) days of the Term, Landlord or Landlord's authorized representatives shall have the right during normal business hours and with 24 hours' advance notice to Tenant, to enter the Demised Premises to show the Demised Premises to any prospective tenant or purchaser.

During the final one hundred eighty (180) days of the term hereof, Landlord and Landlord's authorized representatives shall have the right to erect and maintain on or about the Demised Premises customary signs advertising the Demised Premises for lease.

Section 21. Indemnity and Exculpation:

A. **Exculpation.** The Town of Addison, Texas and all other Addison Persons and the Manager Persons (for purposes of this subparagraph A, as the terms "Addison Persons" and "Manager Persons" are defined in subparagraph B below), shall not be liable to Tenant or to any Tenant Persons (for purposes of this subparagraph A, as the term "Tenant Persons" is defined in subparagraph B below), or to any other person whomsoever, for any death or injury to persons or damage to or destruction of property or any other harm on or about the Demised Premises or any adjacent area owned by Landlord caused by or resulting from any act or omission of Tenant or any Tenant Persons or any other person entering the Demised Premises under express or implied invitation of Tenant or any Tenant Persons, or arising out of the use or occupation of the Premises by Tenant or by any Tenant Persons, in the performance of Tenant's obligations hereunder.

B. **Tenant's Indemnity Obligation.** TENANT AGREES TO AND SHALL FULLY DEFEND (WITH COUNSEL REASONABLY ACCEPTABLE TO LANDLORD), INDEMNIFY AND HOLD HARMLESS (I) THE TOWN OF ADDISON, TEXAS, AND ITS ELECTED OFFICIALS, THE OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS, INDIVIDUALLY OR COLLECTIVELY, IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES (THE TOWN OF ADDISON, TEXAS, AND THE ELECTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS EACH BEING AN "ADDISON PERSON" AND COLLECTIVELY THE "ADDISON PERSONS") AND (II) AIRPORT MANAGER AND AIRPORT MANAGER'S OWNERS, OFFICERS, EMPLOYEES AND AGENTS (AIRPORT MANAGER AND AIRPORT MANAGER'S OWNERS, OFFICERS, EMPLOYEES AND AGENTS EACH BEING A "MANAGER PERSON" AND COLLECTIVELY THE "MANAGER PERSONS"), FROM AND AGAINST ANY AND ALL CLAIMS, ACTIONS, PROCEEDINGS, CAUSES OF ACTION, DEMANDS, LOSSES, LIENS, HARM, DAMAGES, PENALTIES, FINES, LIABILITIES, EXPENSES, LAWSUITS, JUDGMENTS, COSTS, AND FEES (INCLUDING REASONABLE ATTORNEY FEES AND COURT COSTS) OF ANY KIND AND NATURE WHATSOEVER MADE UPON, INCURRED BY, SUFFERED BY, OR ASSERTED AGAINST ANY ADDISON PERSON OR ANY MANAGER PERSON OR THE DEMISED PREMISES, WHETHER DIRECTLY OR INDIRECTLY (COLLECTIVELY FOR PURPOSES OF THIS SUBPARAGRAPH B, "DAMAGES"), THAT

RESULT FROM, RELATE TO, OR ARISE OUT OF, IN WHOLE OR IN PART, (I) ANY CONDITION OF THE DEMISED PREMISES CAUSED IN WHOLE OR IN PART BY TENANT OR BY ANY OF TENANT'S OWNERS, DIRECTORS, SHAREHOLDERS, PARTNERS, MANAGERS, OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, ENGINEERS, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, TENANTS, LICENSEES, INVITEES, PATRONS, CONCESSIONAIRES, OR ANY OTHER PERSON OR ENTITY FOR WHOM TENANT IS LEGALLY RESPONSIBLE, AND THEIR RESPECTIVE OWNERS, DIRECTORS, SHAREHOLDERS, PARTNERS, OFFICERS, MANAGERS, EMPLOYEES, AGENTS, REPRESENTATIVES, ENGINEERS, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, TENANTS, LICENSEES, INVITEES, PATRONS, AND CONCESSIONAIRES, OR ANY OTHER PERSON ACTING BY OR UNDER THE AUTHORITY OR WITH THE PERMISSION OF TENANT, TENANT'S TENANTS, OR ANY OTHER PERSON ENTERING THE PREMISES UNDER EXPRESS OR IMPLIED INVITATION OF TENANT DURING THE TERM (COLLECTIVELY, "TENANT PERSONS"), (II) ANY CONSTRUCTION ON OR REPAIR TO THE DEMISED PREMISES, OR THE DEMISED PREMISES BECOMING OUT OF REPAIR DUE TO THE FAULT OF TENANT OR ANY TENANT PERSONS, FOR ANY REASON INCLUDING BY FAILURE OF EQUIPMENT, PIPES, OR WIRING, OR BROKEN GLASS, OR BY THE BACKING UP OF DRAINS, OR BY GAS, WATER, STEAM, ELECTRICITY OR OIL LEAKING, ESCAPING OR FLOWING INTO THE PREMISES, REGARDLESS OF THE SOURCE, OR BY DAMPNESS OR BY FIRE, EXPLOSION, FALLING PLASTER OR CEILING, (III) REPRESENTATIONS OR WARRANTIES BY TENANT UNDER THIS LEASE, AND/OR (IV) ANY ACT OR OMISSION OF TENANT OR ANY TENANT PERSONS UNDER, IN CONNECTION WITH, OR IN THE PERFORMANCE OF, THIS LEASE. SUCH DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION SHALL AND DOES INCLUDE DAMAGES ALLEGED OR FOUND TO HAVE BEEN CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF THE TOWN OF ADDISON, TEXAS, ANY OTHER ADDISON PERSON, THE AIRPORT MANAGER, OR ANY OTHER MANAGER PERSON, OR BY ANY ACT OR OMISSION BY THE TOWN OF ADDISON, TEXAS, ANY OTHER ADDISON PERSON, THE AIRPORT MANAGER, OR ANY OTHER MANAGER PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

HOWEVER, TENANT'S LIABILITY UNDER THIS CLAUSE SHALL BE REDUCED BY THAT PORTION OF THE TOTAL AMOUNT OF THE DAMAGES (EXCLUDING DEFENSE FEES AND COSTS) EQUAL TO THE ADDISON PERSON OR ADDISON PERSONS', OR MANAGER PERSON OR MANAGER PERSONS', (AS THE CASE MAY BE) PROPORTIONATE SHARE OF THE NEGLIGENCE, OR CONDUCT THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, THAT CAUSED THE LOSS. LIKEWISE, TENANT'S LIABILITY FOR ANY ADDISON PERSON'S OR ANY MANAGER PERSON'S DEFENSE COSTS AND ATTORNEYS' FEES SHALL BE REDUCED BY THAT PORTION OF THE DEFENSE COSTS AND ATTORNEYS' FEES EQUAL TO ADDISON PERSON OR ADDISON PERSONS', OR MANAGER PERSON OR MANAGER PERSONS', (AS THE CASE MAY BE) PROPORTIONATE SHARE OF THE NEGLIGENCE, OR CONDUCT THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, THAT CAUSED THE LOSS.

TENANT SHALL PROMPTLY ADVISE LANDLORD IN WRITING OF ANY CLAIM OR DEMAND AGAINST THE TOWN OF ADDISON, ANY OTHER ADDISON PERSON, ANY MANAGER PERSON, OR TENANT OR ANY TENANT PERSON RELATED TO OR ARISING OUT OF TENANT'S ACTIVITIES UNDER THIS LEASE AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT TENANT'S SOLE COST AND EXPENSE. THE ADDISON PERSONS AND MANAGER PERSONS, AS THE CASE MAY BE, SHALL HAVE THE RIGHT, AT THE ADDISON PERSONS' OR MANAGER PERSONS' (AS

THE CASE MAY BE) OPTION AND AT THEIR OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING TENANT OF ANY OF ITS OBLIGATIONS HEREUNDER.

C. **Release.** TENANT HEREBY RELEASES LANDLORD AND ALL OTHER ADDISON PERSONS, AND AIRPORT MANAGER AND ALL OTHER MANAGER PERSONS, (I) FOR ANY DEATH OR INJURY TO ANY PERSON OR PERSONS OR DAMAGE TO OR DESTRUCTION OF PROPERTY OF ANY KIND RESULTING FROM THE DEMISED PREMISES BECOMING OUT OF REPAIR OR BY DEFECT IN OR FAILURE OF EQUIPMENT, PIPES, OR WIRING, OR BROKEN GLASS, OR BY THE BACKING UP OF DRAINS, OR BY GAS, WATER, STEAM, ELECTRICITY OR OIL LEAKING, ESCAPING OR FLOWING INTO THE DEMISED PREMISES, REGARDLESS OF THE SOURCE, OR BY DAMPNESS OR BY FIRE, EXPLOSION, FALLING PLASTER OR CEILING OR FOR ANY OTHER REASON WHATSOEVER, AND (II) ANY LOSS OR DAMAGE THAT MAY RESULT FROM OR BE OCCASIONED BY OR THROUGH THE ACTS OR OMISSIONS OF OTHER TENANTS OF LANDLORD OR CAUSED BY OPERATIONS IN CONSTRUCTION OF ANY PRIVATE, PUBLIC, OR QUASI-PUBLIC WORK.

THE PROVISIONS OF THIS SECTION 21 SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS LEASE.

Section 22. Environmental Compliance:

A. No Storage or Disposal: Tenant shall not install, store, use, treat, transport, discharge or dispose (or permit or acquiesce in the installation, storage, use, treatment, transportation, discharge or disposal by Tenant, its directors, officers, shareholders, members, partners, agents, employees, invitees, contractors, subcontractors, independent contractors, or subtenants) on the Demised Premises or any portion of the Common Facilities, any: (a) asbestos in any form; (b) urea formaldehyde foam insulation; (c) transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of 50 parts per million; or (d) any other chemical, material, air pollutant, toxic pollutant, waste, or substance which is regulated as toxic or hazardous or exposure to which is prohibited, limited or regulated by the Resource Conservation Recovery Act (42 U.S.C. §6901, et seq., as amended or superseded), the Comprehensive and Environmental Response Compensation and Liability Act (42 U.S.C. §9601, et seq. as amended or superseded), the Hazardous Materials Transportation Act, the Toxic Substances Control Act, the Clean Air Act, and/or the Clean Water Act, or any other federal, state, county, regional, local or other governmental authority laws, rules, orders, standards, policies, or regulations, or which, even if not so regulated may or could pose a hazard to the health and safety of the occupants of the Demised Premises and/or any portions of the Common Facilities, and which is either: (i) in amounts in excess of that permitted or deemed safe under any applicable law, rule, order, standard, policy, or regulation or (ii) in any manner prohibited or deemed unsafe under applicable law, rule, order, standard, policy, or regulation. (The substances referred to in (a), (b), (c) or (d) are collectively referred to hereinafter as "Hazardous Materials").

B. Cleanup Laws: Tenant shall, at Tenant's own expense, comply with any presently existing or hereafter enacted laws relating to Hazardous Materials (collectively, "Cleanup Laws provided, however that Tenant shall not be responsible for correcting any violation of the Cleanup Laws under this Section that existed prior to the Date of Tenant's Taking Possession – Phase I Demised Premises In furtherance and not in limitation of the foregoing, Tenant shall, at Tenant's own expense, make all submissions to, provide all information to, and comply with all

requirements of the appropriate governmental authority (the "Authority") under the Cleanup Laws. Should any Authority require that a cleanup plan be prepared and that a cleanup be undertaken because of the existence of Hazardous Materials which were installed, stored, used, treated, transported, disposed of or discharged on the Demised Premises and/or any portion of the Common Facilities, by Tenant, its directors, shareholders, members, partners, officers, agents, employees, invitees, independent contractors, contractors, subcontractors, licensees, subtenants, any other person entering the Demised Premises under express or implied invitation of Tenant, or any person directly or indirectly employed by or acting under Tenant, during the Term, Tenant shall, at Tenant's own expense, prepare and submit the required plans and financial assurances and carry out the approved plans in accordance with such Cleanup Laws and to Landlord's satisfaction.. At no expense to Landlord, Tenant shall promptly provide all information requested by Landlord for preparation of affidavits or other documents required by Landlord to determine the applicability of the Cleanup Laws to the Demised Premises and/or any portion of the Common Facilities, as the case may be, and shall sign the affidavits promptly when requested to do so by Landlord.

TENANT'S FURTHER INDEMNITY OBLIGATION. TENANT SHALL INDEMNIFY, DEFEND, SAVE AND HOLD HARMLESS LANDLORD AND ALL OTHER ADDISON PERSONS, AND AIRPORT MANAGER AND ALL OTHER MANAGER PERSONS, FROM AND AGAINST, AND REIMBURSE LANDLORD AND ALL OTHER ADDISON PERSONS, AND AIRPORT MANAGER AND ALL OTHER MANAGER PERSONS FOR, ANY AND ALL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH, (I) THE GENERATION, INSTALLATION, STORAGE, USE, TREATMENT, TRANSPORTING, DISPOSAL OR DISCHARGE OF HAZARDOUS MATERIALS IN OR ON THE DEMISED PREMISES AND/OR ANY PORTION OF THE AIRPORT, INCLUDING THE COMMON FACILITIES, OR ANY PROPERTY ADJACENT TO THE AIRPORT, BY TENANT OR ANY TENANT PERSONS, AND (II) ALL FINES, SUITS, PROCEDURES, CLAIMS AND ACTIONS OF ANY KIND ARISING OUT OF TENANT'S FAILURE TO PROVIDE ALL INFORMATION, MAKE ALL SUBMISSIONS AND TAKE ALL STEPS REQUIRED BY A GOVERNMENT AUTHORITY UNDER THE CLEANUP LAWS OR ANY OTHER ENVIRONMENTAL LAW, RULE, STANDARD, REGULATION, OR POLICY. SUCH DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION SHALL AND DOES INCLUDE DAMAGES ALLEGED OR FOUND TO HAVE BEEN CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF THE TOWN OF ADDISON, ANY OTHER ADDISON PERSONS, AIRPORT MANAGER, OR ANY OTHER MANAGER PERSONS, OR BY ANY ACT OR OMISSION OF OR BY THE TOWN OF ADDISON, TEXAS, ANY OTHER ADDISON PERSONS, THE AIRPORT MANAGER OR ANY OTHER MANAGER PERSONS THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND. HOWEVER, TENANT'S LIABILITY UNDER THIS CLAUSE SHALL BE REDUCED BY THAT PORTION OF THE TOTAL AMOUNT OF THE ENVIRONMENTAL DAMAGES (EXCLUDING DEFENSE FEES AND COSTS) EQUAL TO THE ADDISON PERSON OR ADDISON PERSONS', OR MANAGER PERSON OR MANAGER PERSONS', (AS THE CASE MAY BE) PROPORTIONATE SHARE OF THE NEGLIGENCE, OR CONDUCT THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, THAT CAUSED THE LOSS. LIKEWISE, TENANT'S LIABILITY FOR ANY ADDISON PERSON'S OR ANY MANAGER PERSON'S DEFENSE COSTS AND ATTORNEYS' FEES SHALL BE REDUCED BY THAT PORTION OF THE DEFENSE COSTS AND ATTORNEYS' FEES EQUAL TO ADDISON PERSON OR ADDISON PERSONS', OR MANAGER PERSON OR MANAGER PERSONS', (AS THE CASE MAY BE) PROPORTIONATE SHARE OF THE NEGLIGENCE, OR CONDUCT THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, THAT CAUSED THE LOSS.

C. Environmental Notices: Tenant shall promptly supply Landlord with copies of any notices, correspondence and submissions made by Tenant to or received by Tenant from any governmental authorities of the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, the FAA, TxDOT, or any other local, state or federal authority that requires submission of any information concerning environmental matters or Hazardous Materials.

D. Intentionally deleted by the Parties.

E. **NOTWITHSTANDING ANYTHING IN THIS LEASE TO THE CONTRARY, TENANT SHALL NOT HAVE ANY LIABILITY OR OBLIGATION UNDER THIS LEASE TO ANY PARTY ARISING OUT OF OR RELATED TO, THE GENERATION, INSTALLATION, STORAGE, USE, TREATMENT, TRANSPORTING, DISPOSAL OR DISCHARGE OF HAZARDOUS MATERIALS IN, ON, OR UNDER ANY PORTION OF THE AIRPORT OTHER THAN THE DEMISED PREMISES (INCLUDING, BUT NOT LIMITED TO, THE COMMON FACILITIES, THE AIRPORT FUEL FARM, OR ANY PROPERTY ADJACENT TO THE AIRPORT), EVEN IF SUCH HAZARDOUS MATERIALS MIGRATES, DRAINS, OR LEACHES ONTO OR UNDER THE DEMISED PREMISES, UNLESS A TENANT PARTY GENERATED, INSTALLED, STORED, USED, TREATED, TRANSPORTED, DISPOSED OR DISCHARGED OF SUCH HAZARDOUS MATERIALS.**

F. Survival: The parties defense and indemnity and hold harmless obligations and liabilities pursuant to the terms of this Sections 6, 21 and 22 shall survive the expiration or earlier termination of this Lease.

Section 23. Default by Tenant:

Each of the following events, inclusive of those events of default otherwise referenced herein, shall be deemed to be an Event of Default (herein so called) by Tenant under this Lease:

A. Failure of Tenant to pay any installment of Rent payable to Landlord or any other sum payable to Landlord hereunder, on the date that same is due, and such failure shall continue thereafter for a period of ten (10) days (the "10-day Grace Period") and such failure shall not be cured within ten (10) days after written notice thereof (the "Cure Period") to Tenant (which Cure Period may overlap, in whole or in part, the 10 day Grace Period).

B. Failure to pay or cause to be paid taxes (to the extent Tenant is obligated to pay or cause same to be paid), utilities, or insurance premiums, or any other payment which Tenant is obligated to pay under the Lease and such failure shall continue for a period of thirty (30) days after written notice thereof to Tenant.

C. Failure of Tenant to comply with any term, condition or covenant of this Lease (other than the payment of Rent, or the payment of taxes, utilities or insurance premiums, or other payments Tenant is to make under this Lease, as set forth in Subsection A and B of this Section 23) and such failure shall not be cured within thirty (30) days after written notice thereof to Tenant setting forth such default; provided, however, in the event such failure is not susceptible of cure

within such thirty (30) day period, then Tenant shall advise Landlord in writing of the same, such thirty (30) day period shall be extended for an additional period of time (not to exceed an additional sixty (60) days except in the case of Force Majeure, in which event the Force Majeure provisions shall apply) so long as Tenant has provided Landlord written notice of the curative measures Tenant proposes to undertake and has commenced to cure such failure within the initial thirty (30) day period and thereafter diligently pursues such cure.

D. Insolvency, the making of a transfer in fraud of creditors, or the making of an assignment for the benefit of creditors by Tenant or any guarantor of Tenant's obligations.

E. Filing of a petition under any section or chapter of the Bankruptcy Code, as amended, or under any similar law or statute of the United States or any State thereof by Tenant or any guarantor of Tenant's obligations, or adjudication as a bankrupt or insolvent in proceedings filed against Tenant or such guarantor.

F. Appointment of a receiver or trustee for all or substantially all of the assets of Tenant or any guarantor of Tenant's obligations.

G. Abandonment or cessation of use of the Demised Premises or any substantial portion thereof for the purpose leased by Tenant for a period of thirty (30) consecutive days except for casualty, condemnation, or Force Majeure.

H. Tenant is in default of any other ground lease at Addison Airport, including but not limited to, premises subject to the Phase II Land Option.

Section 24. Remedies of Landlord:

Upon the occurrence of any of Event of Default by Tenant under this Lease, Landlord, without prejudice to any other legal, equitable, or contractual right or remedy, shall have the option to pursue any one or more of the following rights or remedies using lawful force if necessary or appropriate, without notice or demand whatsoever:

A. Recover unpaid Rent and any Damages (as defined below);

B. Re-enter and re-possess all or any part of the Demised Premises by changing or picking the locks, access codes, or other access control devices, and taking any other self-help or judicial action, to exclude Tenant and other occupants from the Demised Premises. Re-entry or repossession of the Demised Premises by Landlord will not be construed as an election by Landlord to terminate this Lease.

C. Remove and store (at Tenant's sole cost) any property (other than aircraft) on the Demised Premises.

D. Sue for eviction, specific enforcement, equitable relief, Rent, damages, or any other available remedy.

E. Cure Tenant's default, and if Landlord does so, Tenant must reimburse Landlord within 30 days after Landlord delivers an invoice for any actual, out-of-pocket expenses Landlord incurred effecting compliance with Tenant's obligations.

F. Withhold or suspend any payment that this Lease would otherwise require Landlord to make.

G. Exercise all other remedies available to Landlord at law or in equity (including, without limitation, injunctive and other extraordinary remedies

For purposes of this Section, "Damages" includes, without limitation, all actual and incidental, and consequential damages, court costs, interest, and attorneys' fees incurred by Landlord and arising from Tenant's breach of this Lease, including, without limitation, the cost of (A) recovering possession of the Demised Premises, (B) removing and storing Tenant's and any other occupant's property, (C) re-letting the Demised Premises, including, without limitation, the costs of brokerage commissions and cleaning, decorating, repairing, or altering the Demised Premises for a substitute tenant or tenants, (D) collecting any money owed by Tenant or a substitute tenant, (E) repairing any damage caused by any Tenant Persons, (F) performing any obligation of Tenant under the Lease, and (G) any other loss or cost incurred by Landlord as a result of, or arising from, Tenant's breach of the Lease or Landlord's exercise of its rights and remedies for such breach. Provided, however, that consequential damages shall be limited to the direct losses naturally incurred by the Town of Addison at the Addison Airport, proven by a preponderance of the evidence that is a natural result of the breach of the Lease by Tenant.

Unless Landlord delivers signed, written notice thereof to Tenant explicitly accepting surrender of the Demised Premises, providing for termination of this Lease, or evicting Tenant, no act or omission by Landlord or Airport Manager or their respective officials, officers, employees, or agents will constitute Landlord's acceptance of surrender of the Demised Premises, termination of Lease, or an actual or constructive eviction of Tenant (including, without limitation, Tenant's delivery of keys to any of Landlord's or Manager's officials, officers, employees, or agents or Landlord's repossession, reentry, or reletting of the Demised Premises).

Pursuit of any of the foregoing rights or remedies by Landlord shall not preclude Landlord's pursuit of any of the other rights or remedies herein provided or any other rights or remedies provided by law, in equity, or otherwise, nor shall pursuit of any right or remedy herein provided constitute a forfeiture or waiver of any Rent due to Landlord hereunder or of any damages accruing to Landlord by reason of the violation of any of the terms, conditions and covenants herein contained.

Section 25. Default by Landlord:

No default by Landlord hereunder shall constitute an eviction or disturbance of Tenant's use and possession of the Demised Premises or render Landlord liable for damages (including consequential damages) or entitle Tenant to be relieved from any of Tenant's obligations hereunder (including the obligation to pay rent) or grant Tenant any right of deduction, abatement, set-off or recovery or entitle Tenant to take any action whatsoever with regard to the Demised Premises or Landlord until thirty (30) days after Tenant has given Landlord written notice specifically setting forth

such default by Landlord, and Landlord has failed to cure such default within said thirty (30) day period, or in the event such default cannot be cured within said thirty (30) day period then within an additional reasonable period of time (not to exceed an additional sixty (60) days except in the case of Force Majeure, in which event the Force Majeure provisions shall apply) so long as Landlord has provided Tenant written notice of the curative measures Landlord proposes to undertake and has commenced curative action within said thirty (30) day period and thereafter is diligently attempting to cure such default. In the event that Landlord fails to cure such default within said thirty (30) day period, or within said additional reasonable period of time, Tenant shall have the right as its sole and exclusive remedy to:

A. Proceed to cure such default (provided such cure occurs entirely within the Demised Premises) and deduct the cost of curing same plus interest thereon at the rate of ten percent (10%) per annum from the next succeeding rental installment(s) due by Tenant to Landlord hereunder;

B. Proceed to cure such default (provided such cure occurs entirely within the Demised Premises) and bring suit against Landlord for the cost of curing same plus interest thereon at the rate of ten percent (10%) per annum;

C. Terminate this Lease by written notice to Landlord and pursue any remedies available to Tenant under law or in equity. In the event of such termination, the provisions of Section 28.C shall apply to the Building Improvements on the Leased Premises.

If any mortgagee of Landlord has given Tenant its address for notices and specifically requests such notice, Tenant agrees to give the notice required hereinabove to such mortgagee at the time Tenant gives same to Landlord, and to accept curative action, if any, undertaken by such mortgagee as if such curative action had been taken by Landlord.

Section 26. Mitigation of Damages:

A. In lieu of any obligation imposed by law on Landlord to mitigate damages arising from Tenant's abandonment of the Demised Premises in breach of this Lease, Landlord, beginning not more than 90 days after Tenant physically vacates the Demised Premises and continuing until the Demised Premises have been relet (but subject to the provisions of this subsection A set forth below), will market the Demised Premises for lease, and Tenant will remain liable for all Rent and for Damages incurred by Landlord (as the term "Damages" is defined in Section 24, above).

Landlord and Tenant agree to the following criteria in connection with Landlord's obligation (if any) to mitigate damages as described above:

1. Landlord will have no obligation to solicit or entertain negotiations with any other prospective tenants of the Demised Premises until and unless Landlord obtains full and complete possession of the Demised Premises, including without limitation, the final and unappealable legal right to relet the Demised Premises free of any claim of Tenant.

2. Landlord will not be obligated to offer the Demised Premises to a prospective tenant when other premises suitable for that prospective tenant's use are (or soon will be) available in any other premises located at Addison Airport.

3. Landlord will not have any obligation to lease the Demised Premises for any rental less than the current rate then prevailing for similar space at Addison Airport (or if no similar space is available, the current fair market rental then prevailing for similar space in comparable buildings in the same market area as the Demised Premises) nor shall Landlord be obligated to enter into a new lease under any terms or conditions that are unacceptable to Landlord.

4. Landlord will not be obligated to enter into any lease with any prospective tenant whose reputation is not acceptable to Landlord, in Landlord's commercially reasonable judgment and opinion.

5. Landlord will not be obligated to enter into a lease with any prospective tenant: (i) which does not have, in Landlord's sole judgment and opinion, sufficient financial resources and operating experience to operate the Demised Premises in a first class manner and meet its financial obligations; or (ii) whose proposed use of the Demised Premises is not a permitted use under the terms of this Lease.

6. Landlord will not be required to expend any amount of money to alter, remodel or otherwise make the Demised Premises suitable for use by any prospective tenant.

If Landlord makes the Demised Premises available for reletting under the criteria set forth hereinabove, Landlord will be deemed to have fully satisfied Landlord's obligation (if any) to mitigate damages under this Lease and under any law or judicial ruling in effect on the date of this Lease or at the time of Tenant's default, and **Tenant hereby waives and releases**, to the fullest extent legally permissible, any right to assert in any action by Landlord to enforce the terms of this Lease, any defense, counterclaim, or rights of setoff or recoupment respecting the mitigation of damages by Landlord (or alleged failure by Landlord to adequately mitigate its damages), unless and to the extent Landlord maliciously or in bad faith fails to act in accordance with the requirements of this Section.

No rent collected from a substitute tenant for any month in excess of the rent due under the Lease for that month will be credited or offset against unpaid rent for any other month or any other Damages. Tenant stipulates that the mitigation requirements expressed in this Section are objectively reasonable. **TO THE FULLEST EXTENT PERMITTED BY LAW, TENANT WAIVES ANY OTHER OBLIGATION BY LANDLORD TO MITIGATE ITS DAMAGES AFTER TENANT FAILS TO PAY RENT OR VACATES OR ABANDONS THE PREMISES.**

B. Tenant's right to seek actual damages as a result of a default by Landlord under this Lease shall be conditioned on Tenant taking all actions reasonably required, under the circumstances, to minimize any loss or damage to Tenant's property or business, or to any of Tenant's officers, employees, agents, invitees, or other third parties that may be caused by any such default of Landlord.

Section 27. Waiver of Subrogation:

Each party hereto waives any and every claim which arises or may arise in such party's favor against the other party hereto during the Term of this Lease for any and all loss of, or damage to, any of such party's property located within or upon, or constituting a part of, the Demised Premises, which loss or damage is covered by valid and collectible casualty, fire and extended coverage insurance policies, to the extent that such loss or damage is recoverable under such insurance policies. Such mutual waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Lease with respect to any loss of, or damage to, property of the Parties hereto. Inasmuch as such mutual waivers will preclude the assignment of any aforesaid claim by way of subrogation or otherwise to an insurance company (or any other person), each party hereby agrees immediately to give to each insurance company which has issued to such party policies of fire and extended coverage insurance, written notice of the terms of such mutual waivers, and to cause such insurance policies to be properly endorsed, if necessary, to prevent the invalidation of such insurance coverages by reason of such waivers.

Section 28. Title to Improvements:

A. Any and all improvements on the Demised Premises, including, without limitation, any buildings constructed on the Demised Premises by or for Tenant (the "Improvements"), shall be owned by Tenant during the term of this Lease.

B. Notwithstanding the foregoing, provided Tenant is not then in default of this Lease, Tenant may elect up to ninety (90) days following Final Completion to deed or otherwise convey (in form and content acceptable to Landlord, and free and clear of any and all claims and any and all liens or other encumbrances) ownership of the Building Improvements (but not Tenant's trade fixtures or other personal property) constructed upon the Demised Premises to Landlord, and upon such conveyance, the same shall merge with the title of the Demised Premises, free and clear of any claim of Tenant and all persons or entities claiming under or through Tenant (including, without limitation, any holder of a leasehold mortgage), and shall become the property of Landlord with all other terms and conditions of the Lease remaining the same (e.g., following such conveyance, Tenant shall continue to be responsible and liable for all maintenance, repair, and upkeep of, and all other provisions of this Lease relating to, the Building Improvements, shall continue to carry insurance with respect to the Building Improvements, shall have the Restoration obligations set forth in Section 14, etc., as if the Building Improvements had not been deeded or otherwise conveyed to Landlord). In the event of such conveyance, Landlord agrees, subject to the provisions of this subsection, to accept title and ownership of the Building Improvements provided there are no pending casualty claims or liens against the Building Improvements.

C. Upon the expiration or earlier termination of this Lease, the Improvements and all parts thereof, shall merge with the title of the Demised Premises, free and clear of any claim of Tenant and all persons or entities claiming under or through Tenant (including, without limitation, any holder of a leasehold mortgage), and shall become the property of Landlord. In such event (i) Tenant shall deliver up to Landlord the Demised Premises clean and free of trash and in good repair and condition in accordance to the prevailing Tenant's Leasehold Minimum Maintenance and Repair Standards and

Practices, as amended or modified, with all fixtures and equipment situated in the Demised Premises delivered in good working order, reasonable wear and tear excepted, and (ii) unless Tenant is then in default, Tenant shall have the right to remove all personal property (including aircraft stored in the Building Improvements) and trade fixtures owned by Tenant from the Demised Premises, but Tenant shall be required to repair any damage to the Demised Premises caused by such removal in a good and workmanlike manner and at Tenant's sole cost and expense; or (iii) with no less than twelve (12) months remaining to the Term, Landlord may elect to by written notice require Tenant to demolish and remove, or cause to be removed, all improvements from the Demised Premises and restore the Demised Premises to the condition in which the same existed immediately prior to the Landlord's the Landlord's Phase I Demolition Start Date given in Section 6.A.2 above, in which event Tenant shall, at Tenant's sole cost, risk and expense, perform and complete such removal and restoration in a good and workmanlike manner, in accordance with all applicable ordinances, codes, rules and regulations prior to the expiration or termination of the Term. Upon such termination, Tenant shall at Landlord's request, execute a recordable instrument evidencing the termination of this Agreement giving the effective date of said termination or expiration date.

D. Tenant's obligations under this Section 28 shall continue and survive beyond the expiration or termination of this Lease.

Section 29. Mechanics' and Materialmen's Liens Indemnity:

A. TENANT AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS TO THE FULL EXTENT AS PROVIDED IN THIS LEASE, LANDLORD AND ALL ADDISON PERSONS, AND AIRPORT MANAGER AND ALL MANAGER PERSONS, FROM AND AGAINST ALL LIABILITY ARISING OUT OF THE FILING OF ANY MECHANICS' OR MATERIALMEN'S LIENS AGAINST THE DEMISED PREMISES BY REASON OF ANY ACT OR OMISSION OF TENANT OR ANYONE CLAIMING UNDER TENANT (INCLUDING, WITHOUT LIMITATION, ANY TENANT PERSONS), AND LANDLORD, AT LANDLORD'S OPTION, MAY SATISFY SUCH LIENS AND COLLECT THE AMOUNT EXPENDED FROM TENANT TOGETHER WITH INTEREST THEREON AS PROVIDED IN SECTION 39 AS ADDITIONAL RENT; PROVIDED, HOWEVER, THAT LANDLORD SHALL NOT SO SATISFY SUCH LIENS UNTIL FIFTEEN (15) DAYS AFTER WRITTEN NOTIFICATION TO TENANT OF LANDLORD'S INTENTION TO DO SO AND TENANT'S FAILURE DURING SUCH FIFTEEN (15) DAY PERIOD TO BOND SUCH LIENS OR ESCROW FUNDS WITH APPROPRIATE PARTIES TO PROTECT LANDLORD'S INTEREST IN THE DEMISED PREMISES, UNLESS A SHORTER PERIOD OF TIME IS DICTATED BY APPLICABLE LAW.

Section 30. INTENTIONALLY DELETED.

Section 31. Quiet Enjoyment and Subordination:

Landlord represents that Tenant, upon payment of the Rent and performance of the terms, conditions, covenants and agreements herein contained, shall (subject to all of the terms and conditions of this Lease) peaceably and quietly have, hold and enjoy the Demised Premises during the Term. Landlord further is hereby irrevocably vested with full power and authority by Tenant to subordinate Tenant's interest hereunder to any mortgage, deed of trust or other lien hereafter placed on the Demised Premises or to declare this Lease prior and superior to any mortgage, deed of trust or other lien hereafter placed on the Demised Premises; provided, however, any such subordination shall be upon the express conditions that (i) this Lease shall be recognized by the mortgagee and that all of

the rights of Tenant shall remain in full force and effect during the Term on condition that Tenant attorn to the mortgagee, its successors and assigns, and perform all of the covenants and conditions required by the terms of this Lease, and (ii) in the event of foreclosure or any enforcement of any such mortgage, the rights of Tenant hereunder shall expressly survive and this Lease shall in all respects continue in full force and effect so long as Tenant shall fully perform all Tenant's obligations hereunder and attorn to the purchaser. Tenant also agrees to execute, within ten (10) days after receipt, further instruments declaring this Lease prior and superior to any mortgage, deed of trust or other lien and specifically providing that this Lease shall survive the foreclosure of such mortgage, deed of trust or other lien.

Section 32. Rent on Net Return Basis:

The Rent provided for in this Lease shall be an absolutely net return to Landlord for the Term, free of any loss, expenses or charges with respect to the Demised Premises, including, without limitation, maintenance, repairs, replacement, insurance, taxes and assessments, and this Lease shall be construed in accordance with and to effectuate such intention.

Section 33. Holding Over:

Should Tenant, or any of Tenant's successors in interest fail to surrender the Demised Premises, or any part thereof, on the expiration of the term of this Lease, such holding over shall constitute a tenancy from month to month only terminable at any time by either Landlord or Tenant after thirty (30) days prior written notice to the other, at a monthly rental equal to one hundred twenty-five percent (125%) of the Base Rent paid for the last month of the Term.

Section 34. Waiver of Default:

No waiver by the Parties hereto of any default or breach of any term, condition or covenant of this Lease shall be deemed to be a waiver of any subsequent default or breach of the same or any other term, condition or covenant contained herein. Landlord will not be deemed to have waived any right or Tenant's breach of any obligation under this Lease, unless Landlord delivers a signed writing, addressed to Tenant explicitly relinquishing that right or breach. No custom or practice arising during the administration this Lease will waive, or diminish, Landlord's right to insist upon strict performance of Tenant's obligations. No restrictive endorsement or other statement on or accompanying any check or payment will be deemed an accord and satisfaction or novation, and Landlord will be entitled to accept any such check or payment, without prejudice, to Landlord's rights to recover the full amount due and to exercise its other remedies.

Section 35. Release of Landlord Upon Transfer:

All of Landlord's personal liability for the performance of the terms and provisions of this Lease (except for any liability accruing prior to such transfer) shall terminate upon a transfer of the Demised Premises by Landlord, provided that any such transferee shall execute a document confirming that the obligations of Landlord under this Lease shall be binding upon such transferee. In addition, the obligations of Landlord are covenants running with the land and shall be binding upon the transferee of Landlord's interest in this Lease and the Demised Premises. Landlord shall provide

Tenant at least sixty (60) days' notice of any such transfer, together with the name and contact information of the transferee.

Section 36. Attorneys' Fees:

If, on account of any breach or default by either party to this Lease, it shall become necessary for either party to employ an attorney to enforce or defend any of its rights or remedies hereunder, with the result that a judicial proceeding shall be filed, then the prevailing party in such judicial proceeding shall be entitled, in addition to any other rights it may have, in law or equity, to collect reasonable attorneys' fees and costs of Court incurred.

Section 37. Financial Information:

Tenant agrees that Tenant will from time to time upon the written request of Landlord during the term of this Lease furnish to Landlord such credit and banking references as Landlord may reasonably request.

Section 38. Estoppel Certificates:

Tenant agrees that from time to time, upon not less than fifteen (15) days prior written request by Landlord, Tenant will deliver to Landlord a statement in writing certifying that:

A. This Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease as modified is in full force and effect and stating the modifications).

B. The dates to which Rent and other charges have been paid.

C. To Tenant's knowledge, Landlord is not in default under any term or provision of this Lease or if in default the nature thereof in detail in accordance with an exhibit attached thereto.

D. If requested by Landlord, Tenant will not pay rent for more than one (1) month in advance and that this Lease will not be amended without notice to Landlord's mortgagee and that the same will not be terminated without the same notice required by the Lease to be furnished to Landlord also being furnished to Landlord's mortgagee and Landlord's mortgagee fails to cure such default within the curative period allowed Landlord under this Lease.

Landlord agrees that from time to time, upon not less than ten (10) days' prior written request by Tenant, Landlord will deliver to Tenant a statement in writing certifying that:

1. This Lease is unmodified and in full force and effect (or if there have been modifications, that the Lease as modified is in full force and effect and stating the modifications).

2. The dates to which Rent and other charges have been paid.

3. To Landlord's knowledge, Tenant is not in default under any term or provision of this Lease or if in default the nature thereof in detail in accordance with an exhibit attached thereto.

4. If requested by Tenant, that this Lease will not be amended without notice to Tenant's mortgagee and that the same will not be terminated without the same notice required by the Lease to be furnished to Tenant also being furnished to Tenant's mortgagee and Tenant's mortgagee fails to cure such default within the curative period allowed Tenant under this Lease.

Section 39. Interest on Tenant's Obligations and Manner of Payment:

All monetary obligations of Tenant to Landlord under this Lease remaining unpaid ten (10) days after the due date of the same (if no due date has been established under other provisions hereof, the "due date" shall be the date upon which Landlord demands payment from Tenant in writing) shall bear interest at the rate of ten percent (10%) per annum (or the maximum interest rate permitted by law, whichever is lower) from and after said tenth (10th) day until paid. If more than twice during any calendar year Tenant's personal or corporate check is not paid by the bank on which it is drawn for whatever reason, Landlord may require by giving written notice to Tenant that the payment of all future monetary obligations of Tenant under this Lease are to be made on or before the due date by cash, cashier's check, certified check, money order, or wire transfer, and the delivery of Tenant's personal or corporate check will no longer constitute payment of such monetary obligations. Any acceptance by Landlord of a personal or corporate check after such notice shall not be deemed or construed as a waiver or estoppel of Landlord to require other payments as required by said notice.

Section 40. Special Events:

Landlord may from time to time sponsor certain special events, including, but not limited to, air shows, to be conducted on portions of the Airport, which may limit or obstruct access to the Premises and/or to the Airport ("Special Events"), and Tenant agrees and consents to the same. As a material inducement to Landlord to enter into this Lease, and notwithstanding anything to the contrary contained herein, Tenant, on behalf of Tenant and on behalf of all directors, officers, shareholders, partners, principals, employees, agents, contractors, subtenants, licensees or concessionaires of Tenant and on behalf of any other party claiming any right to use the Demised Premises by, through or under Tenant, hereby: (i) agrees that Landlord has the right to sponsor any such Special Events and to allow use of portions of the Airport therefor even if the same limit or obstruct access to the Demised Premises and/or to the Airport; (ii) **releases, waives and discharges** Landlord and Manager, and Addison Persons and Manager Persons, from all liability for any loss, damage, cost, expense or claim arising or resulting from or pertaining to the limitation or obstruction of access to the Demised Premises and/or to the Airport from the conduct of Special Events and/or activities relating or pertaining thereto, including, without limitation, death, injury to person or property or loss of business or revenue except to the extent caused by the gross negligence or willful misconduct of Landlord, Manager, Addison Persons and Manager Persons (the "Released Claims"); (iii) **covenants not to sue** the Landlord or Manager, or any of the Addison Persons and Manager Persons, for any Released Claims except to the extent caused by the gross negligence or willful misconduct of Landlord, Manager, Addison Persons and Manager Persons; (iv) agrees that the terms contained in this Section are intended and shall be construed to be as broad and inclusive as possible under the laws of the State

of Texas; and (v) agrees that if any portion of this Section is held to be invalid or unenforceable, the remainder of this Section shall not be affected thereby but shall continue in full force and effect.

Section 41. Landlord/Tenant Relationship:

It is understood and agreed that in leasing, using, occupying, and operating the Demised Premises, Tenant is a tenant and is not acting as agent, partner, joint venturer, independent contractor or employee of Landlord or Airport Manager.

Section 42. Force Majeure:

A. In the event performance by Landlord of any term, condition or covenant in this Lease is delayed or prevented by an Act of God, strike, lockout, shortage of material or labor, restriction by any governmental authority, civil riot, flood, or any other cause not within the control of Landlord, the period for performance of such term, condition or covenant shall be extended for a period equal to the period Landlord is so delayed or hindered.

B. In the event performance by Tenant of any term, condition or covenant in this Lease is delayed or prevented by an Act of God, strike, lockout, shortage of material or labor, restriction by any governmental authority, civil riot, flood, or any other cause not within the control of Tenant, the period for performance of such term, condition or covenant shall be extended for a period equal to the period Tenant is so delayed or hindered.

Section 43. Exhibits:

All exhibits, attachments, annexed instruments and addenda referred to herein shall be considered a part hereof for all purposes with the same force and effect as if copied verbatim herein.

Section 44. Use of Language:

Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural, unless the context otherwise requires.

Section 45. Captions:

The captions or headings, sections, or paragraphs in this Lease are inserted for convenience only and shall not be considered in construing the provisions hereof if any question of intent should arise.

Section 46. Successors; No Third-Party Beneficiaries; No Waiver of Immunity; No Tax Representation:

The terms, conditions and covenants contained in this Lease shall apply to, inure to the benefit of, and be binding upon the Parties hereto and their respective successors in interest and legal representatives except as otherwise herein expressly provided. All rights, powers, privileges,

immunities and duties of Landlord under this Lease, including, but not limited to, any notices required or permitted to be delivered by Landlord to Tenant hereunder, may, at Landlord's option, be exercised or performed by Landlord's agent or attorney.

Except as otherwise set forth in this Lease (e.g., provisions relating to the Airport Manager and Manager Persons), this Lease 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.

Except as otherwise expressly provided in this Lease, nothing in this Lease 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, or Airport Manager, its owners, officers, employee, representatives, and agents, are or may be entitled, including, without limitation, any waiver of immunity to suit.

Notwithstanding any provision of this Lease, Landlord makes no representation that this Lease or any provision hereof will entitle or allow Tenant to receive any federal income or other federal tax benefit whatsoever.

Section 47. Severability:

If any provision in this Lease should be held to be invalid, illegal, or unenforceable, the validity and enforceability of the remaining provisions of this Lease shall not be affected thereby, and the invalid, illegal, or unenforceable term will be reformed to give effect (to the fullest extent possible) to the Parties' intentions in a manner that is legal, valid, and enforceable. It is the parties' intent that the term of this Lease not exceed 40 years (480 months); should it be determined the term exceeds such period of time, the term hereof shall be reformed so as to make the term not exceed such period of time.

Section 48. Notices:

Any notice or document required to be delivered or given hereunder in writing shall be delivered or given (i) in person, (ii) by United States mail, postage prepaid, registered or certified mail, return receipt requested, or (iii) by Federal Express Corporation or other nationally recognized carrier to be delivered on the next business day. Such notice or document shall be deemed to be delivered or given, whether actually received or not, (a) when received if delivered or given in person, (b) if sent by United States mail, three (3) business days after being deposited in the United States mail as set forth above, and (c) on the next business day after the day the notice or document is provided to Federal Express Corporation or other nationally recognized carrier to be delivered as set forth above. Addresses for the delivery or giving of any such notice or document are as follows:

TO LANDLORD:

Town of Addison, Texas
c/o City Manager
5300 Belt Line Road

TO TENANT:

Black Forest Aviation RE LLC
24 Waterway Avenue, Suite 225
The Woodlands, Texas 77380

Dallas, Texas 75254
Email: wpierson@addisontx.gov

Attention: Mr. Jonathan Hitchcock

and

Town of Addison, Texas
c/o Addison Airport Manager
16051 Addison Road, Suite 220
Addison, Texas 75001
Attn: Real Estate Manager
Email: bill.dyer@addisonairport.net

and

Messer, Rockefeller and Fort, PLLC
Attn: Brenda N. McDonald
6371 Preston Road, Suite 200
Frisco, Texas 75034
Email: brenda@txmunicipallaw.com

Section 49. Fees or Commissions:

Each Party hereto hereby covenants and agrees with the other that such Party shall be solely responsible for the payment of any brokers', agents' or finders' fees or commissions agreed to by such party arising from the execution of this Lease or the performance of the terms and provisions contained herein, and such Party agrees to indemnify and hold the other Party harmless from the payment of any such fees or commissions.

Section 50. Counterparts:

This Lease may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

Section 51. Consent; "Includes" and "Including"; Recitals:

Where Landlord consent or approval is required in this Lease, such consent or approval may be given by the City Council of the Town of Addison, Texas or by the City Manager of the Town of Addison. For purposes of this Lease, "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. The above and foregoing recitals to the Lease are true and correct and are incorporated into and made a part of this Lease for all purposes.

Section 52. Governing Law and Venue; Survivability of Rights and Remedies:

This Lease and all of the transactions contemplated herein 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 Lease 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. Any rights and remedies either party may have with respect to the other arising out of the performance of or failure to perform this Lease during the term hereof shall survive the cancellation, expiration or termination of this Lease.


Section 53. INTENTIONALLY DELETED

Section 54. Entire Agreement and Amendments; Authorized Persons:

This Lease, consisting of fifty-four (54) Sections and Exhibits 1-8 and Addendum #1 attached hereto, embodies the entire agreement between Landlord and Tenant and supersedes all prior agreements and understandings, whether written or oral, and all contemporaneous oral agreements and understandings relating to the subject matter hereof. Except as otherwise specifically provided herein, no agreement hereafter made shall be effective to change, modify, discharge or effect an abandonment of this Lease, in whole or in part, unless such agreement is in writing and signed by or in behalf of the party against whom enforcement of the change, modification, discharge or abandonment is sought.

The undersigned representatives of the Parties hereto are the properly authorized persons and have the necessary authority to execute this Lease on behalf of their entity.

EXECUTED as of the Day, month and year first-above written.

TENANT:	LANDLORD:
BLACK FOREST AVIATION RE, LLC	CITY OF ADDISON, TEXAS
By: 	By: _____
Printed Name: <u>Jonathan Hitchcock</u>	Wesley S. Pierson, City Manager
Its: <u>CEO and Vice President</u>	

ACKNOWLEDGEMENTS

STATE OF TEXAS
COUNTY OF DALLAS

This instrument was acknowledged before me on _____, 201_ by
Wesley S. Pierson, City Manager of the City of Addison, Texas, a home-rule municipality, on behalf
of the said municipality.

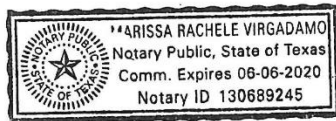
GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the ____ day of
_____, 201_.

Notary Public, State of Texas

STATE OF TEXAS
COUNTY OF Montgomery

This instrument was acknowledged before me on November 30, 2018, by
Jonathan Hitchcock CFO/Vice President of Black Forest Aviation RE, LLC, a Texas
limited liability company, on behalf of the said limited liability company.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 30 day of
November, 2018.



Marissa Rachele Virgadamo
Notary Public, State of Texas

Exhibit 1

Legal Description of Addison Airport

The property platted pursuant to the Final Plat, Addison Airport, recorded as Instrument #200503420292 in the Dallas County, Texas Official Public Records as depicted on the following two pages.

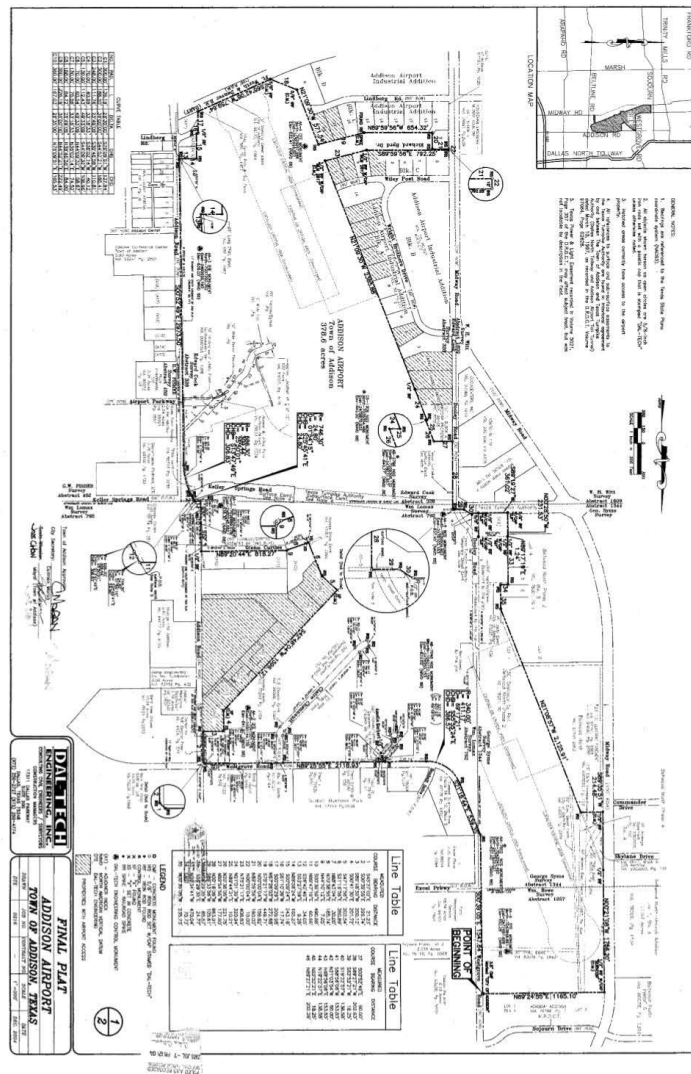


Exhibit 2

Boundary Survey of Demised Premises

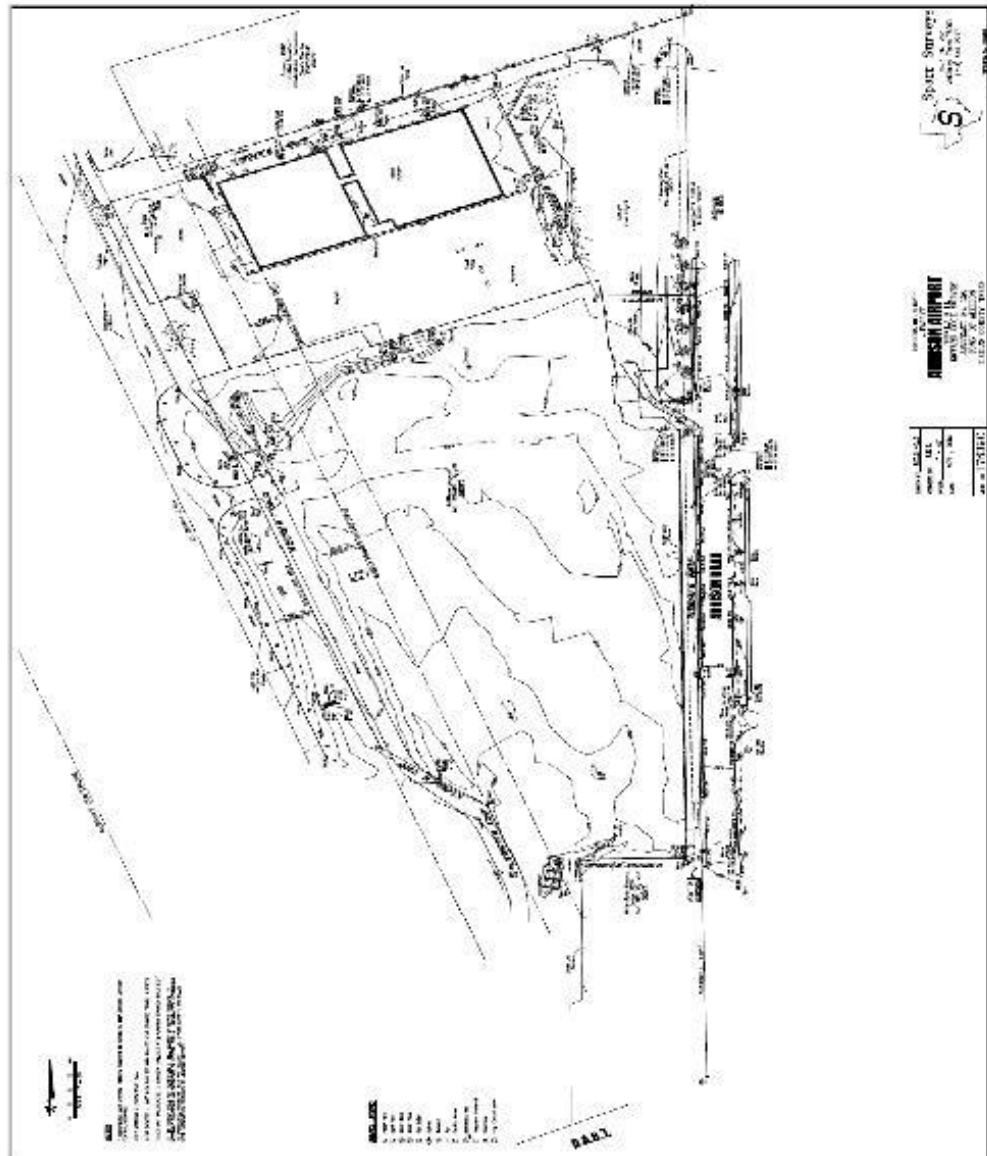


Exhibit to Ground Lease Agreement

Exhibit 3

Legal Description of Demised Premises

Property #3500 At Addison Airport

BEING a tract of land situated in the Edward Cook Survey, Abstract No. 326, Dallas County, Texas, and being a part of the Final Plat of Addison Airport, an addition to the Town of Addison, Texas, according to the plat thereof recorded in Volume 2005131, Page 82 of the Deed Records of Dallas County, Texas (DRDCT), and being more particularly described as follows:

BEGINNING at a 5/8-inch iron rod set with plastic cap stamped 'Sparr Surveys' in the west line of Addison Road (variable width right-of-way), at the northeast corner of the remainder portion of a tract of land as described in deed to the White Rock Masonic Lodge #234 recorded in Volume 3981, Page 416 DRDCT, from which a 1/2-inch iron rod found at the intersection of the west line of said Addison Road with the north line of a Dallas Area Rapid Transit right-of-way bears South 01 degrees 09 minutes 29 seconds East, 378.49 feet;

THENCE North 89 degrees 58 minutes 24 seconds West, departing the west line of said Addison Road, along the north line of said Masonic Lodge tract, at a calculated distance of 164.21 feet passing the northwest corner of said Masonic Lodge tract, in all a distance of 255.40 feet to a magnetic nail set with flasher stamped 'RPLS 3701';

THENCE North 21 degrees 07 minutes 31 seconds West, at all times remaining 500.00 feet northeast of and parallel to the runway centerline of said Addison Airport, 102.47 feet to a magnetic nail set with flasher stamped 'RPLS 3701';

THENCE North 54 degrees 58 minutes 24 seconds West, 179.00 feet to feet to a 5/8-inch iron rod set with plastic cap stamped 'Sparr Surveys';

THENCE North 21 degrees 07 minutes 31 seconds West, at all times remaining 400.30 feet northeast of and parallel to the runway centerline of said Addison Airport, 1024.32 feet to a magnetic nail set with flasher stamped 'RPLS 3701';

THENCE North 69 degrees 09 minutes 18 seconds East, 559.70 feet to a magnetic nail set with flasher stamped 'RPLS 3701';

THENCE South 21 degrees 28 minutes 09 seconds East, 391.70 feet to a 5/8-inch iron rod set with plastic cap stamped 'Sparr Surveys';

THENCE North 89 degrees 07 minutes 11 seconds East, 126.44 feet to a 5/8-inch iron rod set with plastic cap stamped 'Sparr Surveys' in the west line of said Addison Road;

THENCE South 00 degrees 52 minutes 49 seconds East, along the west line of said Addison Road, 990.63 feet to the **POINT of BEGINNING** and **CONTAINING** 15.68 acres of land.

Exhibit 4

Approved Site Plan

(Intentionally Left Blank – Please refer to Exhibit 5)

Exhibit 5

Description of Building Improvements to Be Constructed

It is the mutual intention of the Parties hereto for Tenant to erect and/or construct to or on the Demised Premises the Building Improvements generally described in this Exhibit 5 as follows:

An approximately 20,000 sq. ft. FBO Facility with three (3) 39,000 sq. ft. hangars, additional lean-to space, over 200,000 sq. ft. of aircraft ramp, and related automobile parking with an expected Construction Value to exceed no less than Fifteen Million Dollars (\$15,000,000.00) (separate and apart from the cost of design).

This Exhibit 5 hereby incorporates herein by reference the complete set of comprehensive As-Built drawings and related documentation required of Tenant upon its Final Completion of the Building Improvements as defined in Section 6.B.10. of the Ground Lease.

Exhibit 6

Form of Irrevocable Standby Letter of Credit

[Lender Letterhead]

_____, 2018

Town of Addison, Texas
c/o City Manager
5300 Belt Line Road
Dallas, Texas 75254
Email: wpierson@addisontx.gov

Dear Mr. Pierson:

At the request of _____ [TENANT] _____, we have established in your favor the enclosed Irrevocable Standby Letter of Credit # _____, in an amount not to exceed _____ and ____/100 Dollars (\$_____.00).

Please examine this instrument carefully. If you are unable to comply with the terms and conditions, please communicate with the applicant to arrange for an amendment.

All drawings under this credit must be accompanied by the original Letter of Credit for endorsement.

If we can be of further assistance, please do not hesitate to call us at _____.

Sincerely,

_____ [LENDER]

By: _____
Name: _____
Title: _____

Enclosure

cc: _____ [TENANT] _____

Attention: _____

[Lender Letterhead]

IRREVOCABLE LETTER OF CREDIT # _____

Date: _____, 2018

Beneficiary:

Town of Addison, Texas
c/o City Manager
5300 Belt Line Road
Dallas, Texas 75254
Email: wpierson@addisontx.gov

Applicant:

[TENANT]

Attention: _____

Gentlemen:

We hereby issue our Irrevocable Standby Letter of Credit # _____ in favor of Beneficiary. This Letter of Credit is effective up to the aggregate amount of _____ and No/100 Dollars (\$_____.00) available by draft drawn on Issuer at sight, marked "Drawn under Irrevocable Standby Letter of Credit # _____" accompanied by the following:

1. Beneficiary's written statement purportedly signed by its authorized representative reading as follows: "The undersigned is authorized to make the following statement on behalf of Town of Addison, Texas ("Beneficiary"). Beneficiary hereby certifies that an "Event of Default", as defined in Section 23 of the Lease, has occurred under that certain Ground Lease Agreement dated _____, 2018, between Beneficiary and Applicant (the "Lease") with respect to the construction of the Building Improvements, as defined therein, and that such default is ongoing. The amount of the draft presented represents the amount known by me to be required to complete construction of the Building Improvements under the Lease."
2. This original Letter of Credit and any amendments thereto (if any). In the event of a partial drawing the original Letter of Credit will be endorsed and returned to you, unless the Letter of Credit has expired or the amount available is reduced to zero.

Special Conditions:

1. Partial drawings are permitted under this Letter of Credit.
2. Other than Beneficiary's statement required above, the Issuer shall require no further substantiation of the occurrence of such an Event of Default, consent of Applicant, or proof of the necessity of the draw.
3. This Letter of Credit sets forth in full the terms of our undertaking and such undertaking shall not in any way be modified, amended or amplified by reference to any document, instrument or agreement referred to herein or to which this Letter of Credit relates, and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement.
4. Except as expressly stated herein, this undertaking is not subject to any agreement, condition or qualification.

We hereby engage with you that documents drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented for payment to [LENDER], at _____, Attention: _____, prior to 5:00 pm on or before _____, 201__.

This Letter of Credit is subject to and governed by the Uniform Customs and Practice for Documentary credits of the International Chamber of Commerce (Publication 600, 2007 Revision).

_____[LENDER]_____

By: _____
Name: _____
Title: _____

Exhibit 7

MASTER LANDLORD SUBLEASE CONSENT

GROUND LEASE TENANT & MASTER LEASE INFORMATION

Name of Tenant as "Tenant"		
Primary Contact		
Legal Notice Address:		
Telephone:		Ground Lease No: _____
E-mail Address:		Effective Date of Ground Lease: _____ ("Master Lease Effective Date")

SUBLEASE AGREEMENT (the "Sublease")

<u>Sublease Agreement Date:</u>	<u>Commencement Date:</u>	<u>Expiration Date:</u>
Describe Renewal Options (if applicable):		

Subtenant Name: as "Subtenant"			"State" of Registration (if applicable)
DBA:			
"Entity Type"	<input type="checkbox"/>	Corporation	<input type="checkbox"/> Partnership
	<input type="checkbox"/>	Limited Liability Company (LLC)	<input type="checkbox"/> Joint Venture
	<input type="checkbox"/>	Sole Proprietorship	<input type="checkbox"/> Individual
	<input type="checkbox"/>	Other: (Describe)	
Primary Contact:			Title:
Address of Leased Premises			
Telephone:			E-mail:
Website:	<input type="checkbox"/> Please include in Airport Directory (See Page 2 for additional information)		

SECONDARY COMPANY CONTACT INFORMATION

Name:		Title:
Telephone:		E-mail

EMERGENCY / AFTER HOURS CONTACT INFORMATION

Name:		Title:
Telephone:		E-mail

BASED AIRCRAFT REGISTRATION (use an additional sheet if needed)

N #	Make	Model	Year

PERMITTED USE OF SUBLEASED PREMISES SUBJECT TO MASTER LEASE- (check all that apply)

<input type="checkbox"/>	Aircraft Sales & Rentals	<input type="checkbox"/>	Aircraft Maintenance & Repairs
<input type="checkbox"/>	Air Cargo Operations	<input type="checkbox"/>	Instruction/Training
<input type="checkbox"/>	Corporate Aircraft Storage & Flight Ops.	<input type="checkbox"/>	Office & General Administration
<input type="checkbox"/>	Fractional Ownership/Charter Operations	<input type="checkbox"/>	Personal Aircraft Storage Only
<input type="checkbox"/>	Other (describe):	<input type="checkbox"/>	Other (describe)

AERONAUTICAL BUSINESS SERVICES AND AFFILIATIONS (choose from the list below)

Primary Business Type:	Secondary Business Type:
------------------------	--------------------------

ANCILIARY SERVICES SUBTENANT PROVIDES (choose all that apply)

<input type="checkbox"/>	Aircraft Air Conditioning	<input type="checkbox"/>	Aviation Support	<input type="checkbox"/>	Government Contracts
<input type="checkbox"/>	Aircraft Cleaning	<input type="checkbox"/>	Avionics Sales/Repair	<input type="checkbox"/>	Hangar Development
<input type="checkbox"/>	Aircraft Sales - Turbine	<input type="checkbox"/>	Charter - Cargo	<input type="checkbox"/>	Hangar Management
<input type="checkbox"/>	Aircraft Sales - Piston	<input type="checkbox"/>	Charter - Passenger	<input type="checkbox"/>	Hangar/Office Leasing
<input type="checkbox"/>	Airport Management	<input type="checkbox"/>	Concessions	<input type="checkbox"/>	Helicopter Maintenance
<input type="checkbox"/>	AMP Testing	<input type="checkbox"/>	Corporate Flight Dept.	<input type="checkbox"/>	Helicopter Repairs
<input type="checkbox"/>	Aviation Consulting	<input type="checkbox"/>	Fixed Base Operator	<input type="checkbox"/>	Instrument Sales/Repair
<input type="checkbox"/>	Aviation Insurance	<input type="checkbox"/>	Flight Instruction	<input type="checkbox"/>	Interior Design/Refurbishment
<input type="checkbox"/>	Aviation Maintenance/Heavy	<input type="checkbox"/>	Fractional Ownership	<input type="checkbox"/>	Museum
<input type="checkbox"/>	Aviation Maintenance/Light	<input type="checkbox"/>	Fuel Tank Inspect/Repair	<input type="checkbox"/>	Pilot Shop

FAA & OTHER CERTIFICATIONS

(Underlined terms are defined as first given above)

The Town of Addison, Texas (the "Master Landlord") is the sole Landlord under that certain Ground Lease/Lease Agreement dated as of the Master Lease Effective Date wherein by way of any assignment, amendment, modification or other act, the above-named Tenant is the Tenant of the Ground Lease/Lease Agreement described above. Together with any and all assignments, modifications and amendments thereto, if any, the Ground Lease/Lease Agreement is hereinafter referred to as the "Master Lease," by the terms of which Tenant leased from Master Landlord certain property referred to as the "Demised Premises," "Leased Premises," or "Premises" (or such similar term) in the Master Lease (referred to herein as the "Demised Premises") located at Addison Airport within the Town of Addison, Texas, said property being more particularly described in said Master Lease. Tenant is hereby seeking Master Landlord's consent to the sublease ("Consent to Sublease") by Tenant of all or a part of the Demised Premises, which part is described in the Sublease, to the Subtenant so named above, pursuant to that Sublease Agreement described above (the "Sublease"), on the following terms and conditions:

Based on Tenant's representations, Master Landlord hereby consents to the Sublease on the following terms and conditions:

1. Tenant shall remain fully liable for the performance of each and every term, provision, covenant, duty and obligation of the Tenant under the Master Lease including, without limitation, the duty to make any and all payments of rent. This Consent to Sublease shall in no way release Tenant from any of its covenants, agreements, liabilities and duties under the Master Lease. Within five (5) days of written demand by Master Landlord, Tenant and/or Subtenant shall deliver a true and correct copy of the Sublease as it may be amended or modified from time to time. This Consent to Sublease does not constitute approval by Master Landlord of the terms of the Sublease. Nothing herein contained shall be deemed a waiver or release of any of the Master Landlord's rights under the Master Lease.

2. No further subletting or assignment, conveyance, or other transfer of all or any portion of the Demised Premises shall be made without the prior written consent of the Master Landlord, except as otherwise provided in Master Lease.

3. Subtenant's use and occupancy of the Demised Premises shall be subject to all of the terms and conditions of the Master Lease, Subtenant agrees not to violate the terms and provisions of the Master Lease and in the event of any conflict between the terms of the Master Lease and the terms of the Sublease, the terms of the Master Lease shall control (and, without limiting the foregoing, the Demised Premises shall never be used for any purpose other than as permitted by the Master Lease, and this Consent to Sublease does not constitute and is not consent to any use on or within the Demised Premises which is not permitted by the Master Lease).

4. Subtenant shall be obligated to obtain Master Landlord's consent to any action as to which Tenant is obligated to obtain such consent under the Master Lease.

5. The Sublease shall automatically terminate upon termination of the Master Lease, notwithstanding any other provision of the Sublease to the contrary. Master Landlord has no obligation to communicate such termination to Subtenant.

6. Tenant shall be fully liable for any violation by Subtenant of any of the terms and conditions of the Master Lease.

7. Master Landlord shall have no obligation for the performance by Tenant of its obligations under the Sublease. Neither this Consent to Sublease, the exercise by Master Landlord of its rights hereunder, nor the Sublease or any other instrument shall give Subtenant any rights directly or indirectly against Master Landlord or create or impose any obligation, duty, responsibility, or liability of Master Landlord in favor of or for the benefit of Subtenant.

8. In the event of the occurrence of an event of default under the Master Lease by Tenant while the Sublease is in effect, Master Landlord, in addition to any other rights or remedies provided in the Master Lease or by law, in equity, or otherwise, may at Master Landlord's option, collect directly from the Subtenant all rents becoming due under the Sublease and apply such rent against any sums due to Master Landlord. No direct collection by Master Landlord from Subtenant shall release Tenant from the payment or performance of Tenant's obligations under the Master Lease; provided that if Master Landlord collects any rents directly from Subtenant pursuant to this paragraph, Subtenant shall be released from its obligations to pay such rents to Tenant.

9. Tenant and Subtenant each hereby represent and warrant to Master Landlord that other than the Sublease, there are no agreements or understandings, whether written or oral between Tenant and Subtenant with respect to Subtenant's use and occupancy of the Demised Premises or any property of Tenant located therein.

10. Tenant and Subtenant each hereby covenants and agrees with Master Landlord that Tenant and Subtenant shall **defend, indemnify and hold harmless** Master Landlord, its elected officials, its officers, employees, representatives and agents from and against any and all claims, liabilities and obligations to any broker or agent in connection with the Sublease, including, without limitation, any reasonable attorneys' fees and costs incurred by Master Landlord in connection therewith.

11. If Subtenant is to operate as a commercial aeronautical service provider pursuant to the Sublease Agreement, Tenant hereby warrants and represents to Master Landlord that Tenant has delivered to Subtenant a complete copy of the *Addison Airport Minimum Standards and Requirements for Commercial Aeronautical Service Providers* and the *Addison Airport Rules and Regulations*, and Subtenant hereby acknowledges and warrants and represents to Master Landlord that Subtenant has received the same and shall comply with the requirements set forth therein.

12. Tenant and Subtenant attest, warrant and represent to Master Landlord that all information given herein is true and correct.

This Master Landlord's Consent to Sublease shall not be effective unless and until an original copy executed by all parties has been returned to Master Landlord, attention Real Estate Manager, Addison Airport, 16051 Addison Road, Suite 220, Addison, TX 75001.

ACKNOWLEDGED AND AGREED TO this _____ day of _____, 2015.

Tenant:

By: _____
(Signature)

(Printed Name)

Title: _____

Date: _____

Subtenant:

By: _____
(Signature)

(Printed Name)

Title: _____

Date: _____

Recommended by Airport Manager

By: _____
(Signature)

(Printed Name)

Title: _____

Date: _____

**Master Landlord
Town of Addison, Texas**

By: _____
(Signature)

(Printed Name)

Title: _____

Date: _____

Exhibit 8

MEMORANDUM OF GROUND LEASE

AFTER RECORDING RETURN TO:

Addison Airport Management
c/o Real Estate Manager
16051 Addison Road, Suite 220
Addison, Texas 75001

MEMORANDUM OF LEASE

This Memorandum of Lease is dated as of _____, 2018, and executed by and between the Town of Addison, Texas, a home-rule municipality ("Landlord" or "City") and Black Forest Aviation RE, LLC, a Texas limited liability company ("Tenant"). Capitalized terms not otherwise defined in this Memorandum will have the same meaning ascribed to such terms in the Ground Lease.

WHEREAS, a Ground Lease was executed on _____, 2018 (the "Ground Lease") between Landlord and Tenant wherein Landlord leased to Tenant and Tenant leased from Landlord a certain parcel of land owned by the City and located at and within Addison Airport ("Airport"), more fully described in Exhibit "A" attached hereto and made a part hereof, and in that certain boundary survey dated _____, which property is now commonly referred to as (Address to be Determine) Addison Road; and

WHEREAS, the Term of the Ground Lease begins on the Commencement Date and continues for four hundred-eighty (480) full calendar months; and

WHEREAS, the address of Landlord as set forth in the Ground Lease is:

Town of Addison, Texas
c/o City Manager
5300 Belt Line road
Dallas, Texas 75254

and

Town of Addison, Texas
c/o Addison Airport Manager
16051 Addison Road, Suite 220
Addison, Texas 75001
Attn: Real Estate Manager

and;

WHEREAS, the address of Tenant as set forth in the Ground Lease is:

Black Forest Aviation, RE LLC
24 Waterway Avenue, Suite 225
The Woodlands, Texas 77380

NOW THEREFORE, this Memorandum of Lease is solely for recording and notice purposes and shall not be construed to alter, modify, expand, diminish or supplement the provisions of the Ground Lease, as amended. In the event of any inconsistency between the provisions of this Memorandum of Lease and the provisions of the Ground Lease, as amended, the provisions of the Ground Lease, as amended, shall govern. Reference should be made to the Ground Lease (and all amendments thereto) for the full description of the rights and duties of Landlord and Tenant thereunder, and this Memorandum of Lease shall in no way affect the terms and conditions of the Ground Lease (including all amendments thereto) or the interpretation of the rights and duties of Landlord and Tenant thereunder.

IN WITNESS WHEREOF, the undersigned parties have executed this Memorandum of Lease on the day and the year first set forth above.

Tenant: Black Forest Aviation RE LLC

Landlord: Town of Addison, Texas

By: _____

By: _____

Wesley S. Pierson, City Manager

Printed Name: _____

Title: _____

ACKNOWLEDGEMENT

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared _____, _____ of Black Forest Aviation RE LLC, a Texas limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein stated.

GIVEN under my hand and seal of office this _____ day of _____, 2018.

[SEAL]

By: _____
Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared Wesley S. Pierson, city manager of the Town of Addison, a home-rule municipality, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein stated.

GIVEN under my hand and seal of office this _____ day of _____, 2018.

[SEAL]

By: _____
Notary Public, State of Texas

EXHIBIT A
to Memorandum of Lease

LEGAL DESCRIPTION OF DEMISED PREMISES

[THE PARTIES SHALL INSERT THE LEGAL DESCRIPTION OF
THE DEMISED PREMISES AGREED TO DURING THE
INSPECTION PERIOD BEFORE RECORDATION OF THE
MEMORANDUM OF LEASE.]

Lease Addendum #1

Tenant's Leasehold Minimum Maintenance and Repair Standards and Practices

I. Purpose: Pursuant to Section 11 (or elsewhere as provided for) of the Lease³ the Tenant is required to maintain the Demised Premises and all improvements, fixtures, equipment and personal property thereto in "good repair and in a first class condition" and in accordance with all applicable ordinances, codes, rules and regulations of or adopted by the City of Addison or any regulating agency with oversight of any or all portions of the Demised Premises throughout the Term as it may be extended or otherwise amended.

Additionally, Section 28 entitled Title to Improvements provides, among other things, Tenant shall own and hold title to any building improvements constructed on the Demised Premises and upon the expiration or early termination of the ownership of said building improvements, said building improvements shall merge with the title of the Demised Premises and become the property of the Landlord. Landlord may, at Landlord sole discretion, elect Tenant to: (i) deliver to Landlord the Demised Premises clean and free of trash and in good repair and condition in accordance with these Tenant's Leasehold Minimum Maintenance and Repair Standards and Practices together with all fixtures and equipment situated in the Demised Premises with reasonable wear and tear excepted; or (ii) prior to the expiration or early termination of the Term, demolish and remove or cause to be removed from the Demised Premises all building improvements together with any fixtures or equipment remaining and restore the Demised Premises to reasonably the same condition it was found immediately prior to taking possession of the Phase I or Phase II Demised Premises as the case may be. Such demolition and removal shall be performed at Tenant's sole cost and risk in accordance with all prevailing ordinances, codes, rules and regulations governing same.

Therefore, these Tenant's Leasehold Minimum Maintenance and Repair Standards and Practices ("Maintenance Standards") hereby set forth in general the minimum level of standard of maintenance and repair or practice the Landlord expects of Tenant and Tenant (or any of its successors and, or assigns) agrees to be obliged in order to comply with the terms and conditions of the Lease.

II. Governing Standard or Practice: Section 8.A. of the Lease states the Tenant agrees to comply with all laws, ordinances, rules, regulations, directives, permits, policies or standards of any governmental authority, entity, or agency affecting the use of the Demised Premises; and any "Construction/Maintenance Standards and Specifications" published by Landlord or its Airport Manager governing such matters at Addison Airport. Section 11.B. of the Lease states "Should

³ All capitalized terms used in these Tenant's Minimum Leasehold Maintenance Standards and Procedures are as used and defined in the underlying Lease unless otherwise defined herein.

there ever arise a conflict between the degree of standard or duty to practice any such standard or practice between [these Maintenance Standards] and any new construction and maintenance and repair standard so adopted by the Landlord, the standard and/or practice representing the higher or greater degree of standard and/or practice shall prevail as if such higher degree of standard and/or practice is incorporated into and made a part of these [Maintenance Standards].

III. Terminology Used: Unless otherwise provided herein, the definition and/or the description of certain terms used or referred to below shall be the same as defined in the Lease or ASTM International Standard E2018-15⁴ (as it may be amended or modified from time to time or its equivalence as generally accepted by the United States commercial real estate industry at the time).

For the purpose herein, the standard being in “good repair and in first-class condition” generally means when the building component or system is serving its designed function, is of working condition and operating well, shows evidence of being well taken care of and does not require immediate or short-term repairs above its *de minimis* threshold or does not evidence a material physical deficiency.

Building System – Interacting or independent components or assemblies, which form single integrated units that comprise a building and its site work, such as pavement and flatwork, structural frame, roofing, exterior walls, plumbing, HVAC, electrical, etc. (ASTM E2018-15).

Component – A portion of a building system, piece of equipment, or building element (ASTM E2018-15).

Deferred Maintenance – Physical deficiencies that could have been remedied with routine maintenance, normal operating maintenance, etc., excluding *de minimus* conditions that generally do not present a material physical deficiency to the subject property (ASTM E2018-15).

Effective Age – The estimated age of a building component that considers actual age as affected by maintenance history, location, weather conditions, and other factors. Effective Age may be more or less than actual age (ASTM E2018-15).

Engineer: Designation reserved by law for a person professionally qualified, examined, and licensed by the appropriate governmental board having jurisdiction, to perform engineering services (ASTM E2018-15).

Expected Useful Life – The average amount of time in years that an item, component or system is estimated to function without material repair when installed new and assuming routine maintenance is practiced (ASTM E2018-15).

Fair Condition – To be found in working condition but may require immediate or short-term repairs above the *de minimis* threshold of not evidencing a material physical deficiency (ASTM E2018-15).

⁴ ASTM Designation E2018-15; November 2015 ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken PA 19428-2929, United States

Normal Wear and Tear - Defined as deterioration that results from the intended use of the commercial premises, including breakage or malfunction due to age or deteriorated condition, but the term does not include deterioration that results from negligence, carelessness, accident or abuse of the premises, equipment or chattels by the Tenant, by a guest or invitee of the Tenant (Section 93.006[b]); Chapter 93 of the Texas Property Code entitled "Commercial Tenancies"

Physical Deficiency(ies) – The presence of a conspicuous defect or defects and/or material deferred maintenance of a subject property's material systems, components, or equipment as observed. Specifically excludes deficiencies that may be remedied with routine maintenance, miscellaneous minor repairs, normal operating maintenance, etc. (ASTM E2018-15).

Poor Condition – Found not to be in working condition or requires immediate or short-term repairs substantially above the *de minimis* threshold of not evidencing a material physical deficiency (ASTM E2018-15).

Routine Maintenance - Repair that does not require specialized equipment, professional services, or licensed contractors but, rather can be corrected within the budget and skill set of typical property maintenance staff (ASTM E2018-15).

IV. Baseline Property Condition Assessment: Beginning on or about the tenth (10th) anniversary but no later than the twelfth (12th) anniversary of the Term, Tenant shall procure, at the sole cost of Tenant, a Property Condition Assessment baseline report (PCA) to be prepared, written and signed by a licensed professional engineer qualified to assess the condition of the Demised Premises and all Building Improvements, fixtures and equipment made a part thereto pursuant to the then-operative version of ASTM International Standard Designation E2018 as of the date the PCA is performed. If at that time, for any reason, ASTM International no longer publishes standards for conducting property condition assessments for commercial real estate in the United States, Landlord and Tenant shall mutually agree to adopt another similar standard of practice to be performed by qualified third Parties recognized and accepted by the commercial real estate industry in the United States.

For any portion of the Demised Premises designed and constructed with the intent to be used for the storage and movement of aircraft, the PCA shall also include an aircraft pavement condition assessment performed for such areas in accordance with FAA Advisory Circular 150/5380-7A "Airport Pavement Management Program" and ASTM Standard Designation D5340 "Standard Test Method for Airport Pavement Condition Index Surveys" (or their respective operative standard in effect at the time of the PCA report date). If no such standard exists at the time, the pavement condition assessment shall be performed based on prevailing industry standards as of the date of the assessment.

A. Within thirty (30) days of the published date of the PCA report Tenant shall deliver to Landlord a complete signed original copy of the PCA report together with the aircraft pavement condition assessment, if any, together with:

(1.) "Tenant's Remedy Plan", a written plan prepared by Tenant itemizing and given in sufficient detail Tenant's plan to remedy and cure, at Tenant's sole cost and

expense, any and all Physical Deficiencies and, or Deferred Maintenance matters identified and communicated in the PCA report. Tenant's Remedy Plan shall indicate, among other things, that all work will be completed in a good and workman like condition pursuant to all local building codes and ordinances as required by the Lease within one hundred and eighty (180) calendar days from the date of the PCA's published report date (the "Remedy Period") unless otherwise agreed to in writing by Landlord.

(a.) If the pavement condition index (PCI ⁵) score reflects a score less than 70 (or its equivalence) the Tenant's Remedy Plan shall set forth in sufficient detail Tenant's intended remedy and cost estimate necessary to increase the aircraft pavement PCI score to a minimum of 70 within the Remedy Period.

(b.) In the event the PCA recommends supplemental testing or evaluation of any building component including, but not limited to, structural, building envelope, roofing, HVAC, plumbing, electrical, fire alarm and suppression, elevator, hangar door and/or door operators, environmental and ADA, Tenant's Remedy Plan shall reflect Tenant's plan to complete such supplemental investigations as recommended within the Remedy Period.

(2.) **"Tenant's Facility Maintenance and Repair Plan"** (or "Maintenance Plan") which sets forth in sufficient detail Tenant's stated itemized objectives to maintain and keep all building components and systems, pavement and landscaped areas in good condition and repair together with any planned capital repairs, including those cited in the PCA report and any capital improvements planned within the next ten (10) years following the PCA published report date. Additionally, the Maintenance Plan should include but not be limited to the following:

(a.) Tenant's schedule and checklist for periodic self-inspection of all major building components and systems on annualized basis.

(b) Tenant shall periodically update the Maintenance Plan to reflect scheduled repairs made together with itemized repair costs given, new conditions found as a result of Tenant's periodic self-inspections and Tenant's plan to maintain or repair said condition.

B. If Tenant fails to deliver to Landlord a complete signed original Baseline PCA Report, Tenant's Remedy Plan and Tenant's Facility Maintenance and Repair Plan as required herein. Landlord may provide written notice thereof to Tenant. Tenant shall have sixty (60) days after receipt of such notice to provide such report or plan. Tenant's failure

⁵ The **Pavement Condition Index (PCI)** is a numerical index between 0 and 100 which is used to indicate the general condition of a pavement. It is widely used in transportation civil engineering. It is a statistical measure and requires manual survey of the pavement. PCI surveying processes and calculation methods have been standardized by ASTM for both roads and airport pavements (see ASTM D5340 - 11: Standard Test Method for Airport Pavement Condition Index Surveys).

to provide the documentation required herein shall be considered an Event of Default of the Lease subject to the Landlord written notice and Tenant cure period specified in Section 23 of the Lease. Tenant's failure to promptly remedy any Physical Deficiency(ies) identified and communicated in any PCA report as required herein is also considered an Event of Default under the Lease subject to the Landlord written notice and Tenant cure period specified in Section 23 of the Lease. In the event of such default(s), in addition to all other rights and remedies available to Landlord under the Lease and by law, Landlord may, but not be obligated to, cause such reports and plans to be prepared and implemented as deemed commercially reasonable; and all reasonable costs therefore expended by Landlord plus interest thereon as provided for in Section 39 of the Lease shall be paid by Tenant upon demand.

V. Requirement for Subsequent Baseline Property Condition Report Updates, Tenant Remedy Plan Updates and Tenant's Facility Maintenance and Repair Plan Updates:

A. Upon each ten (10) year anniversary of the Term (but not later than two (2) years after each 10-year anniversary) Tenant shall procure, at its sole cost and expense, a PCA update (including aircraft pavement condition assessment) with the subsequent PCA report being of similar form and scope as the initial baseline PCA outlined above. Consideration should be given to the age of all building components and whether any special assessments might be warranted. Within thirty (30) days of the published date of the subsequent PCA report, Tenant shall deliver to Landlord a complete signed original of the subsequent PCA report together with the aircraft pavement condition assessment findings. Simultaneously, Tenant shall deliver to Landlord its Tenant Remedy Plan setting forth Tenant's itemized and detailed plan for remedying and curing all Physical Deficiencies and/or Deferred Maintenance matters identified and communicated in the subsequent PCA report. Similarly, Tenant shall also deliver to Landlord Tenant's Facility Maintenance and Repair Plan updated to reflect the most recent subsequent PCA report findings and recommendations.

B. With no more than seventy-two (72) and no less than sixty (60) months remaining until the Lease Expiration Date, Tenant shall procure, at its sole cost and expense, a final PCA report (including aircraft pavement condition assessment) with the final PCA report being of similar form and scope as the initial baseline PCA outlined above (the "Final PCA Report"). Consideration should be given to the age of all building components and whether any special assessments might be warranted. Within thirty (30) days of the published date of the Final PCA Report, Tenant shall deliver to Landlord a complete signed original of the Final PCA Report together with the aircraft pavement condition assessment findings. Simultaneously, Tenant shall deliver to Landlord its Tenant Remedy Plan setting forth Tenant's itemized and detailed plan for remedying and curing all Physical Deficiencies and/or Deferred Maintenance matters identified and communicated in the Final PCA Report. Similarly, Tenant shall also deliver to Landlord Tenant's Facility Maintenance and Repair Plan updated to reflect the Final PCA Report findings and recommendations which are to be implemented through the Lease Expiration Date.

VI. Qualification of Property Condition Reviewer: The qualifications of a third-party consultant performing or overseeing the PCA shall be:

- Licensed in the state of Texas as a professional architecture or engineer;
- Demonstrated experience working with general aviation type properties;
- Having working knowledge of relevant FAA Advisory Circulars and ASTM Standards relating to facility and pavement maintenance and survey standards affecting the subject property type and scope (size and complexity, etc.); and
- Experience preparing property condition reports.

VII. *Record Retention:* Throughout the Term Tenant shall diligently gather and retain in an orderly manner all documentation affecting and relating to the Building Improvements and any fixtures or equipment made a part of the Demised Premises. To the extent possible the Tenant shall retain digital copies of all such documentation, which can be easily reviewed, inspected and sourced. All such documents are to be made available to each consultant assigned to perform the property condition assessment and pavement condition analysis. Such documents to be retained should include but not be limited to:

- Site plan – updated as necessary.
- Property Survey – updated as necessary to reflect any changes to the leased premises.
- Construction and “as-built” drawings together with written building specifications.
- Certificate of Occupancy and building permits.
- Building Owner’s Manual received from the General Contractor
- Pavement Condition Assessment Reports (aircraft apron and other)
- Insurance casualty claims and adjustment reports affecting the Building Improvements
- Description of future/planned material improvement or repairs.
- Outstanding notices and citations for building, fire, and zoning code and ADA violations
- Previously prepared, if any, Property Condition Assessment reports or engineering testing and surveys pertaining to any aspect of the subject property’s physical condition.
- Lease listing literature, listing for sale, marketing/promotional literature such as photographs, descriptive information, reduced floor plans, etc.
- Periodic inspection reports (self or third-party) and supporting documentation.
- Irrigation Plans, updated as needed
- Operating manuals, instructions, parts lists

VIII. *Reversionary Process (at Lease Expiration or Early Termination):* Pursuant to the terms and conditions of the Lease, unless otherwise amended or modified the Lease is due to expire at the end of the Lease Expiration Date at which time any and all Building Improvements and any

subsequent improvements and alterations made thereto as defined in the Lease revert and become under the ownership of the Landlord. If Tenant is not then in default of the Lease, Tenant shall have the right to remove all personal property and trade fixtures owned by the Tenant from the Demised Premises, but Tenant shall be required to repair any damage to the Demised Premises caused by such removal, which work shall be conducted in a good and workmanlike manner and at Tenant's sole cost and expense.

Accordingly, in order to facilitate an orderly transfer of all the ownership interests of the Demised Premises, Tenant shall deliver or cause to be delivered to Landlord all of the following on or before the Expiration Date, or earlier termination of the Lease:

A. Tenant's Representations: Tenant shall certify and attest in writing, in a form acceptable to Landlord:

- (1.) Tenant conveys to Landlord in good and indefeasible title all the Building Improvements free and clear of any and all liens, assessments, easements, security interests and other encumbrances; and
- (2.) There are no lessees or sub-lessees in possession of any portion of the Building Improvements, tenants at sufferance or trespassers; and
- (3.) There are no mechanic's liens, Uniform Commercial Code liens or unrecorded liens against the Building Improvements, and all obligations of Tenant arising from the ownership and operation of the Demised Premises and any business operated on the Building Improvements including but not limited to taxes, leasing commissions, salaries, contracts, and similar agreements, have been paid or will be paid before the Expiration Date; and
- (4.) There is no pending or threatened litigation, condemnation, or assessment affecting the Building Improvements; and
- (5.) Tenant has disclosed to Landlord any and all known conditions of a material nature with respect to the Building Improvements which may affect the health or safety of any occupant of the Demised Premises. Except as disclosed in writing by Landlord or Tenant, the Improvements have no known latent structural defects or construction defects of a material nature, and none of the improvements has been constructed with materials known to be a potential health hazard to occupants of the Building Improvements; and
- (6.) Except as otherwise disclosed in writing by Tenant to Landlord, the Building Improvements does not contain any Hazardous Materials other than lawful quantities properly stored in containers in compliance with applicable laws. For the purpose herein, "Hazardous Materials" means any pollutants, toxic substances, oils, hazardous wastes, hazardous materials or hazardous substances as defined in or pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Clean Water Act, as amended, or any other federal, state or local environmental law, ordinance, rule, or regulation, whether existing or subsequently enacted during the Term.

B. Any rental and monies due under the Lease unless paid in full; and

- C. A Bill of Sale conveying personal property remaining or left on the Demised Premises, if any, free and clear of liens, security interest and encumbrances; and
- D. All plans, drawings and specifications respecting the Building Improvements, including as-built plans and specifications, landscape plans, building system plans (HVAC, Telecom/Data, Security System, plumbing) air-conditioning in Tenant's possession or control; and
- E. Inventory with corresponding descriptions and identification of all keys, lock combinations, access codes and other such devices or means to access every securable portion, compartment, cabinet, panel, closet, gate or point of entry within the Demised Premises; and
- F. All soil reports, engineering and architectural studies, grading plans, topographical maps, feasibility studies and similar information in Tenant's possession or control relating to the Demised Premises; and.
- G. A list and complete copies of all current service contracts, maintenance contracts, management contracts, warranties, licenses, permits, operating agreements, reciprocal easement agreements, maps, if any, applicable to the Demised Premises, certificate of occupancy, building inspection approvals and covenants, and conditions and restrictions respecting the Demised Premises; and
- H. Copies of all utility bills (electric, water/sewer and gas) and similar records respecting the Building Improvements for the past three (3) months; and
- I. A schedule of all service contracts, agreements and other documents not expressly referenced herein relating to the Demised Premises.

End

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING AN AVIATION BULK FUEL DISPENSING LICENSE AGREEMENT BETWEEN THE TOWN OF ADDISON AND GALAXY FBO HOLDINGS, L.L.C., 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 Aviation Bulk Fuel Dispensing License Agreement between the Town of Addison and Galaxy FBO Holdings, L.L.C., 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 11th day of December, 2018

Joe Chow, Mayor

ATTEST:

By: _____
Irma Parker, City Secretary

APPROVED AS TO FORM:

By: _____
Brenda N. McDonald, City Attorney

EXHIBIT A



Addison Airport

Aviation Bulk Fuel Dispensing
License Agreement

GALAXY FBO HOLDINGS, LLC

TABLE OF CONTENTS

SECTION 1 DEFINITIONS AND CERTAIN BASIC PROVISIONS.....	4
SECTION 2 GRANTING CLAUSE	6
SECTION 3 DELIVERY OF PREMISES	6
SECTION 4 PAYMENT OF BASE FEE AND ADDITIONAL FEE	7
SECTION 5 LICENSEE'S RESPONSIBILITY FOR PERSONAL PROPERTY TAXES AND REAL PROPERTY TAXES	9
SECTION 6 COMMON AREA OF THE FUEL FARM.....	9
SECTION 7 FUEL RECEIPT, REPORTING AND FUEL FLOWAGE FEES.....	10
SECTION 8 USES AND CARE OF THE FUEL FARM.....	12
SECTION 9 MAINTENANCE AND REPAIR OF FUEL TANKS AND OTHER EQUIPMENT.....	13
SECTION 10 ALTERATIONS	14
SECTION 11 ACCESS TO FUEL FARM, FUEL TANKS AND EQUIPMENT.....	15
SECTION 12 UTILITIES.....	15
SECTION 13 INSURANCE COVERAGE.....	16
SECTION 14 WAIVER OF LIABILITY; MUTUAL WAIVER OF SUBROGATION	17
SECTION 15 DAMAGES BY CASUALTY.....	18
SECTION 16 EMINENT DOMAIN	18
SECTION 17 ASSIGNMENT AND SUBLETTING	19
SECTION 18 ESTOPPELS	20
SECTION 19 NON-COMPETE.....	20
SECTION 20 DEFAULT AND REMEDIES	21
SECTION 21 HOLDING OVER.....	23
SECTION 22 EXPIRATION OR TERMINATION OF LICENSE.....	23
SECTION 23.....	24
NOTICES.....	24
SECTION 24 COMMISSIONS	24
SECTION 25 CHANGES DUE TO LEGAL REQUIREMENTS.....	24
SECTION 26 APPLICABLE LAWS.....	25
SECTION 27 MANDATORY NON-BINDING MEDIATION.....	25
SECTION 28 MISCELLANEOUS	27

NOTICE OF INDEMNIFICATION.....	30
EXHIBIT “A” LEGAL DESCRIPTION OF ADDISON AIRPORT FUEL FARM.....	32
EXHIBIT “B” SURVEY OF ADDISON AIRPORT FUEL FARM.....	34
EXHIBIT “C” SITE PLAN AND TANK CAPACITY OF ADDISON AIRPORT FUEL FARM.....	35
EXHIBIT “D” TERM EXTENSIONS.....	35
EXHIBIT “E” STATEMENT OF LICENSOR’S INITIAL CONSTRUCTION RESPONSIBILITY.....	37
EXHIBIT “F” LICENSEE’S GENERAL AREAS OF RESPONSIBILITY FOR MAINTENANCE AND REPAIR.....	38
EXHIBIT “G”	40
LIST OF AIRCRAFT OWNED OR LEASED BY LICENSEE	40

ADDISON AIRPORT AVIATION BULK FUEL DISPENSING LICENSE AGREEMENT

SECTION 1

DEFINITIONS AND CERTAIN BASIC PROVISIONS

1.1 The following list sets out certain defined terms and certain financial and other information pertaining to this License Agreement (“**License**” and “**Agreement**” are interchangeably used herein to mean one and the same):

- (a) “**Licensor**”: **TOWN OF ADDISON**, a Texas home-rule municipality.
- (b) “**Licensor's Address**”: 5300 Belt Line Road, Dallas, Texas 75254.
- (c) “**Manager**”: AECOM Energy & Construction, Inc. an Ohio corporation and SAMI Management, Inc. a Texas corporation
- (d) “**Manager's Address**”: 16051 Addison Road, Suite #220, Addison, Texas 75001
- (e) “**Licensee**”: **Galaxy FBO Holdings, LLC**, a Texas limited liability company
- (f) “**Licensee's Address**”: 24 Waterway Avenue, Suite 225
The Woodlands, Texas 77380
Attn.: Jonathan Hitchcock

Primary Contact: Jeremy Gee
Telephone: 936-494-4252 Email: jgee@galaxyfbo.com

Primary Contact Address: Galaxy FBO Holdings, LLC
2972 Hawthorne Drive
Conroe, TX 77301
- (g) “**Licensee's Trade Name**”: Galaxy FBO
- (h) “**Licensee's Guarantor Name and Address** (if applicable, attach Guaranty as an exhibit): NA
- (i) “**Fuel Farm**”: Licensor's property located in the Town of Addison, Dallas County, Texas, which property is described on **Exhibit “A”** and shown on **Exhibit “B”** attached to this License. With regard to **Exhibits “A” and “B”**, the parties agree that they are attached solely for the purpose of depicting the location of the Fuel Farm and the Fuel Tanks within the Fuel Farm and that no representation, warranty, or covenant is to be implied by any information shown on such exhibits.
- (j) “**Fuel Tanks**”: **Three (3)** above-ground storage tank(s), together with all equipment attached thereto necessary for Licensee's use of the Fuel Tank in accordance with this License, situated in the Fuel Farm and identified on **Exhibit “C”** attached hereto, with a stipulated total capacity of **65,000** gallons (“**Total Licensee Gallon Capacity**”) of fuel, also being known as

Tank #	Designated Fuel Type	Licensee Gallon Capacity	% Of Total Fuel Farm Combined Capacity
#06	JetA	25,000	0.07937
#07	Jet A	25,000	0.07937
#08	100LL	15,000	0.04762
Total		65,000	0.20636 **

** The “**Licensee's Proportionate Share**”, calculated in accordance with Section 4.10, on the Commencement Date is established to be **20.636** Percent (%).

- (k) **“Commencement Date”**: The earlier of (i) the date upon which Licensee commences use of the Fuel Tanks with Licensors prior written consent.
- (l) **“Term”**: The period of time commencing on the Commencement Date and shall expire, unless earlier terminated on November 30, 2027, however subject to any properly exercised Term Extension as described in Exhibit “D” attached hereto.
- (m) **“Base Fee”**: Annual Consideration for this License equal to the Total Licensee Gallon Capacity, multiplied by \$3078 per gallon, payable in equal monthly installments as provided for in Section 4.
- (n) **“Additional Fee”**: Annual Consideration for this License equal to the Total Licensee Gallon Capacity, multiplied by the prevailing per gallon rate as adopted and published by the Licensor from time to time as the *“Addison Airport Rates & Charges”*, payable in equal monthly installments as provided for in Section 4. In no event shall the Additional Fee ever be adjusted (as provided for herein), to be less than \$3290 per gallon at anytime over the Term.
- (o) **“Fuel Flowage Fee”**: Consideration for this License to receive and dispense aircraft fuel, equal to the Fuel Flowage Rate (as defined in Section 7.1 of this License) of:
- Public Fixed Based Operator as defined below: 14¢ for each gallon
- Non-public Operator as defined below: 22¢ for each gallon
- of aviation fuel received by Licensee during the Term, payable in monthly installments as provided for in Section 7.
- (p) **“Security Deposit”**: ~~SN/A~~ Such Security Deposit is due and payable upon execution of this License and held on account on behalf of Licensee by Licensor in accordance with Section 28.4.
- (q) **“Permitted Use of Fuel Tanks”**: Exclusively for the storage of fuel in support of aeronautical operations of type and grade approved in writing by Licensor in the capacity of a:
- (Check only one)
- ☒ **Public Fixed Based Operator** for retail delivery into aircraft at the Airport, for delivery into aircraft at the Airport owned, leased or otherwise operated by Licensee and for the purpose of fueling ground equipment at the Airport used in the support of Licensee’s aeronautical operations at the Airport and for no other purpose, except for any such delivery to aircraft of holders of valid off-airport access permits or as otherwise approved in writing by Licensor.
- ☐ **Non-public Operator** with delivery to aircraft owned or leased by Licensee and for the purpose of fueling ground equipment at the Airport used in the support of Licensee’s aeronautical operations and for no other purpose. For the purpose herein, aircraft owned or leased by Licensee shall include, without limitation, all those aircraft listed on Exhibit G attached hereto, which list may be amended from time to time by Lessee. **LICENSEE IS HEREBY EXPRESSLY PROHIBITED FROM DISPENSING AIRCRAFT FUEL TO ANY AIRCRAFT NOT OWNED OR LEASED BY LICENSEE. LICENSEE IS HEREBY EXPRESSLY PROHIBITED FROM DISPENSING AIRCRAFT FUEL TO ANY THIRD-PARTY AIRCRAFT, INCLUDING BUT NOT LIMITED TO, ANY OF LICENSEE’S SUBLESSEES, GUESTS OR INVITEES.**
- (r) **“Airport”**: The Addison Airport situated in the Town of Addison, Dallas County, Texas.
- (s) **“Licensee’s Minimum Standard to Operate Fuel Tanks”**: Is hereby 320,000 gallons of aviation fuel (excluding diesel and mobile fuel), as described and determined in Section 7.7 below.
- (t) **“Includes” and “including”**: for purposes of this Agreement, 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.

1.2 The following chart is provided as an estimate of Licensee's monthly and annual payment to Licensor as Consideration (as defined in Section 4.1). This chart, however, does not supersede the specific provisions contained elsewhere in this License.

PAYMENTS IN ADVANCE:	Annual	Monthly
Base Fee (Section 1.1(m) and 4.3)	<u>\$20,007.00</u>	<u>\$1,667.00</u>
Additional Fee (\$.3290/gal. is current rate shown here, to be the prevailing approved rate) (Section 1.1(n) and 4.4)	<u>\$21,385.00</u>	<u>\$1,782.00</u>
Subtotal of Payments in Advance	<u>\$41,392.00</u>	<u>\$3,449.00</u>
PAYMENT IN ARREARS:		
Fuel Flowage Fee <u>\$0.14</u> x total gallons received during the preceding month (Section 7).	<u>\$TBD</u>	<u>\$ TBD</u>
TOTAL MONTHLY CONSIDERATION (Payment In Advance plus Payment In Arrears)	<u>\$TBD</u>	<u>\$TBD</u>

SECTION 2

GRANTING CLAUSE

2.1 Licensor licenses the Fuel Tanks to Licensee, subject to and only upon the terms and conditions set forth in this License and further subject to all laws, codes, ordinances, rules, standards, policies, permits, and regulations now in effect or hereafter adopted, modified, or amended by Licensor or any governmental or quasi-governmental authority having jurisdiction over the Airport or any part thereof, and all requirements, conditions, and standards of any Airport grant or funding or any grant agreements or grant assurances of the Airport now in effect or as hereafter agreed to, adopted, issued, modified, amended, or established. This License is not a lease and grants no interest or estate in the Fuel Farm, including, without limitation, any leasehold interest.

SECTION 3

DELIVERY OF PREMISES

3.1 BY ACCEPTANCE OF THIS LICENSE, LICENSEE HEREBY AGREES THE FUEL FARM IS BEING DELIVERED TO LICENSEE IN GOOD WORKING CONDITION AND UNDERSTANDS THAT THE FUEL TANKS ARE BEING LICENSED TO LICENSEE, ON AN "AS IS", "WHERE IS" AND "WITH ALL FAULTS" BASIS, WITH LICENSEE ACCEPTING ALL DEFECTS, IF ANY AND LICENSOR MAKES NO REPRESENTATIONS (OTHER THAN AS TO LICENSOR'S OWNERSHIP OF THE FUEL FARM), WARRANTIES OR COVENANTS OF ANY KIND OR NATURE, WHETHER EXPRESS OR IMPLIED, AS TO THE HABITABILITY, FITNESS OR SUITABILITY OF THE FUEL FARM FOR A PARTICULAR PURPOSE, INCLUDING, BUT NOT LIMITED TO (AND LICENSOR HEREBY EXPRESSLY DISCLAIMS THE SAME), ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LICENSEE ACKNOWLEDGES AND AGREES THAT LICENSEE HAS HAD THE OPPORTUNITY TO INSPECT THE FUEL FARM, AND THAT ANY SUCH INSPECTION HAS BEEN ADEQUATE TO ENABLE LICENSEE TO MAKE LICENSEE'S OWN DETERMINATION REGARDING THE SUITABILITY OR FITNESS OF THE FUEL TANKS AND FUEL FARM. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LICENSEE HEREBY ASSUMES ALL RISK AND LIABILITY (AND AGREES THAT LICENSOR SHALL NOT BE LIABLE FOR ANY SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL OR OTHER DAMAGE) RESULTING OR ARISING FROM OR RELATING TO THE USE, CONDITION, LOCATION, MAINTENANCE, REPAIR OR OPERATION OF THE FUEL FARM, EXCEPT TO THE EXTENT OTHERWISE EXPRESSLY HEREIN AGREED AND CONSENTED TO BY LICENSOR.

3.2 Licensors shall have the right upon ninety (90) day's prior written notice, to relocate Licensee to another Fuel Tank or Fuel Tanks (the "**Replacement Fuel Tank(s)**") in the Fuel Farm as Licensors deems, at its sole discretion, to be reasonably necessary. In the event of such relocation, the cost of relocating Licensee and the cost of altering the Replacement Fuel Tanks to make them comparable to the current Fuel Tanks shall be borne by Licensors (except for those alterations or improvements made to the Fuel Tanks by Licensee with or without Licensors' prior consent). If Licensors exercises such right of relocation, this License shall continue in full force and effect without any change to the terms or other conditions, except that the Replacement Fuel Tanks shall be deemed substituted in Section 1.1(j) and an appropriate adjustment shall be made to the amount of the Consideration and any Security Deposit.

SECTION 4

PAYMENT OF BASE FEE AND ADDITIONAL FEE

4.1 The Base Fee and all other sums or charges payable by Licensee, including but not limited to Additional Fee and Fuel Flowage Fees and other fees required by this License, are sometimes herein referred to collectively as "**Consideration**". All payments of Consideration are to be paid by corporate, personal or cashier's check or money order. Payments of Consideration are not to be made in cash. The Licensors shall have the same remedies in the case of a default in the payment of Additional Fee and Fuel Flowage Fees and any other Consideration as are available to Licensors in the case of a default in the payment of the Base Fee.

4.2 The Consideration shall be payable to Licensors at Licensors' address set forth in Section 1.1(b) or, such other address designated by Licensors with prior written notice given to Licensee. Consideration shall not be considered paid until actually received by Licensors or Licensors' designee.

4.3 Beginning with the Commencement Date and continuing throughout the Term of this License, Licensee shall pay an annual Base Fee in the amount specified in Section 1.1(m), which Base Fee shall be paid by Licensee (separately or together with other Consideration due and payable) in equal monthly installments as required herein, without any interruption, offset or deduction of any nature. The first such monthly installment shall be due and payable on or before the Commencement Date, and subsequent installments shall be due and payable on or before the first day of each succeeding calendar month during the Term. If the Term of this License commences on a day other than the first day of a calendar month, or terminates on a day other than the last day of a calendar month, the Base Fee installment of such partial month as provided for under this Section 4.3 shall be prorated and such installment or installments so prorated shall be paid in advance (i.e., the quotient that results from dividing the number of calendar days of such partial month included in the Term by the total number of days in that month, then multiplying such quotient by one-twelfth of the Base Fee).

4.4 In addition to the Base Fee and any other Consideration required under this License, Licensee shall pay an Additional Fee which is to be assessed by Licensors annually for each fiscal year of Licensors, but said amount shall never be less than that specified in Section 1.1(n).

4.5 The Additional Fee payable by the Licensee under this License shall be equivalent to Licensee's Proportionate Share of Licensors' cost of operating and maintaining the Common Area and the Replacement Recovery Allowance provided for under Section 4.6. Such costs, hereinafter referred to as the "**Common Area Charge**", may include but not be limited to: all utilities which serve the Fuel Farm including water, sewer, electricity, gas and data/telecommunications; all systems and system components necessary and appurtenant to the operation of the Fuel Farm (i.e., motors, pumps, pipes, hoses, valves, regulators, vents, safety systems, separators, auxiliary power supply); structural systems including roof and canopy repair and maintenance; the costs of any third-party service agreement which may include the repair, maintenance and inspection of the Fuel Farm and any of its systems and system components; painting, cleaning, sweeping, landscaping, inspecting, repairing and replacing the Fuel Farm or any portion thereof; Licensors' reasonable overhead costs for administration and management; and the cost of any Real Estate Charges or Insurance Expenses for which Licensors is not reimbursed pursuant to Section 5, but specifically excluding all expenses paid or reimbursed by Licensee to Licensors pursuant to Section 6.

4.6 Licensors and Licensee agree that Licensors may include in the Additional Fee a reasonable reserve sufficient to pay the costs of the future replacement of the Fuel Tanks and Roofing System (the "**Replacement Recovery Allowance**"), which costs are to be amortized over a twenty-five (25) year and ten (10) year useful lifespan, respectively. Licensors, in its sole discretion, may adjust the monthly amount collected from Licensee for the

Replacement Recovery Allowance from time to time to coincide with the industry's generally accepted replacement values for fuel tanks and roofing systems comparable to the Fuel Tanks and Roofing System.

4.7 If the Term of this License commences on a day other than the first day of a calendar month, or terminates on a day other than the last day of a calendar month, the Additional Fee for such partial month shall be pro-rated and paid in advance similarly as provided for the Base Fee under Section 4.3.

4.8 Prior to the commencement of Licensor's fiscal year beginning the first day of October following the Commencement Date of this License ("Licensor's Fiscal Year") and prior to each Licensor's Fiscal Year thereafter, Licensor shall provide Licensee an estimate of the Additional Fee for such fiscal year. The Additional Fee shall be due and payable by Licensee (separately or together with other Consideration due and payable) in equal monthly installments during such fiscal year, without any interruption, offset or deduction of any nature. The first such monthly installment shall be due and payable on the Commencement Date, and subsequent installments, as adjusted for each fiscal year during the Term, shall be due and payable on or before the first day of each succeeding calendar month during the Term. If the Term of this License commences on a day other than the first day of a calendar month, or terminates on a day other than the last day of a calendar month, the Additional Fee installment of such partial month as provided for under this Section 4.8 shall be prorated and such installment so prorated shall be paid in advance (i.e., the quotient that results from dividing the number of calendar days of such partial month included in the Term by the total number of days in that month, then multiplying such quotient by one-twelfth of the Additional Fee).

4.9 Within one hundred twenty (120) days following the conclusion of Licensor's Fiscal Year and within one hundred twenty (120) days following each Licensor's Fiscal Year thereafter, or as soon thereafter as reasonably possible, Licensor shall furnish to Licensee an itemized statement reconciling the actual Common Area Charge and other costs for that fiscal year (or part thereof during the Term of this License) against the Additional Fee for such fiscal year or partial fiscal year. Within thirty (30) days of the delivery of such statement to Licensee, Licensee shall pay to Licensor the Licensee's Proportionate Share of the positive difference, if any, resulting from subtracting the Additional Fee paid by Licensee for such fiscal year from the Licensee's Proportionate Share of the actual Common Area Charge and other costs for such fiscal year. If such Additional Fee paid by Licensee exceeds Licensee's Proportionate Share of such Common Area Charge and other costs for such fiscal year or partial fiscal year, Licensor shall have the right, at its option, to credit such excess against the next accruing payment(s) of the Additional Fee due under this License or return such excess to Licensee.

4.10 The Licensee's Proportionate Share is that percentage, at the time when the applicable cost was incurred, determined by dividing the Total Licensee Gallon Capacity by the combined capacity of the fuel tanks in the Fuel Farm, as reasonably determined by Licensor. Licensee's Proportionate Share on the Commencement Date is stipulated by the parties in Section 1.1(j).

4.11 The amount of the actual Common Area Charge and other costs determined by Licensor under Section 4.9 shall be final, conclusive and binding upon the parties hereto on the date which is one hundred eighty (180) calendar days following the date Licensor provides such itemized statement of reconciliation to Licensee.

4.12 In the event any Consideration due is not actually received by Licensor by the fifth (5th) day after such amount is due, or if any Consideration payment is made by check, which check is returned for insufficient funds, then in addition to the past due amount, immediately on Licensor's demand, Licensee shall pay to Licensor one of the following (the choice to be at the sole option of Licensor unless one of the choices is improper under applicable law, in which event the other alternative, if proper under applicable law, will automatically be deemed to have been selected): (a) a late charge in an amount equal to ten percent (10%) of such late Consideration, in order to compensate Licensor for its administrative and other overhead expenses; or (b) interest on such late Consideration then due at the maximum rate of interest which could legally be charged in the event of a loan of such late Consideration to Licensee (but in no event to exceed 1 ½% per month), such interest to accrue continuously on any unpaid balance of such Consideration due to Licensor by Licensee during the period commencing with the due date of such late Consideration and terminating with the date on which Licensee makes full payment of all such late Consideration. Any such late charge or interest payment shall be payable immediately on demand as additional Consideration. It is hereby agreed that in no event shall any charges permitted under this License, to the extent the same are considered to be interest under applicable law, ever exceed the maximum lawful rate of interest allowed under applicable law.

4.13 If Licensor fails to receive from Licensee any installment of Base Fee or Additional Fee within ten (10) days after the same is due for any two (2) consecutive calendar months, or if the payment of any Consideration is made by check, which check is returned for insufficient funds twice within any consecutive twelve (12) month period, Licensor

may, by giving written notice to Licensee, and in addition to any late charge or interest accruing pursuant to Section 4.12 above, as well as any other rights and remedies accruing pursuant to Section 20 or Section 22 below, or any other provision of this License, at law or in equity, require subsequent Base Fee and Additional Fee installments to be paid quarterly in advance by cashier's check or money order and the delivery of Licensee's corporate or personal check will no longer constitute a payment of such Consideration. Any acceptance of a corporate or personal check for such Consideration shall not be construed as a subsequent waiver of said right to require payment by cashier's check or money order.

4.14 The obligation of Licensee to pay Consideration shall survive the expiration or earlier termination of this License.

SECTION 5

LICENSEE'S RESPONSIBILITY FOR PERSONAL PROPERTY TAXES AND REAL PROPERTY TAXES

5.1 Licensee shall be liable for all taxes, if any, levied against personal property owned by Licensee and placed within or used by Licensee within the Fuel Farm. If any personal property taxes are validly levied against Licensor or Licensor's property and Licensor pays the same, such taxes shall be included in the Common Area Charge.

5.2 If any Real Estate Charges (as defined below) are validly levied against Licensor or Licensor's property and Licensor pays the same, such Real Estate Charges shall be included in the Common Area Charge. All Insurance Expenses (as defined below) related to the Fuel Farm or Licensor's ownership of the Fuel Farm shall be included in the Common Area Charge. "**Real Estate Charges**" shall include, if any, ad valorem taxes, general and special assessments, any tax or excise on fees including Consideration, any tax or charge for governmental services (such as street maintenance or fire protection) and any tax or charge which replaces any of such above-described Real Estate Charges; provided, however, that Real Estate Charges shall not be deemed to include any franchise, estate, inheritance or general income tax. "**Insurance Expenses**" shall include all premiums and other expenses incurred by Licensor for liability insurance, and fire and extended coverage property insurance (plus whatever endorsements or special coverages which Licensor, in Licensor's sole discretion, may consider appropriate) and the amount of any deductible paid by Licensor in connection with any claim thereunder.

SECTION 6

COMMON AREA OF THE FUEL FARM

6.1 The term "**Common Area**" is defined for all purposes of this License as that part of the Fuel Farm which is maintained by Licensor, the expense of which may be incurred by Licensor and included as Common Area Expenses as provided for in Section 4.5, intended for the common use of all licensees of the Fuel Farm and other authorized persons. The Common Area includes all systems that comprise the Fuel Farm and are appurtenant thereto including but not limited to all utilities (water, sewer, electricity, gas and data/tele-communications); all systems and system components necessary to the operation and function of the Fuel Farm (i.e., motors, pumps, pipes, hoses, valves, regulators, vents, life and safety systems, separators, auxiliary power, lights, switches, meters, tanks), building infrastructures, parking areas, driveways, landscaping, curbs, loading area, lighting facilities, roofs and the like. Licensor reserves the right to change from time to time the rights and interests to, and the dimensions and location of, the Common Area, as well as the rights and interests to and the dimensions, identities, locations and types of any improvements in the Fuel Farm.

6.2 Licensee shall have the nonexclusive right to use the Common Area as constituted from time to time for the purpose or purposes described in Section 1.1(q), such use to be in common with Licensor, other licensees in the Fuel Farm and other authorized persons subject to such reasonable rules and regulations governing use as Licensor may from time to time prescribe.

SECTION 7

FUEL RECEIPT, REPORTING AND FUEL FLOWAGE FEES

7.1 As additional Consideration under this License, Licensee shall pay to Licensor the Fuel Flowage Fee at the Flowage Fee Rate. The "Flowage Fee Rate" (herein so called) is (see Section 1.1(o)) for each gallon of aviation fuel received by Licensee at the Airport during the Term, excluding any fuel not intended for aeronautical use (i.e., diesel and mobile fuel used in connection with ground support operations) during the Term; provided, however, the Town of Addison, Texas reserves the right to increase or decrease the Flowage Fee Rate as, in its sole discretion, may be necessary or reasonably appropriate. This License is conditioned upon the payment of the Fuel Flowage Fee at the Flowage Fee Rate, and such payment is required as set forth in and in accordance with Chapter 14, Article III, Division 2 of the Code of Ordinances of the Town of Addison, Texas (as the same may be amended or superseded). Licensor and Licensee herein agree and acknowledge that any payment made by Licensee of said Fuel Flowage Fee required hereunder is in satisfaction of the Fuel Flowage Fee at the Flowage Fee Rate established by the City Council of the Town of Addison, Texas. Licensor shall give Licensee at least thirty (30) days prior written notice before any change in the Flowage Fee Rate becomes effective.

7.2 The Fuel Flowage Fee shall be paid, with respect to each calendar month during the Term beginning with the month in which the Commencement Date occurs, on or before the fifth (5th) day of the calendar month following such month, without offset or deduction of any nature, at a sum equal to the product of the applicable Flowage Fee Rate multiplied by the total amount of fuel received at the Airport by Licensee during the preceding full or partial calendar month.

7.3 Licensee shall submit to Licensor with each monthly payment of the Fuel Flowage Fee, but in no event later than the fifth (5th) day of each month during the Term, a monthly fuel report (the "**Monthly Report**"), certified as being true and correct by a duly authorized representative of Licensee, showing for the preceding calendar month the amount of fuel received, sold or dispensed.

7.4 On or before the sixtieth (60th) day after the expiration of each calendar year, and the thirtieth (30th) day after the expiration or termination of this License, Licensee shall deliver to Licensor an annual fuel report (the "**Annual Report**"), certified as being true and correct by an authorized representative of Licensee, showing the amount of aviation fuel received, sold or dispensed during the calendar year preceding the date on which the Annual Report is due. In the event any provision of this License or the enforcement thereof by the Licensor, requires accounting of the Fuel Flowage Fee and the payment thereof for a period less than twelve (12) months, such shorter period shall be treated as one (1) year for the purpose of an Annual Report, and such Annual Report shall be delivered to Licensor within thirty (30) days after termination of such shorter period.

7.5 In addition to the information described in Section 7.4, each Monthly Report and each Annual Report shall include any and all additional information required by Licensor, and shall be in the form established by Licensor (which form may be modified, revised, or amended by Licensor in its sole discretion at any time). Each of the Monthly Reports and the Annual Reports are hereinafter referred to as a "**Fuel Report**." In the event Licensor is not satisfied with any Fuel Report provided by Licensee, Licensor shall have the right to cause its auditors or designated representative to inspect Licensee's books and records, wherever located, evidencing and accounting for all aviation fuel received, sold or dispensed in or from the Airport for the reporting period or periods in question. Licensee hereby agrees to make available all books and records, including but not limited to its bills of lading, general ledgers, bank accounts and fuel sales receipts available for inspection during Licensee's normal business hours within five (5) days upon receipt of written demand by Licensor. If it is determined by the auditors that the amount of fuel received, sold or dispensed during such period(s) is understated by more than two percent (2%), the reasonable expense of such audit shall be borne by Licensee. Licensee shall promptly pay to Licensor any deficiency, or Licensor shall promptly refund to Licensee any overpayment, as the case may be, which is established by such audit.

7.6 If Licensee fails to prepare and deliver promptly any Fuel Report or other document required under this License, Licensor may, in addition to exercising any of the remedies provided to Licensor under this License or any law, rule, or regulation, engage a Certified Public Accountant to make an audit of all books and records of Licensee, including (without limitation) Licensee's bank accounts, which in any way pertain to or show the aviation fuel received, sold or dispensed and prepare the Fuel Report or other document that Licensee failed to prepare and deliver to Licensor. The Fuel Report or other document prepared by such Certified Public Accountant shall be conclusively

binding on Licensee, and Licensee shall pay upon demand all expenses of the audit and other services in regard to preparing such Fuel Report or other document.

7.7 Licensee shall continuously during the Term of this License use its best efforts to maximize the quantity of fuel it receives at the Fuel Tanks at the Fuel Farm. Under no circumstance, however, shall Licensee fail to receive at least the following quantities of fuel at the Fuel Farm (“**Licensee’s Minimum Standard to Operate Fuel Tanks**”), except as expressly provided under this Section 7.7:

- (a) If the Permitted Use of the Fuel Tanks is for a Public Fixed Based Operator as described in Section 1.1(q), Licensee’s Minimum Standard to Operate Fuel Tanks is 320,000 gallons of fuel received at the Fuel Farm over each three (3) consecutive calendar-month periods during the Term (the “**Quarterly Minimum Gallons**”); provided, however, that
 - (i) during the first six (6) calendar months immediately following the Commencement Date, Licensee shall exercise its best efforts to receive no less than 320,000 gallons of fuel, and
 - (ii) during the first year of this License (“**Licensee’s Start-up Period**”), Licensee shall exercise its best efforts to receive no less than 896,000 gallons of fuel (the “**Start-up Period Minimum Gallons**”).

Licensee’s

- (i) failure to receive the Start-up Period Minimum Gallons during the Licensee’s Start-up Period (the difference between the Start-up Period Minimum Gallons and the amount of fuel actually received during Licensee’s Start-up Period being the “**Start-up Deficiency**”), or
- (ii) failure after the Start-up Period to receive at least the Quarterly Minimum Gallons (the difference between the Quarterly Minimum Gallons and the amount of fuel actually received by Licensee during any three (3) month period (following the Start-up Period) that Licensee failed to receive at least the Quarterly Minimum Gallons being the “**Quarterly Deficiency**”),

shall not constitute an event of default under this License if, during the three (3) consecutive calendar months immediately after Licensee receives written notice from Licensor of such failure (the “**FBO Notice Period**”, beginning on the first day of the first calendar month following Licensee’s receipt of the written notice), Licensee receives in the Fuel Tanks at the Fuel Farm an amount of fuel equal to or greater than the Start-up Deficiency or the Quarterly Deficiency, as the case may be, in addition to the Quarterly Minimum Gallons for the FBO Notice Period.

- (b) If the Permitted Use of the Fuel Tanks is for a Non-public Operator as described in Section 1.1(q), Licensee’s Minimum Standard to Operate Fuel Tanks is 45,000 gallons received at the Fuel Farm over each six (6) consecutive calendar-month period during the Term (the “**Semi-annual Minimum Gallons**”); provided, however, Licensee’s failure to receive at least the Semi-annual Minimum Gallons (the difference between the Semi-annual Minimum Gallons and the amount of fuel actually received by Licensee during any six (6) month period that Licensee failed to receive at least the Semi-annual Minimum Gallons being the “**Semi-annual Deficiency**”) shall not constitute an event of default under this License if, during the six (6) consecutive calendar months immediately after Licensee receives written notice from Licensor of such failure (the “**Non-public Notice Period**”, beginning on the first day of the first calendar month following Licensee’s receipt of the written notice), Licensee receives in the Fuel Tanks at the Fuel Farm an amount of fuel equal to or greater than the Semi-annual Deficiency, in addition to the Semi-annual Minimum Gallons for the Non-public Notice Period.
- (c) Licensee’s cure rights under Section 20.1 shall not apply to the occurrence of any failure to satisfy the Licensee’s Minimum Standard to Operate Fuel Tanks under this Section 7.7. Except as provided for in this Section 7.7, any such failure to perform under this Section 7.7 shall constitute an immediate event of default entitling Licensor to exercise its remedies under this License, at law, in equity, or otherwise.
- (d) Licensor reserves the right, in its sole discretion, to decrease the Quarterly Minimum Gallons or the Semi-Annual Minimum Gallons, or temporarily suspend or waive, and then reinstitute, the Licensee’s

Minimum Standard to Operate Fuel Tanks, as Licensor may deem to be necessary or appropriate, in its sole discretion, based upon but not limited to, a *force majeure* event that has prevented Licensee from receiving the minimum quantity of fuel required under this Section 7.7.

- (e) Licensor reserves the right, in its sole discretion, to uniformly increase the Quarterly Minimum Gallons or the Semi-Annual Minimum Gallons for all Licensees of the same class (e.g. Public or Non-public Fueller) provided Licensor gives each Licensee within the same respective class three (3) years' prior written notice of the increase.

SECTION 8

USES AND CARE OF THE FUEL FARM

8.1 Licensee shall commence all of its fueling operations at the Fuel Farm on or immediately after the Commencement Date and shall perform such operations in a commercially reasonable manner so as to produce the maximum amount of sales from the Fuel Tanks.

8.2 Licensee shall not use the Fuel Farm or the Fuel Tanks for any purpose other than the purpose authorized by Section 1.1(q). Licensee, without Licensor's prior written consent, shall not store anything in the Fuel Tanks, other than the designated fuel type and grade of fuel authorized in Section 1.1(j), or use the Fuel Farm for any purpose which creates a risk of release of toxic or otherwise Hazardous Substances or increases the insurance premium cost for the Fuel Farm or the Airport or invalidates any insurance policy carried on the Fuel Farm or the Airport, other than the ordinary risk associated with the prudent use of any substantially similar aircraft fuel farm. All fuel kept, stored or maintained in the Fuel Tanks by Licensee, and all other property of Licensee that is maintained or used at the Fuel Farm shall be delivered, kept, stored, maintained, transported, dispensed and otherwise used at Licensee's sole risk. Without limiting the generality of the foregoing, Licensee covenants and agrees that Licensee shall not, nor shall Licensee allow or permit any of Licensee's owners, officers, employees, agents, contractors or other representatives, or any other person for whom Licensee may be responsible or liable (Licensee, together with such other persons and entities being sometimes hereinafter collectively referred to as "**Licensee Parties**"), to cause, directly or indirectly, any release or discharge of any Hazardous Substances (as defined in Section 8.4) at the Fuel Farm or any other portion of the Airport or premises adjacent thereto. Without limiting the generality of the foregoing, Licensee further covenants and agrees that Licensee shall not, nor shall Licensee allow or permit any of the Licensee Parties to, bring into, maintain upon, generate, use, store, dispense or dispose of any Hazardous Substances in or about the Fuel Farm or any other portion of the Airport or premises adjacent thereto, unless such Hazardous Substances are maintained upon, generated, used, stored, dispensed or disposed of only (a) in such quantities as are reasonably necessary for Licensee's operations, (b) in accordance with the standards and instructions of the producer and distributor of such Hazardous Substances and, if fuel, the manufacturer of the Fuel Tanks and in compliance with all applicable laws, and (c) in such a manner as would prevent a release or discharge thereof in violation of applicable laws. Upon request of Licensor at any time, Licensee shall provide Licensor with a written list, certified to by Licensee in writing, identifying any Hazardous Substances then maintained upon, generated, used, stored, dispensed or disposed of at the Fuel Farm or elsewhere at the Airport or premises adjacent thereto by Licensee and the approximate quantity of same, together with a representation that neither Licensee nor any other Licensee Parties have released or discharged any Hazardous Substances in or about the Fuel Farm or any other portion of the Airport or adjacent premises in violation of these provisions, all certified as being true and correct by a duly authorized representative of Licensee. Upon any violation of the foregoing covenants, Licensee shall be obligated, at Licensee's sole cost, to immediately cease such violation and, if any Hazardous Substance has been released or discharged, remediate, clean-up and remove from the Fuel Farm or other portions of the Airport or premises adjacent thereto all such Hazardous Substances; provided, however, that any such remediation, clean-up and removal shall be undertaken only after written notice of the release or discharge has been given by Licensee to Licensor and Licensor has approved the method of remediation, clean-up and removal. Notwithstanding the proceeding or any other provision of this Agreement, the introduction, receipt, delivery, creation, use, storage, dispensing or disposal of any Hazardous Substances at the Fuel Farm or elsewhere at the Airport or premises adjacent thereto, and any remediation, clean-up or removal of released or discharged Hazardous Substances, by or on behalf of Licensee or any other Licensee Parties shall be conducted to the satisfaction of Licensor.

8.3 **INDEMNITY.** LICENSEE SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE LICENSOR, ITS OFFICIALS, OFFICERS, EMPLOYEES, AGENTS AND OTHER REPRESENTATIVES, AND THEIR

RESPECTIVE HEIRS, SUCCESSORS AND ASSIGNS (TOGETHER, "LICENSOR INDEMNIFIED PERSONS"), FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, LOSSES, JUDGMENTS, DAMAGES (INCLUDING DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, AND OTHER DAMAGES), ACTIONS, FINES, PENALTIES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COSTS OF DEFENSE) (TOGETHER, "INDEMNIFIED DAMAGES") INCURRED BY LICENSOR OR OTHER SUCH LICENSOR INDEMNIFIED PERSONS, OR ANY OF THEM, AS A RESULT OF, ARISING OUT OF, OR IN CONNECTION WITH ANY BREACH OF ANY PROVISION OF SECTION 8.2 OR ANY ACT OR OMISSION OF LICENSEE OR OF ANY OF LICENSEE PARTIES UNDER, RELATED TO, OR IN CONNECTION WITH THE RECEIPT, DELIVERY, STORAGE, MAINTENANCE, TRANSPORTATION, DISPENSING, OR OTHER USE OF ANY HAZARDOUS SUBSTANCES, **INCLUDING ANY INDEMNIFIED DAMAGES CAUSED BY THE NEGLIGENCE OF THE LICENSOR OR ANY OF THE OTHER LICENSOR INDEMNIFIED PERSONS, BUT LICENSEE SHALL HAVE NO DUTY TO INDEMNIFY LICENSOR OR ANY LICENSOR INDEMNIFIED PERSON FOR INDEMNIFIED DAMAGES CAUSED BY THE SOLE NEGLIGENCE OF LICENSOR OR SUCH LICENSOR INDEMNIFIED PERSON, UNLESS THE INSURANCE OF LICENSEE COVERS THE INDEMNIFIED DAMAGES CAUSED BY SUCH SOLE NEGLIGENCE.**

8.4 As used in this Section 8, "**Hazardous Substances**" shall include, without limitation, any and all hazardous or toxic substances, materials, contaminants, pollutants, or wastes pertaining to health or the environment as are identified, defined or listed elsewhere in any applicable local, state and federal ordinances, rules, regulations, laws and statutes, as the same may hereafter be passed, issued, enacted and/or amended, such as asbestos, petroleum products, hazardous materials, hazardous wastes and hazardous and/or toxic substances as defined or used in the Comprehensive Environmental Response, Compensation And Liability Act Of 1980, as amended (42 U.S.C. §9601 Et Seq.) and The Resource Conservation And Recovery Act, as amended (42 U.S.C. §6901 Et Seq.).

8.5 Licensee shall not, nor shall Licensee permit or allow any other Licensee Parties to, (a) cause any damage or waste at or about the Fuel Farm; (b) overload the Fuel Tanks; (c) cause any objectionable or unpleasant odors to emanate from the Fuel Tanks, except odors ordinarily emanating from a substantially similar aircraft fuel farm; (d) take any other action which would constitute a nuisance or would disturb or endanger Licensor, its employees, agents and other representatives, other licensees of the Fuel Farm, other occupants or users of the Airport or any neighbors of the Airport; or (e) permit any unlawful practice to be carried on or committed on the Fuel Farm.

8.6 Licensee shall procure, at its sole expense, any permits and licenses required for the use of the Fuel Farm including, without limitation, any permit or license required by the fire department of Licensor. At Licensor's request, Licensee shall deliver to Licensor copies of all such permits and licenses.

8.7 Only authorized and properly trained personnel of Licensee shall use the Fuel Farm pursuant to Licensee's rights under this License. In addition, if Licensee's business makes it advisable for Licensee to take any extra precautions at the Fuel Farm, Licensee shall take all such extra precautions.

SECTION 9

MAINTENANCE AND REPAIR OF FUEL TANKS AND OTHER EQUIPMENT

9.1 During the Term, Licensee, at Licensee's sole expense, shall maintain, repair and replace, as reasonably and prudently required, all equipment at the Fuel Farm diagonally cross-hatched on **Exhibit "F"** attached hereto (collectively, the "**Licensee Equipment**"). Without limiting the generality of the forgoing, the Licensee Equipment shall include all fuel loading and unloading equipment, such as hoses, couplings, swivels and such devices used in connection with the Fuel Tanks, and all filters, separators or other filtering medium or such devices related to the Fuel Tanks. With regard to **Exhibit "F"**, the parties agree that no representation, warranty, or covenant is to be implied by **Exhibit "F"**. If any such maintenance, repairs or replacements required to be made by Licensee are not made within ten (10) days after written notice delivered to Licensee by Licensor (except in the event of an emergency, in which case such repairs, replacements, changes or upgrades shall be required to be made by Licensee, as quickly as reasonably possible under the circumstances), then Licensor may perform such maintenance, repairs and replacements, and Licensee shall pay to Licensor, on demand, the costs of such maintenance, repairs and replacements, plus 15% for Licensor's overhead, plus interest on such sums). If Licensor elects to perform such maintenance, repairs or

replacements, Licensor shall have no liability to Licensee for any loss or damage that may result to Licensee's business by reason of the same.

9.2 Except for the obligations of Licensee to be responsible for the continued maintenance, repairs and replacements of the Licensee Equipment described in Section 9.1 and Licensee's obligations under Section 9.3, and subject to the other obligations of Licensee under this License, Licensor shall at all times keep the Fuel Farm in good condition and repair generally in keeping with the standards of Licensor for the Airport and prevailing industry standards. Licensor, however, shall not be required to make any repairs occasioned by the act, omission, damage or negligence of Licensee, its employees, agents or other representatives, or any other person entering or using the Fuel Farm allegedly through the rights granted to Licensee under this License; and the provisions of the previous sentence are expressly recognized to be subject to the provisions of Section 15 and Section 16 of this License. In the event that the Fuel Tanks or other parts of the Fuel Farm should become in need of repair required to be made by Licensor hereunder, Licensee shall give immediate written notice thereof to Licensor and Licensor shall have a commercially reasonable time after receipt of such written notice in which to make such repairs. The costs of Licensor incurred pursuant to this Section 9.2 shall be included in the Common Area Charge.

9.3 During the Term, Licensee shall keep the Fuel Tanks, and cooperate with Licensor and other licensees of the Fuel Farm in keeping the Fuel Farm sidewalks, service-ways and loading areas, neat, clean and free from debris.

SECTION 10

ALTERATIONS

10.1 Licensee shall not make any installations, alterations or replacements of improvements, fixtures or equipment at the Fuel Farm without the prior written consent of Licensor, which consent may be withheld in Licensor's sole discretion. Without limiting the generality of the immediately preceding sentence, any installation, alteration or replacement consented to by Licensor must be effected strictly in accordance with Licensor's instructions and shall not unreasonably interfere with or disrupt the activities of Licensor or any other licensees of fuel tanks at the Fuel Farm. Licensee shall, promptly following the completion of any installations, alterations or replacements consented to by Licensor, deliver to Licensor "as built" plans and specifications with respect to any such installations, alterations and replacements. Any permitted installation, alteration or replacement which may be made or installed by Licensee in connection with the Fuel Farm shall remain upon and become the property of Licensor on completion of such installation, alteration or replacement; provided, however, that Licensor may request their removal upon the expiration or earlier termination of this License, in which event Licensee shall remove the same and restore the Fuel Farm to its condition immediately preceding such installation, alteration or replacement, ordinary wear and tear excepted and subject to Sections 9.2, 15 and 16, at Licensee's sole cost and expense. In the event that Licensee fails to remove such installation, alteration and replacement from the Fuel Farm within ten (10) days after the date of expiration or earlier termination of this License, Licensor may, at its option, keep or dispose of the same as Licensor shall determine at its sole discretion, without any liability or obligation to Licensee whatsoever. Licensee shall be obligated to reimburse Licensor for any costs incurred by Licensor in removing and disposing of such installation, alteration and replacement, and restoring the Fuel Farm to its original condition immediately preceding such construction, ordinary wear and tear excepted and subject to Sections 9.2, 15 and 16.

10.2 **INDEMNITY.** All construction work done by Licensee on the Fuel Farm shall be performed in a good and workmanlike manner, lien-free and in compliance with all applicable laws, and in such manner as to cause a minimum of interference with other construction in progress at the Fuel Farm or the use of the Fuel Farm by Licensor or any other licensees of fuel tanks at the Fuel Farm. **LICENSEE AGREES TO DEFEND AND INDEMNIFY LICENSOR AND LICENSOR INDEMNIFIED PERSONS AND HOLD LICENSOR AND THE OTHER LICENSOR INDEMNIFIED PERSONS HARMLESS FROM AND AGAINST ANY INDEMNIFIED DAMAGES RESULTING FROM SUCH WORK, INCLUDING ANY INDEMNIFIED DAMAGES CAUSED BY THE NEGLIGENCE OF THE LICENSOR OR ANY OF THE OTHER LICENSOR INDEMNIFIED PERSONS, BUT LICENSEE SHALL HAVE NO DUTY TO INDEMNIFY LICENSOR OR ANY LICENSOR INDEMNIFIED PERSON FOR INDEMNIFIED DAMAGES CAUSED BY THE SOLE NEGLIGENCE OF LICENSOR OR SUCH LICENSOR INDEMNIFIED PERSON, UNLESS THE INSURANCE OF LICENSEE COVERS THE INDEMNIFIED DAMAGES CAUSED BY SUCH SOLE NEGLIGENCE.**

10.3 In the event Licensee uses a general contractor to perform any installations, alterations or replacements on the Fuel Farm, Licensee shall, prior to the commencement of such work, require said general contractor to execute and deliver to Licensor a waiver and release of lien (in form and content reasonably satisfactory to Licensor) of any and all claims against Licensor and liens against the Fuel Farm to which such contractor might at any time be entitled, and to execute and record a Bond to Pay Claims (the “**Bond**”) in accordance with Chapter 53, Subchapter I of the Texas Property Code, as such may be amended, superseded or replaced from time to time, and shall deliver a copy of the recorded Bond to Licensor. The delivery of the waiver and release of lien and the Bond within the time period set forth above shall be a condition precedent to Licensee's ability to enter on and begin its installation, alteration or replacement work on the Fuel Tanks and, if applicable, to any reimbursement from Licensor for Licensee's work.

10.4 In the event that Licensor elects to modify all or any portion of the Fuel Farm, Licensee will cooperate with Licensor during such modification, including Licensee's tolerating temporary inconveniences.

SECTION 11

ACCESS TO FUEL FARM, FUEL TANKS AND EQUIPMENT

11.1 Licensor shall have the right to enter upon the Fuel Farm at any time for any purpose consistent with this License.

11.2 Neither Licensee nor any Licensee Parties shall enter onto the roof of the Fuel Farm.

11.3 Neither Licensee nor any Licensee Parties shall use or manipulate in any manner any fuel tanks at the Fuel Farm (other than the Fuel Tanks), or any equipment used solely therewith.

11.4 Licensor shall have no liability to Licensee for any loss of access by Licensee to the Fuel Farm or the Fuel Tanks by reason of any security requirement, legal requirement, casualty, accident, condemnation, alteration, maintenance, repair, strike, act of God, force majeure, or cause beyond the reasonable control of Licensor.

SECTION 12

UTILITIES

12.1 Failure by Licensor to furnish, or the interruption or termination of utility services in whole or in part, resulting from any security requirement, legal requirement, casualty, accident, condemnation, alteration, maintenance, repair, strike, act of God, force majeure, or cause beyond the reasonable control of Licensor, shall not render Licensor liable in any respect nor be construed as a breach of this License, nor work as an abatement of the Consideration, nor relieve Licensee from the obligation to fulfill any covenant or agreement hereof. Should any of the equipment or machinery used in providing such services for any cause cease to function properly, Licensor shall use reasonable diligence to repair such equipment or machinery but, except as otherwise expressly provided herein, Licensee shall have no claim for offset, abatement of the Consideration, damages or termination of this License on account of an interruption in service thereby or resulting therefrom.

SECTION 13

INSURANCE COVERAGE

13.1 Licensors shall procure and maintain throughout the Term of this License a policy or policies of insurance, causing the Fuel Farm to be insured under standard fire and extended coverage insurance and liability insurance or that which is typically available to a municipality for such purposes in the State of Texas (plus whatever endorsements or special coverages Licensors, at its sole and reasonable discretion, may consider appropriate), to the extent necessary to comply with Licensors's obligations pursuant to the provisions set forth in this License.

13.2 Licensee shall procure and maintain throughout the Term a policy or policies of insurance, at its sole cost and expense to meet or exceed the requirements specified in the then prevailing "Addison Airport Minimum Standards and Requirements For Commercial Aeronautical Service Providers" (the "**Minimum Licensee Insurance Standards**") which may be amended or modified by Licensors from time to time.

13.3 In the event no Minimum Licensee Insurance Standards are known to be in effect, Licensee shall procure and maintain throughout the Term, at the minimum, at its sole cost and expense:

(a) a policy or policies of insurance causing the Licensee Equipment and Licensee's personal property at the Fuel Farm to be insured under standard Special Form or similar property insurance;

(b) business automobile liability insurance for all owned and non-owned automobiles with a combined single limit of \$5,000,000 for bodily injury and property damage; and

(c) commercial general liability insurance insuring Licensee on an occurrence basis against all claims, demands or actions arising out of or in connection with Licensee's use or occupancy of the Fuel Farm, or by the condition of the Fuel Farm

(d) a minimum of \$1,000,000 in Pollution Liability Insurance coverage

(e) other such insurance in such amounts and against such other insurable hazards, which at the time are commonly obtained within the aeronautical industry.

. Licensee's commercial general liability policy or policies must provide coverage with a combined single limit of not less than \$5,000,000 per occurrence (with no offset for occurrences on property other than the Fuel Tanks), and Licensee's insurance policy or policies must list Licensors as a loss payee (as to the Special Form or similar property insurance) as to Licensors's interest in any of Licensee's property and as an "Additional Insured" as to all other insurance including, without limitation, the commercial general liability insurance, which shall also name as Additional Insured's any management personnel or company retained by Licensors to operate or manage the Fuel Farm and/or the Airport.

13.4 All such insurance must be written by insurance companies and on forms and with deductibles satisfactory to Licensors, and Licensee's insurance shall be primary (with any policies of Licensors being excess, secondary and non-contributory). If it becomes customary or otherwise a prudent business practice within Licensee's industry to provide insurance policies with limits higher than the foregoing limits or with coverages other than the foregoing coverages, then Licensee will provide Licensors with such additional insurance as may be requested by Licensors. Licensee also agrees to provide and maintain adequate workers' compensation insurance insuring against and satisfying Licensee's obligations and liabilities under the workers' compensation laws of the State of Texas in no less than statutorily required amounts, covering Licensee's agents and employees in the Fuel Tanks, and containing a waiver of subrogation in favor of Licensors.

13.5 **INDEMNITY. LICENSEE** HEREBY INDEMNIFIES, AGREES TO HOLD HARMLESS AND DEFEND LICENSOR AND THE OTHER LICENSOR INDEMNIFIED PERSONS FROM AND AGAINST ANY AND ALL INDEMNIFIED DAMAGES SUFFERED BY LICENSEE OR ANY OF LICENSEE'S EMPLOYEES, AGENTS OR OTHER REPRESENTATIVES AT OR ABOUT THE FUEL FARM WHICH WOULD HAVE BEEN OR IS COVERED BY AN APPROPRIATE WORKERS' COMPENSATION INSURANCE POLICY (AS MAY BE REQUIRED BY LAW TO BE CARRIED BY LICENSEE) AND/OR EMPLOYER'S LIABILITY INSURANCE POLICY, **INCLUDING ANY INDEMNIFIED DAMAGES CAUSED BY THE NEGLIGENCE OF THE LICENSOR OR ANY OF THE OTHER LICENSOR INDEMNIFIED PERSONS, BUT LICENSEE SHALL HAVE NO DUTY TO INDEMNIFY LICENSOR OR ANY LICENSOR INDEMNIFIED PERSON FOR INDEMNIFIED DAMAGES CAUSED BY THE SOLE NEGLIGENCE OF LICENSOR OR SUCH**

LICENSOR INDEMNIFIED PERSON, UNLESS THE INSURANCE OF LICENSEE COVERS THE INDEMNIFIED DAMAGES CAUSED BY SUCH SOLE NEGLIGENCE.

13.6 Licensee shall obtain a written obligation on the part of each insurance company to notify Licensor at least thirty (30) days prior to cancellation, non-renewal or modification of all such insurance described above. Such policies or duly executed certificates or other evidence of such insurance (in any event in form and content reasonably satisfactory to Licensor) shall be delivered to Licensor prior to the Commencement Date. Renewals of insurance shall be delivered to Licensor at least thirty (30) days prior to the expiration of the respective policy term(s). If Licensee should fail to comply with the foregoing requirement relating to insurance, Licensor may obtain such insurance on Licensee's behalf, and Licensee shall pay to Licensor on demand as additional Consideration the premium cost plus interest on such additional Consideration at the maximum contractual rate which could legally be charged in the event of a loan of such late Consideration to Licensee (but in no event to exceed 1 ½% per month).

SECTION 14

WAIVER OF LIABILITY; MUTUAL WAIVER OF SUBROGATION

14.1 Licensor and its agents, employees or authorized representatives shall not (a) be liable to Licensee, nor to Licensee's officers, owners, employees, representatives, contractors, agents or visitors, nor to any other person whomsoever, for any injury to person (including, without limitation, death) or damage to or destruction of property caused by the Fuel Tanks or other portion of the Fuel Farm becoming out of repair or by defect or failure of any structural element of the Fuel Tanks or of any equipment, pipes or wiring, or broken glass, or by the backing up of drains, or by fuel, gas, water, steam, electricity or oil leaking, escaping or flowing into the Fuel Tanks or the Fuel Farm, except where due to Licensor's willful acts or gross negligence in failing to maintain or make repairs required to be made hereunder, after the expiration of a reasonable time after written notice to Licensor of the need for such repairs and Licensor failed to remedy said condition; and (b) be liable to Licensee, nor to Licensee's officers, owners, employees, representatives, contractors, agents or visitors, nor to any other person whomsoever, for any loss or damage that may be occasioned by or through the acts or omissions of other licensees of fuel tanks at the Fuel Farm or of any other persons whomsoever, except for the willful misconduct or gross negligence of authorized employees, agents or authorized representatives of Licensor.

14.2 **INDEMNITY.** Licensor shall not be liable to Licensee, any Licensee Parties or any other person for (a) any injury to person (including, without limitation, death) or damage to or destruction of property on or about the Fuel Farm or any other portion of the Airport or premises adjacent thereto caused by the act or omission of Licensee, any Licensee Parties or any other person using the Fuel Farm or any equipment used in connection therewith under the express or implied invitation of Licensee; or (b) events, acts or occurrences arising out of any breach or default by Licensee in the performance of its obligations under this License. LICENSEE AGREES TO AND SHALL DEFEND AND INDEMNIFY LICENSOR AND THE OTHER LICENSOR INDEMNIFIED PERSONS AND HOLD LICENSOR AND THE OTHER LICENSOR INDEMNIFIED PERSONS HARMLESS FROM AND AGAINST ANY AND ALL INDEMNIFIED DAMAGES ARISING OUT OF SUCH INJURY, INDEMNIFIED DAMAGES OR DESTRUCTION, OR INDEMNIFIED DAMAGES CAUSED BY (I) LICENSEE'S PERFORMANCE OF THIS AGREEMENT, (II) THE USE OF THE FUEL FARM, FUEL TANKS, OR ANY OTHER PORTION OF THE AIRPORT OR PROPERTY ADJACENT THERETO BY LICENSEE OR BY ANY LICENSEE PARTIES; (III) THE CONDUCT OF LICENSEE'S BUSINESS OR ANYTHING ELSE DONE OR PERMITTED BY LICENSEE (OR ANY OF LICENSEE PARTIES) TO BE DONE IN OR ABOUT THE FUEL FARM, FUEL TANKS, OR ANY OTHER PORTION OF THE AIRPORT OR PROPERTY ADJACENT THERETO; (IV) ANY MISREPRESENTATION OR BREACH OF WARRANTY BY LICENSEE UNDER THIS AGREEMENT; OR (V) WITHOUT LIMITING ANY OF THE FOREGOING, ANY ACT OR OMISSION OF LICENSEE OR OF ANY OF LICENSEE PARTIES UNDER, RELATED TO, OR IN CONNECTION WITH THIS AGREEMENT, **INCLUDING ANY INDEMNIFIED DAMAGES CAUSED BY THE NEGLIGENCE OF THE LICENSOR OR ANY OF THE OTHER LICENSOR INDEMNIFIED PERSONS, BUT LICENSEE SHALL HAVE NO DUTY TO INDEMNIFY LICENSOR OR ANY LICENSOR INDEMNIFIED PERSON FOR INDEMNIFIED DAMAGES CAUSED BY THE SOLE NEGLIGENCE OF LICENSOR OR SUCH LICENSOR INDEMNIFIED PERSON, UNLESS THE INSURANCE OF LICENSEE COVERS THE INDEMNIFIED DAMAGES CAUSED BY SUCH SOLE NEGLIGENCE.**

14.3 Licensors and Licensee each hereby waives all right of recovery against the other, and releases the other from any and all liability or responsibility to the other, or to any other party claiming through or under them by way of subrogation or otherwise, for any loss or damage to property arising from any cause that is insurable under standard Special Form or similar property insurance or which is required herein to be insured thereby (and each party agrees to obtain an endorsement to that effect in their respective Special Form or similar property insurance policies), **EVEN IF SUCH LIABILITY OR LOSS IS CAUSED BY THE NEGLIGENCE OF THE OTHER PARTY**; provided, however, that this mutual waiver and release is applicable only with respect to any loss or damage occurring during the time when such Special Form or similar property insurance policies which are readily available in the marketplace contain a clause or permitted endorsement to the effect that any such waiver and release does not adversely affect or impair the policy or the right of the insured party to proceeds under such policy and further provided that this waiver and release shall be applicable only to the extent that insurance proceeds are actually paid and collected to cover for such loss or damage and shall not be applicable to the portion of any such loss or damage which is not reimbursed by the damaged party's insurer because of the "deductible" in the damaged party's insurance coverage. The release specified in this Section 14.3 is cumulative with any releases or exculpations, which may be contained in any other provisions of this License.

SECTION 15

DAMAGES BY CASUALTY

15.1 Licensee shall give immediate written notice to the Licensor of any damage caused to the Fuel Farm or any Fuel Tank by fire or other casualty.

15.2 In the event that the Fuel Farm or any Fuel Tank is damaged or destroyed by fire or other casualty insurable under standard fire and extended coverage insurance, and Licensor does not elect to terminate this License as hereinafter provided, Licensor shall proceed with reasonable diligence and at its sole cost and expense (to the extent that insurance proceeds are available therefore, and provided that Licensee shall reimburse Licensor for any such costs and expenses for which Licensee may be liable under this License) to rebuild and repair the Fuel Farm or any Fuel Tank. In the event (a) the Fuel Farm or any Fuel Tank is destroyed or substantially damaged by a casualty not covered by Licensor's insurance or (b) the Fuel Farm or any Fuel Tank is destroyed or rendered unusable (as determined by Licensor), then Licensor may elect either to terminate this License as to all Fuel Tanks or just the damaged, destroyed or unusable Fuel Tank(s) or to proceed to rebuild and repair the Fuel Farm or any damaged, destroyed or unusable Fuel Tank. Licensor shall give written notice to Licensee of any such election within sixty (60) days' after the occurrence of such casualty and, if Licensor elects to rebuild and repair, shall proceed to do so with commercially reasonable diligence.

15.3 Licensor's obligation to rebuild and repair under this Section 15 shall, in any event, be limited to restoring the Fuel Farm or any Fuel Tank to substantially the condition in which the same existed prior to such fire or other casualty, exclusive of any Licensee Equipment, alterations, additions, improvements, fixtures and other equipment installed by Licensee. Licensee agrees that promptly after completion of such work by Licensor, Licensee will proceed with reasonable diligence and at Licensee's sole cost and expense to restore, repair and replace all Licensee Equipment and all alterations, additions, improvements, fixtures, signs and equipment installed by Licensee.

15.4 Licensee agrees that during any period of reconstruction or repair of the Fuel Farm or any Fuel Tank pursuant to this Section 15, it will continue the operation of its business within the Fuel Farm to the extent practical.

SECTION 16

EMINENT DOMAIN

16.1 If less than all of the Fuel Farm should be taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or by private purchase in lieu thereof, at Licensor's election, this License shall terminate and Licensor shall credit Licensee for unearned Consideration, if any, effective on the date physical possession is taken by the condemning authority.

16.2 If less than all of the Fuel Farm should be taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or by private purchase in lieu thereof, and Licensor elects not to terminate this License, Licensor shall make all necessary repairs or alterations to the remaining Fuel Farm and, promptly after completion of such work by Licensor, Licensee shall restore, repair and replace all Licensee Equipment and all alterations, additions, improvements, fixtures, signs and equipment installed by Licensee.

16.3 If all of the Fuel Farm should be taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or by private purchase in lieu thereof, this License shall terminate effective on the date physical possession is taken by the condemning authority.

16.4 All compensation awarded for any taking (or the proceeds of private sale in lieu thereof) of the Fuel Farm shall be the property of Licensor, and Licensee hereby assigns its interest in any award related to such taking to Licensor.

16.5 Licensee agrees that during any period of reconstruction or repair of the Fuel Farm or any Fuel Tank pursuant to this Section 16, it will continue the operation of its business within the Fuel Farm to the extent practical.

SECTION 17

ASSIGNMENT AND SUBLETTING

17.1 Licensee shall not and has no authority to assign or in any manner transfer this License or any interest herein, sublicense its interest under this License or any part thereof, or grant any license, concession or other right of use of any portion of the Fuel Farm without Licensor's prior written consent, which may be withheld in Licensor's sole discretion. Any attempted assignment or transfer, or any attempt to grant any sublicense, concession or other right of use, in violation of the preceding sentence shall be null and void, *ab initio*. In determining whether or not to grant its consent, Licensor shall be entitled to take into consideration all factors including, without limitation, Licensor's desired Licensee mix, the reputation and net worth of the proposed transferee, purported intent and use of the facilities by the proposed transferee (even beyond what is specified in Section 1.1(q)) and the then-current market conditions (including market consideration). In addition, Licensor shall also be entitled to charge an assignment fee for processing and considering, but not necessarily consenting to, Licensee's request. Consent by Licensor to one or more assignments, transfers, or sublicenses shall not constitute a novation or waiver of Licensor's rights as to any subsequent assignments, transfers, and sublicenses. If Licensor consents, any unexercised extension options of Licensee described on Exhibit "D" attached hereto shall be deemed null and void, *ab initio*, and of no force or effect.

17.2 If Licensee is a corporation, partnership or other entity (other than a publicly traded entity), and if at any time during the Term of this License the person or persons who own a majority of either the outstanding voting rights or controlling interests of Licensee at the time of the execution of this License cease for any reason to own a majority of such voting rights or controlling interests (except as a result of transfers by devise or descent) of Licensee, the loss of a majority of such voting rights or controlling interests shall be deemed an assignment of this License by Licensee and, therefore, subject in all respects to the provisions of Section 17.1 above. For purposes hereof, "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. Licensee shall give to Licensor, upon Licensor's request, a list of such person or persons.

17.3 Any assignee or other transferee of an interest in and to this License shall be deemed, by acceptance of such assignment or other transfer or by use of the Fuel Farm, to have assumed all of the obligations set forth in or arising under this License. Such assumption shall be effective as of the earlier of the date of such assignment or other transfer, or the date on which the assignee or other transferee commences use of the Fuel Farm.

17.4 Notwithstanding any assignment, other transfer or subletting, Licensee shall at all times remain fully responsible and liable for the payment of the Consideration herein specified and for compliance with all of its other obligations under this License (even if future assignments, transfers and sublicenses occur subsequent to the assignment, transfer or sublicensing by Licensee, and regardless of whether or not Licensee's approval has been obtained for such future assignments, transfers and sublicensing). In the event that for any reason any assignment or transfer, or sublicense, concession or other right of use of any portion of the Fuel Farm, prohibited by this Section 17 is consummated without the prior written consent of Licensor, or if an assignment, sublicense or other transfer by Licensee is permitted by Licensor, and the consideration paid and/or payable by an assignee, transferee, sublicensee

or other user by reason of this License exceeds the Consideration paid payable under this License, then Licensee shall be bound and obligated to pay Licensor all such excess consideration within ten (10) days following receipt thereof by Licensee from such assignee, transferee, sublicensee or other user. Finally, in the event of any assignment or transfer, or sublicense, concession or other right of use of any portion of the Fuel Farm, whether permitted by Licensor or otherwise consummated without Licensor's consent, it is understood and agreed that all consideration paid to Licensee by the assignee, transferee, sublicensee or other user shall be received by Licensee in trust for Licensor to be forwarded immediately to Licensor without offset or reduction of any kind, and upon election by Licensor such consideration shall be paid directly to Licensor as specified in Section 4.2 of this License (to be applied as a credit and offset to Licensee's Consideration obligation).

17.5 Licensee shall not and has no authority to mortgage, pledge or otherwise encumber its interest in this License, without the prior written consent of Licensor, which consent may be withheld in Licensor's sole discretion. Any such mortgage, pledge or other encumbrance in violation of the preceding sentence shall be null and void, *ab initio*.

17.6 In the event of the transfer and assignment by Licensor of its interest in this License to a person or persons expressly assuming Licensor's obligations under this License, Licensor shall thereupon be released from any further obligations hereunder, and Licensee agrees to look solely to such successor in interest of the Licensor for performance of such obligations. Any security given by Licensee to secure performance of Licensee's obligations hereunder may be assigned and transferred by Licensor to such successor in interest and Licensor shall thereby be discharged of any further obligation relating thereto.

SECTION 18

ESTOPPELS

18.1 Licensee agrees that it will, from time to time upon request by Licensor, execute and deliver to Licensor a written statement addressed to Licensor (or to a party designated by Licensor), which statement shall identify Licensee and this License, shall certify that this License is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified), shall confirm that Licensor is not in default as to any obligations of Licensor under this License (or if Licensor is in default, specifying any default), shall confirm Licensee's agreements contained in this License, and shall contain such other information or confirmations as Licensor may reasonably request. Licensor is hereby irrevocably appointed and authorized as the agent and attorney in fact of Licensee to execute and deliver any such written statement on Licensee's behalf if Licensee fails to do so within fourteen (14) business days after the delivery of a written request from Licensor to Licensee.

SECTION 19

NON-COMPETE

19.1 Licensee covenants and agrees that during the Term of this License, neither Licensee nor any person, firm or corporation, directly or indirectly controlling, controlled by or under common control with Licensee (and also, in the event Licensee is a corporation, if any officer or director thereof or shareholder owning more than ten percent (10%) of the outstanding stock thereof, or parent, subsidiary or related or affiliated corporation) either directly or indirectly shall operate or commence operation of any facility selling or that otherwise offers for sale any aircraft fuel of the type to be used by Licensee in the Fuel Tanks or similar or related items, or in any manner competes with the business of the Fuel Farm, within a straight-line radius of ten (10) miles of the Fuel Farm, which Licensee acknowledges is a reasonable area for the purpose of this provision. It is acknowledged that Licensor will incur damages by reason of the diversion of business from the Fuel Tanks and Fuel Farm to such other facility within such radius, as a proximate result of the establishment of such other facility.

SECTION 20

DEFAULT AND REMEDIES

20.1 Default by Licensee. The following events shall be deemed to be events of default by Licensee under this License:

- (a) Licensee shall fail to pay when due any Base Fee or other sum of Consideration including, but not limited to, Licensee's Additional Fee or adjusted Additional Fee and Fuel Flowage Fees as required to be paid by Licensee to Licensor under this License (hereinafter sometimes referred to as a "**Monetary Default**").
- (b) Licensee shall fail to comply with any term, provision or covenant of this License (other than a Monetary Default) and shall not cure such failure within thirty (30) days after delivery to Licensee notice of the occurrence of such default.
- (c) Licensee shall become insolvent, or shall make a transfer in fraud of creditors, or shall seek relief under Title 11 of the Bankruptcy Code (defined in Section 20.3 below) or shall make an assignment for the benefit of creditors, or Licensee shall admit in writing its inability to pay its debts as they become due.
- (d) Licensee shall file a petition under any section or chapter of the Bankruptcy Code, as amended, pertaining to bankruptcy or under any similar insolvency or debtor-relief law or statute of the United States or any state thereof, or Licensee shall be adjudged bankrupt or insolvent in proceedings filed against Licensee thereunder; or an involuntary case is commenced under 11 U.S.C. § 303 as amended or an insolvency, receivership or any similar proceedings are commenced under Federal or State law and such proceedings are not fully and finally dismissed, or a petition or answer proposing the adjudication of Licensee as bankrupt or its reorganization under any present or future federal or state bankruptcy or similar insolvency or debtor-relief law shall be filed in any court and such petition or answer shall not be discharged or denied within sixty (60) days after the filing thereof.
- (e) A receiver or trustee shall be appointed for all or substantially all of the assets of Licensee, or for the Fuel Tanks or any of Licensee's property located therein, in any proceeding brought by Licensee; or any such receiver or trustee shall be appointed in any proceeding brought against Licensee and shall not be discharged within sixty (60) days after such appointment or Licensee shall consent to or acquiesce in such appointment.
- (f) The license hereunder shall be revoked upon execution or other process of law in any action against Licensee.
- (g) The liquidation, termination or default of a lease, license or other written agreement with the Town of Addison, dissolution, forfeiture of right to do business or death of Licensee.

20.2 Remedies of Licensor. Upon the occurrence of any event of default by Licensee under this License, Licensor may:

- (a) immediately terminate this License and at the expense and liability of the Licensee, alter or change any or all locks or other security or power devices controlling access to the Fuel Farm or Fuel Tanks without posting or giving notice of any kind to Licensee.
- (b) do whatever Licensee is obligated to do under the terms of this License; and Licensee agrees to reimburse Licensor on demand for any expense which Licensor may incur in thus effecting compliance with Licensee's obligations under this License together with interest at the lesser of (i) the maximum rate permitted under applicable law or (ii) eighteen percent (18%) per annum.

20.3 Event of Bankruptcy. In addition to, and in no way limiting the other remedies set forth in this Section 20, Licensor and Licensee agree that if Licensee ever becomes the subject of a voluntary or involuntary bankruptcy, reorganization or other similar type proceeding under the federal bankruptcy laws, as now enacted or hereinafter amended, then:

(a) “adequate protection” and “adequate assurance” of Licensor's interest under this License pursuant to the provisions of Sections 361, 362, 363, 364 and 365 (or their successor sections) of the Bankruptcy Code, 11 U.S.C. Paragraph 101, et seq. (such Bankruptcy Code as amended from time to time being herein referred to as the “**Bankruptcy Code**”), prior to assumption and/or assignment of this License by Licensee shall include, but not be limited to, all or any part of the following:

(1) curing all monetary and non-monetary defaults, including, without limitation, payment of attorneys' fees incurred by Licensor related to enforcing the terms and conditions of this License and the continued payment by Licensee of the Base Fee and all other Considerations due and owing hereunder and the performance of all other covenants and obligations hereunder by Licensee;

(2) the furnishing of an additional and/or new security deposit by Licensee in the amount of three (3) times the then-current monthly Base Fee and other Considerations payable hereunder; and

(3) in addition, the Licensee shall provide financial statements evidencing the financial condition and operating performance of any proposed assignee and guarantors, if any, which is sufficient to show that the proposed assignee is capable of performing in Licensor's sole discretion, all of the Licensee's obligations under the terms and conditions of this License, including, without limitation, the “adequate assurance” and “adequate protection” requirements set forth herein.

(b) in the event Licensor consents, in its sole discretion, to the assignment of this License, any person or entity, to which this License is assigned pursuant to the provisions of the Bankruptcy Code, shall be deemed without further act or deed to have assumed all of the obligations of Licensee arising under this License on and after the effective date of such assignment, including, without limitation, adequate protection and adequate assurance requirements under Section 20.3(a). Any such assignee shall, upon demand by Licensor, execute and deliver to Licensor an instrument confirming such assumption of liability, along with applicable guaranties of any principals of the assignee.

(c) notwithstanding the prohibition against assignment contained in Section 17.1 herein, if this License is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, any and all monies or other considerations payable or otherwise to be delivered to Licensor including Base Fees and other Considerations hereunder, shall be and remain the exclusive property of Licensor and shall not constitute property of Licensee or of the bankruptcy estate of Licensee. Any and all monies or other considerations constituting Licensor's property under the preceding sentence not paid or delivered to Licensor shall be held in trust by Licensee or Licensee's bankruptcy estate for the benefit of Licensor and shall be promptly paid to or turned over to Licensor.

(d) to the extent permitted by law, Licensor and Licensee agree that this License is a contract under which applicable law excuses Licensor from accepting performance from, or rendering performance to, any person or entity other than Licensee within the meaning of the Bankruptcy Code, 11 U.S.C. Paragraph 101, et seq.

20.4 No Waiver. The following do not constitute a waiver of any rights Licensor may have under the License: (a) failure of Licensor to declare any default immediately upon its occurrence, or delay in taking any action in connection with an event of default, shall not constitute a waiver of such default, nor shall it constitute an estoppel against Licensor, but Licensor shall have the right to declare the default at any time and take such action as is lawful or authorized under this License; (b) failure by Licensor to enforce its rights with respect to any one default shall not constitute a waiver of its rights with respect to any subsequent default; (c) receipt by Licensor of Licensee's keys to the Fuel Tanks or the Fuel Farm shall not constitute a termination of this License; and (d) no payment by Licensee or receipt by Licensor of (i) a lesser amount than the Consideration due under this License shall be deemed to be other than on account of the earliest Consideration due hereunder; and (ii) any endorsement or statement on any check or any letter accompanying any check or payment as Consideration shall not be deemed an accord and satisfaction and Licensor may accept such check or payment without prejudice to Licensor's right to recover the balance of such Consideration or pursue any other remedy in this License provided.

20.5 Remedies Cumulative. No right or remedy herein conferred upon or reserved to Licensor is intended to be exclusive of any other right or remedy it may have, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing by agreement, applicable law, common law, in equity, or otherwise. In addition to other remedies provided in this License, Licensor shall be entitled, to the extent permitted by applicable law, but without the requirement of a bond or evidence of irreparable harm, to

injunctive relief in case of the violation, or attempted or threatened violation, of any of the covenants, agreements, conditions or provisions of this License, or to a decree compelling performance of any of the other covenants, agreements, conditions or provisions of this License, or to any other remedy allowed to Licensor by law, common law, in equity, or otherwise.

20.6 Evidence of Termination. To the extent any provision of applicable law requires some action by Licensor to evidence or effect the termination of this License or to evidence the termination of Licensee's right of occupancy, Licensee and Licensor hereby agree that written notice by Licensor to Licensee or to any of Licensee's agents, servants or employees, which states, in substance, that Licensor has elected to and has terminated this License, shall be sufficient to evidence and effect the termination herein provided for.

20.7 Licensor Default. Licensee shall not exercise any remedy for any breach or default by Licensor under this License without first giving written notice of such breach or default to Licensor and a commercially reasonable opportunity to cure such breach or default of not less than thirty (30) days from the date Licensor receives such notice.

SECTION 21

HOLDING OVER

21.1 In the event Licensee continues use of the Fuel Farm after the termination or expiration of this License and without the execution of a new license, it will be deemed to be using the Fuel Farm as a licensee under a license terminable at will at a daily fee equal to the Consideration herein provided plus one hundred percent (100%) of such amount, pro-rated on a daily basis, otherwise subject to all the conditions, provisions and obligations of this License insofar as the same are applicable to a license terminable at will.

SECTION 22

EXPIRATION OR TERMINATION OF LICENSE

22.1 Immediately prior to the expiration or earlier termination of Licensee's right to use the Fuel Farm pursuant to this License, Licensee shall:

- a) deliver the Fuel Tanks back to Licensor in good repair, excepting reasonable wear and tear and losses required to be restored by Licensor provided for in Section 9.1, Section 15 and Section 16;
- b) completely remove all sludge, solids, and residual substances from inside of the Fuel Tanks, piping and filtration devices in accordance with state and federal guidelines;
- c) dispose of tank bottom sludge according to state and federal laws and regulations;
- d) remove and replace all filters, separators or other filtering medium or such devices typically required under Section 9.1;
- e) secure the Fuel Tanks by bolting and locking all manways, valves and cap or plug fill lines, gauge openings or pump lines; and
- f) take all other actions reasonably necessary to empty, secure and stabilize the Fuel Tanks as instructed by Licensor.

22.2 On the surrender of the Fuel Tanks at the expiration or earlier termination of this License, Licensee shall give Licensor at least seventy-two (72) hours advance notice that the Fuel Tanks are ready for Licensor's inspection and acceptance. Upon this notification, Licensor shall then inspect the Fuel Tanks and call for the inspection by the Town of Addison Fire Department and any other regulatory entity having jurisdiction over such matters. Licensee agrees to remedy, at first reasonable opportunity, any exception or exceptions reported as a result of said inspections. Once all exceptions have been resolved and accepted by Licensor, Licensor shall deliver written notice to Licensee that Licensor has accepted the surrender of the Fuel Tanks pursuant to this Section 22, and Licensee's right to access and use of the Fuel Tanks and Fuel Farm is terminated.

SECTION 23

NOTICES

23.1 Wherever any notice is required or permitted hereunder, such notice shall be in writing. Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered when actually received by the designated addressee or, if earlier and regardless of whether actually received or not, when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the parties hereto at the respective addresses set out in Section 1.1 above, or at such other address as they might specify by written notice.

23.2 If and when included within the term "Licensor" as used in this License there are more than one person, firm or corporation, all shall jointly arrange among themselves for their joint execution of such notice specifying some individual at some specific address for the receipt of notices and payments to the Licensor; if and when included within the term "Licensee" as used in this instrument there are more than one person, firm or corporation, all shall jointly arrange among themselves for their joint execution of such a notice specifying some individual at some specific address for the receipt of notices and payments to Licensee. All parties included within the terms "Licensor" and "Licensee", respectively, shall be bound by notices and payments given in accordance with the provisions of this Section. 23.2 to the same effect as if each had received such notice or payment. In addition, Licensee agrees that Licensor's attorney, property manager or other agent may give notices to Licensee on Licensor's behalf.

SECTION 24

COMMISSIONS

24.1 **EACH PARTY HERETO REPRESENTS TO THE OTHER THAT IT HAS NOT AUTHORIZED ANY BROKER OR FINDER TO ACT ON ITS BEHALF IN CONNECTION WITH THE NEGOTIATION AND EXECUTION OF THIS LICENSE, AND LICENSOR AND LICENSEE EACH AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE OTHER FROM AND AGAINST ANY AND ALL INDEMNIFIED DAMAGES ARISING OUT OF OR RESULTING FROM ANY AGREEMENT, ARRANGEMENT OR UNDERSTANDING MADE OR ALLEGED TO HAVE BEEN MADE BY SUCH INDEMNIFYING PARTY WITH ANY SUCH OTHER BROKER OR FINDER IN CONNECTION WITH THIS LICENSE, INCLUDING ANY SUCH CLAIM, LOSS, DAMAGE, COST OR EXPENSE ARISING OUT OF THE NEGLIGENCE OF THE INDEMNIFIED PARTY, PROVIDED THAT INDEMNIFYING PARTY SHALL HAVE NO DUTY TO INDEMNIFY THE INDEMNIFIED PARTY FOR INDEMNIFIED DAMAGES CAUSED BY THE SOLE NEGLIGENCE OF THE INDEMNIFIED PARTY.**

SECTION 25

CHANGES DUE TO LEGAL REQUIREMENTS

25.1 If for any reason the Fuel Farm was not constructed in compliance with any legal requirements in existence at the time of construction, Licensor shall have no liability to Licensee or any Licensee Parties as a result thereof, except that Licensor shall have a reasonable period of time after notification from Licensee of such noncompliance to cause the Fuel Farm to comply with such legal requirements. If there are any changes to such legal requirements after the date of completion of Licensor's construction of the Fuel Farm that require changes thereto, Licensor shall have a reasonable period of time after notification from Licensee to make such changes. All costs incurred by Licensor in causing the Fuel Farm to comply with applicable laws may be included in the Common Area Charge.

SECTION 26

APPLICABLE LAWS

26.1 Licensors and Licensee acknowledge that there are in effect federal, state, county and municipal laws, rules, regulations, standards, and policies (together, "laws") and that the same may hereafter be modified or amended and additional laws may hereafter be enacted or go into effect, relating to or affecting the Fuel Farm or the Fuel Tanks. Licensee shall not cause, or permit or allow the Licensee Parties to cause, any violation of any applicable laws. Moreover, Licensee shall have no claim against Licensor by reason of any changes Licensor may make in the Fuel Farm or the Fuel Tanks required by any applicable laws or any charges imposed upon Licensee, Licensee's customers or other invitees as a result of applicable laws.

26.2 If any provision in this License is held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this license shall not be affected thereby.

26.3 Licensee hereby acknowledges that Licensor is bound by the terms and conditions of any and all Federal Aviation Administration, Texas Department of Transportation, and other grant agreements, grant assurances and regulations regarding the Airport, and the terms of any grant, loan, regulation, or agreement under Section 22.055 of the Texas Transportation Code, as amended or superseded, whether now existing or made in the future. Without limiting the generality of Section 26.1, Licensee agrees not to take any action or omit to take any action in relation to the Fuel Farm that would cause Licensor to be in violation of such terms, conditions, agreements, assurances, regulations, grant or loan.

26.4 Licensors and Licensee hereby specifically acknowledge that U.S. Code of Federal Regulations Title 40 Part 112 – *Oil Pollution Prevention*, governs the conduct of the parties under the License. Licensors and Licensee hereby further specifically acknowledge that the National Fire Protection Association, Inc. (NFPA) 407, *Standard for Aircraft Fuel Servicing*, governs the conduct of the parties under the License. Without limiting the generality of Section 26.1, Licensee agrees not to take any action or omit to take any action in relation to the Fuel Farm that would cause Licensor to be in violation of such regulations or standards.

26.5 If, by reason of any applicable laws, the payment to, or collection by, Licensor of any Consideration or other charges payable by Licensee to Licensor pursuant to the provisions of this License is in excess of the amount (the "**Maximum Charge**") permitted by laws, then Licensee, during the period when such laws shall be in force and effect (the "**Freeze Period**"), shall not be required to pay, nor shall Licensor be permitted to collect, any sum in excess of the Maximum Charge. Upon the earlier of (i) the expiration of the Freeze Period, or (ii) the issuance of a final order or judgment of a court of competent jurisdiction declaring such laws to be invalid or not applicable to the provisions of this License, Licensee, to the extent not then proscribed by applicable law, and commencing with the first day of the month immediately following, shall pay to Licensor as additional Consideration, prorated in equal monthly installments over the balance of the Term of this License, a sum equal to the cumulative difference between the Maximum Charge and such Consideration or other charge during the Freeze Period. If any provision of this Section 26.5, or the application thereof, shall to any extent be declared to be invalid and unenforceable, the same shall not be deemed to effect the validity and enforceability of any of the other provisions of this Section 26.5 or of this License, all of which shall remain in effect to the fullest extent permitted by law.

SECTION 27

MANDATORY NON-BINDING MEDIATION

27.1 The parties have entered into this License in the belief that it is mutually advantageous to them. It is with that same spirit of cooperation that they pledge to attempt to resolve any dispute (unless the Dispute involves an event of default of a payment obligation under this License) amicably without the necessity of litigation. Accordingly, they agree if any dispute arises between them relating to this License (the "**Dispute**"), they will first utilize the following procedures specified in this Section 27 (the "**Procedure**") before resorting to any court proceedings, unless the lack of immediate court proceedings would cause irreparable harm without an adequate remedy at law:

- (a) The party seeking to initiate the Procedure (the "**Initiating Party**") will give Notification to the other party. The Notification must describe in general terms the nature of the Dispute and the Initiating

Party's requested relief. Additionally, the Notification must identify one or more individuals with authority to settle the Dispute on the Initiating Party's behalf. The party receiving the Notification (the "**Responding Party**") will have five (5) business days within which to designate by reply Notification to the Initiating Party one or more individuals with authority to settle the Dispute on the Responding Party's behalf. The individuals so designated will be known as the "**Authorized Individuals**". The Initiating Party and the Responding Party will collectively be referred to as the "**Disputing Parties**" or individually as a "**Disputing Party**".

(b) The Authorized Individuals may investigate the Dispute as they deem appropriate, but they agree to promptly, and in no event not later than fourteen (14) days from the date of the Initiating Party's Notification, meet to discuss the resolution of the Dispute. The Authorized Individuals will meet at the times and places and with the frequency as they may agree. If the Dispute has not been resolved within fourteen (14) days from their initial meeting date, the Disputing Parties will cease direct negotiations and will submit the Dispute to mediation in accordance with the following procedure:

(i) The Authorized Individuals will have five (5) business days from the date they cease direct negotiations to submit to each other by Notification a written list of acceptable qualified attorney-mediators not affiliated with any party. Within five (5) days from the date the list is received, the Authorized Individuals will rank the mediators in numerical order of preference and exchange the rankings. If one or more names are on both lists, the highest-ranking person will be designated as the mediator. If no mediator has been selected under this procedure, the Disputing Parties agree jointly to request a state district or federal district judge of their choosing, from the State of Texas, to supply a list of potential qualified attorney-mediators. Within five (5) days from the date the list is received, the Authorized Individuals will rank the mediators in numerical order of preference and exchange the rankings. If one or more names are on both lists, the highest-ranking person will be designated as the mediator. If no mediator has been selected under this procedure, either of the Disputing Parties may unilaterally request a local state district judge for Dallas County, Texas, to supply the list. Within five (5) business days from the date the list is received, the Authorized Individuals will again rank the proposed mediators in numerical order of preference and will simultaneously exchange the list and will select as the mediator the individual receiving the highest combined ranking. If the mediator is not available to serve, they will proceed to contact the mediator who was next highest in ranking until they are able to select a mediator.

(ii) In consultation with the mediator selected, each Disputing Party will cause its Authorized Individual to cooperate with the other Authorized Individual in promptly designating a mutually convenient time and place for the mediation. Unless circumstances require otherwise, the time for mediation shall not be later than thirty (30) days after selecting the mediator.

(iii) If any Disputing Party has substantial need for information in another Disputing Party's possession or control in order to prepare for the mediation, all Disputing Parties will attempt to agree to procedures to expeditiously request and exchange the information and the scope of such request with the mediator's help if required.

(iv) At least seven (7) days before the first scheduled mediation session, each Disputing Party will deliver to the mediator, and by Notification deliver to the other Disputing Party, a general and concise written summary of its views on the Dispute and any other matters required by the mediator. The mediator may also request that a confidential issue paper be submitted by each Disputing Party to the mediator.

(v) In the mediation, each Disputing Party will be represented by its Authorized Individual and may also be represented by counsel. In addition, each Disputing Party may, with the mediator's permission and subject to the confidentiality provisions of this Section 27, bring additional persons as needed to respond to questions, contribute information and participate in the negotiations.

(vi) The mediator will determine the format for the meetings. The format must be designed to insure that (A) both the mediator and the Authorized Individuals have an opportunity to hear an oral presentation of each Disputing Party's views on the Dispute, and (B) the Authorized Individuals attempt to negotiate to resolve the Dispute, with or without the assistance of counsel or others permitted to attend, but with the mediator's assistance. To this end, the mediator is authorized to

conduct both joint meetings and separate private caucuses with the Disputing Parties. The mediation session will be private and the Disputing Parties agree to not disclose or release any information to third-parties (except as allowed under Subsection (x) below). The Parties will require the mediator to keep confidential all information learned in private caucus with any Disputing Party unless specifically authorized by the Disputing Party to disclose the information to the other Disputing Party. The Disputing Parties commit to participate in the proceedings with the intention of resolving the Dispute if at all possible.

(vii) The Disputing Parties agree to participate in the mediation procedure to its conclusion. The mediation will be terminated by (a) executing a settlement agreement between the Disputing Parties, (b) declaring to the mediator that the mediation is terminated, or (c) a Disputing Party declaring in writing that the mediation process is terminated when one (1) full day's mediation session is concluded.

(viii) Even if the mediation is terminated without the resolution of the Dispute, the Disputing Parties agree not to terminate negotiations and not to commence any court proceedings before five (5) days following the termination of the mediation. In any event, any Disputing Party may terminate the mediation procedure if the other Disputing Party fails to comply with this Procedure or if any claim in the Dispute, in the absence of such termination, could be barred by any applicable statute of limitations.

(ix) The mediator's fees and expenses will be shared equally among the Disputing Parties. The mediator will be disqualified as a witness, consultant, expert, or counsel for any Disputing Party with respect to the Dispute and any related matters.

(x) Mediation is a compromise and offer to compromise subject to Rule 408 of the Texas and Federal Rules of Evidence. The entire mediation process is confidential, and no stenographic, visual or audio record will be made. Subject to Rule 408 of the Texas and Federal Rules of Evidence, all conduct, statements, promises, offers, views and opinions, whether oral or written, made in the course of the mediation by any Disputing Party, their Authorized Individuals or any of their agents, employees, representatives or other invitees and by the mediator are confidential and, in addition and where appropriate, will be deemed privileged, and shall not be disclosed to anyone who is not (A) a party's agent, employee, expert, witness, or representative and (B) bound by the same confidentiality standards as the parties hereto. Evidence otherwise discoverable or admissible, however, is not excluded from discovery or admission as a result of its use in the mediation.

SECTION 28

MISCELLANEOUS

28.1. **INDEMNITY.** LICENSEE SHALL ALSO DEFEND AND INDEMNIFY LICENSOR AND THE LICENSOR INDEMNIFIED PERSONS AGAINST AND HOLD LICENSOR AND THE LICENSOR INDEMNIFIED PERSONS HARMLESS FROM ALL COSTS, EXPENSES, DEMANDS AND LIABILITY LICENSOR OR THE LICENSOR INDEMNIFIED PERSONS MAY INCUR IF LICENSOR OR ANY OF THE LICENSOR INDEMNIFIED PERSONS BECOME OR ARE MADE A PARTY TO ANY CLAIM OR ACTION (A) INSTITUTED BY LICENSEE AGAINST ANY THIRD PARTY, OR BY ANY THIRD PARTY AGAINST LICENSEE, OR AGAINST ANY PERSON HOLDING ANY INTEREST UNDER OR USING THE FUEL FARM BY LICENSE OR BY AGREEMENT WITH LICENSEE; (B) FOR FORECLOSURE OF ANY LIEN FOR LABOR OR MATERIAL FURNISHED TO OR FOR LICENSEE OR SUCH OTHER PERSON; (C) OTHERWISE ARISING OUT OF OR RESULTING FROM ANY ACT, OMISSION OR TRANSACTION OF LICENSEE, ANY OF LICENSEE PARTIES, OR SUCH OTHER PERSON; OR (D) NECESSARY TO PROTECT LICENSOR'S INTEREST UNDER THIS LICENSE IN A BANKRUPTCY PROCEEDING, OR OTHER PROCEEDING UNDER THE BANKRUPTCY CODE, 11 U.S.C. PARAGRAPH 101, ET SEQ., INCLUDING SUCH COSTS, EXPENSES, DEMANDS, AND LIABILITIES AS ARE OR MAY BE CAUSED BY THE NEGLIGENCE OF THE LICENSOR OR ANY OF THE LICENSOR INDEMNIFIED PERSONS, BUT LICENSEE SHALL HAVE NO DUTY TO INDEMNIFY LICENSOR OR ANY LICENSOR

INDEMNIFIED PERSON FOR INDEMNIFIED DAMAGES CAUSED BY THE SOLE NEGLIGENCE OF LICENSOR OR SUCH LICENSOR INDEMNIFIED PERSON, UNLESS THE INSURANCE OF LICENSEE COVERS THE INDEMNIFIED DAMAGES CAUSED BY SUCH SOLE NEGLIGENCE.

28.2 Nothing in this License shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture or joint enterprise between the parties hereto, it being understood and agreed that neither the method of computation of Consideration, nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of Licensor and Licensee.

28.3 Licensee shall not, for any reason, withhold or reduce Licensee's required payments of Consideration and other charges provided in this License, it being agreed that the obligations of Licensor under this License are independent of Licensee's obligations except as may be otherwise expressly provided herein.

28.4 Licensee shall deposit the Security Deposit with Licensor upon Licensee's execution of this Lease. Licensor shall hold the Security Deposit without interest as security for the performance by Licensee of Licensee's covenants and obligations under this License. Licensor shall not be required to keep the Security Deposit separate from its other accounts and no trust relationship is created with respect to the Security Deposit. The Security Deposit is not an advance payment of rental or a measure of liquidated damages in case of an event of default by Licensee. Upon the occurrence of an event of default by Licensee, Licensor, from time to time, in addition to and without prejudice to any other remedy provided herein or provided by law, may use the Security Deposit to the extent necessary to make good any arrearages of Consideration and any other damage, injury, expense or liability caused to Licensor by any events of default by Licensee. If at any time during this License the Security Deposit then being held by Licensor is less than one monthly installment of the Base Fee plus the then prevailing Additional Fee, Licensee will be required to make an additional payment to Licensor so that the Security Deposit being held by Licensor is always equal to one monthly installment of the Base Fee plus the then prevailing Additional Fee. If an event of default by Licensee does not exist, and no condition exists, which, with the passage of time or the giving of notice, or both, would constitute an event of default, when this License expires or terminates, any remaining balance of such Security Deposit not used by Licensor in accordance with this License and applicable law shall be returned by Licensor to Licensee at the last address of Licensee according to the records of Licensor within a commercially reasonable time following such expiration or termination. Licensee's actual or attempted assignment, transfer, or encumbrance of the Security Deposit will not bind Licensor.

28.5 One or more waivers of any covenant, term or condition of this License by either party shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition. The consent or approval by either party to or of any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

28.6 If any provision of this License is held to be illegal, invalid, or unenforceable, under present or future governmental laws, rules, or regulations, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions shall remain in full force and effect. Licensee shall not record this License or any memorandum or short form hereof, nor shall Licensee permit or cause this License or any memorandum or short form hereof to be recorded. Any attempt at recordation of this License or of a memorandum or short form hereof by Licensee without having first obtained Licensor's written approval shall, at Licensor's option, constitute an automatic event of default by Licensee and, at Licensor's option, may void this License and Licensee's rights hereunder.

28.7 THE LAWS OF THE STATE OF TEXAS (WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS) SHALL GOVERN THE INTERPRETATION, VALIDITY, PERFORMANCE AND ENFORCEMENT OF THIS LICENSE. THIS LICENSE IS PERFORMABLE IN DALLAS COUNTY, TEXAS. VENUE FOR ANY ACTION UNDER THIS LICENSE SHALL BE IN DALLAS STATE DISTRICT COURT, DALLAS COUNTY, TEXAS, THE COUNTY IN WHICH CONSIDERATION SHALL BE PAID PURSUANT TO SECTION 1 AND SECTION 4.2 OF THIS LICENSE. BY EXECUTING THIS LICENSE, EACH PARTY HERETO (i) EXPRESSLY CONSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF THE COURTS OF SUCH COUNTY AND THE STATE OF TEXAS; (II) WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY CLAIM OR DEFENSE THAT THE COURTS OF SUCH COUNTY AND STATE ARE NOT A PROPER OR CONVENIENT VENUE OR FORUM; AND (III) CONSENTS TO THE SERVICE OF PROCESS IN ANY MANNER AUTHORIZED BY TEXAS LAW.

28.8 The captions used herein are for convenience only and do not limit or amplify the provisions hereof.

28.9 Whenever herein the singular number is used, the same shall include the plural, and words of any gender shall include each other gender.

28.10 The terms, provisions and covenants contained in this License shall apply to, inure to the benefit of and be binding upon the parties and their respective heirs, successors in interest, legal representatives and permitted assigns except as otherwise herein expressly provided. Neither party shall be bound by this License in any way until both parties have executed this License and each party has received a copy of this License duly executed by the other. No provision of this License is intended to inure to the benefit of any third party.

28.11 This License and the schedules, riders and exhibits attached, if any (all of which are hereby incorporated by reference herein and made a part hereof), together with the rules and regulations adopted and promulgated by Licensor pursuant to the provisions of this License, contain the entire agreement between the parties, and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties, and no rights are created in favor of either party other than as specified or expressly contemplated in this License, and this License supersedes and revokes all previous negotiations, arrangements, letters of intent, offers to lease or license, lease or license proposals, brochures, representations and information conveyed, whether oral or in writing, between the parties or their respective representatives or any other person purporting to represent Licensor or Licensee. Licensee acknowledges that it has not been induced to enter into this License by any representations or warranties not set forth in this License, that Licensee has not relied upon any representations or warranties not contained in this License and that any rules of interpretation which would otherwise guide the interpretation of this License by virtue of the identity of the party drafting the terms and provisions of this License shall not apply (it being acknowledged and agreed that each party has been represented or had the opportunity to be represented by able counsel in connection with the negotiation and interpretation of this License and all terms and provisions hereof). No brochure, rendering, information, correspondence, representation, warranty or discussion shall be deemed to be a part of this License unless specifically set forth herein or specifically incorporated herein by reference. In addition, no agreement, discussion, course of dealing or course of performance between the parties shall be effective to change, modify or terminate this License or to release Licensee or any other obligated party with respect to liability for this License, either in whole or in part unless the same shall be in writing and duly signed by the party against whom enforcement of such change, modification or termination is sought.

28.12 Licensee agrees to treat the financial terms of this License as confidential and shall not allow disclosure of such financial terms without the prior written consent of Licensor unless required to undertake such disclosure by applicable law. The parties acknowledge that the financial terms of this License are confidential to the maximum extent allowed under applicable law, and any disclosure of it by Licensee would cause Licensor irreparable harm, which could not be measured in actual damages.

28.13 This License consists of twenty-eight (28) Sections and **Exhibits "A" through "F"**. In the event any provision of an exhibit or other attached page shall be inconsistent with a provision in the body of this License, the provision set forth in the License shall be deemed to control.

28.14 If Licensee executes this License as a corporation or partnership, each of the persons executing this License on behalf of Licensee does hereby personally represent and warrant that Licensee is a duly authorized and existing corporation or partnership, that Licensee is qualified to do business in the state in which the Fuel Farm is located, that such corporation or partnership has full right and authority to enter into this License, and that each person signing this License on behalf of such corporation or partnership is authorized to do so. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect. In the event any representation or warranty set forth in this Section 28.14 is materially false, all persons who execute this License on behalf of, or as the act and deed of Licensee, shall be individually liable as Licensee.

28.15 In addition to provisions of this Agreement expressly providing for the survival of provisions of this Agreement following the expiration or earlier termination of this Agreement, any other provision of this Agreement, including, without limitation, remedies for a breach or default under this Agreement or the payment of Compensation, that could be reasonably construed to be intended by the parties to survive such expiration or termination shall so survive. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to

the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

28.16 Licensors and Licensee hereby acknowledge and agree that they are knowledgeable and experienced in commercial transactions and further hereby acknowledge and agree that the provisions of this License for determining Consideration and other charges payable by Licensee are commercially reasonable and valid even though such methods may not state precise mathematical formulae for determining such charges. ACCORDINGLY, LICENSEE HEREBY VOLUNTARILY AND KNOWINGLY WAIVES ALL RIGHTS AND BENEFITS TO WHICH LICENSEE MAY BE ENTITLED UNDER SECTION 93.004 OF THE TEXAS PROPERTY CODE, AS ENACTED BY HOUSE BILL 2186, 77TH LEGISLATURE, AS SUCH SECTION NOW EXISTS OR AS SAME MAY BE HEREAFTER AMENDED OR SUCCEEDED, TO THE EXTENT SUCH SECTION IS APPLICABLE.

NOTICE OF INDEMNIFICATION

THE PARTIES TO THIS LICENSE AGREEMENT HEREBY ACKNOWLEDGE AND AGREE THAT THIS LICENSE CONTAINS CERTAIN INDEMNIFICATION PROVISIONS FOR THE LICENSEE TO INDEMNIFY THE LICENSOR AND OTHER LICENSOR INDEMNIFIED PERSONS. IF A CLAIM IS MADE AGAINST LICENSOR OR ANY OTHER LICENSOR INDEMNIFIED PERSON THAT IS INDEMNIFIED BY LICENSEE UNDER THIS AGREEMENT, LICENSEE SHALL DEFEND LICENSOR OR SUCH LICENSOR INDEMNIFIED PERSON AT LICENSEE'S SOLE COST AND EXPENSE WITH COUNSEL REASONABLY ACCEPTABLE TO LICENSOR OR SUCH LICENSOR INDEMNIFIED PERSON, OR, AT LICENSEE'S ELECTION, LICENSEE SHALL REIMBURSE LICENSOR OR SUCH LICENSOR INDEMNIFIED PERSON FOR ANY FEES OR COSTS LICENSOR OR SUCH LICENSEE INDEMNIFIED PERSON INCURS IN DEFENDING ANY SUCH CLAIM. LICENSEE'S DEFENSE, INDEMNITY AND HOLD HARMLESS OBLIGATIONS UNDER THIS AGREEMENT SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

(THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK)

EXECUTED effective as of _____, 20__.

LICENSOR:

TOWN OF ADDISON, TEXAS

By: _____

Printed Name: _____

Title: _____

ATTEST:

By: _____

_____, City Secretary

LICENSEE:

GALAXY FBO HOLDINGS, LLC

By: [Signature]

Printed Name: Jonathan Hittcock

Title: CFO and Vice President

Taxpayer Identification No. 46-1626031

ATTEST:

By: Marissa Rachele Virgadamo

Print Name: Marissa Rachele Virgadamo

Title: Notary Public, State of Texas

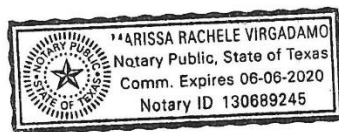


EXHIBIT "A"

LEGAL DESCRIPTION OF ADDISON AIRPORT FUEL FARM

DESCRIPTION:

BEING 106,831 Square Feet or 2.4525 Acres, Tract of land in the E. Cook Survey, Abstract 326, Dallas County, Texas, and located on Addison Municipal Airport, Addison, Texas and being more particularly described by metes and bounds as follows:

COMMENCING at a 5/8 inch iron rod found in the West Right-of-Way line of Addison Road (60' Right-of-Way), said point also being the southeast corner of a 0.6983 acres Addison Airport lease Tract; THENCE South 00° 52' 49" East and along said West line of Addison Road, a distance of 129.60 feet to a 5/8 inch iron rod set for the POINT OF BEGINNING, said point also being the northeast corner of said 2.4525 subject tract;

THENCE South 00° 52' 49" East and continuing along the said West line of Addison Road, a distance of 598.6 feet to a 5/8 inch iron rod set for corner;

THENCE South 89° 07' 11" West and departing said West line of Addison Road, a distance of 104.06 feet to a 5/8 inch iron rod set for corner;

THENCE North 14° 20' 57" West a distance of 390.27 feet to a PK Nail set for corner;

THENCE North 21° 29' 45" West a distance of 130.61 feet to a PK Nail set for corner;

THENCE North 23° 40' 57" East a distance of 78.22 feet to a PK Nail set for corner;

THENCE North 69° 16' 38" East a distance of 75.84 feet to a PK Nail set for corner;

THENCE North 89° 07' 11" East a distance of 142.12 feet to the POINT OF BEGINNING, and CONTAINING 106,831 square feet or 2.4525 acres of land more or less.

EXHIBIT "B"

SURVEY OF ADDISON AIRPORT FUEL FARM

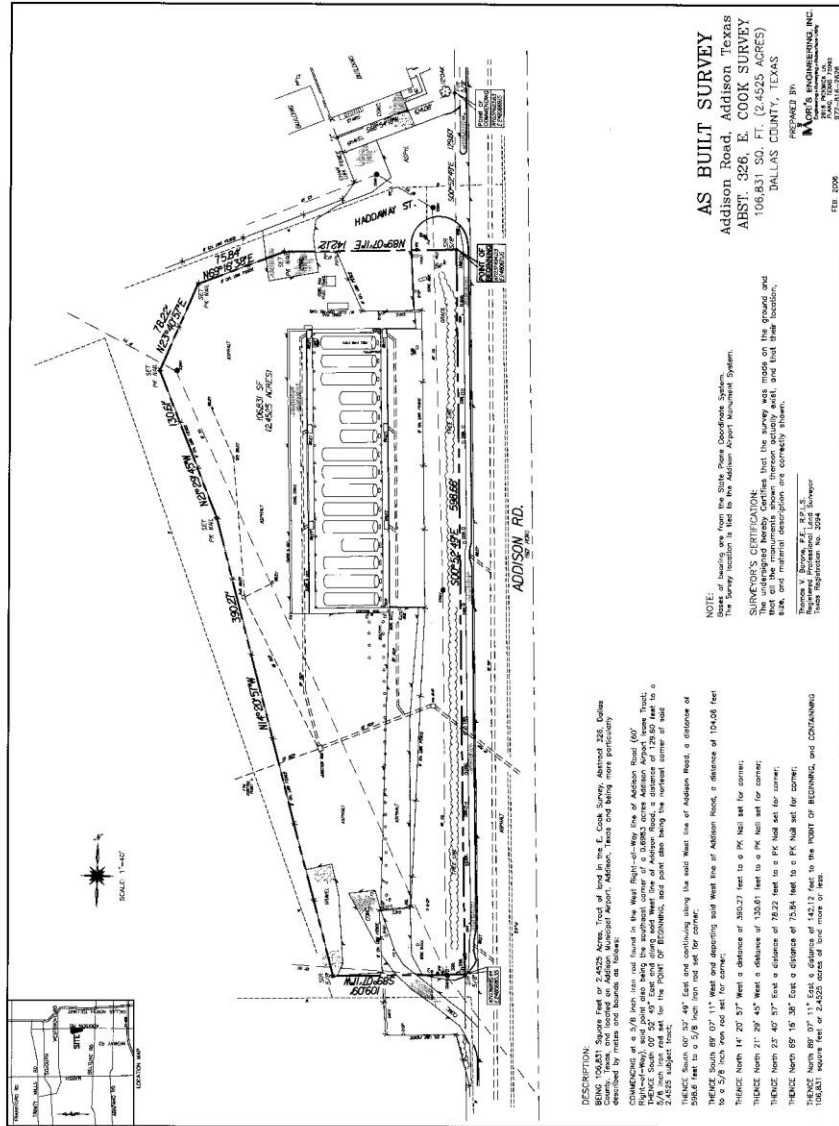


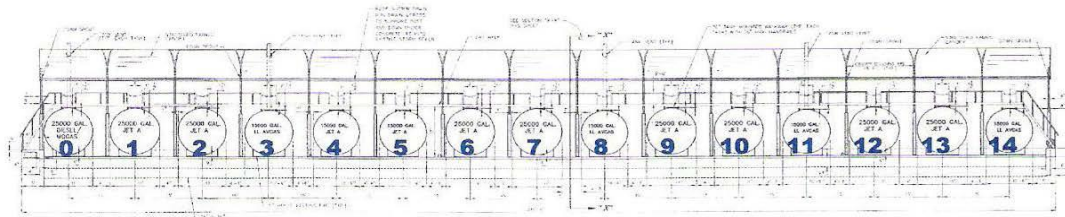
EXHIBIT "C"

SITE PLAN AND TANK CAPACITY OF ADDISON AIRPORT FUEL FARM

This Exhibit "C" is presented for the purpose of identifying the Fuel Tanks within the Fuel Farm, their capacity in gallons and percentage relative to the aggregate as of the Commencement Date of this Agreement. This Exhibit "C" is subject to change at Licensor's discretion except as otherwise expressly restricted in the Agreement.

License Holder As of	Tank ID#	Designated Fuel Type	Tank Gallon Capacity	Capacity as % of Total Gallons	TCEQ #
Mercury Air Center – Addison, Inc.	00 _a	Motor Vehicle Gasoline	10,000	0.03175	
Mercury Air Center – Addison, Inc.	00 _b	Diesel	15,000	0.04762	
Mercury Air Center – Addison, Inc.	01	Jet A	25,000	0.07937	
Mercury Air Center – Addison, Inc.	02	Jet A	25,000	0.07937	
Mercury Air Center – Addison, Inc.	03	100 LL	15,000	0.04762	
Currently Not In Use	04	Jet A	15,000	0.04762	
Currently Not In Use	05	Jet A	15,000	0.04762	
Galaxy FBO Holdings, LLC	06	Jet A	25,000	0.07937	
Galaxy FBO Holdings, LLC	07	Jet A	25,000	0.07937	
Galaxy FBO Holdings, LLC	08	100 LL	15,000	0.04762	
Sky B&B	09	Jet A	25,000	0.07937	
Sky B&B	10	Jet A	25,000	0.07937	
EAGLE LAND & CATTLE CO.	11	100 LL	15,000	0.04762	
RR Investments, Inc.	12	Jet A	25,000	0.07937	
RR Investments, Inc.	13	Jet A	25,000	0.07937	
RR Investments, Inc.	14	100 LL	15,000	0.04762	
Totals			315,000	1.0000	

TCEQ=Texas Commission on Environmental Quality or its equivalence



East Sectional View

EXHIBIT "D"

TERM EXTENSIONS

Licensee (but not any assignee, sublicensee or other transferee of Licensee, even if Licensor's consent thereto is obtained in accordance with the terms and conditions of Section 17 of this License) is granted the option(s) to extend the Term of this License for four (4) consecutive term(s) of sixty (60) months each (each, a "**Term Extension**"), provided (a) Licensee is not in default under the License or any other agreement with the Town of Addison at Addison Airport at the time of its exercise of the Term Extension, nor at the commencement date of the applicable Term Extension, and (b) Licensee gives written notice to Licensor of its exercise of the option to extend the Term between that period of time being sixty (60) months prior to the end of Term and six (6) months prior to the end of Term or Term Extension (the "**Option Period**"). Each Term Extension shall commence on the day immediately following the date of expiration of the immediately preceding original Term or Term Extension and shall be upon the same terms, conditions and Consideration as were in effect hereunder during such immediately preceding original Term or Term Extension, except (i) Licensee shall have no further right to an extension herein after the last Term Extension described below; and (ii) the monthly Base Fee during such each Term Extension shall be subject to adjustment as follows:

(a) the **First Term Extension**, from 12/1/2027 to 11/30/2032¹, shall be at the monthly Base Fee rate of \$.3235 per gallon/yr.; and

(b) the **Second Term Extension**, from 12/1/2032 to 11/30/2037, the monthly Base Fee rate shall subject to adjustment as set forth below; and

(c) the **Third Term Extension**, from 12/1/2037 to 11/30/2042, the monthly Base Fee rate shall be subject to adjustment as set forth below; and

(d) the **Fourth Term Extension**, from 12/1/2042 to 11/30/2047, the monthly Base Fee rate shall be subject to adjustment as set forth below.

Commencing with the Second Term Extension the Base Fee shall be adjusted to reflect changes in the Consumers' Price Index - All Items for Dallas, Texas Metropolitan Area (hereinafter referred to as the "Consumer Price Index"), as quoted in the publication *Consumer Price Index for All Urban Consumers (CPI-U)* for the Dallas-Fort Worth Consolidated Metropolitan Statistical Area which is issued by the U.S. Department of Labor, Bureau of Labor Statistics ("CPI Adjustment"). For purposes hereof, the basic index ("Basic Index") is the Consumer Price Index existing or already published as of December 1, 2027. The current index ("Current Index") is the most current Consumer Price Index already published by the U.S. Department of Labor, Bureau of Labor Statistics as of the beginning of each respective Term Extension. The base rate ("Base Rate") subject to adjustment is \$.3235 per gallon/yr. The adjustment calculation is made as follows:

Beginning with the calendar year of the then applicable Term Extension, the Base Fee shall be adjusted so that it equals the product of the Base Rate multiplied by a fraction, the numerator of which is the Current Index and the denominator of which is the Basic Index, but in no event shall the Base Fee ever be decreased below the product of the Base Rate times the Licensee's Total Tank Capacity or, \$21,027.50 per annum (65,000 gals x \$.3235).

In the event the Consumer Price Index is unavailable for whatever reason for the computations set forth hereinabove, another index approximating the Consumer Price Index as closely as feasible (as reasonably determined by the City) shall be substituted therefore.

Licensee's rights under this **Exhibit "D"** shall terminate if the License or Licensee's right to use of the Fuel Tanks is terminated, or if Licensee fails to timely exercise Licensee's option to extend the Term of this License in accordance with the terms and conditions of this **Exhibit "D"** with TIME BEING OF THE ESSENCE WITH RESPECT TO LICENSEE'S EXERCISE THEREOF.

¹ Date is intended to be coterminous with other active FBOs operating at the time of Effective Date

EXHIBIT "E"

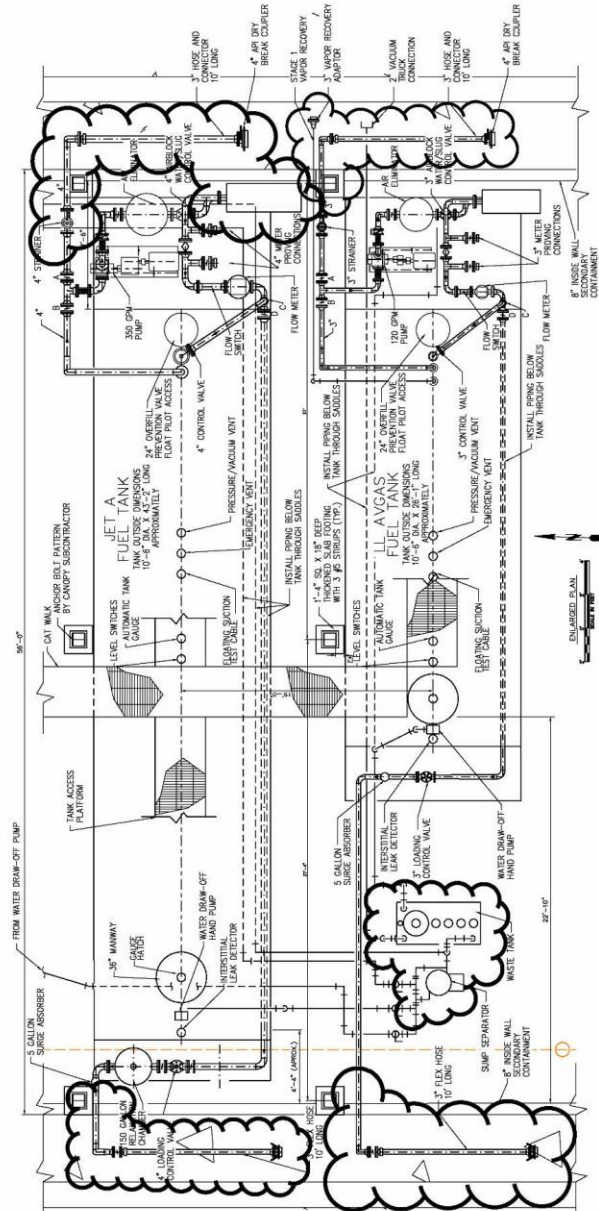
STATEMENT OF LICENSOR'S INITIAL CONSTRUCTION RESPONSIBILITY

Description of Bulk Fuel and Dispensing System for Addison Airport

The proposed Bulk Fuel Storage and Dispensing System is to be centrally located with fifteen (15) individual bulk fuel storage tanks, with off-load and five (5) Fixed Base Operator (FBO) metered dispensing systems, in a consolidated, environmentally protected site, including tanks and operating equipment, with suitable architectural considerations to blend into the site. The horizontal mounted cylindrical tanks will have an approximate dimension of ten and one-half feet (10.5' W) diameter by forty-three feet (43' L) in length (25,000 gal), or alternatively, ten and one-half feet (10.5') diameter by twenty-six feet (26') in length (15,000 gal). Fuel storage tanks will be double wall, 2-hour fire rated, protected tanks. Primary products to be dispensed are Low Lead AVGAS and Jet A Fuel, with one two-compartment tank of 10,000 and 15,000 gallon, with dispensing equipment for LL MoGas and Diesel. The Jet A off-load systems will be capable of off-loading 8,000 gallons to an over-the-road fuel tanker truck within 20 minutes at approximately 350 gallons/minute and the dispensing systems into the Airport refueling vehicles will be rated at approximately 300 gallons/minute. Industry standard filtration systems with automatic shutdown and alarms will be installed on the off-load side of the storage tanks, to protect product in the fuel storage tanks. Overflow protection devices will be installed on all fuel storage tanks and connected to the pump control panel. Pump/dispensing control panel or panels, will be logically sequenced, gauged to fuel storage tanks for fuel level indication, and clearly marked for ease of operations. An oil/water separator will be installed and connected to the secondary containment dike area, using a valve connection and the off-load/dispensing pad to allow for immediate wash-down of any spilled product. The off-load/dispensing pad will be large enough to provide a designated parking spot for any aircraft-refueling vehicle that develops a leak. Fuel storage area will have explosion proof electrical fixtures and control panel. A fresh water line will be required for emergency eye wash unit and a 1" hose and reel unit installed for wash down. The hose must reach all areas of the facility, including the oil/water separator. An emergency telephone/intercom/transmitter device will be installed with direct link to the Main Fire Station alarm room located at 4798 Airport Parkway, Addison, Texas 75001-3364. Fuel storage tanks will be mounted in an 18" high concrete low wall secondary containment area, connected to the oil/water separator so that any major spill in the containment area can be washed down and pumped out through the oil/water separator. Design will include area lighting, site storm drainage and connection, any required utilities relocation, and site appearance considerations. Access from the outside (airport land side) will be controlled with electrically operated gates and/or a code or key access pad. Paved access will be required from the street and from the airfield areas. Street connection will include driveways, curb and gutter.

Source: Addison Airport Project Specification Book for Bulk Fuel Storage and Dispensing System, Section 01000A, Paragraph 9, Page 5

LICENSEE'S GENERAL AREAS OF RESPONSIBILITY FOR MAINTENANCE AND REPAIR



LL AVCAS AND JET A FUEL TANK LAYOUT PLAN

This diagram is attached for the purpose of depicting Licensee's general area of responsibility for the maintenance and repair within the Fuel Farm and with respect to the Fuel Tanks and that no representation, warranty, or covenant is to be implied by its accuracy, deviation, from actual conditions or any other information shown including dimensions, locations, title, reference or classification. Should a arise between this Exhibit and the meaning of the License Agreement, the License Agreement shall prevail.



Page 39 of 40

EXHIBIT "G"

LIST OF AIRCRAFT OWNED OR LEASED BY LICENSEE

AIRCRAFT MAKE

AIRCRAFT MODEL

"N" NUMBER

"Not Required For Public Fixed Base Operator Permit"

Work Session and Regular Meeting

19.

Meeting Date: 12/11/2018

Department: Finance

Pillars: Gold Standard for Financial Health

Milestones: Review Town's ordinances and regulations to modernize them and facilitate redevelopment
Implementation and continuous development of Long Term Financial Plan

AGENDA CAPTION:

Present, Discuss and Consider Action on an **Ordinance Authorizing the Issuance of Town of Addison, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2018 in the Approximate Aggregate Principal Amount of \$13,500,000 to Fund the Construction of a New Building for U.S. Customs and Border Patrol and Airport Administrative Offices and Various Water and Wastewater Capital Improvement Projects.**

BACKGROUND:

As discussed in the Fiscal Year 2019 budget process, the Town will issue \$7,000,000 in Certificates of Obligation for the purpose of the construction of the U.S. Customs and Border Protection Federal Inspection Station to be combined with the Airport Administration offices to be located at 4545 Jimmy Doolittle Drive. The proposed Certificates of Obligation bonds will be self-supporting, meaning that this obligation will be funded through airport operating revenues.

The Town will also be issuing \$6,500,000 in Certificates of Obligations for the purpose of water and wastewater capital projects to improve or maintain the Town's existing infrastructure. On January 23, 2018, Council adopted a utility rate model that included the cost of water and wastewater capital projects such as, tank rehabilitation, lift station rehabilitation, facilities replacements, and water and sewer line replacements. As part of the of the utility rate model, Council subsequently approved an ordinance on September 11, 2018 to adopt increases to water and sewer rates. These increases were effective on October 1, 2018. These new rates include funds needed to provide a mix of cash and bond funding for capital improvement projects.

The proposed Certificates of Obligation bonds for water and wastewater improvements will be self-supporting; therefore, this obligation will be funded through the newly adopted utility rates.

The financial impacts of the Certificates of Obligation were included in the Fiscal

Year 2019 budget and are reflected in the Fiscal Year 2019 utility rates. The attached ordinance includes blanks that will be filled in on the day of the bond sale, December 11, 2018.

RECOMMENDATION:

Administration recommends approval.

Attachments

Ordinance - Issuance of 2018 Certificates of Obligation

ORDINANCE

relating to

\$ _____
TOWN OF ADDISON, TEXAS
COMBINATION TAX AND REVENUE
CERTIFICATES OF OBLIGATION
SERIES 2018

Dated: December 1, 2018

Adopted: December 11, 2018

TABLE OF CONTENTS

Page

ARTICLE I

DEFINITIONS AND OTHER PRELIMINARY MATTERS

Section 1.01. Definitions.....	2
Section 1.02. Findings.....	4
Section 1.03. Table of Contents, Titles, and Headings.....	4
Section 1.04. Interpretation.....	5

ARTICLE II

SECURITY FOR THE CERTIFICATES; INTEREST AND SINKING FUND

Section 2.01. Payment of the Certificates.....	5
Section 2.02. Interest and Sinking Fund.....	6

ARTICLE III

AUTHORIZATION; GENERAL TERMS AND PROVISIONS REGARDING THE CERTIFICATES

Section 3.01. Authorization.....	6
Section 3.02. Date, Denomination, Maturities, and Interest.....	7
Section 3.03. Medium, Method, and Place of Payment.....	7
Section 3.04. Execution and Registration of Certificates.....	9
Section 3.05. Ownership.....	9
Section 3.06. Registration, Transfer, and Exchange.....	10
Section 3.07. Cancellation.....	10
Section 3.08. Temporary Certificates.....	11
Section 3.09. Replacement Certificates.....	11
Section 3.10. Book-Entry-Only System.....	12
Section 3.11. Successor Securities Depository; Transfer Outside Book-Entry-Only System.....	13
Section 3.12. Payments to Cede & Co.....	13

ARTICLE IV

REDEMPTION OF CERTIFICATES BEFORE MATURITY

Section 4.01. Limitation on Redemption.....	14
Section 4.02. Optional Redemption.....	14
Section 4.03. Reserved.....	14
Section 4.04. Partial Redemption.....	14
Section 4.05. Notice of Redemption to Owners.....	15
Section 4.06. Payment Upon Redemption.....	15

Section 4.07.	Effect of Redemption.....	15
Section 4.08.	Conditional Notice of Redemption.....	16
Section 4.09.	Lapse of Payment.....	16

ARTICLE V

PAYING AGENT/REGISTRAR

Section 5.01.	Appointment of Initial Paying Agent/Registrar.....	16
Section 5.02.	Qualifications.....	16
Section 5.03.	Maintaining Paying Agent/Registrar.....	16
Section 5.04.	Termination.....	17
Section 5.05.	Notice of Change to Owners.....	17
Section 5.06.	Agreement to Perform Duties and Functions.....	17
Section 5.07.	Delivery of Records to Successor.....	17

ARTICLE VI

FORM OF THE CERTIFICATES

Section 6.01.	Form Generally.....	17
Section 6.02.	Form of the Certificates.....	18
Section 6.03.	CUSIP Registration.....	24
Section 6.04.	Legal Opinion.....	24
Section 6.05.	Statement Insurance.....	24

ARTICLE VII

SALE AND DELIVERY OF CERTIFICATES; DEPOSIT OF PROCEEDS; FLOW OF FUNDS

Section 7.01.	Sale of Certificates; Official Statement.....	25
Section 7.02.	Control and Delivery of Certificates.....	25
Section 7.03.	Deposit of Proceeds.....	26

ARTICLE VIII

INVESTMENTS

Section 8.01.	Investments.....	26
Section 8.02.	Investment Income.....	26

ARTICLE IX

PARTICULAR REPRESENTATIONS AND COVENANTS

Section 9.01.	Payment of the Certificates.....	27
Section 9.02.	Other Representations and Covenants.....	27

Section 9.03. Provisions Concerning Federal Income Tax Exclusion.....	27
Section 9.04. No Private Use or Payment and No Private Loan Financing.....	28
Section 9.05. No Federal Guaranty.....	28
Section 9.06. No Hedge Bonds.....	28
Section 9.07. No Arbitrage.....	28
Section 9.08. Arbitrage Rebate.....	28
Section 9.09. Information Reporting.....	29
Section 9.10. Record Retention.....	29
Section 9.11. Registration.....	29
Section 9.12. Deliberate Actions.....	29
Section 9.13. Continuing Obligation.....	30

ARTICLE X

DEFAULT AND REMEDIES

Section 10.01. Events of Default.....	30
Section 10.02. Remedies for Default.....	30
Section 10.03. Remedies Not Exclusive.....	30

ARTICLE XI

DISCHARGE

Section 11.01. Discharge.....	31
-------------------------------	----

ARTICLE XII

CONTINUING DISCLOSURE UNDERTAKING

Section 12.01. Annual Reports.....	31
Section 12.02. Material Event Notices.....	31
Section 12.03. Limitations, Disclaimers and Amendments.....	33

ARTICLE XIII

AMENDMENTS

Section 13.01. Amendments.....	34
--------------------------------	----

ARTICLE XIV

MISCELLANEOUS

Section 14.01. Changes to Ordinance.....	34
Section 14.02. Partial Invalidity.....	35
Section 14.03. No Personal Liability.....	35

ARTICLE XV
EFFECTIVENESS

Section 15.01. Effectiveness.....35

AN ORDINANCE AUTHORIZING THE ISSUANCE OF TOWN OF ADDISON, TEXAS, COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2018 IN THE AGGREGATE PRINCIPAL AMOUNT OF \$_____; AWARDING THE SALE THEREOF; LEVYING A TAX, AND PROVIDING FOR THE SECURITY FOR AND PAYMENT OF SAID CERTIFICATES; AUTHORIZING THE EXECUTION AND DELIVERY OF A PAYING AGENT/REGISTRAR AGREEMENT; APPROVING THE OFFICIAL STATEMENT; ENACTING OTHER PROVISIONS RELATING TO THE SUBJECT; AND DECLARING AN EFFECTIVE DATE

WHEREAS, under the provisions of the Texas Local Government Code, Chapter 271, Subchapter C, as amended, the Town of Addison, Texas (the "Town"), is authorized to issue certificates of obligation for the purposes specified in this Ordinance and for the payment of all or a portion of the contractual obligations for professional services, including that of engineers, attorneys, and financial advisors in connection therewith, and to sell the same for cash as herein provided; and

WHEREAS, the Town is authorized to provide that such obligations will be payable from and secured by the levy of a direct and continuing ad valorem tax against all taxable property within the Town, in combination with all or a part of certain revenues of the Town's waterworks and sewer system (the "System") remaining after payment of any obligations of the Town payable in whole or in part from a lien on or pledge of such revenues that would be superior to the obligations to be authorized herein as authorized by Chapter 1502, Texas Government Code; and

WHEREAS, the City Council has found and determined that it is necessary and in the best interests of the Town and its citizens that it issue such certificates of obligation authorized by this Ordinance; and

WHEREAS, pursuant to a resolution heretofore passed by this governing body, notice of intention (the "Notice of Intention") to issue certificates of obligation of the Town payable as provided in this Ordinance was published in a newspaper of general circulation in the Town in accordance with the requirements of law, such certificates of obligation to be issued for the purpose of paying contractual obligations to be incurred for the purposes set forth in Section 3.01 hereof; and

WHEREAS, the Notice of Intention stated that the City Council intended to pass an ordinance authorizing the issuance of the Certificates at its City Council meeting held on the date of adoption of this Ordinance; and

WHEREAS, no petition of any kind has been filed with the City Secretary, any member of the City Council or any other official of the Town, protesting the issuance of such certificates of obligation; and

WHEREAS, this City Council is now authorized and empowered to proceed with the issuance of said certificates of obligation and to sell the same for cash; and

WHEREAS, the meeting at which this Ordinance is considered is open to the public as required by law, and public notice of the time, place, and purpose of said meeting was given as required by Chapter 551, Texas Government Code, as amended; therefore,

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

ARTICLE I

DEFINITIONS AND OTHER PRELIMINARY MATTERS

Section I.1. Definitions.

Unless otherwise expressly provided or unless the context clearly requires otherwise in this Ordinance, the following terms shall have the meanings specified below:

“Business Day” means a day that is not a Saturday, Sunday, legal holiday or other day on which banking institutions in the city where the Designated Payment/Transfer Office is located are required or authorized by law or executive order to close.

“Certificate” means any of the Certificates.

“Certificate Date” means the date designated as the initial date of the Certificates by Section 3.02(a) of this Ordinance.

“Certificates” means the certificates of obligation authorized to be issued by Section 3.01 of this Ordinance and designated as “Town of Addison, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2018.

“Closing Date” means the date of the initial delivery of and payment for the Certificates.

“Code” means the Internal Revenue Code of 1986, as amended, including applicable regulations, published rulings, and court decisions.

“Designated Payment/Transfer Office” means (i) with respect to the initial Paying Agent/Registrar named herein, its office in Dallas, Texas, or at such other location designated by the Paying Agent/Registrar and (ii) with respect to any successor Paying Agent/Registrar, the office of such successor designated and located as may be agreed upon by the Town and such successor.

“DTC” means The Depository Trust Company of New York, New York, or any successor securities depository.

“DTC Participant” means brokers and dealers, banks, trust companies, clearing corporations and certain other organizations on whose behalf DTC was created to hold securities to facilitate the clearance and settlement of securities transactions among DTC Participants.

“EMMA” means the Electronic Municipal Market Access System.

“Event of Default” means any event of default as defined in Section 10.01 of this Ordinance.

“Fiscal Year” means such fiscal year as shall from time to time be set by the City Council.

“Initial Certificate” means the initial certificate authorized by Section 3.04(d) of this Ordinance.

“Interest and Sinking Fund” means the interest and sinking fund established by Section 2.02 of this Ordinance.

“Interest Payment Date” means the date or dates upon which interest on the Certificates is scheduled to be paid until their respective dates of maturity or prior redemption, such dates being February 15 and August 15 of each year commencing August 15, 2019.

“MSRB” means the Municipal Securities Rulemaking Board.

“Net Revenues” means the gross revenues of the System less the expenses of operation and maintenance as said expenses are defined by Chapter 1502, Texas Government Code, as amended.

“Ordinance” means this Ordinance.

“Owner” means the person who is the registered owner of a Certificate or Certificates, as shown in the Register.

“Paying Agent/Registrar” means initially The Bank of New York Mellon Trust Company, National Association, Dallas, Texas, or any successor thereto as provided in this Ordinance.

“Prior Lien Bonds” means any and all bonds or other obligations of the Town presently outstanding or that may be hereafter issued, payable from and secured by a first lien on and pledge of the Net Revenues or by a lien on and pledge of the Net Revenues subordinate to a first lien and pledge of such Net Revenues but superior to the lien and pledge of the Surplus Revenues made for the Certificates.

“Record Date” means the last Business Day of the month next preceding an Interest Payment Date.

“Register” means the Register specified in Section 3.06(a) of this Ordinance.

“Representations Letter” means the Blanket Letter of Representations between the Town and DTC.

“Rule” means SEC Rule 15c2-12, as amended from time to time.

“SEC” means the United States Securities and Exchange Commission.

“SID” means any person designated by the State of Texas or an authorized department, officer or agency thereof, as and determined by the SEC or its staff to be a state information depository within the meaning of the Rule from time to time.

“Special Payment Date” means the Special Payment Date prescribed by Section 3.03(b).

“Special Record Date” means the Special Record Date prescribed by Section 3.03(b).

“Surplus Revenues” means the revenues of the System remaining after payment of all operation and maintenance expenses thereof, and all debt service, reserve, and other requirements in connection with the Town’s Prior Lien Bonds; provided, however, that the amount of such Surplus Revenues pledged to the payment of the Certificates shall be limited to \$1,000.

“System” as used in this Ordinance means the Town’s waterworks and sewer system, including all present and future additions, extensions, replacements, and improvements thereto.

“Town” means the Town of Addison, Texas.

“Unclaimed Payments” means money deposited with the Paying Agent/Registrar for the payment of principal of, redemption premium, if any, or interest on the Certificates as the same come due and payable or money set aside for the payment of Certificates duly called for redemption prior to maturity.

Section I.2. Findings.

The declarations, determinations, and findings declared, made, and found in the preamble to this Ordinance are hereby adopted, restated, and made a part of the operative provisions hereof.

Section I.3. Table of Contents, Titles, and Headings.

The table of contents, titles, and headings of the Articles and Sections of this Ordinance have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Ordinance or any provision hereof or in ascertaining intent, if any question of intent should arise.

Section I.4. Interpretation.

(a) Unless the context requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa.

(b) This Ordinance and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein.

ARTICLE II

SECURITY FOR THE CERTIFICATES; INTEREST AND SINKING FUND

Section II.1. Payment of the Certificates.

(a) Pursuant to the authority granted by the Texas Constitution and laws of the State of Texas, there shall be levied and there is hereby levied for the current year and for each succeeding year thereafter while any of the Certificates or any interest thereon is outstanding and unpaid, an ad valorem tax on each one hundred dollars valuation of taxable property within the Town, at a rate sufficient, within the limit prescribed by law, to pay the debt service requirements of the Certificates, being (i) the interest on the Certificates, and (ii) a sinking fund for their redemption at maturity or a sinking fund of two percent per annum (whichever amount is the greater), when due and payable, full allowance being made for delinquencies and costs of collection.

(b) The ad valorem tax thus levied shall be assessed and collected each year against all property appearing on the tax rolls of the Town most recently approved in accordance with law, and the money thus collected shall be deposited as collected to the Interest and Sinking Fund.

(c) Said ad valorem tax, the collections therefrom, and all amounts on deposit in or required hereby to be deposited to the Interest and Sinking Fund are hereby pledged and committed irrevocably to the payment of the principal of and interest on the Certificates when and as due and payable in accordance with their terms and this Ordinance.

(d) The amount of taxes to be provided annually for the payment of principal of and interest on the Certificates shall be determined and accomplished in the following manner:

(i) The Town's annual budget shall reflect (i) the amount of debt service requirements to become due on the Certificates in the next succeeding Fiscal Year of the Town and (ii) the amount on deposit in the Interest and Sinking Fund, as of the date such budget is prepared (after giving effect to any payments required to be made during the remainder of the then current Fiscal Year), and (iii) the amount of Surplus Revenues estimated and budgeted to be available for the payment of such debt service requirements on the Certificates during the next succeeding Fiscal Year.

(ii) The amount required to be provided in the succeeding Fiscal Year of the Town from ad valorem taxes shall be the amount, if any, the debt service requirements to be paid on the Certificates in the next succeeding Fiscal Year of the Town exceeds the sum of (i) the amount shown to be on deposit in the Interest and Sinking Fund (after giving effect to any payments required to be made during the remainder of the then current Fiscal Year) at the time the annual budget is prepared, and (ii) the Surplus Revenues shown to be budgeted and available for payment of said debt service requirements.

(iii) Following the final approval of the annual budget of the Town, the governing body of the Town shall, by ordinance, levy an ad valorem tax at a rate sufficient to produce taxes in the amount determined in paragraph (ii) above, to be utilized for purposes of paying the principal of and interest on the Certificates in the next succeeding Fiscal Year of the Town.

(e) The Town hereby covenants and agrees that the Surplus Revenues are hereby irrevocably pledged equally and ratably to the payment of the principal of, redemption premium, if any, and interest on the Certificates, as the same become due.

(f) If the liens and provisions of this Ordinance shall be released in a manner permitted by Article XI hereof, then the collection of such ad valorem tax may be suspended or appropriately reduced, as the facts may permit, and further deposits to the Interest and Sinking Fund may be suspended or appropriately reduced, as the facts may permit. In determining the aggregate principal amount of outstanding Certificates, there shall be subtracted the amount of any Certificates that have been duly called for redemption and for which money has been deposited with the Paying Agent/Registrar for such redemption.

Section II.2. Interest and Sinking Fund.

(a) The Town hereby establishes a special fund or account to be designated the "Town of Addison, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2018, Interest and Sinking Fund" (the "Interest and Sinking Fund") said fund to be maintained at an official depository bank of the Town separate and apart from all other funds and accounts of the Town.

(b) Money on deposit in or required by this Ordinance to be deposited to the Interest and Sinking Fund shall be used solely for the purpose of paying the interest on and principal of the Certificates when and as due and payable in accordance with their terms and this Ordinance.

ARTICLE III

AUTHORIZATION; GENERAL TERMS AND PROVISIONS REGARDING THE CERTIFICATES

Section III.1. Authorization.

The Town's certificates of obligation to be designated "Town of Addison, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2018" (the "Certificates"), are

hereby authorized to be issued and delivered in accordance with the Constitution and laws of the State of Texas, specifically Subchapter C, Chapter 271, Texas Local Government Code, as amended. The Certificates shall be issued in the aggregate principal amount of \$_____ for the following purposes, to wit: (i) designing, constructing, installing, acquiring and equipping additions, extensions and improvements to the Town's water and wastewater system, and the acquisition of land and interests in land for such projects, (ii) designing, acquiring, improving, constructing and renovating facilities and infrastructure at the Addison Municipal Airport related to constructing and equipping a new customs and airport administration facility, ((i) and (ii), the "Project"); and (iii) to pay professional services of attorneys, financial advisors and other professionals in connection with the Project and the issuance of the Certificates.

Section III.2. Date, Denomination, Maturities, and Interest.

(a) The Certificates shall be dated December 1, 2018. The Certificates shall be in fully registered form, without coupons, in the denomination of \$5,000 or any integral multiple thereof and shall be numbered separately from one upward, except the Initial Certificate, which shall be numbered T-1.

(b) The Certificates shall mature on February 15 in the years and in the principal amounts set forth in the following schedule:

<u>Years</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Years</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
2020			2030		
2021			2031		
2022			2032		
2023			2033		
2024			2034		
2024			2035		
2025			2036		
2026			2037		
2027			2038		
2028			2039		

(c) Interest shall accrue and be paid on each Certificate respectively until its maturity or prior redemption from the later of the Certificate Date or the most recent interest payment date to which interest has been paid or provided for at the rates per annum for each maturity specified in the schedule contained in subsection (b) above. Such interest shall be payable semiannually on February 15 and August 15 of each year commencing August 15, 2019, and shall be computed on the basis of a 360-day year of twelve 30-day months.

Section III.3. Medium, Method, and Place of Payment.

(a) The principal of, redemption premium, if any, and interest on the Certificates shall be paid in lawful money of the United States of America.

(b) Interest on the Certificates shall be payable to the Owners as shown in the Register at the close of business on the Record Date; provided, however, in the event of nonpayment of interest on a scheduled Interest Payment Date and for 30 days thereafter, a new record date for such interest payment (a "Special Record Date") shall be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the Town. Notice of the Special Record Date and of the scheduled payment date of the past due interest (the "Special Payment Date," which shall be 15 days after the Special Record Date) shall be sent at least five Business Days prior to the Special Record Date by United States mail, first class, postage prepaid, to the address of each Owner of a Certificate appearing on the Register at the close of business on the last Business Day next preceding the date of mailing of such notice.

(c) Interest shall be paid by check, dated as of and mailed on the Interest Payment Date, and sent by the Paying Agent/Registrar to each Owner, first class United States mail, postage prepaid, to the address of each Owner as it appears in the Register, or by such other customary banking arrangement acceptable to the Paying Agent/Registrar and the Owner; provided, however, that the Owner shall bear all risk and expense of such alternative banking arrangement. At the option of an Owner of at least \$1,000,000 principal amount of the Certificates, interest may be paid by wire transfer to the bank account of such Owner on file with the Paying Agent/Registrar.

(d) The principal of each Certificate shall be paid to the Owner thereof on the due date, whether at the maturity date or the date of prior redemption thereof upon presentation and surrender of such Certificate at the Designated Payment/Transfer Office of the Paying Agent/Registrar.

(e) If the date for the payment of the principal of or interest on the Certificates shall be a Saturday, Sunday, legal holiday, or day on which banking institutions in the city where the Designated Payment/Transfer Office of the paying Agent/Registrar is located are required or authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday, or day on which banking institutions are required or authorized to close, and payment on such date shall have the same force and effect as if made on the original date payment was due and no additional interest shall be due by reason of nonpayment on the date on which such payment is otherwise stated to be due and payable.

(f) Unclaimed Payments shall be segregated in a special escrow account and held in trust, uninvested by the Paying Agent/Registrar, for the account of the Owners of the Certificates to which the Unclaimed Payments pertain. Subject to Title 6 of the Texas Property Code, Unclaimed Payments remaining unclaimed by the Owners entitled thereto for three years after the applicable payment or redemption date shall be applied to the next payment or payments on the Certificates thereafter coming due and, to the extent any such money remains after the retirement of all outstanding Certificates, shall be paid to the Town to be used for any lawful purpose. Thereafter, neither the Town, the Paying Agent/Registrar, nor any other person shall be liable or responsible to any Owners of such Certificates for any further payment of such unclaimed moneys or on account of any such Certificates, subject to Title 6 of the Texas Property Code.

Section III.4. Execution and Registration of Certificates.

(a) The Certificates shall be executed on behalf of the Town by the Mayor and the City Secretary, by their manual or facsimile signatures, and the official seal of the Town shall be impressed or placed in facsimile thereon. Such facsimile signatures on the Certificates shall have the same effect as if each of the Certificates had been signed manually and in person by each of said officers, and such facsimile seal on the Certificates shall have the same effect as if the official seal of the Town had been manually impressed upon each of the Certificates.

(b) In the event that any officer of the Town whose manual or facsimile signature appears on the Certificates ceases to be such officer before the authentication of such Certificates or before the delivery thereof, such manual or facsimile signature nevertheless shall be valid and sufficient for all purposes as if such officer had remained in such office.

(c) Except as provided below, no Certificate shall be valid or obligatory for any purpose or be entitled to any security or benefit of this Ordinance unless and until there appears thereon the Certificate of Paying Agent/Registrar substantially in the form provided herein, duly authenticated by manual execution by an officer or duly authorized signatory of the Paying Agent/Registrar. It shall not be required that the same officer or authorized signatory of the Paying Agent/Registrar sign the Certificate of Paying Agent/Registrar on all of the Certificates. In lieu of the executed Certificate of Paying Agent/Registrar described above, the Initial Certificate delivered at the Closing Date shall have attached thereto the Comptroller's Registration Certificate substantially in the form provided herein, manually executed by the Comptroller of Public Accounts of the State of Texas, or by his duly authorized agent, which Certificate shall be evidence that the Certificate has been duly approved by the Attorney General of the State of Texas, that it is a valid and binding obligation of the Town, and that it has been registered by the Comptroller of Public Accounts of the State of Texas.

(d) On the Closing Date, one initial Certificate (the "Initial Certificate") representing the entire principal amount of all Certificates, payable in stated installments to the initial purchaser, or its designee, executed by the Mayor and City Secretary of the Town, approved by the Attorney General, and registered and manually signed by the Comptroller of Public Accounts, will be delivered to the initial purchaser or its designee. Upon payment for the Initial Certificate, the Paying Agent/Registrar shall cancel the Initial Certificate and deliver to DTC on behalf of the initial purchaser one registered definitive Certificate for each year of maturity of the Certificates in the aggregate principal amount of all Certificates for such maturity, registered in the name of Cede & Co., as nominee of DTC.

Section III.5. Ownership.

(a) The Town, the Paying Agent/Registrar, and any other person may treat the person in whose name any Certificate is registered as the absolute owner of such Certificate for the purpose of making and receiving payment as herein provided (except interest shall be paid to the person in whose name such Certificate is registered on the Record Date or Special Record Date, as applicable), and for all other purposes, whether or not such Certificate is overdue, and neither the Town nor the Paying Agent/Registrar shall be bound by any notice or knowledge to the contrary.

(b) All payments made to the Owner of a Certificate shall be valid and effectual and shall discharge the liability of the Town and the Paying Agent/Registrar upon such Certificate to the extent of the sums paid.

Section III.6. Registration, Transfer, and Exchange.

(a) So long as any Certificates remain outstanding, the Town shall cause the Paying Agent/Registrar to keep at the Designated Payment/Transfer Office a register (the "Register") in which, subject to such reasonable regulations as it may prescribe, the Paying Agent/Registrar shall provide for the registration and transfer of Certificates in accordance with this Ordinance.

(b) The ownership of a Certificate may be transferred only upon the presentation and surrender of the Certificate at the Designated Payment/Transfer Office of the Paying Agent/Registrar with such endorsement or other evidence of transfer as is acceptable to the Paying Agent/Registrar. No transfer of any Certificate shall be effective until entered in the Register.

(c) The Certificates shall be exchangeable upon the presentation and surrender thereof at the Designated Payment/Transfer Office of the Paying Agent/Registrar for a Certificate or Certificates of the same maturity and interest rate and in a denomination or denominations of any integral multiple of \$5,000, and in an aggregate principal amount equal to the unpaid principal amount of the Certificates presented for exchange. The Paying Agent/Registrar is hereby authorized to authenticate and deliver Certificates exchanged for other Certificates in accordance with this Section.

(d) Each exchange Certificate delivered by the Paying Agent/Registrar in accordance with this Section shall constitute an original contractual obligation of the Town and shall be entitled to the benefits and security of this Ordinance to the same extent as the Certificate or Certificates in lieu of which such exchange Certificate is delivered.

(e) No service charge shall be made to the Owner for the initial registration, subsequent transfer, or exchange for a different denomination of any of the Certificates. The Paying Agent/Registrar, however, may require the Owner to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection with the registration, transfer, or exchange of a Certificate.

(f) Neither the Town nor the Paying Agent/Registrar shall be required to issue, transfer or exchange any Certificate called for redemption, in whole or in part, within 45 calendar days prior to the date fixed for redemption; provided, however, such limitation shall not be applicable to an exchange by the Owner of the uncalled principal balance of a Certificate.

Section III.7. Cancellation.

All Certificates paid or redeemed before scheduled maturity in accordance with this Ordinance, and all Certificates in lieu of which exchange Certificates or replacement Certificates are authenticated and delivered in accordance with this Ordinance, shall be canceled and proper records made regarding such payment, redemption, exchange, or replacement. The Paying Agent/Registrar shall then return such canceled Certificates to the Town or may in accordance with law dispose of such cancelled Certificates.

Section III.8. Temporary Certificates.

(a) Following the delivery and registration of the Initial Certificate and pending the preparation of definitive Certificates, the proper officers of the Town may execute and, upon the Town's request, the Paying Agent/Registrar shall authenticate and deliver, one or more temporary Certificates that are printed, lithographed, typewritten, mimeographed, or otherwise produced, in any denomination, substantially of the tenor of the definitive Certificates in lieu of which they are delivered, without coupons, and with such appropriate insertions, omissions, substitutions, and other variations as the officers of the Town executing such temporary Certificates may determine, as evidenced by their signing of such temporary Certificates.

(b) Until exchanged for Certificates in definitive form, such Certificates in temporary form shall be entitled to the benefit and security of this Ordinance.

(c) The Town, without unreasonable delay, shall prepare, execute and deliver to the Paying Agent/Registrar the Certificates in definitive form; thereupon, upon the presentation and surrender of the Certificate or Certificates in temporary form to the Paying Agent/Registrar, the Paying Agent/Registrar shall cancel the Certificates in temporary form and shall authenticate and deliver in exchange therefor a Certificate or Certificates of the same maturity and series, in definitive form, in the authorized denomination, and in the same aggregate principal amount, as the Certificate or Certificates in temporary form surrendered. Such exchange shall be made without the making of any charge therefor to any Owner.

Section III.9. Replacement Certificates.

(a) Upon the presentation and surrender to the Paying Agent/Registrar of a mutilated Certificate, the Paying Agent/Registrar shall authenticate and deliver in exchange therefor a replacement Certificate of like tenor and principal amount, bearing a number not contemporaneously outstanding. The Town or the Paying Agent/Registrar may require the Owner of such Certificate to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection therewith and any other expenses connected therewith.

(b) In the event that any Certificate is lost, apparently destroyed or wrongfully taken, the Paying Agent/Registrar, pursuant to the applicable laws of the State of Texas and in the absence of notice or knowledge that such Certificate has been acquired by a bona fide purchaser, shall authenticate and deliver a replacement Certificate of like tenor and principal amount, bearing a number not contemporaneously outstanding, provided that the Owner first complies with the following requirements:

(i) furnishes to the Paying Agent/Registrar satisfactory evidence of his or her ownership of and the circumstances of the loss, destruction, or theft of such Certificate;

(ii) furnishes such security or indemnity as may be required by the Paying Agent/Registrar to save it and the Town harmless;

(iii) pays all expenses and charges in connection therewith, including, but not limited to, printing costs, legal fees, fees of the Paying Agent/Registrar, and any tax or other governmental charge that is authorized to be imposed; and

(iv) satisfies any other reasonable requirements imposed by the Town and the Paying Agent/Registrar.

(c) If, after the delivery of such replacement Certificate, a bona fide purchaser of the original Certificate in lieu of which such replacement Certificate was issued presents for payment such original Certificate, the Town and the Paying Agent/Registrar shall be entitled to recover such replacement Certificate from the person to whom it was delivered or any person taking therefrom, except a bona fide purchaser, and shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost, or expense incurred by the Town or the Paying Agent/Registrar in connection therewith.

(d) In the event that any such mutilated, lost, apparently destroyed, or wrongfully taken Certificate has become or is about to become due and payable, the Paying Agent/Registrar, in its discretion, instead of issuing a replacement Certificate, may pay such Certificate when it becomes due and payable.

(e) Each replacement Certificate delivered in accordance with this Section shall constitute an original additional contractual obligation of the Town and shall be entitled to the benefits and security of this Ordinance to the same extent as the Certificate or Certificates in lieu of which such replacement Certificate is delivered.

Section III.10. Book-Entry-Only System.

(a) Notwithstanding any other provision hereof, upon initial issuance of the Certificates, the Certificates shall be registered in the name of Cede & Co., as nominee of DTC. The definitive Certificates shall be initially issued in the form of a single separate certificate for each of the maturities thereof.

(b) With respect to Certificates registered in the name of Cede & Co., as nominee of DTC, the Town and the Paying Agent/Registrar shall have no responsibility or obligation to any DTC Participant or to any person on behalf of whom such a DTC Participant holds an interest in the Certificates. Without limiting the immediately preceding sentence, the Town and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Certificates, (ii) the delivery to any DTC Participant or any other person, other than an Owner, as shown on the Register, of any notice with respect to the Certificates, including any notice of redemption, or (iii) the payment to any DTC Participant or any other person, other than an Owner, as shown in the Register of any amount with respect to principal of, premium, if any,

or interest on the Certificates. Notwithstanding any other provision of this Ordinance to the contrary, the Town and the Paying Agent/Registrar shall be entitled to treat and consider the person in whose name each Certificate is registered in the Register as the absolute owner of such Certificate for the purpose of payment of principal of, premium, if any, and interest on Certificates, for the purpose of giving notices of redemption and other matters with respect to such Certificate, for the purpose of registering transfer with respect to such Certificate, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of, premium, if any, and interest on the Certificates only to or upon the order of the respective Owners as shown in the Register, as provided in this Ordinance, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the Town's obligations with respect to payment of, premium, if any, and interest on the Certificates to the extent of the sum or sums so paid. No person other than an Owner, as shown in the Register, shall receive a certificate evidencing the obligation of the Town to make payments of amounts due pursuant to this Ordinance. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., the word "Cede & Co." in this Ordinance shall refer to such new nominee of DTC.

(c) The Representations Letter previously executed and delivered by the Town, and applicable to the Town's obligations delivered in book-entry-only form to DTC as securities depository, is hereby ratified and approved for the Certificates.

Section III.11. Successor Securities Depository; Transfer Outside Book-Entry-Only System.

In the event that the Town or the Paying Agent/Registrar determines that DTC is incapable of discharging its responsibilities described herein and in the Representations Letter of the Town to DTC, and that it is in the best interest of the Town and the beneficial owners of the Certificates that they be able to obtain certificated Certificates, or in the event DTC discontinues the services described herein, the Town shall (i) appoint a successor securities depository, qualified to act as such under Section 17(a) of the Securities and Exchange Act of 1934, as amended, notify DTC and DTC Participants of the appointment of such successor securities depository and transfer one or more separate Certificates to such successor securities depository; or (ii) notify DTC and DTC Participants of the availability through DTC of certificated Certificates and cause the Paying Agent/Registrar to transfer one or more separate registered Certificates to DTC Participants having Certificates credited to their DTC accounts. In such event, the Certificates shall no longer be restricted to being registered in the Register in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names Owners transferring or exchanging Certificates shall designate, in accordance with the provisions of this Ordinance.

Section III.12. Payments to Cede & Co.

Notwithstanding any other provision of this Ordinance to the contrary, so long as the Certificates are registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, premium, if any, and interest on such Certificates, and all notices with respect to such Certificates shall be made and given, respectively, in the manner provided in the Representations Letter of the Town to DTC.

ARTICLE IV

REDEMPTION OF CERTIFICATES BEFORE MATURITY

Section IV.1. Limitation on Redemption.

The Certificates shall be subject to redemption before scheduled maturity only as provided in this Article IV.

Section IV.2. Optional Redemption.

(a) The Town reserves the option to redeem Certificates maturing on and after February 15, 2029 in whole or any part, before their respective scheduled maturity dates, on February 15, 2028 or on any date thereafter, such redemption date or dates to be fixed by the Town, at a price equal to the principal amount of the Certificates called for redemption plus accrued interest to the date fixed for redemption.

(b) If less than all of the Certificates are to be redeemed pursuant to an optional redemption, the Town shall determine the maturity or maturities and the amounts thereof to be redeemed and shall direct the Paying Agent/Registrar to call by lot the Certificates, or portions thereof, within such maturity or maturities and in such principal amounts for redemption.

(c) The Town, at least 45 days before the redemption date, unless a shorter period shall be satisfactory to the Paying Agent/Registrar, shall notify the Paying Agent/Registrar of such redemption date and of the principal amount of Certificates to be redeemed.

Section IV.3. Reserved.

Section IV.4. Partial Redemption.

(a) A portion of a single Certificate of a denomination greater than \$5,000 may be redeemed, but only in a principal amount equal to \$5,000 or any integral multiple thereof. If such a Certificate is to be partially redeemed, the Paying Agent/Registrar shall treat each \$5,000 portion of the Certificate as though it were a single Certificate for purposes of selection for redemption.

(b) Upon surrender of any Certificate for redemption in part, the Paying Agent/Registrar, in accordance with Section 3.06 of this Ordinance, shall authenticate and deliver an exchange Certificate or Certificates in an aggregate principal amount equal to the unredeemed portion of the Certificate so surrendered, such exchange being without charge.

(c) The Paying Agent/Registrar shall promptly notify the Town in writing of the principal amount to be redeemed of any Certificate as to which only a portion thereof is to be redeemed.

Section IV.5. Notice of Redemption to Owners.

(a) The Paying Agent/Registrar shall give notice of any redemption of Certificates by sending notice by first class United States mail, postage prepaid, not less than 30 days before the date fixed for redemption, to the Owner of each Certificate (or part thereof) to be redeemed, at the address shown on the Register at the close of business on the Business Day next preceding the date of mailing such notice.

(b) The notice shall state the redemption date, the redemption price, the place at which the Certificates are to be surrendered for payment, and, if less than all the Certificates outstanding are to be redeemed, an identification of the Certificates or portions thereof to be redeemed.

(c) Any notice given as provided in this Section shall be conclusively presumed to have been duly given, whether or not the Owner receives such notice.

Section IV.6. Payment Upon Redemption.

(a) Before or on each redemption date, the Town shall deposit with the Paying Agent/Registrar money sufficient to pay all amounts due on the redemption date and the Paying Agent/Registrar shall make provision for the payment of the Certificates to be redeemed on such date by setting aside and holding in trust such amounts as are received by the Paying Agent/Registrar from the Town and shall use such funds solely for the purpose of paying the principal of, redemption premium, if any, and accrued interest on the Certificates being redeemed.

(b) Upon presentation and surrender of any Certificate called for redemption at the Designated Payment/Transfer Office of the Paying Agent/Registrar on or after the date fixed for redemption, the Paying Agent/Registrar shall pay the principal of, redemption premium, if any, and accrued interest on such Certificate to the date of redemption from the money set aside for such purpose.

Section IV.7. Effect of Redemption.

(a) Notice of redemption having been given as provided in Section 4.05 of this Ordinance, the Certificates or portions thereof called for redemption shall become due and payable on the date fixed for redemption and, unless the Town defaults in its obligation to make provision for the payment of the principal thereof, redemption premium, if any, or accrued interest thereon, such Certificates or portions thereof shall cease to bear interest from and after the date fixed for redemption, whether or not such Certificates are presented and surrendered for payment on such date.

(b) If the Town shall fail to make provision for payment of all sums due on a redemption date, then any Certificate or portion thereof called for redemption shall continue to

bear interest at the rate stated on the Certificate until due provision is made for the payment of same by the Town.

Section IV.8. Conditional Notice of Redemption.

The Town reserves the right to give notice of its election or direction to redeem Certificates conditioned upon the occurrence of subsequent events. Such notice may state (i) that the redemption is conditioned upon the deposit of moneys and/or authorized securities, in an amount equal to the amount necessary to effect the redemption, with the Paying Agent/Registrar, or such other entity as may be authorized by law, no later than the redemption date, or (ii) that the Town retains the right to rescind such notice at any time on or prior to the scheduled redemption date if the Town delivers a certificate of the Town to the Paying Agent/Registrar instructing the Paying Agent/Registrar to rescind the redemption notice and such notice and redemption shall be of no effect if such moneys and/or authorized securities are not so deposited or if the notice is rescinded. The Paying Agent/Registrar shall give prompt notice of any such rescission of a conditional notice of redemption to the affected Owners. Any Certificates subject to conditional redemption and such redemption has been rescinded shall remain Outstanding and the rescission of such redemption shall not constitute an event of default. Further, in the case of a conditional notice of redemption, the failure of the Town to make moneys and or authorized securities available in part or in whole on or before the redemption date shall not constitute an event of default.

Section IV.9. Lapse of Payment.

Money set aside for the redemption of Certificates and remaining unclaimed by the Owners of such Certificates shall be subject to the provisions of Section 3.03(f) hereof.

ARTICLE V

PAYING AGENT/REGISTRAR

Section V.1. Appointment of Initial Paying Agent/Registrar.

The Bank of New York Mellon Trust Company, National Association, Dallas, Texas, is hereby appointed as the initial Paying Agent/Registrar for the Certificates.

Section V.2. Qualifications.

Each Paying Agent/Registrar shall be a commercial bank, a trust company organized under the laws of the State of Texas, or other entity duly qualified and legally authorized to serve as and perform the duties and services of paying agent and registrar for the Certificates.

Section V.3. Maintaining Paying Agent/Registrar.

(a) At all times while any of the Certificates are outstanding, the Town will maintain a Paying Agent/Registrar that is qualified under Section 5.02 of this Ordinance. The Mayor is hereby authorized and directed to execute an agreement with the Paying Agent/Registrar specifying the duties and responsibilities of the Town and the Paying Agent/Registrar in

substantially the form presented at this meeting, such form of agreement being hereby approved. The signature of the Mayor shall be attested by the City Secretary of the Town.

(b) If the Paying Agent/Registrar resigns or otherwise ceases to serve as such, the Town will promptly appoint a replacement.

Section V.4. Termination.

The Town, upon not less than sixty (60) days' notice, reserves the right to terminate the appointment of any Paying Agent/Registrar by delivering to the entity whose appointment is to be terminated written notice of such termination.

Section V.5. Notice of Change to Owners.

Promptly upon each change in the entity serving as Paying Agent/Registrar, the Town will cause notice of the change to be sent to each Owner by first class United States mail, postage prepaid, at the address thereof in the Register, stating the effective date of the change and the name and mailing address of the replacement Paying Agent/Registrar.

Section V.6. Agreement to Perform Duties and Functions.

By accepting the appointment as Paying Agent/Registrar and executing the Paying Agent/Registrar Agreement, the Paying Agent/Registrar is deemed to have agreed to the provisions of this Ordinance and that it will perform the duties and functions of Paying Agent/Registrar prescribed thereby.

Section V.7. Delivery of Records to Successor.

If a Paying Agent/Registrar is replaced, such Paying Agent/Registrar, promptly upon the appointment of the successor, will deliver the Register (or a copy thereof) and all other pertinent books and records relating to the Certificates to the successor Paying Agent/Registrar.

ARTICLE VI

FORM OF THE CERTIFICATES

Section VI.1. Form Generally.

(a) The Certificates, including the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Certificate of the Paying Agent/Registrar, and the Assignment form to appear on each of the Certificates, (i) shall be substantially in the form set forth in this Article, with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance, and (ii) may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including any reproduction of an opinion of counsel) thereon as, consistently herewith, may be determined by the Town or by the officers executing such Certificates, as evidenced by their execution thereof.

(b) Any portion of the text of any Certificates may be set forth on the reverse side thereof, with an appropriate reference thereto on the face of the Certificates.

(c) The definitive Certificates, if any, shall be typewritten, photocopied, printed, lithographed, or engraved, and may be produced by any combination of these methods or produced in any other similar manner, all as determined by the officers executing such Certificates, as evidenced by their execution thereof.

(d) The Initial Certificate submitted to the Attorney General of the State of Texas may be typewritten and photocopied or otherwise reproduced.

Section VI.2. Form of the Certificates.

The form of the Certificates, including the form of the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the form of Certificate of the Paying Agent/Registrar and the form of Assignment appearing on the Certificates, shall be substantially as follows:

(a) Form of Certificate.

REGISTERED
No. _____

REGISTERED
\$ _____

United States of America
State of Texas
County of Dallas
TOWN OF ADDISON, TEXAS
COMBINATION TAX AND REVENUE
CERTIFICATE OF OBLIGATION
SERIES 2018

INTEREST RATE: MATURITY DATE: DATED DATE: CUSIP NUMBER:
_____ % February 15, _____ December 1, 2018 _____

The Town of Addison (the "Town"), in the County of Dallas, State of Texas, for value received, hereby promises to pay to

or registered assigns, on the Maturity Date specified above, the sum of

_____ DOLLARS

unless this Certificate shall have been sooner called for redemption and the payment of the principal hereof shall have been provided for, and to pay interest on such principal amount from the later of Dated Date specified above or the most recent interest payment date to which interest has been paid or provided for until payment of such principal amount has been provided for, at the per annum rate of interest specified above, computed on the basis of a 360-day year of twelve 30-day months, such interest to be paid semiannually on February 15 and August 15 of each year, commencing August 15, 2019.

The principal of this Certificate shall be payable without exchange or collection charges in lawful money of the United States of America upon presentation and surrender of this Certificate at the designated office in Dallas, Texas, of The Bank of New York Mellon Trust Company, National Association, as Paying Agent/Registrar (the "Designated Payment/Transfer Office"), or, with respect to a successor paying agent/registrar, at the Designated Payment/Transfer Office of such successor Paying Agent/Registrar. Interest on this Certificate is payable by check dated as of the interest payment date, and will be mailed by the Paying Agent/Registrar to the registered owner at the address shown on the registration books kept by the Paying Agent/Registrar or by such other customary banking arrangement acceptable to the Paying Agent/Registrar and the registered owner; provided, however, such registered owner shall bear all risk and expenses of such customary banking arrangement. At the option of an Owner of at least \$1,000,000 principal amount of the Certificates, interest may be paid by wire transfer to the bank account of such Owner on file with the Paying Agent/Registrar. For the purpose of the payment of interest on this Certificate, the registered owner shall be the person in whose name this Certificate is registered at the close of business on the "Record Date," which shall be the last

business day of the month next preceding such interest payment date; provided, however, that in the event of nonpayment of interest on a scheduled payment date and for 30 days thereafter, a new record date for such interest payment (a "Special Record Date") shall be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the Town. Notice of the Special Record Date and of the scheduled payment date of the past due interest (the "Special Payment Date," which date shall be 15 days after the Special Record Date) shall be sent at least five business days prior to the Special Record Date by United States mail, first class, postage prepaid, to the address of each Owner of a Certificate appearing on the books of the Paying Agent/Registrar at the close of business on the last business day next preceding the date of mailing of such notice.

If the date for the payment of the principal of or interest on this Certificate shall be a Saturday, Sunday, legal holiday, or day on which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are required or authorized by law or executive order to close, the date for such payment shall be the next succeeding day that is not a Saturday, Sunday, legal holiday, or day on which banking institutions are required or authorized to close, and payment on such date shall have the same force and effect as if made on the original date payment was due and no additional interest shall be due by reason of nonpayment on the date on which such payment is otherwise stated to be due and payable.

This Certificate is one of a series of fully registered certificates specified in the title hereof issued in the aggregate principal amount of \$ _____ (herein referred to as the "Certificates"), issued pursuant to a certain ordinance of the Town (the "Ordinance") for the purpose of paying contractual obligations to be incurred for authorized public improvements (the "Project") as described in the Ordinance, and to pay the contractual obligations for professional services of attorneys, financial advisors and other professionals in connection with the Project and the issuance of the Certificates.

The Certificates and the interest thereon are payable from the levy of a direct and continuing ad valorem tax within the limits prescribed by law, against all taxable property in the Town and from a pledge of certain Surplus Revenues (not to exceed \$1,000) of the Town's waterworks and sewer system, all as described and provided for in the Ordinance.

The Town has reserved the option to redeem the Certificates maturing on or after February 15, 2029, in whole or in part, before their respective scheduled maturity dates, on February 15, 2028, or on any date thereafter, at a price equal to the principal amount of the Certificates so called for redemption plus accrued interest to the date fixed for redemption. If less than all of the Certificates are to be redeemed, the Town shall determine the maturity or maturities and the amounts thereof to be redeemed and shall direct the Paying Agent/Registrar to call by lot or other customary method that results in a random selection the Certificates, or portions thereof, within such maturity and in such principal amounts, for redemption.

Notice of such redemption or redemptions shall be given by first class mail, postage prepaid, not less than 30 days before the date fixed for redemption, to the registered owner of each of the Certificates to be redeemed in whole or in part. Notice having been so given, the Certificates or portions thereof designated for redemption shall become due and payable on the

redemption date specified in such notice; from and after such date, notwithstanding that any of the Certificates or portions thereof so called for redemption shall not have been surrendered for payment, interest on such Certificates or portions thereof shall cease to accrue.

The Town reserves the right to give notice of its election or direction to redeem Certificates conditioned upon the occurrence of subsequent events. Such notice may state (i) that the redemption is conditioned upon the deposit of moneys and/or authorized securities, in an amount equal to the amount necessary to effect the redemption, with the Paying Agent/Registrar, or such other entity as may be authorized by law, no later than the redemption date, or (ii) that the Town retains the right to rescind such notice at any time on or prior to the scheduled redemption date if the Town delivers a certificate of the Town to the Paying Agent/Registrar instructing the Paying Agent/Registrar to rescind the redemption notice and such notice and redemption shall be of no effect if such moneys and/or authorized securities are not so deposited or if the notice is rescinded. The Paying Agent/Registrar shall give prompt notice of any such rescission of a conditional notice of redemption to the affected Owners. Any Certificates subject to conditional notice of redemption and such redemption has been rescinded shall remain Outstanding and the rescission of such redemption shall not constitute an event of default. Further, in the case of a conditional redemption, the failure of the Town to make moneys and or authorized securities available in part or in whole on or before the redemption date shall not constitute an event of default.

As provided in the Ordinance, and subject to certain limitations therein set forth, this Certificate is transferable upon surrender of this Town for transfer at the Designated Payment/Transfer Office of the Paying Agent/Registrar with such endorsement or other evidence of transfer as is acceptable to the Paying Agent/Registrar; thereupon, one or more new fully registered Certificates of the same stated maturity, of authorized denominations, bearing the same rate of interest, and for the same aggregate principal amount will be issued to the designated transferee or transferees.

Neither the Town nor the Paying Agent/Registrar shall be required to issue, transfer or exchange any Certificate called for redemption where such redemption is scheduled to occur within 45 calendar days of the date fixed for redemption; provided, however, such limitation shall not be applicable to an exchange by the registered owner of the uncalled principal balance of a Certificate.

The Town, the Paying Agent/Registrar, and any other person may treat the person in whose name this Certificate is registered as the owner hereof for the purpose of receiving payment as herein provided (except interest shall be paid to the person in whose name this Certificate is registered on the Record Date, or the Special Record Date, as applicable) and for all other purposes, whether or not this Certificate be overdue, and neither the Town nor the Paying Agent/Registrar shall be affected by notice to the contrary.

IT IS HEREBY CERTIFIED AND RECITED that the issuance of this Certificate and the series of which it is a part is duly authorized by law; that all acts, conditions, and things to be done precedent to and in the issuance of the Certificates have been properly done and performed and have happened in regular and due time, form, and manner as required by law; that ad valorem taxes upon all taxable property in the Town have been levied for and pledged to the

payment of the debt service requirements of the Certificates within the limit prescribed by law; that, in addition to said taxes, further provisions have been made for the payment of the debt service requirements of the Certificates from a pledge of a limited amount of the Surplus Revenues, as described in the Ordinance, derived by the Town from the operation of the waterworks and sewer system in an amount limited to \$1,000, that when so collected, such taxes and Surplus Revenues shall be appropriated to such purposes; and that the total indebtedness of the Town, including the Certificates, does not exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the Town has caused this Certificate to be executed by the manual or facsimile signature of the Mayor of the Town and countersigned by the manual or facsimile signature of the City Secretary, and the official seal of the Town has been duly impressed or placed in facsimile on this Certificate.

Mayor, Town of Addison, Texas

City Secretary,
Town of Addison, Texas

[SEAL]

(b) Form of Comptroller's Registration Certificate. The following Comptroller's Registration Certificate may be deleted from the definitive Certificates if such certificate on the Initial Certificate is fully executed.

OFFICE OF THE COMPTROLLER	§	
OF PUBLIC ACCOUNTS	§	REGISTER NO. _____
OF THE STATE OF TEXAS	§	

I hereby certify that there is on file and of record in my office a certificate of the Attorney General of the State of Texas to the effect that this Certificate has been examined by him as required by law, that he finds that it has been issued in conformity with the Constitution and laws of the State of Texas, and that it is a valid and binding obligation of the Town of Addison, Texas; and that this Certificate has this day been registered by me.

Witness my hand and seal of office at Austin, Texas, _____.

Comptroller of Public Accounts
of the State of Texas

(c) Form of Certificate of Paying Agent/Registrar. The following Certificate of Paying Agent/Registrar may be deleted from each Initial Certificate if the Comptroller's Registration Certificate appears thereon.

CERTIFICATE OF PAYING AGENT/REGISTRAR

The records of the Paying Agent/Registrar show that the Initial Certificates of this series of Certificates was approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas, and that this is one of the Certificates referred to in the within-mentioned Ordinance.

THE BANK OF NEW YORK MELLON
TRUST COMPANY,
NATIONAL ASSOCIATION,
as Paying Agent/Registrar

Dated: _____

By: _____

Authorized Signatory

(d) Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers unto (print or typewrite name, address and Zip Code of transferee): _____

(Social Security or other identifying number: _____) the within Certificate and all rights hereunder and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Certificate on the books kept for registration hereof, with full power of substitution in the premises.

Dated: _____

Signature Guaranteed By:

Authorized Signatory

NOTICE: The Signature on this Assignment must correspond with the name of the registered owner as it appears on the face of the within Certificate in every particular and must be guaranteed in a manner acceptable to the Paying Agent/Registrar.

(e) The initial Certificate shall be in the form set forth in subsections (a) through (d) of this Section, except for the following alterations:

(i) immediately under the name of the Certificate, the headings “INTEREST RATE,” and “MATURITY DATE” shall both be completed with the words “As Shown Below” and the words “CUSIP NO.” shall be deleted;

(ii) in the first paragraph of the Certificate, the words “on the Maturity Date specified above, the sum of _____ DOLLARS” shall be deleted and the following will be inserted: “on the fifteenth day of February in the years, in the principal installments and bearing interest at the per annum rates set forth in the following schedule:

<u>Year</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
-------------	-------------------------	----------------------

(Information to be inserted from Section 3.02(c) hereof).

(iii) the Initial Certificate shall be numbered T-1.

Section VI.3. CUSIP Registration.

The Town may secure identification numbers through the CUSIP Global Services, managed by Standard & Poor’s Financial Services LLC on behalf of the American Bankers Association, and may authorize the printing of such numbers on the face of the Certificates. It is expressly provided, however, that the presence or absence of CUSIP numbers on the Certificates shall be of no significance or effect in regard to the legality thereof and neither the Town nor the attorneys approving said Certificates as to legality are to be held responsible for CUSIP numbers incorrectly printed on the Certificates.

Section VI.4. Legal Opinion.

The approving legal opinion of Bracewell LLP, Bond Counsel, may be attached to or printed on the reverse side of each Certificate over the certification of the City Secretary of the Town, which may be executed in facsimile.

Section VI.5. Statement Insurance.

A statement relating to a municipal bond insurance policy, if any, to be issued for the Certificates, may be printed on each Certificate.

ARTICLE VII

SALE AND DELIVERY OF CERTIFICATES; DEPOSIT OF PROCEEDS; FLOW OF FUNDS

Section VII.1. Sale of Certificates; Official Statement.

(a) The Certificates, having been duly advertised and offered for sale at competitive bid, are hereby officially sold and awarded to _____. (the "Purchaser") for a purchase price equal to the principal amount thereof, plus a cash premium in the amount of \$_____, and plus interest accrued to the Closing Date, being the bid which produced the lowest true interest cost to the City. The Initial Certificate shall be registered in the name of the Purchaser or its designee.

(b) The form and substance of the Preliminary Official Statement and any addenda, supplement or amendment thereto, are hereby in all respects approved and adopted and is hereby deemed final as of its date within the meaning and for the purposes of paragraph (b)(1) of Rule 15c2-12 under the Securities Exchange Act of 1934, as amended. The Mayor and City Secretary are hereby authorized and directed to cause to be prepared a final Official Statement (the "Official Statement") incorporating applicable pricing information pertaining to the Certificates, and to execute the same by manual or facsimile signature and deliver appropriate numbers of executed copies thereof to the Purchaser. The Official Statement as thus approved, executed and delivered, with such appropriate variations as shall be approved by the Mayor and the Purchaser, may be used by the Purchaser in the public offering and sale thereof. The City Secretary is hereby authorized and directed to include and maintain a copy of the Official Statement and any addenda, supplement or amendment thereto thus approved among the permanent records of this meeting. The use and distribution of the Preliminary Official Statement, and the preliminary public offering of the Certificates by the Purchaser, is hereby ratified, approved and confirmed.

(c) All officers of the Town are authorized to execute such documents, certificates and receipts as they may deem appropriate in order to consummate the delivery of the Certificates in accordance with the terms of sale therefor. Further, in connection with the submission of the record of proceedings for the Certificates to the Attorney General of the State of Texas for examination and approval of such Certificates, the appropriate officer of the Town is hereby authorized and directed to issue a check of the Town payable to the Attorney General of the State of Texas as a nonrefundable examination fee in the amount required by Chapter 1202, Texas Government Code (such amount per series to be the lesser of (i) 1/10th of 1% of the principal amount of such series of the Certificates or (ii) \$9,500.)

(d) The obligation of the Purchaser to accept delivery of the Certificates is subject to the Purchaser being furnished with the final, approving opinion of Bracewell LLP, bond counsel for the Town, which opinion shall be dated and delivered the Closing Date.

Section VII.2. Control and Delivery of Certificates.

(a) The Mayor of the Town is hereby authorized to have control of the Initial Certificate and all necessary records and proceedings pertaining thereto pending investigation,

examination, and approval of the Attorney General of the State of Texas, registration by the Comptroller of Public Accounts of the State of Texas and registration with, and initial exchange or transfer by, the Paying Agent/Registrar.

(b) After registration by the Comptroller of Public Accounts, delivery of the Certificates shall be made to the Purchaser or a representative thereof under and subject to the general supervision and direction of the Mayor, against receipt by the Town of all amounts due to the Town under the terms of sale.

(c) In the event the Mayor or City Secretary is absent or otherwise unable to execute any document or take any action authorized herein, the Mayor Pro Tem and the Assistant City Secretary, respectively, shall be authorized to execute such documents and take such actions, and the performance of such duties by the Mayor Pro Tem and the Assistant City Secretary shall for the purposes of this Ordinance have the same force and effect as if such duties were performed by the Mayor and City Secretary, respectively.

Section VII.3. Deposit of Proceeds.

(a) First: All amounts received on the Closing Date as accrued interest on the Certificates from the Certificate Date to the Closing Date, if any, shall be deposited to the Interest and Sinking Fund.

(a) Second: The remaining balance received on the Closing Date, shall be deposited to a special account of the Town, such moneys to be dedicated and used solely for the purposes for which the Certificates are being issued as herein provided in Section 3.01. To the extent any of such amount is not used for such purposes, such excess shall be deposited to the Interest and Sinking Fund.

ARTICLE VIII

INVESTMENTS

Section VIII.1. Investments.

(a) Money in the Interest and Sinking Fund created by this Ordinance, at the option of the Town, may be invested in such securities or obligations as permitted under applicable law.

(b) Any securities or obligations in which such money is so invested shall be kept and held in trust for the benefit of the Owners and shall be sold and the proceeds of sale shall be timely applied to the making of all payments required to be made from the fund from which the investment was made.

Section VIII.2. Investment Income.

(a) Interest and income derived from investment of the Interest and Sinking Fund be credited to such fund.

(b) Interest and income derived from investment of the funds to be deposited pursuant to Section 7.03(b) hereof shall be credited to the account where deposited until the acquisition or construction of said projects is completed and thereafter, to the extent such interest and income are present, such interest and income shall be deposited to the Interest and Sinking Fund.

ARTICLE IX

PARTICULAR REPRESENTATIONS AND COVENANTS

Section IX.1. Payment of the Certificates.

On or before each Interest Payment Date for the Certificates and while any of the Certificates are outstanding and unpaid, there shall be made available to the Paying Agent/Registrar, out of the Interest and Sinking Fund, money sufficient to pay such interest on and principal of, redemption premium, if any, and interest on the Certificates as will accrue or mature on the applicable Interest Payment Date, maturity date and, if applicable, on a date of prior redemption.

Section IX.2. Other Representations and Covenants.

(a) The Town will faithfully perform, at all times, any and all covenants, undertakings, stipulations, and provisions contained in this Ordinance and in each Certificate; the Town will promptly pay or cause to be paid the principal of, redemption premium, if any, and interest on each Certificate on the dates and at the places and manner prescribed in such Certificate; and the Town will, at the times and in the manner prescribed by this Ordinance, deposit or cause to be deposited the amounts of money specified by this Ordinance.

(b) The Town is duly authorized under the laws of the State of Texas to issue the Certificates; all action on its part for the creation and issuance of the Certificates has been duly and effectively taken; and the Certificates in the hands of the Owners thereof are and will be valid and enforceable obligations of the Town in accordance with their terms.

Section IX.3. Provisions Concerning Federal Income Tax Exclusion.

The Town intends that the interest on the Certificates be excludable from gross income for federal income tax purposes pursuant to sections 103 and 141 through 150, inclusive, of the Code. The Town covenants and agrees not to take any action, or omit to take any action within its control, that if taken or omitted, respectively, would (i) cause the interest on the Certificates to be includable in gross income, as defined in section 61 of the Code, for federal income tax purposes or (ii) result in the violation of or failure to satisfy any provision of sections 103 and 141 through 150, inclusive, of the Code. In particular, the Town covenants and agrees to comply with each requirement of Sections 9.03 through 9.13, inclusive; provided, however, that the Town will not be required to comply with any particular requirement of Sections 9.03 through 9.13, inclusive, if the Town has received an opinion of nationally recognized bond counsel ("Counsel's Opinion") that (i) such noncompliance will not adversely affect the excludability of interest on the Certificates from gross income for federal income tax purposes or (ii) compliance with some other requirement specified in such Counsel's Opinion will satisfy the applicable requirements of the Code and the Regulations, in which case compliance with such other

requirement will constitute compliance with the corresponding requirement specified in Sections 9.03 through 9.13, inclusive.

Section IX.4. No Private Use or Payment and No Private Loan Financing.

The Town covenants and agrees that it will make such use of the proceeds of the Certificates, including interest or other investment income derived from Certificate proceeds, regulate the use of property financed, directly or indirectly, with such proceeds, and take such other and further action as may be required so that the Certificates will not be “private activity bonds” within the meaning of section 141 of the Code. Moreover, the Town will certify, through an authorized officer, employee or agent, that, based upon all facts and estimates known or reasonably expected to be in existence on the date the Certificates are delivered, the proceeds of the Certificates will not be used in a manner that would cause the Certificates to be “private activity bonds” within the meaning of section 141 of the Code.

Section IX.5. No Federal Guaranty.

The Town covenants and agrees not to take any action, or knowingly omit to take any action within its control, that, if taken or omitted, respectively, would cause the Certificates to be “federally guaranteed” within the meaning of section 149(b) of the Code, except as permitted by section 149(b)(3) of the Code.

Section IX.6. No Hedge Bonds.

The Town covenants and agrees not to take any action, or knowingly omit to take any action, within its control, that, if taken or omitted, respectively, would cause the Certificates to be “hedge bonds” within the meaning of section 149(g) of the Code.

Section IX.7. No Arbitrage.

The Town covenants and agrees that it will make such use of the proceeds of the Certificates, including interest or other investment income derived from Certificate proceeds, regulate investments of proceeds of the Certificates, and take such other and further action as may be required so that the Certificates will not be “arbitrage bonds” within the meaning of section 148(a) of the Code. Moreover, the Town will certify, through an authorized officer, employee or agent, based upon all facts and estimates known or reasonably expected to be in existence on the date the Certificates are delivered, that the proceeds of the Certificates will not be used in a manner that would cause the Certificates to be “arbitrage bonds” within the meaning of section 148(a) of the Code.

Section IX.8. Arbitrage Rebate.

If the Town does not qualify for an exception to the requirements of section 148(f) of the Code relating to the required rebate to the United States, the Town will take all necessary steps to comply with the requirement that certain amounts earned by the Town on the investment of the “gross proceeds” of the Certificates (within the meaning of section 148(f)(6)(B) of the Code), be rebated to the federal government. Specifically, the Town will (i) maintain records regarding the investment of the gross proceeds of the Certificates as may be required to calculate the amount

earned on the investment of the gross proceeds of the Certificates separately from records of amounts on deposit in the funds and accounts of the Town allocable to other Certificate issues of the Town or moneys that do not represent gross proceeds of any bond issues of the Town, (ii) determine at such times as are required by the applicable Regulations, the amount earned from the investment of the gross proceeds of the Certificates that is required to be rebated to the federal government, and (iii) pay, not less often than every fifth anniversary date of the delivery of the Certificates, or on such other dates as may be permitted under applicable Regulations, all amounts required to be rebated to the federal government. Further, the Town will not indirectly pay any amount otherwise payable to the federal government pursuant to the foregoing requirements to any person other than the federal government by entering into any investment arrangement with respect to the gross proceeds of the Certificates that might result in a reduction in the amount required to be paid to the federal government because such arrangement results in a smaller profit or a larger loss than would have resulted if the arrangement had been at arm's length and had the yield on the issue not been relevant to either party.

Section IX.9. Information Reporting.

The Town covenants and agrees to file or cause to be filed with the Secretary of the Treasury, not later than the 15th day of the second calendar month after the close of the calendar quarter in which the Certificates are issued, an information statement concerning the Certificates, all under and in accordance with section 149(e) of the Code.

Section IX.10. Record Retention.

The Town will retain all pertinent and material records relating to the use and expenditure of the proceeds of the Certificates until three years after the last Certificate is redeemed or paid at maturity, or such shorter period as authorized by subsequent guidance issued by the Department of the Treasury, if applicable. All records will be kept in a manner that ensures their complete access throughout the retention period. For this purpose, it is acceptable that such records are kept either as hardcopy books and records or in an electronic storage and retrieval system, provided that such electronic system includes reasonable controls and quality assurance programs that assure the ability of the Town to retrieve and reproduce such books and records in the event of an examination of the Certificates by the Internal Revenue Service.

Section IX.11. Registration.

The Certificates will be issued in registered form.

Section IX.12. Deliberate Actions.

The Town will not take a deliberate action (as defined in section 1.141-2(d)(3) of the Regulations) that causes the Certificates to fail to meet any requirement of section 141 of the Code after the issue date of the Certificates unless an appropriate remedial action is permitted by section 1.141-12 of the Regulations, the Town takes such remedial action, and a Counsel's Opinion is obtained that such remedial action cures any failure to meet the requirements of section 141 of the Code.

Section IX.13. Continuing Obligation.

Notwithstanding any other provision of this Ordinance, the Town's obligations under the covenants and provisions of Sections 9.03 through 9.13, inclusive, shall survive the defeasance and discharge of the Certificates for as long as such matters are relevant to the excludability of interest on the Certificates from gross income for federal income tax purposes.

ARTICLE X

DEFAULT AND REMEDIES

Section X.1. Events of Default.

Each of the following occurrences or events for the purpose of this Ordinance is hereby declared to be an Event of Default:

- (i) the failure to make payment of the principal of, redemption premium, if any, or interest on any of the Certificates when the same becomes due and payable; or
- (ii) default in the performance or observance of any other covenant, agreement, or obligation of the Town, which default materially and adversely affects the rights of the Owners, including but not limited to their prospect or ability to be repaid in accordance with this Ordinance, and the continuation thereof for a period of sixty (60) days after notice of such default is given by any Owner to the Town.

Section X.2. Remedies for Default.

(a) Upon the happening of any Event of Default, then any Owner or an authorized representative thereof, including but not limited to a trustee or trustees therefor, may proceed against the Town for the purpose of protecting and enforcing the rights of the Owners under this Ordinance by mandamus or other suit, action or special proceeding in equity or at law in any court of competent jurisdiction for any relief permitted by law, including the specific performance of any covenant or agreement contained herein, or thereby to enjoin any act or thing that may be unlawful or in violation of any right of the Owners hereunder or any combination of such remedies.

(b) It is provided that all such proceedings shall be instituted and maintained for the equal benefit of all Owners of Certificates then outstanding.

Section X.3. Remedies Not Exclusive.

(a) No remedy herein conferred or reserved is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the Certificates or now or hereafter existing at law or in equity; provided, however, that notwithstanding any other provision of this Ordinance, the right to accelerate the debt evidenced by the Certificates shall not be available as a remedy under this Ordinance.

(b) The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy.

ARTICLE XI

DISCHARGE

Section XI.1. Discharge.

The Certificates may be defeased, discharged or refunded in any manner permitted by applicable law.

ARTICLE XII

CONTINUING DISCLOSURE UNDERTAKING

Section XII.1. Annual Reports.

(a) The Town shall provide annually to the MSRB, (1) within six months after the end of each fiscal year of the Town, financial information and operating data with respect to the Town of the general type included in the final Official Statement, being information described in the Tables numbered 1 through 6 and 8 through 15, including financial statements of the Town if audited financial statements of the Town are then available, and (2) if not provided as part such financial information and operating data, audited financial statements of the Town, when and if available. Any financial statements to be provided shall be (i) prepared in accordance with the accounting principles appended to the Official Statement, or such other accounting principles as the Town may be required to employ from time to time pursuant to state law or regulation, and (ii) audited, if the Town commissions an audit of such financial statements and the audit is completed within the period during which they must be provided. If the audit of such financial statements is not complete within 12 months after any such fiscal year end, then the Town shall file unaudited financial statements within such 12-month period and audited financial statements for the applicable fiscal year, when and if the audit report on such statements becomes available.

(b) If the Town changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the Town otherwise would be required to provide financial information and operating data pursuant to this Section.

(c) The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific referenced to any document (including an official statement or other offering document, if it is available from the MSRB) that theretofore has been provided to the MSRB or filed with the SEC.

Section XII.2. Material Event Notices.

(a) The Town shall notify the MSRB, in a timely manner not in excess of ten (10) Business Days after the occurrence of the event, of any of the following events with respect to the Certificates:

- (i) Principal and interest payment delinquencies;
- (ii) Non-payment related defaults, if material;
- (iii) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (iv) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (v) Substitution of credit or liquidity providers, or their failure to perform;
- (vi) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Certificates, or other material events affecting the tax status of the Certificates;
- (vii) Modifications to rights of holders of the Certificates, if material;
- (viii) Certificate calls, if material, and tender offers;
- (ix) Defeasances;
- (x) Release, substitution, or sale of property securing repayment of the Certificates, if material;
- (xi) Rating changes;
- (xii) Bankruptcy, insolvency, receivership or similar event of the Town;¹
- (xiii) The consummation of a merger, consolidation, or acquisition involving the Town or the sale of all or substantially all of the assets of the Town, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
- (xiv) Appointment of a successor Paying Agent/Registrar or change in the name of the Paying Agent/Registrar, if material.

¹ For the purposes of the event identified in (xii), the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for an obligated person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the obligated person, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the obligated person.

(b) The Town shall provide to the MSRB, in an electronic format as prescribed by the MSRB, in a timely manner, notice of a failure by the Town to provide required annual financial information and notices of material events in accordance with Sections 12.01 and 12.02. All documents provided to the MSRB pursuant to this Section shall be accompanied by identifying information as prescribed by the MSRB.

Section XII.3. Limitations, Disclaimers and Amendments.

(a) The Town shall be obligated to observe and perform the covenants specified in this Article for so long as, but only for so long as, the Town remains an “obligated person” with respect to the Certificates within the meaning of the Rule, except that the Town in any event will give notice of any redemption calls and any defeasances that cause the Town to be no longer an “obligated person.”

(b) The provisions of this Article are for the sole benefit of the Owners and beneficial owners of the Certificates, and nothing in this Article, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The Town undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Article and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the Town’s financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Article or otherwise, except as expressly provided herein. The Town does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Certificates at any future date.

UNDER NO CIRCUMSTANCES SHALL THE TOWN BE LIABLE TO THE OWNER OR BENEFICIAL OWNER OF ANY CERTIFICATE OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE TOWN, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS ARTICLE, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

(c) No default by the Town in observing or performing its obligations under this Article shall constitute a breach of or default under the Ordinance for purposes of any other provisions of this Ordinance.

(d) Nothing in this Article is intended or shall act to disclaim, waive, or otherwise limit the duties of the Town under federal and state securities laws.

(e) The provisions of this Article may be amended by the Town from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the Town, but only if (i) the provisions of this Article, as so amended, would have permitted an underwriter to purchase or sell Certificates in the primary offering of the Certificates in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as

well as such changed circumstances, and (ii) either (A) the Owners of a majority in aggregate principal amount (or any greater amount required by any other provisions of this Ordinance that authorizes such an amendment) of the Outstanding Certificates consent to such amendment or (B) an entity or individual person that is unaffiliated with the Town (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Owners and beneficial owners of the Certificates. If the Town so amends the provisions of this Article, it shall include with any amended financial information or operating data next provided in accordance with Section 12.01 an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in type of financial information or operating data so provide.

ARTICLE XIII

AMENDMENTS

Section XIII.1. Amendments.

This Ordinance shall constitute a contract with the Owners, be binding on the Town, and shall not be amended or repealed by the Town so long as any Certificate remains outstanding except as permitted in this Section. The Town may, without consent of or notice to any Owners, from time to time and at any time, amend this Ordinance in any manner not detrimental to the interests of the Owners, including the curing of any ambiguity, inconsistency, or formal defect or omission herein. In addition, the Town may, with the written consent of the Owners of the Certificates holding a majority in aggregate principal amount of the Certificates then outstanding, amend, add to, or rescind any of the provisions of this Ordinance; provided that, without the consent of all Owners of outstanding Certificates, no such amendment, addition, or rescission shall extend the time or times of payment of the principal of and interest on the Certificates, reduce the principal amount thereof, the redemption price, or the rate of interest thereon, or in any other way modify the terms of payment of the principal of or interest on the Certificates, give any preference to any Certificate over any other Certificate, or reduce the aggregate principal amount of Certificates required to be held by Owners for consent to any such amendment, addition, or rescission.

ARTICLE XIV

MISCELLANEOUS

Section XIV.1. Changes to Ordinance.

The Mayor and Director of Finance, in consultation with Bond Counsel, are hereby authorized to make changes to the terms of this Ordinance if necessary or desirable to carry out the purposes hereof or in connection with the approval of the issuance of the Certificates by the Attorney General of Texas.

Section XIV.2. Partial Invalidity.

If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of the Ordinance.

Section XIV.3. No Personal Liability.

No recourse shall be had for payment of the principal of or interest on any Certificates or for any claim based thereon, or on this Ordinance, against any official or employee of the Town or any person executing any Certificates.

ARTICLE XV

EFFECTIVENESS

Section XV.1. Effectiveness.

This Ordinance shall take effect immediately from and after its passage.

APPROVED AND ADOPTED this December 11, 2018.

Mayor, Town of Addison, Texas

ATTEST:

City Secretary, Town of Addison, Texas

APPROVED AS TO FORM:

By: _____
City Attorney, Town of Addison, Texas

*Signature Page for Ordinance
Series 2018 Combination Tax and Revenue Certificates of Obligation*

