



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

**November 12, 2019**

**ADDISON TOWN HALL**

**5300 BELT LINE RD., DALLAS, TX 75254  
5:45 PM EXECUTIVE SESSION & WORK SESSION  
7:30 PM REGULAR MEETING**

1. Call Meeting to Order

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

**• Project House**

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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.

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## WORK SESSION

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4. Present and Discuss a Status Update on the Midway Road Reconstruction Project, the Process to Procure Contractor Services, Including the Possibility of Using DART's Construction Contractor, and the Project Timeline.
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## REGULAR MEETING

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### Pledge of Allegiance

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Announcements and Acknowledgements regarding Town and Council Events and Activities

Discussion of Events/Meetings

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5. Public Comment.  
The City Council invites citizens to address the City Council on any matter, including items on the agenda, except public hearings that are included on the agenda. Comments related to public hearings will be heard when the specific hearing starts. Citizen comments are limited to three (3) minutes, unless otherwise required by law. To address the Council, please fill out a City Council Appearance Card and submit it to a staff member prior to the Public Comment item on the agenda. The Council is not permitted to take any action or discuss any item not listed on the agenda. The Council may choose to place the item on a future agenda.
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Consent Agenda:

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

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6. Consider Action on the Minutes of the October 29, 2019 City Council Meeting.
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7. Consider Action on a **Resolution to Approve a Cityworks License and Maintenance Agreement Between the Town of Addison and Azteca Systems, LLC, for the Use of the Cityworks Software and Authorizing the City Manager to Execute the Agreement** in an Amount Not to Exceed \$90,000.
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8. Consider Action on a **Resolution to Approve the Agreement between the Town of Addison and SHI Government Solutions, Inc., for Services Related to the Implementation of the Cityworks Software and Authorizing the City Manager to Execute the Agreement** in an Amount Not to Exceed \$94,329.90.
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9. Consider Action on a **Resolution to Approve a Grant Funding Agreement Between the Town of Addison and Dallas Cat Lady and Authorize the City Manager to Execute the Grant Funding Agreement** in an Amount Not to Exceed \$5,000.
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10. Consider Action on a **Resolution to Approve a Grant Funding Agreement Between the Town of Addison and Dallas County Mental Health & Retardation d/b/a Metrocare Services and Authorize the City Manager to Execute the Grant Funding Agreement** in an Amount Not to Exceed \$5,000.
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11. Consider Action on a **Resolution to Approve a Master Agreement for Professional Services with Garver, LLC for Addison Airport On-Call Engineering Services for the 2020 Fiscal Year, and Authorize the City Manager to Execute the Agreement** in an Amount Not to Exceed \$137,000.
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#### Regular Items

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12. Present, Discuss, and Consider Action on a **Resolution Canvassing and Declaring the Results of a Special Bond Election Held in the Town of Addison, Texas, on November 5, 2019.**
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#### Adjourn Meeting

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

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Posted: \_\_\_\_\_

Irma Parker, City Secretary

Date: Thursday, November 7, 2019

Time: 5:30 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:** 11/12/2019

**Department:** Infrastructure- Development Services

**Pillars:** Excellence in Transportation Systems

**Milestones:** All roads in an acceptable condition and well maintained

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### **AGENDA CAPTION:**

Present and Discuss **a Status Update on the Midway Road Reconstruction Project, the Process to Procure Contractor Services, Including the Possibility of Using DART's Construction Contractor, and the Project Timeline.**

### **BACKGROUND:**

Town Staff will present a status update of the Midway Road Reconstruction Project that includes project design, property acquisition activities, the evaluation and selection of a general contractor for the project, and the updated project timeline.

Given the extremely active construction market, Town Staff has been evaluating options to identify and select a qualified contractor and realize potential project cost savings. In addition to the traditional bidding process, Town Staff has been in discussions with DART staff about the possibility of using Archer Western Herzog (AWH), DART's contractor who is designing and building the Silver Line Rail Project, as the construction contractor for the reconstruction of Midway Road. Staff will review the next steps needed to determine a decision as to whether to use AWH, or if the Town should advertise for bids using the traditional method.

### **RECOMMENDATION:**

Information only, no action required.

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### **Attachments**

Presentation - Midway Road Reconstruction Update

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# Midway Road Reconstruction Update and Upcoming Timeline

City Council  
November 12, 2019

The logo for the City of Addison, featuring the word "ADDISON" in blue capital letters inside a white circle, which is set against a blue background with a white diagonal line.

ADDISON

- Project Scope, Timeline, and Cost Estimate
- Project Design Status
  - Initial 100% submittal
- Property Acquisition
  - 26 Parcels
  - Appraisals
  - Final Offers
- Procurement options and coordination with DART Silver Line construction
- Upcoming schedule

# Project Scope, Timeline, and Cost Estimate

- Reconstruction of Midway Road from Spring Valley Road to Keller Springs Road
  - Paving improvements
  - Drainage, water, and sanitary sewer line improvements
  - Traffic signal and lighting upgrades
  - 10' sidepath on westside from Spring Valley to Belt Line Road
  - Connection to Cotton Belt Trail at Wheeler Bridge at Arapaho Road
- Final 100% plans due by November 25, 2019
- Total project cost estimated to be \$41 million

# Design Status Update

- Initial 100% Design plans received on August 14, 2019
- Staff has reviewed the plans and provided comments to the engineer, Teague, Nall, and Perkins (TNP)
- Staff and TNP met on October 28<sup>th</sup> for the final review of comments and to discuss final changes to the plans
  - TNP is incorporating those comments and changes into the plans
- Final 100% design expected on or before November 25, 2019

# Property Acquisition Update

- 26 parcels are to be acquired – fee simple and easement acquisitions
  - Ranging from 100 square feet to 7,734 square feet
- All appraisals have been completed and received by staff
- Final Offer packets are being prepared
  - Offer Letter
  - Appraisal
  - State of Texas Landowner's Bill of Rights
    - Entitled to just compensation
    - Only for a public use
    - Entitled to a hearing before special commission if dissatisfied with Town's offer
  - Draft conveyance documents
- Possession and Use Agreements, if needed



# Procurement Question / Decision

- Under the State of Texas purchasing requirements, for projects over \$50,000 cities must procure goods and services through a competitive bid process.
- They may, however, procure goods and services in cooperation with another governmental entity that has procured that good or service through the competitive process.
- DART used the competitive process to select Archer Western Herzog (AWH) to design and build the Silver Line
- Through an Interlocal Agreement with DART, Addison can use DART's contractor for the reconstruction of Midway Road

- Using DART's contractor may mean:
  - Improved coordination between contractors, particularly at the railroad crossing under Wheeler Bridge
  - Ability to minimize disruption from two separate projects on different timelines
  - Ability to take advantage of DART's "buying power" may help reduce construction costs
  - Lessens project management strain on limited Addison staff

# Procurement Options

- Once final 100% design is received it will be sent to DART for their design/build contractor, AWH, to submit a price for the reconstruction of the roadway.
- DART will also provide an independent price proposal using data from the current market.
- AWH, DART, and the design engineer's Opinion of Probable Construction Cost will be compared.
- Town will decide whether to use AWH or bid the project using our own competitive bid process.

# Option - If Using DART's Contract with AWH

- AWH's review expected to take 4-6 weeks once they receive the final plans
- If AWH's price is acceptable to the Town, the Town will execute an Interlocal Agreement with DART for:
  - Reconstruction of Midway Road and associated improvements
  - Construction management services
  - Roles and responsibilities
- Council consideration first quarter calendar year 2020
- If approved, construction will start on DART's schedule
  - First Quarter 2020
- Reconstruction of Midway Road expected to take 3 years to complete

# Option - If Using Traditional Bid Process

If Town decides not to use DART's contractor:

- Week of January 20, 2020 - Advertise project on BidSync
- February 20, 2020 – Open bids
- March 24, 2020 - Council consideration of award
- Week of April 6, 2020 – Notice to Proceed issued to successful bidder
- Reconstruction of Midway Road expected to take 3 years to complete

# Questions / Discussion

The logo for Addison-Wesley, featuring the word "ADDISON" in a bold, blue, sans-serif font. The text is centered within a white circle, which is itself set against a blue background. The blue background is part of a larger graphic element on the right side of the slide, which includes a white circle and is bordered by dark gray triangular shapes in the top-right and bottom-right corners.

**ADDISON**

**Work Session and Regular Meeting**

**6.**

**Meeting Date:** 11/12/2019

**Department:** City Manager

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**AGENDA CAPTION:**

Consider Action on the **Minutes of the October 29, 2019 City Council Meeting.**

**BACKGROUND:**

The Minutes for the October 29, 2019 City Council Work Session and Regular Meeting have been prepared for consideration.

**RECOMMENDATION:**

Administration recommends approval.

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**Attachments**

Minutes - October 29, 2019 Work Session and Regular Meeting

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# **DRAFT**

## **OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL WORK SESSION & REGULAR MEETING**

**October 29, 2019**

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

**6:00 p.m. Work Session**

**7:30 p.m. Regular Meeting**

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

1. **Call Meeting to Order:** Mayor Chow called the meeting to order.
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### **WORK SESSION**

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2. **Present and Discuss the Sam's Club and Surrounding Areas Special Area Study Findings and Recommendations Regarding Future Development of the Properties Within That Area of the Town Generally Bounded on the North by Belt Line Road, on the East by Midway Road, on the South by an Oncor Utility Easement Located Approximately 250 Feet North of Proton Drive, and on the West by the Addison Grove Development, and the Midway Meadows and Towne Lake Neighborhoods.**

**Presentation:** Charles Goff, Director of Development Services, presented this item. He provided background of the Special Area Study as it was presented to the Council in 2014 and 2015. He reviewed that there was an Advisory Committee appointed, public input was obtained, community meetings held, and two development concepts created. One focused on neighborhoods and the second focused more on commercial and employment.

At that time the Council only provided direction on the portion of the study area that was the former Sam's Club property. The vision of the other areas was never finalized. Mr. Goff reminded Council that there are approximately 50 acres of land in the study area that includes



11 separate properties. The current land uses include retail, restaurant, office and hotel. In 2015 the direction from Council was to encourage the developers to explore a mixed used development with a retail component that maximizes residential ownership.

Mr. Goff presented the two concepts considered by the Advisory Committee as well as the Preferred Development Concept. A summary of the community's responses, both in support and mixed, was provided. Mr. Goff also reviewed the feedback received from Council when they discussed the matter again in 2017.

Mr. Goff explained that a developer has approached staff with a proposal similar to the Preferred Development Concept and is requesting direction regarding the Town's vision for the area. Mr. Goff asked Council whether they would like to finalize the plans as presented, start a new study, or review the existing study for possible changes.

**COUNCIL COMMENTS:** Council members discussed the plans presented in detail, specifically regarding the proposed multi-family area and whether it should be a senior living facility; also zoning, buffers, and privacy. Council Member Willesen expressed that he is not in favor of multi-family. Council Member Hughes stated that more attention to detail should be considered by the Council and those details provided to the public for input prior to Council approval. Mayor Pro Tempore Braun stated that the most important factors for residents are views, noise, and traffic. Council Member Walden agreed with Mayor Pro Tempore Braun's statement however added that he is generally okay with the concept plan as it is.

Several options were discussed as to how to obtain public input on the development. City Manager Wes Pierson advised that the methods used for the recent Parks and Recreation Master Plan were successful and can be utilized for this project. There was general agreement among Council members that a new Advisory Committee be formed to review the existing study and determine whether any of the plan needs to be revised. Applications will be taken for the committee with appointments in January 2020.

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### 3. **Present and Discuss Potential Regulations Regarding Semi-Truck Parking.**

**Presentation:** This item was presented by Management Analyst Miesha Johnson. She presented an overview of the Town's current semi-truck (over ¾ ton) parking regulations for residential and at Addison Town Center, and other regulations that apply to semi-truck parking in public places. Some Council members have received complaints about trucks parking for extended periods of time in some commercial areas. It was noted that the Target store recently posted "No Truck Parking" signs, that appear to have been effective. Ms. Johnson also provided information regarding truck parking regulations in Plano (4-hour limit except in industrial areas) and Frisco (no overnight semi-truck parking in large retail centers.) None of Addison's comparison cities prohibit semi-truck parking in commercial areas. Ms. Johnson asked the Council whether they would like regulations for semi-truck parking to be developed and if so, whether they would prefer no parking at all or as an alternative, just prohibit overnight parking.

**COUNCIL COMMENTS:** Several aspects of whether to allow semi-truck parking or not were expressed by the Council Members, including how such regulations would be enforced. While

some Council members felt strongly that new regulations were needed, others requested more data as to whether this matter is an issue that needs additional regulations. Mayor Chow summarized that more research needs to be done and then the Council will discuss it again.

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## REGULAR MEETING

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### Pledge of Allegiance

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### Announcements and Acknowledgements regarding Town and Council Events and Activities

### Discussion of Events/Meetings

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**Public Comment:** *The City Council invites citizens to address the City Council on any matter, including items on the agenda, except public hearings that are included on the agenda. Comments related to public hearings will be heard when the specific hearing starts. Citizen comments are limited to **three (3) minutes**, unless otherwise required by law. To address the Council, please fill out a **City Council Appearance Card** and submit it to a staff member prior to the Public Comment item on the agenda. The Council is not permitted to take any action or discuss any item not listed on the agenda. The Council may choose to place the item on a future agenda.*

No residents or audience members requested to speak.

**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.*

Council Member Willesen requested that Agenda Item 6 be pulled for separate discussion, and Council Member Walden requested that Agenda Item 11 also be pulled for separate discussion.

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#### 4. **Consider Action on the Minutes of the October 8, 2019 City Council Meeting**

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#### 5. **Consider Action on a Resolution to Approve a Grant Funding Agreement Between the Town of Addison and Addison Arbor Foundation and Authorize the City Manager to Execute the Grant Funding Agreement in an Amount Not to Exceed \$65,000.**

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#### 6. **Consider Action on a Resolution to Approve a Grant Funding Agreement Between the Town of Addison and Metrocrest Chamber of Commerce and**

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**Authorize the City Manager to Execute the Grant Funding Agreement in an Amount Not to Exceed \$35,000.**

(This item pulled from Consent Agenda by Council Member Willesen for separate discussion.)

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7. **Consider Action on a Resolution to Approve a Grant Funding Agreement Between the Town of Addison and Metrocrest Services and Authorize the City Manager to Execute the Grant Funding Agreement in an Amount Not to Exceed \$66,120.**

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8. **Consider Action on a Resolution to Approve a Grant Funding Agreement Between the Town of Addison and The Family Place and Authorize the City Manager to Execute the Grant Funding Agreement in an Amount Not to Exceed \$2,500.**

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9. **Consider Action on a Resolution to Approve a Grant Funding Agreement with On Eagles Wings, Inc. d/b/a Woven Health Clinic and Authorize the City Manager to Execute the Grant Funding Agreement in an Amount Not to Exceed \$5,000.**

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10. **Consider Action on a Resolution Approving the Purchase of Upgraded Taser 7's and Authorizing the City Manager to Execute the Purchase Agreement in an Amount Not to Exceed \$128,885.90.**

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11. **Consider Action on a Resolution to Approve a Contract for Annual Tree Maintenance Services with Elite Tree Service and Authorizing the City Manager to Execute the Agreement in an Amount Not to Exceed \$152,000.**

(This item pulled from Consent Agenda by Council Member Walden for separate discussion.)

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12. **Consider Action on a Resolution Approving an Agreement Between the Town of Addison and Garver, LLC for Construction Management Services Related to the Construction of the Landside of the US Customs and Border Protection and Airport Administration Office Combined Facility, and Authorizing the City Manager to Execute the Agreement in an Amount Not to Exceed \$98,573.**

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13. **Consider Action on a Resolution Approving an Agreement Between the Town of Addison and Garver, LLC for Construction Management Services Related to the Construction of the Airside Improvements of the US Customs and Border Protection and Airport Administration Office Combined Facility, and Authorizing the City Manager to Execute the Agreement in an Amount Not to**

**Exceed \$86,300.**

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14. **Consider Action on a Resolution Approving an Aviation Bulk Fuel Dispensing License Agreement Between the Town of Addison and Eagle Land & Cattle Co. at Addison Airport and Authorizing the City Manager to Execute the New Fuel Farm License Agreement.**
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15. **Consider Action on a Resolution Approving the Second Renewal of the Master Services Agreement for Professional Engineering Services with Cobb, Fendley & Associates, Inc., Related to the Civil Engineering Review of Private Development Plans for Public Infrastructure, and Authorizing the City Manager to Execute the Agreement in an Amount Not to Exceed \$75,000.**
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Mayor Chow called for a motion to approve the Consent Agenda.

**MOTION:** Deputy Mayor Pro Tempore Ward moved to approve Consent Agenda Item Numbers 4, 5, 7, 8, 9, 10, 12, 13, 14, and 15. Council Member Hughes seconded the motion. Motion carried unanimously.

**Regarding Consent Agenda Item Number 6:** Council Member Willesen questioned why there are no itemized amounts stated for each category listed in the grant funding agreement, like has been done in other agreements such as the service agreement with the World Affairs Council. There was a discussion between Council members and the Town's Attorney Brenda McDonald, on the distinction between a service agreement that is paid quarterly based on its activities and reporting, and a grant funding agreement that is paid fifty percent at a time twice a year and reported on to the Town quarterly. It was stated that the way these types of agreements are drafted can be discussed at a future meeting. City Manager Pierson advised he will have the matter on an agenda during the first quarter of calendar year 2020.

Council Member Willesen advised that he will vote no on this item due to the way it is drafted, but that his no vote is not against the Metrocrest Chamber of Commerce.

**MOTION:** Deputy Mayor Pro Tempore Ward moved to approve Consent Agenda Item Number 6 as presented. Council Member Hughes seconded the motion. Motion carried with Council Member Willesen voting against.

**Regarding Consent Agenda Item Number 11:** Council Member Walden asked whether this contract has any impact on the pruning that Oncor does in their utility easements. Janna Tidwell, Director of Parks and Recreation, answered this question stating that Oncor does their own pruning in order to protect their overhead power lines that the Town does not control Oncor's pruning. Ms. Tidwell also provided a breakdown of the components of the agreement as they pertain to various locations. She noted that the Town's ordinance covers tree maintenance on commercial private property and that it requires a permit.

**MOTION:** Council Member Walden moved to approve Consent Agenda Item Number 11. Mayor Pro Tempore Braun seconded the motion. Motion carried unanimously

**Resolution No. R19- 83- Grant Funding Agreement - Addison Arbor Foundation**  
**Resolution No. R19- 84- Grant Funding Agreement - Metrocrest Chamber of Commerce**  
**Resolution No. R19- 85- Grant Funding Agreement - Metrocrest Services**  
**Resolution No. R19- 86- Grant Funding Agreement - The Family Place**  
**Resolution No. R19- 87- Grant Funding Agreement - Woven Health Clinic**  
**Resolution No. R19- 88- Purchase of Upgraded Taser 7's**  
**Resolution No. R19- 89- Elite Tree Service Contract**  
**Resolution No. R19- 90- Airport Construction Management Services - Landside**  
**Resolution No. R19- 91- Airport Construction Management Services - Airside**  
**Resolution No. R19- 92- Fuel Farm License Agreement**  
**Resolution No. R19- 93- Master Services Agreement with Cobb Fendley**

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## Regular Items

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16. **Present, Discuss, and Consider Action on an Ordinance Granting a Meritorious Exception to Section 62-208 of Chapter 62 of the Code of Ordinances to Allow a 60 Square Foot Temporary Real Estate Sign, on the Property Located at 4150 Belt Line Road, Providing a Penalty Not to Exceed Five Hundred and No/100 Dollars (\$500.00) for Each Offense and a Separate Offense Shall be Deemed Committed Each Day During or on Which Violation Occurs or Continues.**

Olga Chernomorets, Planning and Development Manager, presented this item. She explained that the developer for the townhomes at this location has requested temporary signage that exceeds the allowable sign face square footage. She reviewed that the Code of Ordinances, Chapter 62, Section 62-208 regulates this type of sign by restricting the number, location and size which is specifically 36 square feet on the face of the sign. The applicant is requesting a 60 square foot sign on Lot 4 of Block A on the Oak Street side in order to increase visibility. Ms. Chernomorets advised that after a meritorious exception has been given, the applicant would have to reapply every 12 months to continue keeping the temporary sign. Condition of the sign would be considered at that time however, any deterioration prior to that would be addressed by the Code Enforcement department. The developer spoke briefly and advised that the project should be complete in a year and a half, and a model should be open by the end of this year.

**MOTION:** Mayor Pro Tempore Braun moved to approve Item 16 as presented. Council Member Hughes seconded the motion. Motion carried unanimously.

### **Ordinance No. O19- 16**

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17. **Present, Discuss, and Consider Action on a Resolution Appointing Four Members to Serve on the Planning & Zoning Commission for Two-Year Terms Commencing January 1, 2020 and Providing an Effective Date.**

City Secretary Irma Parker reviewed which places on the Planning and Zoning Commission have terms expiring December 31, 2019 and the Council members who can nominate each of those positions. A list of applicants was provided to the Council.

Council Nominations:

Mayor Pro Tempore Braun- would like to reappoint Robert Catalani to Place 4

Deputy Mayor Pro Tempore Ward- would like to reappoint Eileen Resnik to Place 5

Council Member Hughes- would like to reappoint Tom Souers to Place 7

Mayor Chow stated that Jerry Dougan (Place 6) notified him that he will be moving out of Addison during the next year. He thanked Mr. Dougan for his service. Mayor Chow then stated he would like to appoint Chris DeFransisco to serve in Place 6.

**MOTION:** Council Member Walden moved to approve the nominations. Mayor Pro Tempore Braun seconded the motion. Motion carried unanimously.

**MOTION:** Council Member Hughes moved to approve the resolution. Mayor Pro Tempore Braun seconded the motion. Motion carried unanimously.

**Resolution No. R19- 94**

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18. **Present, Discuss, and Consider Action on a Resolution Appointing Four Members to Serve on the Board of Zoning Adjustment for Two-Year Terms Commencing January 1, 2020 and Providing an Effective Date.**

City Secretary Parker reviewed which places on the Board of Zoning Adjustment have terms expiring December 31, 2019 and the Council Members who can nominate each of those positions. A list of applicants was provided to the Council.

Council Nominations:

Mayor Pro Tempore Braun- would like to reappoint E.J. Copeland to Place 4

Deputy Mayor Pro Tempore Ward- would like to reappoint Jeanne Dunlap to Place 5

Council Member Hughes- would like to appoint J.T. McPherson to Place 7

Mayor Chow- would like to reappoint Gary Krupkin to Place 6

**MOTION:** Deputy Mayor Pro Tempore Ward moved to approve the resolution appointing the previously stated nominations. Mayor Pro Tempore Braun seconded the motion. Motion carried unanimously.

**Resolution No. R19- 95**

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19. **Present, Discuss, and Consider Action on a Resolution Appointing Fourteen Members to the Charter Review Commission Pursuant to Home Rule Charter Section 11:29 and Establishing Certain Procedural Matters Regarding the Commission and Other Matters Related to the Commission.**

City Secretary Parker advised the Council that the Home Rule Charter requires a review by a Charter Commission at least every ten years to make recommendations for possible changes. Recommended changes would be presented for a vote during the May 2020 election. Applications were received and Council was provided with a list of applicants. Mayor Chow asked each Council member to select two people from the list for appointment.

Council Nominations:

Mayor Chow- Margie Gunther and Nancy Williams

Mayor Pro Tempore Braun- Nancy Craig and Kent Dominique

Deputy Mayor Pro Tempore Ward- David Collins and Kim Boyle

Council Member Hughes- Bruce Arfsten and Jimmy Niemann

Council Member Quintanilla- Jim Duffy and Liz Oliphant

Council Member Walden- Ron Whitehead and Susan Halpern

Council Member Willesen- Mary Ann Mayer Redmond and J.T. McPherson

Council Member Willesen encouraged Town residents to attend the committee meetings in order to learn more about the Town's Charter.

**MOTION:** Council Member Hughes moved to approve the resolution appointing the previously stated nominations. Motion was seconded by Council Member Walden. Motion Carried unanimously.

**Resolution No. R19- 96**

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20. **Present, Discuss, and Consider Action on a Resolution Creating and Appointing Members to the Addison Census Complete Count Committee for the 2020 Decennial Census; Specifying Power and Duties of the Committee and Designating Staff Liaisons; Providing for Automatic Termination of the Committee; Providing for Service Without Compensation and Providing an Effective Date.**

City Secretary Parker reviewed that at a Council meeting in September Planning and Development Manager Olga Chernomoretz presented information from the United States Census Bureau regarding the 2020 Census. The Census Bureau has requested local governments help educate and motivate residents to participate in the Census by establishing a Complete Count Committee. Addison is also working with Dallas County in these efforts. There was a brief discussion regarding waiting until another meeting to make appointments however Mr. Goff advised the Council that due to timing of the available training for Complete Count Committees, the individuals need to be appointed now. A map showing applicant addresses was provided to the Council

Twenty-three applications were received. There is not a specific number of people for the Committee so after discussion, the Mayor advised Council may each appoint three individuals. Council Member Willesen advised that he has three people who have not yet submitted applications that he would like to appoint. (Applications will be forthcoming.) He also asked if

non-residents could be appointed, such as those who are involved with local businesses. It was determined that residency is not a requirement.

**Council Nominations:**

Mayor Chow- Darren Gardner, David Collins, and Jeanne Dunlap

Mayor Pro Tempore Braun- Brandon Bowers, Chris Carter, and Juli Branson,

Deputy Mayor Pro Tempore Ward- Adam Gordon, Susan Milholland, and Suzann “Suzie” Oliver

Council Member Hughes- Fran Powell, Nancy Craig, and Tom Hansen

Council Member Quintanilla- Colleen Campbell, Eugene Kelly, and Lorrie Semler

Council Member Walden- Deirdre Moore, Mark Alan Wolfe, and Megan Bedera

Council Member Willesen- Ben Paquette, Jessica Zazzara, and Dotti Singhal

**MOTION:** Council Member Quintanilla moved to the resolution including the previously stated 21 nominations. Motion was seconded by Council Member Willesen. Motion passed unanimously.

**Resolution No. R19- 97**

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**Adjourn Meeting**

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

**TOWN OF ADDISON, TEXAS**

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Joe Chow, Mayor

**ATTEST:**

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Irma G. Parker, City Secretary



## Work Session and Regular Meeting

7.

**Meeting Date:** 11/12/2019

**Department:** Information Technology

**Pillars:** Excellence in Asset Management

**Milestones:** Implement the Asset Management Plan

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### **AGENDA CAPTION:**

Consider Action on a **Resolution to Approve a Cityworks License and Maintenance Agreement Between the Town of Addison and Azteca Systems, LLC, for the Use of the Cityworks Software and Authorizing the City Manager to Execute the Agreement** in an Amount Not to Exceed \$90,000.

### **BACKGROUND:**

On May 23, 2017, the Council approved a contract with Kayuga Solution, Inc., for the development of a comprehensive Asset Management database for the Town of Addison. Kayuga worked with Staff from various departments to gather information related to the inventory and condition of the Town's buildings, parks, utilities, streets, airport, and fleet. The Asset Management database is now complete. Also, as a part of the Asset Management Plan, the Town received the Infrastructure Reinvestment Intelligence System (IRIS) that is a tool Staff can use to plan for upcoming maintenance, rehabilitation, and replacement activities.

The next steps to fully implement the Asset Management Plan are the acquisition and implementation of a Computerized Maintenance Management System (CMMS). A CMMS is used to keep a centralized record of all assets and equipment, as well as schedule and track maintenance activities and keep a detailed record of the work performed. It is used to track internal work orders and external work requests, schedule tasks, manage inventory, and record asset history.

Staff has reviewed several software system packages and conducted interviews of their representatives. As a result, Staff selected Azteca Systems, LLC ("Azteca Systems") as the preferred company to provide Cityworks software. Cityworks was chosen over the other CMMS solutions because of its feature-rich design that offers many options and functional capabilities and an array of modules, including Water, Wastewater, Streets, Traffic, Facilities, Parks, Recreation, and Airport.

The Cityworks software will be integrated with the Town's Enterprise Resource

Planning (ERP) system to help Staff:

- Maintain a record of asset and work history;
- Provide information on asset performance;
- Provide forecast and trending analyses for staffing and inventory;
- Increase productivity and reduce costs;
- Improve accountability;
- Track Key Performance Indicators (KPI); and
- Understand the full life-cycle cost of ownership.

This is a three year agreement and the software license fee for the first year is \$20,000, second year is \$30,000, and will increase to \$40,000 annually for the following years. The first year software license fee (\$20,000) and the implementation of the software package (\$94,329.90) is budgeted in the Self-Funded Special Projects Fund. The combined total for the first year software license fee and the implementation of the software package is \$114,329.90 and the original amount budgeted was \$125,000.

**RECOMMENDATION:**

Administration recommends approval.

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**Attachments**

Resolution - License and Maintenance Agreement with Azteca Systems, LLC. for the Use of the Cityworks Software

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

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A CITYWORKS LICENSE AND MAINTENANCE AGREEMENT BETWEEN THE TOWN OF ADDISON AND AZTECA SYSTEMS, LLC, FOR THE USE OF THE CITYWORKS SOFTWARE AN AMOUNT NOT TO EXCEED \$90,000.00, 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 Cityworks license and maintenance Agreement between the Town of Addison and Azteca Systems, LLC for use of the Cityworks Software in an amount not to exceed \$90,000.00, 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.

**DULY RESOLVED AND ADOPTED** by the City Council of the Town of Addison, Texas, on this the **12<sup>th</sup>** day of **NOVEMBER 2019**.

**TOWN OF ADDISON, TEXAS**

\_\_\_\_\_  
Joe Chow, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Irma Parker, City Secretary

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

## CITYWORKS® LICENSE AND MAINTENANCE AGREEMENT

This Software License and Maintenance Agreement made by and between Azteca Systems, LLC ("Azteca Systems") a Delaware limited liability company, with a place of business at 11075 South State, Suite 24, Sandy, Utah 84070 USA and the town of **Addison, Texas**, using certain of Azteca Systems Licensed Products hereinafter referred to as "Licensee." This Agreement is effective immediately upon delivery of Licensed Products (the "Effective Date").

Azteca Systems Products are licensed under the terms and conditions of the Agreement. This agreement, when executed by the licensee named below ("Licensee") and Azteca Systems, LLC (Azteca Systems), as licensor of the Software, Online, Services, and Documentation licensed under the License Agreement, will supersede any previous Agreements including the License Agreement presented in the installation process requiring acceptance by electronic acknowledgement and will constitute a signed License Agreement.

This signed Agreement includes (i) this License and Maintenance Agreement, (ii) Addendum #1 – Product Licensing, (iii) Addendum #2 – Standard Maintenance and Support and (iv) Addendum #3 – Third Party Contractor Acknowledgment.

This signed Agreement may be executed in duplicate by the Parties. An executed Agreement, modification, amendment, or separate signature page shall constitute a duplicate if it is transmitted through electronic means, such as fax or email, and reflects the signing of the document by any Party. Duplicates are valid and binding even if an original paper document bearing each Party's original signature is not delivered.

### ARTICLE I—DEFINITIONS

#### 1.1 Definitions. The terms used are defined as follows:

- a. "Agreement" means this Software License Agreement between Azteca Systems and Licensee, inclusive of all schedules, exhibits, attachments, addenda and other documents incorporated by reference.
- b. "Authorization Code(s)" means any key, authorization number, enablement code, login credential, activation code, token, account user name and password, or other mechanism required for use of a Product.
- c. "Authorized User" or "User" shall mean: (i) a direct user of the Licensed Products, including but not limited to Licensee's employees; (ii) Licensee's consultants who have agreed to maintain the Licensed Property in confidence and use it only for the benefit of Licensee, or (iii) members of the public gaining access to, and only limited use of, the Licensed Products via the Software's public web portal (if applicable). Other than limited use of the Products through the software's web portal, the public is not considered an authorized user.
- d. "Client Data" means the data provided or inputted by or on behalf of Licensee, including personally identifiable information, for use with the Software.
- e. "Covered Software" shall mean the particular Cityworks Software, scripts, interfaces and custom code identified in Addendum #1.
- f. "Deployment Server License" means a license that, in addition to providing staging server License rights, authorizes Licensee to install and use the Software for deployment in Licensee's internal use.
- g. "Testing Server License" means a license that authorizes Licensee to install and use the Software on a server in Licensee's internal use to provide testing License rights prior to deployment.
- h. "Documentation" means all user reference documentation that is delivered with the Software.
- i. "Internal Use" means use of the Licensed Products by employees of Licensee in Licensee's internal operations but does not include access of the Licensed Products by, or use of the Licensed Products in the provisions of services to, Licensee's clients or customers. Internal Use also includes use of the Licensed Products by contractors of Licensee, including contractors providing outsourcing or hosting services, as long as Licensee assumes full responsibility for the compliance with this Agreement in such use. Use of the Licensed Products (or any part thereof) for the benefit of others, whether by means of a software as a service offering, service bureau application, application service provider, outsourcing or other means of providing service to any third party shall not be considered Internal Use.
- j. "Licensed Products" or "Products" shall mean the portion of the Cityworks Software and the Documentation to which Licensee has purchased a License as identified as specified in Addendum #1

attached hereto. Licensed Products shall include any updates or upgrades to the Licensed Products that Azteca Systems may at its discretion deliver to Licensee. Products includes but is not limited to Software, Online Services, and Documentation licensed under the terms of this license Agreement.

- k. "Login" means a license that allows Licensee to permit a single authorized named end user to use the Software, Data, and Documentation installed on a server and accessed from a computer device.
- l. "Online Services" means any Internet-based system, including applications and associated APIs, hosted by Azteca Systems or its licensors, for storing, managing, publishing, and using Cityworks software and data, and other information.
- m. "Ordering Document(s)" means a sales quotation, purchase order, or other document identifying the Products that Licensee orders.
- n. "Preview" means any alpha, beta, or prerelease Product.
- o. "Sample(s)" means sample code, sample applications, add-ons, or sample extensions of Products.
- p. "Server" means each single instance of an operating system, whether physically installed on a computer or within a virtualized environment.
- q. "Software" or "Cityworks Software" means all or any portion of Azteca Systems proprietary software technology, excluding data, accessed or downloaded from an Azteca Systems (Cityworks) authorized website or delivered on any media in any format including backups, updates, upgrades, and service packs.
- r. "Standard Maintenance" or "Maintenance Addendum" shall mean the Standard Software Maintenance & Support Addendum #2.
- s. "Term License" means a license or access provided for use of a Product for a limited time period ("Term") or on a subscription or maintenance basis as specified herein.

## ARTICLE 2—INTELLECTUAL PROPERTY RIGHTS AND RESERVATION OF OWNERSHIP

Products are licensed, not sold. Azteca Systems and its licensors own Products and all copies, which are protected by United States and applicable international laws, treaties, and conventions regarding intellectual property and proprietary rights including trade secrets. This Agreement does not transfer ownership rights of any description in the Software, materials, or services to Licensee or any third party. Licensee agrees to use reasonable means to protect Products from unauthorized use, reproduction, distribution, or publication. Azteca Systems and its third-party licensors reserve all rights not specifically granted in this Agreement including the right to change and improve Products.

## ARTICLE 3—GRANT OF LICENSE

**3.1 Grant of License.** Subject to the terms of this Agreement, Azteca Systems grants to Licensee a personal, nonexclusive, nontransferable license solely to use the Products as set forth in Addendum #1 – Product Licensing (i) for which the applicable license fees have been paid; (ii) for Licensee's own internal use; and (iii) in accordance with this Agreement and the configuration ordered by Licensee or as authorized by Azteca Systems; and (iv) for the applicable Term or until terminated in accordance with Article 5. License types may include, but are not limited to Login, Workgroup, Departmental, ELA (Enterprise License) Licenses. Licensee may allow Third Party Contractors to access and use the licensed Software, provided Licensee and Third Party Contractor agree to and are bound by the terms set forth in Addendum 3. In addition to the Scope of Use in Article 4, Addendum #1 – Product Licensing which applies to specific Products, Addendum #2 – Standard Maintenance and Support, and Addendum #3 – Third Party Contractor Acknowledgment (if applicable) collectively, are incorporated in this Agreement.

- a. *Software.* Use and License for specific Software products are set forth in Addendum 1- Product Licensing Addendum, which is incorporated by reference.
- b. *Maintenance.* Maintenance terms are set forth in Section 9.11 below and in Addendum 2, - Standard Maintenance and Support which terms are incorporated by reference.
- c. *Third Party Contractor.* Terms of use for Third Party Contractor software usage (if applicable) are set forth in Addendum #3, which is incorporated by reference.

**3.2 Preview Release Licenses.** Products acquired under an evaluation license or under a Beta program are intended for evaluation and testing purposes only and not for commercial use. Any such use is at Licensee's own risk, and the Products do not qualify for Azteca or distributor maintenance.



**3.3 Special Use Programs.** If Licensee acquires Products under a special program for noncommercial, nonprofit, educational, or other limited-use license, Licensee's use of the Products is subject to the terms set forth in the applicable enrollment form or as described on Azteca's website in addition to the non-conflicting terms of this Agreement. All such program terms are incorporated herein by reference.

**3.4 Delivery.** Unless otherwise requested by Licensee, Azteca Systems shall provide an electronic link to make available to Licensee the Licensed Property by electronic download and a license key to activate the Licensed Property.

#### ARTICLE 4—SCOPE OF USE

##### 4.1 Permitted Uses

- a. For Products delivered to Licensee, Licensee may:
  1. Install and store Products on electronic storage device(s);
  2. Make archival copies and routine computer backups;
  3. Install and use a newer version of Software concurrently with the version to be replaced during a reasonable transition period not to exceed 6 months, provided that the deployment of either version does not exceed the Licensee's licensed quantity; thereafter, Licensee shall not use more Software in the aggregate than Licensee's total licensed quantity; and
  4. Move the Software in the licensed configuration to a replacement Server.
- b. Licensee may use, copy, or prepare derivative works of Documentation supplied in digital format and thereafter reproduce, display, and redistribute the customized documentation only for Licensee's own internal use. Portions of Documentation supplied in digital format merged with other software and printed or digital documentation are subject to this License Agreement. Licensee shall include the following copyright attribution notice acknowledging the proprietary rights of Azteca and its licensors: "Portions of this document include intellectual property of Azteca and its licensors and are used herein under license. Copyright © [Licensee will insert the actual copyright date(s) from the source materials] Azteca Systems, LLC. and its licensors. All rights reserved."
- c. *Consultant or Contractor Access.* Subject to Section 3.1 and Addendum #3, Azteca Systems grants Licensee the right to permit Licensee's Third Party Consultants or Contractors to use the Products exclusively and solely for Licensee's benefit. Licensee must comply with terms and provisions of Addendum #3 and provide a copy to Azteca. Licensee shall be solely responsible for compliance by Third Party Consultants and Contractors with this License Agreement and shall ensure that the Third Party Consultant or Contractor discontinues Product use upon completion of work for Licensee. Access to or use of Products by Third Party Consultants or Contractors not exclusively for Licensee's benefit is prohibited.

**4.2 Uses Not Permitted.** Except to the extent that applicable law prohibits or overrides these restrictions, or as provided herein, Licensee shall not:

- a. Sell, rent, lease, sublicense, lend, assign, or time-share Products;
- b. Permit persons other than Authorized Users to access or use the Licensed Products (or any part thereof);
- c. Act as a service bureau or Commercial ASP;
- d. Use Software, Data, or Documentation for a site or service and operate the site or service for profit or generate revenue through direct or indirect methods (e.g., advertising or by charging for access to the site or service);
- e. Redistribute Software, Data, or Online Services to third parties, in whole or in part, including, but not limited to, extensions, components, or APIs;
- f. Redistribute Authorization Codes;
- g. Reverse engineer, decompile, or disassemble Products;
- h. Make any attempt to circumvent the technological measure(s) that controls access to or use of Products;
- i. Upload or transmit content or otherwise use Products in violation of third-party rights, including

- intellectual property rights, privacy rights, nondiscrimination laws, or any other applicable law or government regulation;
- j. Remove or obscure any Azteca Systems (or its licensors') patent, copyright, trademark, proprietary rights notices, and/or legends contained in or affixed to any Product, Product output, metadata file, or online and/or hard-copy attribution page of any Data or Documentation delivered hereunder;
- k. Separate from the licensed use of APIs, Licensee may not unbundle or independently use individual or component parts of the Products, Software, or Online Services;
- l. Unbundle or independently use the individual or component parts of Software or Online Services;
- m. Incorporate any portion of the Software into a product or service that competes with the Software;
- n. Publish the results of benchmark tests run on Software without the prior written permission of Azteca Systems; or
- o. Use, incorporate, modify, distribute, provide access to, or combine any computer code provided with the Software in a manner that would subject such code or any part of the Software to open source license terms, which includes any license terms that require computer code to be (i) disclosed in source code form to third parties, (ii) licensed to third parties for the purpose of making derivative works, or (iii) redistributable to third parties at no charge.

#### ARTICLE 5—TERM AND TERMINATION

5.1. This License Agreement is effective upon date and signature of Licensee below. The initial term of this License Agreement will begin upon the dates set forth in Addendum 1 and provided the fees are paid. This License agreement and its maintenance provisions may then be renewed annually by payment of the then current maintenance fees for the next annual maintenance period as set forth in Addendum 1.

5.2. Either party may terminate this License Agreement or any Product license for a material breach that is not cured within thirty (30) days of written notice to the breaching party, except that termination is immediate for a material breach that is impossible to cure.

5.3. Termination for Convenience: Either party may terminate this Agreement by giving the other party thirty (30) days' written notice prior to the end of the current Term Maintenance Period.

5.4. In the event that either funding from Licensee or other sources is withdrawn, reduced, or limited, or the authority of Licensee to perform any of its duties is withdrawn, reduced, or limited in any way after the Effective Date of this Agreement and prior to normal completion, the parties shall have the authority to exercise the Termination for Convenience option to terminate this Agreement in whole or in part. If a party to this Agreement chooses to terminate for convenience that party may do so by thirty (30) days' written notice to the other party.

5.5. Upon termination of the License and Maintenance Agreement, all Product licenses granted hereunder terminate as well. Upon termination of a License or the License and Maintenance Agreement, Licensee will (i) stop accessing and using affected Product(s); (ii) clear any client-side data cache derived from Online Services; and (iii) uninstall, remove, and destroy all copies of affected Product(s) in Licensee's possession or control, including any modified or merged portions thereof, in any form, and execute and deliver evidence of such actions to Azteca Systems.

5.6. If this Agreement is terminated for convenience, the Licensee is only liable for payment required by the terms of this Agreement for license, maintenance and support services rendered or products and software received and accepted prior to the effective date of termination.

5.7. If this Agreement is terminated under section 5.3 or 5.4 above, Licensee shall then return to Azteca Systems all of the Software, related modules, related updates, and any whole or partial copies, codes, modifications, and merged portions in any form. Azteca will then for no additional charge to Licensee and at Licensee's option either grant a license to the Licensee, for a period of one (1) year, which will allow Licensee to retain the ability to access records and data contained in the Software or allow Licensee to create digital copies of all files needed by the Licensee for the same period. If Licensee needs to retain access to records or data for a period longer than one (1) year, in order to transfer data to another system, Azteca will consider reasonable requests to extend beyond one (1) year.

5.8. The parties hereby agree that all provisions which operate to protect the intellectual rights of Azteca Systems shall remain in force should breach or termination of any kind occur.

## ARTICLE 6—LIMITED WARRANTIES AND DISCLAIMERS

**6.1 Limited Warranties.** Except as otherwise provided in this Article 6, Azteca Systems warrants for a period of ninety (90) days from the date Azteca Systems issues the Authorization Code enabling use of Software and that the unmodified Software will substantially conform to the published Documentation under normal use and service.

**6.2 Special Disclaimer.** CONTENT, DATA, SAMPLES, NEW VERSIONS, HOT FIXES, PATCHES, SERVICE PACKS, UPDATES, UPGRADES, AND ONLINE SERVICES PROVIDED ON A NO-FEE BASIS, AND EVALUATION, TEST AND BETA SOFTWARE ARE DELIVERED "AS IS" WITHOUT WARRANTY OF ANY KIND.

**6.3 Internet Disclaimer.** THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE INTERNET IS A NETWORK OF PRIVATE AND PUBLIC NETWORKS AND THAT (i) THE INTERNET IS NOT A SECURE INFRASTRUCTURE, (ii) THE PARTIES HAVE NO CONTROL OVER THE INTERNET, AND (iii) NONE OF THE PARTIES SHALL BE LIABLE FOR DAMAGES UNDER ANY THEORY OF LAW RELATED TO THE PERFORMANCE OR DISCONTINUANCE OF OPERATION OF ANY PORTION OF THE INTERNET OR POSSIBLE REGULATION OF THE INTERNET THAT MIGHT RESTRICT OR PROHIBIT THE OPERATION OF ONLINE SERVICES.

**6.4 General Disclaimer.** EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTIES, AZTECA SYSTEMS DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, AND NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. AZTECA SYSTEMS DOES NOT WARRANT THAT PRODUCTS, MAINTENANCE OR ANY TECHNICAL SUPPORT SERVICES PROVIDED HEREIN WILL MEET LICENSEE'S NEEDS; THAT LICENSEE'S OPERATION OF THE SAME WILL BE UNINTERRUPTED, ERROR FREE, FAULT-TOLERANT, OR FAIL-SAFE; OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED. PRODUCTS ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS THAT MAY LEAD TO DEATH, PERSONAL INJURY, OR PHYSICAL PROPERTY/ENVIRONMENTAL DAMAGE. LICENSEE SHOULD NOT FOLLOW ANY SUGGESTIONS OR INSTRUCTIONS THAT APPEAR TO BE HAZARDOUS, UNSAFE, OR ILLEGAL. ANY SUCH USE SHALL BE AT LICENSEE'S OWN RISK AND COST.

**6.5 Exclusive Remedy.** Licensee's exclusive remedy and Azteca Systems' entire liability for breach of the limited warranties set forth in this Article 6 shall be limited, at Azteca Systems' sole discretion, to (i) replacement of any defective media; (ii) repair, correction, or a workaround for Software or Online Services subject to the Azteca Systems Maintenance Services and Support Addendum; or (iii) return of the license fees paid by Licensee for the current period, prorated for the current period, for Software or Online Services that do not meet Azteca Systems limited warranty, provided that Licensee uninstalls, removes, and destroys all copies of Software or Documentation; ceases using the Software or Online Services; and executes and delivers evidence of such actions to Azteca Systems.

**6.6** If the performance of any obligation under this Agreement is prevented, restricted, or interfered with by reason of fire, flood, earthquake, explosion, or other casualty or accident; strikes or labor disputes; inability to procure delivery of parts, supplies, services, or power; war, threat of actual terrorist act, cyberattack, or other violence; any law order, proclamation, regulation, ordinance, or demand; or any condition whatsoever beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the other party, will be provided a temporary extension for a period of time as may be reasonably necessary to allow for such delay, prevention interference, or restriction.

## ARTICLE 7—LIMITATION OF LIABILITY

**7.1 Disclaimer of Certain Types of Liability.** AZTECA SYSTEMS, ITS AUTHORIZED DISTRIBUTOR (IF ANY), AND ITS LICENSORS SHALL NOT BE LIABLE TO LICENSEE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOST PROFITS, LOST SALES, OR BUSINESS EXPENDITURES; INVESTMENTS; BUSINESS COMMITMENTS; LOSS OF ANY GOODWILL; OR ANY INDIRECT, SPECIAL,



INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS LICENSE AND MAINTENANCE AGREEMENT OR USE OF PRODUCTS, HOWEVER CAUSED ON ANY THEORY OF LIABILITY, WHETHER OR NOT AZTECA SYSTEMS OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

**7.2 General Limitation of Liability.** EXCEPT AS PROVIDED IN ARTICLE 8—INFRINGEMENT INDEMNITY, THE TOTAL CUMULATIVE LIABILITY OF AZTECA SYSTEMS AND ITS AUTHORIZED DISTRIBUTOR HEREUNDER, FROM ALL CAUSES OF ACTION OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, MISREPRESENTATION, OR OTHERWISE, SHALL NOT EXCEED THE FEES ACTUALLY PAID BY LICENSEE DURING THE CURRENT MAINTENANCE AND SUPPORT PERIOD, FOR THE PRODUCTS THAT GIVE RISE TO THE CAUSE OF ACTION.

**7.3 Applicability of Disclaimers and Limitations.** Licensee agrees that the limitations of liability and disclaimers set forth in this License Agreement will apply regardless of whether Licensee has accepted Products or any other product or service delivered by Azteca Systems. The parties agree that Azteca Systems has set its fees and entered into this License Agreement in reliance on the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties, and that the same form an essential basis of the bargain between the parties. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

THE FOREGOING WARRANTIES, LIMITATIONS, AND EXCLUSIONS MAY NOT BE VALID IN SOME JURISDICTIONS AND APPLY ONLY TO THE EXTENT PERMITTED BY APPLICABLE LAW IN LICENSEE'S JURISDICTION. LICENSEE MAY HAVE ADDITIONAL RIGHTS UNDER LAW THAT MAY NOT BE WAIVED OR DISCLAIMED. AZTECA SYSTEMS DOES NOT SEEK TO LIMIT LICENSEE'S WARRANTY OR REMEDIES TO ANY EXTENT NOT PERMITTED BY LAW.

#### **ARTICLE 8—INFRINGEMENT INDEMNITY**

**8.1** Azteca Systems shall defend, indemnify as described below, and hold Licensee harmless from and against any loss, liability, cost, or expense, including reasonable attorneys' fees, arising out of any claims, actions, or demands by a third party legally alleging that Licensee's licensed use of Software or Online Services infringe a US patent, copyright, or trademark, provided:

- a. Licensee promptly notifies Azteca Systems in writing of the claim;
- b. Licensee provides documents describing the allegations of infringement;
- c. Azteca Systems has sole control of the defense of any action and negotiation related to the defense or settlement of any claim; and
- d. Licensee reasonably cooperates in the defense of the claim at Azteca Systems' request and expense.

**8.2** If Software or Online Services are found to infringe a US patent, copyright, or trademark, Azteca Systems, at its own expense, may either (i) obtain rights for Licensee to continue using the Software or Online Services or (ii) modify the allegedly infringing elements of Software or Online Services while maintaining substantially similar functionality. If neither alternative is commercially reasonable, the license shall terminate, and Licensee shall cease accessing infringing Online Services and shall uninstall and return to Azteca Systems any infringing item(s). Azteca Systems entire liability shall then be to indemnify Licensee pursuant to Section 8.1 and refund the unused portion of fees paid, prorated for the current maintenance and support period.

**8.3** Azteca Systems shall have no obligation to defend Licensee or to pay any resultant costs, damages, or attorneys' fees for any claims or demands alleging direct or contributory infringement to the extent arising out of (i) the combination or integration of Software or Online Services with a product, process, or system not supplied by Azteca Systems or specified by Azteca Systems in its Documentation; (ii) material alteration of Software or Online Services by anyone other than Azteca Systems or its subcontractors; or (iii) use of Software or Online Services after modifications have been provided by Azteca Systems for avoiding infringement or use after a return is ordered by Azteca Systems under Section 8.2.

**8.4 THE FOREGOING STATES THE ENTIRE OBLIGATION OF AZTECA SYSTEMS WITH RESPECT TO INFRINGEMENT OR ALLEGATION OF INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.**

## **ARTICLE 9—GENERAL PROVISIONS**

**9.1 Future Updates.** New or updated Products and subscription renewals will be licensed under the then-current Azteca Systems license terms and conditions included with the deliverable Products.

**9.2 Export Control Regulations.** Licensee expressly acknowledges and agrees that Licensee shall not export, re-export, import, transfer, or release Products, in whole or in part, to (i) any US embargoed country; (ii) any person on the US Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the US Commerce Department's Denied Persons List, Entity List, or Unverified List; or (iv) any person or entity or into any country where such export, re-export, or import violates any US, local, or other applicable import/export control laws or regulations including, but not limited to, the terms of any import/export license or license exemption and any amendments and supplemental additions to those import/export laws as they may occur from time to time.

**9.3 Taxes and Fees, Shipping Charges.** License fees quoted to Licensee are exclusive of any and all taxes or fees, including, but not limited to, sales tax, use tax, value-added tax (VAT), customs, duties, or tariffs, and shipping and handling charges.

**9.4 No Implied Waivers.** The failure of either party to enforce any provision of this License Agreement shall not be deemed a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

**9.5 Severability.** The parties agree that if any provision of this License Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make the intent of the language enforceable.

**9.6 Successor and Assigns.** Licensee shall not assign, sublicense, or transfer Licensee's rights or delegate Licensee's obligations under this License Agreement without Azteca Systems' prior written consent, and any attempt to do so without consent shall be void. This License Agreement shall be binding on the respective successors and assigns of the parties to this License Agreement. Notwithstanding, a government contractor under contract to the government to deliver Products may assign this License Agreement and Products acquired for delivery to its government customer upon written notice to Azteca Systems, provided the government customer assents to the terms of this License Agreement.

**9.7 Survival of Terms.** The provisions of Articles 2, 5, 6, 7, 8, and 9 of this License Agreement, and the provisions of section 4.1 of Addendum 2, shall survive the expiration or termination of this License and Maintenance Agreement.

**9.8 Equitable Relief.** Licensee agrees that any breach of this License Agreement by Licensee may cause irreparable damage and that, in the event of such breach, in addition to any and all remedies at law, Azteca Systems shall have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction without the requirement of posting a bond or proving injury as a condition for relief.

**9.9 US Government Licensee.** The Products are commercial items, developed at private expense, provided to Licensee under this License Agreement. If Licensee is a US government entity or US government contractor, Azteca Systems licenses Products to Licensee in accordance with this License Agreement under FAR Subparts 12.211/12.212 or DFARS Subpart 227.7202. Azteca Systems Data and Online Services are licensed under the same subpart 227.7202 policy as commercial computer software for acquisitions made under DFARS. The commercial license rights in this License Agreement strictly govern Licensee's use, reproduction, or disclosure of Products. Azteca Systems Software source code is unpublished, and all rights to Products are reserved by Azteca Systems and its licensors. Licensee may transfer Software to any licensed government procuring agency facility to which computer(s) on which Software is installed are transferred. If any court, arbitrator, or board holds that Licensee has greater rights to any portion of Products under applicable public procurement law, such rights shall extend only to the portions affected.

**9.10 Governing Law, Disputes, and Arbitration.** This License Agreement shall be governed by and construed in accordance with the laws of the State of Texas without reference to conflict of laws principles, except that US federal law shall govern in matters of intellectual property.

**9.11 Maintenance.** Maintenance for qualifying Software consists of updates and other benefits, such as access to technical support, are provided during the Term of Use. Maintenance is specified as set forth in Addendum #2.


**9.12 Feedback.** Azteca Systems may freely use any feedback, suggestions, or requests for Product improvements that Licensee provides to Azteca Systems. Regardless of the source of any feedback or suggestions, any improvements to Cityworks Software or Products, and any related intellectual property, are owned by Azteca Systems.

**9.13 Patents.** Licensee may not seek, and may not permit any other user to seek, a patent or similar right worldwide that is based on or incorporates any Azteca Systems technology or services. This express prohibition on patenting shall not apply to Licensee's software and technology except to the extent that Azteca Systems technology or services, or any portion thereof, are a part of any claim or preferred embodiment in a patent application or a similar application.

**9.14 Entire Agreement.** This License Agreement, including its incorporated documents, addendums, and exhibits constitutes the sole and entire agreement of the parties as to the subject matter set forth herein and supersedes any previous license agreements, understandings, and arrangements between the parties relating to such subject matter. Additional or conflicting terms set forth in any purchase orders, invoices, or other standard form documents exchanged during the ordering process, other than product descriptions, quantities, pricing, and delivery instructions, are void and of no effect. Any modification(s) or amendment(s) to this License Agreement must be in writing and signed by each party or as otherwise provided in Addendum #1.

IN WITNESS WHEREOF, the parties hereto have caused this License Agreement to be executed and made effective by their respective authorized representatives.

**AZTECA SYSTEMS, LLC**

By: 

Name: Brian L. Haslam

Title: President - CEO

Date: 07/29/19

**ADDISON, TX – (LICENSEE)**

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

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

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

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



## **ADDENDUM #1**

### **PRODUCT LICENSING**

1. **Licensed Software:**

Server AMS Premium Enterprise License Agreement (ELA), Includes Unlimited Quantities of the Identified Products:

Office

Respond

Mobile Native Apps (for iOS/Android)

--Includes the following Add-ons:

Storeroom

Equipment Checkout

Contracts

Cityworks for Excel

Cityworks Analytics for AMS

eURL (Enterprise URL)

Operational Insights

Workload

Web Hooks

Local Government Templates (LGT)

Use of Cityworks AMS Application Programming Interfaces (APIs) with commercially available Cityworks-centric applications that are licensed and maintained by authorized Cityworks partners.

Use of Cityworks AMS Application Programming Interfaces (APIs) with third party system integrations,

*Annual fee herein is based on 10,001 - 25,000 population range*

*Additional Software Products & Licenses: Additional Software Products & licenses may be added to this License Agreement with either an acknowledgement of an official Cityworks quote signed by Licensee and additional fees, if necessary or applicable being paid, or receipt of Purchase Order from Licensee in response to an official Cityworks quote and additional fees, if applicable being paid.*

2. **Notices & Licensee Information: Until or unless otherwise, modified, all notices relevant to this agreement shall be sent to the following address:**

|  |  |
|--|--|
| <b>Azteca Systems, LLC</b><br>11075 South State, Suite 24<br>Sandy, Utah 84070 | <b>Town of Addison</b><br>PO Box 9010<br>Addison, TX 75001               |
|  | Attn: Kingsley Obinna  |
|  | E-mail: <a href="mailto:kobinna@addisontx.gov">kobinna@addisontx.gov</a> |
|  | Phone: 972.450.2858  |

3. **Delivery Date/Effective Date of Software**

***MM/DD/YYYY***

4. **Schedule of Payments and Fees under License and Maintenance Agreement**

| <b>Annual Support Period</b> | <b>Date From/To (mm/dd/yyyy)</b> | <b>Amount</b>      |
|------------------------------|----------------------------------|--------------------|
| <b>Period 1</b>              | <b>TBD</b>                       | <b>\$20,000.00</b> |
| <b>Period 2</b>              | <b>TBD</b>                       | <b>\$30,000.00</b> |
| <b>Period 3</b>              | <b>TBD</b>                       | <b>\$40,000.00</b> |

5. **Additional**

Updates to the above licensed software means a subsequent release of the program which Azteca generally makes available to its supported customers as part of the annual maintenance plan for which fees have been paid.

Occasionally, Azteca changes the name of its licensed software as part of its ongoing process to improve and increase the functionality of the software. In the event the software licensed or listed above changes in name, and/or improvements are made, Azteca will provide software with functionality that is similar to or with substantially the same or greater functionality of the originally licensed software, provided all current license fees have been paid.

Updates may not always include any release, option or future program that Azteca licenses separately. Updates are provided when available (as determined by Azteca). Azteca is under no obligation to develop any future programs or functionality. Any updates made available will be delivered to you, or made available to you for download. You shall be responsible for copying, downloading and installing the updates.

**ADDENDUM #2**  
**STANDARD MAINTENANCE AND SUPPORT**

Standard Maintenance and Support Addendum provisions are between the Licensee and Azteca, Systems, LLC. Maintenance and Support are provided subject to the terms and conditions of the signed License Agreement and which is incorporated by reference.

1. **MAINTENANCE & SUPPORT:** Azteca Systems will provide maintenance and support services to Licensee for qualifying Products during the applicable Term for such Products provided the applicable license fees have been paid for the times and periods and amounts specified in Addendum #1. Maintenance and Support Services consist of the following benefits: Technical support, new version software, service packs, software upgrades, and software updates.

1.1. Azteca Systems will ensure upward compatibility for the Covered Software applications within a reasonable timeframe for minor Esri® ArcGIS and Cityworks supported database revisions. Azteca Systems will not ensure upward compatibility for Covered Software Applications when there are major Esri ArcGIS revisions (for example, from rev 10.x to rev 11.x), however Azteca Systems will make all reasonable efforts to provide upward compatibility.

1.2. Azteca Systems shall, without additional charge (except as allowed for in paragraph 3.4), during the term of this Agreement provide the following:

- (a) Software Updates. Software Updates includes Upgrades and service packs which are a collection of files that enhance or correct the Covered Software and which will be available for Licensee to download during the Maintenance Term/Period. Updates and Upgrades may also include new versions;
- (b) Provide Telephone Support, Email Support, Web Support, during normal business hours, 8 AM to 5 PM Mountain Time, Monday through Friday (excepting Holidays) and after hour emergency support line, and other benefits deemed appropriate by Azteca Systems (as set forth in Section 2 below); and
- (c) Implement and maintain a means of secure, remote direct network access (VPN, Web-access, etc.) to the Licensee's systems in order to perform thorough remote diagnostics.

1.3. The following items, among others, however, are specifically excluded as support services under this section of this Maintenance and Support:

- (a) Support for applying or installing upgrades and service packs;
- (b) Assistance with questions related to third party software, computer hardware, networking, and other similar items that are not provided by Azteca;
- (c) Assistance with computer operating system questions not directly pertinent to the Covered Software or Program Modifications;
- (d) Licensee Data debugging and/or correcting;
- (e) Services necessitated as a result of any cause other than authorized ordinary and proper use by the Licensee of the Covered Software, including but not limited to neglect, abuse, unauthorized modifications and/or unauthorized updates;
- (f) Consulting regarding customizations created to function with the Covered Software unless the customization is identified and listed as Covered Software in Addendum 1;
- (g) Assistance with applications which are not part of a standard life cycle, such as preview, beta, or candidate releases; and
- (h) Questions such as configuration, implementation and walk-throughs.

1.4. Support Periods are renewable unless terminated as provided in Section 3 below. The Maintenance Services consists of software and documentation updates and access to technical support via telephone, email, web-based ([www.MyCityworks.com](http://www.MyCityworks.com)) and after hours support as set forth in Section 1 of this Addendum.

1.5. Technical support provided pursuant these maintenance provisions shall be performed in a professional and workmanlike manner. Azteca Systems will use commercially reasonable efforts to provide corrections to a technical issue or provide a workaround, but Azteca Systems cannot guarantee that all technical issues can be fixed or resolved.

1.6. **Authorized Callers.** Licensee may designate a limited number of authorized callers per software product listed in Addendum 1. Licensee may replace Authorized Callers at any time by notifying Azteca Systems Support services. Authorized callers may be designated in this Addendum #2 or by email. Azteca may limit the total number of authorized callers as may be reasonably necessary and may request an updated list of authorized callers.

1.7. **Cityworks Online Support and Customer Portal.** Azteca has created a self-help support website center for Authorized Callers to submit technical issues, chat with technical specialists, track technical support incidents through the 'MyCityworks' portal, and view technical articles, updated product documentation, blogs, links to forums, and technology announcements. The support and care website can be found at <http://www.mycityworks.com>.

## **2. PROCEDURES FOR ACCESSING SUPPORT:**

2.1. All problem categories from routine, non-critical and critical that occur during normal business hours shall procedurally occur as follows: 1) Licensee's system administration staff as first line of support, and then 2) Azteca Systems staff as the second line of support. Azteca Systems will make all reasonable efforts to acknowledge all requests for support during normal business hours within 4 hours.

2.2. Prior to calling Azteca Systems for support services, the Licensee will first attempt to isolate any problems that occur within the Licensee's System. The Licensee will try to reduce the problem down to a specific software or system component. If it is determined that the problem is The Cityworks Software component, Licensee will first try and resolve the problem without Azteca Systems' involvement. If Licensee cannot resolve the problem or isolate the problem, Licensee may contact Azteca Systems via telephone, chat, or self-service portal. In each case, Cityworks technical support will log the information and provide, an answer to the question, a resolution to the problem, or submit a verified bug to the development group. Any support request that is not quickly resolved will be assigned to a technical support representative. Phone calls and chat requests are accepted during normal business hours as outlined on the Contact Support page of MyCityworks.com. Voicemails and requests submitted via the self-service portal outside of the posted business hours will be responded to on a first come, first served basis the next business day.

2.3. For critical problems that occur outside of Azteca Systems' normal business hours (8 AM to 5 PM, Mountain Time) and cannot be isolated and resolved by the Licensee, Azteca Systems will provide an after-hours phone number or pager number that will forward the call to the currently assigned Azteca Systems support representative. Azteca Systems will make all reasonable efforts to acknowledge and respond to the request for support for critical problems that occur outside of normal business hours within 4 hours of receipt of the call from a designated and authorized Licensee representative. Critical problems are defined as problems that cause several users to be unable to perform their duties. For routine and non-critical problems Licensee will submit support requests during normal business hours as outline in 2.2 above.

2.4. After a Technical Support Incident is logged, Azteca Systems will use commercially reasonable efforts to provide corrections to a technical issue or provide a work around. While it is Azteca's goal to provide an acceptable solution to technical issues, Azteca cannot guarantee that all technical issues can be fixed or resolved.

2.5. Azteca will use all reasonable efforts to utilize remote support-type services. However, in the event Licensee and Azteca Systems agree it becomes necessary for Azteca Systems to be on-site to provide support for the Covered Software, the parties by mutual negotiation, shall develop a separate agreement that will govern the terms and conditions for any on-site work or services.



### 3. **CHARGES/FEES**

3.1. License, Maintenance and Support Services herein are included in the payment of annual fees as set forth in Addendum #1, and shall be paid by Licensee. The annual fee for each twelve (12) month period is set forth in Addendum #1, and shall be paid prior to the start for each License and Maintenance Period unless otherwise specified. The annual fee for successive Terms/Periods (twelve-month periods) commencing upon the anniversary of the first maintenance period, shall become due prior to the end of the preceding paid-up Maintenance Period.

3.2. Upon sixty (60) days written notice, the fee for the License and Maintenance Periods listed in Addendum 1 subsequent to year three (3) of the Maintenance Period, may be adjusted by Azteca Systems to reflect increases in costs of providing the services; provided, however, that the fee shall not increase by more than the CPI from the previous annual fee. Azteca Systems will notify Licensee of the new pricing no later than ninety (90) days prior to the annual renewal date of the year preceding the year for which such adjusted pricing applies.

3.3. **Maintenance Expiration.** Azteca Systems will send Licensee a notice of expiration approximately sixty (60) days before the Maintenance term expires. If Azteca Systems does not receive a purchase order prior to the expiration date, Azteca will send the notification to Licensee upon expiration of the Maintenance term. Azteca Systems will continue to provide technical support for an additional thirty (30) days, but Licensee will no longer receive Software updates released after the Maintenance term's expiration. If Licensee does not reinstate Maintenance within thirty (30) days of the expiration date, Licensee will no longer receive technical support. All other Maintenance benefits and Support services will end with the expiration of the Maintenance term.

3.4. **Reinstatement Fee for Lapsed Maintenance.** Azteca Systems will reinstate Maintenance if Licensee sends a purchase order or payment within thirty (30) days of the expiration date. If Licensee does not renew Maintenance within thirty (30) days of the expiration date but at a later date wants to reinstate Maintenance, Maintenance fees will include the Maintenance fees that Licensee would have paid since the expiration date.

### 4. **MISCELLANEOUS**

4.1. **Data Confidentiality Statement:** Azteca Systems will take reasonable measures to ensure that any Licensee data and/or confidential information provided to Azteca Systems is not inappropriately accessed or distributed to any third-party. Data provided to Azteca Systems by the Licensee may be loaded onto Azteca Systems servers or employee computers for the purpose of testing The Cityworks Software, database structure, or database values, and related Esri® software to resolve database or software performance issues, software enhancements and software defects. At no time will the data be distributed to individuals or organizations who are not Azteca Systems employees without first receiving written approval from Licensee. If requested by the Licensee, and once the testing has been completed, Azteca Systems will delete all data provided by the Licensee.

4.2. **No Implied Waivers:** No failure or delay by Azteca Systems or Licensee in enforcing any right or remedy under this Agreement shall be construed as a waiver of any future or other exercise of such right or remedy by Azteca Systems.

4.3. **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. Pursuant to Texas Government Code Chapter 2270, Azteca Systems execution of this Agreement shall serve as verification that Azteca Systems does not presently boycott Israel and will not boycott Israel during the term of this Agreement. 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 and action made for ordinary business purposes.



**ADDENDUM #3**

**THIRD PARTY CONSULTANT/CONTRACTOR ACKNOWLEDGMENT**

If Licensee (**Addison, TX**) engages any Third Party Contractor and desires to grant access to or permission to use the licensed software, the access may be granted subject to the following terms conditions and provisions:

1. Access and use of the Licensed Products by any third party is solely for Licensee's benefit;
2. The Third Party Contractor (or, if applicable, its employee) shall be considered, as applicable, the Authorized User for purposes of the applicable license type, and all use by such contractor shall be in accordance with the terms and conditions of the License and Maintenance Agreement;
3. Before accessing the Licensed Products, the Third Party Contractor agrees in writing that (a) the software shall be used solely in accordance with the terms of this Agreement and solely for Licensee's benefit and (b) said contractor shall be liable to Azteca Systems for any breach by it of this Agreement;
4. Licensee hereby agrees and acknowledges that Licensee will be liable for any and all actions or omissions of the Third Party Contractor with respect to the use of the Licensed Products, as if such actions or omissions were the Licensee's;
5. Upon expiration or termination of this License Agreement, the rights of usage to any Third Party Contractor shall immediately terminate;
6. Use of the Software by such Third Party Contractors on Licensee's behalf will be governed by the terms of this Agreement, and will require that Licensee purchase the appropriate license for each user utilized by such contractor;
7. Any breach of this Agreement by any Third Party Contractor(s) will be deemed to be a breach by Licensee;
8. Licensee will ensure that Third Party Contractor agrees to comply with and does comply with the terms of this Agreement on the same basis as the terms apply to Licensee; and
9. Any Third Party Contractor must sign a copy of this Addendum acknowledging that it has a copy of the License Agreement and agrees to the terms herein, further Licensee shall provide a signed copy of this Addendum for every Third Party contractor to which it has granted permission to access and/or use the licensed software;

The rights granted under Third-Party Contractor Addendum, do not modify the license or increase the number of licenses granted under this Agreement. Third-Party Contractor acknowledges acceptance by signing below, and providing a copy to Azteca Systems at [contracts@cityworks.com](mailto:contracts@cityworks.com).

\_\_\_\_\_  
Third Party Contractor Name (Print)

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

Authorized Signature

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

## Work Session and Regular Meeting

8.

**Meeting Date:** 11/12/2019

**Department:** Information Technology

**Pillars:** Excellence in Asset Management

**Milestones:** Implement the Asset Management Plan

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### **AGENDA CAPTION:**

Consider Action on a **Resolution to Approve the Agreement between the Town of Addison and SHI Government Solutions, Inc., for Services Related to the Implementation of the Cityworks Software and Authorizing the City Manager to Execute the Agreement** in an Amount Not to Exceed \$94,329.90.

### **BACKGROUND:**

On May 23, 2017, the Council approved a contract with Kayuga Solution, Inc., for the development of a comprehensive Asset Management Plan for the Town of Addison. Kayuga worked with staff members from various departments to gather information related to the inventory and condition of the Town's buildings, parks, utilities, streets, airport, and fleet. The Asset Management database is now complete. Also, as a part of the Asset Management Plan, the Town received the Infrastructure Reinvestment Intelligence System (IRIS) that is a tool staff can use to plan for upcoming maintenance, rehabilitation, and replacement activities.

The next steps to fully implement the Asset Management Plan are the acquisition and implementation of a Computerized Maintenance Management System (CMMS). A CMMS is used to keep a centralized record of all assets and equipment, as well as schedule and track maintenance activities and keep a detailed record of the work performed. It is used to track internal work orders and external work requests, schedule tasks, manage inventory, and record asset history. After the acquisition of a CMMS is the implementation of the Cityworks software, which is the Town's selected CMMS.

Addison chose SHI Government Solutions, Inc. through BuyBoard, a state-wide collective purchasing agency that bids out services and products for its members to provide the leverage needed to achieve better pricing on products, equipment, and services. SHI Government Solutions, Inc. is the State of Texas Implementer and is a member of the Cityworks Reseller Program and it is registered as a partner eligible to implement the Cityworks software.

SHI Government Solutions, Inc., through its employees or other agents, will implement Cityworks software for the Water, Wastewater, Streets, Traffic,

Facilities, Parks, and Recreation modules and will provide the following services as it's described below:

- Series of on-site kick off meetings,
- Conduct on-site workflow analysis and software installations,
- Configure the Cityworks database to include service requests, work orders and inspections,
- On-site review of configured database and the Cityworks software,
- Configuration of employee, materials and equipment lists so costs can be associated with work orders,
- On-site training and support,
- Ongoing support after the system acceptance.

The total cost of the system implementation, including professional services is \$94,329.90. This item is budgeted in the Self-Funded Special Projects Fund. The original estimated budget for the first year software license fee (\$20,000) and the combined total for the first year software license fee and the implementation of the software package is \$114,329.90. The implementation of the software package was originally budgeted at \$125,000.

**RECOMMENDATION:**

Administration recommends approval.

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**Attachments**

Resolution - SHI Government Solutions Inc. Agreement for CityWorks Software Implementation

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**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING THE AGREEMENT BETWEEN THE TOWN OF ADDISON AND SHI GOVERNMENT SOLUTIONS, INC., FOR SERVICES RELATED TO THE IMPLEMENTATION OF THE CITYWORKS SERVER AMS SOFTWARE IN AN AMOUNT NOT TO EXCEED \$94,329.90, 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 Agreement between the Town of Addison and SHI Government Solutions, Inc., for services related to the implementation of the Cityworks Server AMS software in an amount not to exceed \$94,329.90, 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.

**DULY RESOLVED AND ADOPTED** by the City Council of the Town of Addison, Texas, on this the **12<sup>th</sup>** day of **NOVEMBER 2019**.

**TOWN OF ADDISON, TEXAS**

\_\_\_\_\_  
Joe Chow, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Irma Parker, City Secretary

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

## EXHIBIT A



### Implementation of the Cityworks Server AMS Software

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#### STATEMENT OF WORK

5/1/2019

*Prepared for*

**Town Of Addison**

*Presented By*

**Colin McMahon**

**Inside Account Executive, SHI GS**

**(732)-652-3072**

**[Colin.McMahon@SHI.com](mailto:Colin.McMahon@SHI.com)**



# EXHIBIT A

Prepared for Town Of Addison

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SHI ESG  
Fixed Price Gov't Solutions SOW Template  
Revision: 1-16  
Nov. 23, 2018

Version 1-0

SHI Government Solutions and Town Of Addison Confidential

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# EXHIBIT A

Prepared for Town Of Addison

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# EXHIBIT A

Prepared for Town Of Addison

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## 1. EXECUTIVE SUMMARY

Town Of Addison (“Customer”) has engaged SHI Government Solutions (“SHI GS”) to implement the Cityworks Server AMS software.

## 2. PROJECT MANAGEMENT

A resource will be provided by SHI GS to work with the Customer to see the entire project through to completion. This resource will be the first call for support of any kind at any time during the project. SHI GS project management covers items such as, but not limited to:

- Conducts a kick off meeting to ensure all project deliverables are outlined and sets proper project expectations.
- Ensures project timelines, dependencies, budgets and closure are met within the project lifecycle.
- Holds regular status meetings with SHI GS’s Consulting team to identify proactively any issues that may arise in order to mitigate risk.
- Holds regular status meetings with the Customer to review project status, open action items, and upcoming tasks.
- Issues regular status reports to the management of all companies involved in the project.
- Facilitates any necessary change orders and administrative tasks as necessary.



# EXHIBIT A

Prepared for Town Of Addison

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## 3. SCOPE OF SERVICES OVERVIEW

SHI GS, through its employees or other agents, shall provide to Town Of Addison the Services described as follows:

As an Authorized Business Partner of Azteca Systems, SHI will work to implement Cityworks Server AMS for the Water and Wastewater and Streets and Traffic divisions of the Infrastructure Services Department, Facilities division of the General Services Department and operations for the Parks and Recreation Department.

SHI's implementation process includes the following tasks:

- Series of on-site kick off meetings
- Conduct on-site work flow analysis and software installations
- Configure Cityworks database to include Service Requests, Work Orders and Inspections
- On-site review of configured database and Cityworks software
- Configuration of Employee, Materials and Equipments lists so costs can be associated with work orders.
- On-Site Training and Support
- Continued Support after go-live

\*\*Based on approximately 35 Users

### Assumptions

- Customer is responsible for all purchases of the Cityworks software and hardware devices for the users.
- SHI will assist the City with deployment of the Cityworks site, but is not responsible for configuration of hardware or the network required to run the Cityworks AMS software.
- Customer is responsible for all Esri software and the configuration of ArcGIS Server for use with the Cityworks Server AMS software.

# EXHIBIT A

Prepared for Town Of Addison

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## Schedule

All tasks in this scope of work are estimated to go live 6 months from the kick off meeting.

### **a) Development of GIS Asset Inventory for Traffic and Facility Assets**

SHI understands the Town of Addison is working with a third-party contractor to develop an Asset Management Plan for all of the Town's assets. Deliverables of the project include GIS and tabular formats of the Town's assets. SHI staff will work with the Town's GIS staff to import these features into the GIS for Traffic and Facilities.

### **b) In-House Service Request Page for Facilities**

The In-House Service Request Page utilizes the Cityworks Service Request API and allows internal users to request services for Facilities without having to log-in to the Cityworks application. The page allows users to enter the Request Type, Location, Requester Information and Comments. This will generate a Service Request in Cityworks that once created will fall into the normal workflow process in Cityworks for Facilities.

## Assumptions

- Customer will include the Service Request API with the purchase of their Cityworks licensing

### **c) Configuration of Cityworks and GIS for use with the IRIS Asset Management Software**

SHI staff will work with both Town and IRIS staff to understand the data that needs to be passed between the Cityworks and GIS databases for use in the IRIS Asset Management software.

SHI will configure work order templates, inspections and the GIS data to accept information needed by the IRIS software.

# EXHIBIT A

Prepared for Town Of Addison

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Workshops and meetings for the IRIS configuration will be held during the kick off and workflow assessment meetings for the Cityworks implementation.

IRIS personnel will be responsible for retrieving the data from the GIS database and import into the IRIS database. IRIS will be used as the dashboard and main software for the Town's Asset Management, not Cityworks.

## Assumptions

- Customer is responsible for purchase and maintenance of the IRIS software.

## d) **Crystal Reports Training**

Cityworks software utilizes the Crystal Reports software for generating custom reports. SHI Crystal Training includes how to utilize the Cityworks search engine and out of the box reporting tools and how to generate custom user reports through the Crystal Reports software.

The training class also includes a report package of popular user reports. The package provides the following:

- 3 standard Print templates for Work Orders, Service Requests and Inspections
- 10 commonly used Cityworks report templates such as Work Order Cost Summary and Summary reports for Service Requests, Work Orders and Inspections. Templates are customized to reflect client logos and Cityworks data.

Should the Town choose to not have Crystal Reports Training, the Town has several options:

- SHI Report Services - \$134.02/hour for custom reports. Deliverable will be a .rpt file.
- SHI Print and Report Templates - \$1,546.39 includes the 3 standard print templates and 10 Commonly used reports. Templates can be customized for the City's logo.
- SHI Print Templates - \$515.46 – no modifications.

# EXHIBIT A

Prepared for Town Of Addison

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## Assumptions

- Customer is responsible for the purchase of the required number of licenses of the Crystal Reports software.
- Customer is responsible for the installation of the Crystal Reports software on user machines.

## Schedule

Crystal Reports training is generally conducted 3-4 months after the go-live of the Cityworks software.

### e) **SHI Unique ID Tool**

Designed to work seamlessly with the GIS database, the SHI Unique ID Tool generates custom, unique IDs for GIS features with the following highlights:

- Allows for multiple ID formats in the same attribute tables; Legacy ID's remain active
- Globally unique IDs across database
- Saves configuration for easy modifications
- Automatically assigns IDs, eliminating user error or duplicate ID's generated through manual ID processes
- Batch ID generation functionality - for use with new or imported datasets

The Town only wants to use the Unique ID tool to generate IDs for new features prior to the go-live of the Cityworks application. Once live, the Town will turn-off the Unique ID tool and the tool will no longer be supported by SHI Staff.

## Assumptions

- SHI staff will install and configure the UID tools on the customer's GIS server. Tool will run prior to go-live to populate unique IDs for existing and new features during the implementation process.

# EXHIBIT A

Prepared for Town Of Addison

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- Customer will allow SHI staff to remove all UID software after go-live of the Cityworks software.

## f) Cityworks Storeroom Implementation

SHI will work with warehouse staff to implement the Cityworks Storeroom module for warehouse and material inventory. The implementation process would mimic that of the Server AMS software.

The Storeroom module can be implemented in a separate phase, but due to how the module interacts with the work orders in Cityworks AMS, SHI would recommend implementing both AMS and Storeroom simultaneously.

## Assumptions

- Customer will include the Storeroom license with the Cityworks licensing

## Schedule

All tasks in this scope of work are estimated to go live 6 months from the kick off meeting

# EXHIBIT A

Prepared for Town Of Addison

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## 4. DOCUMENT DELIVERABLES

The following documentation will be delivered in this project. Management of this documentation will be as follows:

1. The SHI GS team will create the document
2. The SHI GS project manager will institute revision control on the document
3. Document will be sent to the Customer for review. Unless agreed upon previously, feedback from the Customer will be required within five business days. If feedback is not received within that timeframe, the document will be considered "accepted" by the Customer
4. Town Of Addison reviews and either approves it, or returns to the SHI GS project manager with changes indicated
5. SHI GS team makes any necessary changes
6. SHI GS project manager delivers final version of document to Town Of Addison. This version, if required, will be used in subsequent steps in the project

### 1. PROJECT PLANNING

**Project plan** in Microsoft Project format containing the following information:

- a. Tasks with predecessor relationships
- b. Planned start date
- c. Estimated duration
- d. Estimated amount of work
- e. Task ownership (resources)
- f. Gantt Chart

# EXHIBIT A

Prepared for Town Of Addison

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## 5. SUCCESS CRITERIA

The project milestones and success criteria for each milestone are as follows:

| <b><i>Task Completed</i></b>   |
|--|
| Kickoff (33% of Task Totals) <ul style="list-style-type: none"><li>• Implementation Services</li><li>• GIS Asset Inventory</li><li>• In-House Request Page</li><li>• Configuration with IRIS</li><li>• Storeroom Implementation</li></ul> Unique ID Tool (100% of Tool Fees) |
| Workflow Assessment (60 % of Task Totals) <ul style="list-style-type: none"><li>• Implementation Services</li><li>• In-House Request Page</li><li>• Configuration with IRIS</li><li>• Storeroom Implementation</li></ul>   |
| Database Review (75% of Task Totals) <ul style="list-style-type: none"><li>• Implementation Services ]</li><li>• In-House Request Page</li><li>• Configuration with IRIS</li><li>• Storeroom Implementation</li></ul> GIS Asset Inventory (100% of Task Total)               |
| Go-Live (90% of Task Totals) <ul style="list-style-type: none"><li>• Implementation Services</li><li>• In-House Request Page</li><li>• Configuration with IRIS</li><li>• Storeroom Implementation</li></ul>  |
| Final Implementation Invoice (100% of Task Totals) <ul style="list-style-type: none"><li>• Implementation Services</li><li>• In-House Request Page</li><li>• Configuration with IRIS</li><li>• Storeroom Implementation</li></ul>  |
| Crystal Reports Training <ul style="list-style-type: none"><li>• 100% Billed</li></ul>   |

# EXHIBIT A

Prepared for Town Of Addison

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## 6. PROJECT DURATION

The estimated project duration is 6 months\*. SHI GS will work with Town Of Addison to provide the required resources to meet a schedule that would be agreeable to all parties. In addition, the schedule assumes reasonable access to Town Of Addison resources and does not allow for holidays, vacations, and unforeseen delays in deliveries.

*\* Please be advised that the above timeframe is to provide a general timeline for delivery and is not a true reflection of the total man hours/effort involved for this engagement.*



# EXHIBIT A

## 7. ASSUMPTIONS

The program and associated price quoted within this Statement of Work are based on the following assumptions. Should any element(s) of these assumptions be lacking during execution of services, additional time and associated fees and expenses may be required to complete this Statement of Work.

1. SHI GS is not responsible for lost data. SHI GS recommends that Town Of Addison perform a full working backup of their network prior to the commencement of services.
2. Please note that the time designated for knowledge transfer is throughout the engagement. Town Of Addison is responsible for providing a resource dedicated to this engagement and the extent of the knowledge transfer is dependent upon the availability of this resource.
3. Minimum lead time for scheduling is fourteen (14) business days from our receipt of the signed SOW or fourteen (14) business days from the confirmed start date between SHI GS and Town Of Addison; whichever date is later. Should you require more aggressive scheduling, please contact SHI GS to determine availability.
4. SHI GS will not develop applications as a part of this SOW.
5. Town Of Addison will provide the necessary hardware to complete the engagement.
6. SHI GS is not responsible for delays caused by failures; including but not exclusive to systems, personnel or environmental causes or in receiving data from Town Of Addison
7. Any restrictions or requirements regarding the engineer's use of personal equipment must be stated in advance of the commencement of the engagement.
8. Town Of Addison will provide, to the extent necessary, administrative usernames and passwords to meet necessary obligations.
9. Town Of Addison will provide necessary and accurate information regarding their current network environment. This information will include the technical configuration of the domain environment.
10. Town Of Addison will provide the necessary workspace and network access to provide the above services.
11. Town Of Addison will provide access to building(s) and room(s) as necessary to complete the services described above.
12. All hardware and/or software and licensing required to perform the above services will be provided by and is the responsibility of Town Of Addison. All wiring, hardware, and software required to perform the above services are in working order.
13. Town Of Addison will provide a technical point of contact during the time of this engagement.
14. No overtime services will be provided without a change order authorizing such charges. "Overtime" is defined as any work performed outside the hours of 8:00 AM to 5:00 PM local time.
15. All parties agree that personnel shall not be asked to perform, nor volunteer to perform, engineering and/or consulting tasks that lie outside the skill sets and experience of personnel. Personnel have the right to decline on a service request if the request falls outside the scope of their experience and expertise.

# EXHIBIT A

Prepared for Town Of Addison

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## 8. LOCATIONS

The location/s of services to be provided and billing contact is:

### CUSTOMER CONTACT INFORMATION

|  |
|--|
| <b>Company Name:</b><br>Town of Addison  |
| <b>Street Address:</b><br>16801 Westgrove Drive  |
| <b>City, State, Zip Code:</b><br>Addison, TX 75001   |
| <b>Contact Name:</b><br>Kingsley Obinna  |
| <b>Contact Phone Number and E-mail address:</b><br>972-450-2858 <a href="mailto:kobinna@addisontx.gov">kobinna@addisontx.gov</a> |

### WORK LOCATION

|  |
|--|
| <b>Street Address:</b><br>16801 Westgrove Drive    |
| <b>City, State, Zip Code:</b><br>Addison, TX 75001 |

# EXHIBIT A

## 9. CUSTOMER RESPONSIBILITIES

Both Town Of Addison and SHI GS are responsible for the successful execution of this engagement. Town Of Addison agrees to the following assigned responsibilities:

- Prior to the start of this project, Town Of Addison will indicate to SHI GS in writing a person to be the point of contact. All engagement communications will be addressed to such point of contact (the “Customer Contact”).
- The Customer Contact will have the authority to act for Town Of Addison in all aspects of the engagement; however any changes that affect the scope of this SOW, schedule or price will require that an amendment to the SOW be executed between the parties.
- The Customer Contact shall have the authority to resolve conflicting requirements.
- The Customer Contact will ensure that any communication between Town Of Addison and SHI GS is made through the SHI GS project manager.
- The Customer Contact will obtain and provide engagement requirements, information, data, decisions and approvals within one working day of the request, unless both parties agree to a different response time.
- The Customer Contact will ensure that SHI GS engagement personnel have reasonable and safe access to the Engagement site and adequate office space, if required.
- The Customer Contact will help resolve engagement issues and ensure that issues are brought to the attention of the appropriate persons within the Town Of Addison organization, if required.
- Customer Contact will provide technical points-of-contact, who have a working knowledge of the enterprise components to be considered during this engagement (“Technical Contacts”). SHI GS may request that meetings be scheduled with Technical Contacts.
- Town Of Addison will inform SHI GS of any necessary access issues and security measures, and provide access to all necessary hardware and facilities as required.
- Town Of Addison will provide, at no expense to SHI GS: computer hardware, software, and necessary access to the Town Of Addison network as required to complete the work described in this SOW.
- Town Of Addison is responsible for providing necessary telecommunications equipment, and related infrastructure as required for the successful completion of this Engagement.
- Town Of Addison agrees that all related information regarding this engagement will be communicated to SHI GS as expeditiously as possible.

# EXHIBIT A

Prepared for Town Of Addison

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## 10. CHANGE CONTROL PROCESS

The “Change Control Process” is that process which shall govern changes to the scope of Services during the life of the SOW. The Change Control Process will commence at the start of the Project and will continue throughout the Project's duration.

Under the Change Control Process, a written “Change Request Form” (attached as Appendix A) will be the instrument for communicating any desired changes to the SOW. The Change Request Form will describe the proposed change; the reason for the change and the effect the change may have on the project. The project manager of the requesting party will submit a written Change Request Form to the project manager for the other parties.

SHI GS and Town Of Addison will review the change request. All parties must sign the approval section of the Change Request Form to authorize the implementation of any change that affects the SOW's scope of services, schedule or price. Furthermore, any such changes that affect the scope of this SOW, schedule or price will require that an amendment to the SOW be executed between the parties.

## 11. SOW REVIEW PROCESS

Upon receipt of a signed SOW and purchase order, planning for the project will commence. A key step in the planning process is the kickoff meeting with SHI GS and Town Of Addison's team.

In the kickoff meeting, the contents of the SOW will be reviewed. This is an opportunity for Town Of Addison's team who will be involved with the project to understand the SOW's goals, tasks, deliverables, and timelines.

Upon completion of the project kick-off meeting, minutes of the kickoff meeting will be created based on the meeting discussion and distributed to Town Of Addison. Any changes to the project scope will be documented in these minutes. If Change Orders are necessary due to scope changes, that process would be initiated after the kickoff meeting.

# EXHIBIT A

Prepared for Town Of Addison

## 12. PRICE AND PAYMENT SCHEDULE

SHI GS proposes to deliver the services described here for a fixed price for the fees set forth below:

| Program Component                                   | Fee         |
|---|-------------|
| Implementation of the Cityworks Server AMS Software | \$94,329.90 |

This price quote is valid for 60 days from 5/1/2019.

Any additional work that is required outside the scope of this SOW shall follow the Change Control Process or initiate a new SOW.

### 1. PAYMENT SCHEDULE

The following table describes the project milestones. When these are completed and approved by Town Of Addison, SHI GS will invoice the specified amount.

| Project Milestones   | Fee         |
|--|-------------|
| Kickoff (33% of Task Totals) <ul style="list-style-type: none"><li>• Implementation Services</li><li>• GIS Asset Inventory</li><li>• In-House Request Page</li><li>• Configuration with IRIS</li><li>• Storeroom Implementation</li></ul> Unique ID Tool (100% of Tool Fees) | \$30,958.85 |
| Workflow Assessment (60 % of Task Totals) <ul style="list-style-type: none"><li>• Implementation Services</li><li>• In-House Request Page</li><li>• Configuration with IRIS</li></ul> Storeroom Implementation   | \$23,388.80 |

# EXHIBIT A

Prepared for Town Of Addison

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|  |                    |
|--|--------------------|
| Database Review (75% of Task Totals) <ul style="list-style-type: none"><li>• Implementation Services ]</li><li>• In-House Request Page</li><li>• Configuration with IRIS</li><li>• Storeroom Implementation</li></ul> GIS Asset Inventory (100% of Task Total) | \$14,676.94        |
| Go-Live (90% of Task Totals) <ul style="list-style-type: none"><li>• Implementation Services</li><li>• In-House Request Page</li><li>• Configuration with IRIS</li></ul> Storeroom Implementation  | \$12,578           |
| Final Implementation Invoice (100% of Task Totals) <ul style="list-style-type: none"><li>• Implementation Services</li><li>• In-House Request Page</li><li>• Configuration with IRIS</li></ul> Storeroom Implementation  | \$9,327.35         |
| Crystal Reports Training<br>100% Billed  | \$3,399.96         |
| <b>Total:</b>  | <b>\$94,329.90</b> |

## 2. TRAVEL EXPENSES

No Travel is required.

## 3. BILLING TERMS

SHI GS will request the approval of Town Of Addison when a milestone (see Payment Schedule above) has been completed. Upon receipt of Town Of Addison's approval, SHI GS will invoice Town Of Addison for the milestone. All invoices are due and payable within 30 calendar days of the invoice date.

# EXHIBIT A

Prepared for Town Of Addison

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The total fee does not include applicable taxes. Invoice(s) will include any applicable taxes due.

## 13. TERMS & CONDITIONS

This statement of work (SOW) is subject to and governed by the terms of contract Buy Board Cooperative Purchasing agreement, dated 5/15/2018, ("Agreement").

## 14. SPECIAL DATA SECURITY CONSIDERATIONS

As data security concerns and regulations continue to rise in import such as Health Insurance Portability and Accountability Act ("HIPAA") and Payment Card Industry Data Security Standard ("PCI DSS"), SHI GS wants to ensure the project delivery team maintains that compliance. If the Customer organization utilizes special tools or has procedural requirements that must be observed during this project such as the use of cloud storage or file/email encryption, please advise your SHI GS sales representative and project manager as soon as possible. If required tools are not currently employed by the SHI GS team, the costs of those tools will be a project expense pass-through. Please allow project initialization time for acquisition of these tools.



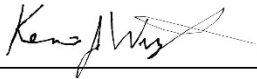
# EXHIBIT A

Prepared for Town Of Addison

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## 15. SOW ACCEPTANCE

The parties, intending to be legally bound, have caused this SOW to be executed by their authorized representatives on the dates set forth below.

| Town Of Addison |  | SHI Government Solutions |  |
|-----------------|--|--------------------------|--|
| Name            |  | Name                     | Kevin Wright   |
| Title           |  | Title                    | Manager, Partner Services  |
| Signature       |  | Signature                |  |
| Date            |  | Date                     | 10/03/2019   |

## 16. CONFIDENTIAL

The information in this document shall not be duplicated, used, or disclosed in whole or in part outside Town Of Addison's organization. If a contract is awarded to SHI GS as a result of or in connection with the submission of this document, Town Of Addison shall have the right to duplicate, use, or disclose the information within its organization to the extent provided by the contract between Town Of Addison and SHI GS. This restriction does not limit Town Of Addison right to use information contained in this document if it is obtained from another source without restriction.



# EXHIBIT A

Prepared for Town Of Addison

## 17. APPENDIX A – CHANGE REQUEST FORM

### CHANGE REQUEST FORM


|                        |   |
|------------------------|---|
| Project Name:          | Implementation of the Cityworks Server AMS Software |
| Customer Name:         | Town Of Addison                                     |
| Change Request Number: |   |
| Date:                  |   |
| Submitted by:          |   |
| Change Evaluator:      |   |


|                            |  |
|----------------------------|--|
| CHANGE REQUEST DESCRIPTION |  |
|                            |  |
| IMPACT OF CHANGE           |  |
|                            |  |
| PRICE                      |  |
|                            |  |
| SIGNATURES                 |  |

|                                  |  |         |  |
|----------------------------------|--|---------|--|
| Status: Accepted/Rejected        |  | Reason: |  |
| Town Of Addison Approval:        |  | Date:   |  |
| SHI GS Project Manager Approval: |  | Date:   |  |


## EXHIBIT A

### Signature Certificate

 Document Reference: NTRK32IC6LF8HYJKUIC9HX



Easy Online Document Signing




Kevin Wright

Party ID: JR5UZLJ2L3VA6HSK5ITDP2

IP Address: 4.15.215.230


VERIFIED EMAIL: kevin\_wright@shi.com

Electronic Signature:



Multi-Factor  
Digital Fingerprint Checksum

6f6a7cf21c11c0b0b817a611a148e32eaf7df305



**Timestamp**

2019-10-03 14:14:48 -0700

2019-10-03 14:14:47 -0700

2019-10-03 14:13:08 -0700

2019-10-03 09:04:28 -0700


**Audit**

All parties have signed document. Signed copies sent to: Kevin Wright and Hannah Sura.

Document signed by Kevin Wright (kevin\_wright@shi.com) with drawn signature. - 4.15.215.230

Document viewed by Kevin Wright (kevin\_wright@shi.com). - 4.15.215.230

Document created by Hannah Sura (hannah\_sura@shi.com). - 24.45.113.128



This signature page provides a record of the online activity executing this contract.

Page 1 of 1

## Work Session and Regular Meeting

9.

**Meeting Date:** 11/12/2019

**Department:** Finance

**Pillars:** Gold Standard for Financial Health

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### **AGENDA CAPTION:**

Consider Action on a **Resolution to Approve a Grant Funding Agreement Between the Town of Addison and Dallas Cat Lady and Authorize the City Manager to Execute the Grant Funding Agreement** in an Amount Not to Exceed \$5,000.

### **BACKGROUND:**

Town Staff has developed a grant funding process that allows non-profit organizations within the Town of Addison to submit a request of funds for their organization that directly enhances the Town. The Town Staff and appointed Council Member Liaisons evaluate all applications individually. Town Staff reviews all applicable financials of the non-profit organizations, which includes, but is not limited to: equity assessment, cash flow assessment, operations assessment, and percentage of annual revenue in comparison to grant request. To clearly reflect the impact of the grant to Addison and non-Addison residents, Quarterly Grant Reports are required by all non-profit organizations through the end of the Town's Fiscal Year. The Quarterly Grant Reports contain the non-profit organization's goals, objectives and performance measures as identified in the Grant Uses section of the agreement. Financial statements may or may not be required, but Town Staff can request them at any time.

The Dallas Cat Lady submitted an application to the Town requesting \$5,000 for Fiscal Year 2020. During the Council Meeting on September 10, 2019, Council discussed grant funding allocations for multiple non-profits included in the Fiscal Year 2020 budget. During the discussion about the Dallas Cat Lady, Council directed staff to grant the Dallas Cat Lady their requested amount of \$5,000. The Town has reviewed and evaluated the application and determined that the non-profit organization's request outlined in the application is for a public purpose that directly enhances the Town of Addison.

The Dallas Cat Lady grant funding agreement is included as Exhibit A within the attached resolution.

### **RECOMMENDATION:**

Administration recommends approval.

---

## **Attachments**

Resolution - Grant Funding Agreement Dallas Cat Lady Fiscal Year 2020

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

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING THE GRANT FUNDING AGREEMENT BETWEEN THE TOWN OF ADDISON AND THE DALLAS CAT LADY, IN AN AMOUNT NOT TO EXCEED \$5,000.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE GRANT FUNDING AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the Town of Addison, Texas (“City Council”) has investigated and determined that it is in the best interest of the Town of Addison, Texas (“Town”) to provide a grant of public funds to various organizations that promote public purposes and benefit the public within the Town; and

**WHEREAS**, the City Council has adopted an application process (“Application”) whereby these organizations may apply for public funds that will be used for public purposes within the Town, as determined by the Town; and

**WHEREAS**, the Dallas Cat Lady submitted an Application to the Town for consideration; and

**WHEREAS**, the Town has reviewed the Application and investigated and determined that the requests set forth in the Application are for a public purpose and will benefit its citizens; and

**WHEREAS**, the Town and the Dallas Cat Lady desire to enter into this Agreement to set forth the terms and conditions regarding the Dallas Cat Lady’s use of the public funds.

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

**SECTION 1.** The Grant Funding Agreement between the Town and the Dallas Cat Lady in an amount not to exceed \$5,000.00, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved. The City Manager is hereby authorized to execute said agreement.

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

**DULY RESOLVED AND ADOPTED** by the City Council of the Town of Addison, Texas, on this the 12<sup>th</sup> day of November 2019.

**TOWN OF ADDISON, TEXAS**

---

Joe Chow, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

---

Irma Parker, City Secretary

---

Brenda N. McDonald, City Attorney

# EXHIBIT A

STATE OF TEXAS                   §  
  §                   AGREEMENT FOR GRANT FUNDING  
COUNTY OF DALLAS           §

This Agreement for Grant Funding ("Agreement") is made and entered into as of the 1st day of October, 2019 by and between the Town of Addison, Texas (the "City") and Dallas Cat Lady (the "Organization").

## WITNESSETH:

**WHEREAS**, the City Council has investigated and determined that it is in the best interest of the City to provide a grant of public funds to various organizations that promote public purposes and benefit the public within the City; and

**WHEREAS**, the City Council has adopted an application process ("Application") whereby these organizations may apply for public funds that will be used for public purposes within the City, as determined by the City; and

**WHEREAS**, the Organization submitted an Application to the City for consideration; and

**WHEREAS**, the City has reviewed the Application and investigated and determined that the requests set forth in the Application are for a public purpose and will benefit its citizens; and

**WHEREAS**, the City and Organization desire to enter into this Agreement to set forth the terms and conditions regarding the Organization's use of the public funds.

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

## I. TERM

The term of this Agreement shall be for a period of one year from the 1st day of October, 2019, through the 30th day of September, 2020, except as otherwise provided for herein, and subject to the earlier termination of this Agreement ("Term"). The Program, hereinafter defined, must be completed during the Term of the Agreement to the satisfaction of the City.

## II. GRANT USE

The Organization shall complete the following program(s) with the assistance of grant funding received by the City (collectively, the "Program");

(a) Spay/neuter program "Fix them all!" allowing approximately 100 cats and kittens - stray or feral cats as well as cats and kittens in the foster system for adoption, in an effort to reduce the stray and feral cat population; and

(b) Other programs to assist more cats and caregivers in need.



The Organization shall submit detailed quarterly program results to the City listing the expenditures made by the Organization with the Funding received pursuant to this Agreement by the following dates:

January 30, 2020  
April 30, 2020  
July 30, 2020  
October 30, 2020

### III. FUNDING

For the completion of the Program as described herein, the City shall pay to the Organization the sum of no more than Five Thousand and No/100 Dollars (\$5,000.00) ("Funding") as follows: fifty percent (50%) of the Funding shall be paid to the Organization within thirty (30) days of the City's execution of this Agreement, and the remaining fifty percent (50%) of the Funding shall be paid to the Organization on May 30, 2020. However, the Organization may send a written request to the City Manager's Office of the City for an advance of the second fifty percent (50%) distribution prior to May 30, 2020 for a compelling reason, and the City Manager's Office may or may not grant this request in his or her sole and absolute discretion. Payment is made contingent upon the Organization not then being in default of this Agreement. Funding shall not carry over into the following fiscal year. If the Organization fails to complete the Program identified herein to the satisfaction of the City within the Term, then the Organization shall return any and all unexpended Funding to the City immediately upon request, and the Organization may be ineligible for the receipt of Funding the following year.

### IV. RESPONSIBILITY; INDEMNIFICATION

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

(b) INDEMNITY OWED BY THE ORGANIZATION. THE ORGANIZATION COVENANTS AND AGREES TO FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN OF ADDISON, TEXAS AND THE ELECTED AND APPOINTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS, INDIVIDUALLY OR COLLECTIVELY, IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES (THE TOWN OF ADDISON, TEXAS AND THE ELECTED AND APPOINTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS EACH BEING AN "ADDISON PERSON" AND COLLECTIVELY THE "ADDISON PERSONS"), FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, HARM, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, JUDGMENTS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY, AND SUITS, OF ANY KIND AND NATURE WHATSOEVER MADE UPON OR INCURRED BY ANY ADDISON PERSON, WHETHER DIRECTLY OR INDIRECTLY, (THE "CLAIMS"), THAT ARISE OUT OF, RESULT FROM, OR RELATE TO: (1) THE PROGRAM AS DESCRIBED IN SECTION II OF THIS AGREEMENT; (2)

2

AGREEMENT FOR GRANT FUNDING 2019-2020 (Dallas Cat Lady)

REPRESENTATIONS OR WARRANTIES BY THE ORGANIZATION UNDER THIS AGREEMENT; AND/OR (3) ANY OTHER ACT OR OMISSION UNDER OR IN PERFORMANCE OF THIS AGREEMENT BY THE ORGANIZATION, OR ANY OWNER, OFFICER, DIRECTOR, MANAGER, EMPLOYEE, AGENT, REPRESENTATIVE, CONSULTANT, CONTRACTOR, SUBCONTRACTOR, LICENSEE, INVITEE, PATRON, GUEST, CUSTOMER, OR CONCESSIONAIRE OF OR FOR THE ORGANIZATION, OR ANY OTHER PERSON OR ENTITY FOR WHOM THE ORGANIZATION IS LEGALLY RESPONSIBLE, AND THEIR RESPECTIVE OWNERS, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS, REPRESENTATIVES, CONSULTANTS, CONTRACTORS, SUBCONTRACTOR, LICENSEES, INVITEES, PATRONS, GUESTS, CUSTOMERS, AND CONCESSIONAIRES. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

THE ORGANIZATION SHALL PROMPTLY ADVISE THE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST ANY ADDISON PERSON OR THE ORGANIZATION RELATED TO OR ARISING OUT OF THE ORGANIZATION'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT THE ORGANIZATION'S SOLE COST AND EXPENSE. THE ADDISON PERSONS SHALL HAVE THE RIGHT, AT THE ADDISON PERSONS' OPTION AND AT OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING THE ORGANIZATION OF ANY OF ITS OBLIGATIONS HEREUNDER.

THE PROVISIONS OF THIS DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION, AND ANY OTHER DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION SET FORTH IN THIS AGREEMENT, SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

## V. TERMINATION

This Agreement may be canceled and terminated by either party at any time and for any reason or no reason upon giving at least thirty (30) days written notice of such cancellation and termination to the other party hereto. Such notice shall be sent certified mail, return receipt requested, and to the most recent address shown on the records of the party terminating the Agreement. The thirty (30) day period shall commence upon deposit of the said notice in the United States mail and shall conclude at midnight of the 30th day thereafter. In the event of such cancellation and termination and if the Organization has failed at the time of such cancellation and termination to provide the Program set forth herein, the Organization shall immediately refund to the City that portion of Funding paid to the Organization under the terms of this Agreement (and identified in Section II, above) allocable to the Program that has not been completed at the time of cancellation and termination, as determined by the City.

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

## VI. CONFLICT OF INTEREST

AGREEMENT FOR GRANT FUNDING 2019-2020 (Dallas Cat Lady)

3



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

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

## VII. ACCOUNTING

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

Funding received hereunder from the City may be spent for day to day operations, supplies, salaries and other administrative costs (including the completion of a compilation report), provided that such costs are necessary for the promotion and encouragement of the purposes for which the Funding may be used as described herein.

The Organization shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of Funding received pursuant to this Agreement. On request of the City at any time, the Organization shall make all its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of the Organization's fiscal year, the Organization shall provide the City with a financial statement signed by the Chairman of the Organization's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, at the Organization's expense, setting forth the Organization's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Agreement. Beginning FY 2018 and every other year thereafter, so long as the Organization is a recipient of grant funding, the City may request a compilation report prepared by an independent accounting firm prior to the end of the applicable fiscal year. The Organization shall deliver the compilation report to the City within one hundred twenty (120) days of the end of the applicable fiscal year.

If this Agreement is terminated prior to its expiration, the Organization shall provide such reports as required by the City for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Agreement shall survive the expiration of this Agreement.

All application materials, financial information, quarterly (or other) reports, any other information described herein or required hereunder, and general correspondence with the City must be submitted to the City in electronic format to the City email address specified in the application packet. Additionally, the City may require that such materials, information, reports, and correspondence also be provided to the City in writing a hard-copy, non-electronic format.

## **VIII. ADDITIONAL REQUIREMENTS OF THE ORGANIZATION**

The Organization agrees to the following:

(a) The City may conduct an on-site visit to the Organization during the Term;

(b) Within thirty (30) days of the City's execution of this Agreement, the Organization shall provide to the City a current list of all Organization board members and a schedule of all board meetings. A representative from the City may choose to attend any scheduled board meetings. The City shall be immediately notified of any changes to the schedule; and

(c) In any and all marketing material produced by the Organization, the City shall be prominently recognized as a supporter of the Organization through the use of the City designated logo provided.

## **IX. INDEPENDENT CONTRACTOR**

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

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

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

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

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

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

## **XII. NON-DISCRIMINATION**

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

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

AGREEMENT FOR GRANT FUNDING 2019-2020 (Dallas Cat Lady)

5



The Organization shall observe and abide by, and this Agreement is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended. The Organization agrees that any and all records of the Organization which, including but not limited to describe, relate to, convey and/or illustrate the obligations, terms and conditions set forth in this Agreement shall be subject to the Texas Public Information Act, Texas Government Code Chapter 552, as amended. The above and foregoing recitals to this Agreement are true and correct and incorporated herein and made a part hereof.

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

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

#### **XV. COUNTERPARTS**

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

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

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

#### **XVII. NOTICES**

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

The City's address:

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

The Organization's address:

Leigh Sessler  
Dallas Cat Lady  
P.O. Box 181671  
Dallas, Texas 75218

### **XVIII. SEVERABILITY**

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

### **XIX. AUTHORITY TO EXECUTE AGREEMENT**

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.

### **XX. ENTIRE AGREEMENT**

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

### **XXI. SOVEREIGN IMMUNITY**

The parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

### **XXII. 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.

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

**TOWN OF ADDISON, TEXAS**

**DALLAS CAT LADY**

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

By: Ms. Leigh Sessler  
Ms. Leigh Sessler, Exec. Director

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

Date: 10/19/19

## Work Session and Regular Meeting

10.

**Meeting Date:** 11/12/2019

**Department:** Finance

**Pillars:** Gold Standard for Financial Health

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### **AGENDA CAPTION:**

Consider Action on a **Resolution to Approve a Grant Funding Agreement Between the Town of Addison and Dallas County Mental Health & Retardation d/b/a Metrocare Services and Authorize the City Manager to Execute the Grant Funding Agreement** in an Amount Not to Exceed \$5,000.

### **BACKGROUND:**

Town Staff has developed a grant funding process that allows non-profit organizations within the Town of Addison to submit a request of funds for their organization that directly enhances the Town. The Town Staff and appointed Council Member Liaisons evaluate all applications individually. Town Staff reviews all applicable financials of the non-profit organizations, which includes, but is not limited to: equity assessment, cash flow assessment, operations assessment, and percentage of annual revenue in comparison to grant request. To clearly reflect the impact of the grant to Addison and non-Addison residents, Quarterly Grant Reports are required by all non-profit organizations through the end of the Town's Fiscal Year. The Quarterly Grant Reports contain the non-profit organization's goals, objectives and performance measures as identified in the Grant Uses section of the agreement. Financial statements may or may not be required, but Town Staff can request them at any time.

The Dallas County Mental Health & Retardation d/b/a Metrocare Services submitted an application to the Town requesting \$40,000 for Fiscal Year 2020. During the Council Meeting on September 10, 2019, Council discussed grant funding allocations for multiple non-profits included in the Fiscal Year 2020 budget. During the discussion about Metrocare Services, Council directed staff to grant Metrocare Services \$5,000. The Town has reviewed and evaluated the application and determined that the non-profit organization's request outlined in the application is for a public purpose that directly enhances the Town of Addison.

The Dallas County Mental Health & Retardation d/b/a Metrocare Services grant funding agreement is included as Exhibit A within the attached resolution.



**RECOMMENDATION:**

Administration recommends approval.

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**Attachments**

Resolution - Grant Funding Agreement Metrocare Services Fiscal Year 2020

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

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING THE GRANT FUNDING AGREEMENT BETWEEN THE TOWN OF ADDISON AND DALLAS COUNTY MENTAL HEALTH & MENTAL RETARDATION D/B/A METROCARE SERVICES, IN AN AMOUNT NOT TO EXCEED \$5,000.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE GRANT FUNDING AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the Town of Addison, Texas (“City Council”) has investigated and determined that it is in the best interest of the Town of Addison, Texas (“Town”) to provide a grant of public funds to various organizations that promote public purposes and benefit the public within the Town; and

**WHEREAS**, the City Council has adopted an application process (“Application”) whereby these organizations may apply for public funds that will be used for public purposes within the Town, as determined by the Town; and

**WHEREAS**, Dallas County Mental Health & Mental Retardation d/b/a Metrocare Services submitted an Application to the Town for consideration; and

**WHEREAS**, the Town has reviewed the Application and investigated and determined that the requests set forth in the Application are for a public purpose and will benefit its citizens; and

**WHEREAS**, the Town and Dallas County Mental Health & Mental Retardation d/b/a Metrocare Services desire to enter into this Agreement to set forth the terms and conditions regarding Dallas County Mental Health & Mental Retardation d/b/a Metrocare Services’ use of the public funds.

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

**SECTION 1.** The Grant Funding Agreement between the Town and Dallas County Mental Health & Mental Retardation d/b/a Metrocare Services in an amount not to exceed \$5,000.00, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved. The City Manager is hereby authorized to execute said agreement.

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

**DULY RESOLVED AND ADOPTED** by the City Council of the Town of Addison, Texas, on this the 12<sup>th</sup> day of November 2019.

**TOWN OF ADDISON, TEXAS**

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Joe Chow, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

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Irma Parker, City Secretary

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Brenda N. McDonald, City Attorney

# EXHIBIT A

STATE OF TEXAS

§

## AGREEMENT FOR GRANT FUNDING

COUNTY OF DALLAS

§

§

This Agreement for Grant Funding ("Agreement") is made and entered into as of the 1st day of October, 2019 by and between the Town of Addison, Texas (the "City") and Dallas County Mental Health & Mental Retardation d/b/a Metrocare Services (the "Organization").

### WITNESSETH:

**WHEREAS**, the City Council has investigated and determined that it is in the best interest of the City to provide a grant of public funds to various organizations that promote public purposes and benefit the public within the City; and

**WHEREAS**, the City Council has adopted an application process ("Application") whereby these organizations may apply for public funds that will be used for public purposes within the City, as determined by the City; and

**WHEREAS**, the Organization submitted an Application to the City for consideration; and

**WHEREAS**, the City has reviewed the Application and investigated and determined that the requests set forth in the Application are for a public purpose and will benefit its citizens; and

**WHEREAS**, the City and Organization desire to enter into this Agreement to set forth the terms and conditions regarding the Organization's use of the public funds.

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

### I. TERM

The term of this Agreement shall be for a period of one year from the 1st day of October, 2019, through the 30th day of September, 2020, except as otherwise provided for herein, and subject to the earlier termination of this Agreement ("Term"). The Program, hereinafter defined, must be completed during the Term of the Agreement to the satisfaction of the City.

### II. GRANT USE

The Organization shall complete the following program(s) with the assistance of grant funding received by the City (collectively, the "Program"):

(a) Provide support for the build out and furnishing of the clinic's new Community Room; and

(b) Support marketing and continuing education certificates for lecture series and networking events to increase awareness of community veteran services.

The Organization shall submit detailed quarterly program results to the City listing the expenditures made by the Organization with the Funding received pursuant to this Agreement by the following dates:

January 30, 2020  
April 30, 2020  
July 30, 2020  
October 30, 2020

### III. FUNDING

For the completion of the Program as described herein, the City shall pay to the Organization the sum of no more than Five Thousand and No/100 Dollars (\$5,000.00) ("Funding") as follows: fifty percent (50%) of the Funding shall be paid to the Organization within thirty (30) days of the City's execution of this Agreement, and the remaining fifty percent (50%) of the Funding shall be paid to the Organization on May 30, 2020. However, the Organization may send a written request to the City Manager's Office of the City for an advance of the second fifty percent (50%) distribution prior to May 30, 2020 for a compelling reason, and the City Manager's Office may or may not grant this request in his or her sole and absolute discretion. Payment is made contingent upon the Organization not then being in default of this Agreement. Funding shall not carry over into the following fiscal year. If the Organization fails to complete the Program identified herein to the satisfaction of the City within the Term, then the Organization shall return any and all unexpended Funding to the City immediately upon request, and the Organization may be ineligible for the receipt of Funding the following year.

### IV. RESPONSIBILITY; INDEMNIFICATION

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

(b) **INDEMNITY OWED BY THE ORGANIZATION. THE ORGANIZATION COVENANTS AND AGREES TO FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN OF ADDISON, TEXAS AND THE ELECTED AND APPOINTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS, INDIVIDUALLY OR COLLECTIVELY, IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES (THE TOWN OF ADDISON, TEXAS AND THE ELECTED AND APPOINTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS EACH BEING AN "ADDISON PERSON" AND COLLECTIVELY THE "ADDISON PERSONS"), FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, HARM, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, JUDGMENTS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY, AND SUITS, OF ANY KIND AND NATURE WHATSOEVER MADE UPON OR INCURRED BY ANY ADDISON PERSON, WHETHER DIRECTLY OR INDIRECTLY, (THE "CLAIMS"), THAT ARISE OUT OF, RESULT FROM, OR RELATE TO: (1) THE PROGRAM AS DESCRIBED IN SECTION II OF THIS AGREEMENT; (2)**

AGREEMENT FOR GRANT FUNDING 2019-2020 (Metrocare Services)

2



REPRESENTATIONS OR WARRANTIES BY THE ORGANIZATION UNDER THIS AGREEMENT; AND/OR (3) ANY OTHER ACT OR OMISSION UNDER OR IN PERFORMANCE OF THIS AGREEMENT BY THE ORGANIZATION, OR ANY OWNER, OFFICER, DIRECTOR, MANAGER, EMPLOYEE, AGENT, REPRESENTATIVE, CONSULTANT, CONTRACTOR, SUBCONTRACTOR, LICENSEE, INVITEE, PATRON, GUEST, CUSTOMER, OR CONCESSIONAIRE OF OR FOR THE ORGANIZATION, OR ANY OTHER PERSON OR ENTITY FOR WHOM THE ORGANIZATION IS LEGALLY RESPONSIBLE, AND THEIR RESPECTIVE OWNERS, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS, REPRESENTATIVES, CONSULTANTS, CONTRACTORS, SUBCONTRACTOR, LICENSEES, INVITEES, PATRONS, GUESTS, CUSTOMERS, AND CONCESSIONAIRES. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

THE ORGANIZATION SHALL PROMPTLY ADVISE THE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST ANY ADDISON PERSON OR THE ORGANIZATION RELATED TO OR ARISING OUT OF THE ORGANIZATION'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT THE ORGANIZATION'S SOLE COST AND EXPENSE. THE ADDISON PERSONS SHALL HAVE THE RIGHT, AT THE ADDISON PERSONS' OPTION AND AT OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING THE ORGANIZATION OF ANY OF ITS OBLIGATIONS HEREUNDER.

THE PROVISIONS OF THIS DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION, AND ANY OTHER DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION SET FORTH IN THIS AGREEMENT, SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

#### V. TERMINATION

This Agreement may be canceled and terminated by either party at any time and for any reason or no reason upon giving at least thirty (30) days written notice of such cancellation and termination to the other party hereto. Such notice shall be sent certified mail, return receipt requested, and to the most recent address shown on the records of the party terminating the Agreement. The thirty (30) day period shall commence upon deposit of the said notice in the United States mail and shall conclude at midnight of the 30th day thereafter. In the event of such cancellation and termination and if the Organization has failed at the time of such cancellation and termination to provide the Program set forth herein, the Organization shall immediately refund to the City that portion of Funding paid to the Organization under the terms of this Agreement (and identified in Section II, above) allocable to the Program that has not been completed at the time of cancellation and termination, as determined by the City.

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

#### VI. CONFLICT OF INTEREST

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

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

## **VII. ACCOUNTING**

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

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

The Organization shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of Funding received pursuant to this Agreement. On request of the City at any time, the Organization shall make all its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of the Organization's fiscal year, the Organization shall provide the City with a financial statement signed by the Chairman of the Organization's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, at the Organization's expense, setting forth the Organization's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Agreement. If this Agreement is terminated prior to its expiration, the Organization shall provide such reports as required by the City for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Agreement shall survive the expiration of this Agreement.

All application materials, financial information, quarterly (or other) reports, any other information described herein or required hereunder, and general correspondence with the City must be submitted to the City in electronic format to the City email address specified in the application packet. Additionally, the City may require that such materials, information, reports, and correspondence also be provided to the City in writing a hard-copy, non-electronic format.

## **VIII. ADDITIONAL REQUIREMENTS OF THE ORGANIZATION**

The Organization agrees to the following:

(a) The City may conduct an on-site visit to the Organization during the Term;



(b) Within thirty (30) days of the City's execution of this Agreement, the Organization shall provide to the City a current list of all Organization board members and a schedule of all board meetings. A representative from the City may choose to attend any scheduled board meetings. The City shall be immediately notified of any changes to the schedule; and

(c) In any and all marketing material produced by the Organization, the City shall be prominently recognized as a supporter of the Organization through the use of the City designated logo provided.

#### **IX. INDEPENDENT CONTRACTOR**

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

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

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

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

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

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

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

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

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

The Organization shall observe and abide by, and this Agreement is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended. The Organization agrees that any and all records of the Organization which,

including but not limited to describe, relate to, convey and/or illustrate the obligations, terms and conditions set forth in this Agreement shall be subject to the Texas Public Information Act, Texas Government Code Chapter 552, as amended. The above and foregoing recitals to this Agreement are true and correct and incorporated herein and made a part hereof.

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

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

#### **XV. COUNTERPARTS**

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

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

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

#### **XVII. NOTICES**

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

The City's address:

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

The Organization's address:

Dr. John W. Burruss  
Dallas County MHMR  
d/b/a Metrocare Services  
16160 Midway Road Suite 218  
Addison, Texas 75001

#### **XVIII. SEVERABILITY**

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

#### **XIX. AUTHORITY TO EXECUTE AGREEMENT**

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.

#### **XX. ENTIRE AGREEMENT**

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

#### **XXI. SOVEREIGN IMMUNITY**

The parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

#### **XXII. NO BOYCOTT ISRAEL**

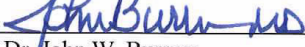
Pursuant to Texas Government Code Chapter 2270, Organization's execution of this Agreement shall serve as verification that the Organization does not presently boycott Israel and will not boycott Israel during the term of this Agreement.

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

**TOWN OF ADDISON, TEXAS**

**DALLAS COUNTY MHMR d/b/a  
METROCARE SERVICES**

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

By:   
Dr. John W. Burruss,  
President & CEO

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

Date: 10/24/2019

## Work Session and Regular Meeting

11.

**Meeting Date:** 11/12/2019

**Department:** Infrastructure- Development Services

**Pillars:** Excellence in Transportation Systems

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### **AGENDA CAPTION:**

Consider Action on a **Resolution to Approve a Master Agreement for Professional Services with Garver, LLC for Addison Airport On-Call Engineering Services for the 2020 Fiscal Year, and Authorize the City Manager to Execute the Agreement** in an Amount Not to Exceed \$137,000.

### **BACKGROUND:**

Through a Request for Qualifications selection process administered by the TxDOT Aviation Division in 2013, the Town of Addison selected Garver, LLC (Garver) as the Addison Airport Engineer of Record to provide engineering design services for all grant-funded airport capital projects. From time-to-time, however, there is a need for engineering services for projects that are not eligible for grant funding. For example, the airport needs design, bid phase, and construction management services for various airside and landside concrete pavement repairs. Construction management and testing services are needed for relocation of the fuel farm delivery tanker exit lane, and design and construction management services are needed for reconstruction of George Haddaway Road. Staff recommends that Garver provide these on-call services since they are the current Engineer of Record, they are very familiar with the airport's facilities and design standards, and they have provided outstanding engineering services to the airport.

Under the terms of the on-call agreement, Garver will provide engineering services on a work order basis, the scope and cost of which will be agreed upon in advance of the work being performed. A sample Work Order form is attached as Appendix B in Exhibit A in the attached resolution. The terms of the on-call services agreement will be incorporated into each work order. The agreement amount is not to exceed \$137,000 and is budgeted for in the Airport operating budget and will expire September 30, 2020. The agreement can be terminated for any reason upon delivery of a written notice to Garver.

### **RECOMMENDATION:**

Administration recommends approval.

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

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A MASTER AGREEMENT FOR PROFESSIONAL SERVICES WITH GARVER, LLC FOR ADDISON AIRPORT ON-CALL SERVICES FOR THE 2020 FISCAL YEAR IN AN AMOUNT NOT TO EXCEED \$137,000.00, 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 Master Agreement for Professional Services between the Town of Addison, Texas and Garver, LLC for Addison Airport On-Call Services for the 2020 fiscal year in an amount not to exceed \$137,000.00, attached hereto as **Exhibit A**, is hereby approved. The City Manager is hereby authorized to execute the agreement and utilize the services contemplated therein by approving work orders under the agreement.

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

**DULY RESOLVED AND ADOPTED** by the City Council of the Town of Addison, Texas, on this the **12<sup>th</sup>** day of **NOVEMBER 2019**.

**TOWN OF ADDISON, TEXAS**

\_\_\_\_\_  
Joe Chow, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Irma Parker, City Secretary

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

# EXHIBIT A



## MASTER AGREEMENT FOR PROFESSIONAL SERVICES Addison Airport On-Call Services Town of Addison, Texas Project No. 20A11100

THIS MASTER AGREEMENT FOR PROFESSIONAL SERVICES is made by and between the **Town of Addison of Addison, Texas** hereinafter referred to as "Client," and **GARVER, LLC**, hereinafter referred to as "GARVER".

The Client desires to hire Garver to provide professional engineering and planning services related to Addison Airport, and Garver desires to provide such services to the Client.

GARVER will provide professional services related to these improvements as described herein.

The Client and GARVER in consideration of the mutual covenants in this contract agree in respect of the performance of professional services by GARVER and the payment for those services by the Client as set forth below. Execution of the agreement by GARVER and the Client constitutes the Client's written authorization to GARVER to proceed on the date last written below with the services described herein.

### SECTION 1 - EMPLOYMENT OF GARVER

The Client agrees to engage GARVER, and GARVER agrees to perform professional services in connection with the proposed improvements as stated in the sections to follow. These services will conform to the requirements and standards of the Client and conform to the standards of practice ordinarily used by members of GARVER's profession practicing under similar conditions. For having rendered such services, the Client agrees to pay GARVER compensation as stated in the sections to follow.

### SECTION 2 - SCOPE OF SERVICES

GARVER will perform professional services as requested by the Client. The terms of each work assignment or project will be defined and agreed upon by the Client and GARVER and represented in the form of a written Work Order.

### SECTION 3 - PAYMENT

For the work described in each Work Order, except as otherwise agreed to in writing by the Client and GARVER, the Client agrees to pay GARVER in accordance with the terms written in the applicable Work Order.

Notwithstanding any other provision of this Agreement, the total amount to be paid to Garver under this Agreement shall not exceed **\$137,000.00**.

For the work described under SECTION 2 - SCOPE OF SERVICES, the Client will pay GARVER on a monthly basis. The Client represents that funding sources are in place with the available funds necessary to pay GARVER.

Master Agreement for Professional Services 1 of 8  
ADS On-Call Services

Garver Project No. 20A11100



If any payment due GARVER under this agreement is not received within 60 days from date of invoice, GARVER may elect to suspend services under this agreement without penalty or liquidated damages assessed from the Client.

As directed by the Client, some billable work may have been performed by GARVER prior to execution of this agreement. Payment for this work will be made in accordance with the fee arrangement established herein, as approved by the Client.

Additional Services (Extra Work). For work not described or included in Section 2 – Scope of Services but requested by the Client in writing, the Client will pay GARVER, for time spent on the project, at the rates shown in Appendix A for each classification of GARVER's personnel (may include contract staff classified at GARVER's discretion) plus reimbursable expenses including but not limited to printing, courier service, reproduction, and travel. The rates shown in Appendix A will be increased annually with the first increase effective on or about June 1, 2020.

#### **SECTION 4 - CLIENT'S RESPONSIBILITIES**

In connection with the project, the Client's responsibilities shall include, but not be limited to, the following:

1. Giving thorough consideration to all documents presented by GARVER and informing GARVER of all decisions within a reasonable time so as not to delay the work of GARVER.
2. Making provision for the employees of GARVER to enter public and private lands as required for GARVER to perform necessary preliminary surveys and other investigations.
3. Obtaining the necessary lands, easements and right-of-way for the construction of the work. All costs associated with securing the necessary land interests, including property acquisition and/or easement document preparation, surveys, appraisals, and abstract work, shall be borne by the Client outside of this contract, except as otherwise described in Section 2 – Scope of Services.
4. Furnishing GARVER such plans and records of construction and operation of existing facilities, available aerial photography, reports, surveys, or copies of the same, related to or bearing on the proposed work as may be in the possession of the Client. Such documents or data will be returned upon completion of the work or at the request of the Client.
5. Furnishing GARVER a current boundary survey with easements of record plotted for the project property.
6. Paying all plan review and advertising costs in connection with the project.
7. Providing legal, accounting, and insurance counseling services necessary for the project and such auditing services as the Client may require.
8. Furnishing permits, permit fees, and approvals from all governmental authorities having jurisdiction over the project and others as may be necessary for completion of the project.
9. Giving prompt written notice to GARVER whenever the Client observes or otherwise becomes aware of any defect in the project or other events which may substantially alter GARVER's performance under this Agreement.





10. Client will not hire any of GARVER's employees during performance of this contract and for a period of one year beyond completion of this contract.
11. Furnishing GARVER a current geotechnical report for the proposed site of construction. GARVER will coordinate with the geotechnical consultant, the Owner has contracted with, on the Owner's behalf for the information that is needed for this project.

## **SECTION 5 – MISCELLANEOUS**

### **5.1 Instruments of Service**

GARVER's instruments of service provided by this agreement consist of the printed hard copy reports, drawings, and specifications issued for the Assignment or Project; whereas electronic media, including CADD files, are tools for their preparation. As a convenience to the Client, GARVER will furnish to the Client both printed hard copies and electronic media. In the event of a conflict in their content, however, the printed hard copies shall take precedence over the electronic media.

GARVER's electronic media are furnished without guarantee of compatibility with the Client's software or hardware, and GARVER's sole responsibility for the electronic media is to furnish a replacement for defective disks within thirty (30) days after delivery to the Client.

GARVER retains ownership of the printed hard copy drawings and specifications and the electronic media. The Client is granted a license for their use, but only in the operation and maintenance of the Project or Assignment for which they were provided. Use of these materials for modification, extension, or expansion of this Project or on any other project, unless under the direction of GARVER, shall be without liability to GARVER and GARVER's consultants. The Client shall indemnify, defend, save harmless GARVER, GARVER's consultants, and the officers and employees of any of them from and against any and all claims, liabilities, damages, losses, and costs, including but not limited to costs of defense, arising out of the Client's use of these materials for modification, extension, or expansion of this Project or on any other project not under the direction of GARVER.

Because data stored in electronic media form can be altered, either intentionally or unintentionally, by transcription, machine error, environmental factors, or by operators, it is agreed that the Client shall indemnify, defend, save harmless GARVER, GARVER's consultants, and the officers and employees of any of them from and against any and all claims, liabilities, damages, losses, and costs, including but not limited to costs of defense, arising out of changes or modifications to the data in electronic media form in the Client's possession or released to others by the Client and for any use of the electronic media and printed hard copy drawings and specifications outside the license granted by this provision.

### **5.2 Opinions of Cost**

Since GARVER has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, GARVER's Estimates of Project Costs and Construction Costs provided for herein are to be made on the basis of GARVER's experience and qualifications and represent GARVER's best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but GARVER cannot and does not guarantee that proposals, bids or actual Total Project or Construction Costs will not vary from estimates prepared by GARVER.

The Client understands that the construction cost estimates developed by GARVER do not establish a limit for the construction contract amount. If the actual amount of the low construction bid exceeds the



construction budget established by the Client, GARVER will not be required to re-design the project without additional compensation.

### 5.3 Underground Utilities

GARVER will not, unless defined within a Work Order, provide research regarding utilities and survey utilities located and marked by their owners as provided for in this agreement. Additionally, since many utility companies typically will not locate and mark their underground facilities prior to notice of excavation, GARVER is not responsible for knowing whether underground utilities are present or knowing the exact location of utilities for design and cost estimating purposes. Additionally, GARVER is not responsible for damage to underground utilities, unmarked or improperly marked, caused by geotechnical, potholing, construction, or other subconsultants working under a subcontract to this agreement.

### 5.4 Insurance

GARVER currently has in force, and agrees to maintain in force for the life of this Contract, the following minimum schedule of insurance:

|  |                 |
|--|-----------------|
| Worker's Compensation  | Statutory Limit |
| Automobile Liability<br>(Combined Property Damage and Bodily Injury) | \$500,000.00    |
| General Liability<br>(Combined Property Damage and Bodily Injury)    | \$1,000,000.00  |
| Professional Liability   | \$2,000,000.00  |

Garver shall name Client as an additional insured on Garver's General Liability policy.

### 5.5 Records

GARVER will retain all pertinent records for a period of two years beyond completion of the project. Client may have access to such records during normal business hours.

### 5.6 Indemnity Provision

Subject to the limitation on liability set forth in Section 5.8, GARVER agrees to indemnify the Client for damages, liabilities, or costs (including reasonable attorneys' fees recoverable under applicable law) to the extent the damages and costs are found to be caused by the negligent acts, errors, or omissions of GARVER, its subconsultants, or any other party for whom GARVER is legally liable, in the performance of their professional services under this contract.

The Client agrees to indemnify GARVER for damages, liabilities, or costs (including reasonable attorneys' fees recoverable under applicable law) to the extent the damages and costs are found to be caused by the negligent acts, errors, or omissions of the Client, its agents, or any other party for whom the Client is legally liable, in the performance of their professional services under this contract.

In the event claims, losses, damages, or expenses are found to be caused by the joint or concurrent negligence of GARVER and the Client, they shall be borne by each party in proportion to its own negligence.



Client agrees that any claim or suit for damages made or filed against GARVER by Client will be made or filed solely against GARVER or its successors or assigns and that no member or employee of GARVER shall be personally liable to Client for damages under any circumstances.

#### **5.7 Design without Construction Phase Services**

Unless otherwise stipulated in Work Orders, it is understood and agreed that GARVER's Scope of Services under this Agreement does not include project observation or review of the Contractor's performance or any other construction phase services, and that such services will be provided by the Client. The Client assumes all responsibility for interpretation of the Construction Contract Documents and for construction observation and supervision and waives any claims against GARVER that may be in any way connected thereto.

In addition, the Client agrees, to the fullest extent permitted by law, to indemnify and hold GARVER harmless from any loss, claim or cost, including reasonable attorneys' fees and costs of defense, arising or resulting from the performance of such services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustments or changes made to the Construction Contract Documents to reflect changed field or other conditions, except for claims arising from the sole negligence or willful misconduct of GARVER.

If the Client requests in writing that GARVER provide any specific construction phase services and if GARVER agrees in writing to provide such services, then they shall be compensated for the work as Additional Services.

#### **5.8 Limitation of Liability**

IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS OF THE PROJECT TO BOTH THE CLIENT AND GARVER, THE RISKS HAVE BEEN ALLOCATED SUCH THAT THE CLIENT AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO LIMIT THE LIABILITY OF GARVER AND ITS SUBCONSULTANTS TO THE CLIENT AND TO ALL CONSTRUCTION CONTRACTORS AND SUBCONTRACTORS ON THE PROJECT FOR ANY AND ALL CLAIMS, LOSSES, COSTS, DAMAGES OF ANY NATURE WHATSOEVER OR CLAIMS FOR EXPENSES FROM ANY CAUSE OR CAUSES, SO THAT THE TOTAL AGGREGATE LIABILITY OF GARVER AND ITS SUBCONSULTANTS TO ALL THOSE NAMED SHALL NOT EXCEED GARVER'S TOTAL FEE FOR SERVICES RENDERED ON THIS PROJECT. SUCH CLAIMS AND CAUSES INCLUDE, BUT ARE NOT LIMITED TO NEGLIGENCE, PROFESSIONAL ERRORS OR OMISSIONS, STRICT LIABILITY, BREACH OF CONTRACTOR WARRANTY, AND INDEMNITY OBLIGATIONS.

NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY IN THIS AGREEMENT OR A WORK AUTHORIZATION AND TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER CLIENT NOR GARVER SHALL BE LIABLE, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, WARRANTY, INDEMNITY, ERROR AND OMISSION, OR ANY OTHER CAUSE WHATSOEVER, FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES, OR DAMAGES ARISING FROM OR IN CONNECTION WITH LOSS OF POWER, LOSS OF USE, LOSS OF REVENUE OR PROFIT (ACTUAL OR ANTICIPATED), LOSS BY REASON OF SHUTDOWN OR NON-OPERATION, INCREASED COST OF CONSTRUCTION, COST OF CAPITAL, COST OF REPLACEMENT POWER OR CUSTOMER CLAIMS, AND CLIENT HEREBY RELEASES GARVER, AND GARVER RELEASES CLIENT, FROM ANY SUCH LIABILITY.



#### **5.8.1 Hazardous Materials**

Nothing in this agreement shall be construed or interpreted as requiring GARVER to assume any role in the identification, evaluation, treatment, storage, disposal, or transportation of any hazardous substance or waste. Notwithstanding any other provision to the contrary in this Agreement or a Work Authorization and to the fullest extent permitted by law, Client shall indemnify, defend and save GARVER and its affiliates, subconsultants, agents, suppliers, and any and all employees, officers, directors of any of the foregoing, if any, from and against any and all losses which arise out of the performance of the Services and relating to the regulation and/or protection of the environment, including, without limitation, losses incurred in connection with characterization, handling, transportation, storage, removal, remediation, disturbance, or disposal of hazardous material, whether above or below ground.

#### **5.9 Mediation**

The Client and GARVER agree that any and all discussions resulting from this clause are confidential. As they may apply to the presiding rules of evidence, negotiations pursuant to this clause shall not imply admission of responsibility or guilt for the aggravating action, but shall be regarded as compromise, resolution attempts, and settlement negotiations.

The Client and GARVER agree to, through good faith efforts, first attempt to resolve all conflicts that arise out of or related to this Agreement, through direct discussions involving senior and/or executive management representatives from their respective organizations. It is a requirement of this clause for this condition be attempted prior to the use of other dispute resolution processes. If the respective representatives are unable to develop a compromise resolving the dispute, such that it is satisfactory to both parties within thirty (30) calendar days after a party delivers a written notice of such dispute, then further mediation processes shall begin, as described herein.

If direct discussions fail to resolve the dispute, the Client and Garver further agree to pursue non-binding mediation unless the parties mutually agree otherwise.

The Client and GARVER further agree to use their reasonable best efforts to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants and in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

#### **5.10 Litigation Assistance**

This Agreement does not include costs of GARVER for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by the Client, unless Litigation Assistance has been expressly included as part of the work defined in Section 2 - Scope of Services. In the event the Client requests such services of GARVER, this Agreement shall be amended in writing by both the Client and GARVER or a separate written agreement will be negotiated between the parties.

### **SECTION 6 - CONTROL OF SERVICES**

This is a Texas Contract and in the event of a dispute concerning a question of fact in connection with the provisions of this contract which cannot be disposed of by mutual agreement between the Client and GARVER, the matter shall be resolved in accordance with the Laws of the State of Texas.



This Agreement may be terminated by either party by seven (7) days written notice in the event of substantial failure to perform in accordance with the terms hereof by the one (1) party through no fault to the other party or for the convenience of the Client upon delivery of written notice to GARVER. If this Agreement is so terminated, GARVER shall be paid for the time and materials expended to accomplish the services performed to date, as provided in SECTION 3 - PAYMENT; however, GARVER may be required to furnish an accounting of all costs.

#### **SECTION 7 - SUCCESSORS AND ASSIGNS**

The Client and GARVER each bind themselves and their successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement; neither the Client nor GARVER shall assign, sublet, or transfer their interest in this agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

#### **SECTION 8 – APPENDICES AND EXHIBITS**

- 8.1 The following Appendices and/or Exhibits are attached to and made a part of this Agreement:
- 8.1.1 Appendix A – Garver Hourly Rate Schedule
  - 8.1.2 Appendix B – Sample Work Order

Acceptance of this proposed Agreement is indicated by an authorized agent of the Client signing in the space provided below. Please return one signed original of this Agreement to GARVER for our records.

|

|





IN WITNESS WHEREOF, Client and GARVER have executed this Agreement effective as of the date last written below.

Town of Addison

GARVER, LLC

By: \_\_\_\_\_  
*Signature*

By: Frank McIlwain  
*Signature*

Name: \_\_\_\_\_  
*Printed Name*

Name: Frank McIlwain  
*Printed Name*

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

Title: Vice President

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

Date: November 1, 2019

Attest: \_\_\_\_\_

Attest: Michelle McCall



**APPENDIX A**  
**Addison Airport On-Call Services**  
**2020 Garver Hourly Rate Schedule**

| Classification                             | Rates     |
|--|-----------|
| <b>Engineers / Architects</b>              |           |
| E-1.....                                   | \$ 141.00 |
| E-2.....                                   | \$ 167.00 |
| E-3.....                                   | \$ 196.00 |
| E-4.....                                   | \$ 231.00 |
| E-5.....                                   | \$ 284.00 |
| E-6.....                                   | \$ 351.00 |
| E-7.....                                   | \$ 395.00 |
| <b>Planners / Environmental Specialist</b> |           |
| P-1.....                                   | \$ 171.00 |
| P-2.....                                   | \$ 202.00 |
| P-3.....                                   | \$ 230.00 |
| P-4.....                                   | \$ 245.00 |
| P-5.....                                   | \$ 295.00 |
| P-6.....                                   | \$ 350.00 |
| P-7.....                                   | \$ 390.00 |
| <b>Designers</b>                           |           |
| D-1.....                                   | \$ 127.00 |
| D-2.....                                   | \$ 144.00 |
| D-3.....                                   | \$ 171.00 |
| D-4.....                                   | \$ 200.00 |
| <b>Technicians</b>                         |           |
| T-1.....                                   | \$ 109.00 |
| T-2.....                                   | \$ 148.00 |
| T-3.....                                   | \$ 160.00 |
| <b>Surveyors</b>                           |           |
| S-1.....                                   | \$ 68.00  |
| S-2.....                                   | \$ 81.00  |
| S-3.....                                   | \$ 112.00 |
| S-4.....                                   | \$ 153.00 |
| S-5.....                                   | \$ 202.00 |
| S-6.....                                   | \$ 236.00 |
| 2-Man Crew (Survey).....                   | \$ 244.00 |
| 3-Man Crew (Survey).....                   | \$ 312.00 |
| 2-Man Crew (GPS Survey).....               | \$ 264.00 |
| 3-Man Crew (GPS Survey).....               | \$ 332.00 |
| <b>Construction Observation</b>            |           |
| C-1.....                                   | \$ 120.00 |
| C-2.....                                   | \$ 151.00 |
| C-3.....                                   | \$ 182.00 |
| C-4.....                                   | \$ 236.00 |
| <b>Management/Administration</b>           |           |
| M-1.....                                   | \$ 403.00 |
| X-1.....                                   | \$ 82.00  |
| X-2.....                                   | \$ 104.00 |
| X-3.....                                   | \$ 167.00 |
| X-4.....                                   | \$ 197.00 |
| X-5.....                                   | \$ 207.00 |
| X-6.....                                   | \$ 246.00 |
| X-7.....                                   | \$ 279.00 |

Agreement for Professional Services  
ADS On-Call Services

Garver Project No. 20A11100



APPENDIX B

WORK ORDER NO. [?]  
Town of Addison  
Town of Addison, Texas  
Project No. 20A11100

This WORK ORDER is made by and between the **Town of Addison, Texas** hereinafter referred to as "Client," and **GARVER, LLC**, hereinafter referred to as "GARVER", in accordance with the provisions of the MASTER AGREEMENT FOR PROFESSIONAL SERVICES executed on [??/??/????].

Under this Work Order, the Client intends to make the following improvements for **[Insert Project Title]**:

[Insert text here.]

GARVER will provide professional services related to these improvements as described herein.

**SECTION 1 - SCOPE OF SERVICES**

[Insert text here.]

**SECTION 2 – PAYMENT**

For the work described under SECTION 1 - SCOPE OF SERVICES, the Client will pay GARVER on an hourly rate basis. The Client represents that funding sources are in place with the available funds necessary to pay GARVER.

The table below presents a summary of the fee amounts and fee types for this contract.

| WORK DESCRIPTION  | FEE AMOUNT | FEE TYPE    |
|---|------------|-------------|
| Preliminary Work/Study  |            | HOURLY RATE |
| Surveys   |            | HOURLY RATE |
| Preliminary Design  |            | HOURLY RATE |
| Final Design  |            | HOURLY RATE |
| Bidding Services  |            | HOURLY RATE |
| Construction Phase Services   |            | HOURLY RATE |
| Services After Construction – Warranty<br>Follow-Up; Start-Up; etc. |            | HOURLY RATE |
| Etc.  |            |             |
| TOTAL FEE   |            |             |

The Client will pay GARVER, for time spent on the project, at the rates established in the Master Services Agreement for each classification of GARVER's personnel (may include contract staff classified at GARVER's discretion) plus reimbursable expenses including but not limited to printing, courier service, reproduction, and travel. The total amount paid to GARVER under this work order is estimated to be [Insert Fee]. The actual total fee may exceed this estimate.

Work Order No. [?]  
Addison Airport On-Call Services

1 of 3

Garver Project No. 20A11100





Expenses other than salary costs that are directly attributable to performance of our professional services will be billed as follows:

1. Actual direct cost for travel, long distance and wireless communications, outside reproduction and presentation material preparation, and mail/courier expenses (however, no travel outside of Dallas County, Texas shall be eligible for payment or reimbursement unless GARVER has, prior to any such travel, submitted to Client the costs and received the Client's written consent for the same).
2. Actual direct cost plus 10 percent for subcontract/subconsultant fees.
3. Commercial rates or similar in-house production for reports, plan sheets, presentation materials, etc.
4. \$100 per month for each month computer design/modeling software is utilized.
5. The amount allowed by the federal government for mileage with an additional \$0.05 for survey trucks/vans.
6. \$20 per hour for GPS survey equipment use.
7. \$20 per day for traffic counter equipment use.

The Client will pay GARVER on a monthly basis, based upon statements submitted by GARVER to the Client for the scope of services described in this work order. Payments not received within 60 days of invoice date will be subject to a one percent monthly simple interest charge.

### SECTION 3 – APPENDICES AND EXHIBITS

- 3.1 The following Appendices and/or Exhibits are attached to and made a part of this Agreement:
  - 3.1.1 Appendix A - Project Location Map
- 3.2 The Master agreement For Professional Services between the Client and Garver, executed on \_\_\_\_\_ is incorporated as if fully set forth herein and the parties affirm and restate the provisions contained therein.

This Agreement may be executed in two (2) or more counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Work Order No. [?]  
Addison Airport On-Call Services

2 of 3

Garver Project No. 20A11100



Approval and acceptance of this Work Order, including attachments listed in SECTION 3 – APPENDICES AND EXHIBITS, shall incorporate this document as part of the Agreement. Garver is authorized to begin performance upon receipt of a copy of this Work Order signed by the Client. The effective date of this Work Order shall be the last date written below.

TOWN OF ADDISON, TEXAS

GARVER, LLC

By: \_\_\_\_\_  
*Signature*

By: \_\_\_\_\_  
*Signature*

Name: \_\_\_\_\_  
*Printed Name*

Name: \_\_\_\_\_  
*Printed Name*

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

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

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

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

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

Work Order No. [?]  
Addison Airport On-Call Services

3 of 3

Garver Project No. 20A11100

## Work Session and Regular Meeting

12.

Meeting Date: 11/12/2019

Department: City Secretary

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### AGENDA CAPTION:

Present, Discuss, and Consider Action on a **Resolution Canvassing and Declaring the Results of a Special Bond Election Held in the Town of Addison, Texas, on November 5, 2019.**

### BACKGROUND:

A Special Election was held on Tuesday, November 5, 2019 for the purpose of submitting to the voters of the Town five (5) propositions.

The purpose of this agenda item is to canvass the election returns and declare the election results. At the time of finalizing this agenda item, the Town has not yet received the complete canvass of results from Dallas County Elections Office. The results will be made available as soon as they are received from Dallas County.

Summary of 2019 Bond Election Results:

| Proposition |         | Early Voting | Election Day | Total | Percentage |
|-------------|---------|--------------|--------------|-------|------------|
| A           | For     | 278          | 426          | 704   | 58.04%     |
|             | Against | 174          | 335          | 509   | 41.96%     |
|             | Total   | 452          | 761          | 1213  |            |
| B           | For     | 277          | 418          | 695   | 57.49%     |
|             | Against | 171          | 343          | 514   | 42.51%     |
|             | Total   | 448          | 761          | 1209  |            |
| C           | For     | 306          | 519          | 825   | 67.96%     |
|             | Against | 147          | 242          | 389   | 32.04%     |
|             | Total   | 453          | 761          | 1214  |            |
| D           | For     | 279          | 476          | 755   | 62.29%     |
|             | Against | 173          | 284          | 457   | 37.71%     |
|             | Total   | 452          | 760          | 1212  |            |
| E           | For     | 313          | 497          | 810   | 67.00%     |
|             | Against | 136          | 263          | 399   | 33.00%     |
|             | Total   | 449          | 760          | 1209  |            |

**RECOMMENDATION:**

Administration recommends approval.

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**Attachments**

Resolution - Canvassing November 5, 2019 Bond Election

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**RESOLUTION NO. R19-\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS CANVASSING RETURNS AND DECLARING THE RESULTS OF A BOND ELECTION HELD IN THE TOWN OF ADDISON, TEXAS, ON NOVEMBER 5, 2019 AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council (the “City Council”) of the Town of Addison, Texas (the “Town”) on August 13, 2019 ordered that a bond election (the “Election”) be held within the Town on November 5, 2019, for the purpose of submitting to the resident qualified electors of the Town the propositions hereinafter set forth; and

**WHEREAS**, notice of this election was duly published in the Dallas Morning News and posted on the bulletin board at Town Hall; and

**WHEREAS**, the City Council has investigated all matters pertaining to the Election, including the ordinance calling the Election, giving notice, appointing officers, holding and making returns of the Election; the election officers who held the Election have duly made the returns of the results thereof; and said returns have been duly delivered to the City Council for official canvassing of the returns thereof; and

**WHEREAS**, upon the consideration of the returns of the Election, it is hereby found and determined that the same was held in accordance with the authorizing proceedings and was in all respects legally held after due notice had been given, and the returns duly and legally made, and other instruments;

**WHEREAS**, the official canvass of the returns of the Election showed the following results:

| <b><u>TOWN OF ADDISON - PROPOSITION A</u></b>   |                                      |
|---|--------------------------------------|
| “Shall the City Council of the Town of Addison, Texas, be authorized to issue general obligation bonds of the Town in the amount of \$22,300,000 for the purpose of providing funds for permanent public improvements, to wit: designing, developing, constructing and improving Keller Springs Road and Airport Parkway, both from Dallas North Tollway to Addison Road, including sidewalks, bridges, landscaping, streetlighting, right-of-way protection, and related storm drainage improvements; and acquiring rights-of-way in connection therewith; said bonds to mature serially over a period of not to exceed twenty-five (25) years from their date, to be issued in such installments and sold at any price or prices and to bear interest at any rate or rates as shall be determined within the discretion of the City Council under laws in effect at the time of issuance, and to provide for the payment of the principal of and interest on said bonds by levying a tax sufficient to pay the annual interest on and to create a sinking fund sufficient to redeem said bonds as they become due?” | <b><u>704</u>      Votes For</b>     |
|   | <b><u>509</u>      Votes Against</b> |

|   |   |
|---|---|
| <p align="center"><b><u>TOWN OF ADDISON - PROPOSITION B</u></b></p> <p>“Shall the City Council of the Town of Addison, Texas, be authorized to issue general obligation bonds of the Town in the amount of \$33,602,000 for the purpose of providing funds for permanent public improvements, to wit: designing, developing, constructing and improving Quorum Drive from the DART Rail line to Dallas North Tollway and Montfort Drive from Beltline Road to the Addison city limits, including sidewalks, bridges, landscaping, streetlighting, right-of-way protection and related storm drainage improvements; and acquiring rights-of-way in connection therewith; said bonds to mature serially over a period of not to exceed twenty-five (25) years from their date, to be issued in such installments and sold at any price or prices and to bear interest at any rate or rates as shall be determined within the discretion of the City Council under laws in effect at the time of issuance, and to provide for the payment of the principal of and interest on said bonds by levying a tax sufficient to pay the annual interest on and to create a sinking fund sufficient to redeem said bonds as they become due?”</p>                                     | <p><b><u>695</u></b>      <b>Votes For</b></p> <p><b><u>514</u></b>      <b>Votes Against</b></p> |
| <p align="center"><b><u>TOWN OF ADDISON - PROPOSITION C</u></b></p> <p>“Shall the City Council of the Town of Addison, Texas, be authorized to issue general obligation bonds of the Town in the amount of \$6,723,000 for the purpose of providing funds for permanent public improvements, to wit: acquiring, developing, renovating and improving parks, park facilities, recreation facilities, including the Addison Athletic Club, and open spaces for park and recreation purposes in and for the Town, including the acquisition of land therefor; said bonds to mature serially over a period of not to exceed twenty-five (25) years from their date, to be issued in such installments and sold at any price or prices and to bear interest at any rate or rates as shall be determined within the discretion of the City Council under laws in effect at the time of issuance, and to provide for the payment of the principal of and interest on said bonds by levying a tax sufficient to pay the annual interest on and to create a sinking fund sufficient to redeem said bonds as they become due?”</p>  | <p><b><u>825</u></b>      <b>Votes For</b></p> <p><b><u>389</u></b>      <b>Votes Against</b></p> |
| <p align="center"><b><u>TOWN OF ADDISON - PROPOSITION D</u></b></p> <p>“Shall the City Council of the Town of Addison, Texas, be authorized to issue general obligation bonds of the Town in the amount of \$7,395,000 for the purpose of providing funds for permanent public improvements; to-wit: renovating, repairing, improving, and equipping existing Town service, public safety, conference and administrative facilities, including repair, replacement, and improvement of roofs, mechanical, electrical, plumbing, air conditioning, heating and ventilation equipment and systems, façade improvements, and improvements required by the Americans with Disabilities Act and other applicable laws; said bonds to mature serially over a period not to exceed twenty-five (25) years from their date, to be issued in such installments and sold at any price or prices and to bear interest at any rate or rates as shall be determined within the discretion of the City Council under laws in effect at the time of issuance, and to provide for the payment of the principal and interest on said bonds by levying a tax sufficient to pay the annual interest on and to create a sinking fund sufficient to redeem said bonds as they become due?”</p> | <p><b><u>755</u></b>      <b>Votes For</b></p> <p><b><u>457</u></b>      <b>Votes Against</b></p> |
| <p align="center"><b><u>TOWN OF ADDISON - PROPOSITION E</u></b></p> <p>“Shall the City Council of the Town of Addison, Texas, be authorized to issue general obligation bonds of the Town in the amount of \$600,000 for the purpose of providing funds for permanent public improvements; to-wit: improving, acquiring and equipping advanced traffic control systems and facilities, said bonds to mature serially over a period not to exceed twenty-five (25) years from their date, to be issued in such installments and sold at any price or prices and to bear interest at any rate or rates as shall be determined within the discretion of the City Council under laws in effect at the time of issuance, and to provide for the payment of the principal and interest on said bonds by levying a tax sufficient to pay the annual interest on and to create a sinking fund sufficient to redeem said bonds as they become due?”</p>  | <p><b><u>810</u></b>      <b>Votes For</b></p> <p><b><u>399</u></b>      <b>Votes Against</b></p> |



**TOTAL BALLOTS CAST IN ELECTION:**

**1,214**

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

**SECTION 1.** All of the recitals contained in the preamble of this Resolution are found to be true and are adopted as findings of fact by the City Council and as part of its judgment.

**SECTION 2.** The Election of November 5, 2019 was duly called, notice of the election was given in accordance with law, and the election was held in accordance with law.

**SECTION 3.** It is found and determined that the results of the Election as canvassed and tabulated in the preamble hereof reflect the expressed desires of the electors. Based on the results of the Election, the Town is authorized to issue its bonds with respect to the Propositions and in accordance with applicable law.

**SECTION 4.** This Resolution shall take effect immediately upon its passage and approval.

**DULY RESOLVED AND ADOPTED** by the City Council of the Town of Addison, Texas, on this the 12<sup>th</sup> day of NOVEMBER 2019.

**TOWN OF ADDISON, TEXAS**

\_\_\_\_\_  
Joe Chow, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Irma Parker, City Secretary

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