

DRAFT



REGULAR MEETING & WORK SESSION OF THE CITY COUNCIL

October 27, 2020

ADDISON TREEHOUSE

**14681 MIDWAY RD., ADDISON, TX 75001
5:45 PM EXECUTIVE SESSION, WORK SESSION
& REGULAR MEETING**

Notice is hereby given that the Addison City Council will conduct its REGULARLY SCHEDULED MEETING on Tuesday, October 27, 2020 at the Addison TreeHouse with a quorum of the City Council physically present. Limited seating for members of the public will be available using CDC recommended social distancing measures. The Town will utilize telephone or videoconference public meetings to facilitate public participation to mitigate the spread of COVID-19 by avoiding meetings that bring people into a group setting. Telephonic or videoconferencing capabilities will be utilized to allow individuals to address the Council. Email comments may also be submitted to: iparker@addisontx.gov by 3:00 pm the day of the meeting. Members of the public are entitled to participate remotely via Toll-Free Dial-in Number: 877.853.5247; Meeting ID: 409.327.0683 Participant ID: #. For more detailed instructions on how to participate in this meeting visit our Agenda Page. The meeting will be live streamed on Addison's website at: www.addisontexas.net.

Call Meeting to Order

Pledge of Allegiance

EXECUTIVE SESSION

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

Section 551.071, Tex. Gov. Code, Consultation with an attorney to seek legal advice regarding pending or contemplated litigation or settlement offer, regarding:

- G J Seeding, LLC v. FNH Construction, LLC and Hudson Insurance Company, Cause No. DC-20-11409, 134th Judicial District, Dallas County, Texas.

Reconvene in to Regular Session: In accordance with Texas Government Code, Chapter 551, the City Council will reconvene into Regular Session to consider action, if any, on matters discussed in Executive Session.

WORK SESSION

1. Present and Discuss the **Hotel Fund's Financial Sustainability.**
2. Present and Discuss **Public Input Related to the Addison Athletic Club Renovations.**
3. Present and Discuss the **Council Calendar for November 2020 through March 2021.**
4. Present and Discuss **Options for a 2020 Community Holiday Event.**
5. Present and Discuss an **Update on the Town's Citizen Engagement Platform, the Addison FixIT App.**

REGULAR MEETING

Announcements and Acknowledgments Regarding Town and Council Events and Activities

Discussion of Meetings / Events

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.

Consent Agenda

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

6. Consider Action on the **Minutes from October 13, 2020 Regular Meeting.**

7. Consider Action on **Ordinances to Reappoint Larry Dwight as Presiding Municipal Judge to the Addison Municipal Court of Record #1 and to Reappoint Cass Callaway and Danielle Dulaney as Alternate Municipal Judges to the Addison Municipal Court of Record #1 and Authorize the City Manager to Execute the Agreements.**

8. Consider Action on an **Ordinance Amending Chapter 38, Section 38-54 (Emergency Ambulance Service Fees) of the Code of Ordinances of the Town of Addison.**

9. Consider Action on a **Resolution Authorizing the City Manager to Enter into an Agreement with the Texas Department of Transportation to Participate in the Routine Airport Maintenance Program (RAMP) Grant for Airport Improvements at Addison Airport in an Amount Not to Exceed \$50,000.**
10. Consider Action to **Authorize the Purchase and Installation of Furnishings, Fixtures, and Equipment for the Addison Airport Customs and Border Protection and Airport Administration Facility from bkm Total Office of Texas, LLC, Through the OMNIA Partners Purchasing Cooperative** in an Amount Not to Exceed \$158,158.03.
11. Consider Action on a **Resolution to Approve the Agreement for Professional Engineering Services Between the Town of Addison and Cobb, Fendley & Associates, Inc. to Perform Professional Services for a Comprehensive Update of the Current Engineering Design Standards, Construction Details, and Front-End Bid Document Specifications for the Town of Addison and Authorize the City Manager to Execute the Agreement** in an Amount Not to Exceed \$186,550.
12. Consider Action on a **Resolution to Approve a Professional Services Agreement with Kleinfelder, Inc. to Perform Engineering Services for a Risk & Resilience Assessment and Emergency Response Plan and Authorize the City Manager to Execute the Agreement** in an Amount Not to Exceed \$86,200.
13. Consider Action on a **Resolution to Approve the Purchase of Network Infrastructure from Solid IT Networks, Inc. and an End User License Agreement with Extreme Network for the Installation of Hardware, Software, and Ongoing Technical Support Services and Authorize the City Manager to Execute the Agreement** in an Amount Not to Exceed \$158,441.27.
14. Consider Action on a **Resolution to Approve an Agreement for Funding Between the Town of Addison and the Metrocrest Chamber of Commerce and Authorizing the City Manager to Execute the Agreement** in an Amount Not to Exceed \$35,000.

15. Present, Discuss, and Consider Action on an Ordinance Granting a Meritorious Exception from the Code of Ordinances Chapter 62 for Fish Gallery, Located at 15003 Inwood Road, in Order to Permit Two Signs with a Height of 33 inches, One on the East Facade and One on the South Facade.

16. Present, Discuss, and Consider Action on the Appointment of a Selection Committee for the Addison Circle/Silver Line Station Transit-oriented Development Project.

Adjourn Meeting

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

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.

POSTED BY: _____
Irma G. Parker, City Secretary

DATE POSTED: _____

TIME POSTED: _____

DATE REMOVED FROM BULLETIN BOARD: _____

REMOVED BY: _____

Council Meeting

1.

Meeting Date: 10/27/2020

Department: City Manager

Pillars: Gold Standard for Financial Health

AGENDA CAPTION:

Present and Discuss the Hotel Fund's Financial Sustainability.

BACKGROUND:

Hotel Fund revenue has been negatively impacted by the economic effects of COVID-19. In the first of two Work Session discussions, Staff will present an overview of the Hotel Fund, the Hotel Occupancy Tax, and a projection of the Hotel Fund's financial sustainability over the next five years.

Staff will also present details on the individual programs (events and activities) budgeted in the Hotel Fund. Each program will be presented with a description, financial information, and a Staff developed rating. Staff will then seek Council direction regarding the development of program recommendations intended to maintain the financial sustainability of the Hotel Fund. Staff will take this direction, develop specific recommendations, and bring the recommendations back to Council for discussion at a future Work Session.

RECOMMENDATION:

Staff requests direction from Council.

Attachments

Presentation - Hotel Fund Financial Sustainability Discussion

Municipal Hotel Occupancy Taxes - Texas Hotel and Lodging Association

The Hotel Tax - Texas Municipal League

Hotel Fund Financial Sustainability Discussion

The logo for Addison, featuring the word "ADDISON" in a bold, blue, sans-serif font centered within a white circle. The circle is set against a blue background that is part of a larger graphic design on the right side of the slide, which includes diagonal lines and a grey triangle at the top right corner.

ADDISON

Tonight's Agenda Item

Because of the continuing economic effects of COVID-19, Staff conducted a financial analysis of the Hotel Fund and made projections through FY2025.

The analysis revealed the Hotel Fund is financially sustainable through FY2021.

We are bringing this discussion forward proactively so that recommendations can be developed that maintain the minimum 25% reserve requirement in the fund after FY2021.

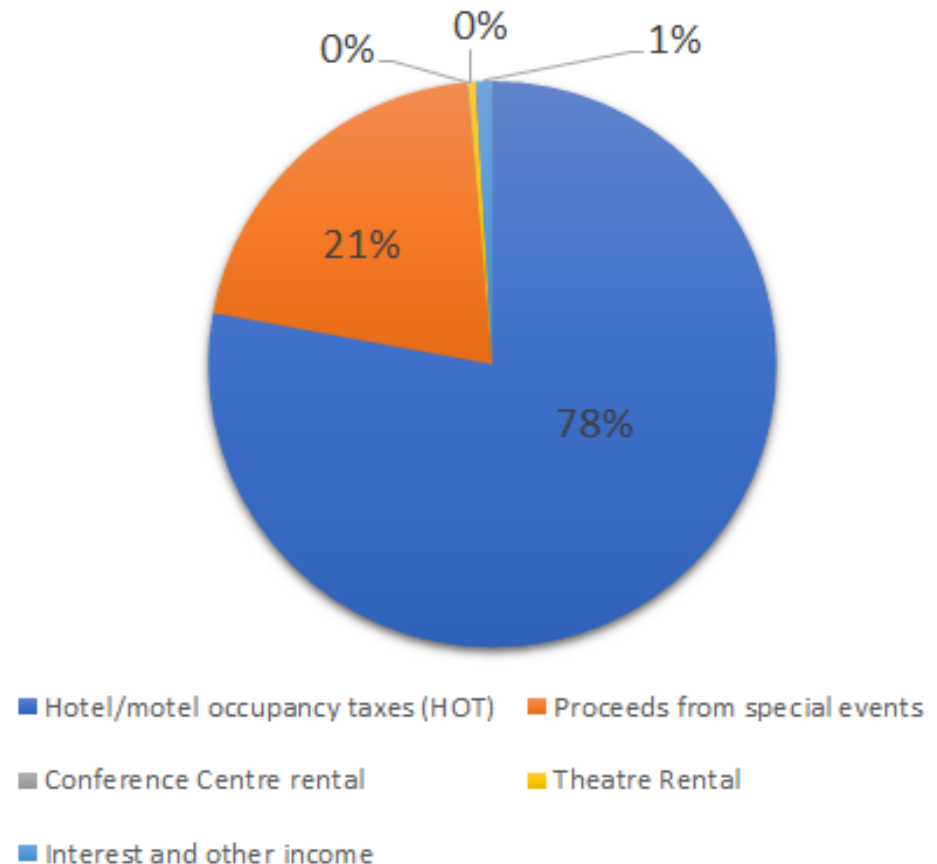
Staff will present a financial analysis of the Hotel Fund, discuss Hotel Fund's major events and activities, and seek Council direction on the development of recommendations to help insure the long-term financial sustainability of the fund.

The Hotel Fund accounts for the use of hotel occupancy tax revenue generated by Addison's hotels which is restricted by State legislation to directly enhancing and promoting tourism and the convention and hotel industry.

Hotel Fund revenue comes from:

- Hotel Occupancy Tax
- Special Events Revenue
- Conference Centre Rentals
- Theatre Centre Rentals
- Other Earnings

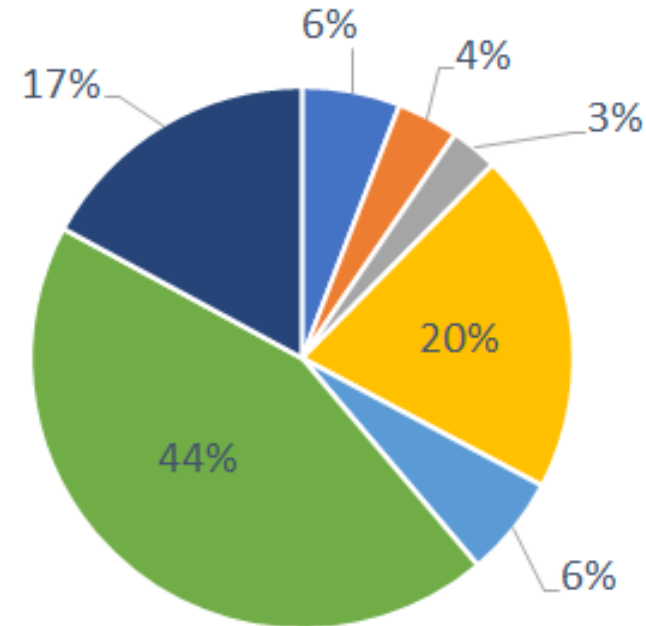
Hotel Fund FY 2021 Revenue



Major expenditures in this fund are:

- Special Events (44%)
- Marketing (20%)
- Special Events Operations (17%)
- Performing Arts (6%)
- Addison Theatre Centre (6%)
- Addison Conference Centre (4%)
- General Hotel Operations (3%)

Hotel Fund FY 2021 Expenditures



- Addison Theatre Centre
- Conference Centre
- General Hotel Operations
- Marketing
- Performing Arts
- Special Events
- Special Events Operations

Hotel Occupancy Tax Allowed Uses

The Hotel Occupancy Tax (HOT) in Texas is 13% of the price paid for a room with the state receiving 6% and the Town receiving 7%.

The Texas Municipal Hotel Occupancy Tax is defined in Texas Tax Code Chapter 351.

HOT revenue expenditures must meet a two-part test under the law:

1. Does the expense promote tourism AND the convention and hotel industry? If yes, move to #2.
2. The expense must meet one of the following categories:
 - 1) Construction, operation, and/or maintenance of convention center and/or visitor information center facilities.
 - 2) Convention registration.
 - 3) Advertising the city.
 - 4) Promotion of the arts. (15% maximum of HOT revenue with 'arts' defined by law)
 - 5) Historical restoration and preservation.
 - 6) Sporting events in a county under one million in population.
 - 7) Enhancing or upgrading existing sports facilities or sports fields (only in certain cities).
 - 8) Tourist transportation systems.
 - 9) Signage directing the public to sights and attractions that are visited frequently by hotel guests.

TOWN OF ADDISON									
HOTEL SPECIAL REVENUE FUND LONG-TERM FINANCIAL PLAN									
City Council Adopted FY2021 Annual Budget									
						Year 1	Year 2	Year 3	Year 4
	Actual	Estimated	Budget	Projected	Projected	Projected	Projected	Projected	Projected
	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24	2023-24	2023-24	2024-25
BEGINNING BALANCE	\$ 4,122,535	\$ 3,468,059	\$ 2,285,310	\$ 1,780,156	\$ 885,321	\$ 52,751	\$ (793,357)		
REVENUES:									
Hotel/motel occupancy taxes (HOT)	5,427,585	3,000,000	4,155,000	4,570,500	4,799,025	4,942,996	5,091,286		
Proceeds from special events	1,206,764	109,172	1,104,500	1,115,545	1,126,700	1,137,967	1,149,347		
Conference Centre rental	523,710	256,007	-	550,000	566,500	583,495	601,000		
Theatre Rental	78,316	60,000	23,810	24,048	24,289	24,531	24,777		
Interest and other income	118,410	86,315	50,100	50,601	51,107	51,618	52,134		
TOTAL REVENUES	\$7,354,785	\$3,511,494	\$5,333,410	\$6,310,694	\$6,567,621	\$6,740,608	\$6,918,544		
EXPENDITURES:									
Addison Theatre Centre	291,298	348,036	318,877	328,443	338,297	348,446	358,899		
Conference Centre	956,507	938,776	200,977	1,000,000	1,030,000	1,060,900	1,092,727		
General Hotel Operations	142,763	85,527	154,125	159,464	164,516	169,737	175,132		
Marketing	962,526	1,013,214	1,113,915	1,169,929	1,202,009	1,234,986	1,268,888		
Performing Arts	437,900	500,000	329,089	357,132	381,557	393,004	404,794		
Special Events	2,579,212	543,817	2,405,808	2,469,788	2,535,474	2,602,912	2,672,149		
Special Events Operations	903,337	846,912	931,773	952,773	980,339	1,008,732	1,037,978		
TOTAL OPERATING EXPENDITURES	6,273,544	4,276,282	5,454,564	6,437,529	6,632,191	6,818,716	7,010,567		
Fund transfer out	\$ 715,000	\$ 384,000	\$ 384,000	\$ 768,000	\$ 768,000	\$ 768,000	\$ 768,000		
Capital Projects (Cash Funded)	1,020,717	33,960	-	-	-	-	-		
TOTAL EXPENDITURES	8,009,261	4,694,242	5,838,564	7,205,529	7,400,191	7,586,716	7,778,567		
ENDING FUND BALANCE	\$ 3,468,059	\$ 2,285,310	\$ 1,780,156	\$ 885,321	\$ 52,751	\$ (793,357)	\$ (1,653,381)		
Ending balance as a % of expenditures	55.3%	53.4%	32.6%	13.8%	0.8%	-11.6%	-23.6%		
Required ending fund balance	\$ 1,568,386	\$ 1,069,071	\$ 1,363,641	\$ 1,609,382	\$ 1,658,048	\$ 1,704,679	\$ 1,752,642		
Positive (Negative) fund balance variance	\$ 1,899,672	\$ 1,216,240	\$ 416,515	\$ (724,061)	\$ (1,605,297)	\$ (2,498,036)	\$ (3,406,023)		

Hotel Fund Sustainability Project

A team comprised of Staff from Special Events, Marketing and Communications, Economic Development and Tourism, Finance, and the City Manager's Office analyzed the Hotel Fund.

Program-Based Approach

- The team looked at the Hotel Fund as a collection of individual programs (events and activities) such as Taste Addison, Conference Centre, and Hotelier Support.
- A description of each program was created. The revenue, costs and non-financial benefits of each program were documented.
- Each program was evaluated based on its:
 - Hotel Occupancy Tax legislation alignment (promotes tourism and hotel/convention industry)
 - Contribution to the Strategic Planning Pillar of Optimizing the Addison Brand
 - Local economic impact
 - % of cost offset by program revenue

Program Summary Slide Format

Program Description: A brief description of each program will be provided.

Program Rating:

1. How well does the program support tourism AND the convention and hotel industry?
2. Under which of the Hotel Occupancy Tax categories does this program fall?
3. How well does the program support Council’s Strategic Pillar of Optimizing the Addison Brand?
4. How well does the program impact the Addison economy?
5. Percentage of program costs offset by program revenue.

Tourism & Hotels	H.O.T. Category	Addison Brand	Local Economic Impact	Cost % Offset by Revenue
4 of 5	3	4 of 5	4 of 5	32%

Programs were rated on a 1 to 5 scale. Programs scores of 0 or 1 are highlighted in red. Programs scoring 2 or 3 are in yellow. Programs scoring 4 or 5 are in green.

Program Financials for FY2021:

Revenue	Expenses	Hotel Fund’s Cost
\$333,000	\$1,036,333	\$703,333

Staff Seeks Council Direction

After presenting each program summary, Staff will seek Council direction on the development of recommendations for that program.

Staff will ask Council if they would like recommendations developed for:

- Program modifications such as increasing revenue, decreasing costs, and/or program modifications.
- Program suspension while the Hotel Fund recovers financially.
- Program elimination.
- Transferring a program out of the Hotel Fund.
- Other options.

Staff will utilize this direction to develop specific recommendations that will be presented for Council consideration at a future meeting.

Taste Addison

ADDISON

Multi-day festival featuring national music artists, Addison restaurants, and alcohol sampling.

In 2019, this festival generated 155 room nights (tracked via hotel packages) and over 420 million impressions/views valued at \$437,005 (measured by PR firm and media sources). Total attendance was 14,420.

Tourism & Hotels	H.O.T. Category	Addison Brand	Local Economic Impact	Cost % Offset by Revenue
4 of 5	3	4 of 5	4 of 5	32%

Revenue	Expenses	Hotel Fund's Cost
\$333,000	\$1,036,333	\$703,333



Addison Kaboom Town

Independence Day celebration featuring airshow at Addison Airport, festival at Addison Circle Park, and fireworks display that generates watch parties across the town and beyond.

In 2019, this festival generated 735 room nights (tracked via hotel packages) and over 522 million impressions/views valued at \$3.2 million (measured by PR firm and media sources). Total attendance was 25,015.

Tourism & Hotels	H.O.T. Category	Addison Brand	Local Economic Impact	Cost % Offset by Revenue
5 of 5	3	5 of 5	5 of 5	19%

Revenue	Expenses	Hotel Fund's Cost
\$115,500	\$624,022	\$508,522



Addison Oktoberfest

Multi-day German-themed festival featuring multiple stages with German music and dance, German food and beer, and interactive games.

In 2019, this festival generated 474 room nights (tracked via hotel packages) and over 1.04 billion impressions/views valued at \$2.3 million (measured by PR firm and media sources). Total attendance was 43,308.

Tourism & Hotels	H.O.T. Category	Addison Brand	Local Economic Impact	Cost % Offset by Revenue
5 of 5	3	5 of 5	5 of 5	62%

Revenue	Expenses	Hotel Fund's Cost
\$619,000	\$1,006,410	\$387,410



Addison After Dark

Monthly event series featuring live music, themed activities, and attractions. Occurs April - November at Addison Circle Park.

In 2019, this festival generated 0 room nights (tracked via hotel packages), over 445 million impressions/views valued at \$80,416 (measured by PR firm and media sources), and total attendance of 2,642.

In 2020, the replacement event series Addison Weekend Drive-In generated 16 room nights (tracked via hotel packages) and total attendance of 2,490; final impressions/views have not been calculated.

Tourism & Hotels	H.O.T. Category	Addison Brand	Local Economic Impact	Cost % Offset by Revenue
3 of 5	3	4 of 5	2 of 5	12%

Revenue	Expenses	Hotel Fund's Cost
\$17,000	\$137,153	\$120,153



Addison Circle Park Maintenance and Operations



Maintenance of Addison Circle Park, including mowing and trimming, infrastructure, and utilities.

Addison Circle Park is defined in the Parks Master Plan as a *Destination Park* that supports large group gatherings and events. The park also operates as a community park space the majority of the year.

Tourism & Hotels	H.O.T. Category	Addison Brand	Local Economic Impact	Cost % Offset by Revenue
0 of 5	None	4 of 5	2 of 5	0%

Revenue	Expenses	Hotel Fund's Cost
\$0	\$232,176	\$232,176



Special Event Permitting

Management and execution of the special event permit program, which allows runs, festivals, and other programs to operate in the Town of Addison that attract visitors and support community businesses.

In 2019, permitted events operated by third party planners brought over 42,000 people to Addison. The number of hotel room nights generated is unknown. Expenses for this program are due to the sponsorship of the events at Vitruvian Park produced by UDR.

Tourism & Hotels	H.O.T. Category	Addison Brand	Local Economic Impact	Cost % Offset by Revenue
3 of 5	3	3 of 5	3 of 5	11%

Revenue	Expenses	Hotel Fund's Cost
\$20,000	\$185,000	\$165,000



Special Events Operations and Administration

Operational expenses such as office maintenance, technology, utilities and furnishings, as well as administrative expenses such as training, uniforms, memberships, awards and oversight of the Belt Line banner program.

Maintaining an office, staff and associated administrative costs are necessary for the execution of the other programs.

Tourism & Hotels	H.O.T. Category	Addison Brand	Local Economic Impact	Cost % Offset by Revenue
	3			

Revenue	Expenses	Hotel Fund's Cost
\$0	\$613,221	\$613,221



Addison Theatre Centre

Services provided to support internally and externally produced public shows, exhibitions, and private functions, including technical services and equipment, planning assistance and oversight. Also, the purchase, upkeep, and maintenance of equipment and facilities, and staffing/administrative costs.

In 2019, the Main Stage and Studio Theatre spaces were in use 72% of the time. There are 9 organizations using the facility regularly, and approximately a dozen more who use it occasionally. Because these groups do not currently report on hotel stays generated by their performances, impact on the hotel industry is unknown.

Tourism & Hotels	H.O.T. Category	Addison Brand	Local Economic Impact	Cost % Offset by Revenue
2 of 5	4	3 of 5	2 of 5	7%

Revenue	Expenses	Hotel Fund's Cost
\$23,810	\$320,996	\$297,186



Performing Arts Grants

Grant funding awarded to select performing arts organizations that utilize the Addison Theatre Centre. Organizations and funding levels are determined by Council.

In 2019, the group receiving grant funds gave 137 live, public performances. In 2020, the two groups receiving grant funds gave 84 live, public performances (reduced due to COVID-19). Because these groups do not currently report on hotel stays generated by their performances, impact on the hotel industry is unknown.

Tourism & Hotels	H.O.T. Category	Addison Brand	Local Economic Impact	Cost % Offset by Revenue
2 of 5	4	3 of 5	2 of 5	0%

Revenue	Expenses	Hotel Fund's Cost
\$0	\$377,500	\$377,500



Addison Conference Centre



Services provided to support facility rentals for private events, meetings, expos, and conferences, including technical services and equipment, planning assistance, event set-up and break-down, and oversight. Also, the purchase, upkeep, and maintenance of equipment and facilities, marketing, and staffing/administrative costs.

In 2019, the Addison Conference Centre and/or Stone Cottage were booked by clients 67% of the time. Because these groups do not report on hotel stays generated by their bookings, impact on the hotel industry is unknown.

Tourism & Hotels	H.O.T. Category	Addison Brand	Local Economic Impact	Cost % Offset by Revenue
4 of 5	1	3 of 5	2 of 5	0% in FY2021 53% in FY2019

	Revenue	Expenses	Hotel Fund's Cost
FY2021	\$0	\$234,978	\$234,978
FY2019	\$523,710	\$991,507	\$467,797



Conference and Meeting Incentives

Funds used to incentivize groups to book their meetings, conferences, or events in Addison hotels and meeting venues.

In 2019, groups that received incentives actualized 26,388 room nights and \$7M in revenue for Addison hotels. In 2020, funds were unexpended as groups and organizations canceled their events due to the pandemic. The funds will be critical in the upcoming year to attract conferences and meetings to Addison that will create room nights. Sponsorships help attract events that generate room nights but may not qualify for the Hotel Support Program.

Tourism & Hotels	H.O.T. Category	Addison Brand	Local Economic Impact	Cost % Offset by Revenue
5 of 5	3	5	5 of 5	0%

Revenue	Expenses	Hotel Fund's Cost
\$0	\$282,892	\$282,892



Hotelier Support

Informative meetings and appreciation events hosted by Addison staff for hoteliers, as well as membership for all Addison hotels to the state organization, Texas Hotel & Lodging Association.

Meetings with hoteliers help to keep open communication with the Town which benefits all involved. The Hotel & Lodging Association membership give hotel access to legal professionals, legislative updates and industry best practices.

Tourism & Hotels	H.O.T. Category	Addison Brand	Local Economic Impact	Cost % Offset by Revenue
4 of 5	3	3 of 5	3 of 5	0%

Revenue	Expenses	Hotel Fund's Cost
\$0	\$24,272	\$24,272



World Affairs Council

World Affairs Council is a non-profit corporation established under the laws of the State of Texas with a mission to promote international awareness, understanding, and connections through its multifaceted programs. The Council works to enhance the region’s global stature and to prepare North Texans to thrive in our complex world.

Among other things, these efforts provide an opportunity to attract tourists and businesses to the City and educate the public on the many cultures that make up the North Texas region.

Since most events are hosted in other communities, these efforts do not directly promote the hotel and convention industry within Addison.

Tourism & Hotels	H.O.T. Category	Addison Brand	Local Economic Impact	Cost % Offset by Revenue
1 of 5	None	2 of 5	1 of 5	0%



Revenue	Expenses	Hotel Fund’s Cost
\$0	\$60,000	\$60,000

Tourism Administration

The tourism efforts are part of the Economic Development and Tourism Department. The Tourism Coordinator is the sole employee. Funding comes from a transfer from the Hotel Fund to the Economic Development Fund.

The tourism division of the Economic Development & Tourism Department helps manage the programs and activities that help attract tourists and visitors to Addison.

Tourism & Hotels	H.O.T. Category	Addison Brand	Local Economic Impact	Cost % Offset by Revenue
	3			

Revenue	Expenses	Hotel Fund's Cost
\$0	\$126,842	\$126,842



Print and digital advertising, visitor guides, influencer programs, content creation, website design and promotional items, and other related marketing materials to promote Addison to visitors.

The Barber Shop Advertising Agency started with the Town last October and has been able to help target marketing efforts more effectively by expanding Addison’s digital, targeted efforts. In 2020, the advertising program generated near 18 million impressions and more than 407,000 engagements and clicks.

Tourism & Hotels	H.O.T. Category	Addison Brand	Local Economic Impact	Cost % Offset by Revenue
5 of 5	3	5 of 5	4 of 5	0%

Revenue	Expenses	Hotel Fund’s Cost
\$0	\$515,365	\$515,365



Marketing Administration

There are two people in the Marketing Department. In addition to providing support for tourism-related activities, the department also creates the weekly Town newsletter, maintains the Town’s website and social media channels, manages crisis communications, and markets a variety of city programs to the community.

Maintaining an office, staff and associated administrative costs are necessary for the execution of the other programs.

Tourism & Hotels	H.O.T. Category	Addison Brand	Local Economic Impact	Cost % Offset by Revenue
	3			

Revenue	Expenses	Hotel Fund’s Cost
\$0	\$330,635	\$330,635



Summary of Program Evaluations

	Tourism & Hotels	H.O.T. Category	Addison Brand	Local Economic Impact	Cost % Offset by Revenue
Taste Addison	4 of 5	3	4 of 5	4 of 5	32%
Addison Kaboom Town	5 of 5	3	5 of 5	5 of 5	19%
Addison Oktoberfest	5 of 5	3	5 of 5	5 of 5	62%
Addison After Dark	3 of 5	3	4 of 5	2 of 5	12%
Addison Circle Park M&O	0 of 5	None	4 of 5	2 of 5	0%
Special Event Permitting	3 of 5	3	3 of 5	3 of 5	11%
Special Events Operations & Administration		3			
Addison Theatre Centre	2 of 5	4	3 of 5	2 of 5	7%
Performing Arts Grant	2 of 5	4	3 of 5	2 of 5	0%
Addison Conference Centre	4 of 5	1	3 of 5	2 of 5	0% in FY21 53% in FY19
Conference and Meeting Incentives	5 of 5	3	5	5 of 5	0%
Hotelier Support	4 of 5	3	3 of 5	3 of 5	0%
World Affairs Council	1 of 5	None	2 of 5	1 of 5	0%
Tourism Administration		3			
Marketing	5 of 5	3	5 of 5	4 of 5	0%
Marketing Administration		3			

Discussion Continued at Future Meeting

A second Work Session discussion is tentatively scheduled for November during which the requested recommendations will be presented.

Council's direction to Staff on the recommendations presented will be requested at that meeting.

What Cities Need to Know to Administer Municipal Hotel Occupancy Taxes

Texas Hotel & Lodging Association

REVISED OCTOBER 2019

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Criteria #1: First, every hotel tax expenditure must DIRECTLY enhance and promote tourism AND the convention and hotel industry.	14
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Introduction

Since 1967, hotel occupancy taxes have been an important tool for Texas municipalities to promote growth in tourism and hotel activity. Today, nearly every city in Texas with a hotel operating in the city limits levies a municipal hotel occupancy tax.¹ In turn, hotel guests generate economic activity for local businesses and generate nearly \$3 billion in annual tax revenues for local governments, including but not limited to increased sales taxes, alcohol taxes, and property taxes.² If a tourist is motivated to come to an area or to extend his or her stay at a hotel due to activities or facilities funded with hotel tax revenues, the local and state economies benefit. In turn, the hotel tax revenues generated from additional room night activity funds future programs and tourism-related facilities, providing an economic engine for prosperity for the area.

Unlike property tax and sales tax revenues, which cities can use for most public purposes, local hotel occupancy tax revenues fall under a more structured statutory mandate. Municipal hotel occupancy taxes are a dedicated tax and primarily governed by Chapter 351 of the Texas Tax Code. This guide assists local governments, hotel tax grant applicants, and lodging operators in all aspects of the municipal hotel tax process, including the rules on allowable expenditures of these funds by Texas cities.

Authorized Municipalities

All incorporated Texas municipalities, including general law and home rule cities, may enact a hotel occupancy tax within the city limits.³ A city with a population of under 35,000 may also adopt the hotel occupancy tax within that city's extraterritorial jurisdiction (ETJ).⁴ Most cities are eligible to adopt a hotel occupancy tax at a rate of up to 7 percent of the price paid for the use of a hotel room.⁵ Additionally, a city or county may not propose a hotel occupancy tax rate that would result in a combined hotel occupancy tax rate imposed from all sources that would exceed 17 percent of the price paid for the room.⁶ If a city adopts the hotel occupancy tax within its ETJ, the combined state, county, and municipal hotel occupancy tax rate may not exceed 15 percent.⁷

In addition to local hotel occupancy taxes, all lodging properties operating in Texas are subject to a six percent state hotel occupancy tax.⁸ Governed under Chapter 156 of the Texas Tax Code, the state hotel occupancy tax is collected by the Texas Comptroller. Funds from the state six percent hotel occupancy tax flow directly to the Texas Comptroller's office and are largely used for the general governmental operations of the State. However, a portion of the state hotel occupancy tax revenue also goes toward funding tourism promotion through Texas's marketing campaign, "Let's Texas."

¹ Texas Hotel & Lodging Association (THLA) maintains a listing of most city and county hotel tax rates, accessible upon request to THLA members.

² Source: Office of the Governor of Texas, Economic Development and Tourism.

³ Tex. Tax Code Ann. § 351.002(a) (Vernon 2019).

⁴ § 351.0025(a).

⁵ § 351.003(a).

⁶ Tex. Loc. Gov't Code § 334.254(d). Note that the 17 percent cap does not apply to a city that approved a higher hotel tax through a venue ballot proposition prior to September 1, 2013, such as El Paso.

⁷ § 351.0025(b).

⁸ Tex. Tax Code § 156.051.

Collecting the Tax

Under the Texas Tax Code, the following businesses are considered “hotels” and are required to collect hotel occupancy taxes from their guests: “Any building or buildings in which members of the public obtain sleeping accommodations for consideration” for less than 30 days, including a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, rooming house, or bed and breakfast facilities.⁹ Additionally, a “short-term rental,” defined as the rental of all or part of a residential property to a person who is not a permanent resident, is subject to hotel occupancy taxes.¹⁰ The Texas Administrative Code also includes “manufactured homes, skid mounted bunk houses, residency inns, condominiums, cabins, and cottages within the definition of a “hotel” if the facility is rented for periods of under 30 days.¹¹ Hospitals, sanitariums, nursing homes, dormitories or other non-hotel housing facilities owned by institutions of higher education, and oilfield portable units do not collect the tax.¹² Subject to various exemptions, the hotel tax is imposed on any “person” who pays for the use of a room in a hotel, including corporations, organizations, and other legal entities. The hotel room must cost \$2 or more per day for the local hotel tax to apply, and \$15 or more per day for the state hotel tax to apply.¹³

Meeting rooms versus sleeping rooms:

The rental of sleeping rooms in hotels is subject to both state and local hotel taxes. However, there is a difference in how state and local hotel taxes apply to the rental of hotel meeting rooms. While the rental of sleeping rooms in hotels are subject to both state and local hotel taxes, meeting room rentals are not subject to local hotel occupancy taxes.¹⁴ The rental of a meeting room or meeting space in a hotel is subject to the state 6 percent hotel occupancy tax provided the room or space is physically located in a structure that also contains sleeping rooms.¹⁵ For meeting rooms and banquet halls located in a structure that is physically separated from a structure that contains sleeping rooms, neither state nor local hotel occupancy taxes apply to that rental of those meeting rooms or banquet halls, provided rental costs or charges are separately stated from any lodging costs or other charges on the guest’s invoice or receipt.¹⁶

It must be noted that sales tax may apply to the costs associated with the rental of meeting rooms or banquet halls located in a structure that is physically separated from a structure that contains sleeping rooms, if the lodging facility provides food or beverage service that is subject to sales tax.¹⁷ Such sales tax would apply to the meeting room or banquet hall rental costs or charges regardless of whether the food or beverage charges are separately stated on the guest’s invoice or receipt.¹⁸

Food and beverage and other hotel charges:

Certain hotel guest charges assessed are subject to hotel occupancy taxes, while other guest charges are subject to state and local sales tax. Common hotel charges usually subject to sales taxes (but generally not subject to hotel occupancy taxes) are hotel banquet service fees, food and beverage fees, movie rentals, dry cleaning/laundry services, internet connection, parking, and portage or bellhop fees.

⁹ Tex. Tax Code § 156.001(a); 34 Tex. Admin. Code Ann. § 3.161(a)(3) (Vernon 2019).

¹⁰ Tex. Tax Code § 156.001(c).

¹¹ Tex. Tax Code § 156.001(a); 34 Tex. Admin. Code Ann. § 3.161(a)(3) (Vernon 2019).

¹² Tex. Tax Code § 156.001.

¹³ Tex. Tax Code § 156.051(a); § 351.002(a).

¹⁴ *Id.*

¹⁵ Tex. Tax Code § 156.051(a); Tex. Comptroller Opinion Letter No. 200103106L, Mar. 9, 2001.

¹⁶ *Id.*

¹⁷ 34 Tex. Admin. Code Ann. § 3.161(a)(3) (Vernon 2019); Tex. Comptroller Opinion Letter No. 201010556L, Oct, 2010.

¹⁸ *Id.*

Hotel charges related to occupancy of a sleeping room or readying a sleeping room for occupancy are usually subject to hotel occupancy taxes only. Common hotel charges subject to hotel occupancy tax are rollaway bed charges, pet charges, smoking fees, room damage fees, room safe charges, and late or early checkout fees.¹⁹ It is important to note that if a hotel offers services as part of a package rate included with lodging, and the price of a specific good or service is not separately stated on a guest's invoice, bill, or folio, the entire package is subject to hotel occupancy taxes.²⁰

Additionally, a special rule applies to whether hotel occupancy taxes are imposed on a hotel room rental cancellation fee. A 1989 Texas Comptroller's hearing concluded that hotel taxes are not due on charges to guests who 1) cancel more than 30 days before the scheduled stay begins, or 2) when the total cancellation charge to the guest is less than the reserved room rate.²¹ This rule applies both to individual reservations and also to group contracts.²²

Application of local hotel tax rate increases on pre-existing contracts

If a municipality increases its hotel tax rate, the increased tax rate generally does not apply to a hotel room under a contract that was executed before the date the increased rate takes effect. The increased tax rate does not apply in such cases if the prior contract specified the former local hotel tax rate as a term in the agreement.²³ This prior contract exemption also does not apply if the contract's terms state that the contract is subject to "applicable taxes" or to change or modification from a tax rate increase.²⁴

Exemptions from the Local Tax

Texas law also provides certain hotel tax exemptions based on the length of a guest's stay or the guest's affiliation with an exempt organization. Texas law is more generous with exemptions from the state 6% hotel occupancy tax than it is for local hotel tax exemptions. The state hotel occupancy tax generally allows for an exemption from state hotel tax for the following entities: educational, charitable, and religious entities. However, these entities are *not exempt* from local hotel occupancy taxes.²⁵

Focusing specifically on the local hotel occupancy taxes, there are primarily four categories of exemptions permitted from municipal and county hotel occupancy taxes:

- 1) **Federal Employees:** Federal employees traveling on official business;
- 2) **Diplomats:** Foreign diplomats with a tax exempt card issued by the U.S. Department of State;
- 3) **High Ranking State Officials:** A very limited number of state officials with a hotel tax exemption card (e.g. heads of state agencies, state legislators and legislative staff, members of state boards and commissions, and state judges); and
- 4) **Permanent Resident/Over 30 Day Stay:** Persons or businesses who have agreed in advance to use a hotel room for more than 30 consecutive days (i.e. the "permanent resident" hotel tax exemption).²⁶

¹⁹ THLA maintains a list of most hotel charges and which tax, if any is assessed on a particular charge. This list is available upon request to THLA members.

²⁰ Tex. Comptroller Opinion Letter No. 200102031L, Feb. 7, 2001.

²¹ Texas Comptroller's Hearing Decision No. 24,654 (1989).

²² *Id.*

²³ Tex. Tax Code § 351.007.

²⁴ *Id.*

²⁵ Tex. Tax Code § 156.102.

²⁶ Tex. Tax Code § 156.104.

Hotel guests claiming items one through three of the above exemptions are required to show appropriate identification and to fill out a “Hotel Occupancy Tax Exemption Certificate” promulgated by the Texas Comptroller.²⁷ The tax exemption certificate form is available on the Texas Comptroller’s website at <https://www.comptroller.texas.gov/taxes/hotel/forms/>. It would be advisable for hotels to have such forms available to guests to fill in if the guest seeks to claim such exemptions.

Permanent residents (guests who stay for more than 30 days):

Special attention should be paid to the “permanent resident” hotel tax exemption. The permanent resident exemption applies to both state and local hotel taxes, and ensures that hotel guests staying over 30 days are taxed the same as residents staying at extended-stay properties, apartments, corporate rental facilities, rental houses, etc.²⁸ The Texas Tax Code states that any “person” who has the right to use or possess a lodging room for at least 30 consecutive days is exempt from state and local hotel occupancy taxes, provided there is no interruption in payment for the room during this period.²⁹ In Texas, a “person” also includes a corporation or business. Therefore, one should look to whether the same person, corporate entity, business, or other entity paid for the room for that entire period.

If, in advance or upon check-in, the guest provides notice to a hotel of intent to occupy a guest room for 30 days or longer, no hotel tax is due for any part of a guest’s stay. A signed registration card or confirmed reservation indicating a guest’s intent to occupy a room for 30 days or longer is sufficient written evidence.³⁰ Furthermore, the guest is not actually required to physically occupy the room, but the guest must maintain the right to occupy the room for the length of the exemption period.³¹

If no notice is provided upon check-in that can be documented by a written agreement (guest reservation, confirmation, registration, or folio or separate agreement), the first 30 days of the guest’s stay are **not** hotel tax-exempt.³² However, the guest’s stay becomes automatically hotel tax exempt on the 31st day—regardless of whether there was prior notice of the guest’s intent to stay for 30 days or more, as long as there has been no interruption in payment for the room.³³

THLA generally recommends hoteliers collect hotel occupancy taxes from the guest for the first 30 days of the guest’s stay. On the 31st day of the guest’s stay, provided there is no interruption of payment for the room and there was prior written notice or a reservation indicating the guest’s intent to stay 30 days or longer, the hotel should refund the collected hotel occupancy taxes for the first thirty days. This protects the hotel from incurring tax liability should the guest check out before staying at least 30 days. The hotel could choose to not collect the hotel tax during the stay if the guest paid in advance for the entire 30 days and there was no allowance for a refund if the guests checks out early.

State Employees:

Virtually all rank and file state employees do not have a special hotel occupancy tax exemption card that prevents them from having to pay the state and local hotel tax even when they are on official business. Such state employees must pay the state and local hotel occupancy tax when paying their bill and, their

²⁷ *Id.*

²⁸ § 156.101.

²⁹ Tex. Tax Code § 156.101; 34 Tex. Admin. Code § 3.161(a)(4).

³⁰ Tex. Comptroller Opinion Letter No. 200601452L, Jan. 27, 2006.

³¹ 34 Tex. Admin. Code § 3.161(b)(2)(C).

³² § 3.161(b)(2)(A).

³³ *Id.*

state agency may later apply for a refund from the state and local government tax offices.³⁴ The state agency the employee works for is responsible for requesting this refund from the state and local government.

City and County Employees/Officials:

City and county officers and employees are not exempt from the state or the local hotel occupancy tax, even if the officers or employees are traveling on official business.³⁵ Additionally, cities have no legal authority to authorize additional exemptions from the hotel occupancy tax that are not recognized in the Tax Code.³⁶ The Attorney General ruled in JM-865 (1988) that cities cannot grant an exception to the hotel occupancy tax for religious, charitable, or educational organizations without new constitutional or statutory authority to do so.

Letters of tax exemption:

The Texas Comptroller maintains an online database of entities that have been granted a “Letter of Tax Exemption” from the state hotel occupancy tax. Most commonly, these organizations fall into the religious or charitable categories of exemption from the state hotel occupancy tax. The State Comptroller generally requires a letter of tax exemption to accompany a completed hotel tax exemption certificate form before an exemption may be granted on this basis. The comptroller’s approved letter of exemption database is accessible online at <https://www.comptroller.texas.gov/taxes/exempt/search.php>. It is important to note that many entities may be exempt from the state sales tax, but are not exempt from the state or local hotel occupancy tax.

For religious entities with a national affiliation, oftentimes the national organization’s letter of tax exemption will cover individual congregations.³⁷ For example, a search of “Baptist Convention” on the online database reveals that the “NATIONAL BAPTIST CONVENTION OF AMERICA INCORPORATED” holds a letter of tax exemption that will also be valid for subordinate entities. An individual Baptist congregation affiliated with the National Baptist Convention can use the national organization’s letter of tax exemption to accompany the signed exemption certificate.

Finally, the Comptroller’s staff has indicated they are willing to exercise some flexibility for lodging properties that accept a tax exemption certificate in good faith from a qualifying religious entity even if the entity may not yet have formally filed for a letter of tax exemption. This, however, should only be relied upon as a last resort, as there is no official report of this position, and auditors are trained to look for definitive documentation. In such a case, check the identification papers (ID, business card, etc.) for the traveler. If the entity fits into one of the exempt categories under the THLA exemption chart, honor the exemption if that entity is paying for the room. Make a copy of the identification item you are relying on and be sure that all such travelers fill out the hotel occupancy tax exemption certificate form.

To simplify the hotel tax exemption issue, THLA publishes a chart that hotels and city governments can utilize to determine when a hotel tax exemption is permitted under state law. (See next page.)

³⁴ §3.163(b).

³⁵ See generally Tex. Tax Code § 351.005; Tex. Comptroller Opinion Letter No. 200202815L, Feb. 22, 2002.

³⁶ Tex. Att’y Gen. JM-865 (1988).

³⁷ Tex. Comptroller Opinion Letter No. 200109470L, Sep. 13, 2001.

THLA’s Simplified Hotel Occupancy Tax Exemption Rules

TYPE OF BUSINESS REQUESTING EXEMPTION	EXEMPT FROM STATE H.O.T.	EXEMPT FROM LOCAL H.O.T.	COMMENTS
Agricultural Development Corporations	Yes	Yes	Guest must present Texas Comptroller letter of tax exemption, and Guest must fill out tax exemption certificate form.
City & County Employees	Not exempt	Not exempt	Local government employees are not exempt from hotel taxes, even when traveling on official business.
Charitable Organizations	Depends (see comments to the right)	Not exempt	Guest must present Texas Comptroller letter of tax exemption, and Guest must fill out tax exemption certificate form. Charitable entities must be able to show that they devote all or substantially all of their activities to the alleviation of poverty, disease, pain, and suffering by providing food, clothing, drugs, treatment shelter, or psychological counseling directly to indigent or similarly deserving members of society, with entity funds derived from sources other than fees or charges for its services. Other 501 (c) (3) and 501 (c) (6) entities are not exempt.
Texas Educational Organizations (see comments on the right regarding differences between Texas and out-of-state educational organizations)	Yes	Not exempt	Guest must fill out tax exemption certificate form. State law limits the state hotel occupancy tax exemption for higher education entities to only Texas institutions of higher education. Out-of-state higher education entities are not exempt from the state or local hotel tax. However, out-of-state educational entities that are not institutions of higher education (high schools, middle schools, elementary schools, etc.) are exempt from state hotel taxes just like their Texas counterparts.
Electric & Telephone Cooperatives	Yes	Yes	Guest must present Texas Comptroller letter of tax exemption, and Guest must fill out tax exemption certificate form.
Federal Credit Unions	Yes	Yes	Guest must fill out tax exemption certificate form, and Present a valid ID. Texas Comptroller opinion letters indicate that employees traveling on official business as employees of a federal credit union are treated as federal government employees.
Federal Employees (includes FEMA and Red Cross reimbursed rooms)	Yes	Yes	Guest must fill out tax exemption certificate form, and Present a valid ID.
Foreign Diplomats	Yes	Yes	Guest must fill out tax exemption certificate form, and Guest must present tax exempt card issued by U.S. Department of State.

TYPE OF BUSINESS REQUESTING EXEMPTION	EXEMPT FROM STATE H.O.T.	EXEMPT FROM LOCAL H.O.T.	COMMENTS
Health Facilities Development Corporations	Yes	Yes	Guest must present Texas Comptroller letter of tax exemption, and Guest must fill out tax exemption certificate form.
Housing Authorities & Finance Corporations	Yes	Yes	Guest must present Texas Comptroller letter of tax exemption, and Guest must fill out tax exemption certificate form.
Pan American Games Olympic Games Local Organizing Committees	Yes	Yes	Guest must present Texas Comptroller letter of tax exemption, and Guest must fill out tax exemption certificate form.
Permanent Residents (30 days or more)	Yes	Yes	Guest must notify hotel of their intent to stay 30 or more days at the beginning. Guests who notify hotel in advance or at check-in of intent to stay longer than 30 days and have no interruption in their stay qualify for a state and local hotel tax exemption for their first 30 days of their hotel stay, and any consecutive days thereafter. If stay is interrupted, hotel occupancy taxes must be paid. Guests who do not notify the hotel of the anticipated over 30 day duration of their stay are only exempt for hotel occupancy taxes beginning on the 31 st consecutive day of their stay.
Public Facility Corporation	Yes	Yes	Guest must present Texas Comptroller letter of tax exemption, and Guest must fill out tax exemption certificate form.
Regional Education Service Centers	Yes	Not exempt	Guest must present Texas Comptroller letter of tax exemption, and Guest must fill out tax exemption certificate form.
Religious Organizations	Yes	Not exempt	Guest must present Texas Comptroller letter of tax exemption, and Guest must fill out tax exemption certificate form.
High Ranking State Officials with Hotel Tax Exemption Photo ID Card	Yes	Yes	Guest must fill out tax exemption certificate form, and Guest must present state photo ID card that specifically notes that employee is exempt from hotel occupancy tax. These include only heads of state agencies; members of state boards and commissions; state legislators and their staff; and state judges.
General State Employees <u>without</u> Special Hotel Tax Exemption Photo ID Card	Not exempt	Not exempt	Guest must pay the state and local hotel tax, and then their state agency may apply for hotel tax reimbursement from the local and state governments through a separate process.

How the City Receives the Tax

The hotel occupancy tax is collected from the hotel guest when the guest makes payment for the hotel room. The tax is then remitted by the hotel to the city on a regular basis, to be established by the city. Although the Texas Comptroller's Office is not directly involved in the collection of the local hotel occupancy tax, cities sometimes use the same reporting timeframes and forms for local hotel tax collection that are used by the Texas Comptroller for collection of the state hotel occupancy tax. This allows hotels to follow a consistent payment pattern. The Texas Comptroller's timeframes are as follows: Hotels owing less than \$500 in state hotel tax for each calendar month, or \$1,500 for a calendar quarter, report and remit tax on the 20th day of the month following the end of the fiscal year quarter. All other hotels file monthly state hotel tax returns by the 20th day of the following month. If the 20th day falls on a weekend or bank holiday, the hotel tax return is due on the next business day.³⁸

Regardless of the reporting period used, cities often require hotels to include a copy of the hotel's state hotel tax report for the Texas Comptroller as part of their report. The state report data may be used to check the local report provided by the hotel to the city. It is important to remember, however, that the amount of taxable revenue will vary to a certain degree between the state and local hotel tax based on the amount of state hotel tax exempt business a property handles that is not exempt from the local hotel tax, and the amount of meeting room rentals subject solely to the state hotel tax.

Reimbursement to a Hotel for Collection Expenses, and Use of Local Hotel Tax Revenues by a City for Tax Collection Costs

By ordinance, a municipality may allow hotel operators to retain up to 1 percent of the amount of hotel occupancy taxes collected as reimbursement for the costs of collecting the tax.³⁹ The municipality may require hotels to forfeit the reimbursement because of a failure to pay the tax or failure to file a report as required by the municipality.⁴⁰

Cities may spend each year not more than the lesser of one-percent or \$75,000 of the city's hotel tax revenues for the actual costs during that year for the creation, maintenance, operation, and administration of an electronic tax administration system.⁴¹ If a city uses hotel tax revenue for such a system, the city must allow the hotels to retain 1% of the hotel tax revenue collected to offset the costs of collecting the tax. A city may contract with a third party for this electronic administration system.⁴² The state statutes do not contain any other provisions allowing city governments to retain any of the collected tax to cover costs of imposing or collecting the tax. A city may not use hotel tax revenue to pay for audits of area hotels.⁴³

However, cities that undertake responsibility for operating a facility or event funded by the local hotel occupancy tax may be reimbursed from the hotel tax revenues for actual expenses incurred in operating the facility or event, if the hotel tax funded expenditure directly promotes tourism and local hotel and convention activity.⁴⁴

³⁸ Tex. Comptroller, <http://www.window.state.tx.us/taxinfo/hotel/faqhotel.html>.

³⁹ Tex. Tax Code § 351.005(a).

⁴⁰ § 351.005(b).

⁴¹ § 351.1012.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ § 351.101(e).

Penalties for Failure to Report or Collect the Tax

The local hotel occupancy tax statutes provide for specific penalties a city may assess against hotel operators who fail to file the hotel tax collections report, file late or without full payment, or produce false tax returns.⁴⁵

Interest, penalties, and attorney's fees:

A city may include a provision in its hotel occupancy tax ordinance that imposes a 15 percent penalty of the total amount of the tax owed, but only if the tax has been delinquent for at least one complete municipal fiscal quarter.⁴⁶ Additionally, a delinquent hotel operator may be liable to the municipality for the municipality's reasonable attorney's fees.⁴⁷ The hotel occupancy tax ordinance may also include a provision that makes it a criminal misdemeanor offense for failure to collect the tax, failure to file a return, filing a false return, or failure to timely make the hotel tax remittances.⁴⁸

A city may assess interest on delinquent unpaid hotel occupancy taxes, with interest accruing from the first day after the date the hotel tax is due to the city.⁴⁹ The maximum interest rate a city may assess is the greater of either, 1) the prime rate published in the Wall Street Journal plus one percent, or 2) the rate the city imposed on January 1, 2013.⁵⁰

Audits, audit costs, and concurrent state tax delinquencies:

Generally, a city may not use hotel occupancy tax revenues to pay for audit costs associated with administering the collection of hotel occupancy taxes.⁵¹ However, a city can require a hotel to pay the costs of a city audit of the hotel's revenues if the hotel did not file a tax report as required by the municipality, but only if 1) the hotel is delinquent for at least two complete municipal calendar quarters; and 2) the municipality has not received a disbursement from the Texas Comptroller for the hotel's concurrent state hotel tax delinquency.⁵²

The concurrent state hotel tax delinquency provision in the Tax Code allows cities to receive a commission from the Texas Comptroller if the Comptroller successfully utilizes city audit information to collect delinquent state hotel taxes from the hotel.⁵³ First, a city submits any documentation or other information to the Comptroller that shows a hotel's failure to collect or pay hotel occupancy tax. The Comptroller then reviews the submitted information and determines whether to proceed with state hotel tax collection and enforcement.⁵⁴ If the information submitted by the city results in the collection of delinquency state hotel occupancy taxes, the Comptroller will remit 20 percent of the revenues collected by the Comptroller to the city, to defray the city's low hotel tax audit costs.⁵⁵

⁴⁵ § 351.004.

⁴⁶ *Id.*

⁴⁷ § 351.004.

⁴⁸ *Id.*

⁴⁹ § 351.0042.

⁵⁰ *Id.*

⁵¹ See generally § 351.101(e). The Tax Code contains an exception to the prohibition on using hotel occupancy tax revenues to pay for audit costs specific to the City of Amarillo: Under Tex. Tax Code § 351.1067, the City of Amarillo may use hotel occupancy tax revenues to pay for the costs of auditing a hotel, provided the City audits no more than one-third of the total number of hotels in the city in any fiscal year.

⁵² § 351.004.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

Alternatively, a city may request any available state hotel occupancy tax audit information from the Texas Comptroller. The city must keep such state hotel tax audit information confidential, and use the information only for enforcement or administration of the city's hotel tax. To obtain such information, a city must make a written request to the Comptroller's Office, Open Records Section, at P.O. Box 13528, Austin, Texas 78711. The request must be on city letterhead and signed by a high-level city official, preferably the mayor. A city may also fax such a written request to the Comptroller's Office, Open Records Section, at (512) 475-1610.

Enforcement Authority of a City

Cities are also given the authority to take the following actions against a hotel operator who fails to report or collect the local hotel occupancy tax:

- require the forfeiture of any revenue the city allowed the hotel operator to retain for its cost of collecting the tax;⁵⁶
- bring a civil suit against the hotel operator for noncompliance;⁵⁷
- ask the district court to enjoin operation of the hotel until the report is filed and/or the tax is paid;⁵⁸ and
- any other remedies provided under Texas law.

The most noteworthy of these remedies is the ability of the city to request that the district court close down the hotel if the hotel occupancy taxes are not turned over. Informing the hotel operator of the possibility of such a closure generally results in compliance by the hotel.

A city may also require in its hotel occupancy tax ordinance that persons buying a hotel retain out of the purchase price an amount sufficient to cover any delinquent hotel occupancy taxes that are due to the city.⁵⁹ If the buyer does not remit this amount or show proof that the hotel is current in remitting its hotel occupancy taxes, the buyer becomes liable for any past delinquent hotel occupancy taxes due on the purchased hotel.⁶⁰

The purchaser of a hotel may request that the city provide a receipt showing that no hotel occupancy tax is due ("Letter of No Tax Due") on the property to be purchased.⁶¹ The city is required to issue the statement not later than the 60th day after the request.⁶² If the city fails to issue the statement by the deadline, the purchaser is released from the obligation to withhold the amount due from the hotel purchase price.⁶³

The general statute of limitations for a lawsuit related to the collection and delinquency of hotel occupancy taxes is four years from the date the hotel tax is due.⁶⁴ However, this statute of limitations period does not apply if a hotel fails to file a report for the tax, or if the hotel files a false or fraudulent report.⁶⁵

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ § 351.0041.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

Use of Local Hotel Occupancy Tax Revenues

There is a two-part test for every expenditure of local hotel occupancy tax.⁶⁶

Criteria #1: First, every hotel tax expenditure must DIRECTLY enhance and promote tourism AND the convention and hotel industry.⁶⁷

Under the Tax Code, every event, program, or facility funded with local hotel occupancy tax revenues must be likely to do two things: 1) directly promote tourism; and 2) directly promote the convention and hotel industry.⁶⁸ “Tourism” is defined under Texas state law as guiding or managing individuals who are traveling to a different, city, county, state, or country.⁶⁹ A “direct” promotion of the convention and hotel industry has been consistently interpreted by the Texas Attorney General as a program, event, or facility likely to cause increased hotel or convention activity.⁷⁰ This activity may result from hotel or convention guests who are already in town and choose to attend the hotel tax funded facility or arts or historical event, or it may result from individuals who come from another city or county to stay in an area lodging property at least in part to attend the hotel tax funded event or facility.

If the hotel tax funded event or facility is not reasonably likely to directly enhance tourism and the hotel and convention industry, local hotel occupancy tax revenues cannot legally fund it.⁷¹ However, it is important to note that events and facilities that do not qualify for hotel occupancy tax funding are often still legally eligible for city funding from other funding sources available to the city (general property tax revenues, general sales tax revenues, franchise fee revenues, etc.). State law is simply stricter in terms of how the local hotel occupancy tax revenues can be spent.

There is no statutory formula for determining the level of impact an event must have to satisfy the requirement to directly promote tourism and hotel and convention activity.⁷² However, communities with successful tourism promotion programs often condition the amount of hotel occupancy tax that is awarded to the proportionate impact of the event as facility on tourism and hotel activity incident to the funding request. Entities applying for hotel occupancy tax revenue funding should indicate how they will market the event to attract tourists and hotel guests. If an entity does not adequately market its events to tourists and hotel guests, it is difficult to produce an event or facility that will effectively promote tourism and hotel activity.

A city or delegated entity should also consider whether a funded event will be held in a venue that will likely attract tourists and hotel guests. For example, if an event is held in a local school or community center, it may be less likely to attract tourists than if it is held at a local performing arts venue, museum or civic center. Each community will need to assess whether the facility hosting the function is likely to attract tourists and hotel guests. Similarly, if an event is a community picnic, local parade, educational class, or other similar type of event, it is often not likely to attract tourists and hotel guests and would not likely be eligible for hotel occupancy tax funding.

⁶⁶ §§ 351.101(a), (b).

⁶⁷ §§ 351.101(b).

⁶⁸ *Id.*

⁶⁹ § 351.001(6).

⁷⁰ See Op. Tex. Att’y Gen. Nos. GA-0124 (2003), JM-690 (1987).

⁷¹ *Id.*

⁷² See generally Tex. Tax Code §§ 351.101(a), (b).

Finally, it is a good practice to utilize a hotel tax application form. THLA has a sample hotel occupancy tax application form and a “post event” form that are already in use by many city governments throughout Texas. For a copy of these two forms, simply call THLA at (512) 474-2996, or email THLA at news@texaslodging.com. These forms pose questions of funding applicants such as “Do you have a hotel room block for your events?” and “What do you expect to be the number of room nights sold for this event?” Additionally, the application asks if the entity has negotiated a special hotel price for attendees of their funded event. If the entity does not find the need to reserve a hotel space or a room block or negotiate a special hotel rate, it is not likely that they anticipate their event/s will have a meaningful impact on hotel activity.

City staff and funded entities can also visit with area hoteliers who, in many cases, can provide feedback on whether any of their hotel guests expressed an interest in attending such events or facilities in the past. Hotel front desk and management staff usually know what local events and facilities were of interest to their guests by notes in their reservation systems, requests for directions, and information and transportation to such venues by hotel patrons.

After a hotel tax grant recipient’s event or program is offered for several years, the recipient should have a reasonable idea as to whether their event or program’s attendance includes a number of tourists and hotel guests. For example, some entities track whether guests are staying at local hotels via their event guest log or surveys. Other entities measure potential out-of-town attendance from their ticket sales records or other survey information.

It is important to note that Texas law also provides that local hotel occupancy tax may not be used for general revenue purposes or general governmental operations of a municipality.⁷³ It also may not be used to pay for governmental expenses that are not directly related to increasing tourism and hotel and convention activity.⁷⁴ For example, consider a request to use the hotel occupancy tax to pay for construction of additional lighting, restrooms, roads, sidewalks, or landscaping in a downtown area. These are expenditures for which the city would traditionally use its general revenues. Therefore, such an expenditure would violate the prohibition against using the hotel tax for “general governmental operations of a municipality.”⁷⁵ It is difficult to argue that such improvements to a non-tourism facility would “directly” promote tourism and hotel activity. At best, one could argue the improvements would “indirectly” enhance tourism and hotel activity—which is not sufficient under the clear language of the Tax Code to qualify for funding from the local hotel occupancy tax.

⁷³ Tex. Tax Code § 351.101(b); *see also* Op. Tex. Att’y Gen. Nos. JM-184 (1984), JM-965(1988).

⁷⁴ *Id.*

⁷⁵ *Id.*

Criteria #2: Every expenditure of the hotel occupancy tax must clearly fit into one of nine statutorily provided categories for expenditure of local hotel occupancy tax revenues.⁷⁶

The nine categories for expenditure of the hotel occupancy tax are as follows:

1) Funding the establishment, improvement, or maintenance of a convention center or visitor information center.

This category allows expenditures of the hotel tax for the creation, improvement, or upkeep of a convention center or a visitor information center.⁷⁷ A visitor information center may be operated by a city or by a chamber of commerce or other entity. If the visitor center facility and staff serve, multiple purposes (e.g. chamber staff or a chamber facility that is both the chamber office and a visitor center), the cost of the visitor center can only be covered by local hotel tax to the extent the facility is used for activities related to directly funding hotel activity. The term “convention center” is defined to include civic centers, auditoriums, exhibition halls, and coliseums that are owned by the city or another governmental entity or that are managed in whole or in part by the city.⁷⁸ It also includes parking areas in the immediate vicinity of a convention center facility, and certain hotels that are owned by the city or another governmental entity, or that are managed in whole or in part by the city.⁷⁹ It does not include facilities that are not of the same general characteristics as the structures listed above.

Texas law specifies that for a facility to be funded as a convention center, it must be a facility primarily used to host conventions and meetings.⁸⁰ “Primarily used” in this context would arguably mean that more than 50 percent of the bookings for the facility are to host conventions or meetings that directly promote tourism and the hotel and convention industry.⁸¹ In other words, holding local resident meetings in a facility would not count toward qualifying the facility as a convention center, but meetings of individuals from out-of-town who in part stay at hotels would qualify.

Simply naming a facility a convention center or visitor information center does not automatically qualify the facility as a “convention center.” The authority to use the hotel occupancy tax for facilities is limited and any such facility must meet the above noted “primary usage” test. For example, general civic buildings such as the city hall, local senior citizen centers or activity centers would not qualify as convention centers that could be funded by hotel tax.

2) Paying the administrative costs for facilitating convention registration.

This provision allows local hotel tax expenditures for administrative costs that are actually incurred for assisting in the registration of convention delegates or attendees.⁸² This is generally an expenditure by bigger cities that hold large conventions, and includes covering the personnel costs and costs of materials for the registration of convention delegates or attendees.

⁷⁶ Tex. Tax Code § 351.101(a).

⁷⁷ § 351.101(a)(1).

⁷⁸ § 351.001(2).

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*; see generally Tex. Tax Code §§ 351.101(a), (b).

⁸² Tex. Tax Code § 351.101(a)(2).

3) Paying for advertising, solicitations, and promotions that attract tourists and convention delegates to the city or its vicinity.

This provision allows expenditures for solicitations or promotional programs/advertising directly related to attracting tourists and convention delegates to the city or its vicinity.⁸³ Such expenditures are traditionally in the form of internet, newspaper, mail, television, or radio ads; or solicitations to promote an event or facility. The advertising or promotion must directly promote the hotel and convention industry.⁸⁴ For example, the Texas Attorney General ruled that the local hotel occupancy tax may not be used for advertising or other economic development initiatives or improvements to attract new businesses or permanent residents to a city.⁸⁵

4) Expenditures that promote the arts.

This section authorizes the expenditure of local hotel occupancy tax for a variety of art-related programs that also promote tourism and local hotel and convention activity.⁸⁶ Specifically, it allows funding the encouragement, promotion, improvement, and application of the arts including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution and exhibition of these major art forms.⁸⁷ However, it is not enough that a facility or event promotes the arts; Texas law requires that the arts related expenditure also directly promote tourism and the hotel and convention industry.⁸⁸

Section 351.101(a) of the Tax Code specifically states, “the municipal hotel occupancy tax may be used only to promote tourism and the convention and hotel industry.” The Texas Attorney General reaffirmed this standard in Opinion GA-0124: “Under section 351.101 of the Tax Code, a municipality may expend its municipal hotel occupancy tax revenue only to promote tourism and the convention and hotel industry, and only for the specific uses listed in the statute.”

THLA and Texans for the Arts (TFA) created a memorandum of understanding to assist local governments in implementing hotel tax laws as they relate to the arts. In order to comply with the hotel occupancy tax statute, THLA and TFA agree that to be eligible for arts funding from HOT revenues, arts-related recipients must satisfy the following three requirements:

1. The recipient must present, perform, promote, encourage or otherwise make possible, artistic events, cultural performances, programs, exhibitions or lectures involving any of the major art forms listed in Texas Tax Code Section 351.101 (a) (4), or "other arts related to the presentation, performance, execution and exhibition of these major art forms."
2. The hotel occupancy tax funded programs, facilities, or events must be advertised and open to the general public. And,
3. The hotel occupancy tax for funded programs, facilities, or events must be expended in a manner

⁸³ § 351.101(a)(3).

⁸⁴ § 351.101(b).

⁸⁵ Op. Tex. Att’y Gen. No. JM-690 (1987).

⁸⁶ Tex. Tax Code § 351.101(a)(4).

⁸⁷ *Id.*

⁸⁸ § 351.101(b).

that directly enhances and promotes tourism and the convention and hotel industry.

With regard to the requirement within Number 3 above related to directly enhancing and promoting tourism and the convention and hotel industry, THLA and TFA agree that the Tax Code does not require a recipient to demonstrate a proportionate level of direct impact on tourism and the convention and hotel industry to be eligible for local hotel tax revenue funding. However, the demonstration of some level of direct impact on tourism and the convention and hotel industry is required.

The following factors may be beneficial to consider, but this list is neither exhaustive nor mandatory:

- a. **Offering Arts Events as Part of a Tourism/Hotel Event:** The hotel tax funded arts entity can show a direct impact on the hotel and convention industry by providing entertainment or arts related services for conventions, conferences and meetings that are attended in whole or part by convention and/or hotel guests.
- b. **Use of Hotel Facilities/Services by the Arts:** The hotel tax funded arts entity can show a direct impact on the hotel and convention industry by using local lodging facilities and/or lodging services for galas or other events that are held by the hotel tax funded arts entity. A direct impact on hotels can also be shown through the use of hotel dining or hotel entertainment facilities by arts patrons either before and/or after hotel tax funded arts events.
- c. **Creating or Causing Room Night Activity at Area Hotels:** The hotel tax funded arts entity can show a direct impact on the hotel and convention industry through the reservation of hotel rooms for visiting artists and/or showing other hotel activity that is directly attributable to the hotel tax funded arts event or facility.
- d. **Surveying of Attendees at Arts Related Events:** The hotel tax funded arts entity can show a direct impact on the hotel and convention industry through audience or attendee questionnaires, polling, hotel block booking codes, or other methods that show hotel night or other hotel or convention activity that is directly attributable to the hotel tax funded arts event or facility.

There are many success stories of cities that have partnered with the arts entities to turn one day arts events into multi-day events that can substantially increase tourism and hotel activity. Such partnerships and long-term planning can help both foster the arts and grow hotel tax proceeds that can be made available to the arts and other eligible uses.

Expenditure Cap on Art-Related Events and Activities

The percentage of total local hotel tax funds that funding a city may allocate to the arts category is limited by state statute. Most cities in Texas may not expend more than 15 percent of the city's annual hotel tax revenue on the arts category. The "Special Rules" section of this guide, starting on page 27, sets forth the funding cap that applies to each city.

Once a city's annual expenditures of local hotel tax reach the applicable cap on expenditures for the arts, the city may not expend any additional hotel tax revenue in that budget year for projects which would fairly fit under the arts category. For example, if an expenditure provides funding to advertise an

arts program, that expenditure is categorized under the “promotion of the arts” subsection of the Tax Code, and the expenditure would be subject to the annual applicable cap on expenditures for the arts.

Attorney General opinion on arts-related facilities

In 2017, the Texas Attorney General issued opinion number KP-0131 regarding whether a city can expend hotel tax revenues for an arts-related facility under the arts category of the Tax Code. This opinion was requested by the City of Lakeway regarding funding the construction of a new performing arts center (referred to as "PAC"), to be owned by the City. The City of Lakeway requested an Attorney General opinion on whether the City may legally use hotel occupancy tax revenue to pay for 1) a feasibility study for the PAC, and 2) the construction, operation, and maintenance of the PAC.

In Opinion KP-0131, the Attorney General took a strict position on using local hotel tax revenue for an arts facility. The opinion states that the phrase, "promotion of the arts," in the state statute does not expressly authorize the use of municipal hotel tax revenues for the construction of arts facilities. The opinion concluded, "construction costs of theater facilities, considered alone, are not within the scope" of the arts category of hotel occupancy tax expenditures.⁸⁹ Based on this reasoning, it seems that the Texas Attorney General holds that funding of a physical structure with local hotel tax revenue must be specifically authorized under some other statutory category of hotel tax expenditures, aside from the general “promotion of the arts” category.

5) Funding historical restoration or preservation programs.

A city may spend a portion of its hotel occupancy tax revenues to enhance historical restoration and preservation projects or activities, or advertising and conducting solicitations and promotional programs to encourage tourists and convention delegates to visit preserved historic sites or museums that are likely to attract tourists and hotel guests.⁹⁰ Texas law does not limit such funding to structures that are owned by a public or nonprofit entity, or to whether the project is listed on a historic registry, but the city may choose to impose such limitations.

It is not enough that a project or activity event merely be historical in nature; Texas law requires that the historical related expenditure also directly promote tourism and the hotel and convention industry.⁹¹ Section 351.101(a) of the Tax Code specifically states that “the municipal hotel occupancy tax may be used only to promote tourism and the convention and hotel industry.” The Attorney General in Opinion GA-0124 (2003) reaffirmed this standard when it held: “Under section 351.101 of the Tax Code, a municipality may expend its municipal hotel occupancy tax revenue “only to promote tourism and the convention and hotel industry” and only for the specific uses listed in the statute.”

Additionally, the percentage of total local hotel occupancy tax revenues that a city may allocate to the historical program’s category is generally limited by statute. See the “Special Rules” section of this guide, starting on page 27.

⁸⁹ Op. Tex. Att’y Gen. No. KP-0131 (2017).

⁹⁰ § 351.101(a)(5).

⁹¹ § 351.101(b).

6) Funding certain expenses, including promotional expenses, directly related to a sporting event within counties with a population of under 1 million.

This section authorizes a municipality located in a county with a population of under 1 million to use local hotel occupancy tax revenue to fund certain expenses, including promotional expenses, directly related to a sporting event.⁹² To qualify under this authorization, the sporting event must be one that would “substantially increase economic activity at hotels and motels within the city or its vicinity.”⁹³ The statutory authorization also requires that a majority of the participants in the sporting event be tourists to the area.⁹⁴

This category is intended to allow communities to fund the event costs for sporting tournaments that result in substantial hotel activity. For example, if a city had to pay an application fee to seek a particular sporting event or tournament, it could use hotel tax for such an expenditure if the sporting event would substantially increase economic activity at hotels and the city was within a county of under one million population. The added requirement that a majority of the participants must be “tourists” was included to prevent the use of local hotel tax for sporting related facilities or events that are purely local (e.g.; local recreation centers, local little league and parks events, intramural sports, etc.).

7) Funding the enhancement or upgrading of existing sports facilities or sports fields for certain municipalities.

Certain statutorily bracketed cities may use local hotel occupancy tax to enhance and upgrade existing sports facilities owned by the municipality.⁹⁵ The municipality must own the sporting facility, and the municipality must meet one of the following population requirements:

- i. The municipality has a population of 80,000 or more, and is located in a county that has a population of 350,000 or less: **Abilene, Amarillo, Beaumont, College Station, Corpus Christi, Killeen, Laredo, League City, Longview, Lubbock, Midland, Odessa, Pearland, San Angelo, Tyler, Waco, and Wichita Falls.**⁹⁶
- ii. The municipality has a population of at least 75,000, but not more than 95,000, and is located in a county that has a population of less than 200,000 but more than 160,000: **Bryan and College Station.**⁹⁷
- iii. The municipality has population of at least 36,000, but not more than 39,000, and is located in a county that has a population of 100,000 or less that is not adjacent to a county with a population of more than two million: **Huntsville and Texarkana.**⁹⁸
- iv. The municipality has a population of at least 13,000 but not more than 39,000, and is located in a county that has a population of at least 200,000: **Addison, Alamo, Alvin, Angleton, Balch Springs, Bellaire, Benbrook, Burlison, Colleyville, Converse, Coppell, Copperas Cove, Corinth, Deer Park, Dickinson, Donna, Duncanville, Farmers Branch, Friendswood, Groves, Hewitt, Highland Village, Horizon City, Harker Heights, Humble, Hurst, Hutto, Katy, La Marque, La Porte, Lake Jackson,**

⁹² § 351.101(a)(6).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ § 351.101(a)(7).

⁹⁶ § 351.101(a)(7)(B)(i).

⁹⁷ § 351.101(a)(7)(B)(ii).

⁹⁸ § 351.101(a)(7)(B)(iii).

Lancaster, Leander, Little Elm, Live Oak, Mercedes, Murphy, Nederland, Port Neches, Portland, Rio Grande City, Rosenberg, Sachse, Saginaw, San Benito, San Juan, Schertz, Seagoville, Socorro, South Houston, Southlake, Stafford, Taylor, The Colony, Universal City, University Park, Watauga, Weslaco, West University Place, and White Settlement.⁹⁹

- v. The municipality has a population of at least 70,000, but not more than 90,000, and no part of the city is located in a county with a population greater than 150,000: **Longview.**¹⁰⁰
- vi. The municipality is located in a county that is adjacent to the Texas-Mexico border, the county has a population of at least 500,000, and the county does not have a municipality with a population greater than 500,000: Cities in Hidalgo County including, but not limited to **McAllen, Edinburg, Mission, and Pharr.**¹⁰¹
- vii. The municipality has a population of at least 25,000 but not more than 26,000, and is located in a county that has a population of 90,000 or less: **Greenville and Paris.**¹⁰²
- viii. The municipality is located in a county that has a population of not more than 300,000 and in which a component university of the University of Houston System is located: **Victoria.**¹⁰³
- ix. The municipality has a population of at least 40,000 and the San Marcos River flows through the municipality: **San Marcos.**¹⁰⁴
- x. The municipality is intersected by both State Highways 71 and 95: **Bastrop.**¹⁰⁵
- xi. The municipality that has a population of more than 10,000 and contains a portion of Mound Lake: **Brownfield.**¹⁰⁶
- xii. The municipality that has a population of not more than 10,000, that contains an outdoor gear and sporting goods retailer with retailer space larger than 175,000 square feet: **Buda.**¹⁰⁷
- xiii. The municipality that has a population of least 90,000 but less than 120,000 and is located in two counties, at least one of which contains the headwaters of the San Gabriel River, and for a municipality with a population of more than 175,000 but less than 255,000 that is located in two counties, each with a population of less than 200,000: **Georgetown and Denton.**¹⁰⁸
- xiv. The municipality that has a population of at least 6,000 and that is the county seat of a county that borders that State of Louisiana, is bisected by the United States highway, and has a population of 75,000 or less: **Marshall and Carthage.**¹⁰⁹
- xv. The municipality has a population of more than 67,000 and is located in two counties with 90 percent of the municipality's territory located in a county with a population of at least 580,000, and the remaining territory located in a county with a population of at least four million: **Missouri City.**¹¹⁰
- xvi. The municipality with a population of not more than 1,500 and is located in a county that borders Arkansas and Louisiana: **Queen City.**¹¹¹
- xvii. The municipality with a population of at least 200,000 and shares a border with Lake Ray Hubbard: **Garland.**¹¹²

⁹⁹ § 351.101(a)(7)(B)(iv).

¹⁰⁰ § 351.101(a)(7)(B)(v).

¹⁰¹ § 351.101(a)(7)(B)(vi).

¹⁰² § 351.101(a)(7)(B)(vii).

¹⁰³ § 351.101(a)(7)(B)(viii).

¹⁰⁴ § 351.101(a)(7)(B)(ix).

¹⁰⁵ § 351.101(x).

¹⁰⁶ § 351.10711(a)(xi).

¹⁰⁷ § 351.101(o)(xii).

¹⁰⁸ § 351.101(a)(6)(xiii).

¹⁰⁹ § 351.1079(a)(xiv).

¹¹⁰ § 351.101(a)(6)(xv).

¹¹¹ § 351.101(n)(xvi).

¹¹² § 351.101(a)(7)(B)(xvii).

[Note that statutory population brackets are based on the most recent decennial U.S. Census, at the time of this article, the most recently decennial census was conducted in 2010 but another decennial census will be conduct in 2020.¹¹³]

Texas state law further requires that before local hotel tax can be used for this purpose, the sports facilities and fields must have been used a combined total of more than 10 times for district, state, regional, or national sports tournaments in the preceding calendar year.¹¹⁴

If local hotel tax revenues are spent on enhancing or upgrading a sports facility, the municipality must also determine the amount of “area hotel revenue” generated by hotel activity from sports events held at the local hotel tax funded facility for the five-year period after the upgrades to the sport facility are completed.¹¹⁵ The area hotel revenues that were generated from sports events at the hotel tax funded facility over that five-year period must at least equal the amount of hotel tax that was spent to upgrade the sports facility. Under this statute, “hotel revenues” refers to the amount of room nights as other hotel revenue generated. It does not refer to the amount of local hotel tax generated.¹¹⁶ If the amount of hotel tax that was spent on the facility upgrades exceeds the hotel revenue attributable to events held at that facility during the five-year period, the municipality must reimburse the hotel occupancy tax revenue fund any such difference from the municipality’s general fund.¹¹⁷

For example, if a city spent \$400,000 on improvements to its soccer fields, it would have to show at least \$400,000 in area hotel revenue directly attributable to events held at that soccer field over the five-year period after the soccer field improvements were completed. If the city could only show \$300,000 in hotel industry revenue due to events held at that soccer field, the city would have to reimburse the city hotel tax with the \$100,000 difference from the city’s general fund.

8) Funding transportation of tourists from hotels to attractions

Often with conventions and large meetings, there is a need to transport the convention attendees to different tourism venues. In 2007, the Texas Legislature authorized the use of city hotel tax for any sized city to cover the costs for transporting tourists from hotels to and near the city to any of the following destinations:

- the commercial center of the city;
- a convention center in the city;
- other hotels in or near the city; and
- tourist attractions in or near the city.¹¹⁸

The reimbursed transportation system must be owned and operated by the city, or privately owned and operated but financed in part by the city.¹¹⁹ For example, this authority could be used to cover the costs of a city to finance certain private shuttles to operate between the convention center and area hotels and attractions for a large city-wide convention. It’s important to note that state law specifically prohibits the

¹¹³ Tex. Gov’t Code Ann. § 311.005(3) (Vernon 2019).

¹¹⁴ Tex. Tax Code §§ 351.101(a)(7), 351.1076.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ § 351.110(a).

¹¹⁹ § 351.110(b).

use of the local hotel tax to cover the costs for a transportation system that serves the general public.¹²⁰

9) Signage directing tourists to sights and attractions that are visited frequently by hotel guests in the municipality.

In 2009, the Texas Legislature added a statutory category that allows cities to use municipal hotel occupancy tax revenue to pay for signage directing tourists to sights and attractions frequently visited by hotel guests in the municipality.¹²¹

Summary of the Nine Uses for the Local Hotel Occupancy Tax

In summary, local hotel occupancy tax revenues only may be spent to establish or enhance a convention center or visitor information center, cover the administrative expenses for registering convention delegates, pay for tourism-related advertising and promotions, fund arts programs or facilities that will directly promote tourism and hotel and convention activity, fund historic restoration or preservation projects that will directly enhance tourism and hotel and convention activity, in certain cities noted above fund certain costs for holding sporting events and making upgrades to sporting facilities that substantially increase local hotel activity, certain transportation costs for taking tourists from hotels to various tourist attractions, and pay for signage directing tourists to sights and attractions frequently visited by hotel guests. If the city cannot fit an expenditure within one of these nine categories, hotel occupancy tax revenues cannot be used for that purpose, unless a special state statute was passed to allow such additional uses. This article also includes a summary of special provisions and limitations placed on cities that fall into certain population brackets or special geographic areas of the state.

With regard to the use of local hotel occupancy taxes, there is no time limit for a city to expend all of its hotel occupancy tax funds. At a minimum, however, state law does require that for cities with a seven percent local hotel tax rate, at least one-seventh of the hotel tax proceeds must be spent advertising and promoting the city to directly impact tourism and the hotel and convention industry.¹²² It should also be noted that state law requires that interest earned on hotel tax must be spent in the same way as other hotel tax revenues.¹²³ State law does not address the use of revenues that are earned from events funded by the local hotel occupancy tax.

¹²⁰ § 351.110(c).

¹²¹ § 351.101(a)(9).

¹²² §§ 351.103, 351.1035, 351.104(d), 351.105(b), and 351.106(a).

¹²³ §§ 351.001(9), (10).

Administering Hotel Occupancy Tax Revenue Expenditures

City reporting of information to the Texas Comptroller

In 2017, the Texas Legislature passed a statute requiring all Texas cities that impose a local hotel tax to annually report to the State Comptroller the hotel tax rate that the city levies and certain information about the city's expenditures of local hotel tax. Specifically, the statute requires the city to report: 1) its municipal hotel tax rate, 2) any applicable venue tax rate, 3) the amount of hotel tax revenue collected for the preceding fiscal year, and 4) the amount and percentage of funds spent on each major category under state law.

A municipality that imposes a hotel occupancy tax (HOT) must report certain information in accordance with either Option 1 or Option 2, as described below.

Option 1: Complete and submit an online reporting form prescribed by the Comptroller. This form can be found at, <https://comptroller.texas.gov/transparency/local/hotel-receipts/>

The Comptroller's office has created an online form requesting the following required information from municipalities electing to report under Option 1:

- The rate of the HOT imposed by the municipality.
- If applicable, the rate of the sports and community venue hotel occupancy tax imposed by the municipality under the authority of Local Government Code Ch. 334, Subchapter H.
- The dollar amount of revenue collected during the preceding fiscal year from the HOT imposed by the municipality under the authority of Tax Code Ch. 351.
- If applicable, the dollar amount of revenue collected during the preceding fiscal year from the sports and community venue hotel occupancy tax imposed by the municipality under the authority of Local Govt. Code Ch. 334, Subchapter H.
- The dollar amount and percentage of the revenue collected from the tax imposed by the municipality, under the authority of Tax Code Ch. 351, Subchapter. A, and allocated during the municipality's preceding fiscal year to each of the following non-population-bracketed categories for expenditures:¹²⁴
 - Convention centers or visitor information centers
 - Convention delegates registration
 - Advertising to attract tourists
 - Arts promotion
 - Historical restoration and preservation projects
 - Signage directing the public to sights and attractions

Option 2: Provide the Comptroller with a direct link to the posted material on the municipality's website that covers the information required under Option 1.

¹²⁴ §§ 351.101(a)(1), (2), (3), (4), (5), and (9).

If the city elects to use Option 2, the city must provide the Comptroller's office a direct internet link, through the Comptroller's online form, where an interested party can easily find the required information described in Option 1 in a clearly stated format. The Comptroller has developed an optional template that municipalities may use if they elect to report using this second option. This template can be found here: <https://comptroller.texas.gov/transparency/local/hotel-receipts/>

Reporting Deadlines: Municipalities have a 50-day window to report the required information. The annual reporting period begins on January 1 and ends on February 20 of each calendar year.

Duty of funded entities to provide a list of activities.

All entities (including the city itself) that are directly or indirectly funded by the local hotel occupancy tax are required to annually provide a list of the scheduled activities, programs, or events that will directly enhance and promote tourism and the convention and hotel industry.¹²⁵ This list is to be provided annually to the city secretary or his/her designee prior to the expenditure of the hotel occupancy tax funding by the funded entity.¹²⁶ An entity may add items to this list at any time, and each city decides the format for providing this information. This documentation requirement does not apply if the entity already provides written information to the city indicating which scheduled activities or events that it offers that directly enhance and promote tourism and the convention and hotel industry. For example, cities that require quarterly or annual reports on the use of hotel tax by hotel tax funded entities would satisfy this requirement if their report addresses the extent to which their events directly promote tourism and hotel activity.¹²⁷

It is important to remember that if an entity does not have any such events or programs reasonably expected to directly promote tourism and the hotel and convention industry, it is not eligible for local hotel occupancy tax funding.¹²⁸ If only a portion of an entity's programs fit these criteria, then only a proportionate amount of that entity's costs should be covered by the local hotel occupancy tax.¹²⁹

Delegating management of funded activities.

The governing body of a city may delegate the management or supervision of programs funded by the hotel occupancy tax by written contract.¹³⁰ This delegation may be made to a person, another governmental entity, or to a private organization.¹³¹ This delegation is often made to a local arts council, a chamber of commerce, or to the convention and visitors bureau. The municipality shall approve the entity's annual budget prior to delegating the management or supervision of hotel tax funded programs.¹³² Furthermore, the municipality shall require the delegated entity to make periodic reports, at least quarterly, listing the hotel occupancy tax expenditures made by the delegated entity.¹³³ Additionally, the Tax Code requires that the contracted entity maintain complete and accurate financial

¹²⁵ § 351.108(b).

¹²⁶ *Id.*; § 351.108(d).

¹²⁷ § 351.108(g).

¹²⁸ § 351.101(b).

¹²⁹ § 351.101(e).

¹³⁰ § 351.101(c).

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

records for every expenditure of hotel occupancy tax revenue, and upon the request of the municipality or another person, make the records available for inspection and review.¹³⁴

An entity with delegated authority to manage hotel tax funded programs undertakes a fiduciary duty with respect to the use of the tax revenue.¹³⁵ Such entities are also required to maintain the city hotel occupancy tax revenue in a separate bank account that may not be commingled with any other account or funds.¹³⁶ The Tax Code does not contain similar prohibitions against commingling the funds for individual organizations, such as an arts or historical group that receives hotel tax funding for their individual program, but do not themselves oversee hotel tax funding to other entities.

Use of hotel occupancy tax revenues to cover administrative expenses.

Texas law allows proceeds of the municipal hotel occupancy tax to be used to cover the portion of administrative costs that are directly attributable to work on activities that may be funded by the local hotel occupancy tax.¹³⁷ For example, entities that manage activities funded by local hotel tax may spend some of the tax for certain day-to-day operational expenses.¹³⁸ These expenses may include supplies, salaries, office rental, travel expenses, and other administrative costs.¹³⁹ However, these costs may be reimbursed only if the expenses are incurred in the promotion and servicing of expenditures authorized under the hotel occupancy tax laws.¹⁴⁰ The portion of the administrative costs that are covered should not exceed the percentage of the cost that is attributable to the activity funded by the hotel occupancy tax.¹⁴¹ For example, administrators who spend 33 percent of their time overseeing hotel occupancy tax funded programs should seek funding for no more than 33 percent of their salary or 33 percent of other related overhead costs. Additionally, hotel occupancy tax revenues may be spent on travel that is directly related to the performance of the person's job in an efficient and professional manner.¹⁴² This travel should facilitate the acquisition of skills and knowledge that will promote tourism and the convention and hotel industry.¹⁴³

¹³⁴ § 351.101(d).

¹³⁵ § 351.101(c).

¹³⁶ *Id.*

¹³⁷ § 351.101(e).

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² § 351.101(f).

¹⁴³ *Id.*

Special Rules for Municipalities

The Texas Tax Code provides additional rules for certain Texas cities based on the city's population bracket. Where noted, these special rules supplement or further restrict the general two-part test for hotel occupancy tax revenue expenditures, discussed earlier in this guide. For statutory construction purposes, population brackets are based on the decennial federal census, most recently conducted in 2010.¹⁴⁴

Cities with populations of less than 125,000.

Minimum expenditure on advertising and promotion:

Cities with populations of less than 125,000 must spend a minimum amount of hotel occupancy tax revenue on advertising and promotion, and that minimum depends on the hotel occupancy tax rate adopted by the city.¹⁴⁵ If the city adopts a tax rate of not more than 3 percent, at least one-half of 1 percent of the rate must be spent on advertising and promotion of the city and its vicinity.¹⁴⁶ If the city adopted a rate that exceeds 3 percent, at least 1 percent of the rate must be spent on advertising and promotion of the city and its vicinity.¹⁴⁷ For example, if a city has a 7 percent hotel occupancy tax rate, at least 1/7 of the hotel occupancy tax proceeds must be spent on advertising and promoting the city and its vicinity to attract tourists and hotel and convention activity. An exception to the minimum threshold for advertising and promotion expenditures is provided if the city receives in excess of \$2 million in hotel tax revenues annually, in which case, the city should allocate its revenue by ordinance.¹⁴⁸

15 percent maximum expenditure for the arts and 50 percent maximum expenditure for historical restoration and preservation:

Under § 351.103(c), a city with a population of under 125,000 may not expend more than the greater of either 15 percent of the hotel occupancy tax revenue collected or the amount of tax received by the city at the rate of 1 percent of the cost of a room on promotion of the arts.¹⁴⁹ Additionally if a city with a population of under 125,000 does not allocate any hotel tax money for a convention center, the Tax Code prohibits the city from allocating more than 50 percent of its hotel occupancy tax for historical restoration or preservation projects.¹⁵⁰

Cities with a population of 200,000 or greater (except Houston): Arlington, Austin, Corpus Christi, Dallas, El Paso, Fort Worth, Garland, Irving, Laredo, Lubbock, Plano, and San Antonio.

In addition to the general two-part test for all expenditures of the hotel occupancy tax revenue, the above cities have certain specific expenditure limitations that apply to their handling of the local hotel occupancy tax.

¹⁴⁴ Tex. Gov't Code § 311.005(3).

¹⁴⁵ § 351.103.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

Minimum expenditure that must be spent on advertising and promotion:

A city with a population of 200,000 or greater is required to spend at least 50 percent of the hotel occupancy tax collected by the city on advertising and conducting solicitations and promotional programs to attract tourists to the city or its vicinity.¹⁵¹ However, if the city collects more than \$2 million in hotel tax revenues annually, this 50 percent minimum expenditure requirement does not apply.¹⁵² Exception: the City of Garland is subject to a special statutory provision covered below that requires it to spend at least 30 percent of its annual hotel tax revenues to advertising and promotion.¹⁵³

15 Percent maximum expenditure for the arts and 15 percent maximum expenditure for historical restoration and preservation:

Under § 351.103(c), a city with a population of at least 200,000 may not expend more than the greater of either 15 percent of the hotel occupancy tax revenue collected or the amount of tax received by the city at the rate of 1 percent of the cost of a room on promotion of the arts.¹⁵⁴ Also, a city with a population of more than 125,000 may not spend more than 15 percent of its hotel occupancy tax revenue on historical restoration and preservation programs.¹⁵⁵

Special rules for the City of Houston.

Maximum hotel occupancy tax rate for Houston:

Houston is capped by statute at a total combined hotel occupancy tax rate of 17 percent.¹⁵⁶ This includes the state, city, county, and sports authority hotel occupancy taxes.¹⁵⁷

Minimum 23 percent expenditure for advertising and promotion:

The City of Houston must spend at least 23 percent of the tax revenue it collects on advertising and promotion, unless the allocation impairs the City's ability to operate and maintain its convention center facilities or to pledge revenue for the payment of convention center bonds.¹⁵⁸

Maximum 19.3 percent expenditure for arts:

The City of Houston may not expend more than the greater of 19.3 percent of the hotel occupancy tax revenue collected or the amount of tax received by the city at the rate of 1 percent of the cost of a room on promotion of the arts.¹⁵⁹

Special Rules for Dallas, Austin, Fort Worth, and San Antonio:

Dallas: 55 percent maximum on funding a convention center, and 45 percent minimum on advertising. Dallas falls into an additional category, "Populous Municipalities with Council-Manager Government," which requires it to use the revenue derived from the portion of the municipal hotel occupancy tax rate

¹⁵¹ Tex. Tax Code § 351.103(a).

¹⁵² § 351.103(b).

¹⁵³ § 351.103(b-1).

¹⁵⁴ § 351.103(c).

¹⁵⁵ § 351.103(c).

¹⁵⁶ Tex. Tax Code §§ 352.003, 351.003(a); Tex. Local Gov't Code Ann. § 382.155 (Vernon 2019).

¹⁵⁷ *Id.*

¹⁵⁸ Tex. Tax Code § 351.103(b).

¹⁵⁹ § 351.103(c).

that exceeds 4 percent for the following purposes: 1) no more than 55 percent for the municipality's convention center complex; and 2) at least 45 percent for advertising and promotion.¹⁶⁰

Additional 2 percent rate for a convention center facility (Austin, Fort Worth, and San Antonio):

Austin, Fort Worth, and San Antonio are authorized to implement up to a 9 percent maximum municipal hotel occupancy tax rate.¹⁶¹ The revenue derived from application of the tax at a rate more than 7 percent, and its interest income, may only be used for the construction of an expansion of an existing convention center facility.¹⁶² This nine percent maximum rate does not apply to Dallas, or to eligible central municipalities with a population of less than 440,000: Arlington, Corpus Christi, Garland, Grand Prairie, and Irving.¹⁶³

Project financing zones (Dallas and Fort Worth):

The City of Fort Worth and the City of Dallas have statutory authority to receive "incremental" state hotel occupancy tax revenues, state sales tax revenues, and mixed beverage tax revenues from hotels within a three mile radius of their convention center and/or other statutory designated city facilities.¹⁶⁴ This incremental tax revenue is the additional state hotel occupancy tax revenues, state sales tax revenues, and mixed beverage tax revenues at certain hotels that exceed a base amount collected from hotels within a three-mile radius of the project. The state funding can be used to enhance and upgrade the convention center in either city, as well as the Will Rogers Memorial Center complex in Fort Worth. The process is performed as follows:

The city designates the project financing zone (i.e. the convention center and/or the Will Rogers Memorial complex), with a project expiration date of less than 30 years. Within 30 days of the designation of the project financing zone, the city notifies the Comptroller about the designation.

Base year amounts are determined for state hotel occupancy tax revenues, state sales tax revenues, and mixed beverage tax revenues collected from hotels located within the three-mile zone in the year in which financing zone is designated.

Then the "incremental hotel-associated revenue" is calculated by determining the amount of annual state hotel occupancy tax revenues, state sales tax revenues, and mixed beverage tax revenues collected from hotels within the three-mile zone that are in excess of the "base year amount." The city is entitled to receive this incremental revenue from the Texas Comptroller, beginning on January 1st after the project's designation, and ending when the project financing zone expires.

Cities with populations between 125,000 and 200,000: Amarillo, Brownsville, Grand Prairie, Killeen, McAllen, McKinney, Mesquite, and Pasadena.

Minimum expenditure on advertising and promotion:

Cities with populations between 125,000 and 200,000 must spend a minimum amount of hotel occupancy tax revenue on advertising and promotion, and that minimum depends on the hotel occupancy tax rate adopted by the city.¹⁶⁵ If the city adopts a tax rate of not more than 3 percent, at least one-half of 1

¹⁶⁰ § 351.106.

¹⁶¹ § 351.003(b).

¹⁶² §§ 351.1065, 351.003(b).

¹⁶³ § 351.003(b).

¹⁶⁴ Tax Code § 351.1015.

¹⁶⁵ § 351.103.

percent of the rate must be spent on advertising and promotion of the city and its vicinity.¹⁶⁶ If the city adopted a rate that exceeds 3 percent, at least 1 percent of the rate must be spent on advertising and promotion of the city and its vicinity.¹⁶⁷ For example, if a city has a 7 percent hotel occupancy tax rate, at least 1/7 of the hotel occupancy tax proceeds must be spent on advertising and promoting the city and its vicinity to attract tourists and hotel and convention activity. An exception to the minimum threshold for advertising and promotion expenditures is provided if the city receives in excess of \$2 million in hotel tax revenues annually, in which case, the city should allocate its revenue by ordinance.¹⁶⁸

15 Percent maximum expenditure for the arts and 15 percent maximum expenditure for historical restoration and preservation:

Under § 351.103(c), a city with a population between 125,000 and 200,000 may not expend more than the greater of either 15 percent of the hotel occupancy tax revenue collected, or the amount of tax received by the city at the rate of 1 percent of the cost of a room, on promotion of the arts.¹⁶⁹ Additionally, a city with a population of more than 125,000 may not spend more than 15 percent of its hotel occupancy tax revenue on historical restoration and preservation programs.¹⁷⁰

Additional rules for certain large coastal municipalities: Corpus Christi.

Public beach expenditures:

The City of Corpus Christi is authorized to use all or any portion of the city hotel occupancy tax collected from hotels that are within areas that were annexed by the City of Corpus Christi and were previously subject to the county hotel occupancy tax toward cleaning and maintaining public beaches.¹⁷¹

Expenditures from the portion of municipal hotel tax rate exceeding 7 percent:

The City of Corpus Christi must separately account for all hotel occupancy tax revenue it derives from a city hotel occupancy tax rate that exceeds 7 percent (up to a maximum of 9 percent).¹⁷² The city may use revenue from the portion of the city hotel occupancy tax rate that exceeds 7 percent for acquiring land for a municipally owned convention center; constructing, improving, operating and maintaining the convention center; and paying bonds to finance these activities.¹⁷³

Special rules for medium sized “eligible coastal municipalities:” Galveston.

A different set of revenue expenditure rules apply for eligible coastal municipalities, defined as a “home-rule municipality that borders the Gulf of Mexico and has a population of less than 80,000.”¹⁷⁴ The City of Galveston fits this bracket’s description. The Tax Code limits the allocation of local hotel occupancy tax revenue for eligible coastal municipalities in the following ways:

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ § 351.103(c).

¹⁷⁰ *Id.*

¹⁷¹ § 351.1055.

¹⁷² §§ 351.1055, 351.003(c), 351.107(e).

¹⁷³ *Id.*

¹⁷⁴ § 351.001(3).

- **Minimum expenditure for improvements to civic centers, hotels, marinas, golf courses, trolleys, and other improvements that attract tourists:**
If the city levies a rate of 7 percent, at least 1 percent of the cost of a room shall be used for the payment of bonds issued to establish, acquire, purchase, construct, or improve public improvements that serve the purpose of attracting visitors and tourists, such as parks, civic centers, auditoriums, coliseums, marinas, cruise ship terminals, hotels, motels, parking facilities, golf courses, trolleys or trolley transportation systems.¹⁷⁵ This 1 percent may also be used for maintenance, improvement, or operation of any of the above facilities.¹⁷⁶ For eligible coastal cities with a 7 percent rate, this requirement mandates dedicating 1/7 of the hotel occupancy tax revenue for items within the above noted purposes.¹⁷⁷
- **Minimum expenditure for matching funds for beach clean-up:**
If the city levies a rate of 6 percent or more, at least 1 percent of the cost of a room shall be used as matching funds for state funds and other funds available to clean and maintain public beaches.¹⁷⁸ For example, if the city levied a 7 percent local hotel occupancy tax, at least 1/7 of the hotel occupancy tax must be spent on beach clean-up. However, a city may credit any funds it receives from the state hotel occupancy tax for beach clean-up toward meeting this obligation.
- **Minimum 1 percent expenditure for other beach related expenditures:**
If the city levies a rate of 5 percent or more, at least 1 percent of the cost of a room shall be used for beach patrol, lifeguard services, marine water safety, and park law enforcement.¹⁷⁹ For example, if the city levied a 7 percent local hotel occupancy tax, at least 1/7 of the hotel occupancy tax must be spent on the above noted beach related expenditures. However, a city may credit any funds it receives from the state hotel occupancy tax for beach related expenditures toward meeting this obligation.¹⁸⁰
- **Minimum 3 percent expenditure for advertising and promotion:**
If the city levies a rate of 4 percent or more, at least 3 percent of the cost of a room shall be used for advertising and promotion.¹⁸¹ For example, if the city levied a 7 percent local hotel occupancy tax, at least 3/7 of the hotel occupancy tax must be spent on advertising and promotion.

Special state funding for beach clean-up: Galveston.

In 1995, the Texas Legislature passed a special statute that dedicates the revenue generated from the state hotel tax at a rate of two percent (one third of the state hotel occupancy tax) from Galveston lodging operators to beach clean-up.¹⁸² For example, if the 6 percent state hotel tax generates \$300 in state hotel tax proceeds, \$100 is given back to the City of Galveston to use for clean-up of beaches within the City of Galveston.

The implementing legislation that authorizes this funding only applies to an “eligible coastal municipality”

¹⁷⁵ § 351.105.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² § 156.2511.

that has created a park board of trustees to clean and maintain public beaches.¹⁸³ An eligible coastal municipality is defined under state law to be a city that,

1. Borders on the Gulf of Mexico; and
2. Has a population of less than 80,000.¹⁸⁴

A city is eligible to adopt a park board of trustees for beach clean-up only if it,

1. Is a home rule city;
2. Has over 40,000 in population;
3. Is under 80,000 in population; and
4. Borders the Gulf of Mexico.¹⁸⁵

According to the Texas Comptroller's Office, the only Texas city that fits both the definition of an "eligible coastal municipality" and the definition of a city that may adopt a park board of trustees for beach clean-up is Galveston.¹⁸⁶ Accordingly, Galveston receives one-third of the state hotel occupancy taxes collected from Galveston area hoteliers for beach clean-up purposes through a rebate from the Texas Comptroller.

Special state funding for beach clean-up: Corpus Christi, Port Aransas, Quintana, South Padre Island, and Surfside Beach.

Originally enacted in 1999, and amended in 2009, 2013, and 2015, the Texas Legislature passed a special statute, similar to the authority relating to Galveston, dedicating a portion of the state hotel occupancy tax generated from certain eligible barrier island coastal municipalities to beach clean-up.¹⁸⁷

The implementing legislation for this funding applies only to certain eligible "barrier island coastal municipalities:" Corpus Christi, Port Aransas, Quintana, South Padre Island, and Surfside Beach.¹⁸⁸ The State of Texas provides a rebate to the city of 2 percent of the 6 percent state hotel occupancy collected by the State from lodging operators in the municipality.¹⁸⁹ This rebated amount can be used by each city only to clean and maintain public beaches in that municipality, for an erosion response project in that municipality, and to clean and maintain bay shores owned by the municipality or leased by the municipality from the State.¹⁹⁰

Municipal hotel occupancy tax funding for coastal erosion: South Padre Island.

In 2009, the Texas Legislature amended Chapter 351 of the Tax Code to allow the City of South Padre Island to increase its hotel occupancy tax rate to 8 ½ percent.¹⁹¹ The law dedicates 7 percent of the 8 ½ percent rate to advertising and promotion or convention center related purposes.¹⁹² One percent can be used for any purpose authorized under Tax Code § 351.101. This legislation dedicates the remaining ½

¹⁸³ *Id.*

¹⁸⁴ § 351.001(3).

¹⁸⁵ Tex. Loc. Gov't Code Ch. 306.

¹⁸⁶ Tex. Comptroller Opinion Letter No. 200007471L, July 6, 2000.

¹⁸⁷ Tax Code § 156.2512.

¹⁸⁸ *Id.*

¹⁸⁹ Tax Code § 156.2512

¹⁹⁰ *Id.*

¹⁹¹ Tax Code §§ 351.001(11), 351.003(d).

¹⁹² § 351.1055(d).

percent of municipal hotel occupancy tax to coastal erosion projects.¹⁹³

Special rules for medium sized home rule coastal cities with a population of less than 80,000 and that border bays: Ingleside, Portland, Aransas Pass, La Porte, Seabrook, Port Aransas, Port Lavaca, Rockport, Baytown, Texas City, and Palacios.

Home-rule cities that have a population of less than 80,000 and border bays operate under a unique statute that governs the expenditure of hotel tax revenues.¹⁹⁴ These medium sized home rule coastal cities have the ability to use local hotel tax revenue for certain special beach related purposes and for tourism related public improvements, but these cities also have additional limitations on how the city uses hotel tax revenues.¹⁹⁵

Under § 351.104(c), a medium sized home rule coastal city may use up to 10 percent of the city’s hotel tax revenue for any of the following:

- 1) for a purpose described by Section 351.105(a)(1) or (2);
- 2) to clean and maintain land owned by a governmental entity that is adjacent to a bay that is bordered by the city; or
- 3) to mitigate coastal erosion on land owned by a governmental entity that is adjacent to a bay that is bordered by the city.¹⁹⁶

The statutory provision regarding the use hotel tax revenue for a purpose described by Section 351.105(a)(1) or (2) is particularly relevant. This section refers to “tourism related improvements,” which includes the establishment, acquisition, purchase, construction, improvement, enlargement, equipment, or repair of public improvements, including parks, civic centers, civic center buildings, auditoriums, exhibition halls, coliseums, marinas, cruise ship terminal facilities, hotels, motels, parking facilities, golf courses, trolley or trolley transportation systems, and other facilities as may be considered advisable in connection with these facilities that serve the purpose of attracting visitors and tourists to the municipality.¹⁹⁷

Again, use of hotel tax revenue for these purposes is limited to 10 percent of the city’s total hotel tax revenue derived under Chapter 351 of the Tax Code.¹⁹⁸ Furthermore, the amount that is spent from the hotel occupancy tax revenue fund for any of the purposes described above must be matched by the city with the same amount of revenue from a source other than the hotel occupancy tax.¹⁹⁹

Additionally, if the medium sized home rule coastal city uses hotel tax revenue for any of the purposes described above (e.g. for a convention center or for a coastal erosion project), the city’s advertising and promotion budget may not be set at an amount that is less than the average amount of revenue used by the city for advertising and promoting the city as a tourism destination during the 36-month period that

¹⁹³ § 351.1055(e).

¹⁹⁴ § 351.104.

¹⁹⁵ *Id.*

¹⁹⁶ § 351.104(c).

¹⁹⁷ § 351.105.

¹⁹⁸ § 351.104(c).

¹⁹⁹ § 351.104(e).

preceded the city's use of city hotel tax for beach maintenance or tourism related public improvements.²⁰⁰

Special rules for small coastal municipalities with a population of less than 5,000, adjacent to a home-rule city with a population of less than 80,000: Jamaica Beach.

Coastal cities with a population of less than 5,000 adjacent to a home-rule city with a population of less than 80,000 may use all or any portion of the municipal hotel tax revenue it collects to clean or maintain beaches within the city, to provide beach security (defined as beach patrol, lifeguard services, marine water safety and park law enforcement) within the municipality, and to pay for any purpose allowed by Tex. Tax Code § 351.105 or Tex. Gov't Code § 1504.001.²⁰¹ The maximum municipal hotel occupancy rate for cities in this bracket is 9 percent.²⁰²

Special rules for the City of Alpine.

Minimum expenditure on advertising and promotion:

The City of Alpine must spend at least 50 percent of its hotel occupancy tax revenue on advertising and promotion to attract tourists and convention delegates or registrants to the city or its vicinity.²⁰³

Maximum expenditure for arts:

Alpine's maximum percentage for the promotion of the arts is 15 percent of its hotel occupancy tax revenues.²⁰⁴

Maximum expenditure for historical restoration and promotion projects:

Alpine's maximum percentage for historical restoration and promotion of historical projects is 15 percent of its hotel occupancy tax revenues.²⁰⁵

Special rules for the City of Nassau Bay.

The City of Nassau Bay has special legislation on point that allows that city to use hotel tax revenue for a convention center, marina, visitor center meeting room, or hotel facility that substantially enhances hotel activity in the city.²⁰⁶ The facility must be owned by a city and be located within a 1,000 feet of a hotel property.²⁰⁷ The total amount spent may not exceed the amount of hotel revenue attributable to events at that facility for the fifteen year period following the construction of the improvement.²⁰⁸ The City must annually publish a report noting the hotel activity that is generated from activities funded by this expenditure of hotel tax and is subject to a requirement to refund the hotel tax fund from the City's General Fund if the project does not have the required return on investment in hotel activity.²⁰⁹

²⁰⁰ § 351.104(d).

²⁰¹ § 351.1055(c).

²⁰² § 351.003(c).

²⁰³ § 351.1035.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ Tax Code §§ 351.101(j), 351.1071.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

Special rules for the City of South Padre Island: Spaceport Viewing, Eco-Tourism, and Fishing Piers.

The City of South Padre Island has specific legislation allowing the City to use a limited amount of hotel tax revenue for the promotional and event expenses of an ecological tourism event if the majority of the event's participants are tourists, and if the event substantially increases economic activity at area hotels.²¹⁰

The legislation also allows South Padre Island to expend local hotel tax on expenses related to the improvement of sites for hotel guests to observe spacecraft launches.²¹¹ If South Padre Island uses hotel occupancy tax revenue for a spaceport viewing facility, the City may not reduce the amount of revenue that is used for advertising and promotion to an amount that is less than the average amount of revenue used by the City for advertising and promotion during the 36-month period that precedes the City's first use of revenue for a spaceport viewing facility.²¹²

Both of these uses (spaceport viewing facilities and eco-tourism events) are capped to a combined total of no more than 15% of the hotel tax collected by the municipality.²¹³

The City may also use revenue for expenses directly related to the construction, improvement, equipping, repairing, operation, and maintenance of coastal sports facilities owned by the city, including boat docks, boat ramps, and fishing piers, if the coastal sports facilities have been used in the preceding calendar year a combined total of more than five times for district, state, regional, or national sports tournaments or events and the majority of the events at the coastal sports facilities are directly related to a sports tournament or event in which the majority of participants are tourists who substantially increase economic activity at hotels within or in the vicinity of the municipality.²¹⁴

Special rules for Blanco, Dripping Springs, Hays City, Johnson City, Mountain City, and Woodcreek: Dark skies.

In 2019, the cities of Blanco, Dripping Springs, Hays City, Johnson City, Mountain City, and Woodcreek were given unique authority to use hotel tax revenue for the promotion and preservation of "dark skies." These funds can be applied to the cost of construction and maintenance of related infrastructure and the purchase and installation of hardware that reduces "light pollution" and "sky glow."²¹⁵

This authority requires that if these cities expend hotel occupancy tax revenue for this purpose, the city must determine the amount of area hotel revenue that is attributable to dark sky related events and activities for five years after the city first uses hotel tax revenue for this purpose. The city may not spend municipal hotel tax revenue on dark skies-related purpose in an amount that exceeds the area hotel revenue attributable to dark skies related events and activities. Additionally, if a city utilizes this "dark

²¹⁰ Tax Code §§ 351.1054, 351.1055(d).

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*

²¹⁴ § 351.1054(3).

²¹⁵ § 351.10692.

skies” authority, the city may not spend more than 25 percent of the city’s annual hotel tax revenue for this purpose.²¹⁶

Special rules for Bryan and College Station: Sports facilities.

The cities of Bryan and College Station have special legislation that provides authority to use hotel tax revenue for new sporting facilities or fields if the facilities or fields are owned by the municipality, and if a majority of the events at the facility or field are directly related to a sporting event that substantially increases hotel activity.²¹⁷ The city may not use hotel tax for the acquisition of the land.²¹⁸ The facilities must meet strict requirements for return on investment for the hotel industry: The city may not spend more on the facility or field than will be generated in hotel revenue from sporting events held at that facility over the next five years.²¹⁹

The city must publish an annual report of the actual room night and economic impact of events held at the facility or field and must reimburse the hotel tax fund for any deficit between the amount spent on the facility from hotel tax and the amount of hotel revenue generated from events at the facility over the subsequent five years.²²⁰ At least annually, a city must compare the area hotel revenue that is attributable to sporting events at the sporting related facilities. In a situation where the area hotel revenue attributable to the sporting facility is less than the projected amount, the city must create a practical plan to increase revenue.²²¹

Special rules for Carrizo Springs, Dilley, Jourdanton, Pecos, Pearsall, Pleasanton, and San Benito: Sports Facilities.

The cities of Carrizo Springs, Dilley, Jourdanton, Pecos, Pearsall, Pleasanton, and San Benito have special legislation that provides authority to issue bonds payable with hotel tax revenue for certain limited sporting facilities.²²² The sporting facility must have the requisite amount of hotel impact before they are funded, and the city must annually report the room night and economic impact of events held at the facility.²²³ The city may not expend more hotel tax on the facility improvements than will be generated in room night revenue from events held at the facility over a 15 year period, and this must be projected by an independent analyst before hotel taxes are used for this purpose.²²⁴

Special rules for Shenandoah: Sports facility.

²¹⁶ § 351.10692(c)(1).

²¹⁷ Tax Code §§ 351.101(i), 351.1078.

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ § 351.1078(c).

²²² Tex. Tax Code § 351.1066.

²²³ *Id.*

²²⁴ *Id.*

Shenandoah may use local hotel tax revenue on a sports-related facility with seating for at least 4,500 people that is used or is planned for use for one or more professional or amateur sports events or other events, including rodeos, livestock shows, and performing arts events.

Special rules for Garland: Sports facility and minimum expenditure threshold for advertising and promotion.

Garland has the authority to make enhancements, and improvements to a existing city owned sports facility. Additionally, Garland must allocate at least 30% of its hotel tax revenue for advertising and promotion of the city as a tourism destination.²²⁵

Special rules for the City of Cedar Park and Webster: Coliseum or multiuse facility.

In 2019, the Legislature authorized the cities of Cedar Park and Webster to use local hotel tax revenue for the construction improvement, enlarging, equipping, renovating, repairing, operation, and maintenance of a coliseum or multiuse facility if the majority of the events at the coliseum or facility attract tourists who substantially increase economic activity at hotels in the municipality.²²⁶

Special rules for the City of Odessa: Sports facilities located on land owned by UTPB.

In 2019, the City of Odessa obtained statutory authority to allow the City to use local hotel tax revenue to construct and maintain a sports facility located in the municipality or a multipurpose sports facility located on land owned by the University of Texas Permian Basin (UTPB) if the City leases the land from UTPB for at least 25 years.²²⁷

If Odessa spends hotel tax revenues on a sports facility, Odessa must determine the amount of “area hotel revenue” generated by hotel activity from sports events held at the hotel tax funded facility for seven years after the City initially expends hotel tax revenue for this purpose.²²⁸ The area hotel revenues that were generated from sporting events at the hotel tax funded facility over that seven year period must at least equal the amount of hotel tax that was spent to construct the sporting facility.²²⁹ If the amount of hotel tax that was spent on the sporting facility exceeds hotel revenue attributable to events held at that facility over that seven year period, the municipality must reimburse the hotel occupancy tax revenue fund any such difference from the municipality’s general fund.²³⁰

Additionally, the City of Odessa may not reduce funding for advertising and promotion during the time period that the sporting facility receives hotel tax funding.²³¹

²²⁵ § 351.101(b-1).

²²⁶ § 351.101(q).

²²⁷ § 351.10712.

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

Special rules for the City of Edinburg: Sports facilities.

In 2019, the Legislature modified the City of Edinburg’s existing authority to use local hotel tax revenue to fund the enhancement or upgrades of existing sports facilities or sports fields.²³² The city may use hotel tax revenue to pay debt service on the sports facility or field, and to pay for related infrastructure located within 2,500 feet of the sports facility. The sports facility, field or related infrastructure must generate hotel revenue in an amount that is at least equal to the hotel tax expended on the facility or related infrastructure within a 10-year period.²³³

Special rules for Rockport.

Nearly all Texas cities are capped at using no more than 15 percent of the city’s local hotel tax revenue on the arts. In 2017, Rockport obtained statutory authority to spend up to 30 percent of the City’s hotel tax revenue on the arts.²³⁴ However, if Rockport spends more than 15 percent of its hotel tax revenue on the arts, the City must determine for that fiscal year the increase in the amount of hotel revenue that is attributable to that expenditure, and the total amount of hotel occupancy tax revenue spent by the city on the arts. If the amount of hotel revenue attributable to the arts is less than the amount of hotel tax revenue spent on the arts, the city shall reimburse the city’s hotel occupancy tax revenue fund from the city’s general fund an amount equal to 50 percent of the difference.²³⁵

Additionally, if Rockport spends more than 15 percent of its local hotel tax revenue on the arts, the City may not reduce the amount of revenue that is used for advertising and promotion to an amount that is less than the average amount of revenue used by the City for advertising and promotion during the 36-month period preceding that fiscal year.²³⁶

Special rules for Marfa.

Marfa is situated hundreds of miles from the nearest airport with scheduled airline service, yet the city caters to a thriving high-end tourism base that often accesses the area by private flights into the Marfa airport. As the number of private jets ferrying tourists and hotel guests has increased, the small county-owned airport has suffered from a lack of repairs to handle private jet aircraft. A special state law allows Marfa to use local hotel tax revenue to repair its municipal airport facility, subject to a number of restrictions.²³⁷ First, the airport must be one without commercial air service, and the airport must be substantially used for private air service that transports passengers staying at hotels in or near the city.²³⁸ Second, Marfa cannot spend more than 15 percent of its annual hotel tax revenue on airport improvements, nor can Marfa spend hotel tax revenue in an amount that exceeds what is returned in hotel revenue generated by increased private air passengers staying at Marfa hotels.²³⁹ Third, this airport spending authority expires in 2032, and the City cannot expend hotel tax revenue on the airport for more than a ten-year period once initiated.²⁴⁰

²³² § 351.101(a)(7)(B)(vi).

²³³ § 351.1068(b).

²³⁴ § 351.1075.

²³⁵ § 351.1075(c)(2).

²³⁶ § 351.1075(c)(1).

²³⁷ § 351.1036.

²³⁸ § 351.1036.

²³⁹ § 351.1036.

²⁴⁰ § 351.1036.

Convention Center Hotel Rebates:

The State of Texas incentivizes development of certain convention center hotel projects by offering an array of state tax rebates to qualifying cities. The process for securing these rebates (e.g. sales taxes, hotel occupancy taxes, local alcoholic beverage taxes) can be quite involved, and eligible cities must closely follow a series of steps to ensure the receipt of state funds.

State Tax Rebates:

Certain statutorily bracketed municipalities as defined below are entitled to receive a rebate of state hotel occupancy taxes, state sales taxes, and local alcoholic beverage taxes from the eligible convention center hotel project for the first 10 years after the project opens for initial occupancy.²⁴¹

In nearly all instances, the hotel project must be owned by or located on land owned by the municipality or by a nonprofit corporation acting on behalf of an eligible central municipality. The hotel project must be located within 1,000 feet of a qualified convention center facility owned by the municipality.

The rebates are for the “payment of bonds or other obligations issued or incurred to acquire, lease, construct, and equip the hotel and any facilities ancillary to the hotel, including convention center entertainment-related facilities, restaurants, retail establishments, street and water and sewer infrastructure necessary for the operation of the hotel or ancillary facilities, and parking facilities within 1,000 feet of the hotel or convention center facility.” (See § 351.102(b)).

In 2019, the Texas Legislature redefined and narrowed the scope of many definitions that apply to the convention center hotel project rebate program:

The term “retail establishment” is defined as an establishment engaged in activities described by the North American Classification System section 442-443,445-446, 448, 451-453.²⁴²

“Infrastructure” includes a road, street highway, bridge, overpass, underpass, and interchange; a fresh, reuse, or alternative water supply system, sanitary sewer system, and storm drainage system; an electric system, telecommunications system, and gas system; signage, landscaping, and hardscaping; and a public amenity or public area, such as a plaza, park, or trail.²⁴³

"Qualified convention center facility" has been limited to mean a facility that has been or will be constructed and that:

- 1) is primarily used to host conventions or meetings;
- 2) is wholly owned by a municipality to which this subchapter applies, and none of which is or may be owned through an undivided common interest;
- 3) is connected to a qualified hotel or has an exterior wall that is located not more than 1,000 feet from the nearest exterior wall of a qualified hotel;

²⁴¹ §§ 351.102(c), 151.429(h); Gov't Code § 2303.5055.

²⁴² www.census.gov/eos/www/naics/2017NAICS/2017_NAICS_Manual.pdf

²⁴³ §351.151(c).

- 4) is not located in a hotel, sports stadium, or other structure but may share common infrastructure or facilities with a hotel, such as a heating, ventilation, and air-conditioning system, electrical system, or kitchen;
- 5) has at least 10,000 square feet of continuous meeting space; and
- 6) is configurable to simultaneously accommodate multiple events of different sizes and types.²⁴⁴

"Qualified hotel" means a hotel that is designated by a municipality as the hotel that is part of a qualified project. A qualified hotel:

- 1) must be located on land owned by the designating municipality;
- 2) must be connected to a qualified convention center facility or have an exterior wall that is located not more than 1,000 feet from the nearest exterior wall of the qualified convention center facility; and
- 3) may consist of two or more towers in limited circumstances.²⁴⁵

"Qualified project" means a project to acquire, construct, repair, remodel, expand, or equip a qualified convention center facility; or acquire, lease, construct, repair, remodel, expand, or equip a qualified hotel; and that may include acquiring, leasing, constructing, repairing, remodeling, expanding, or equipping a restaurant, bar, retail establishment, or spa located in a qualified convention center facility or qualified hotel or connected to a qualified convention center facility or qualified hotel, including by a covered walkway; or a parking area or structure, the nearest property line of which is located not more than 1,000 feet from the nearest property line of a qualified convention center facility or qualified hotel; acquiring, constructing, repairing, remodeling, or expanding infrastructure that is directly related to and necessary for the qualified convention center facility or qualified hotel; and is located within the property lines of the qualified convention center facility or qualified hotel, or not more than 1,000 feet from the nearest property line of the facility or hotel; or acquiring a property right, including a fee simple interest, easement, or other interest in connection with a purpose described by this subdivision.²⁴⁶

Finally, the Legislature limited cities with a population of less than 175,000 to one convention center hotel project in perpetuity.²⁴⁷

In most instances, only the revenue collected from that particular hotel project, for a period of up to ten years, may be pledged.²⁴⁸ Additionally, for up to ten years, an eligible central municipality, a county, or other authorized political subdivision may agree to rebate, refund, or pay eligible tax proceeds to the owner of the hotel project. Eligible tax proceeds include state and local hotel occupancy taxes, local ad valorem taxes, state and local sales and use taxes, and local mixed beverage taxes.²⁴⁹

"Eligible central municipalities" and certain other cities: Abilene, Alvin, Amarillo, Austin, Arlington, Baytown, Cedar Hill, Cedar Park, Celina, Commerce, Conroe, Corpus Christi, Dallas, El Paso, Fort Worth, Fredericksburg, Frisco, Hutto, Grand Prairie, Irving, Katy, Kemah, Kerrville, Kyle, League City, Lewisville, Lubbock, Midland, Nacogdoches, Odessa, Pearland, Port Aransas, Presidio, Prosper, Rio Grande City, Richmond, Roanoke, Round Rock, Rowlett, San Antonio, San Benito, Seabrook, Sugar Land, The Colony, Tyler, Weatherford, and Webster.

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ § 351.155(d).

²⁴⁸ §§ 351.102(c), 151.429(h); Gov't Code § 2303.5055.

²⁴⁹ *Id.*

Arlington, Austin, Dallas, Fort Worth, Houston and Kemah fall under the statutory definition of an “eligible central municipality.”²⁵⁰ An “eligible central municipality” is defined as a municipality with a population of two million or more; a municipality with a population of 350,000 or more but less than 450,000 in which two professional sports stadiums are located, each of which has a seating capacity of at least 40,000 people; and was approved by the voters of the municipality as a sports and community venue project; and a municipality with a population of less than 2,000 that is located adjacent to a bay connected to the Gulf of Mexico, that is located in a county with a population of 290,000 or more that is adjacent to a county with a population of four million or more, and has a board walk on the bay.²⁵¹

Arlington has special authority for the pledge or commitment of certain tax revenue for a unique project associated with stadiums.²⁵²

Amarillo is a city with a population of 173,000 or more, and it is located within two counties, and also has similar authority as eligible central municipalities.²⁵³ However, Amarillo may not pledge tax revenue to the hotel project any earlier than either, the 20th anniversary of the date the city first pledged revenue to the project, or the date the revenue project equals 40 percent of the hotel project’s total construction cost.²⁵⁴

Additionally, state law provides the same eligibility for incentives for a convention center hotel that have traditionally been available to “Eligible Central Municipalities,” for the Cities of Webster, Weatherford, Tyler, The Colony, Sugar Land, Seabrook, San Benito, San Antonio, Rowlett, Round Rock, Roanoke, Richmond, Rio Grande City, Prosper, Presidio, Port Aransas, Pearland, Nacogdoches, Midland, Odessa, Lubbock, Lewisville, League City, Kyle, Kerrville, Katy, Irving, Hutto, Grand Prairie, Frisco, Fredericksburg, El Paso, Corpus Christi, Conroe, Commerce, Celina, Cedar Park, Cedar Hill, Baytown, Alvin, and Abilene²⁵⁵

Fredericksburg has special authority that provides that the hotel project does not have to be owned by or located on land owned by the municipality or by a nonprofit corporation acting on behalf of an eligible central municipality.²⁵⁶

Unlike other eligible cities, the cities of Abilene, Cedar Hill, League City, Lewisville, Lubbock, Katy, Kemah, Port Aransas, Prosper, Roanoke, Rowlett, and Sugar Land must pledge the local hotel tax revenue from the convention center hotel in order to receive all eligible state tax rebates.²⁵⁷ This was an additional requirement added by the Texas Legislature in the 2017 session.

A number of cities obtained special authority in the 2019 Legislative session which would allow the city to receive the tax revenue from qualified establishments if the establishment is located within the zone of the convention center hotel.²⁵⁸ These cities may receive tax revenue from restaurants, bars, retail establishments, and in some instances swimming pools and swimming facilities which are owned or operated by the qualified hotel if they are located in the qualified zone. The following cities are eligible to

²⁵⁰ § 351.001(7).

²⁵¹ § 351.102 (e).

²⁵² § 351.1022.

²⁵³ § 351.102(b).

²⁵⁴ § 351.102(b-1).

²⁵⁵ §§ 351.102(b), (e).

²⁵⁶ § 351.153(a).

²⁵⁷ § 351.102(c).

²⁵⁸ § 351.157(a).

receive this tax revenue: Baytown, Cedar Hill, Celina, El Paso, Grand Prairie, Irving, Richmond, Round Rock, San Benito, Seabrook, and Weatherford.²⁵⁹

Minimum threshold for advertising and promotion funding: Abilene, Alvin Amarillo, Austin, Arlington, Baytown, Cedar Hill, Cedar Park, Celina, Commerce, Conroe, Corpus Christi, Dallas, El Paso, Fort Worth, Fredericksburg, Frisco, Hutto, Grand Prairie, Irving, Katy, Kemah, Kerrville, Kyle, League City, Lubbock, Midland, Odessa, Pearland, Port Aransas, Presidio, Prosper, Rio Grande City, Richmond, Roanoke, Round Rock, Rowlett, San Antonio, San Benito, Seabrook, Sugar Land, The Colony, Tyler, Weatherford, and Webster.

Except for Nacogdoches, cities that undertake funding a convention center hotel with hotel occupancy tax revenues must allocate a minimum threshold of hotel occupancy tax funding for advertising and promotion of tourism and hotel activity under § 351.101(a)(3).²⁶⁰ Specifically, these cities may not allocate hotel tax funding under § 351.101(a)(3) to a percentage that is less than the average percentage of that revenue allocated by the municipality for that purpose during the 36-month period preceding the date the municipality begins using hotel tax revenues for the hotel project.²⁶¹ Additionally, Lubbock's authorization requires the City to increase the amount it spends on marketing sports events and activity by an additional 3% beyond what the City is expending on that purpose under its 2016 fiscal year budget once it exercises its convention center hotel tax rebate authority.²⁶²

²⁵⁹ 351.157(b).

²⁶⁰ § 351.102(d).

²⁶¹ *Id.*

²⁶² § 351.1064.

Additional Information

If a city or funded entity has additional questions about the administration or use of the hotel occupancy tax, it is welcome to contact the Texas Hotel & Lodging Association for assistance by phone at (512) 474-2996. THLA has sample documents available to assist in administering hotel taxes, such as funding grant application forms, post event forms, and tax collection guidelines.

Texas city officials can also make inquiries to the legal staff of the Texas Municipal League at (512) 231-7400.

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THE HOTEL TAX “TWO-STEP”

By **Bill Longley**, TML Legislative Counsel



In the grand scheme of things, city hotel occupancy taxes account for just a small amount of city revenue. Property taxes and sales taxes are far more important to most cities. Why does it seem, then, that hotel taxes generate so much confusion and controversy?

The answer is this: Hotel taxes, unlike most other taxes, are levied on a specific category of businesses—hotels. As a result, these businesses tend to pay close attention to how cities expend these funds. Spend city sales taxes in a controversial way, and no particular category of business feels singled out enough to raise a fuss. Perceived misuses of hotel taxes, on the other hand, are a different story.

Fortunately, it's very easy for a city official to remember how to legally spend hotel taxes. A city simply needs to remind itself to always follow the "two-part test." The key element of a two-part test is – surprise – that it has two parts! Cities frequently remember to meet one element of the test, but then entirely forget the other part. This article will succinctly describe the two-part test, and then describe some common situations to which we can apply the test.

Part 1: Heads in Beds

The first element of the two-part test is this: Every expenditure of hotel taxes must put "heads in beds." What this means is that every funded project must attract overnight tourists to the city's hotels and motels, thus promoting the city's hotel industry.

For example, how about a weekend-long arts and crafts show? There's a very good chance that out-of-town guests might come to visit such an event, so expenditure of hotel tax money on that event would likely qualify.

On the other hand, how about a quilting bee at a local nursing home? While a worthy cause, the quilting bee is unlikely to attract overnight tourists and, therefore, probably wouldn't qualify to receive hotel tax funds.

Part 2: The Nine Categories

Once a project has cleared the first part of the test, it's time for – you guessed it – the second part of the test. Here it is: Every expenditure of hotel taxes must also fit into one of nine statutorily authorized categories. These are the nine categories: (1) convention and visitor centers; (2) convention registration; (3) advertising the city; (4) promotion of the arts; (5) historical restoration and preservation; (6) sporting events in a county under one million in population; (7) enhancing or upgrading existing sports facilities or sports fields (only in certain cities); (8) tourist transportation systems; and (9) signage directing the public to sights and attractions that

are visited frequently by hotel guests in the city.

Thus, even if an event puts heads in beds, it cannot receive hotel tax money unless it also fits into one of the nine categories. For instance, what about a livestock auction that will attract attendees from surrounding counties? While that event is likely to attract overnight tourists, it doesn't fit neatly into one of the nine categories. Therefore, it's likely not a valid recipient of hotel tax money.

It's not enough to meet one of the two prongs of the two-part test. A city must meet both! The following are some real-life examples that have been the focus of inquiries received by the Texas Municipal League (TML) Legal Department.

Fireworks, Anyone?

The prototype hotel tax controversy is an event like a fireworks show or a parade. Cities frequently ask if they can fund a fireworks show with hotel tax money.

Let's subject a fireworks show to the two-part test. Does a fireworks show put heads in beds? The answer is "probably not," unless it is a truly spectacular event. But let's give it the benefit of the doubt. Suppose the Town of Pyrotechnic, Texas, truly does put on a fireworks extravaganza that attracts tourists from around the state. So far, so good.

But what about the second part of the test – the nine categories? Do fireworks shows fit neatly into any of the nine? Not really. Some may argue that such shows "advertise" the city, but this is likely not what that category means. Advertising the city literally means some sort of print or other media that explicitly promote the city. Otherwise, a city could simply say that any popular event "advertises" the city that holds it. Direct funding of fireworks displays and the like are, usually, not a very good fit.

Signs of the Times?

Another frequent question concerns highway signs promoting the city. May a city fund a billboard touting the city's attractions, restaurants, and hotels? Let's put it to the two-part test. Heads in beds? Well, why not? If a billboard encourages motorists to stop in town, those motorists might stay the night, whereas without the sign they would have driven on to the next city. This is exactly what the statute intends. The nine categories? How about advertising? Prior to 2009, a convincing argument could be made that because a billboard literally advertises the city it refers to, that it would fit within the advertising category. All doubt was erased in 2009, when the Texas Legislature added the ninth category – signage directing the public to



sights and attractions. Travel signs are a perfect fit for hotel occupancy tax expenditures.

Chambers of Commerce?

Cities frequently wonder if they can fund the local chamber of commerce using hotel tax money. Do chambers put heads in beds? Maybe, maybe not. Chambers of commerce are typically charged with promoting economic development, not tourism. Even assuming a chamber does promote tourism though, how about the nine categories? Funding a chamber doesn't, in itself, fall into any of the nine categories.

Fortunately, there is an easy solution. The laws governing hotel tax expenditures permit the city to delegate expenditure of hotel tax money to another entity, typically a chamber or convention and visitor bureau. As long as the chamber spends the money on projects that otherwise meet the two-part test mentioned above, it's fine to delegate some funds to them. There must be a written contract laying out the duties of the chamber, though. Also, the chamber must keep the hotel funds in an account separate from its general operating fund.

Arts Organizations

City arts organizations are a common trouble area. It seems that every arts council in the state knows that promotion of the arts is one of the nine categories on which city hotel taxes may be expended. Cities know this because these

arts groups frequently come asking for the money.

The thing to remember about arts groups is this: Direct funding of the organization's operations does nothing in and of itself to put "heads in beds." Put another way, funding the operating budget of an arts council meets the second part of the test (promotion of the arts) but not necessarily the first.

The solution? The city should encourage the group to seek funding only for its festivals and shows that do, in fact, attract tourists to the city. By limiting the expenditure to such events, the city meets both parts of the test.

Don't Forget to Report

Legislation passed in 2017 that requires cities to annually report hotel occupancy tax information to the comptroller, including information on how the funds are spent. Not later than February 20 of each year, a city that imposes a hotel occupancy tax must submit to the comptroller information that includes the city's hotel occupancy tax rate, the amount of revenue generated by the tax, and the amount and percentage of the revenue spent for each of the following purposes:

- Convention or information centers
- Convention delegates registration
- Advertising to attract tourists
- Arts promotion and improvement
- Historical restoration and preservation projects
- Signage directing the public to sights and attractions

Cities must comply with the annual reporting requirements by either submitting the report to the comptroller on a form prescribed by the comptroller, or alternatively providing the comptroller a direct link to, or a clear statement describing the location of, the information required to be reported that is posted on the city's website.

What Else?

There are numerous other technical details about how to legally expend hotel tax funds. In truth, by simply learning and remembering the two-part test, city officials are 99 percent of the way toward full compliance with hotel tax laws. City officials with questions about the hotel occupancy tax should call the TML Legal Department at 512-231-7400. ★

Council Meeting

2.

Meeting Date: 10/27/2020

Department: Parks & Recreation

Pillars: Excellence in Asset Management

Milestones: Implement the Asset Management Plan
Define and promote Addison Identity

AGENDA CAPTION:

Present and Discuss Public Input Related to the Addison Athletic Club Renovations.

BACKGROUND:

On June 9, 2020 Council approved a contract with LPA Architects for the design, construction drawings and construction administration related to renovations and improvements of the Addison Athletic Club (AAC). The project is currently in the Schematic Design Phase which includes gathering input from Addison residents to determine their preferences regarding the renovations.

Between September 22, 2020 and October 13, 2020, staff solicited in-person input at the Addison Athletic Club and on-line input from the Town's web page. Participation in the survey came from 449 Addison residents of which 444 are members of the AAC. Public input revolved around preferred design styles for the renovations, preferred locker room configurations and preferences related to sauna and steam elements.

Staff will present to Council an overview of the input gathered and solicit feedback from Council related to the direction being given to LPA Architects as they move forward with the project.

RECOMMENDATION:

Staff requests direction from Council.

Attachments

Presentation - Public Input AAC Renovations

Public Input For Addison Athletic Club Renovations



AAC Renovations



Addison Athletic Club (AAC) is in the design phase for renovations approved by voters in the 2019 Bond Election. Those renovations include:

- Locker Room Renovations
- Gymnasium and Track Improvements
- Pool Modernization
- Roof Replacement
- HVAC Replacement

Also included in the design will be core building improvements which are not funded at this time but include:

- Reconfiguring the Lobby Desk for Improved Efficiency
- New Flooring (excluding wood and gym floors)
- Painting Walls
- Replacing Lights with LED lights
- Updating Furniture
- Updating Signage

AAC Renovations



- The proposed renovations were identified as priorities in the Addison Athletic Club Master Plan and / or in the Asset Management Plan.
- On June 9, 2020 Council awarded a contract to LPA Architects for the design of the renovations. A portion of that contract includes gathering input in order to determine community preferences.
- To gather feedback a survey was made available to residents on September 22 and closed October 13, 2020.



Community Input - Questions

Athletic Club Renovation Survey

This page shows analysis of submitted data, such as the number of submissions per component value, calculations, and averages. Additional components may be added under the "Add analysis components" fieldset.

Are you a member of the Addison Athletic Club?

Yes	444
No	1
I plan to be in the future	4

Please indicate your sauna preference.

- I prefer a traditional sauna over an infrared sauna.
- I prefer an infrared sauna over a traditional sauna.
- I am neutral on this option.
- I do not prefer either be included in the locker rooms.

Which design do you prefer?

- I prefer the Traditional Design.
- I prefer the Transitional Design.
- I have a neutral opinion.
- I do not like either design Option.

Which Changing Room do you prefer?

- I prefer Option A.
- I prefer Option B.
- I prefer Option C.
- I have a neutral opinion.
- I do not like any of the layout options.

Utilizing the information provided about steam showers please indicate your preference.

- I prefer a traditional steam room over a steam shower.
- I prefer a steam shower over a traditional steam room.
- I am neutral on this option.
- I do not prefer either be included in the locker rooms.

449 Responses

Community Input – Design Style



Traditional Style



ATHLETIC CLUB
ADDISON, TEXAS

PUBLIC INPUT
OPTION A
TRADITIONAL DESIGN



RECEPTION




PROPOSED FINISHES

			
STONE WALL	WALL	WALL	WOOD WALL


LOCKER ROOM




PROPOSED FINISHES

		
WALL	WALL	WALL

INDOOR TRACK





PROPOSED FINISHES

		
TRACK DECK	WALL	WALL

EXTERIOR POOL SHADE STRUCTURE




PROPOSED FINISHES

		
SHADE STRUCTURE	SHADE STRUCTURE	SHADE STRUCTURE

6



Community Input – Design Style

Which design style do you prefer?

I prefer the Traditional Design.	207	46.1%
I prefer the Transitional Design.	207	46.1%
I have a neutral opinion.	33	7.3%
I do not like either design Option.	2	.5%

449 Responses

Staff Recommendation

Proceed with the Traditional Design blending in preferred transitional elements identified in the comments; Lighting up the design and using small accents of color.

Are there items you feel strongly about or against?

Traditional Design Likes

- Timeless and Classic*
- Warm and Inviting
- Better fit for the AAC

Traditional Design Dislikes

- Too dark*
- Outdated Looking

Transitional Design Likes

- Lighter, Brighter, Cleaner*
- Use of Color*
- Open and Inviting
- Fits Addison’s Brand

Transitional Design Dislikes

- Could Become Dated
- Cold and Sterile Feeling

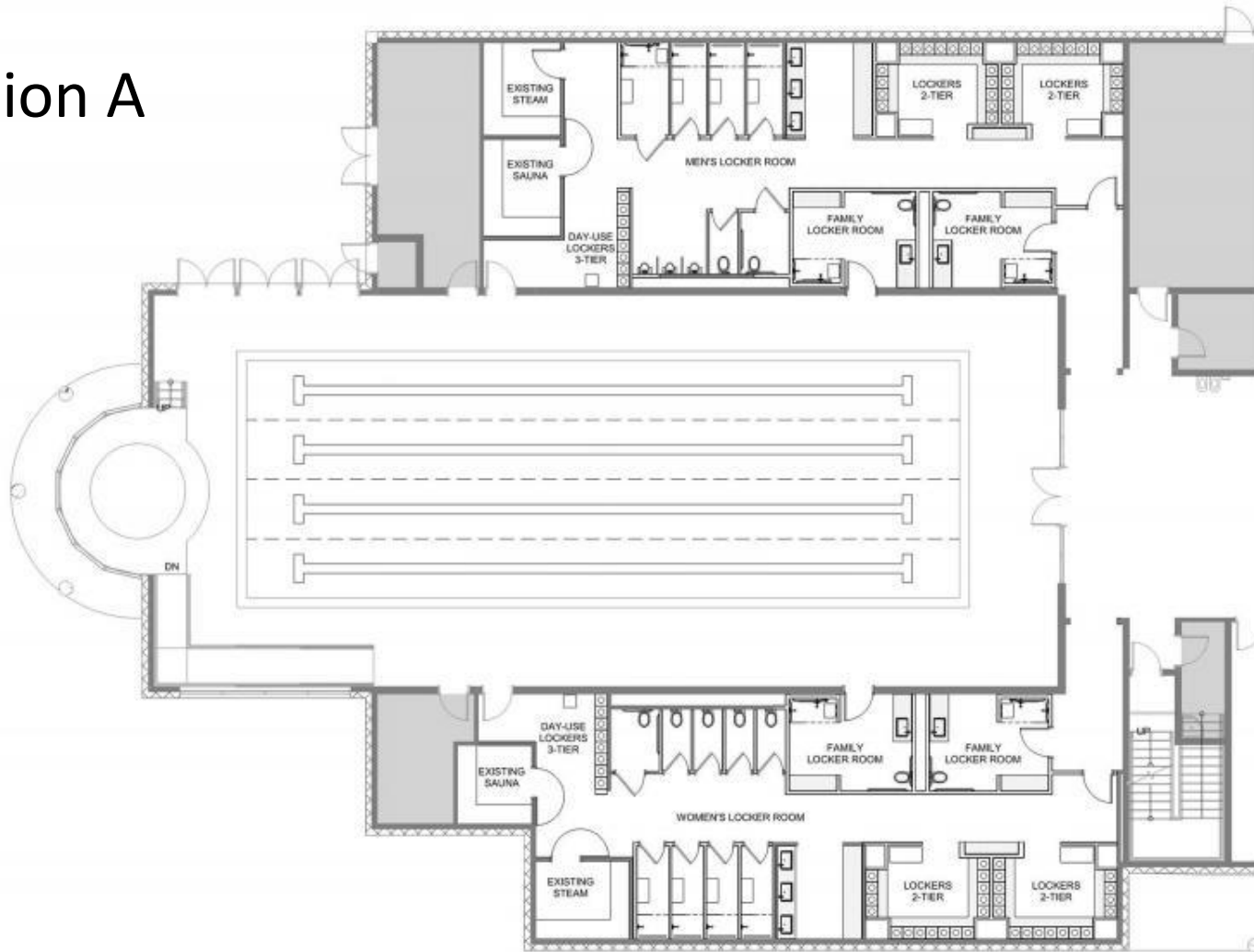
* Designates most consistent comments

Overarching Themes

- Timeless
- Bright and Open
- Should Fit Existing AAC Exterior and Interior.
- Like the Traditional Design with Use of More Color in Transitional Design*
- Materials Should be Low Maintenance, Functional and Durable

Community Input – Changing Rooms

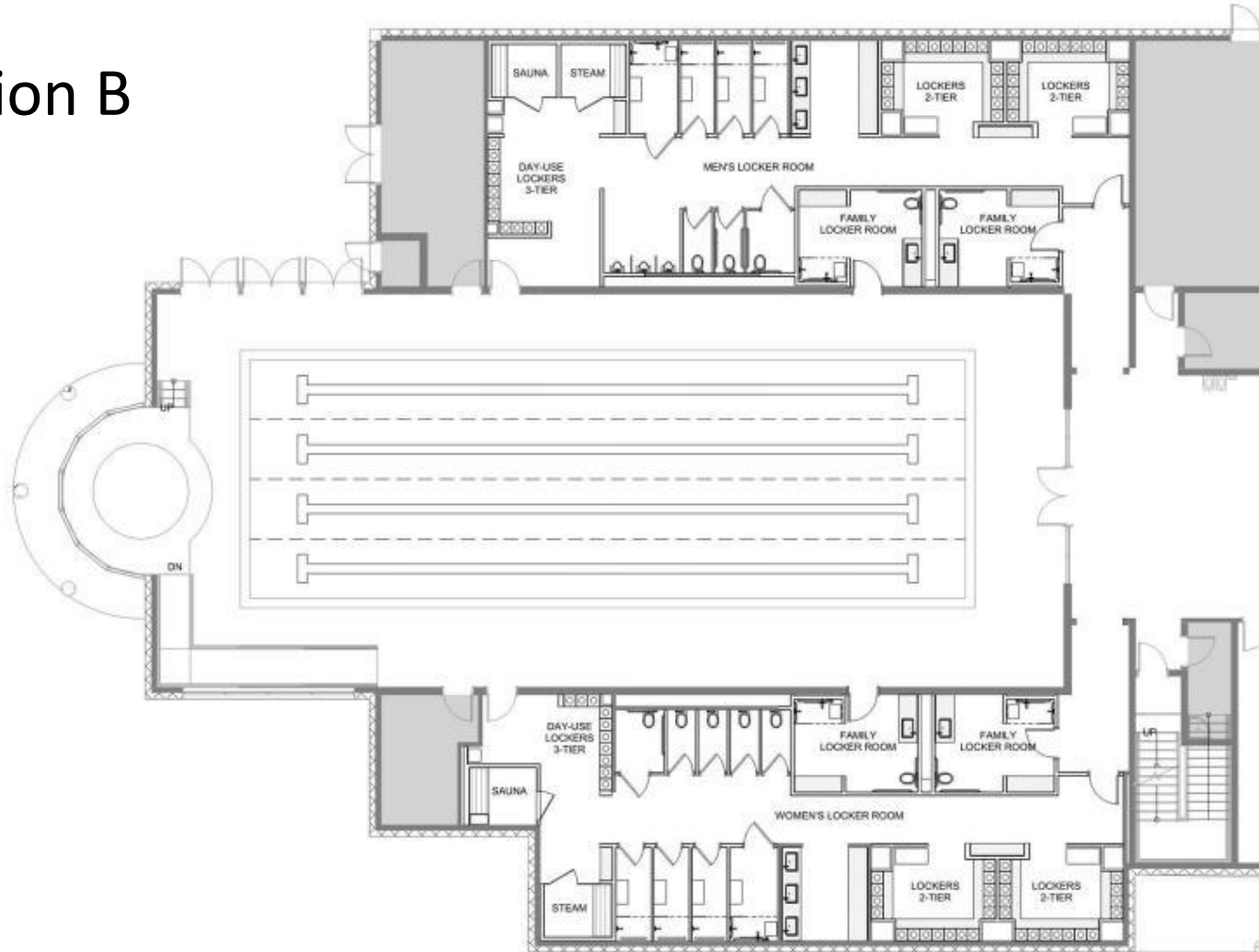
Option A



Community Input – Changing Rooms



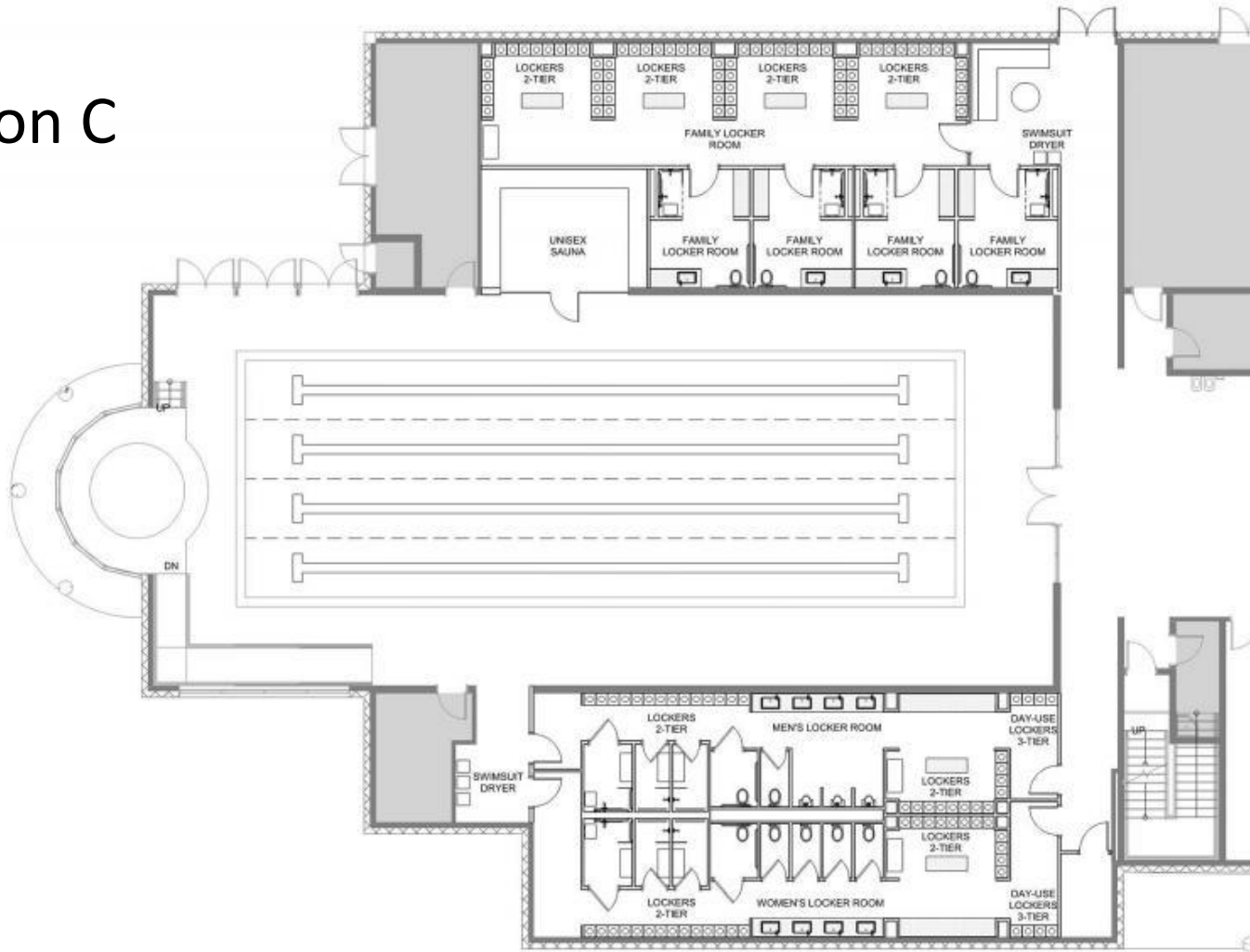
Option B



Community Input – Changing Rooms



Option C





Community Input – Changing Rooms

Which changing room do you prefer?

I prefer Option A.	201	45%
I prefer Option B.	121	27%
I prefer Option C.	42	9%
I have a neutral opinion.	70	16%
I do not like any of the layout options.	15	3%

449 Responses

Staff Recommendation

Proceed with Layout Option A – Look at ways to add a door from the Men’s room to the outdoor pool, add swimsuit dryers to both locker rooms and increase privacy.

Are there items you feel strongly about or against?

Locker Room Design Dislikes

- Size Reduction
- Unisex Sauna
- Stalls Across From Showers
- Small Lockers
- Stall Size

Family Changing Comments

- Are Four Needed?
- Relocate to Outdoor Pool

Overarching Themes

- Privacy and Safety Are Important
- Design for Durability and Cleanliness

Locker Room Design Likes

- Swimsuit Dryer
- Outside Door on Men’s Side

Community Input- Sauna

ADDISON



Traditional Sauna



Infrared Sauna

449 Responses

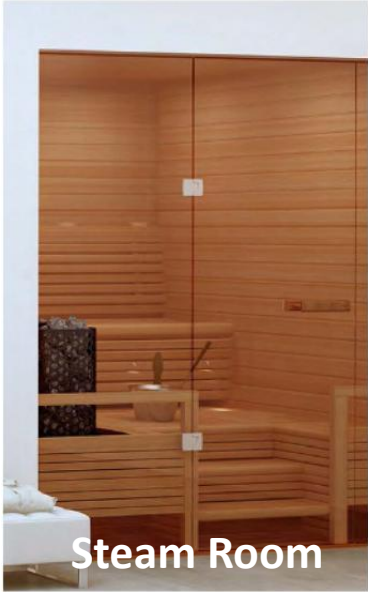
Staff Recommendation

Proceed with Traditional Sauna.

Indicate your sauna preference

I prefer a traditional sauna over an infrared sauna.	193	43%
I prefer an infrared sauna over a traditional sauna.	127	28.3%
I am neutral on this option.	109	24.3%
I do not prefer either be included in the locker rooms.	20	4.4%

Community Input- Steam



Steam Room



Steam Shower

449 Responses

Staff Recommendation

Proceed with Traditional Steam Room.

Indicate your Steam preference

I prefer a traditional steam room over a steam shower.	218	49%
I prefer a steam shower over a traditional steam room.	74	16%
I am neutral on this option.	130	29%
I do not prefer either be included in the locker rooms.	27	6%

Questions



Council Meeting

3.

Meeting Date: 10/27/2020

Department: City Manager

AGENDA CAPTION:

Present and Discuss the **Council Calendar for November 2020 through March 2021.**

BACKGROUND:

Staff is requesting direction from Council regarding the meeting dates for Council meetings for November 2020 through March 2021. Attached are calendars for these months, as well as the initial calendar informational for April and May 2021 for informational purposes.

The second meeting in November and December have historically been canceled due to the Thanksgiving and Christmas holidays.

RECOMMENDATION:

Staff requests direction from Council.

Attachments

Calendar: November 2020 to March 2021

November 2020

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4	5	6	7
8	9 Finance Committee	10 Council Meeting	11	12	13	14
15	16	17 Planning & Zoning Commission	18	19	20	21
22	23	24 ** Council Meeting	25	26 Holiday	27 Holiday	28
29	30					

NOTE **: Traditionally the 2nd meeting in November has been cancelled or rescheduled due to Thanksgiving Holiday.

December 2020

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2	3	4	5
6	7 Finance Committee	8 Council Meeting	9	10	11	12
13	14	15 Planning & Zoning Commission	16	17	18	19
20	21	22 ** Council Meeting	23	24 Holiday	25 Holiday	26
27	28	29	30	31		

NOTE **: Traditionally the second meeting in December has been cancelled due to the Christmas Holiday.

January 2021

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1 HOLIDAY	2
3	4	5	6	7	8	9
10	11 Finance Committee	12 Council Meeting	13 1 st Day to File for Place on the May 1, 2021 General Election	14	15	16
17	18	19 Planning & Zoning Commission	20	21	22	23
24	25	26 Council Meeting	27	28	29	30
31						

February 2021

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1	2	3	4	5	6
7	8 Finance Committee	9 Council Meeting	10	11	12 Last Day to File for a Place on the Ballot for May 1, 2021 Ballot	13
14	15	16 Planning & Zoning	17	18	19	20
21	22	23 Council Meeting	24	25	26	27
28						

March 2021

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1	2	3	4	5	6
7	8 Finance Committee	9 Council Meeting	10	11	12	13
14	15	16 Planning & Zoning	17	18	19	20
21	22	23 Council Meeting	24	25	26	27
28	29	30	31			

April 2021

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1 Last Day to Register for the May 1, 2021 General Election	2	3
4	5	6	7	8	9	10
11	12 Finance Committee	13 Council Meeting	14	15	16	17
18	19 First Day of Early Voting by Personal Appearance – May 1, 2021 Election	20 Last Day to Apply for Ballot by Mail Early Voting	21 Early Voting	22 Early Voting	23 Early Voting	24 Early Voting
25 Early Voting	26 Early Voting	27 Council Meeting Early Voting	28 Last Day of Early Voting by Personal Appearance	29	30	

Spring Town Hall Meeting – typically scheduled on a Monday in April: Virtual, In-Person

May 2021

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1 General Election
2	3	4	5	6	7	8
9	10 Finance Committee	11 Council Meeting Canvass Election	12	13	14	15
16	17	18 Planning & Zoning Commission	19	20	21	22
23	24	25 Council Meeting	26	27	28	29
30	31 HOLIDAY					

Council Meeting

4.

Meeting Date: 10/27/2020

Department: Special Events

Pillars: Gold Standard in Customer Service
Optimize the Addison Brand

Milestones: Promote and protect the Addison Way
Define and promote Addison Identity

AGENDA CAPTION:

Present and Discuss Options for a 2020 Community Holiday Event.

BACKGROUND:

The Town of Addison hosts an annual free community holiday celebration at the Addison Conference Centre that serves 750-1,000 residents and employees. The 2019 Holiday Brunch and Open House served approximately 845 people and featured a catered buffet meal with indoor dining, holiday music performances, inflatable attractions, craft activities, face painting, balloons, and professional photographs with Santa and Mrs. Claus. The total cost of the 2019 event was \$46,247.

Due to the closure of the Addison Conference Centre and current limitations on large social gatherings, the event is unable to take place in its usual format. Staff will present several alternate options for the December 2020 celebration and seek direction from Council on how to proceed.

RECOMMENDATION:

Staff requests direction from Council.

Attachments

Presentation - 2020 Community Holiday Event Options

2020 Community Holiday Event Options

October 27, 2020

The logo for Addison, featuring the word "ADDISON" in a bold, blue, sans-serif font centered within a white circle. This circle is set against a blue background that is part of a larger graphic on the right side of the slide, which includes a grey triangle pointing towards the top-left corner.

Overview

Each year the Town of Addison hosts a free holiday event for the residents and staff of Addison.

The 2019 Holiday Brunch & Open House at the Addison Conference Centre cost \$46,247 and served approximately 845 people.

It included a catered buffet meal, professional Santa photographs, activities for children, and holiday music performances.

Due to the closure of the Addison Conference Centre, social distancing requirements, and limitations on large gatherings, staff has identified several alternative options for 2020.



Option A – Outdoor Gathering

Concert in the Park

- Live holiday music in the ellipse at Addison Circle Park with socially distanced lawn seating
- Catered boxed meal
- Themed photo backgrounds and décor
- Family activities, including a craft station, Santa letter station, and balloon artists
- Addison-branded ornament gift

Capacity: Up to 1,000 individuals

Cost: \$40,000



Option B – Drive Thru Celebration

ADDISON

Holiday Gift Bags

- Residents drive through the Addison Conference Centre circle drive to pick up 1 gift bag per household, which includes:
 - Catered holiday dessert box with traditional, gluten-free and no sugar added items
 - Craft activity kit
 - Addison-branded ornament gift
 - Letter from Mayor & Council
- Up to 200 households can participate in a virtual Santa meet & greet and receive a digital photo with Santa

Capacity: Up to 1,000 households

Cost: \$25,000



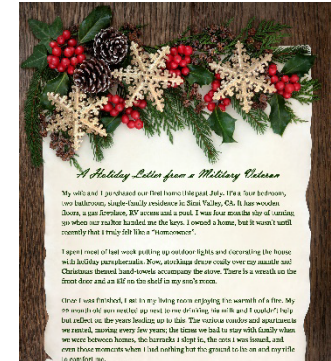
Option C – Holiday Gift

Holiday Gift

- Residents visit the Addison Athletic Club to pick up 1 gift bag per household, which includes:
 - Addison-branded ornament gift
 - Letter from Mayor & Council

Capacity: Up to 6,000 households

Cost: \$20,000



Questions?

ADDISON



Council Meeting

5.

Meeting Date: 10/27/2020

Department: City Manager

Pillars: Gold Standard in Customer Service
Optimize the Addison Brand

Milestones: Promote and protect the Addison Way
Define and promote Addison Identity

AGENDA CAPTION:

Present and Discuss an **Update on the Town’s Citizen Engagement Platform, the Addison FixIT App.**

BACKGROUND:

Council member Marlin Willesen and Council member Paul Walden requested that this item be placed on the agenda. Town Staff will provide an update regarding the Addison FixIT App, the Town's citizen engagement platform. Staff's presentation will include a review of the app's history, utilization, functionality, features, and more. A live demonstration of how to use the app will also be provided.

RECOMMENDATION:

Information only, no action required.

Attachments

Presentation - Addison FixIT App

**Citizen Engagement Platform
“Addison FixIT APP”
Presentation**



ADDISON

To provide Addison residents and business community with a user-friendly, all-in-one **Citizen Engagement** solution that encourages engagement and gives the Town leaders a consolidated view of valuable data to use for providing more meaningful experiences for residents and build a stronger community.

- 123 Customers around the country
- 19 in Texas including:
 - Allen
 - Bedford
 - Denison
 - Denton
 - El Paso
 - Frisco
 - Hurst
 - Katy
 - Kilgore
 - Lewisville
 - Longview
 - McAllen
 - Mesquite
 - Nacogdoches
 - Pearland
 - Prosper
 - Socorro
 - Weatherford

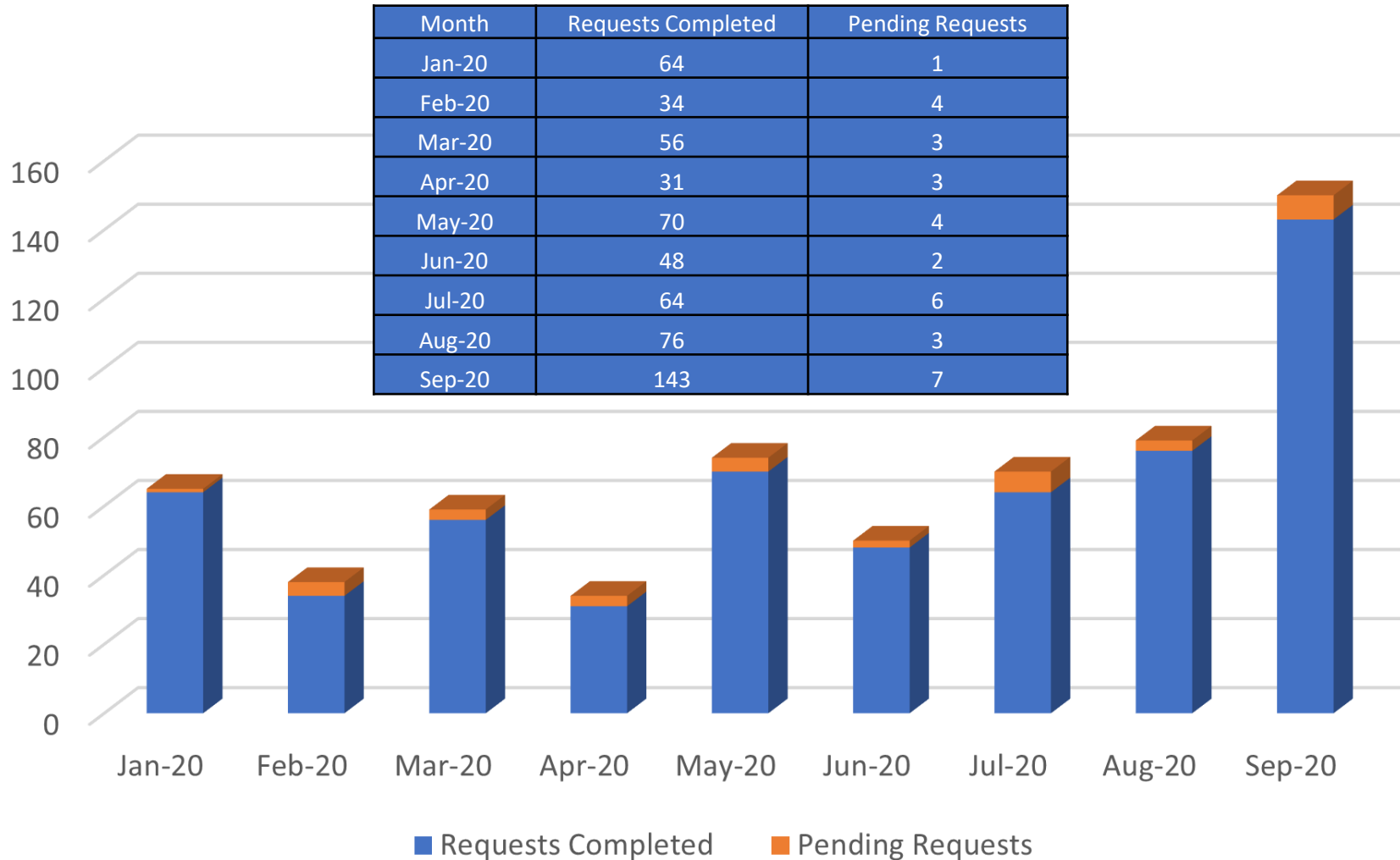
Launch Date: December 22, 2019

Current Number of Subscribers

- 309 IOS downloads
- 77 Android downloads
- 205 total registered users

FixIT App Service Requests By Month

ADDISON



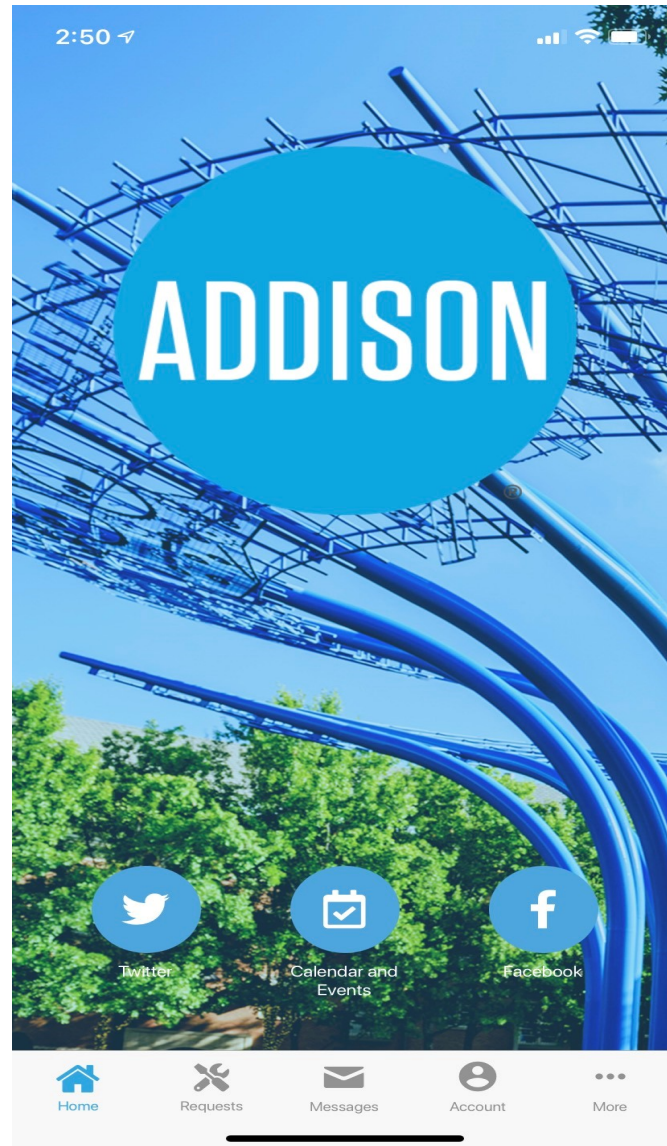
Highlights

- 619 Total Requests
- 586 Requests Completed
- 33 Requests Pending

Top Service Requests

48.4% - Parks Related
21.3% - Code Enforcement
10.3% - Streets Related

Live Demonstration



Can Still Be Customized

- “More” button categories, links and icons

Customized When App Was Created

- Request types
- App colors
- Background images
- App branding (option between image or text)
- Home layout (grid, scroll or list)
- Button styling (lined square, fill square, no border, etc.)
- Button color

Newsletter

- Quarterly Reminder Blurbs
- Added to Important Numbers and Websites section

Facebook

- Periodic Reminder Posts

Website

- Shortened URL: AddisonTexas.net/fixit
- Video (updated Feb. 2020)
- Periodic promos on homepage
- Link on Resident and Government Mega Headers
- First link featured on “How Do I” Section

Council Meeting

6.

Meeting Date: 10/27/2020

Department: City Secretary

AGENDA CAPTION:

Consider Action on the Minutes from October 13, 2020 Regular Meeting.

BACKGROUND:

The minutes for the October 13, 2020 Regular Meeting have been prepared for consideration.

RECOMMENDATION:

Administration recommends approval.

Attachments

Minutes - October 13 2020 Council Meeting

DRAFT

OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL

October 13, 2020

**Executive Session, Work Session & Regular Meeting
5:45 p.m.**

**Addison TreeHouse
14681 Midway Rd., Suite 200, Addison, TX 75001**

The Addison City Council conducted its Regular Council Meeting on Tuesday, October 13, 2020 at the Addison TreeHouse with a quorum of the City Council physically present. Limited seating for members of the public was available using CDC recommended social distancing measures. The Town utilized telephone and videoconferencing to facilitate participation in the meeting. Interested parties were able to make public comments and address the Council via emailed comments submitted to the City Secretary at iparker@addisontx.gov by 3:00 pm on the meeting day. Members of the public were also entitled to participate remotely via Toll-Free Dial-in Number: 877.853.5247; Meeting ID: 409.327.0683 Participant ID: #. Detailed instructions on how to participate in this meeting were available on the Town's website on the Agenda Page. The meeting was live streamed on Addison's website at www.addisontexas.net

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

Call Meeting to Order: Mayor Chow called the meeting to order.

Pledge of Allegiance: Mayor Chow led the Pledge of Allegiance

EXECUTIVE SESSION

Closed (Executive) Session of the Addison City Council pursuant to: Section 551.074, Tex. Gov. Code, to deliberate the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee, pertaining to:

- Municipal Court Presiding and Alternate Judges Evaluation

Mayor Chow closed the Open Session to convene the City Council into Closed Executive Session at 5:47 p.m.

Reconvene into Regular Session: In accordance with Texas Government Code, Chapter 551, the City Council will reconvene into Regular Session to consider action, if any, on matters discussed in Executive Session.

Mayor Chow reconvened the City Council into Open Session at 6:16 p.m. No action was taken as a result of Executive Session.

WORK SESSION

1. **Present and Discuss Any Action Necessary or New Information Regarding the COVID-19 Pandemic.**

City Manager Wes Pierson advised that on October 7, 2020 Governor Greg Abbot issued a new Executive Order that will allow bars to open at 50 percent capacity and would allow County Judges to opt-in by filing their intent to enforce regulations with the State. Dallas County Judge Clay Jenkins stated that he will not file at this time. Mr. Pierson advised that the Town is still following the same protocols with no changes. He did advise that the Code of Ordinances states that the regular meetings of the City Council shall begin at 7:30 pm but that such time may be changed as necessary through the posting of the new time on the agenda. Accordingly, the agenda for today's meeting was posted to begin at 5:45 p.m., to allow for moving from one portion of the meeting to the next without having to recess and reconvene until 7:30 p.m. Mayor Chow advised the city attorney has opined this change allowed.

2. **Present and Discuss Recognition Options for Former Addison Police Officer Ronnie Cox.**

Police Chief Paul Spencer presented this item. He reviewed that in 1986 Addison Police Officer Ronnie Cox was killed in the line off duty serving a narcotics warrant in the City of Dallas. Currently, there is not any type of formal memorial or official recognition of Officer Cox's sacrifice within the Town.

Chief Spencer reviewed the current Naming and Recognition Policy of the Town. He provided a photograph of a display honoring Ronnie Cox that is currently in the Police Department lobby. He also provided photographs of recognitions currently in place at Addison's Fire Stations. Chief Spencer presented photographs of memorials at the police departments in Richardson, Grand Prairie, and Garland.

Chief Spencer reviewed some possible options that included installing artwork or a monument on the Police Department Property that could include other recognitions, not just a memorial. He added that staff could work with the Arbor Foundation to obtain proposals. Another option is to create a Public Safety Memorial on Town property. Chief Spencer requested Council feedback on how to move forward.

During discussion among Council it was determined that the Town should begin taking steps to move forward on this project. Council Members Walden and Braun expressed they would like to have a single Public Safety Memorial at a public location that would be frequented by visitors to Addison. Other Council Members expressed that they would prefer two projects, having something located at the Police Department and another Public Safety Memorial. After discussion, it was determined to begin the process on having something designed to honor Officer Cox to locate at the Police Department in the near term and also to begin work on an artistic project that honors public safety generally, that can be located in a public space (such as a park), that can be moveable (if relocation is desired in the future), and to work with the Arbor Foundation in the process.

3. Present and Discuss Amending the Fee Schedule Related to the Provision of Ambulance Services.

C.J. Alexander, Deputy Fire Chief, presented this item. He reviewed that the last time Addison updated its ambulance service fees was in 2017. He advised this this proposal does not change how residents are billed, only the fee amounts. It was clarified that Addison bills residents' insurance companies and the residents do not pay a balance bill. Non-residents must pay their full ambulance bill directly to the Town. He advised that the largest percentage of ambulance billings are for non-residents.

Chief Alexander provided the rates of the comparison cities, and Addison's current and proposed fees. He added that currently Addison is charging below what is reasonable and customary for the services.

REGULAR MEETING

Announcements and Acknowledgements regarding Town and Council Events and Activities

Discussion of Events/Meetings

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.*

City Secretary Parker advised that no citizens had requested to address the City Council via telephonic means and no emails or other written correspondence was submitted.

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.*

4. **Consider Action to Approve the Minutes from the September 22, 2020 Regular Meeting.**
5. **Consider Action on a Resolution to Approve an Interlocal Agreement with Dallas County Health and Human Services for Coordinated Health Services and Authorize the City Manager to Execute the Agreement in an Amount Not to Exceed \$2,500.**
6. **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.**
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.**
8. **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.**
9. **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.**
10. **Consider Action on a Resolution to Approve a Grant Funding Agreement Between the Town of Addison and Outcry Theatre, Inc. and Authorize the City Manager to Execute the Grant Funding Agreement in an Amount Not to Exceed \$2,500.**
11. **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.**
12. **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.**
13. **Consider Action on a Resolution to Approve a Grant Funding Agreement with WaterTower Theatre and Authorize the City Manager to Execute the Agreement in an Amount Not to Exceed \$375,000 in Cash and In-Kind contributions.**
14. **Consider Action on a Resolution to Approve a Contract with The World Affairs Council of Dallas/Fort Worth for Consulting Services and Authorize the City Manager to Execute the Agreement in an Amount Not to Exceed \$60,000.**

15. **Consider Action on a Resolution to Approve a Joint Funding Agreement With VPDEV2, LLC (a.k.a UDR) for Funding Related to the Design and Construction of the Alpha Road Connector Project / Bella Lane Extension and Authorize the City Manager to Execute the Agreement.**
16. **Consider Action to Approve the Third Quarter Update from the Finance Committee to the City Council for the Period from April 2020 to June 2020.**
17. **Consider Action to Approve the Fourth Quarter Update from the Council Finance Committee to the City Council for the Period from July 2020 to September 2020.**

Mayor Chow asked if there were any requests to remove an item from the Consent Agenda for separate discussion. Council Member Willesen requested to pull Item 9 and Council Member Hughes requested to pull Item 14.

MOTION: Council Member Braun moved to approve Consent Agenda Items 4, 5, 6, 7, 8, 10, 11, 12, 13, 15, 16 and 17 as submitted. Council Member Quintanilla seconded the motion. Motion carried unanimously.

******* Consent Item 9 *******

Council Member Willesen inquired as to how the Town ensures grant recipients follow through on the uses of the funds that are stated in the agreements. City Manager Pierson advised that grant funding is not contingent on performance, which is different from service agreements. Mr. Pierson advised that Metrocare Services responded to his email inquiry about completion of a community room listed as a use of funds in the previous year's agreement, and they advised the project was put on hold due to COVID-19 and will provide a more complete status of the project in the next few weeks.

City Attorney Brenda McDonald explained that the language in the grant agreements states that recipients are to notify the Town if the uses are not completed however, they are not required to return the funds. Council Member Walden suggested that perhaps the grant agreements be worded more like service agreements in the future.

MOTION: Council Member Willesen moved to approve Item 9 in the amount of \$2,500 rather than \$5,000. Council Member Walden seconded the motion. Motion carried unanimously. Mayor Chow confirmed it is possible for them to receive additional funding later.

******* Consent Item 9 *******

Council Member Hughes expressed his appreciation to individuals Jim Falk and Beth Huddleston with the World Affairs Council. He stated that the agreement includes that the World Affairs Council will host an annual event. Council Member Hughes advised he discussed this with Mr. Falk who agreed that due to the pandemic the event may be done virtually.

MOTION: Council Member Hughes moved to approve this item with adjusted wording to reflect that the Addison focused event may be held virtually, depending on timing, and that if possible, it will be held in person. Mayor Pro Tempore Ward seconded the motion. Motion carried unanimously.

Resolution No. R20-074: Interlocal Agreement with Dallas County Health and Human Services

Resolution No. R20-075: Addison Arbor Foundation Grant

Resolution No. R20-076: Metrocrest Services Grant

Resolution No. R20-077: Dallas Cat Lady Grant

Resolution No. R20-078: Metrocare Services Grant

Resolution No. R20-079: Outcry Theatre, Inc. Grant

Resolution No. R20-080: The Family Place Grant

Resolution No. R20-081: Woven Health Clinic Grant

Resolution No. R20-082: Water Tower Theatre Grant

Resolution No. R20-083: World Affairs Council Consulting Services Agreement

Resolution No. R20-084: Joint Funding Agreement Alpha Road Connector/Bella Lane Extension

Regular Items

18. **Hold a Public Hearing, Present, Discuss, and Consider Action to Approve an Ordinance Changing the Zoning on Property Located at the Southwest Corner of Dallas Parkway and Excel Parkway, Which Property is Currently Zoned PD, Planned Development, Through Ordinance 008-054, to a New PD District in Order to Allow a Senior Living Development and Future Office Development. Case 1816- Z/Addison Senior Living.**

Wilson Kerr, Interim Planning and Development Manager, presented this item. He advised this item is a request for a zoning change on a 11.607-acre property located at the southwest corner of Dallas Parkway and Excel Parkway for a new Planned Development that would allow for an 11-story senior living facility. Mr. Kerr advised that most of the property will be used for high-density office development and 4.273 acres would be used for the senior living facility. There would also be a new public street between Dallas Parkway and Addison Road, which requires rezoning and will be built in accordance with the Master Transportation Plan. Mr. Kerr added that a 70,806 square-foot parking structure is included.

Mr. Kerr reviewed that the senior living facility is planned to have 294,325 square feet with 217 senior living dwellings. The building requirements were reviewed.

PRDG Architect Jeff Dolian was present via teleconference call. The exterior elements of the building were discussed, and it was noted that only minor deviations from the ordinance would be allowed. Information regarding the building's interior were provided. It was noted that a contractor has not been selected at this point however once construction begins it should take approximately 22 months to complete.

Mayor Chow opened and closed the public hearing with no one wishing to speak.

MOTION: Council Member Hughes moved to approve this item. Mayor Pro Tempore Ward seconded the motion. Motion passed unanimously.

Ordinance No. O20-57: Zoning Change, Case 1816-Z/Addison Senior Living

19. **Present, Discuss, and Consider Action on Change Order #3 to the Contract with JC Commercial, Inc. for Costs Related to Unforeseen Issues and Conditions for the United States Customs and Border Protection Facility at Addison Airport and Authorize the City Manager to Execute the Change Order in an Amount Not to Exceed \$17,275.41.**

Joel Jenkinson, Airport Director presented this item. He reviewed the unforeseen issues and conditions necessitating this requested Change Order No. 3. He noted that the change order also includes two credits for items that were determined to be unnecessary or better suited to include in the airside project scope. Details of the below list of items were presented as well as photos, costs, and time extensions.

Description	Amount
Dry Wall Adjustment for Plumbing	\$2,943.10
Landscaping and Irrigation Changes	\$2,723.21
Equipment Delays Due to ASI 02	\$7,183.18
CCD-001 Scuppers and Downspouts	\$3,478.06
CCD-002 Drywall Support Labor	\$1,078.23
CCD-003 Door Hardware and Mullion Finishes Color Change	\$2,677.03
CCD-004 Additional Hardware for Door	\$886.60
Northwest Security Camera Pole Removal from Project Scope	(\$1,612.00)
Locker Credit	(\$2,100.00)
Subtotal	\$17,257.41

MOTION: Council Member Quintanilla moved to approve as presented. Council Member Willeesen seconded the motion. Motion carried unanimously.

20. **Present, Discuss, and Consider Action on a Resolution to Adopt the Town of Addison Investment Policy for Fiscal Year 2020-2021.**

Steven Glickman, Chief Financial Officer presented this item. He reviewed that the Public Funds Investment Act requires the Council to annually adopt the Town's Investment Policy. This policy applies to the investment and management of all funds of the Town and includes the following priorities:

- Preservation and safety of principal
- Understanding the suitability of the investment to the financial requirements of the Town

- Liquidity
- Marketability of the investment if the need arises to liquidate the investment prior to maturity
- Diversification of the investment portfolio
- Yield

The following changes to the existing policy are being proposed for FY 2020-2021:

1. Section III - Added investment strategies for each fund represented in the investment portfolio to better align with best practices.
2. Section IV - Limiting bonding requirements to only the CFO and Controller.
3. Section VII - Authorized Security Investments:
 - Paragraph D - Increased the maximum allowable maturity of Certificates of Deposit from 3 years to 5 years
 - Paragraph E - Increased the maximum allowable maturity of Commercial Paper from 180 days to 270 days
 - Paragraph K - Increased the maximum allowable maturity of Other Obligations from 2 years to 5 years
 - Added Paragraph L - Obligations of states, agencies, counties, cities, and other political subdivisions of any state have been rated as to investment quality by a nationally recognized investment rating firm and having received a rating of not less than "A" or its equivalent with a maturity not to exceed five (5) years from the date of purchase.
4. Section VIII - Other Investment Guidelines:
 - Added the exception to competitive bidding to exclude government securities issued at par.
 - Added liquidation exemption for existing investments as follows: The Town is not required to liquidate investments that were authorized investments at the time of purchase. The Town shall consider the time remaining until maturity, the quality of the investment, and the quality and amounts of any collateral which may be security the investment in determining whether to hold the investment until maturity or to redeem the investment.
5. Section IX - Extended the weighted average maturity of the investment portfolio from 18 to 24 months.
6. Section X - Investment Limits:
 - Local Government Investment Pools - Increased the maximum allowable investment from 40 to 70 percent of total portfolio.
 - Municipal Bonds - Made the maximum allowable investment 50% of total portfolio whereas the previous investment policy was silent on the maximum level of investment.

Mr. Glickman advised that the Finance Committee reviewed this information at their meeting of October 12th. Council Member Willeesen inquired whether there should be a maximum amount for any individual investment. Mr. Glickman stated that he had reviewed several policies and that maximum is not needed but if a maximum were preferred for addition to the Policy, he recommended a maximum of 25 percent limit on any individual issuer. The change would be no problem or issue.

MOTION: Council Member Hughes moved to approve Item 20 amended to reflect a 25 percent limit on any one issuer except for US Government Securities and Investment Pools. Mayor Pro Tempore Ward seconded the motion. Motion carried unanimously.

Resolution No. R20-085: Adopt Investment Policy for FY 2020-2021

21. Present, Discuss, and Consider Action on a Resolution to Approve Texas Cooperative Liquid Assets Securities System (Texas CLASS) as an Authorized Investment.

Steven Glickman, Chief Financial Officer presented this item. He advised that Texas CLASS is an investment pool option that utilizes all eligible investments as defined by the Public Funds Investment Act (PFIA). Texas CLASS may invest in any or all the legal investments specified in Sections through 2256.016, of the Act.

MOTION: Council Member Willesen moved to approve as presented. Council Member Walden seconded the motion. Motion carried unanimously.

Resolution No. R20-086: Approve Texas Cooperative Liquid Assets Securities System as an Investment

Adjourn Meeting

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

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

Irma G. Parker, City Secretary

Council Meeting

7.

Meeting Date: 10/27/2020

Department: City Manager

Pillars: Gold Standard in Customer Service
Gold Standard in Public Safety

Milestones: Promote and protect the Addison Way

AGENDA CAPTION:

Consider Action on Ordinances to Reappoint Larry Dwight as Presiding Municipal Judge to the Addison Municipal Court of Record #1 and to Reappoint Cass Callaway and Danielle Dulaney as Alternate Municipal Judges to the Addison Municipal Court of Record #1 and Authorize the City Manager to Execute the Agreements.

BACKGROUND:

The Presiding Municipal Judge and the Alternate Municipal Judges are appointed to two-year terms with their current terms expiring on December 31, 2020. Judge Larry Dwight has served as a Municipal Court Judge for the past thirty-four years, specifically serving as a Presiding Judge for the last 15 terms. Judge Cass Callaway and Judge Danielle Dulaney have served as Alternate Municipal Court Judges for the term ending December 31, 2020.

The judges received their evaluation by the City Council during an executive session at the October 13, 2020 council meeting. If approved, the judges will be appointed for a new term of January 1, 2021, through December 31, 2022.

RECOMMENDATION:

Administration recommends approval.

Attachments

- Ordinance - Municipal Court Judge Appointment 2020 Dwight
 - Ordinance - Municipal Court Judge Appointment 2020 Calloway
 - Ordinance - Municipal Court Judge Appointment 2020 Dulaney
-

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPOINTING LARRY DWIGHT AS PRESIDING JUDGE OF ADDISON MUNICIPAL COURT OF RECORD NO. 1; APPROVING AN AGREEMENT WITH LARRY DWIGHT TO PERFORM SERVICES AS PRESIDING JUDGE, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the Town of Addison has determined that a Presiding Judge is necessary to perform the judicial functions of the Municipal Court of Record No. 1; and

WHEREAS, the City Council of the Town of Addison has determined that Larry Dwight should be appointed as Presiding Judge of Addison Municipal Court of Record No. 1; and

WHEREAS, the City Council of the Town of Addison has determined that an agreement should be entered into with Larry Dwight to perform services as Presiding Judge of Addison Municipal Court of Record No. 1.

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

SECTION 1. Incorporation of Premises. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

SECTION 2. Appointment. The City Council of the Town of Addison hereby appoints Larry Dwight as Presiding Judge of Addison Municipal Court of Record No. 1 to serve for a two-year term, which term shall begin on January 1, 2021, and shall end on December 31, 2022.

SECTION 3. Authorization to Execute. The Agreement by and between the Town of Addison and Larry Dwight regarding Larry Dwight's service as the Presiding Judge of the Addison Municipal Court of Record No. 1, a true and correct copy of which is attached hereto as **Exhibit A**, is hereby approved. The City Manager or the City Manager's designee is authorized to execute the Agreement on behalf of the Town of Addison.

SECTION 4. Effective Date. This Ordinance shall take effect on January 1, 2021.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this 27th day of **OCTOBER** 2020.

Joe Chow, Mayor

ATTEST:

APPROVED AS TO FORM:

Irma Parker, City Secretary

Brenda N. McDonald, City Attorney

EXHIBIT A

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

KNOW ALL MEN BY THESE PRESENTS

AGREEMENT

For and in consideration of the mutual terms, conditions and covenants herein contained, the following Agreement is entered into by and between THE TOWN OF ADDISON, TEXAS (hereinafter referred to as "City") and LARRY DWIGHT (hereinafter referred to as "Dwight") (hereinafter collectively the City and Dwight are referred to as the "Parties).

I.

The City does hereby appoint, Dwight as Presiding Municipal Judge of Addison Municipal Court of Record No. 1 for a term to commence on January 1, 2021, and to expire December 31, 2022.

II.

In consideration for such services, Dwight shall receive:

- 1. a biweekly (that is, once every two (2) weeks) salary, funded from the City's current funds, in the amount of \$4,745.33 starting January 1, 2021, paid in the same manner as are other employees of the City;

III.

Dwight may be removed from office by the City at any time for incompetency, misconduct, malfeasance, or disability, or other reason(s) as may be authorized by or not inconsistent with law. Dwight shall be required to provide thirty (30) days' notice of resignation.

IV.

All other provisions of the City Charter relating to removal from office shall be applicable.

V.

The terms, obligations, and requirements of this Agreement shall be construed in accordance with the laws of the State of Texas, without regard to conflict of law provisions of any jurisdiction. The obligations and requirements of the Parties hereto are performable in Dallas County, and exclusive venue for any dispute relating to this Agreement shall be in Dallas County.

VI.

The Parties further agree that Dwight may only serve beyond the term of this Agreement as provided by the laws and Constitution of this State.

VII.

This Agreement is executed on behalf of the City by the City Manager or the City Manager's designee who is authorized to execute this instrument by order heretofore passed and duly recorded in its minutes.

VIII.

This instrument shall be the entire agreement and understanding between the Parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises, or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed orally.

WITNESS the signatures of all parties hereto in single or multiple originals on this the ____ day of _____, 2020, in Addison, Dallas County, Texas.

LARRY DWIGHT

TOWN OF ADDISON, TEXAS



Larry Dwight

By: _____
Wesley S. Pierson, City Manager

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPOINTING CASS CALLAWAY AS ALTERNATE MUNICIPAL JUDGE OF ADDISON MUNICIPAL COURT OF RECORD NO. 1; APPROVING A COMPENSATION AGREEMENT WITH CASS CALLAWAY TO PERFORM SERVICES AS ALTERNATE MUNICIPAL JUDGE, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the Town of Addison has determined that an Alternate Municipal Judge of Addison Municipal Court of Record No. 1 is necessary to perform the judicial functions in the Town of Addison; and

WHEREAS, the City Council of the Town of Addison has determined that Cass Callaway should be appointed as Alternate Municipal Judge of Addison Municipal Court of Record No. 1; and

WHEREAS, the City Council of the Town of Addison has determined that an agreement should be entered into with Cass Callaway to perform services as Alternate Municipal Judge of Addison Municipal Court of Record No. 1.

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

SECTION 1. Incorporation of Premises. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

SECTION 2. Appointment. The City Council of the Town of Addison hereby appoints Cass Callaway as Alternate Municipal Judge of Addison Municipal Court of Record No. 1 to serve for a two-year term, which term shall begin on January 1, 2021, and shall end on December 31, 2022. Cass Callaway may not serve beyond the said term except upon the express authorization of the City Council, and this provision shall control over any law, rule, or regulation in conflict herewith.

SECTION 3. Authorization to Execute. The Compensation Agreement by and between the Town of Addison and Cass Callaway regarding his service as an Alternate Municipal Judge of the Addison Municipal Court of Record No. 1, a true and correct copy of which is attached hereto as **Exhibit A**, is hereby approved. The City Manager or the City Manager's designee is authorized to execute the Agreement on behalf of the Town of Addison.

SECTION 4. Effective Date. This Ordinance shall take effect on January 1, 2021.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this **27th** day of **OCTOBER** 2020.

Joe Chow, Mayor

ATTEST:

APPROVED AS TO FORM:

Irma Parker, City Secretary

Brenda N. McDonald, City Attorney

EXHIBIT A

STATE OF TEXAS §
 § **KNOW ALL MEN BY THESE PRESENTS**
COUNTY OF DALLAS §

COMPENSATION AGREEMENT

For and in consideration of the mutual terms, conditions and covenants herein contained, the following Agreement is entered into by and between THE TOWN OF ADDISON, TEXAS (hereinafter referred to as "City") and CASS CALLAWAY (hereinafter referred to as "Callaway") (hereinafter collectively the City and Callaway are referred to as the "Parties").

I.

The City does hereby appoint Callaway as Alternate Municipal Judge of Addison Municipal Court of Record No. 1 for a term to commence on January 1, 2021, and to expire December 31, 2022.

II.

As Alternate Municipal Judge, Callaway shall perform such functions, including but not limited to the arraignment of prisoners and any other functions requested of him to assist the Presiding Municipal Judge. Callaway is employed on an on-call basis and is expected to be reasonably available to perform his role as Alternate Municipal Judge as requested by the City. Callaway is required to provide his own robe. Callaway is further required to complete all required judicial continuing legal education ("JCLE") programs as well as spend a reasonable amount of time participating in JCLE so as to enhance his abilities to perform as Alternate Municipal Judge and to enhance the stature of such office at his own expense.

III.

In consideration for such services, Callaway shall receive compensation of One Hundred and No/100 Dollars (\$100.00) per hour, with a minimum of one hour's compensation to be paid to Callaway per sitting in his judicial capacity. The City's obligations are funded from current funds.

IV.

The City makes no warranties or representations as to the amount of work Callaway will receive under this Agreement.

V.

Callaway may be removed from office by the City at any time for incompetency, misconduct, malfeasance, or disability, or other reason(s) as may be authorized by or not inconsistent with law. Callaway shall be required to provide thirty (30) days' notice of resignation.

VI.

The terms, obligations, and requirements of this Agreement shall be construed in accordance with the laws of the State of Texas, without regard to conflict of law provisions of any jurisdiction. The obligations and requirements of the Parties hereto are performable in Dallas County, and exclusive venue for any dispute relating to this Agreement shall be in Dallas County.

VII.

The Parties further agree that Callaway may only serve beyond the term of this Agreement as provided by the laws and Constitution of this State.

VIII.

This Agreement is executed on behalf of the City by the City Manager or the City Manager's designee who is authorized to execute this instrument by order heretofore passed and duly recorded in its minutes.

IX.

This instrument shall be the entire agreement and understanding between the Parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises, or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed orally.

WITNESS the signatures of all parties hereto in single or multiple originals on this the ____ day of _____, 2020, in Addison, Dallas County, Texas.

CASS CALLAWAY

Digitally signed by Cass
Callaway
Cass Robert Callaway
Date: 2020.10.19
12:10:49 -05'00'

Cass Callaway

TOWN OF ADDISON, TEXAS

By: _____
Wesley S. Pierson, City Manager

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPOINTING DANIELLE DULANEY AS ALTERNATE MUNICIPAL JUDGE OF ADDISON MUNICIPAL COURT OF RECORD NO. 1; APPROVING A COMPENSATION AGREEMENT WITH DANIELLE DULANEY TO PERFORM SERVICES AS AN ALTERNATE MUNICIPAL JUDGE, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE COMPENSATION AGREEMENT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the Town of Addison has determined that an Alternate Municipal Judge of Addison Municipal Court of Record No. 1 is necessary to perform the judicial functions in the Town of Addison; and

WHEREAS, the City Council of the Town of Addison has determined that Danielle Dulaney should be appointed as Alternate Municipal Judge of Addison Municipal Court of Record No. 1; and

WHEREAS, the City Council of the Town of Addison has determined that an agreement should be entered into with Danielle Dulaney to perform services as Alternate Municipal Judge of Addison Municipal Court of Record No. 1.

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

SECTION 1. Incorporation of Premises. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

SECTION 2. Appointment. The City Council of the Town Addison hereby appoints Danielle Dulaney as Alternate Municipal Judge of Addison Municipal Court of Record No. 1 to serve for a two-year term, which term shall begin on January 1, 2021, and shall end on December 31, 2022. Danielle Dulaney may not serve beyond the said term except upon the express authorization of the City Council, and this provision shall control over any law, rule, or regulation in conflict herewith.

SECTION 3. Authorization to Execute. The Compensation Agreement by and between the Town of Addison and Danielle Dulaney regarding her service as an Alternate Municipal Judge of the Addison Municipal Court of Record No. 1, a true and correct copy of which is attached hereto as **Exhibit A**, is hereby approved. The City Manager or the City Manager's designee is authorized to execute the Agreement on behalf of the City.

SECTION 4. Effective Date. This Ordinance shall take effect on January 1, 2021.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this 27th day of OCTOBER, 2020.

Joe Chow, Mayor

ATTEST:

APPROVED AS TO FORM:

Irma Parker, City Secretary

Brenda N. McDonald, City Attorney

EXHIBIT A

STATE OF TEXAS §
 § **KNOW ALL MEN BY THESE PRESENTS**
COUNTY OF DALLAS §

COMPENSATION AGREEMENT

For and in consideration of the mutual terms, conditions and covenants herein contained, the following Agreement is entered into by and between THE TOWN OF ADDISON, TEXAS (hereinafter referred to as “City”) and DANIELLE DULANEY (hereinafter referred to as “Dulaney”) (hereinafter collectively the City and Dulaney are referred to as the “Parties”).

I.

The City does hereby appoint, Dulaney as Alternate Municipal Judge of Addison Municipal Court of Record No. 1 for a term to commence on January 1, 2021, and to expire December 31, 2022.

II.

As Alternate Municipal Judge, Dulaney shall perform such functions, including but not limited to the arraignment of prisoners and any other functions requested of her to assist the Presiding Municipal Judge. Dulaney is employed on an on-call basis and is expected to be reasonably available to perform her role as Alternate Municipal Judge as requested by the City. Dulaney is required to provide her own robe. Dulaney is further required to complete all required judicial continuing legal education (“JCLE”) programs as well as spend a reasonable amount of time participating in JCLE so as to enhance her abilities to perform as Alternate Municipal Judge and to enhance the stature of such office at her own expense.

III.

In consideration for such services, Dulaney shall receive compensation of One Hundred and No/100 Dollars (\$100.00) per hour, with a minimum of one hour’s compensation to be paid to Dulaney per sitting in her judicial capacity. The City’s obligations are funded from current funds.

IV.

The City makes no warranties or representations as to the amount of work Dulaney will receive under this Agreement.

V.

Dulaney may be removed from office by the City at any time for incompetency, misconduct, malfeasance, or disability, or other reason(s) as may be authorized by or not inconsistent with law. Dulaney shall be required to provide thirty (30) days’ notice of resignation.

VI.

The terms, obligations, and requirements of this Agreement shall be construed in accordance with the laws of the State of Texas, without regard to conflict of law provisions of any jurisdiction. The obligations and requirements of the Parties hereto are performable in Dallas County, and exclusive venue for any dispute relating to this Agreement shall be in Dallas County.

VII.

The Parties further agree that Dulaney may only serve beyond the term of this Agreement as provided by the laws and Constitution of this State.

VIII.

This Agreement is executed on behalf of the City by the City Manager or the City Manager's designee who is authorized to execute this instrument by order heretofore passed and duly recorded in its minutes.

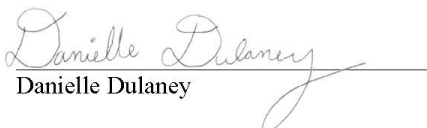
IX.

This instrument shall be the entire agreement and understanding between the Parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises, or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed orally.

WITNESS the signatures of all parties hereto in single or multiple originals on this the ____ day of _____, 2020, in Addison, Dallas County, Texas.

DANIELLE DULANEY

TOWN OF ADDISON, TEXAS


Danielle Dulaney

By: _____
Wesley S. Pierson, City Manager

Council Meeting

8.

Meeting Date: 10/27/2020

Department: Fire

Pillars: Gold Standard in Public Safety

AGENDA CAPTION:

Consider Action on an **Ordinance Amending Chapter 38, Section 38-54 (Emergency Ambulance Service Fees) of the Code of Ordinances of the Town of Addison.**

BACKGROUND:

During the October 13, 2020 Council meeting, Staff presented a proposed amendment to the Town's Emergency Ambulance Service fee schedule to bring it in line with key comparison cities and rates deemed reasonable and customary in the industry. The Town's current Emergency Medical Services billing provider, Emergicon, helped in the research and creation of the proposed fee schedule amendment. Only changes to the fee schedule are being proposed.

The Ordinance retains the Addison Resident Zero Billing provision which means residents will be charged for ambulance services through their insurance company or through Medicare or Medicaid. No deductible, out-of-pocket charge or cash fee will be charged to Addison residents for Emergency Ambulance Services.

Current EMS Fee Schedule:

	Resident	Non-Resident
ALS	\$850	\$950
ALS-2	\$950	\$1050
BLS	\$750	\$850
ALS Disp	\$400	\$400
BLS Disp	\$200	\$200
O2	\$150	\$150
Mileage	\$15	\$15

Proposed EMS Fee Schedule:

	Resident	Non-Resident
ALS	\$1,600	\$1,600

ALS-2	\$1,750	\$1,750
BLS	\$1,400	\$1,400
ALS Disp	\$400	\$400
BLS Disp	\$350	\$350
O2	\$150	\$150
Mileage	\$24	\$24

The last Emergency Ambulance Service fee schedule amendment occurred in October 2017. The proposed amendment may increase the Town's current revenues by an estimated \$23,445 per year.

RECOMMENDATION:

Administration recommends approval.

Attachments

Ordinance - Emergency Ambulance Service Fees

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING CHAPTER 38 (FIRE PREVENTION AND PROTECTION), SECTION 38-54 (EMERGENCY AMBULANCE SERVICE) OF THE CODE OF ORDINANCES OF THE TOWN OF ADDISON, TEXAS BY AMENDING FEES RELATED TO THE PROVISION OF AMBULANCE SERVICES; PROVIDING FOR SAVINGS/REPEALING, SEVERABILITY AND AN EFFECTIVE DATE.

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

SECTION 1. Amendment to Chapter 38 (Fire Prevention and Protection), Section 38-54 (Emergency ambulance service) of the Code of Ordinances. That Chapter 38 (Fire Prevention and Protection), Section 38-54 (Emergency Ambulance Service) of the Code of Ordinances, Addison, Texas is hereby amended to read in its entirety as follows:

Sec. 38-54 - Emergency ambulance service.

(a) *Scope:* Emergency ambulance service within the corporate limits of the Town of Addison shall be provided by, supervised by and under the control and authority of the fire department.

(b) *False statements of emergency:* It shall be unlawful for any person to willfully request emergency ambulance service when such person knows that the need for emergency ambulance service does not exist at the reported place and time.

(c) *Fees for service:*

Service	Resident Fee (see (d) below)	Non-Resident Fee
ALS (Advanced Life Support)	\$1,600.00	\$1,600.00
ALS-2 (Advanced Life Support Level 2)	\$1,750.00	\$1,750.00
BLS (Basic Life Support)	\$1,400.00	\$1,400.00
ALS Disp (Disposable Supplies)	\$400.00	\$400.00
BLS Disp (Disposable Supplies)	\$350.00	\$350.00
O2 (Use of Oxygen)	\$150.00	\$150.00
Mileage	\$24.00/mile	\$24.00/mile

Such fees shall be paid by the person(s) receiving or contracting for the emergency ambulance service. In the case of service received by a minor, the parent or guardian shall be responsible for payment of the fee(s).

(d) *Addison Resident Zero Billing*: Addison residents will be charged for ambulance services through their insurance company or through Medicare or Medicaid. No deductible, out-of-pocket charge or cash fee will be charged to Addison residents. It is the City's intent that all fees for ambulance services will be paid by third parties. Residency shall be determined by current driver's license or state-issued identification card.

(e) *Right to refuse service*: The fire chief or his designated representative retains the right to refuse emergency ambulance transportation to non-emergency medical facilities.

SECTION 2. Savings; Repealing. This Ordinance shall be cumulative of all other ordinances of the Town and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance. Provided, however, that the repeal of such ordinances or parts of such ordinances, and the amendments and changes made by this Ordinance, shall not affect any right, property or claim which was or is vested in the Town, or any act done, or right accruing or accrued, or established, or any suit, action or proceeding had or commenced before the time when this Ordinance shall take effect; nor shall said repeals, amendments or changes affect any offense committed, or any penalty or forfeiture incurred, or any suit or prosecution pending at the time when this Ordinance shall take effect under any of the ordinances or sections thereof so repealed, amended or changed; and to that extent and for that purpose the provisions of such ordinances or parts of such ordinances shall be deemed to remain and continue in full force and effect.

SECTION 3. Severability. The sections, paragraphs, sentences, phrases, clauses and words of this Ordinance are severable, and if any section, paragraph, sentence, phrase, clause or word in this Ordinance or application thereof to any person or circumstance is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares that it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

SECTION 4. Effective Date. This Ordinance shall take effect upon its passage and approval.

DULY RESOLVED AND ADOPTED by the City Council of the Town of Addison, Texas on this 27th day of OCTOBER 2020.

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

APPROVED AS TO FORM:

Irma Parker, City Secretary

Brenda N. McDonald, City Attorney

Council Meeting

9.

Meeting Date: 10/27/2020

Department: Airport

Pillars: Excellence in Transportation Systems

AGENDA CAPTION:

Consider Action on a **Resolution Authorizing the City Manager to Enter into an Agreement with the Texas Department of Transportation to Participate in the Routine Airport Maintenance Program (RAMP) Grant for Airport Improvements at Addison Airport** in an Amount Not to Exceed \$50,000.

BACKGROUND:

The Town of Addison annually receives a Routine Airport Maintenance Program (RAMP) grant administered by the Texas Department of Transportation (TxDOT), Aviation Department under the State Block Grant program. Maintenance projects on the airport such as pavement repairs, pavement markings, general maintenance, are eligible for this grant. This year staff has earmarked the grant to be used for various pavement improvements.

The grant will be a 50/50 matching grant, \$50,000 TxDOT Funds and \$50,000 Town of Addison Airport funds. The Town's matching funds are budgeted and available in the Airport Fund.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution - Ramp Grant

**TOWN OF ADDISON, TEXAS
RESOLUTION NO. _____**

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS ACCEPTING R.A.M.P. FUNDS FROM THE TEXAS DEPARTMENT OF TRANSPORTATION FOR IMPROVEMENTS TO THE ADDISON AIRPORT, AUTHORIZING THE CITY MANAGER TO EXECUTE THE NECESSARY CONTRACTS AND AGREEMENTS AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Addison, hereinafter referred to as Sponsor, intends to make certain improvement to the Addison Airport; and

WHEREAS, the general description of the project is described as: various taxilane, drainage, ramp, and service road improvements including eligible engineering and design costs; and

WHEREAS, the Sponsor is currently eligible for R.A.M.P. funds of \$50,000; and

WHEREAS, the Sponsor has available and will provide at least 50% of the project costs with local funds;

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

Section 1. The Sponsor hereby accepts R.A.M.P. funds from the Texas Department of Transportation for these improvements, a copy the Texas Department of Transportation Grant for Routine Airport Maintenance Program is attached to the Resolution as **Exhibit A** and is hereby approved and the City Manager is authorized to execute the Grant.

Section 2. The Sponsor hereby directs Wesley S. Pierson, City Manager to execute on behalf of the Sponsor, at the appropriate time, and with the appropriate authorizations of this governing body, all contracts and agreements with the Texas Department of Transportation, and such other parties as shall be necessary and appropriate for the implementation of the improvements to the Addison Airport.

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

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this the 27th day of October, 2020.

Joe Chow, Mayor

ATTEST:

By: _____
Irma Parker, City Secretary

APPROVED AS TO FORM:

By: _____
Brenda N. McDonald, City Attorney

EXHIBIT A

**TEXAS DEPARTMENT OF TRANSPORTATION
GRANT FOR ROUTINE AIRPORT MAINTENANCE PROGRAM
(State Assisted Airport Routine Maintenance)**

TxDOT Project ID: M2118ADDS

Part I - Identification of the Project

TO: The Town of Addison, Texas

FROM: The State of Texas, acting through the Texas Department of Transportation

This Grant is made between the Texas Department of Transportation, (hereinafter referred to as the "State"), on behalf of the State of Texas, and the Town of Addison, Texas, (hereinafter referred to as the "Sponsor").

This Grant Agreement is entered into between the State and the Sponsor shown above, under the authority granted and in compliance with the provisions of the Transportation Code Chapter 21.

The project is for **airport maintenance** at the ADDISON - ADDISON Airport.

Part II - Offer of Financial Assistance

1. For the purposes of this Grant, the annual routine maintenance project cost, Amount A, is estimated as found on Attachment A, Scope of Services, attached hereto and made a part of this grant agreement.

State financial assistance granted will be used solely and exclusively for airport maintenance and other incidental items as approved by the State. Actual work to be performed under this agreement is found on Attachment A, Scope of Services. State financial assistance, Amount B, will be for fifty percent (50%) of the eligible project costs for this project or \$50,000.00, whichever is less, per fiscal year and subject to availability of state appropriations.

Scope of Services, Attachment A, of this Grant, may be amended, subject to availability of state funds, to include additional approved airport maintenance work. Scope amendments require submittal of an Amended Scope of Services, Attachment A.

Services will not be accomplished by the State until receipt of Sponsor's share of project costs.

Only work items as described in Attachment A, Scope of Services of this Grant are reimbursable under this grant.

Work shall be accomplished by August 31, 2021, unless otherwise approved by the State.

2. The State shall determine fair and eligible project costs for work scope. Sponsor's share of estimated project costs, Amount C, shall be as found on Attachment A and any amendments.

It is mutually understood and agreed that if, during the term of this agreement, the State determines that there is an overrun in the estimated annual routine maintenance costs, the State may increase the grant to cover the amount of the overrun within the above stated percentages and subject to the maximum amount of state funding.

The State will not authorize expenditures in excess of the dollar amounts identified in this Agreement and any amendments, without the consent of the Sponsor.

3. Sponsor, by accepting this Grant certifies and, upon request, shall furnish proof to the State that it has sufficient funds to meet its share of the costs. The Sponsor grants to the State the right to audit any books and records of the Sponsor to verify expended funds.

Upon execution of this Agreement and written demand by the State, the Sponsor's financial obligation (Amount C) shall be due in cash and payable in full to the State. State may request the Sponsor's financial obligation in partial payments. Should the Sponsor fail to pay their obligation, either in whole or in part, within 30 days of written demand, the State may exercise its rights under Paragraph V-3. Likewise, should the State be unwilling or unable to pay its obligation in a timely manner, the failure to pay shall be considered a breach and the Sponsor may exercise any rights and remedies it has at law or equity.

The State shall reimburse or credit the Sponsor, at the financial closure of the project, any excess funds provided by the Sponsor which exceed Sponsor's share (Amount C).

4. The Sponsor specifically agrees that it shall pay any project costs which exceed the amount of financial participation agreed to by the State. It is further agreed that the Sponsor will reimburse the State for any payment or payments made by the State which are in excess of the percentage of financial assistance (Amount B) as stated in Paragraph II-1.

5. Scope of Services may be accomplished by State contracts or through local contracts of the Sponsor as determined appropriate by the State. All locally contracted work must be approved by the State for scope and reasonable cost. Reimbursement requests for locally contracted work shall be submitted on forms provided by the State and shall include copies of the invoices for materials or services. Payment shall be made for no more than 50% of allowable charges.

The State will not participate in funding for force account work conducted by the Sponsor.

6. This Grant shall terminate upon completion of the scope of services.

Part III - Sponsor Responsibilities

1. In accepting this Grant, if applicable, the Sponsor guarantees that:
 - a. it will, in the operation of the facility, comply with all applicable state and federal laws, rules, regulations, procedures, covenants and assurances required by the State in connection with this Grant; and
 - b. the Airport or navigational facility which is the subject of this Grant shall be controlled by the Sponsor for a period of at least 20 years; and
 - c. consistent with safety and security requirements, it shall make the airport or air navigational facility available to all types, kinds and classes of aeronautical use without discrimination between such types, kinds and classes and shall provide adequate public access during the period of this Grant; and
 - d. it shall not grant or permit anyone to exercise an exclusive right for the conduct of aeronautical activity on or about an airport landing area. Aeronautical activities include, but are not limited to scheduled airline flights, charter flights, flight instruction, aircraft sales, rental and repair, sale of aviation petroleum products and aerial applications. The landing area consists of runways or landing strips, taxiways, parking aprons, roads, airport lighting and navigational aids; and
 - e. through the fence access shall be reviewed and approved by the State; and
 - f. it shall not permit non-aeronautical use of airport facilities without prior approval of the State; and

- g. the Sponsor shall submit to the State annual statements of airport revenues and expenses when requested; and
- h. all fees collected for the use of the airport shall be reasonable and nondiscriminatory. The proceeds from such fees shall be used solely for the development, operation and maintenance of the airport or navigational facility; and
- i. an Airport Fund shall be established by resolution, order or ordinance in the treasury of the Sponsor, or evidence of the prior creation of an existing airport fund or properly executed copy of the resolution, order, or ordinance creating such a fund, shall be submitted to the State. The fund may be an account as part of another fund, but must be accounted for in such a manner that all revenues, expenses, retained earnings, and balances in the account are discernible from other types of moneys identified in the fund as a whole. All fees, charges, rents, and money from any source derived from airport operations must be deposited in the Airport Fund and shall not be diverted to the general revenue fund or another revenue fund of the Sponsor. All expenditures from the Airport Fund shall be solely for airport purposes. Sponsor shall be ineligible for a subsequent grant or loan by the State unless, prior to such subsequent grant or loan, Sponsor has complied with the requirements of this subparagraph; and
- j. the Sponsor shall operate runway lighting at least at low intensity from sunset to sunrise; and
- k. insofar as it is reasonable and within its power, Sponsor shall adopt and enforce zoning regulations to restrict the height of structures and use of land adjacent to or in the immediate vicinity of the airport to heights and activities compatible with normal airport operations as provided in Tex. Loc. Govt. Code Ann. Sections 241.001 et seq. (Vernon and Vernon Supp.). Sponsor shall also acquire and retain aviation easements or other property interests in or rights to use of land or airspace, unless sponsor can show that acquisition and retention of such interest will be impractical or will result in undue hardship to Sponsor. Sponsor shall be ineligible for a subsequent grant or loan by the State unless Sponsor has, prior to subsequent approval of a grant or loan, adopted and passed an airport hazard zoning ordinance or order approved by the State.
- l. mowing services will not be eligible for state financial assistance. Sponsor will be responsible for 100% of any mowing services.

2. The Sponsor, to the extent of its legal authority to do so, shall save harmless the State, the State's agents, employees or contractors from all claims and liability due to activities of the Sponsor, the Sponsor's agents or employees performed under this agreement. The Sponsor, to the extent of its legal authority to do so, shall also save harmless the State, the State's agents, employees or contractors from any and all expenses, including attorney fees which might be incurred by the State in litigation or otherwise resisting claim or liabilities which might be imposed on the State as the result of those activities by the Sponsor, the Sponsor's agents or employees.
3. The Sponsor's acceptance of this Offer and ratification and adoption of this Grant shall be evidenced by execution of this Grant by the Sponsor. The Grant shall comprise a contract, constituting the obligations and rights of the State of Texas and the Sponsor with respect to the accomplishment of the project and the operation and maintenance of the airport.

If it becomes unreasonable or impractical to complete the project, the State may void this agreement and release the Sponsor from any further obligation of project costs.

4. Upon entering into this Grant, Sponsor agrees to name an individual, as the Sponsor's Authorized Representative, who shall be the State's contact with regard to this project. The Representative shall receive all correspondence and documents associated with this grant and shall make or shall acquire approvals and disapprovals for this grant as required on behalf of the Sponsor, and coordinate schedule for work items as required.
5. By the acceptance of grant funds for the maintenance of eligible airport buildings, the Sponsor certifies that the buildings are owned by the Sponsor. The buildings may be leased but if the lease agreement specifies that the lessee is responsible for the upkeep and repairs of the building no state funds shall be used for that purpose.
6. Sponsor shall request reimbursement of eligible project costs on forms provided by the State. All reimbursement requests are required to include a copy of the invoices for the materials or services. The reimbursement request will be submitted no more than once a month.
7. The Sponsor's acceptance of this Agreement shall comprise a Grant Agreement, as provided by the Transportation Code, Chapter 21, constituting the contractual obligations and rights of the State of Texas and the Sponsor with respect to the accomplishment of the airport maintenance and compliance with the assurances and conditions as provided. Such Grant Agreement shall become effective upon the State's written Notice to Proceed issued following execution of this agreement.

Part IV - Nomination of the Agent

1. The Sponsor designates the State as the party to receive and disburse all funds used, or to be used, in payment of the costs of the project, or in reimbursement to either of the parties for costs incurred.
2. The State shall, for all purposes in connection with the project identified above, be the Agent of the Sponsor. The Sponsor grants the State a power of attorney to act as its agent to perform the following services:
 - a. accept, receive, and deposit with the State any and all project funds granted, allowed, and paid or made available by the Sponsor, the State of Texas, or any other entity;
 - b. enter into contracts as necessary for execution of scope of services;
 - c. if State enters into a contract as Agent: exercise supervision and direction of the project work as the State reasonably finds appropriate. Where there is an irreconcilable conflict or difference of opinion, judgment, order or direction between the State and the Sponsor or any service provider, the State shall issue a written order which shall prevail and be controlling;
 - d. receive, review, approve and pay invoices and payment requests for services and materials supplied in accordance with the State approved contracts;
 - e. obtain an audit as may be required by state regulations; the State Auditor may conduct an audit or investigation of any entity receiving funds from TxDOT directly under this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
 - f. reimburse sponsor for approved contract maintenance costs no more than once a month.

Part V - Recitals

1. This Grant is executed for the sole benefit of the contracting parties and is not intended or executed for the direct or incidental benefit of any third party.
2. It is the intent of this grant to not supplant local funds normally utilized for airport maintenance, and that any state financial assistance offered under this grant be in addition to those local funds normally dedicated for airport maintenance.

3. This Grant is subject to the applicable provisions of the Transportation Code, Chapters 21 and 22, and the Airport Zoning Act, Tex. Loc. Govt. Code Ann. Sections 241.001 et seq. (Vernon and Vernon Supp.). Failure to comply with the terms of this Grant or with the rules and statutes shall be considered a breach of this contract and will allow the State to pursue the remedies for breach as stated below.
 - a. Of primary importance to the State is compliance with the terms and conditions of this Grant. If, however, after all reasonable attempts to require compliance have failed, the State finds that the Sponsor is unwilling and/or unable to comply with any of the terms of this Grant, the State, may pursue any of the following remedies: (1) require a refund of any financial assistance money expended pursuant to this Grant, (2) deny Sponsor's future requests for aid, (3) request the Attorney General to bring suit seeking reimbursement of any financial assistance money expended on the project pursuant to this Grant, provided however, these remedies shall not limit the State's authority to enforce its rules, regulations or orders as otherwise provided by law, (4) declare this Grant null and void, or (5) any other remedy available at law or in equity.
 - b. Venue for resolution by a court of competent jurisdiction of any dispute arising under the terms of this Grant, or for enforcement of any of the provisions of this Grant, is specifically set by Grant of the parties in Travis County, Texas.
4. The State reserves the right to amend or withdraw this Grant at any time prior to acceptance by the Sponsor. The acceptance period cannot be greater than 30 days after issuance unless extended by the State.
5. This Grant constitutes the full and total understanding of the parties concerning their rights and responsibilities in regard to this project and shall not be modified, amended, rescinded or revoked unless such modification, amendment, rescission or revocation is agreed to by both parties in writing and executed by both parties.
6. All commitments by the Sponsor and the State are subject to constitutional and statutory limitations and restrictions binding upon the Sponsor and the State (including Sections 5 and 7 of Article 11 of the Texas Constitution, if applicable) and to the availability of funds which lawfully may be applied.

Part VI - Acceptances

Sponsor

The Town of Addison, Texas, does ratify and adopt all statements, representations, warranties, covenants, agreements, and all terms and conditions of this Grant.

The Town of Addison, Texas

Sponsor

Sponsor Signature

Sponsor Title

Date

Acceptance of the State

Executed by and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs and grants heretofore approved and authorized by the Texas Transportation Commission.

STATE OF TEXAS

TEXAS DEPARTMENT OF TRANSPORTATION

Signature

Title

Date

Attachment A

Scope of Services
TxDOT Project ID: M2118ADDS

Eligible Scope Item	Estimated Costs Amount A	State Share Amount B	Sponsor Share Amount C
GENERAL MAINTENANCE	\$100,000.00	\$50,000.00	\$50,000.00
TOTAL	\$100,000.00	\$50,000.00	\$50,000.00

Sponsor Signature

Sponsor Title

Date

GENERAL MAINTENANCE: As needed, Sponsor may contract for services / purchase materials for routine maintenance / improvement of airport pavements, signage, drainage, AWOS systems, approach aids, lighting systems, utility infrastructure, fencing, herbicide / application, sponsor owned and operated fuel systems, hangars, terminal buildings and security systems; professional services for environmental compliance, approved project design. Special projects to be determined and added by amendment.

Only work items as described in Attachment A, Scope of Services of this Grant are reimbursable under this grant.

CERTIFICATION OF AIRPORT FUND

TxDOT Project ID: M2118ADDS

The Town of Addison, Texas, does certify that an Airport Fund has been established for the Sponsor, and that all fees, charges, rents, and money from any source derived from airport operations will be deposited for the benefit of the Airport Fund and will not be diverted for other general revenue fund expenditures or any other special fund of the Sponsor and that all expenditures from the Fund will be solely for airport purposes. The fund may be an account as part of another fund, but must be accounted for in such a manner that all revenues, expenses, retained earnings, and balances in the account are discernible from other types of moneys identified in the fund as a whole.

Sponsor Signature

Sponsor Title

Date

Certification of State Single Audit Requirements

I, _____, do certify that the Town of Addison, Texas, will comply with all requirements of the State of Texas Single Audit Act if the Town of Addison, Texas, spends or receives more than the threshold amount in any grant funding sources during the most recently audited fiscal year. And in following those requirements, the Town of Addison, Texas, will submit the report to the audit division of the Texas Department of Transportation. If your entity did not meet the threshold in grant receivables or expenditures, please submit a letter indicating that your entity is not required to have a State Single Audit performed for the most recent audited fiscal year.

Sponsor Signature

Sponsor Title

Date

DESIGNATION OF SPONSOR'S AUTHORIZED REPRESENTATIVE

TxDOT Project ID: M2118ADDS

The Town of Addison, Texas, designates,

_____ as the Sponsor's authorized
(Name, Title)

representative, who shall receive all correspondence and documents associated with this grant and who shall make or shall acquire approvals and disapprovals for this grant as required on behalf of the Sponsor.

Sponsor Signature

Sponsor Title

Date

DESIGNATED REPRESENTATIVE

First Name, Last Name

Title

Address

Phone Number

Email Address

Council Meeting

10.

Meeting Date: 10/27/2020

Department: Airport

Pillars: Excellence in Transportation Systems

AGENDA CAPTION:

Consider Action to **Authorize the Purchase and Installation of Furnishings, Fixtures, and Equipment for the Addison Airport Customs and Border Protection and Airport Administration Facility from bkm Total Office of Texas, LLC, Through the OMNIA Partners Purchasing Cooperative** in an Amount Not to Exceed \$158,158.03.

BACKGROUND:

On August 27, 2019, the Addison City Council approved a contract with JC Commercial, Inc. for construction of the U.S. Customs and Border Protection and Airport Administration facility at Addison Airport. The overall project budget presented to Council included funding for the purchase of furniture, fixtures, and equipment (FF&E) for the building, including installation.

The Town of Addison evaluates pricing through purchasing cooperatives and interlocal agreements to obtain the best price and to reduce administrative expenses. After working with the architect to determine the appropriate furniture and fixture selections, the Town obtained bids through OMNIA Partners Purchasing Cooperative based on cooperative pricing. Solicitation 20-231, Addison Airport CBP Facility Furniture and Installation Services bid, was advertised on September 29, 2020, and three responses were received.

The cooperative pricing with bkm Total Office of Texas, LLC offered the best pricing for the FF&E purchase and installation services requested in this agenda item. The furniture dealers will provide workstations, seating, lounges, tables, and accessories for the facility, along with installation and warranties.

Funding for the Customs and Border Protection and Airport Administration Building FF&E purchase and installation is included in the project budget. The budget amount for FF&E purchase and installation was \$275,738.

Three cooperative pricing bids were received:

Vendor	Bid
bkm Total Office of Texas, LLC	\$158,158.03
W.R.G., LLC	\$160,262.90

GL Seaman & Co.	\$163,315.30
-----------------	--------------

This purchase requires Council approval because the total amount is greater than \$50,000.

RECOMMENDATION:

Administration recommends approval.

Attachments

- Bid Package
 - Bid Tabulation - Addison Airport CBP Facility Furniture
 - Furniture Dealer Scope of Services
-

Solicitation 20-231

Addison Airport CBP Facility Furniture & Installation Services

Bid Designation: Private



Town of Addison

Bid 20-231
Addison Airport CBP Facility Furniture & Installation Services

Bid Number	20-231
Bid Title	Addison Airport CBP Facility Furniture & Installation Services
Bid Start Date	Sep 29, 2020 12:16:12 PM CDT
Bid End Date	Oct 7, 2020 8:00:00 AM CDT
Question & Answer End Date	Oct 5, 2020 12:00:00 PM CDT
Bid Contact	Wil Newcomer Purchasing Manager
Bid Contact	Michele Griffin Accounting Specialist Finance

Description

Please, refer to OMNIA Partners cooperative contract pricing R191813. The attached specifications with quantities is the Town's best estimate of actual need. The Town reserves the right to modify or not modify actual quantities ordered.



Furniture Dealer Scope of Services

Once furniture Dealers are awarded, they are expected to participate with the Project Manager, the A/E, and General Contractor in coordination of furniture milestones within the construction schedule. Upon event multiple dealers are awarded to a single project, coordination of all dealers furniture milestone schedules will need to be provided by the A/E or Project Manager and then coordinated with the General Contractor.

Confirm requirements with Project Manager as scope and size of project will inform extent of dealer services. Weekly meetings may be required for large or specialty projects but not for medium or small projects.

The furniture dealers shall provide:

- The awarded furniture scope to allow Owner move-in by proposed installation date
- Furniture specific drawings, representing all furniture awarded to Dealer
- Assigned representative to attend weekly construction meetings as necessary to coordinate schedules for furniture delivery and installation. Representative shall be thoroughly familiar with the work and may be contacted for duration of project to act as a liaison between Contractor, Owner and A/E.
- Proposed project schedule indicating compliance with proposed installation dates. Installation dates are mandatory and cannot be delayed for any reason.
- Floor core confirmation of accuracy in alignment with furniture award
- Coordination, through General Contractor, of electrician and data cabling contractors to align activities required to attach furniture to base building services

Dealer to specify and provide all components required to furnish and install a complete working furniture assembly as indicated in RFB. Dealer shall be responsible to order correct quantities of casegoods or systems furniture if handed components are used. Configurations must match A/E drawings exactly.

Dealer to brace, secure, stabilize furniture with appropriate hardware, cantilevers, panel connectors, stabilizing feet, etc. as required making product rigidity as substantial as necessary.

Dealer to provide concealed wire management under all tables, desks, returns, credenzas etc. Provide removable doors or panels in casegoods and conference tables for electrical and data access where required for access to outlets. Dealer shall coordinate with A/E drawings and General Contractor to verify all outlet and data locations and power source types. Dealer shall be responsible for coordination of any cable or wire management accessories required for power/ data connections to base building standards used on project.

Each workstation or individual office setting to be keyed differently. All locks within a workstation or office to be keyed alike. Dealer shall publish a floor plan that includes key numbers issued and marked on drawings as part of final issued installation documentation. Three (3) Master Keys per manufacturer shall be included by Dealer in the cost (if any) of the workstation and private office bid proposal.

Submittals such as shop drawings, samples, warranties, as-built drawings, etc., must be submitted timely so that job progress is not delayed. Dealer agrees that his shop drawings and submittals represent that he has determined all measurements, field construction criteria, and verified and coordinated each shop drawing and submittal with the requirements of the work and of the Furniture RFB. Approval of drawings or other submittals by the A/E or Project Manager shall not relieve Dealer of its obligation to perform the work in strict accordance with the Furniture RFB.

Please submit pricing per specifications under Furniture Quantity Schedule, total by line item, separate line item for total labor and lump sum for entire submittal. Provide turnkey solution with no hidden costs. Currently, the Town anticipates completed delivery and installation date in first week of February 2021.

ADDISON AIRPORT



CBP FACILITY

FURNITURE SPECIFICATIONS

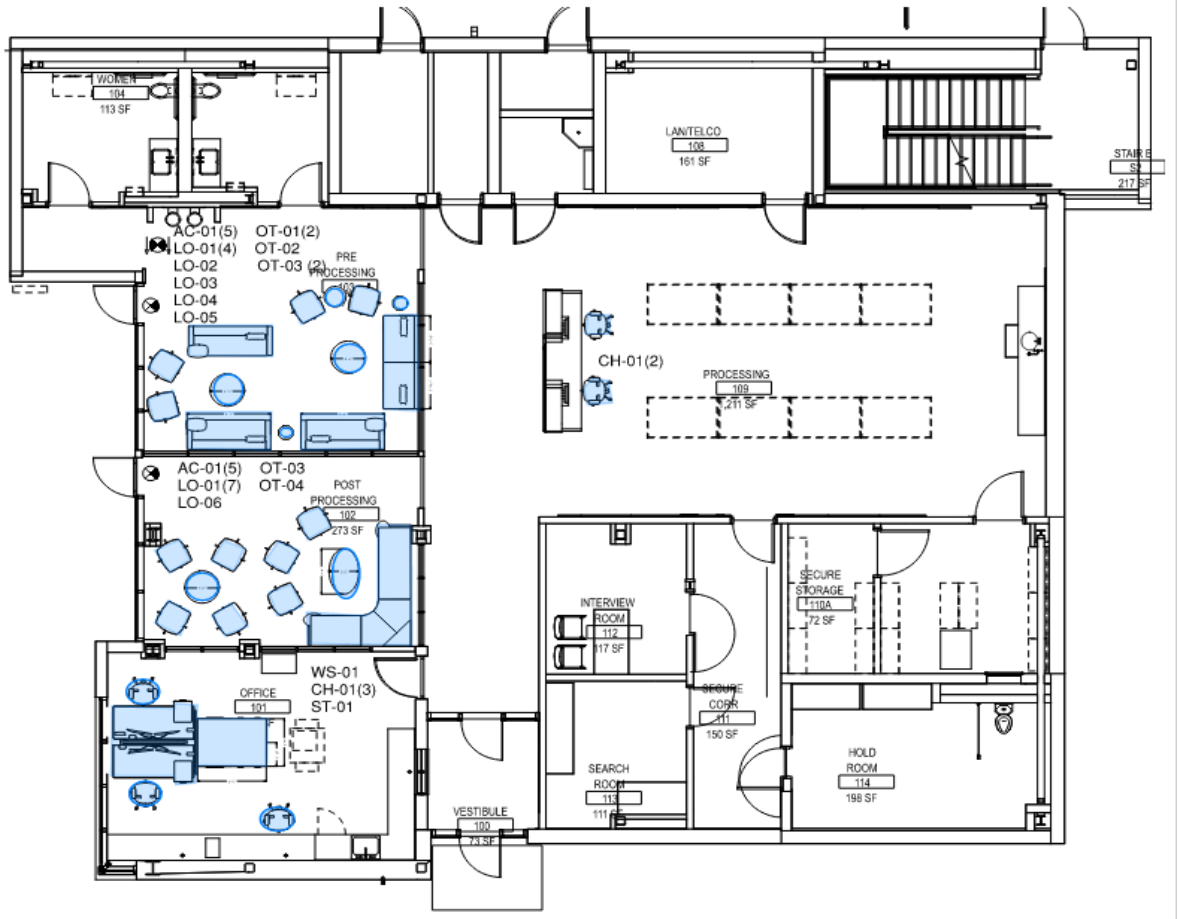
ADDISON AIRPORT
FURNITURE QUANTITY SCHEDULE

9/21/2020

FURNITURE ITEM CODE	LEVEL	LEVEL	EXTENDED QUANTITY	MANUFACTURER	ITEM DESCRIPTION
	1	2			
WORKSTATIONS					
WS-01	0	1	1	OFS	CLUSTER OF 2 WORKSTATIONS
WS-02	0	1	1	OFS	CLUSTER OF 8 WORKSTATIONS
WS-03	0	1	1	OFS	CLUSTER OF 6 WORKSTATIONS
WS-04	0	1	1	OFS	CLUSTER OF 4 WORKSTATIONS
PRIVATE OFFICES					
PO-01	0	1	1	OFS	L-SHAPE OFFICE
PO-02	0	1	1	OFS	STRAIGHT SURFACE OFFICE
SEATING					
CH-01	5	17	22	OFS	ZONAL HIGH BACK
CH-02	0	6	6	OFS	PRET MID BACK TASK
CH-03	0	4	4	OFS	PRET MID BACK STOOL
CH-04	0	2	2	OFS	CINQUE 4 LEG
CH-05	0	6	6	OFS	AIRUS 4 LEG
CH-06	0	28	28	OFS	ACEN 4 LEG CASTOR
CH-07	0	16	16	PARCEL	OUTDOOR ARMCHAIR
CH-08	0	2	2	PARCEL	OUTDOOR BENCH
LOUNGE					
LO-01	11	0	11	OFS	SKARA MID BACK SWIVEL LOUNGECHAIR
LO-02	1	0	1	OFS	ANI SOFA, RIGHT TABLET/OUTLET
LO-03	1	0	1	OFS	ANI SOFA, LEFT TABLET/OUTLET
LO-04	1	0	1	OFS	ANI SOFA, LEFT TABLET/NO OUTLET
LO-05	1	0	1	OFS	ANI LOVESEAT, ARMLESS
LO-06	1	0	1	OFS	COACT LOVESEAT
LO-07	0	3	3	OFS	LONA LOUNGE CHAIR
LO-08	0	1	1	OFS	COSIMA SOFA
LO-09	0	1	1	OFS	ANI SOFA, ARMS
TABLES					
OT-01	2	0	2	OFS	DENRO END TABLE
OT-02	1	0	1	OFS	KOSA SIDE TABLE
OT-03	3	0	3	OFS	MAIVE COFFEE TABLE
OT-04	1	0	1	OFS	KOSA OVAL COFFEE TABLE
OT-05	0	3	3	OFS	WYRE END TABLE
OT-06	0	1	1	OFS	WYRE ROUND COFFEE TABLE
OT-07	0	1	1	OFS	KOSA SM OVAL COFFEE TABLE
OT-08	0	2	2	PARCEL	OUTDOOR SIDE TABLE
TB-01	0	14	14	OFS	APPLAUSE TRAINING TABLE
TB-02	0	1	1	OFS	HEYA DESK HEIGHT HUDDLE TABLE
TB-03	0	1	1	OFS	HEYA STANDING HEIGHT HUDDLE TABLE
TB-04	0	1	1	OFS	INTERMIX DESK HEIGHT TABLE
TB-05	0	3	3	OFS	APPLAUSE SOFT SQUARE TABLE
TB-06	0	3	3	PARCEL	OUTDOOR TABLE 72"
TB-07	0	1	1	PARCEL	OUTDOOR TABLE 96"
ACCESSORIES					
AC-01	10	3	13	OFS	18X18 THROW PILLOW
AC-02	2	20	22	SPACE CO	DUAL MONITOR ARM, CLAMP
AC-03	0	1	1	SPACE CO	SINGLE MONITOR ARM
AC-04	0	2	2	SPACE CO	DUAL MONITOR ARM, GROMMET
ST-01	1	0	1	OFS	STORAGE UNIT

**ADDISON AIRPORT
FURNITURE PLAN**

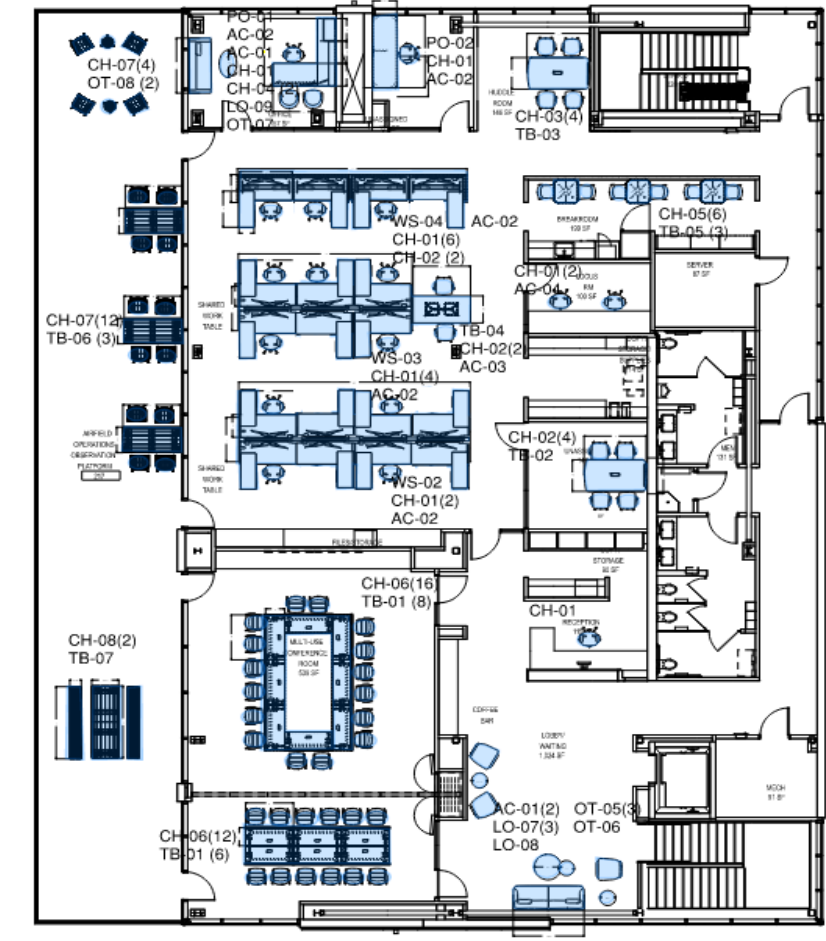
9/21/2020



LEVEL 1

**ADDISON AIRPORT
FURNITURE PLAN**

9/21/2020



LEVEL 2

Furniture Specification

CH.01

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

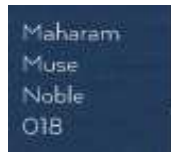
Date Issued: 44095

Specification Type: No

Procurement Type: OMNIA

Item Information

Item Number CH.01
Type Task Chair



Seat Upholstery



Back Upholstery

Manufacturer: OFS
Product Name: Zonal
Product Number: 87017

Description High Back task chair, 2D arm, Lumbar, Standard Cylinder, Carpet Castor

Special Notes:
 GreenGuard

Dimensions:

Finishes:

Seat Upholstery Maharam
 Muse Noble 018

Back Upholstery Dove Mesh

Frame: Graphite
Base: Graphite
Casters: Black

Location

Room Number	Quantity	Room Name
109	2	PROCESSING
101	3	OFFICE
201	1	RECEPTION
208	12	OPEN WORK AREA
209	1	OFFICE
210	1	UNASSIGNED
206	2	FOCUS ROOM
	22	

Furniture Specification

CH.02

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

Date Issued: 44095

Specification Type: No

Procurement Type: OMNIA

Item Information

Item Number CH.02
Type Conference Chair



Seat Upholstery



Back Upholstery

Manufacturer: OFS
Product Name: Pret
Product Number: 86017

Description All Mesh, Fixed arm, carpet castor

Special Notes:
 GreenGuard

Dimensions:

Finishes:

Seat Upholstery Ocean Mesh

Back Upholstery N/A

Frame: Graphite
Base: Graphite
Casters: black

Location

<u>Room Number</u>	<u>Quantity</u>	<u>Room Name</u>
208	2	OPEN WORK AREA
204	4	UNASSIGNED
	6	

Furniture Specification

CH.03

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

Date Issued: 44095

Specification Type: No

Procurement Type: OMNIA

Item Information

Item Number

CH.03

Type

Conference Task Stool



Seat Upholstery



Shell Finish

Manufacturer: OFS

Product Name: Pret

Product Number: 86057

Description All Mesh, Fixed arm, carpet castor

Special Notes:
GreenGuard

Dimensions:

Finishes:

Seat Upholstery Ocean Mesh

Back Upholstery N/A

Frame: Graphite

Base: Graphite

Casters: black

Location

<u>Room Number</u>	<u>Quantity</u>	<u>Room Name</u>
211	4	HUDDLE

Furniture Specification

CH.04

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

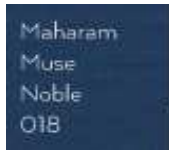
Date Issued: 44095

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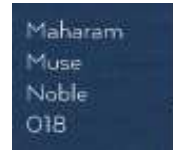
Procurement Type: OMNIA

Item Information

Item Number CH.04
Type Sie Chair



Seat Upholstery



Back Upholstery

Manufacturer: OFS
Product Name: CINQUE
Product Number: 108037

Description Low back Guest Chair, fully upholstered, 4 legs with Felt Glide

Special Notes:
 GreenGuard

Dimensions: 24x25x29.75

Finishes:

Seat Upholstery Maharam
 Muse Noble 018

Back Upholstery Maharam
 Muse Noble 018

Frame: n/a
Base: Onyx
Casters: n/a

Location

Room Number	Quantity	Room Name
209	2	OFFICE

Furniture Specification

CH.05

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

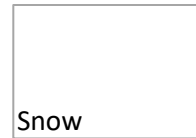
Date Issued: 44095

Specification Type: No

Procurement Type: OMNIA

Item Information

Item Number CH.05
Type Side Chair



Shell

Manufacturer: OFS
Product Name: AIRUS SIDE
Product Number: 15123

Description Perforated Plastic Back, No arms

Special Notes: N/A
GreenGuard N/A

Dimensions: N/A

Finishes:

Seat Upholstery snow plastic

Back Upholstery snow plastic

Frame: silver
Base: glides
Casters: n/a

Location

<u>Room Number</u>	<u>Quantity</u>	<u>Room Name</u>
207	6	BREAKROOM

Furniture Specification

CH.06

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

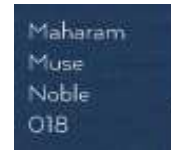
Date Issued: 44095

Specification Type: No

Procurement Type: OMNIA

Item Information

Item Number CH.06
Type Conference Chair



UPHOLSTERY

Manufacturer: OFS
Product Name: ACEN
Product Number: 50093

Description MESH BACK NESTING SIDE CHAIR, WITH ARMS

Special Notes: N/A
GreenGuard N/A

Dimensions:

Finishes:

Upholstery MAHARAM
 MUSE NOBLE 018

Frame: SILVER/ GREY
Base: N/A
Casters: BLACK CARPET

Location

<u>Room Number</u>	<u>Quantity</u>	<u>Room Name</u>
206	28	MULTIUSE CONFERENCE ROOM

Furniture Specification

CH.07

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

Date Issued: 44095

Specification Type: No

Procurement Type: OMNIA

Item Information

Item Number CH.07
Type OUTDOOR



FRAME



WOOD

Manufacturer: PARCEL
Product Name: ARM CHAIR
Product Number: A.ACH//

Description STEEL AND KNOT FREE SOUTHERN YELLOW PINE

Special Notes: N/A
GreenGuard N/A

Dimensions: 31X23X22

Finishes:

Upholstery N/A

WOOD: PARCEL CINNAMON
Frame: PARCEL YACHT ROCK BLUE
Base: N/A
Casters: N/A

Location

<u>Room Number</u>	<u>Quantity</u>	<u>Room Name</u>
217	16	OBSERVATION PLATFORM

Furniture Specification

CH.08

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

Date Issued: 44095

Specification Type: No

Procurement Type: OMNIA

Item Information

Item Number CH.08
Type OUTDOOR



Manufacturer: PARCEL
Product Name: BENCH
Product Number: A.BCH.96//

Description STEEL AND KNOT FREE SOUTHERN YELLOW PINE

Special Notes: N/A
GreenGuard N/A

Dimensions: 18X14X96

Finishes:

Upholstery N/A

WOOD: PARCEL CINNAMON
Frame: PARCEL YACHT ROCK BLUE
Base: N/A
Casters: N/A

Location

<u>Room Number</u>	<u>Quantity</u>	<u>Room Name</u>
217	2	OBSERVATION PLATFORM

Furniture Specification

AC.01

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

Date Issued: 44095

Specification Type: No

Procurement Type: OMNIA

Item Information

Item Number AC.01
Type PILLOW



Upholstery

Manufacturer: OFS

Product Name:

Product Number: TP-18X18

Description Throw Pillow, with insert, allergy free

Special Notes: N/A

GreenGuard N/A

Dimensions: 18x18

Finishes:

Upholstery Luna
 Tech Twist Connect

Frame: n/a

Base: n/a

Casters: n/a

Location

<u>Room Number</u>	<u>Quantity</u>	<u>Room Name</u>
103	5	PREPROCESSING
102	5	POSTPROCESSING
200	2	LOBBY WAITING
209	1	OFFICE
	13	

Furniture Specification

AC.02

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

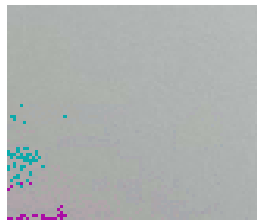
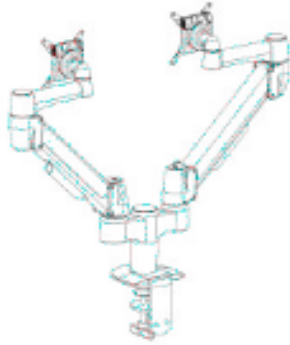
Date Issued: 44095

Specification Type: No

Procurement Type: OMNIA

Item Information

Item Number AC.02
Type MONITOR ARM



FRAME

Manufacturer: SPACECO
Product Name: SPACE ARM
Product Number: SA02QC-CL-PLT

Description DOUBLE QUICK CHANGE C-CLAMP LARGE

Special Notes: N/A
GreenGuard N/A

Dimensions: N/A

Finishes:

Upholstery N/A

Frame: PLATINUM
Base: N/A
Casters: N/A

Location

Room Number	Quantity	Room Name
101	2	OFFICE
208	18	OPEN WORK AREA
209	1	OFFICE
210	1	UNASSIGNED
	22	

Furniture Specification

AC.03

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

Date Issued: 44095

Specification Type: No

Procurement Type: OMNIA

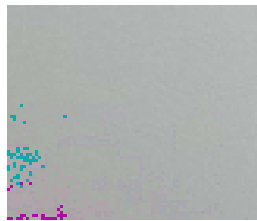
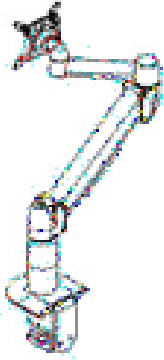
Item Information

Item Number

AC.03

Type

MONITOR ARM



FRAME

Manufacturer: SPACECO
Product Name: SPACE ARM
Product Number: SA01QC-CL-PLT

Description SINGLE QUICK CONNECT C-CLAMP LARGE

Special Notes: N/A
GreenGuard N/A

Dimensions: N/A

Finishes:

Upholstery N/A

Frame: PLATINUM
Base: N/A
Casters: N/A

Location

<u>Room Number</u>	<u>Quantity</u>	<u>Room Name</u>
208	1	OPEN WORK AREA

Furniture Specification

AC.04

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

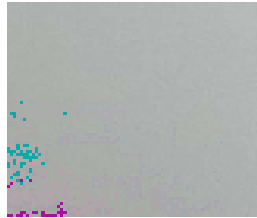
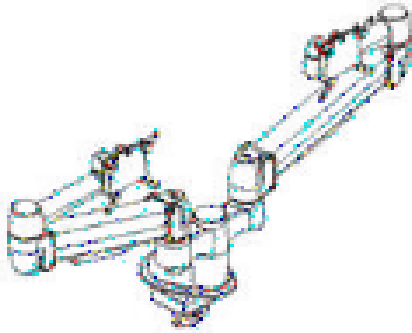
Date Issued: 44095

Specification Type: No

Procurement Type: OMNIA

Item Information

Item Number **AC.04**
Type MONITOR ARM



FRAME

Manufacturer: SPACECO
Product Name: SPACE ARM
Product Number: SA02QC-GT-PLT

Description DOUBLE QUICK CHANGE GROMMET MOUNT LARGE

Special Notes: N/A
GreenGuard N/A

Dimensions: N/A

Finishes:

Upholstery N/A

Frame: PLATINUM
Base: N/A
Casters: N/A

Location

<u>Room Number</u>	<u>Quantity</u>	<u>Room Name</u>
206	2	FOCUS ROOM

ST.01

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

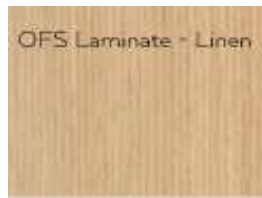
Date Issued: 44095

Specification Type: No

Procurement Type: OMNIA

Item Information

Item Number **ST.01**
Type STORAGE UNIT



FINISH

Manufacturer: OFS
Product Name: INTERMIX
Product Number: CC-972527

Description SINGLE TOP SURFACE OVERALL DIMENSION 60X44 DOUBLE ENDED PEDESTALS 30X44
 PED 1- LATERAL FILE DRAWERS ON FRONT AND BACK; PED 2- TWO HINGED DOORS ON FRONT
Special Notes: AND BACK (ONE INTERIOR ADJUSTABLE SHELF IN EACH); PARALLEL PULLS; LOCKING KEYED
GreenGuard N/A

Dimensions: 60X44X44

Finishes:

Surface Finish LINEN
Top Finish LINEN
Notes PARALLEL STYLE PULL

Location

Room Number	Quantity	Room Name
101	1	OFFICE

Furniture Specification

LO.01

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

Date Issued: 44095

Specification Type: No

Procurement Type: OMNIA

Item Information

Item Number **LO.01**
Type LOUNGE CHAIR



Upholstery

Manufacturer: OFS
Product Name: SKARA
Product Number: 205016

Description MID BACK SWIVEL LOUNGE CHAIR

Special Notes: N/A
GreenGuard N/A

Dimensions: 24.5X24.5X32

Finishes:

Upholstery CAMIRA
 MAIN LINE FLAX
 VICTORIA

Frame: n/a
Base: POLISHED ALUMINUM

Location

<u>Room Number</u>	<u>Quantity</u>	<u>Room Name</u>
103	4	PREPROCESSING
102	7	POSTPROCESSING
	11	

Furniture Specification

LO.02

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

Date Issued: 44095

Specification Type: No

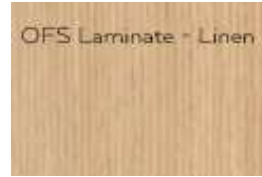
Procurement Type: OMNIA

Item Information

Item Number **LO.02**
Type SOFA



Upholstery



Manufacturer: OFS
Product Name: ANI SOFA
Product Number: 97043

Description HIGH LEG, ARM, RIGHT FACING TABLET, SILVER POWER AT BASE RIGHT FACING, METAL TUBE LEG

Special Notes: N/A
GreenGuard N/A

Dimensions: 73X28X30.5-32

Finishes:

Upholstery CAMIRA
 SYNERGY PARTNER
Tablet 3D LAMINATE LINEN
Outlet Silver
Frame: n/a
Base: Onyx

Location

<u>Room Number</u>	<u>Quantity</u>	<u>Room Name</u>
103	1	PREPROCESSING

Furniture Specification

LO.03

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

Date Issued: 44095

Specification Type: No

Procurement Type: OMNIA

Item Information

Item Number **LO.03**

Type SOFA



Manufacturer: OFS
Product Name: ANI SOFA
Product Number: 97043

Description HIGH LEG, ARM, LEFT FACING TABLET, SILVER POWER AT BASE LEFT FACING, METAL TUBE LEG

Special Notes: N/A
GreenGuard N/A

Dimensions: 73X28X30.5-32

Finishes:

Upholstery CAMIRA
 SYNERGY PARTNER
Tablet 3D LAMINATE LINEN
Outlet Silver
Frame: n/a
Base: Onyx

Location

<u>Room Number</u>	<u>Quantity</u>	<u>Room Name</u>
103	1	PREPROCESSING

Furniture Specification

LO.04

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

Date Issued: 44095

Specification Type: No

Procurement Type: OMNIA

Item Information

Item Number **LO.04**
Type SOFA



Manufacturer: OFS
Product Name: ANI SOFA
Product Number: 97043

Description HIGH LEG, ARM, LEFT FACING TABLET, NO POWER , METAL TUBE LEG

Special Notes: N/A
GreenGuard N/A

Dimensions: 73X28X30.5-32

Finishes:

Upholstery CAMIRA
 SYNERGY PARTNER
Tablet 3D LAMINATE LINEN
Outlet Silver
Frame: n/a
Base: Onyx

Location

<u>Room Number</u>	<u>Quantity</u>	<u>Room Name</u>
103	1	PREPROCESSING

Furniture Specification

LO.05

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

Date Issued: 44095

Specification Type: No

Procurement Type: OMNIA

Item Information

Item Number **LO.05**
Type LOVESEAT



Upholstery

Manufacturer: OFS
Product Name: ANI LOVESEAT
Product Number: 97442

Description HIGH LEG, ARMLESS, NO TABLET, POWER LEFT FACING, METAL TUBE LEG

Special Notes: N/A
GreenGuard N/A

Dimensions: 86.50X28X30.5-32

Finishes:

Upholstery CAMIRA
 SYNERGY PARTNER
Tablet 3D LAMINATE LINEN
Outlet SILVER
Frame: n/a
Base: Onyx

Location

<u>Room Number</u>	<u>Quantity</u>	<u>Room Name</u>
103	1	PREPROCESSING

Furniture Specification

LO.06

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

Date Issued: 44095

Specification Type: No

Procurement Type: OMNIA

Item Information

Item Number **LO.06**
Type SECTIONAL



Manufacturer: OFS
Product Name: COACT
Product Number: F78042-MA; F78043-MA; F78045-M
Description MIDBACK, SINGLE LOW-ARM, RIGHT FACING TABLET, SILVER RIGHT FACING POWER, CORNER WITH BACK TABLE; LEFT FACING TABLET, SILVER LEFT FACING POWER, SQUARE METAL LEG
Special Notes: N/A
GreenGuard N/A
Dimensions: 84X84X28X30.5-32

Finishes:

Upholstery CAMIRA
 SYNERGY PARTNER
Tablet 3D LAMINATE LINEN
Outlet SILVER
Frame: n/a
Base: Onyx

Location

<u>Room Number</u>	<u>Quantity</u>	<u>Room Name</u>
102	1	POSTPROCESSING

Furniture Specification

LO.07

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

Date Issued: 44095

Specification Type: No

Procurement Type: OMNIA

Item Information

Item Number **LO.07**
Type LOUNGE CHAIR



Upholstery

Manufacturer: OFS
Product Name: LONA
Product Number: 84017

Description HIGHBACK SWIVEL WITH HEADREST

Special Notes: N/A
GreenGuard N/A

Dimensions: 29.5X32X38.5

Finishes:

Upholstery CAMIRA
 MAINLINE FLAX VICTORIA
Tablet N/A
Outlet N/A
Frame: n/a
Base: Onyx

Location

<u>Room Number</u>	<u>Quantity</u>	<u>Room Name</u>
200	3	LOBBY WAITING

Furniture Specification

LO.08

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

Date Issued: 44095

Specification Type: No

Procurement Type: OMNIA

Item Information

Item Number **LO.08**

Type SOFA



Upholstery

Manufacturer: OFS
Product Name: COSIMA
Product Number: 95043

Description SOFA

Special Notes: N/A
GreenGuard N/A

Dimensions: 89X31X31

Finishes:

Upholstery CAMIRA
 SYNERGY PARTNER
Tablet N/A
Outlet N/A
Frame: n/a
Base: VENEER LINEN

Location

<u>Room Number</u>	<u>Quantity</u>	<u>Room Name</u>
200	1	LOBBY WAITING

Furniture Specification

LO.09

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

Date Issued: 44095

Specification Type: No

Procurement Type: OMNIA

Item Information

Item Number **LO.09**

Type SOFA



Upholstery

Manufacturer: OFS
Product Name: ANI
Product Number: 97043

Description HIGH LEG, ARM, METAL TUBE LEG

Special Notes: N/A
GreenGuard N/A

Dimensions: 73X28X30.5

Finishes:

Upholstery CAMIRA
 SYNERGY PARTNER
Tablet N/A
Outlet N/A
Frame: n/a
Base: ONYX

Location

<u>Room Number</u>	<u>Quantity</u>	<u>Room Name</u>
209	1	OFFICE

Furniture Specification

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

Date Issued: 44095

Specification Type: No

Procurement Type: OMNIA

Item Information

Item Number **OT.01**
Type END TABLE



Manufacturer: OFS
Product Name: DENRO
Product Number: DNR-20ET

Description SOLID WOOD END TABLE, NON TORCHED

Special Notes: N/A
GreenGuard N/A

Dimensions: 20"H

Finishes:

Top N/A
Edge N/A
Base: WHITE OAK
Notes N/A

Location

<u>Room Number</u>	<u>Quantity</u>	<u>Room Name</u>
103	2	PREPROCESSING

Furniture Specification

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

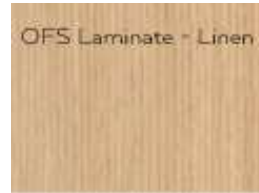
Date Issued: 44095

Specification Type: No

Procurement Type: OMNIA

Item Information

Item Number OT.02
Type END TABLE



Manufacturer: OFS
Product Name: KOSA
Product Number: KS-19RD20H

Description ROUND END TABLE

Special Notes: N/A
GreenGuard N/A

Dimensions: 19X19X20

Finishes:

Top LAMINATE LINEN
Edge N/A
Base: ONYX
Notes N/A

Location

<u>Room Number</u>	<u>Quantity</u>	<u>Room Name</u>
103	1	PREPROCESSING

Furniture Specification

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

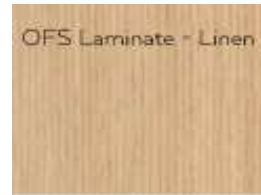
Date Issued: 44095

Specification Type: No

Procurement Type: OMNIA

Item Information

Item Number OT.03
Type COFFEE TABLE



Manufacturer: OFS
Product Name: MAIVE
Product Number: MV-30R17H

Description COFFEE TABLE

Special Notes: N/A
GreenGuard N/A

Dimensions: 30X30X17

Finishes:

Top LAMINATE LINEN
Edge N/A
Base: ONYX
Notes N/A

Location

<u>Room Number</u>	<u>Quantity</u>	<u>Room Name</u>
103	2	PREPROCESSING
102	1	POSTPROCESSING
	3	

Furniture Specification

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

Date Issued: 44095

Specification Type: No

Procurement Type: OMNIA

Item Information

Item Number **OT.04**
Type COFFEE TABLE



Manufacturer: OFS
Product Name: KOSA
Product Number: KS-4226OV15H

Description OVAL COFFEE TABLE

Special Notes: N/A
GreenGuard N/A

Dimensions: 42X26X15

Finishes:

Top LAMINATE LINEN
Edge N/A
Base: ONYX
Notes N/A

Location

<u>Room Number</u>	<u>Quantity</u>	<u>Room Name</u>
102	1	POSTPROCESSING

Furniture Specification

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

Date Issued: 44095

Specification Type: No

Procurement Type: OMNIA

Item Information

Item Number OT.05
Type SIDE TABLE



Manufacturer: OFS
Product Name: WYRE
Product Number: WF-B20RD22H

Description BOTTLE FRAME ROUND END TABLE

Special Notes: N/A
GreenGuard N/A

Dimensions: 20X20X20

Finishes:

Top LAMINATE 3D FROSTY WHITE
Edge N/A
Base: ONYX
Notes N/A

Location

Room Number	Quantity	Room Name
200	3	LOBBY/ WAITING

Furniture Specification

OT.06

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

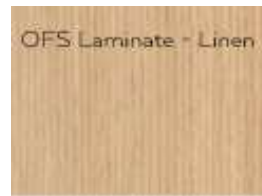
Date Issued: 44095

Specification Type: No

Procurement Type: OMNIA

Item Information

Item Number OT.06
Type COFFEE TABLE



Manufacturer: OFS
Product Name: WYRE
Product Number: WF-T34RD17H

Description TRAPEZOID ROUND COFFEE TABLE

Special Notes: N/A
GreenGuard N/A

Dimensions: 34X34X17

Finishes:

Top LAMINATE 3D LINEN
Edge N/A
Base: ONYX
Notes N/A

Location

Room Number	Quantity	Room Name
200	1	LOBBY/WAITING

Furniture Specification

OT.07

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

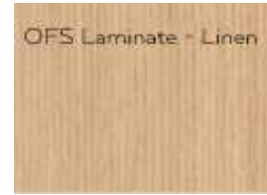
Date Issued: 44095

Specification Type: No

Procurement Type: OMNIA

Item Information

Item Number **OT.07**
Type COFFEE TABLE



Manufacturer: OFS
Product Name: KOSA
Product Number: KS-3622OV15H

Description OVAL COFFEE TABLE

Special Notes: N/A
GreenGuard N/A

Dimensions: 36X22X15

Finishes:

Top LAMINATE LINEN
Edge N/A
Base: ONYX
Notes N/A

Location

Room Number	Quantity	Room Name
209	1	OFFICE

Furniture Specification

OT.08

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

Date Issued: 44095

Specification Type: No

Procurement Type: OMNIA

Item Information

Item Number **OT.08**
Type OCCASIONAL OUTDOOR TABLE



Manufacturer: PARCEL
Product Name: MILK STOOL TABLE
Product Number: A.MST//

Description STEEL AND KNOT FREE SOUTHERN YELLOW PINE

Special Notes: N/A
GreenGuard N/A

Dimensions: 18X14X14

Finishes:

Top PARCEL CINNAMON
Edge N/A
Base: PARCEL YACHT ROCK BLUE
Notes N/A

Location

<u>Room Number</u>	<u>Quantity</u>	<u>Room Name</u>
217	2	OBSERVATION PLATFORM

Furniture Specification

TB.01

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

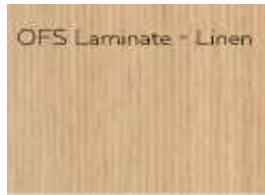
Date Issued: 44095

Specification Type: No

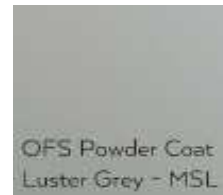
Procurement Type: OMNIA

Item Information

Item Number **TB.01**
Type TRAINING



Top



BASE

Manufacturer: OFS
Product Name: APPLAUSE
Product Number: A6024R-PWF3-CMCL-PS-84S-SCJ60-WM-V4
Description RECTANGULAR SURFACE, NO MODESTY, CENTER POWER LOCATION CUTOUT FOR PS-84S, CONNECTOR BRACKET EACH SIDE, DEUCE BASE CENTER FLIP AND NEST
Special Notes: SINGLE CIRCUIT POWER INFEEED, (2) 15AMP OUTLETS AND (2) 2.1 AMP USB CHARGING PORTS PER TABLE, 1' POWER CORD WITH PERIMETER PLUG, SINGLE CIRCUIT JUMPER FOR DAISY CHAIN APPLICATION; CABLE MANAGEMENT FOR TABLE LEG AND UNDER SURFACE
GreenGuard N/A
Dimensions: 60X24

Finishes:

Top LINEN TFL LAMINATE
Edge SQUARE, MATCHING EDGE FINISH
Base: COLUMN AND FOOT LUSTER
Notes BLACK CASTOR FOR CARPET

Location

Room Number	Quantity	Room Name
203	14	MULTIUSE CONFERENCE

Furniture Specification

TB.02

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

Date Issued: 44095

Specification Type: No

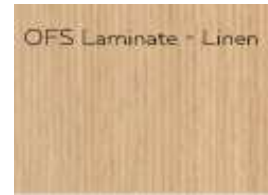
Procurement Type: OMNIA

Item Information

Item Number **TB.02**
Type SEATED HEIGHT HUDDLE



Top



BASE

Manufacturer: OFS
Product Name: HEYA
Product Number: M82T-972519
Description SEATED HEIGHT WITH CENTER TABLE SURFACE CUTOUT FOR PS-80 POWER SUPPLY

Special Notes: POWER SUPPLY (2) 15AMP OUTLETS, (1) HDMI PORT, (1)USB PORT, WIRE MANAGEMENT BELOW SURFACE FROM POWER SUPPLY TO DRYWALL

GreenGuard N/A

Dimensions: 78X42X29

Finishes:

Top FROSTY WHITE LAMINATE
Edge TO MATCH SURFACE
Base: LINEN
Notes

Location

Room Number	Quantity	Room Name
204	1	UNASSIGNED

Furniture Specification

TB.03

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

Date Issued: 44095

Specification Type: No

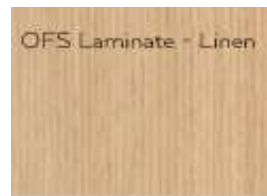
Procurement Type: OMNIA

Item Information

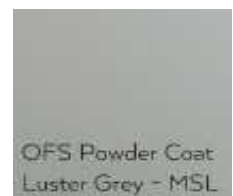
Item Number **TB.03**
Type STANDING HEIGHT HUDDLE



Top



BASE



Manufacturer: OFS
Product Name: HEYA
Product Number: M82T-972518
Description STANDING HEIGHT WITH CENTER TABLE SURFACE CUTOUT FOR PS-80 POWER SUPPLY

Special Notes: POWER SUPPLY (2) 15AMP OUTLETS, (1) HDMI PORT, (1)USB PORT, WIRE MANAGEMENT BELOW SURFACE FROM POWER SUPPLY TO DRYWALL

GreenGuard N/A

Dimensions: 78X42X42

Finishes:

Top FROSTY WHITE LAMINATE
Edge TO MATCH SURFACE
Base: LINEN; KNUCKLE & FOOT RAIL LUSTER GREY
Notes

Location

Room Number	Quantity	Room Name
211	1	HUDDLE

Furniture Specification

TB.04

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

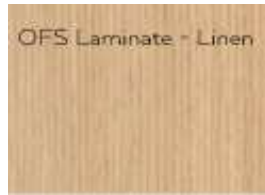
Date Issued: 44095

Specification Type: No

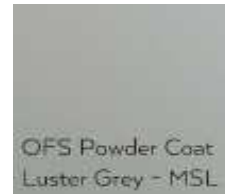
Procurement Type: OMNIA

Item Information

Item Number **TB.04**
Type SEATED HEIGHT HUDDLE



Top



BASE

Manufacturer: OFS
Product Name: INTERMIX
Product Number: CC-P7236RT-ASK4218
Description SEATED HEIGHT WITH DUECE BASE

Special Notes: N/A

GreenGuard N/A

Dimensions: 72X36X29

Finishes:

Top LINEN
Edge SQUARE TO MATCH SURFACE
Base: LUSTER GREAY
Notes

Location

<u>Room Number</u>	<u>Quantity</u>	<u>Room Name</u>
208	1	OPEN WORK AREA

Furniture Specification

TB.05

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

Date Issued: 44095

Specification Type: No

Procurement Type: OMNIA

Item Information

Item Number **TB.05**
Type SEATED HEIGHT



Top



BASE

Manufacturer: OFS
Product Name: APPLAUSE
Product Number: A30SS
Description SEATED HEIGHT WITH DUECE STATIC X BASE

Special Notes: N/A

GreenGuard N/A

Dimensions: 30X30X29

Finishes:

Top FROSTY WHITE LAMINATE
Edge SQUARE TO MATCH SURFACE
Base: LUSTER GREAY
Notes STANDARD GLIDE

Location

Room Number	Quantity	Room Name
207	3	BREAKROOM

Furniture Specification

TB.06

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

Date Issued: 44095

Specification Type: No

Procurement Type: OMNIA

Item Information

Item Number **TB.06**
Type OUTDOOR TABLE



Manufacturer: PARCEL
Product Name: DINING HEIGHT TABLE (SMALL)
Product Number: A.TB3.72//

Description STEEL AND KNOT FREE SOUTHERN YELLOW PINE

Special Notes: N/A
GreenGuard N/A

Dimensions: 30X34X72

Finishes:

Top PARCEL CINNAMON
Edge N/A
Base: PARCEL YACHT ROCK BLUE
Notes N/A

Location

<u>Room Number</u>	<u>Quantity</u>	<u>Room Name</u>
217	3	OBSERVATIONAL PLATFORM

Furniture Specification

TB.07

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

Date Issued: 44095

Specification Type: No

Procurement Type: OMNIA

Item Information

Item Number **TB.07**
Type OUTDOOR TABLE



Manufacturer: PARCEL
Product Name: DINING HEIGHT TABLE (LARGE)
Product Number: A.TB3.96//

Description STEEL AND KNOT FREE SOUTHERN YELLOW PINE

Special Notes: N/A
GreenGuard N/A

Dimensions: 30X34X96

Finishes:

Top PARCEL CINNAMON
Edge N/A
Base: PARCEL YACHT ROCK BLUE
Notes N/A

Location

Room Number	Quantity	Room Name
217	1	OBSERVATIONAL PLATFORM

Furniture Specification

PO.01

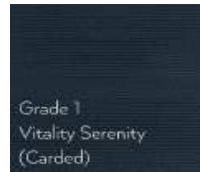
Addison Airport -CBP Facility

Addison, TX

Job Number: 417151
Date Issued: 44095
Specification Type: No
Procurement Type: OMNIA

Item Information

Item Number PO.01
Type OFFICE



Manufacturer: OFS
Product Name: STAKS
Product Number: DEALER TO REFFERENCE FULL BOM FROM MANUFACTURER

Description 30"W WALL MOUNT ORGANIZER WITH HINGED DOOR; 60"W WALL MOUNT SHELF; 18"W WALL MOUNT TACKBOARD WITH ROUNDED CORNERS; 30"D X 78"W HEIGHT ADJUSTABLE DESK WITH MODESTY PANEL; 22"D X 90"W LOW HEIGHT CREDENZA WITH (QTY 2) 30"W OPEN SHELVING & 30"W BOX/FILE LOCKING; CLAMP ON CONVIENENCE POWER (POWER/USB); POWER STRIP AND WIRE MANAGER BELOW SURFACE

Special Specification Notes: N/A

GreenGuard N/A

Dimensions: SEE ABOVE

Finishes:

Storage Surface LAMINATE LINEN
Storage Top LAMINATE LINEN
Finish Notes TACK BOARD VITALITY SERENITY
Table Top LAMINATE LINEN
Table Edge TO MATCH SURFACE
Table Finish Notes ONYX BASE; HEIGHT ADJUSTABLE
Notes: PARALLEL PULL IN ONYX

Location

Room Number	Quantity	Room Name
209	1	OFFICE

Furniture Specification

PO.02

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

Date Issued: 44095

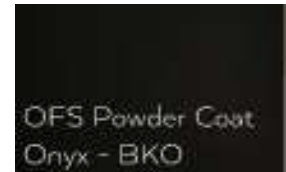
Specification Type: No

Procurement Type: OMNIA

Item Information

Item Number **PO.02**

Type OFFICE



Manufacturer: OFS
Product Name: STAKS
Product Number: DEALER TO REFERENCE FULL BOM FROM MANUFACTURER

Description 30"D DESK WITH METAL REESE BASES; T-BASE CENTER SUPPORT; CLAMP CONVICIENCE POWER (POWER/USB)

Special Specification Notes: N/A

GreenGuard N/A

Dimensions: SEE ABOVE

Finishes:

Storage Surface LAMINATE LINEN
Storage Top LAMINATE LINEN
Finish Notes N/A
Table Top LAMINATE LINEN
Table Edge TO MATCH SURFACE
Table Finish Notes ONYX BASE
Notes: N/A

Location

Room Number	Quantity	Room Name
210	1	UNASSIGNED

Furniture Specification

WS.01

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

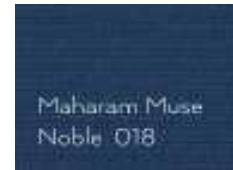
Date Issued: 44095

Specification Type: No

Procurement Type: OMNIA

Item Information

Item Number **WS.01**
Type WORKSTATION



Manufacturer: OFS
Product Name: RANGE
Product Number: DEALER TO REFERENCE FULL BOM FROM MANUFACTURER

Description DUAL SIDED BENCH; HEIGHT ADJUSTABLE BENCHING UNIT; 48"H END PRIVACY PANEL WITH SQUARE CORNERS; CLAMP CONVIENCE POWER (POWER/USB); CENTER MOUNT TACKBOARD WITH ROUNDED CORNERS; MOBILE PEDESTAL WITH SHELF & FILE DRAWER BEHIND DRAWER FRONT; CUSHION TOP; LOCKING; 2 DUPLEXES PER USER; ON HARD WIRED INFEED; WIRE MANAGEMENT BELOW SURFACE

GreenGuard N/A

Dimensions: N/A

Finishes:

Top/ STORAGE/ END PANEL LAMINATE LINEN
Edge TO MATCH SURFACE
Base: ONYX
Notes TACKBOARD ENCORE SILVER
 PEDESTAL CUSHION TOP MAHRAM MUSE NOBLE 018

Location

Room Number	Quantity	Room Name
101	1	OFFICE

Furniture Specification

WS.02

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

Date Issued: 44095

Specification Type: No

Procurement Type: OMNIA

Item Information

Item Number **WS.02**
Type WORKSTATION



Manufacturer: OFS
Product Name: RANGE
Product Number: DEALER TO REFERENCE FULL BOM FROM MANUFACTURER
REFER TO PLAN FOR ACTUAL PEDESTAL LOCATIONS

Description DUAL SIDED BENCH; HEIGHT ADJUSTABLE BENCHING UNIT; 48"H END PRIVACY PANEL WITH SQUARE CORNERS; CLAMP CONVIENENCE POWER (POWER/USB); CENTER MOUNT TACKBOARD WITH ROUNDED CORNERS; LOW HEIGHT 48"W CREDENZA WITH 18"W OPEN STORAGE & 30"W BOX/FILE WITH FELT TOP & SQUARE METAL BASES; LOCKING; 2 DUPLEXES PER USER; ON HARD WIRED INFEEED; WIRE MANAGEMENT BELOW SURFACE

GreenGuard N/A

Dimensions: N/A

Finishes:

Top/ STORAGE/ END PANEL LAMINATE LINEN
Edge TO MATCH SURFACE
Base: ONYX
Notes TACKBOARD ENCORE SILVER
 CREDENZA TOP GREY FELT

Location

<u>Room Number</u>	<u>Quantity</u>	<u>Room Name</u>
208	1	OPEN WORK AREA

Furniture Specification

WS.03

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151
Date Issued: 44095
Specification Type: No
Procurement Type: OMNIA

Item Information

Item Number WS.03
Type WORKSTATION



Manufacturer: OFS
Product Name: RANGE
Product Number: DEALER TO REFERENCE FULL BOM FROM MANUFACTURER
REFER TO PLAN FOR ACTUAL PEDESTAL LOCATIONS

Description DUAL SIDED BENCH; HEIGHT ADJUSTABLE BENCHING UNIT; 48"H END PRIVACY PANEL WITH SQUARE CORNERS; CLAMP CONVIENENCE POWER (POWER/USB); CENTER MOUNT TACKBOARD WITH ROUNDED CORNERS; LOW HEIGHT 48"W CREDENZA WITH 18"W OPEN STORAGE & 30"W BOX/FILE WITH FELT TOP & SQUARE METAL BASES; LOCKING; 2 DUPLEXES PER USER; ON HARD WIRED INFEEED; WIRE MANAGEMENT BELOW SURFACE

GreenGuard N/A

Dimensions: N/A

Finishes:

Top/ STORAGE/ END PANEL LAMINATE LINEN
Edge TO MATCH SURFACE
Base: ONYX
Notes TACKBOARD ENCORE SILVER
 CREDENZA TOP GREY FELT

Location

<u>Room Number</u>	<u>Quantity</u>	<u>Room Name</u>
208	1	OPEN WORK AREA

Furniture Specification

WS.04

Addison Airport -CBP Facility

Addison, TX

Job Number: 417151

Date Issued: 44095

Specification Type: No

Procurement Type: OMNIA

Item Information

Item Number **WS.04**
Type WORKSTATION



Manufacturer: OFS
Product Name: STACKS
Product Number: DEALER TO REFERENCE FULL BOM FROM MANUFACTURER
REFER TO PLAN FOR ACTUAL PEDESTAL LOCATIONS

Description SINGLE SIDED BENCH; HEIGHT ADJUSTABLE BENCHING UNIT; 48"H END PRIVACY PANEL WITH SQUARE CORNERS; 33"H PANELS INTERMEDIATE FOR SUPPORT CLAMP CONVIENENCE POWER (POWER/USB); CENTER MOUNT TACKBOARD WITH ROUNDED CORNERS; LOW HEIGHT 48"W CREDENZA WITH 18"W OPEN STORAGE & 30"W BOX/FILE WITH FELT TOP & SQUARE METAL BASES; LOCKING; 2 DUPLEXES PER USER; ON HARD WIRED INFEEED; WIRE MANAGEMENT BELOW SURFACE

GreenGuard N/A

Dimensions: N/A

Finishes:

Top/ STORAGE/ END PANEL LAMINATE LINEN
Edge TO MATCH SURFACE
Base: ONYX
Notes TACKBOARD ENCORE SILVER
 CREDENZA TOP GREY FELT

Location

<u>Room Number</u>	<u>Quantity</u>	<u>Room Name</u>
208	1	OPEN WORK AREA

TOWN OF ADDISON, TEXAS
CONTRACTOR INSURANCE REQUIREMENTS & AGREEMENT

REQUIREMENTS

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

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

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

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

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

With respect to the foregoing insurance,

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

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

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

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

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

AGREEMENT

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

Project/Bid# Solicitation #2020-231 CBP Facility Furniture & Installation Services

Company: bkm Total Office of Texas, LLC

Printed Name: Steve Burak

Signature: _____ **Date:** 09/30/2020

Town of Addison

Indemnification Agreement

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

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

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

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

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

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

Project/Bid#: Solicitation #2020-231 Addison Airport CBP Facility Furniture & Installation Services

Company Name: BKM Total Office of Texas

Signature:

Date:



Interested Parties

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

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

Filing Process

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

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

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

Town of Addison

REQUEST FOR PROPOSAL TERMS AND CONDITIONS

1. **APPLICABILITY:** These standard Terms and Conditions and the Terms and Conditions, Specifications, Drawings and other requirements included in the Town of Addison's Request for Proposal (collectively, "Terms and Conditions") are applicable to Contracts/Purchase Orders issued by the Town of Addison (hereinafter referred to as the "Town" or "Buyer") and the Seller (herein after referred to as the "Seller," "Proposer," "Contractor," or "Supplier"). Any deviations must be in writing and signed by a representative of the Town's Purchasing Department and the Supplier. No Terms and Conditions contained in the Seller's Proposal, Invoice or Statement shall serve to modify the terms set forth herein. If there is a conflict between the Terms and Conditions and the provisions on the face of the Contract/Purchase Order, the Terms and Conditions will take precedence and control.
2. **OFFICIAL PROPOSAL NOTIFICATION:** The Town utilizes the following for official notifications of proposal opportunities: www.bidsync.com and the Dallas Morning News of Dallas County. These are the only forms of notification authorized by the Town. The Town is not responsible for receipt of notifications or information from any source other than those listed. It shall be the Supplier's responsibility to verify the validity of all Request for Proposal information received from any source other than the Town. There will be NO COST to the Seller for using BidSync for its Bids/Proposals.
3. **PRIOR OR PENDING LITIGATION OR LAW SUITS:** Each Proposer must include in its proposal a complete disclosure of any alleged significant prior or ongoing contract failures, any civil or criminal litigation or investigation pending which involves the Proposer or in which the Proposer has been judged guilty or liable.
4. **COST OF RESPONSE:** Any cost incurred by the Supplier in responding to the Request for Proposal is the responsibility of the supplier and cannot be charged to the Town.
5. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** No Town of Addison employee shall have a direct or indirect financial interest in any contract with the Town, or be directly or indirectly financially interested in the sale of land, materials, supplies or services to the Town.
6. **COMPETITIVE PRICING:** It is the intent of the Town to consider Interlocal Cooperative Agreements and State/Federal contracts in determining the best value for the Town.
7. **INTERLOCAL AGREEMENT:** The successful Proposer agrees to extend prices to all entities that have entered into or will enter into joint purchasing interlocal cooperation agreements with the Town. The Town is a participating member of several interlocal cooperative purchasing agreements. As such, the Town has executed interlocal agreements, as permitted under Chapter 791 of the Texas Government Code, with certain other political subdivisions, authorizing participation in a cooperative purchasing program. The successful Supplier may be asked to provide products/services based upon terms and conditions of award, to any other participant in a cooperative purchasing program.
8. **CORRESPONDENCE:** The proposal number must appear on all correspondence and inquiries pertaining to the Request for Proposal. The Purchase Order number must appear on all invoices or other correspondence relating to the contract.
9. **INDEMNITY/INSURANCE:** See attached Town of Addison minimum requirements.
10. **ERROR-QUANTITY:** Proposals must be submitted in units of quantity specified, extended, and totaled. In the event of discrepancies in extension, the unit prices shall govern.
11. **ACCEPTANCE:** The right is reserved to accept or reject all or part of the proposal or offer, and to accept the proposal or offer considered most advantageous to the Town by line item or total offer or proposal.
12. **PROPOSAL LIST REMOVAL:** The Town reserves the right to remove a Supplier from any Proposal list for: (1) continued failure to be responsive to the Town, (2) failure to deliver merchandise within promised time, (3) delivery of substandard merchandise, or (4) failure to comply with the Contract/Purchase Order requirements.
13. **CONTRACT RENEWAL OPTIONS:** In the event a clause for option to renew for an additional period is included in the Request for Proposal, all renewals will be based solely upon the option and agreement between the Town and the Supplier. Either party dissenting will terminate the contract in accordance with its initial specified term.
14. **TAXES-EXEMPTION:** All quotations are required to be submitted LESS Federal Excise and State Sales Taxes. Tax Exemption Certificate will be executed for the successful Supplier.
15. **ASSIGNMENT AND SUCCESSORS:** The successful Supplier shall not assign, transfer, pledge, subcontract, or otherwise convey, in any manner whatsoever, any contract resulting from this proposal, in whole or in part, without the prior written consent of the Town of Addison.
16. **INVOICING:** Send ORIGINAL INVOICE to address indicated on the contract/purchase order. If invoice is subject to cash discounts the discount period will begin on the day invoices are received. So that proper cash discount may be computed, invoice should show amount of freight as a separate item, if applicable; otherwise, cash discount will be computed on total amount of invoice.

17. ELECTRONIC SIGNATURE – UNIFORM ELECTRONIC TRANSACTION ACT: The Town adopts Texas Business and Commerce Code Chapter 322, Uniform Electronic Transactions Act, allowing individuals, companies, and governmental entities to lawfully use and rely on electronic signatures.

18. FUNDING OUT CLAUSE: This agreement or contract may be terminated by the Town without notice and without penalty or liability in the event that (1) the Town lacks sufficient funds for this agreement or contract; (2) funds for this agreement or contract are not appropriated by the Town Council of the Town; and (3) funds for this agreement or contract that are or were to be provided by grant or through an outside service are withheld, denied or are otherwise not available to the Town.

19. DISPUTE RESOLUTION: Pursuant to subchapter I, Chapter 271, TEXAS LOCAL GOVERNMENT CODE, Contractor agrees that, prior to instituting any lawsuit or other proceeding arising from any dispute or claim of breach under this Agreement (a "Claim"), the parties will first attempt to resolve the Claim by taking the following steps: (i) A written notice substantially describing the factual and legal basis of the Claim shall be delivered by the Contractor to the Town within one-hundred eighty (180) days after the date of the event giving rise to the Claim, which notice shall request a written response to be delivered to the Contractor not less than fourteen (14) business days after receipt of the notice of Claim; (ii) if the response does not resolve the Claim, in the opinion of the Contractor, the Contractor shall give notice to that effect to the Town whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the Claim; (iii) if those persons cannot or do not resolve the Claim, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the Claim.

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

21. PATENTS: Seller agrees to **indemnify and hold harmless** the Buyer against all costs and expenses, including but not limited to attorneys fees, and undertakes and **agrees to defend** at seller's own expense, all suits, actions or proceedings in which Buyer or the users of Buyer's products are claimed to have conducted in, or are made defendants of, actual or alleged infringement of any U.S. or foreign patent or other intellectual property right resulting from the use or sale of the items purchased hereunder and further agrees to pay and discharge any and all judgments or decrees which may be rendered in any such suit, action or proceeding.

22. APPLICABLE LAW: This agreement shall be governed by the laws of the State of Texas, including but not limited to the Uniform Commercial Code as adopted by the State of Texas, as effective and in force on the date of this agreement, without regard to its conflict of laws rules or the conflict of law rules of any other jurisdiction.

23. VENUE: This agreement is performable in Dallas County, Texas, and venue for any suit, action, or legal proceeding under or in connection with this agreement shall lie exclusively in Dallas County, Texas. Proposer submits to the exclusive jurisdiction of the courts in Dallas County, Texas for purposes of any such suit, action, or proceeding hereunder, and waives any claim that any such suit, action, or legal proceeding has been brought in an inconvenient forum or that the venue of that proceeding is improper.

24. TERMINATION FOR CAUSE OR CONVENIENCE: The Town at any time after issuance of this agreement, by 30 days written notice to the Supplier, has the absolute write to terminate this agreement for cause or for convenience (that is, for any reason or no reason whatsoever). "Cause" shall be the Supplier's refusal or failure to satisfactorily perform or complete the work within the time specified, or failure to meet the specifications, quantities, quality and/or other requirements specified in the Contract/Purchase Order. In such case the Supplier shall be liable for any damages suffered by the Town. If the agreement is terminated for convenience, the Supplier has no further obligation under the agreement. Payment shall be made to cover the cost of material and work in process or "consigned" to the Town as of the effective date of the termination.

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

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

27. PROTECTION OF TRADE SECRETS OR PROPRIETARY INFORMATION: Proposals will be received and publicly acknowledged at the location, date, and time stated. Sellers, their representatives and interested persons may be present. The

proposals shall be received and acknowledged only so as to avoid disclosure of the contents to competing sellers and kept secret during negotiation. However, all proposals shall be open for public inspection after the contract is awarded. Trade secrets and confidential information contained in the proposal and identified by Seller in writing as such will be treated as confidential by the Town the extent allowable in the Texas Public Information Act and other law.

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

29. PROPOSAL RESPONSE CONTRACTUAL OBLIGATION: This proposal, submitted documents, and any negotiations, when properly accepted by the Town, shall constitute a contract equally binding between the successful Proposer and the Town. No different or additional terms will become part of this contract except as properly executed in an addendum or change order.

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

Information and Instruction Form

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

Section I Company Profile

Name of Business: bkm Total Office Of Texas

Business Address: 9755 Clifford Drive, Ste 100 Dallas, Texas 75220

Contact Name: Carol Roehrig

Phone#: 214-902-7200

Fax#: 214-902-7201

Email: croehrig@bkmtexas.com

Name(s) Title of Authorized Company Officers: Steve Burak, CFO and Carol Roehrig, President

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

DUN #: 19-692-5952

Remit Address: If different than your physical address:

Section II Instructions to Bidders

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

Contractor/Supplier Responsibility: It is the contractor/suppliers responsibility to check for any addenda or questions and answers that might have been issued before bid closing date and time. Contractors/Suppliers will be

notified of any addenda and Q&A if they are on the invited list, they view the bid, or add themselves to the watch list.

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

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

Town of Addison

5350 Beltline Road

Dallas, TX 75254

Attn: Purchasing Department

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

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

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

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

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

Exceptions: Contractor/Supplier does not take Exception to Bid Specifications or Other Requirements of this Solicitation. If neither exceptions box is checked, default shall be "No Exceptions"

Contractor/Supplier take the following Exception(s) to the Bid Specifications or Other Requirements of this Solicitation (Explain in Detail). If box checked but no exceptions are listed, default shall be "No Exceptions"

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

HUB Owned Business Yes No Include a current copy of your HUB certification with your response or insert Certification number 1020549921200 and expire date August 26th, 2024.

Other Government Entities: Would bidder be willing to allow other local governmental entities to participate in this

contract, if awarded under the same Terms and Conditions? Yes No

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

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

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

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

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

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

Signature: **Date:**

Title:

CFO

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

10/17/17

Question and Answers for Bid #20-231 - Addison Airport CBP Facility Furniture & Installation Services

Overall Bid Questions

There are no questions associated with this bid.

**Addison Airport CBP Facility Furniture &
Installation Services**

RFP #20-231

Bid Tabulation

Vendor Name
BKM
WRG
GL Seaman

Total
\$158,158.03
\$160,262.90
\$163,315.30



Furniture Dealer Scope of Services

Once furniture Dealers are awarded, they are expected to participate with the Project Manager, the A/E, and General Contractor in coordination of furniture milestones within the construction schedule. Upon event multiple dealers are awarded to a single project, coordination of all dealers furniture milestone schedules will need to be provided by the A/E or Project Manager and then coordinated with the General Contractor.

Confirm requirements with Project Manager as scope and size of project will inform extent of dealer services. Weekly meetings may be required for large or specialty projects but not for medium or small projects.

The furniture dealers shall provide:

- The awarded furniture scope to allow Owner move-in by proposed installation date
- Furniture specific drawings, representing all furniture awarded to Dealer
- Assigned representative to attend weekly construction meetings as necessary to coordinate schedules for furniture delivery and installation. Representative shall be thoroughly familiar with the work and may be contacted for duration of project to act as a liaison between Contractor, Owner and A/E.
- Proposed project schedule indicating compliance with proposed installation dates. Installation dates are mandatory and cannot be delayed for any reason.
- Floor core confirmation of accuracy in alignment with furniture award
- Coordination, through General Contractor, of electrician and data cabling contractors to align activities required to attach furniture to base building services

Dealer to specify and provide all components required to furnish and install a complete working furniture assembly as indicated in RFB. Dealer shall be responsible to order correct quantities of casegoods or systems furniture if handed components are used. Configurations must match A/E drawings exactly.

Dealer to brace, secure, stabilize furniture with appropriate hardware, cantilevers, panel connectors, stabilizing feet, etc. as required making product rigidity as substantial as necessary.

Dealer to provide concealed wire management under all tables, desks, returns, credenzas etc. Provide removable doors or panels in casegoods and conference tables for electrical and data access where required for access to outlets. Dealer shall coordinate with A/E drawings and General Contractor to verify all outlet and data locations and power source types. Dealer shall be responsible for coordination of any cable or wire management accessories required for power/ data connections to base building standards used on project.

Each workstation or individual office setting to be keyed differently. All locks within a workstation or office to be keyed alike. Dealer shall publish a floor plan that includes key numbers issued and marked on drawings as part of final issued installation documentation. Three (3) Master Keys per manufacturer shall be included by Dealer in the cost (if any) of the workstation and private office bid proposal.

Submittals such as shop drawings, samples, warranties, as-built drawings, etc., must be submitted timely so that job progress is not delayed. Dealer agrees that his shop drawings and submittals represent that he has determined all measurements, field construction criteria, and verified and coordinated each shop drawing and submittal with the requirements of the work and of the Furniture RFB. Approval of drawings or other submittals by the A/E or Project Manager shall not relieve Dealer of its obligation to perform the work in strict accordance with the Furniture RFB.

Please submit pricing per specifications under Furniture Quantity Schedule, total by line item, separate line item for total labor and lump sum for entire submittal. Provide turnkey solution with no hidden costs. Currently, the Town anticipates completed delivery and installation date in first week of February 2021.

Council Meeting

11.

Meeting Date: 10/27/2020

Department: Infrastructure- Development Services

Pillars: Excellence in Asset Management

Milestones: Review Town's ordinances and regulations to modernize them and facilitate redevelopment
Promote and protect the Addison Way

AGENDA CAPTION:

Consider Action on a **Resolution to Approve the Agreement for Professional Engineering Services Between the Town of Addison and Cobb, Fendley & Associates, Inc. to Perform Professional Services for a Comprehensive Update of the Current Engineering Design Standards, Construction Details, and Front-End Bid Document Specifications for the Town of Addison and Authorize the City Manager to Execute the Agreement** in an Amount Not to Exceed \$186,550.

BACKGROUND:

The Town's current design standards, construction details, and technical specification bid documents were last updated in 1998. The proposed work is necessary to ensure that the Town of Addison continues the standard of high quality, consistency, and most current engineering practices to promote best industry practices. The standards will ensure that all new infrastructure developments and adopted master plans are aligned with the Town's current code, regulations, and rules, which enhances sound development of the Town infrastructure to promote the health, safety, and welfare of the public.

Additionally, the design standards, construction details, and front-end bid documents must be updated to reflect the current standards in place in the surrounding municipalities as well as the North Central Texas Council of Governments (NCTCOG) to best support the Town staff, consultants, contractors and developers in design and construction activities. A comprehensive breakdown of their service fees can be found in Exhibit A of the agreement. The tasks will include:

Engineering Design Standards

- Transportation/Roadway
- Water System
- Wastewater System
- Drainage Criteria Manual
- Erosion Control

- o Standard Construction Details (134 Existing Details)
- o Paving
- o Traffic
- o Water
- o Wastewater
- o Utilities Trench line & Street Restoration (Franchise Utilities)
- o Storm Drainage
- o Erosion Control

Front-End Bid Proposal Document update

- o Cover
- o Table of Contents
- o Advertisement for Bids Instructions to Bidders
- o Proposal Form
- o Bid Bond
- o Standard Contract Agreement
- o Performance Bond
- o Payment Bond
- o Maintenance Bond
- o Contractor's Affidavit of Bills Paid
- o General Provisions
- o Special Provisions
- o Project Signage

The project is expected to take approximately 9 months to complete. The total amount budgeted for the project is \$200,000. The professional engineering services contract funding for this item is available in the approved Utility Funds Fiscal Year 2020-2021 budget.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution - Cobb, Fendley & Associates

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING THE AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES BETWEEN THE TOWN OF ADDISON AND COBB, FENDLEY & ASSOCIATES, INC. FOR PROFESSIONAL ENGINEERING SERVICES RELATED TO THE TOWN OF ADDISON DESIGN STANDARDS, STANDARD DETAILS, & “FRONT END” BID PROPOSAL DOCUMENTS UPDATE IN AN AMOUNT NOT TO EXCEED \$186,550.00, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT, AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. The Agreement for Professional Engineering Services between the Town of Addison and Cobb, Fendley & Associates, Inc., for professional engineering services related to the Town of Addison Design Standards, Standard Details, & “Front End” Bid Proposal Documents Update in an amount not to exceed \$186,550.00, 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 **27th** day of **OCTOBER** 2020.

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

APPROVED AS TO FORM:

Irma Parker, City Secretary

Brenda N. McDonald, City Attorney

EXHIBIT A

**AGREEMENT
BETWEEN
THE TOWN OF ADDISON, TEXAS (TOWN)
AND
COBB, FENDLEY & ASSOCIATES, INC. (CONSULTANT)
FOR
PROFESSIONAL ENGINEERING SERVICES**

Made as of the _____ day of _____ in the year 2020,

BETWEEN the Town: The Town of Addison, Texas
5300 Belt Line Road
Addison, Texas 75001
Telephone: (972) 450-7001

and the Consultant: Cobb, Fendley & Associates, Inc.
2801 Network Boulevard, Suite 800
Frisco, Texas, 75034
Telephone: (972) 335-3214

for the following Project: **Town of Addison Design Standards, Standard Details, & "Front End" Bid Proposal Documents Update**

The Town and the Consultant agree as set forth below.

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

WHEREAS, the Town desires to engage the services of the Consultant to perform a comprehensive update of the current Engineering Design Standards, Standard Construction Details, and "Front-End" Bid Documents for the Town of Addison, Texas, hereinafter referred to as the "Project"; and

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

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

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

Professional Services Agreement
(CobbFendley – Standards & Details Update)

Page 1

**ARTICLE 1
CONSULTANT'S SERVICES**

- 1.1 **Employment of the Consultant** – The Town hereby agrees to retain the Consultant to perform professional engineering services in connection with the Project. Consultant agrees to perform such services in accordance with the terms and conditions of this Agreement.
- 1.2 **Scope of Services** – The parties agree that Consultant shall perform such services as are set forth and described in Exhibit “A,” which is attached hereto and incorporated herein by reference for all purposes. The parties understand and agree that deviations or modifications to the scope of services described in Exhibit “A,” in the form of written change orders, may be authorized from time to time by the Town. In the event of a conflict between any term or condition contained in Exhibit “A” and this Agreement, this Agreement shall control.
- 1.2.1 **Requirement of Written Change Order** – “Extra” work, or “claims” invoiced as “extra” work, or “claims” which have not been issued as a duly executed, written change order by the Addison City Manager, will not be authorized for payment and/or shall not become part of the subcontracts. A duly executed written change order shall be preceded by the Addison City Council's authorization for the Addison City Manager to execute said change order.
- 1.2.2 **DO NOT PERFORM ANY EXTRA WORK AND/OR ADDITIONAL SERVICES WITHOUT A DULY EXECUTED WRITTEN CHANGE ORDER ISSUED BY THE ADDISON CITY MANAGER.** Project Managers, Superintendents, and/or Inspectors of the Town are not authorized to issue verbal or written change orders.
- 1.3 **Schedule of Work** – The Consultant agrees to commence work immediately upon the execution of this Agreement and receipt of written Notice to Proceed, and to proceed diligently with said work to completion as described in the Compensation Schedule / Project Billing / Project Budget attached hereto as **Exhibit “B”** and incorporated herein by reference for all purposes, under normal circumstances and standard review times, the Project shall be completed within **nine (9) months from the effective date herein.**
- 1.4 **Failure to Meet Established Deadlines** – Consultant acknowledges that time is of the essence in the performance of services under this Agreement as set forth in the Compensation Schedule / Project Billing / Project Budget attached hereto as Exhibit “B.”

**ARTICLE 2
THE TOWN'S RESPONSIBILITIES**

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

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

**ARTICLE 3
CONSULTANT'S COMPENSATION**

- 3.1 **Compensation for Consultant's Services** – As described in "Article 1, Consultant's Services," compensation for this Project shall be on an **Hourly Basis** not to exceed **ONE HUNDRED EIGHTY SIX THOUSAND FIVE HUNDRED FIFTY and 00/100 Dollars (\$186,550.00)**, ("Consultant's Fee") and shall be paid in accordance with Article 3 and the Compensation Schedule / Project Billing / Project Budget as set forth in Exhibit "B."
 - 3.1.1 **Completion of Final Report** – Town and Consultant agree that the Final Report shall be completed, submitted to, and accepted by the Town. The electronic formatting of the Final Report and Computer Aided Design and Drafting ("CADD") design files shall conform to the design specifications as outlined in Town of Addison Public Work and Engineering Department Design Standards. Completion of the Record Documents and/or "As-Built" documents, if any, shall be included in the Consultant's Fee and considered to be within the Scope of Services defined under this Agreement
 - 3.1.2 **Disputes between Town and Construction Contractor** – If the Project involves the Consultant performing Construction Administration Services relating to an agreement between a

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

3.1.3 **Consultation and Approval by Governmental Authorities and Franchised Utilities** – Where applicable, Consultant shall be

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

3.2 **Direct Expenses** – Direct Expenses are included in the Consultant's Fee as described in Article 3.1 and include actual reasonable and necessary expenditures made by the Consultant and the Consultant's employees and subcontractors in the interest of the Project. All submitted Direct Expenses are to be within the amounts as stated in the Compensation Schedule / Project Billing / Project Budget set forth in Exhibit "B," and consistent with Exhibit "C," Town of Addison Guidelines for Direct Expenses, General and Administrative Markup, and Travel and Subsistence Expenses. The Consultant shall be solely responsible for the auditing of all Direct Expenses, including the subcontractors, prior to submitting to the Town for reimbursement, and shall be responsible for the accuracy thereof. Any over-payment by the Town for errors in submittals for reimbursement may be deducted from the Consultant's subsequent payment for services; provided, however this shall not be the Town's sole and exclusive remedy for said overpayment.

3.3 **Invoices** – No payment to Consultant shall be made until Consultant tenders an invoice to the Town. Invoices are to be mailed to Town **monthly** for each individual task listed in Exhibit "A." On all submitted

invoices, Consultant shall include appropriate background materials to support the submitted charges on said invoice. Such background material shall include, but is not limited to, employee timesheets, invoices for work obtained from other parties, and receipts and/or log information relating to Direct Expenses. All invoices for payment shall provide a summary methodology for administrative markup and/or overhead charges.

- 3.4 **Timing of Payment** – Town shall make payment to Consultant for said invoices within thirty (30) days following receipt and acceptance thereof. The parties agree that payment by Town to Consultant is considered to be complete upon mailing of payment by Town. Furthermore, the parties agree that the payment is considered to be mailed on the date that the payment is postmarked.
- 3.5 **Disputed Payment Procedures** – In the event of a disputed or contested billing by Town, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. Town shall notify Consultant of a disputed invoice, or portion of an invoice, in writing by the twenty-first (21st) calendar day after the date the Town receives the invoice. Town shall provide Consultant an opportunity to cure the basis of the dispute. If a dispute is resolved in favor of the Consultant, Town shall proceed to process said invoice, or the disputed portion of the invoice, within the provisions of Article 3.5. If a dispute is resolved in favor of the Town, Consultant shall submit to Town a corrected invoice, reflecting any and all payment(s) of the undisputed amounts, documenting the credited amounts, and identifying outstanding amounts on said invoice to aid Town in processing payment for the remaining balance. Such revised invoice shall have a new invoice number, clearly referencing the previous submitted invoice. Town agrees to exercise reasonableness in contesting any billing or portion thereof that has background materials supporting the submitted charges.
- 3.6 **Failure to Pay** – Failure of the Town to pay an invoice, for a reason other than upon written notification as stated in the provisions of Article 3.6 to the Consultant within sixty (60) days from the date of the invoice shall grant the Consultant the right, in addition to any and all other rights provided, to, upon written notice to the Town, suspend performance under this Agreement, and such act or acts shall not be deemed a breach of this Agreement. However, Consultant shall not suspend performance under this Agreement prior to the tenth (10th) calendar day after written notice of suspension was provided to Town, in accordance with Chapter 2251, Subchapter “D” (“Remedy for Nonpayment”) of the *Texas Government Code*. The Town shall not be required to pay any invoice submitted by the Consultant if the Consultant breached any provision(s) herein.

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

ARTICLE 4 OWNERSHIP OF DOCUMENTS

- 4.1 **Documents Property of the Town** – The Project is the property of the Town, and Consultant may not use the documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs, and/or any materials for any other purpose not relating to the Project without Town's prior written consent. Town shall be furnished with such reproductions of the Project, plans, data, documents, maps, and any other information as defined in Exhibit "A." Upon completion of the work, or any earlier termination of this Agreement under Article 3 and/or Article 7, Consultant will revise plans, data, documents, maps, and any other information as defined in Exhibit "A" to reflect changes while working on the Project and promptly furnish the same to the Town in an acceptable electronic format. All such reproductions shall be the property of the Town who may use them without the Consultant's permission for any purpose relating to the Project, including, but not limited to, completion of the Project, and/or additions, alterations, modifications, and/or revisions to the Project. Use of modified or incomplete documents under this paragraph shall be at Town's risk with no liability to Consultant.

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

**ARTICLE 5
CONSULTANT'S INSURANCE REQUIREMENTS**

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

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

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

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

**ARTICLE 6
CONSULTANT'S ACCOUNTING RECORDS**

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

**ARTICLE 7
AUDITS AND RECORDS / PROHIBITED INTEREST / VENDOR DISCLOSURE**

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

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

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

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

**ARTICLE 8
TERMINATION OF AGREEMENT / REMEDIES**

Town may, upon thirty (30) days written notice to Consultant, terminate this Agreement, for any reason or no reason at all, before the termination date hereof, and without prejudice to any other remedy it may have. If Town terminates this Agreement due to

a default of and/or breach by Consultant and the expense of finishing the Project exceeds the Consultant's Fee at the time of termination, Consultant waives its right to any portion of Consultant's Fee as set forth in Article 3 herein and agrees to pay any costs over and above the fee which the Town is required to pay in order to finish the Project. On any default and/or breach by Consultant, Town may elect not to terminate the Agreement, and in such event it may make good the deficiency in which the default consists, and deduct the costs from the Consultant's Fee due Consultant as set forth in Article 3 herein. If Town terminates this Agreement and Consultant is not in default of the Agreement, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of the Town in accordance with the provisions of this Agreement prior to termination.

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

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

**ARTICLE 9
DISPUTE RESOLUTION / MEDIATION**

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

**ARTICLE 10
INDEMNITY**

CONSULTANT SHALL HEREBY COVENANT AND CONTRACT TO WAIVE ANY AND ALL CLAIMS, RELEASE, INDEMNIFY AND HOLD HARMLESS TOWN AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES FROM AND AGAINST ALL DAMAGES, INJURIES (INCLUDING DEATH), INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS (INCLUDING PATENT, COPYRIGHT AND TRADEMARK INFRINGEMENTS), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEYS' FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY), CAUSED OR RESULTING FROM THE NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONSULTANT, ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, SUBCONTRACTORS,

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

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

THIS ARTICLE SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

ARTICLE 11 NOTICES

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

**Director of Public Works & Engineering
Town of Addison, Texas
16801 Westgrove Dr.**

Addison, Texas, 75001
Telephone: (972) 450-2849

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

Cobb, Fendley & Associates
J. Cal Bostwick, Executive Vice President
2801 Network Boulevard, Suite 800
Frisco, Texas, 75034
Telephone: (972) 335-3214

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

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

ARTICLE 12

MISCELLANEOUS

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

12.1.1 Exhibit “A,” Scope of Services.

12.1.2 Exhibit “B,” Compensation Schedule / Project Billing / Project Budget.

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

12.1.6 Exhibit “D,” Town of Addison Contractor Insurance Requirements.

12.1.7 Exhibit "E," Affidavit.

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

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

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

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

Effective Date: _____

TOWN:
Town of Addison, Texas

By: _____
Wesley S. Pierson, City Manager

Date: _____

CONSULTANT:
Cobb, Fendley & Associates, Inc.

By:  _____
Cal Bostwick, P.E., Executive Vice President

Date: 28 Sep 2020

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____, 2020.

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

STATE OF Texas §
 §
COUNTY OF Collin §

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 28th day of September, 2020.

Jennifer Taylor

Notary Public In and For the State of Texas
My commission expires: 09-21-2022

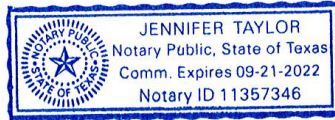


EXHIBIT "A"
SCOPE OF SERVICES
Agreement by and between the Town of Addison, Texas (Town)
and Cobb, Fendley & Associates, Inc. (Consultant)
to perform Professional Services for
STANDARDS & DETAILS UPDATE

BASIC SERVICES

A. ENGINEERING DESIGN STANDARDS UPDATE

1. Conduct a project kick-off meeting with Town staff to determine the Town's needs regarding their standards & details. (meeting held on February 26, 2020). With additional coordination to follow using phone calls and electronic correspondence.
2. Assess the existing Design Standards:
 - A. Existing Engineering Design Standards:
 - i. Transportation/Roadway
 - ii. Water System
 - iii. Wastewater System
 - iv. Drainage Criteria Manual
 - v. Erosion Control
 - B. Review the current Engineering Design Standards, while using current knowledge of, and performing research regarding, the most current NCTCOG design specifications and up to four (4) similar municipalities' to determine which updates and additional standards should be incorporated (with possible modifications) into the Town's standards.
 - C. Create a list/ table of existing standards & similar municipalities' standards for comparison and discussion.
3. Attend first status meeting with Town staff to review lists from the initial assessment, discuss solutions, and receive gathered input from Development Staff & Public Works Department personnel regarding current practices and their desired revisions/updates to the design standards.
4. Using Microsoft Word, update each current section of design standards, per the decisions reached during the status meeting, and add a Plan Requirements section for uniform submittal preparation purposes.
5. Provide a preliminary draft of the updated design standards in PDF form for first Town staff review.

6. Attend second status meeting with Town staff to discuss staff comments and any suggested revisions.
7. Incorporate comments, suggestions, and requested revisions from the preliminary draft into the updated design standards.
8. Provide a final draft of the updated design standards in PDF form for second Town staff review.
9. Coordinate with Town staff via electronic correspondence for final review and any remaining minor revisions.
10. Provide Town with final deliverable versions of the updated Engineering Design Standard in both Microsoft Word and PDF format.

B. STANDARD CONSTRUCTION DETAILS UPDATE

1. Assess the Town Standard Construction Details the following ways:
 - A. Existing Standard Construction Details (134 Existing Details)
 - i. Paving
 - ii. Traffic
 - iii. Water
 - iv. Wastewater
 - v. Utilities Trenchline & Street Restoration (Franchise Utilities)
 - vi. Storm Drainage
 - vii. Erosion Control
 - B. Review the current Standard Construction Details and the updated Engineering Design Standards (Basic Services Section A) for continuity between the two governing documents and identify any discrepancies, creating a list for discussion.
 - C. Use current knowledge of, and perform research regarding, most recent NCTCOG standard construction details and up to four (4) similar municipalities' to determine which additional details should be incorporated (with possible modifications) into the Town's details, creating a list for discussion.
2. Attend first status meeting with Town staff to review lists from the initial assessment, discuss solutions, and receive gathered input from Public Works Department personnel regarding current practices and their desired revisions/updates to the details.

3. Using AutoCAD, update most recent NCTCOG standard details to reflect recommended design standards as applicable, and create any new details (this proposal assumes up to fifteen (15) new details will need to be created), per the decisions reached during the status meeting.
4. Provide a preliminary draft of the updated details in PDF form for first Town staff review.
5. Attend second status meeting with Town staff to discuss staff comments and any suggested revisions.
6. Incorporate comments, suggestions, and requested revisions from the preliminary draft into the updated details.
7. Provide a final draft of the updated details in PDF form for second Town staff review.
8. Coordinate with Town staff via electronic correspondence for final review and any remaining minor revisions.
9. Provide Town with final deliverable versions of the updated Standard Construction Details in both AutoCAD and PDF format.
10. Attend one (1) Town Council meeting for the adoption of both the updated Engineering Design Standards and the updated Standard Construction Details (at the same meeting).

C. "FRONT-END" BID PROPOSAL DOCUMENTS UPDATE

1. Review and assess the current Town standard "front-end" documents for bid proposal/construction contracts.
 - A. Existing Bid Proposal Documents
 - i. Cover
 - ii. Table of Contents
 - iii. Advertisement for Bids
 - iv. Instructions to Bidders
 - v. Proposal Form
 - vi. Bid Bond
 - vii. Contract Agreement
 - viii. Performance Bond
 - ix. Payment Bond
 - x. Maintenance Bond

- xi. Contractor's Affidavit of Bills Paid
- xii. General Provisions
- xiii. Special Provisions
- xiv. Project Sign

B. Use current knowledge of, and perform research regarding, most recent NCTCOG documents and up to four (4) similar municipalities' to determine which, if any verbiage should be modified or incorporated (with possible modifications), creating and electronically submitting a proposed list for Town staff assessment.

C. Review and preparation of Technical Specifications are not part of this contract.

- 2. Using Microsoft Word, update each section of documents, per the decisions reached by Town staff on inclusions or modifications.
- 3. Provide a preliminary draft of the updated documents in PDF format for first Town staff review.
- 4. Coordinate with Town staff via electronic correspondence for preliminary review comments and any draft revisions.
- 5. Incorporate comments, suggestions, and requested revisions from the preliminary draft into the updated documents.
- 6. Provide a final draft of the updated documents in PDF format for second Town staff review.
- 7. Coordinate with Town staff via electronic correspondence for final review and any remaining minor revisions.
- 8. Provide Town with final deliverable versions of the updated front end documents in both Microsoft Word and PDF format.

D. TOWN RESPONSIBILITIES

The Town will provide the following information in a timely manner so as not to delay the services of CobbFendley:

- 1. The Town will provide AutoCAD files for all current standard construction details.

2. The Town will meet internally with Public Works Department personnel and provide the Engineer with feedback regarding desired standards and detail revision/additions after each meeting with CobbFendley.
3. The Town will attend review meetings and make final decisions on issues such that questionable matters may be resolved, and the project progresses as scheduled.
4. Due to the legal nature of the bid proposal and construction contract documents, the Town Attorney will review and approve the final draft bid proposal/contract documents.

E. ADDITIONAL SERVICES

The following services are not included in this proposal. They can be added as additional services or provided by the Town as necessary:

1. Review and preparation of Technical Specifications are not part of this contract.
2. Any engineering consulting or design services other than those expressly detailed in this proposal.

F. COMPENSATION

ENGINEERING DESIGN STANDARDS UPDATE	\$ 99,250.00
STANDARD CONSTRUCTION DETAILS UPDATE	\$ 72,550.00
“FRONT END” BID PROPOSAL DOCUMENTS UPDATE	\$ 14,750.00
PROJECT TOTAL (Max. Fee)	\$186,550.00

EXHIBIT "B"
COMPENSATION SCHEDULE / PROJECT BILLING / PROJECT BUDGET
Agreement by and between the Town of Addison, Texas (Town)
and Cobb, Fendley & Associates, Inc. (Consultant)
to perform Professional Services for
STANDARDS & DETAILS UPDATE

Labor Code Billing Table List

Monday, January 13, 2020
8:42:37 AM

Cobb, Fendley & Associates, Inc.

Table	Labor Code	Description	Rate
1360	2020 CobbFendley Standard Rate Table		
	01B	Principal	290.0000
	02B	Senior Engineer V	290.0000
	03B	Project Manager II	195.0000
	04B	Senior Engineer II	220.0000
	05B	Project Manager V	270.0000
	06B	Engineer I	125.0000
	07B	Graduate Engineer	105.0000
	08B	Senior Engineer I	195.0000
	10N	Crew Member	
	12B	Clerical	80.0000
	14B	3 Person Survey Crew	170.0000
	15B	2 Person Survey Crew	145.0000
	16B	Registered Professional Land Surveyor	170.0000
	17B	Senior RPLS	210.0000
	21B	Right-of-Way Technician	100.0000
	22B	ROW Attorney	160.0000
	23B	Right-of-Way Agent III	160.0000
	24B	Senior ROW Agent/Project Manager I	180.0000
	25B	Senior ROW Agent/Project Manager III	250.0000
	26B	Right-of-Way Agent II	140.0000
	27B	Senior ROW Agent/Project Manager II	200.0000
	28B	Right-of-Way Agent I	110.0000
	31B	Project Manager I	170.0000
	32B	Construction Observer II	130.0000
	33B	Construction Observer III	155.0000
	34B	Engineer III	170.0000
	35B	Construction Manager III	280.0000
	36B	Construction Manager I	185.0000
	37B	Construction Observer I	110.0000
	38B	Construction Manager II	230.0000
	39B	Licensed State Land Surveyor	235.0000
	42B	Project Manager III	220.0000
	43B	Senior Engineer III	235.0000
	58B	Engineer II	150.0000
	60B	4 Person Survey Crew	190.0000
	61B	Senior Engineer IV	270.0000
	62B	Project Manager IV	235.0000
	83B	1 Person Survey Crew	105.0000
	84B	Vac Exc Truck w/2 Tech.(Vac 3000&4000)	295.0000
	86B	Vac Exc Truck w/2 Tech.(Vac 6000)	315.0000
	87B	1 Person Designating Crew	110.0000
	88B	2 Person Designating Crew	170.0000
	89B	Ground Penetrating Radar with 1 Tech.	260.0000
	90B	UAV Drone w/2-Man	235.0000
	91B	HyDrone w/2-Man	340.0000
	97B	Administrative	105.0000
	T1B	Technician I	60.0000

v7.6.748 (MDIEP) -

Page 1 of 2

Labor Code Billing Table List			Monday, January 13, 2020 8:42:37 AM
Table	Labor Code	Description	Rate
	T2B	Technician II	80.0000
	T3B	Technician III	100.0000
	T4B	Senior Technician I	125.0000
	T5B	Senior Technician II	145.0000
	T6B	Senior Technician III	165.0000

TOTAL CONSULTANT'S FEE (NOT-TO-EXCEED)	\$186,550.00
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EXHIBIT "C"
TOWN OF ADDISON GUIDELINES FOR DIRECT EXPENSES; GENERAL AND ADMINISTRATIVE MARKUP; TRAVEL AND SUBSISTENCE EXPENSES

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

II. **GUIDELINES FOR DIRECT EXPENSES**.

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

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

B. **Supplies, Material, Equipment** – Town shall reimburse the actual cost of other similar direct Project-related expenses, which are duly presented in advance and approved by Town's Project Manager in writing.

C. **Commercial Reproduction** – Town shall reimburse the actual cost of reproductions, specifically limited to progress prints prepared for presentation to Town at each phase of progress, and final Construction Documents prepared for distribution at bidding phase, provided that the Consultant has duly obtained at least three (3) quotations from commercial firms and has chosen the best value for the Town. Consultant shall provide such documentation to Town for review prior to submitting these expenses for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.

D. **In-House Reproduction** - Consultant shall make arrangements with the Town for prior approval of in-house reproduction rates prior to submitting these expenses for reimbursement. Town shall provide Consultant with a standard format for documenting these charges. Completion of the Town's reproduction log is required as a prerequisite for payment, including the number or reproductions, the

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

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

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

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

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

IV. GUIDELINES FOR TRAVEL AND SUBSISTENCE EXPENSES.

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

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

REQUIREMENTS

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

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

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

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

Certificate of Liability Insurance forms (together with the endorsements necessary to meet the requirements and instructions contained herein) shall be submitted to the Finance Department by fax at: (972) 450-7050 or emailed to: sglickman@addisontx.gov. Questions regarding required insurance should be directed to the Purchasing Manager.

With respect to the foregoing insurance,

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

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

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

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

AGREEMENT

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

Project/Bid# Design Standards, Standard Details, & "Front End" Bid Proposal Documents Update

Company: Cobb, Fendley & Associates, Inc.

Printed Name: J. Cal Bostwick

Signature:  **Date:** 9/28/2020

EXHIBIT "E"
AFFIDAVIT

THE STATE OF TEXAS §
 §
THE COUNTY OF Dallas §

I, J. Cal Bostwick, a member of the Consultant team, make this affidavit and hereby on oath state the following:

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

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

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

Signed this 28th day of September, 2020.

J. Cal Bostwick
Signature of Official / Title **Executive Vice President**
J. Cal Bostwick, PE

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


Sworn to and subscribed before me on this 28th day of September, 2020.

Jennifer Taylor
Notary Public in and for the State of Texas
My commission expires: 09-21-2022

Professional Services Agreement
(CobbFendley – Standards & Details Update)



EXHIBIT "F"
CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

CONFLICT OF INTEREST QUESTIONNAIRE		FORM CIQ
For vendor doing business with local governmental entity		
<p>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>	OFFICE USE ONLY <hr/> Date Received 	
<p>1 Name of vendor who has a business relationship with local governmental entity.</p> <p align="center">N/A - Cobb, Fendley & Associates, Inc.</p>		
<p>2 <input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)</p>		
<p>3 Name of local government officer about whom the information is being disclosed.</p> <p align="center">_____</p> <p align="center">Name of Officer</p>		
<p>4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.</p> <p align="center">A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <p align="center"><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p align="center">B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?</p> <p align="center"><input type="checkbox"/> Yes <input type="checkbox"/> No</p>		
<p>5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.</p>		
<p>6 <input type="checkbox"/> Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).</p>		
<p>7</p> <p align="center"></p> <p align="center">_____ Signature of vendor doing business with the governmental entity</p>		<p align="center">9/28/2020 _____ Date</p>

Form provided by Texas Ethics Commission

www.ethics.state.tx.us

Revised 11/30/2015

Professional Services Agreement
(CobbFendley – Standards & Details Update)

Page 30

EXHIBIT "F"
CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

Local Government Officers Town of Addison, Texas

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

- Mayor: Joe Chow

- Council Members:
 - Lori Ward, Mayor Pro Tem
 - Guillermo Quintanilla, Deputy Mayor Pro Tem
 - Tom Braun, Councilman
 - Ivan Hughes, Councilman
 - Paul Walden, Councilman
 - Marlin Willesen, Councilwoman

- City Manager: Wesley S. Pierson

Council Meeting

12.

Meeting Date: 10/27/2020

Department: Infrastructure- Development Services

Pillars: Excellence in Asset Management

Milestones: Promote and protect the Addison Way

AGENDA CAPTION:

Consider Action on a **Resolution to Approve a Professional Services Agreement with Kleinfelder, Inc. to Perform Engineering Services for a Risk & Resilience Assessment and Emergency Response Plan and Authorize the City Manager to Execute the Agreement** in an Amount Not to Exceed \$86,200.

BACKGROUND:

As part of Section 2013 of America's Water Infrastructure Act of 2018, The Environmental Protection Agency (EPA) requires community water systems serving more than 3,300 customers to complete a Risk and Resilience Assessment (RRA) and develop an Emergency Response Plan (ERP). The RRA identifies potential vulnerabilities, hazards, accidents and threats to the water and sewer system. The ERP will ensure our utility facilities are secure and able to recover quickly in the event of such threats or emergencies to protect the public's health and safety.

Kleinfelder, Inc. has prepared a professional services agreement to develop RRA and ERP for the Town's water and sewer utilities. A comprehensive breakdown of their services and fees can be found in Exhibits A & B of the agreement. The engineering scope of work includes a Risk and Resilience Assessment of our water infrastructure and an update to our Emergency Response Plan. Implementation deadlines are based on the population. The Town's deadline to submit the RRA to the EPA is June 30, 2021. The deadline to implement the ERP is six months following the submittal of the RRA to the EPA. In anticipation of this requirement, staff budgeted \$100,000 in the Utility Fund.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution - Klienfelder Risk Assessment
EPA Risk & Resilience and Emergency Response Plan Fact Sheet

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING THE AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES BETWEEN THE TOWN OF ADDISON AND KLEINFELDER, INC. FOR PROFESSIONAL ENGINEERING SERVICES RELATED TO THE RISK AND RESILIENCE ASSESSMENT AND EMERGENCY RESPONSE PLAN UPDATE IN AN AMOUNT NOT TO EXCEED \$86,200.00, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT, AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. The Agreement for Professional Engineering Services between the Town of Addison and Kleinfelder, Inc., for professional engineering services related to the Risk and Resilience Assessment and Emergency Response Plan Update in an amount not to exceed \$86,200.00, 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 **27th** day of **OCTOBER** 2020.

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

APPROVED AS TO FORM:

Irma Parker, City Secretary

Brenda N. McDonald, City Attorney

EXHIBIT A

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

Made as of the 30th day of September in the year 2020,

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

and the Consultant: Kleinfelder, Inc.
 7805 Mesquite Bend Drive, Suite # 100
 Irving, TX - 75063
 Telephone: (972) 868-5900

for the following Project: Risk and Resilience Assessment & Emergency Response
 Plan Update

The Town and the Consultant agree as set forth below.

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

WHEREAS, the Town desires to engage the services of the Consultant to provide professional services which shall include, but not be limited to, Risk and Resilience Assessment & Emergency Response Plan Update within the Town of Addison, Texas; hereinafter referred to as "Project"; and

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

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

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

**ARTICLE 1
CONSULTANT'S SERVICES**

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

the Compensation Schedule / Project Billing / Project Budget attached hereto as Exhibit "B."

ARTICLE 2 THE TOWN'S RESPONSIBILITIES

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

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

ARTICLE 3 CONSULTANT'S COMPENSATION

- 3.1 **Compensation for Consultant's Services** – As described in "Article 1, Consultant's Services," compensation for this Project shall be on a Type of Payment Basis not to exceed **Eighty-Six Thousand Two Hundred and 00/100 Dollars (\$86,200)**, ("Consultant's Fee") and shall be paid in accordance with Article 3 and the Compensation Schedule / Project Billing / Project Budget as set forth in Exhibit "B." The total estimated compensation for Engineer's services included in the breakdown by tasks as noted in Exhibit "B" incorporates all labor, overhead, profit, Reimbursable Expenses and Engineer's Subconsultants' charges. Engineer may alter the distribution of compensation between individual tasks of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Town.
 - 3.1.1 **Completion of Final Report** – Town and Consultant agree that the Final Report shall be completed, submitted to, and accepted by the Town. The electronic formatting of the Final Report and Computer Aided Design and Drafting ("CADD") design files shall conform to the design specifications as outlined in Town of Addison Public Work and Engineering Department Design Standards. Completion of the Record Documents and/or "As-Built"

documents, if any, shall be included in the Consultant's Fee and considered to be within the Scope of Services defined under this Agreement.

3.1.2

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

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

3.2 **Direct Expenses** – Direct Expenses are included in the Consultant's Fee as described in Article 3.1 and include actual reasonable and necessary expenditures made by the Consultant and the Consultant’s employees and subcontractors in the interest of the Project. All submitted Direct Expenses are to be within the amounts as stated in the Compensation Schedule / Project Billing / Project Budget set forth in Exhibit “B,” and consistent with Exhibit “C,” Town of Addison Guidelines for Direct Expenses, General and Administrative Markup, and Travel and Subsistence Expenses. The Consultant shall be solely responsible for the auditing of all Direct Expenses, including the subcontractors, prior to submitting to the Town for reimbursement, and shall be responsible for the accuracy thereof. Any overpayment by the Town for errors in submittals for reimbursement may be deducted from the Consultant’s subsequent payment for services; provided, however this shall not be the Town’s sole and exclusive remedy for said overpayment.

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

Hourly Billable Rates by Position

Position	Rate
Senior Project Manager	\$225/Hour
Project Engineer	\$150/Hour
Project Professional	\$156/Hour
Staff Professional II	\$140/Hour
Senior Principal Professional	\$275/Hour
Project Control Specialist II	\$85/Hour
Professional	\$80/Hour
Project Administration I	\$75/Hour
Construction Inspector	\$85/Hour

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

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

ARTICLE 4 OWNERSHIP OF DOCUMENTS

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

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

ARTICLE 5
CONSULTANT'S INSURANCE REQUIREMENTS

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

ten (10) days for non-payment of premium, evidenced by return receipt or United States Certified Mail. Consultant shall furnish Town with certificates evidencing such coverage prior to commencing work on the Project.

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

ARTICLE 6 CONSULTANT’S ACCOUNTING RECORDS

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

ARTICLE 7 AUDITS AND RECORDS / PROHIBITED INTEREST / VENDOR DISCLOSURE

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

The Consultant agrees that it is aware of the prohibited interest requirement of the Town Charter, which is repeated on the Affidavit, attached hereto as Exhibit “E” and

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

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

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

ARTICLE 8 TERMINATION OF AGREEMENT / REMEDIES

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

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

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

**ARTICLE 9
DISPUTE RESOLUTION / MEDIATION**

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

**ARTICLE 10
INDEMNITY**

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

WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE. THIS INDEMNIFICATION SHALL EXTEND TO THE PAYMENT OR REIMBURSEMENT OF THE TOWN'S REASONABLE ATTORNEYS FEES AND ASSOCIATED COSTS, COURT COSTS, AND SETTLEMENT COSTS IN PROPORTION TO THE CONSULTANT'S LIABILITY.

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

THIS ARTICLE SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

ARTICLE 11 NOTICES

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

Director of Public Works and Engineering Services

Town of Addison
16801 Westgrove Drive
Addison, Texas 75001

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

Kleinfelder, Inc.
CP Nawal, Client Account Manager
7805 Mesquite Bend Drive, Suite # 100
Irving, TX - 75063

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

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

**ARTICLE 12
MISCELLANEOUS**

- 12.1 **Complete Agreement** – This Agreement, including the exhibits hereto labeled “A” through “F,” all of which are incorporated herein for all purposes, constitute the entire Agreement by and between the parties regarding the subject matter hereof and supersedes all prior and/or contemporaneous written and/or oral understandings. This Agreement may not be amended, supplemented, and/or modifies except by written agreement duly executed by both parties. The following exhibits are attached below and made a part of this Agreement:
- 12.1.1 Exhibit “A,” Scope of Services.
 - 12.1.2 Exhibit “B,” Compensation Schedule / Project Billing / Project Budget.
 - 12.1.3 Exhibit “C,” Town of Addison Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses.
 - 12.1.6 Exhibit “D,” Town of Addison Contractor Insurance Requirements.
 - 12.1.7 Exhibit “E,” Affidavit.
 - 12.1.8 Exhibit “F”, Conflict of Interest Questionnaire, Form CIQ.
- 12.2 **Assignment and Subletting** – The Consultant agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the Town. The Consultant further agrees that the assignment or subletting or any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Consultant of its full obligations to the Town as provided by this Agreement. All such approved work performed by assignment or subletting shall be billed through Consultant, and there shall be no third party billing.
- 12.3 **Successors and Assigns** – Town and Consultant, and their partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives, and administrators are hereby bound to the terms and conditions of this Agreement.
- 12.4 **Severability** – In the event of a term, condition, or provision of this Agreement is determined to be invalid, illegal, void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect as if such invalid, illegal, void, unenforceable or unlawful provision had never been contained herein.

- 12.5 **Venue** – This entire Agreement is performable in Dallas County, Texas and the venue for any action related directly or indirectly, to this Agreement or in any manner connected therewith shall be in Dallas County, Texas, and this Agreement shall be construed under the laws of the State of Texas.
- 12.6 **Execution / Consideration** – This Agreement is executed by the parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.
- 12.7 **Authority** – The individuals executing this Agreement on behalf of the respective parties below represent to each other that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for an on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the other party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.
- 12.8 **Waiver** – Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.
- 12.9 **Headings** – The headings of the various sections of this Agreement are included solely for convenience of reference and are not to be full or accurate descriptions of the content thereof.
- 12.10 **Multiple Counterparts** – This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.
- 12.11 **Sovereign Immunity** – The parties agree that the Town has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.
- 12.12 **Additional Representations** – Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had the opportunity to confer with its counsel.
- 12.13 **Miscellaneous Drafting Provisions** – This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply.

- 12.14 **No Third Party Beneficiaries** -- Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.
- 12.15 **No Boycott – Israel** -- Pursuant to Texas Government Code Chapter 2270, Organization's execution of this Agreement shall serve as verification that the Organization does not presently boycott Israel and will not boycott Israel during the term of this Agreement.

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

Effective Date: _____

TOWN:
Town of Addison, Texas

By: _____
Wesley S. Pierson, City Manager

Date: _____

CONSULTANT:
Kleinfelder, Inc.

By:  _____
David R. Boes, VP, Area Manager

Date: 9.30.2020

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

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

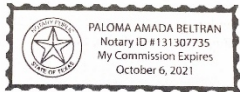
GIVEN UNDER MY HAND AND SEAL OF OFFICE this ___ day of _____, 2020.

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

STATE OF Texas §
 §
COUNTY OF Dallas §

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 30th day of September, 2020.



David Boes

Notary Public In and For the State of Texas
My commission expires: 10.6.2021

EXHIBIT "A"
SCOPE OF SERVICES

**Agreement by and between the Town of Addison, Texas (Town)
and (Consultant)
to perform Professional Engineering Services for Risk and Resilience
Assessment & Emergency Response Plan Update**

BACKGROUND AND PURPOSE

Section 2013 of America's Water Infrastructure Act of 2018 (AWIA), signed into law in October of 2018, requires that community water systems serving more than 3,300 people complete a Risk and Resilience Assessment (RRA) and update their Emergency Response Plan (ERP) to align with the completed RRA. This new RRA federal requirement replaces and updates the vulnerability assessments that were previously required under the 2002 Bioterrorism Act. The RRA must incorporate a number of new risk assessment elements, including natural hazards, cybersecurity, and financial systems. ERPs must then be updated to add new strategies as needed to improve resiliency against the risks identified in the RRA, including actions or equipment needed for reducing impact of hazards and including plans and procedures if needed.

Based on Addison's service population of approximately 15,500, the AWIA compliance deadlines for submittal to the Environmental Protection Administration (EPA) are:

- Risk and Resilience Assessment – Due before June 30, 2021
- Emergency Response Plan Update – Due six months following completion of the RRA.

As these deadlines are incorporated into the Act itself, according to EPA, it is unlikely that deadlines will be extended.

The Town of Addison purchases finished water with a chloramine residual from Dallas Water Utilities. The current contract is for 11 MGD. Addison has two entry points from DWU under direct pressure, two pump stations with storage tanks, and two elevated storage tanks. The Town does not currently have treatment facilities or post-disinfection facilities. The Town's SCADA system monitors flow, pH, total chlorine, and ammonia at the two DWU entry points. The elevated tanks are monitored for chlorine.

PROJECT APPROACH

Both the RRA and ERP will rely on input from most aspects of the Town, from distribution to payroll, so it will be most useful to include staff from each department, in a

collaborative approach. We know how valuable your time is, and how critical staff safety is to our water supply clients. Our approach will be to conduct much of our work by desktop review and research to minimize the demands on your staff's time and to streamline the amount of time needed for visiting your facilities.

We will plan to kick off the project with a teleconference to introduce our team members, review the scope with your team, and confirm goals and objectives. Ahead of the kickoff call, we will develop a workplan summarizing scope, staff, deliverables, QA/QC reviews, communication lines, schedule, and safety procedures. We will also include a Request for Information listing the types of information needed for the desktop review portion of the task. Once we've completed our desktop review, which will likely include follow up telephone interviews with key staff, we will then schedule targeted site visits to inventory assets and systems in a manner which respects all applicable federal, state, local and Town safety protocols in relation to COVID-19. Following the data review, we'll again host a workshop (either at your offices or via teleconference, as appropriate) to review and confirm initial findings with your team before we proceed with the RRA document development. A similar process will be used to develop the ERP.

Our goal is to develop deliverables for Addison that not only meet federal compliance, but that build upon and align with existing and anticipated state, county, and local resources, and priorities, such as existing Hazard Mitigation Plans or Climate Resiliency Plans. To the extent possible, we will work to understand and incorporate these requirements so that your deliverables are aligned with compatible goals. Lastly, the RRA and ERPs should be useful tools. The RRA to identify and prioritize risks but also serve as a road map for improving resiliency and mitigating risk. The ERP should be a living document which is easy to access and use – both in hardcopy and digital form. Often an ERP exists only in hard copy form on a shelf, or as a PDF which may not be easy to use. We propose to provide a digital document with a nested folder format that can link to resources and forms that can be used online if staff are forced to work remotely without easy access to printers and copiers.

SCOPE OF SERVICES

Kleinfelder proposes to provide the following services:

Task 1 –Project Management and Administration Services

Kleinfelder's project manager will manage the project scope of work for the duration of the project which will including monitoring individual tasks, schedule and budget, making staff assignments to maintain the project schedule, and general management and coordination of project staff. The coordination with Town will be as described below:

- a. Monthly Invoice. Prepare and submit monthly invoices including budget status, and expenditures during the previous month.
- b. Provide monthly update for the progress of work via conference call.
- c. Ensure that the Kleinfelder Quality Procedures are followed.
- d. Manage project scope and subconsultants as necessary.

Task 2 – Risk and Resilience Assessment (RRA)

Kleinfelder will prepare a Risk and Resilience Assessment to meet Addison obligations under the relevant provisions of Section 2013 of the America’s Water Infrastructure Act of 2018. The RRA will be prepared using EPA and American Water Works Association Guidance and with the input of Addison Water System management and operations staff by performing the following subtasks:

a. RRA Data Collection and Review:

Kleinfelder will facilitate a kick-off call with Addison to review project scope, goals and objectives and discuss the types of information to be assessed.

Kleinfelder will review and compile data, and conduct interviews with Addison personnel relating to the following aspects of the water system:

- i. Water infrastructure (aqueducts, vaults, pipes, pumps, storage facilities, distribution mains, valves, and meters; interconnections; power supplies; office and storage space).
- ii. Existing planning documentation, as available (Master Plan, Vulnerability Assessment, existing ERP, critical parts/equipment lists, asset management documentation, mutual aid assistance agreements, business continuity plans).
- iii. Electronic, computer and automated systems and security – both software and hardware (treatment, distribution process control systems, business enterprise information technology).
- iv. Monitoring practices (source and finished water quality, laboratory resources / equipment / training, leak detection, data management equipment and systems).
- v. Chemicals (inventory, storage, use, handling; focused on uncontrolled release of potentially dangerous chemicals).
- vi. Financial infrastructure (equipment and systems used to operate and manage utility finances; billing, payment and accounting systems and services).
- vii. Operations and Maintenance.

Kleinfelder will facilitate a teleconference workshop to discuss / confirm initial findings with the Addison team.

- b. RRA Document Development: Prepare RRA documentation compliant with AWIA Section 2013 and EPA guidance, as well as applicable state guidance.
 - i. Inventory critical infrastructure assets and associated threat categories for natural hazards and malevolent acts.
 - ii. Identify threat likelihood for each asset threat category.
 - 1. Malevolent acts will be assessed using EPA's Baseline Information on Malevolent Acts for Community Water Systems.
 - 2. Natural hazards to be assessed will be aligned with local Hazard Mitigation Plans.
 - iii. Develop matrix of risk scores for asset / threat pairs.
 - iv. Identify existing and potential counter measures for each asset.
 - v. Prepare Draft RRA report for Addison review.
 - vi. Meet with Addison management and staff to review Draft RRA.
 - vii. Prepare Final RRA incorporating one round of comments on the Draft.

This Task assumes up to two days of site visits to facilities and three progress meetings (by telephone) with Addison.

Task 3 – Emergency Response Plan Update

Kleinfelder will update Addison's Emergency Response Plan to incorporate the findings of the RRA and to meet Addison's obligations under the relevant provisions of Section 2013 of the America's Water Infrastructure Act of 2018. The ERP will be prepared using TCEQ, EPA and American Water Works Association Guidance and with the input of Addison Water System management and operations staff by performing the following subtasks:

- a. ERP Data Collection and Review: Review existing ERP and associated documentation including: Roster of staff and certifications, utility health and safety plan, internal communications lists, list of critical customers, communication equipment, local emergency partner communication lists, existing incident specific response procedures, if available. Conduct workshop with Addison team following data review to confirm understanding of procedures and processes.
- b. ERP Document Development: Prepare ERP documentation in compliance with AWIA and state/federal guidance, and in response to the risks and hazards identified in Task 1. We propose to prepare this document in a digital format

including hyperlinks and a nested folder structure to allow for ease of digital access, use, and updates. Sections will include:

1. Utility Information
2. Resilience Strategies
3. Emergency Plans and Procedures
4. Mitigation Actions
5. Detection Strategies

Meet with Client to review Draft ERP and finalize ERP based on one round of comments.

SCHEDULE

Kleinfelder has staff available and is prepared to commence work on this assignment immediately upon receipt of an executed Agreement and shall use its best efforts to perform all services as expeditiously as is consistent with professional skill and care and the orderly progress of the work. We expect to be able to complete each task within four months assuming the Town of Addison's review time for deliverable is one (1) week. Please note the timely execution of this scope of services depends in part on Addison providing detailed information to Kleinfelder.

FEE ESTIMATE (Refer to Exhibit B)

LIMITATIONS

Our work will be performed in a manner consistent with that level of care and skill ordinarily exercised by other members of Kleinfelder's profession practicing in the same locality, under similar conditions and at the date the services are provided. Our conclusions, opinions and recommendations will be based on a limited number of observations and data. It is possible that conditions could vary between or beyond the data evaluated. Kleinfelder makes no guarantee or warranty, express or implied, regarding the services, communication (oral or written), report, opinion, or instrument of service provided.

This proposal is valid for a period of Ninety (90) days from the date of this proposal, unless a longer period is specifically required by the Owner in which case that time frame will apply. This proposal was prepared specifically for the Owner and may not be provided to others without Kleinfelder's express permission.

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

**Agreement by and between the Town of Addison, Texas (Town)
and (Consultant)
to perform Professional Engineering Services for Risk and Resilience
Assessment & Emergency Response Plan Update**

I. COMPENSATION SCHEDULE / PROJECT BILLING SUMMARY.

Kleinfelder proposes to perform Tasks 1 and 2 for a total lump sum fee in the amount of **\$86,200**. The lump sum fees include applicable labor, overhead, and expenses. The fee breakdown by Task is listed below.

Task 1 – Project Management:	\$8,100
Task 2 – Risk and Resiliency Assessment:	\$49,900
Task 3 – Emergency Response Plan Update:	\$28,200
Total Lump Sum Fee*:	\$86,200

*The above fee will not be exceeded without prior approval. Invoices will be issued on a periodic basis, or upon completion of the project, whichever is sooner. The net cash amount of this invoice is payable on presentation of the invoice. The Town and Kleinfelder may subsequently agree in writing to provide for additional services to be rendered under this agreement for additional, negotiated compensation.

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

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

II. **GUIDELINES FOR DIRECT EXPENSES**.

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

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

B. **Supplies, Material, Equipment** – Town shall reimburse the actual cost of other similar direct Project-related expenses, which are duly presented in advance and approved by Town's Project Manager in writing.

C. **Commercial Reproduction** – Town shall reimburse the actual cost of reproductions, specifically limited to progress prints prepared for presentation to Town at each phase of progress, and final Construction Documents prepared for distribution at bidding phase, provided that the Consultant has duly obtained at least three (3) quotations from commercial firms and has chosen the best value for the Town. Consultant shall provide such documentation to Town for review prior to submitting these expenses for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.

D. **In-House Reproduction** - Consultant shall make arrangements with the Town for prior approval of in-house reproduction rates prior to submitting these expenses for reimbursement. Town shall provide Consultant with a standard format for documenting these charges. Completion of the Town's reproduction log is required as a prerequisite for payment, including the number or reproductions, the

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

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

III. GUIDELINES FOR GENERAL AND ADMINISTRATIVE MARKUP.

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

IV. GUIDELINES FOR TRAVEL AND SUBSISTENCE EXPENSES.

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

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

REQUIREMENTS

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

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

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

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

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

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

With respect to the foregoing insurance,

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

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

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

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

AGREEMENT

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

Project/Bid# Risk and Resilience Assessment & Emergency Response Plan Update

Company: Kleinfelder, Inc.

Printed Name: David R. Boes

Signature:  **Date:** 9.30.2020

EXHIBIT "E"
AFFIDAVIT

THE STATE OF TEXAS §
 §
THE COUNTY OF DALLAS §


I, David R. Boes, a member of Kleinfelder Inc., make this affidavit and hereby on oath state the following:

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

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

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

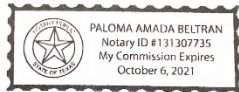
Signed this 30th day of September, 20XX. 2020.



VP, Area Manager
Signature of Official / Title

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

Sworn to and subscribed before me on this 30th day of September, 20XX. 2020.






Notary Public in and for the State of Texas
My commission expires: 10.6.2021

EXHIBIT "F"
CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

FORM CIQ CONFLICT OF INTEREST QUESTIONNAIRE For vendor or other person doing business with local governmental entity	
<p>This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session. This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a). By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code. A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.</p>	OFFICE USE ONLY
<p>1. Name of person who has a business relationship with local governmental entity.</p>	<p>Date Received</p>
<p>2. Check this box if you are filing an update to a previously filed questionnaire. <input type="checkbox"/></p> <p>(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)</p>	
<p>3. Name of local government officer with whom filer has employment or business relationship.</p> <p align="center"><u>None - Not Applicable</u> Name of Local Government Officer</p> <p>This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.</p> <p>A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>D. Describe each employment or business relationship with the local government officer named in this section.</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>	

EXHIBIT "F"
CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

4. Signature of person doing business with the governmental entity Date:	
 _____ Signature	9.30.2020 _____ Date

Local Government Officers Town of Addison, Texas

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

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

RISK AND RESILIENCE ASSESSMENTS AND EMERGENCY RESPONSE PLANS:



NEW REQUIREMENTS FOR DRINKING WATER UTILITIES

Section 2013 of America's Water Infrastructure Act of 2018 (AWIA) requires community water systems¹ that serve more than 3,300 people to complete a risk and resilience assessment and develop an emergency response plan.

RISK AND RESILIENCE ASSESSMENT

Your utility must conduct a risk and resilience assessment and submit certification of its completion to the U.S. EPA by the following dates:

EMERGENCY RESPONSE PLAN

Your utility must develop or update an emergency response plan and certify completion to the U.S. EPA **no later than six months** after risk and resilience assessment certification. Each utility deadline is unique; however, the dates below are the due dates for utilities who submit a risk and resilience assessment certification by the final due date according to the population served.

Important Dates

- March 31, 2020 if serving $\geq 100,000$ people.
- December 31, 2020 if serving 50,000 to 99,999 people.
- June 30, 2021 if serving 3,301 to 49,999 people.

- September 30, 2020 if serving $\geq 100,000$ people.
- June 30, 2021 if serving 50,000 to 99,999 people.
- December 30, 2021 if serving 3,301 to 49,999 people.

Recertification

Every five years, your utility must review the risk and resilience assessment and submit a recertification to the U.S. EPA that the assessment has been reviewed and, if necessary, revised.

Within six months of submitting the recertification for the risk and resilience assessment, your utility must certify it has reviewed and, if necessary, revised, its emergency response plan.

Visit the U.S. EPA website to find more information on guidance for developing a risk and resilience assessment at <https://www.epa.gov/waterriskassessment/conduct-drinking-water-or-wastewater-utility-risk-assessment>.

Visit the U.S. EPA website for guidance on developing an Emergency Response Plan at <https://www.epa.gov/waterutilityresponse/develop-or-update-drinking-water-or-wastewater-utility-emergency-response-plan>.

TOOLS OR METHODS

AWIA does not require the use of any standards, methods or tools for the risk and resilience assessment or emergency response plan. Your utility is responsible for ensuring that the risk and resilience assessment and emergency response plan address all the criteria in AWIA Section 2013(a) and (b), respectively. The U.S. EPA recommends the use of standards, including AWWA J100-10 Risk and Resilience Management of Water and Wastewater Systems, along with tools from the U.S. EPA and other organizations, to facilitate sound risk and resilience assessments and emergency response plans.

¹ Section 2013 of AWIA applies to community water systems. Community water systems are drinking water utilities that consistently serve at least 25 people or 15 service connections year-round.

Still have questions about the new AWIA requirements?
Contact the U.S. Environmental Protection Agency (U.S. EPA) at dwresilience@epa.gov.

Office of Water (4608T)
EPA-817-F-19-004
May 2019



FREQUENTLY ASKED QUESTIONS

I need more information about risk and resilience assessments and emergency response plans:

Risk and resilience assessments evaluate the vulnerabilities, threats and consequences from potential hazards.

What does a risk and resilience assessment include?

- Natural hazards and malevolent acts (i.e., all hazards).
- Resilience of water facility infrastructure (including pipes, physical barriers, water sources and collection, treatment, storage and distribution, and electronic, computer and other automated systems).
- Monitoring practices.
- Financial systems (e.g., billing systems).
- Chemical storage and handling.
- Operation and maintenance.

Who should I work with when creating my emergency response plan?

- Utilities must coordinate the risk and resilience assessments, as well as the emergency response plans with local emergency planning committees.

For more information, see www.congress.gov/bill/115th-congress/senate-bill.

I need more information on the certification process:

What do I need to submit to the U.S. EPA?

- Each utility must submit a certification of your risk and resilience assessment and emergency response plan. Each submission must include: utility name, date and a statement that the utility has completed, reviewed or revised the assessment. The U.S. EPA has developed an optional certification template that can be used for email or mail certification. The optional certification form will be available in August 2019.

Who can certify my risk and resilience assessment and emergency response plan?

- Risk and resilience assessments and emergency response plans can be self-certified by the utility.

How do I submit my certification?

- Three options will be provided for submittal: regular mail, email and a user-friendly secure online portal. The online submission portal will provide drinking water systems with a receipt of submittal. The U.S. EPA recommends using this method. The certification system will be available in August 2019.

What does an emergency response plan include?

- Strategies and resources to improve resilience, including physical security and cybersecurity.
- Plans and procedures for responding to a natural hazard or malevolent act that threatens safe drinking water.
- Actions and equipment to lessen the impact of a malevolent act or natural hazard, including alternative water sources, relocating intakes and flood protection barriers.
- Strategies to detect malevolent acts or natural hazards that threaten the system.

When can I submit the initial certification?

- Utilities should wait to submit the initial certification to the U.S. EPA until the U.S. EPA publishes *Baseline Information on Malevolent Acts Relevant to Community Water Systems*, which is required under AWIA by August 2019.

Do I need to submit my certification to my state or local government?

- No. Section 2013 of AWIA does not require utilities to submit the certification to state or local governments.

How long do I need to keep a copy of my risk and resilience assessment and emergency response plan?

- Utilities need to keep a copy of both documents for five years after certification.

What if I do not have a copy of my most recent risk and resilience assessment?

- The U.S. EPA intends to destroy vulnerability assessments (VAs) submitted in response to the Bioterrorism Act of 2002, but if utilities would like to have their VA and certification documents mailed to them, contact WSD-Outreach@epa.gov, and on utility letterhead, include the utility name, PWSID, address and point of contact as an attachment to the email.

RESOURCES & TOOLS

Conducting a Risk and Resilience Assessment

- The U.S. EPA's Risk and Resilience Baseline Threat Document (available August 2019).
- The U.S. EPA's [Vulnerability Self-Assessment](#).

The U.S. EPA Website

- <https://www.epa.gov/waterresilience/americas-water-infrastructure-act-2018-risk-assessments-and-emergency-response-plans>.

Developing an Emergency Response Plan

- [Emergency Response Plan Guidance](#).
- The U.S. EPA's [Emergency Response Webpage](#).
- [Local Emergency Planning Committees](#).

Still have questions about the new AWIA requirements?
Contact the U.S. Environmental Protection Agency (U.S. EPA) at dwresilience@epa.gov.

Office of Water (4608T)
EPA-817-F-19-004
May 2019

Council Meeting

13.

Meeting Date: 10/27/2020

Department: Information Technology

Pillars: Excellence in Asset Management
Gold Standard in Customer Service
Gold Standard in Public Safety

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

AGENDA CAPTION:

Consider Action on a **Resolution to Approve the Purchase of Network Infrastructure from Solid IT Networks, Inc. and an End User License Agreement with Extreme Network for the Installation of Hardware, Software, and Ongoing Technical Support Services and Authorize the City Manager to Execute the Agreement** in an Amount Not to Exceed \$158,441.27.

BACKGROUND:

We are facing the following challenges with the Town's current computer network:

- Performance – The current network infrastructure is an aging system that was designed and purchased in 2014. Since then, the Town has expanded its services and has implemented several new systems. These new services, systems, and additional staff are straining the current network.
- Warranty – The extended warranties for this equipment will be expiring in a few months.

To address these issues, the Town is requesting to purchase an Extreme Networks system, including routers and switches, from Solid IT Networks. Solid IT Networks is a preferred vendor through Texas Department of Information Resources (DIR). DIR is responsible for a cooperative contracts program that enables government entities to efficiently pool their purchasing power to drive down costs. The DIR program provides an effective procurement channel to thousands of public sector entities across Texas. DIR simplifies the procurement process for public sector entities throughout the State by releasing Request for Proposal (RFP) and choosing vendors at the State level whom can be selected by State agencies and Local governments.

Extreme Networks offers a system which is the leading solution in the market today. The proposed system includes twenty six (26) Access Ethernet Switches that will connect all the employees located in different buildings throughout the Town and the storefront to the Town's network, four (4) Core Ethernet Switches for the main datacenter at the Service Center, four (4) Core Ethernet Switches

for the backup datacenter at the Central Fire Station, and four (4) Storage Ethernet Switches that will connect the newly purchased storage units located at the Service Center and the Central Fire Station to the Town's network. Our plan is to configure network devices during weekdays and install them on the weekends or after hours.

The total cost of the system implementation, including professional services and the extended warranty and support for 6 years, is \$158,441.27. This item is budgeted in the Fiscal Year 2021 Information Technology Equipment Replacement Fund.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution - Contract with Solid IT Networks, Inc.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A CONTRACT FOR SERVICES BETWEEN THE TOWN OF ADDISON AND SOLID IT NETWORKS, INC., IN AN AMOUNT NOT TO EXCEED \$158,441.27, FOR THE INSTALLATION OF NETWORK ETHERNET SWITCHES, ROUTERS, MANAGEMENT SOFTWARE, RELATED WARRANTIES AND TECHNICAL SUPPORT AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT, AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. The Contract for Services between the Town of Addison and Solid IT Networks, Inc., for the installation of network ethernet switches, routers, management software, related warranties and technical support in an amount not to exceed \$158,441.27, 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 _____ day of **OCTOBER** 2020.

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 §

§
§
§
§

CONTRACT FOR SERVICES

COUNTY OF DALLAS

THIS CONTRACT FOR SERVICES (hereinafter the "Contract") is made and entered into by and between the Town of Addison, Texas (hereinafter called "Town") and Solid IT Networks, Inc., a Texas corporation with its principal office at 16507 Hedgecroft, Suite 100, Houston, Texas 77060 (hereinafter called "Contractor") on the day of October, 2020 ("Effective Date").

WITNESSETH:

WHEREAS, the Town sought services related to the installation of network ethernet switches, routers and management software ("Services"); and

WHEREAS, the Town reviewed the Texas Department of Information Resources' ("DIR") available vendors; and

WHEREAS, the Contractor, through DIR Contract No. DIR-TSO-4296, submitted a proposal for the work identified by the Services, attached hereto as **Exhibit A** and incorporated herein for all purposes ("Proposal"); and

WHEREAS, based upon the review of the Proposal, the Town has investigated and determined that it desires to hire the Contractor for the Services.

1. DESCRIPTION OF WORK

For the consideration agreed below to be paid to Contractor, the Contractor shall provide the Services upon the terms and conditions set forth in the Agreement Documents, hereinafter defined, and shall furnish all personnel, labor, equipment, supplies, deliverables and all other items necessary to provide all of the work as specified by the terms and conditions of the Agreement Documents. Contractor will perform the Services with the degree of skill and diligence normally practiced by contractors performing the same or similar services, and Contractor makes the same guarantee with regard to performance for any and all subcontractors completing Services under this Contract.

A. The Services are to be performed in a good and workmanlike manner and shall conform in every respect to the following, collectively, the "Agreement Documents":

- (i) This Contract;
- (ii) DIR Contract No. DIR-TSO-4296 ("DIR Contract"), located at <https://dir.texas.gov>;

- (iii) Contractor Proposal, including: the Statement of Work, Warranty(ies), Extreme Network Product Support and End of Life Policy, Extreme Network Standard Product Warranty Policy Terms and Conditions, Extreme Networks Product Warranty Summary Terms and Conditions, Extreme Networks Return and Replace Service Description, Extreme Networks Software and Global Technical Assistance Center Service, Extreme Network Advanced Hardware Replacement Service, all attached hereto as **Exhibit A** and incorporated herein for all purposes; and
- (iv) Insurance Requirements, attached hereto as **Exhibit B** and incorporated herein for all purposes.
- (v) Extreme Wired Upgrade Cost Breakdown, attached hereto as **Exhibit C** and incorporated herein for all purposes.

B. All of the documents referred to in Subsection A of this Section 1, above, are incorporated by reference and made a part of this Contract for all purposes as though each were written word for word in this Contract; provided, however, that in case of a conflict in the language of the DIR Contract, the Proposal and this Contract, the terms and conditions of this Contract shall control, and then the DIR Contract and then the Proposal in that order, and are final and binding on both parties. Contractor and Town further agree that should any dispute or questions arise respecting the true construction or meaning of any of these documents, the true meaning shall be decided by the Town and such decision shall be binding and conclusive upon Contractor.

C. Contractor and Town agree that Town shall place the written order for Services. At that time, the warranties associated with the ordered Hardware, as that term is defined in Exhibit A, shall commence and continue for sixty (60) months.

2. INSPECTION OF SITES AND COORDINATION

Contractor represents that, prior to submitting the Proposal and executing this Contract, Contractor became and remains thoroughly acquainted with all matters relating to the performance of this Contract, all applicable laws and all of the terms and conditions of this Contract. All Services under this Contract shall be coordinated under, and performed to the satisfaction of the City Manager, or his/her designee, hereinafter called "Director."

3. PAYMENT

In exchange for those Services described in the Agreement Documents, the Town agrees to pay Contractor an amount not to exceed **One Hundred Fifty Eight Thousand Four Hundred Forty One Dollars and 27/100s (\$158,441.27)**, according to the terms and conditions of this Contract. Payment for all Services shall be in accordance with Exhibit C, attached hereto and incorporated herein for all purposes. The Town shall retain ten percent (10%, or \$15,844.13) of the total Extreme Wired Upgrade until the Town has provided written notice of "final acceptance" of the Services, or until the contract end date of January 31, 2021, whichever is sooner, at which time the ten percent (10%, or \$15,844.13) retainage shall be promptly paid to Contractor. The remaining contract amount of \$142,597.14 will be invoiced, net 30 days, as product and software are delivered.

On or before the 10th day of each month, Contractor shall submit to Town an invoice for the Services provided by Contractor during the immediately preceding month. Each invoice shall be form and content satisfactory to Town and shall, among other things, include: (i) a specific description of the Services; (ii) such documentation and information as Town may require to verify the accuracy of the invoice; and (iii) the sum of all prior payments under this Contract and the balance remaining that may be charged to the Services. Charges not in dispute shall be paid within thirty (30) days of receipt of invoice.

4. TERM

Subject to Section 1(C) herein, the Services identified within the Proposal shall be completed no later than January 31, 2021, including installation of all hardware. For good cause shown by Contractor in writing, the Director may extend the time to perform the Services. Per Solid IT Networks' Statement of Work, installation will be warranted for 30 days, following "2 Days of Switch/Install Configuration." Any product or configuration issues encountered past this date will be covered per the terms of the purchased manufacturer's warranty.

The Contractor recognizes that the Contract shall commence upon the Effective Date and continue in full force and effect until termination in accordance with its provisions. Contractor and City herein recognize that the continuation of any Contract after the close of any given fiscal year of the Town, which fiscal year ends on September 30th of each year, shall be subject to City Council approval. In the event that the City Council does not approve the appropriation of funds for the Contract, the Contract shall terminate at the end of the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder. Contract may be terminated by the Town at any time upon providing Contractor thirty (30) days written notice of the termination date.

5. PERMITS; COMPLIANCE WITH LAWS AND REGULATIONS

Contractor shall possess or obtain any necessary permits required by Town ordinance or State or Federal law for the performance of the Services prior to commencing the Services. Contractor shall perform its obligations pursuant to this Contract in accordance with all Federal, State and local statutes, ordinances, laws, regulations and executive, administrative and judicial orders applicable to the Services to be performed pursuant to the Contract.

6. INDEPENDENT CONTRACTOR

Contractor's status shall be that of an independent contractor and not an agent, servant, employee, or representative of the Town in the performance of the Services. Contractor shall exercise independent judgment in performing duties under this Contract and, in cooperation with the Director, is solely responsible for setting working hours, scheduling or prioritizing the workflow and determining how the work is to be performed. No term or provision of this Contract or act of Contractor in the performance of this Contract shall be construed as making Contractor the agent, servant or employee of the Town, or making Contractor or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the Town provides its employees.

7. **INDEMNITY**

CONTRACTOR, ITS OFFICERS, DIRECTORS, PARTNERS, CONTRACTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEEES AND/OR TRUSTEES (COLLECTIVELY REFERRED TO AS "CONTRACTOR" FOR PURPOSES OF THIS SECTION), AGREE TO RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY AND ITS OFFICERS, COUNCIL MEMBERS, REPRESENTATIVES, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO AS "CITY" FOR PURPOSES OF THIS SECTION) FROM ANY AND ALL CLAIMS (INCLUDING PATENT, COPYRIGHT AND INFRINGEMENT), DEMANDS, DAMAGES, INJURIES (INCLUDING DEATH) LIABILITIES, AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COSTS OF DEFENSE) ARISING DIRECTLY OR INDIRECTLY OUT OF THE OPERATION OR PERFORMANCE OF CONTRACTOR UNDER THIS CONTRACT. THE CITY WILL NOT ACCEPT LIABILITY FOR INJURIES THAT ARE THE RESULT OF THE NEGLIGENCE, MALFEASANCE, ACTION OR OMISSION OF CONTRACTOR. CONTRACTOR AGREES TO ACCEPT LIABILITY FOR INJURIES TO ITSELF OR OTHERS CAUSED BY ITS OWN NEGLIGENCE, MALFEASANCE, ACTION OR OMISSION. THIS INDEMNIFICATION PROVISION IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST CITY BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS CONTRACT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN CONTRACTOR AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE CONTRACTOR, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE.

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY CONTRACTOR IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING.

CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF CITY'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CITY'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS CONTRACT. CONTRACTOR SHALL RETAIN CITY-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS CONTRACT. IF CONTRACTOR FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND OWNER SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY.

THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

8. INSURANCE AND BOND REQUIREMENTS

Contractor shall procure, pay for, and maintain during the term of this Contract, with a company authorized to do business in the State of Texas and otherwise acceptable to the Town, the insurance coverage as required by Exhibit B.

9. TERMINATION

The Town may, at its option and without prejudice to any other remedy the Town may be entitled to at law, in equity or elsewhere under this Contract, terminate further work under this Contract in whole or in part for cause or for the convenience of the Town by giving at least thirty (30) days advance written notice of termination to Contractor, with the understanding that all performance being terminated shall cease as of a date to be specified in the notice. Town shall compensate Contractor in accordance with the terms of this Contract for Contract work properly performed prior to the date of termination specified in the notice, following inspection and acceptance of same by Town's Director. Contractor shall not, however, be entitled to lost or anticipated profits should Town choose to exercise its option to terminate.

10. NOTICES

Any notice, payment, statement, or demand required or permitted to be given under this Contract by either party to the other may be effected by personal delivery in writing, including email, or by mail. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice to the other party. Mailed notices shall be deemed communicated as of three (3) days after mailing.

If intended for Town, to:

Wes Pierson
City Manager
5300 Beltline Road
Dallas, Texas 75354
(972) 450-7000

Brenda N. McDonald
City Attorney
Messer, Fort & McDonald, PLLC
6371 Preston Road, Suite 200
Frisco, Texas 75254
(972) 668-6400

If intended for Contractor, to:

Oliver Newman
General Manager
16507 Hedgecroft, Ste. 100
Houston, TX 77060
364-229-2435

11. EQUAL EMPLOYMENT OPPORTUNITY/NONDISCRIMINATION

A. Contractor shall not discriminate against any employee or applicant for employment because of race, age, color, ancestry, national origin, place of birth, religion, sex, sexual orientation, gender identity and expression, military or veteran status, genetic characteristics, or disability unrelated to job performance. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during their employment without regard to their race, age, color, ancestry, national origin, place of birth, religion, sex, sexual orientation, gender identity and expression, military or veteran status, genetic characteristics, or disability unrelated to job performance. This action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. Contractor agrees to post in conspicuous places a notice, available to employees and applicants, setting forth the provisions of this non-discrimination clause.

B. Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, age, color, ancestry, national origin, place of birth, religion, sex, sexual orientation, gender identity and expression, military or veteran status, genetic characteristics, or disability unrelated to job performance.

12. ASSIGNMENT

Contractor shall not sell, assign, transfer or convey this Contract, in whole or in part, without the prior written consent of the Town. As an express condition of consent to any assignment, Contractor shall remain liable for completion of the Contract work in the event of default by the successor contractor or assignee.

13. RIGHT OF REVIEW AND AUDIT

Town may review any and all of the services performed by Contractor under this Contract. Town is granted the right to audit, at Town's election, all of Contractor's records and billings relating to the performance of this Contract. Contractor agrees to retain such records for a minimum of three (3) years following completion of this Contract. Any payment, settlement, satisfaction, or release made or provided during the course of performance of this Contract shall be subject to Town's rights as may be disclosed by an audit under this section.

14. CONFIDENTIALITY AND DATA OWNERSHIP

A. Contractor understands and agrees that in the performance of work or services under this Contract, or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by the Town, and that such information may contain proprietary details, disclosures, or sensitive information which disclosure to or use by an unauthorized third party will be damaging or illegal. Contractor agrees that all information disclosed by the Town to Contractor which is in written form and which is marked confidential shall be held in confidence and used only in performance of services under this Contract, except where the law or a court order requires otherwise. Contractor shall exercise the same standard of care to protect such information as is used to protect his own proprietary data.

B. The Town understands and agrees that in the performance of work or services under this Contract, or in contemplation thereof, the Town may have access to private or confidential information which may be owned or controlled by Contractor, and that such information may contain proprietary details, disclosures, or sensitive information whose disclosure to or use by an unauthorized third party will be damaging or illegal. The Town agrees that all information disclosed by Contractor to the Town that is in written form and which is marked confidential shall be held in confidence and used only in performance of services under this Contract, except where the law or a court order requires otherwise. The Town shall exercise the same standard of care to protect such information as is used to protect its own proprietary data.

C. All data produced or collected pursuant to this Contract whether originated by the Town or by the Contractor, shall remain the property of the Town upon completion of this Contract. This does not include data produced or collected by Contractor prior to the effective date of this Contract or data produced or collected by Contractor which is not related to this Contract.

17. VENUE

The obligations of the parties to this Contract shall be performable in Dallas County, Texas, and if legal action is necessary in connection with or to enforce rights under this Contract, exclusive venue shall lie in Dallas County, Texas.

18. GOVERNING LAW

This Contract shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

19. LEGAL CONSTRUCTION

In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Contract, and this Contract shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Contract.

20. COUNTERPARTS

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

21. CAPTIONS

The captions to the various clauses of this Contract are for informational purposes only and shall not alter the substance of the terms and conditions of this Contract.

22. SUCCESSORS AND ASSIGNS

This Contract shall be binding upon and inure to the benefit of the parties and their respective successors and, except as otherwise provided in this Contract, their assigns.

23. ENTIRE AGREEMENT; NO ORAL MODIFICATIONS

This Contract (with all referenced Exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement of both parties, superseding all oral or written previous and contemporary agreements between the parties relating to matters set forth in this Contract. Except as otherwise provided elsewhere in this Contract, this Contract cannot be modified without written supplemental agreement executed by both parties.

24. SOVEREIGN IMMUNITY

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

25. NO BOYCOTT ISRAEL

Pursuant to Texas Government Code Chapter 2271, Contractor's execution of this Contract shall serve as verification that Solid IT Networks, Inc. does not presently boycott Israel and will not boycott Israel during the term of this Contract.

26. MISCELLANEOUS DRAFTING PROVISIONS

Miscellaneous Drafting Provisions. This Contract shall be deemed drafted equally by all parties hereto. The language of all parts of this Contract shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Contract are for the convenience of the parties and are not intended to be used in construing this document.

EXECUTED this the 12th day of October, 2020.

TOWN:
Town of Addison, Texas

BY _____
Wesley S. Pierson, City Manager

CONTRACTOR:
Solid IT Networks, Inc.,
a Texas corporation


BY 
Name: Oliver Newman
Title: General Manager

Exhibit A

DIR Contract No. DIR-TSO-4296

Vendor Contract No. _____

STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
CONTRACT FOR PRODUCTS AND RELATED SERVICES

Solid IT Networks, Inc.

1. Introduction

A. Parties

This Contract for products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter "DIR") with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and Solid IT Networks, Inc. (hereinafter "Vendor"), with its principal place of business at 16507 Hedgecroft, Ste. 100 Houston, TX 77060.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts' Electronic State Business Daily, Request for Offer (RFO) DIR-TSO-TMP-422, on March 20, 2018, for Data Storage, Data Communications & Networking Equipment and Related Services. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-422 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

For purchase transactions under this Contract, the order of precedence shall be as follows: this Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Customer Service Agreement; Exhibit 1, Vendor's Response to RFO DIR-TSO-TMP-422, including all addenda; and Exhibit 2, DIR-TSO-TMP-422, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing purchase transactions. In the event of a conflict between the documents listed in this paragraph related to purchases, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. Term of Contract

The initial term of this Contract shall be two (2) years commencing on the last date of approval by DIR and Vendor, with three (3) optional one-year renewals. Prior to expiration of each term, the contract will renew automatically under the same terms and conditions unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party wishes to discuss modification of terms or not renew. Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

Department of Information Resources

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(DIR rev 03/2018)

3. Product and Service Offerings

A. Products

Products available under this Contract are limited to Data Storage, Data Communications & Networking Equipment as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of products awarded based on the posting described in Section 1.B above. Vendor may not add a manufacturer's product line which was not included in the Vendor's response to the solicitation described in Section 1.B above.

B. Services

Services available under this Contract are limited to Data Storage, Data Communications & Networking Equipment Related Services as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

4. Pricing

Pricing to the DIR Customer shall be as set forth in Appendix A, Section 8, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee.

5. DIR Administrative Fee

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is three-quarters of one percent (.75%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$750.00.

B) All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor without further requirement for a formal contract amendment. Any change in the administrative fee shall be incorporated in the price to the Customer.

6. Notification

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Kelly A Parker, CTPM, CTCM
Director, Cooperative Contracts
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-1647
Facsimile: (512) 475-4759
Email: kelly.parker@dir.texas.gov

If sent to the Vendor:
Oliver Newman
Solid IT Networks, Inc.
16507 Hedgecroft, Ste. 100
Houston, TX 77060
Phone: (940) 453-8880
Facsimile: (281) 999-4009
Email: onewman@solidit.com

7. License and Service Agreements

A. Shrink/Click-wrap License Agreement

Regardless of any other provision or other license terms which may be issued by Vendor after the effective date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of a Purchase Order for products licensed under this Contract, or the fact that such other agreement may be affixed to or accompany software upon delivery (shrink-wrap), the terms and conditions set forth in this Contract shall supersede and govern the license terms between Customers and Vendor. **It is the Customer's responsibility to read the Shrink/Click-wrap License Agreement and determine if the Customer accepts the license terms as amended by this Contract. If the Customer does not agree with the license terms, Customer shall be responsible for negotiating with the reseller to obtain additional changes in the Shrink/Click-wrap License Agreement language from the software publisher.**

B. Service Agreement

Services provided under this Contract shall be in accordance with the Service Agreement as set forth in Appendix D of this Contract. No changes to the Service Agreement terms and conditions may be made unless previously agreed to by Vendor and DIR.

C. Conflicting or Additional Terms

In the event that conflicting or additional terms in Vendor Software License Agreements, Shrink/Click Wrap License Agreements, Service Agreements or linked or supplemental documents amend or diminish the rights of DIR Customers or the State, such conflicting or additional terms shall not take precedence over the terms of this Contract.

In the event of a conflict, any linked documents may not take precedence over the printed or referenced documents comprising this contract; provided further that any update to such linked documents shall only apply to purchases or leases of the associated Vendor product or service offering after the effective date of the update; and, provided further, that, if Vendor has responded to a solicitation or request for pricing, no update of such linked documents on or after the initial date of Vendor's initial response shall apply to that purchase unless Vendor directly informs Customer of the update before the purchase is consummated.

DIR Contract No. DIR-TSO-4296

Vendor Contract No. _____

In the event that different or additional terms or conditions would otherwise result from accessing a linked document, agreement to said linked document shall not be effective until reviewed and approved in writing by Customer's authorized signatory.

Vendor shall not [without prior written agreement from Customer's authorized signatory,] require any document that: 1) diminishes the rights, benefits, or protections of the Customer, or that alters the definitions, measurements, or method for determining any authorized rights, benefits, or protections of the Customer; or 2) imposes additional costs, burdens, or obligations upon Customer, or that alters the definitions, measurements, or method for determining any authorized costs, burdens, or obligations upon Customer.

If Vendor attempts to do any of the foregoing, the prohibited documents will be void and inapplicable to the contract between DIR and Vendor or Vendor and Customer, and Vendor will nonetheless be obligated to perform the contract without regard to the prohibited documents, unless Customer elects instead to terminate the contract, which in such case may be identified as a termination for cause against Vendor.

The foregoing requirements apply to all contracts, including, but not limited to, contracts between Customer and a reseller who attempts to pass through documents and obligations from its Manufacturer or Publisher.

8. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Product and Related Services Contracts.

No exceptions have been agreed to by DIR and Vendor.

(Remainder of this page intentionally left blank)

DIR Contract No. DIR-TSO-4296

Vendor Contract No. _____

This Contract is executed to be effective as of the date of last signature.

Solid IT Networks, Inc.

Authorized By: Signature on File

Name: Christine Feddern

Title: Vice President

Date: 11/20/2018

The State of Texas, acting by and through the Department of Information Resources

Authorized By: Signature on File

Name: Hershel Becker

Title: Chief Procurement Officer

Date: 12/03/2018

Office of General Counsel: Signature on File: MH 11/26/2018



Town of Addison

Network Infrastructure Upgrade

Statement of Work

(as of September 18, 2020)

Scope

Addison is looking to upgrade their existing wired infrastructure to accommodate existing and future needs.

Wired Infrastructure – Provide two days of professional services to assist in the deployment of Extreme Networks switches at the Town of Addison. Deployment includes planning, physical installation, basic configuration and testing of the 2 core switches per datacenter in HA mode sharing one virtual default gateway IP.

Project Outline

- **Wired Infrastructure** - Solid IT will provide onsite and remote engineering support to install and configure Extreme Networks switches. There is an expectation that after hours and onsite work will be required.
 - Service Planning
 - Onsite meeting to develop implementation plan.
 - Discuss industry best practices
 - Discuss and Define IP address schemes
 - Define VLANs
 - Define deployment schedule
 - Configure Extreme Networks switches based on implementation plan
 - Install Extreme Networks switches based on deployment schedule.
 - Unpatch and uninstall existing switches that are to be replaced (assumes a 1 to 1 ratio of old to new switches)

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- Cross connect devices in the IDF into the new Extreme Networks switches.
 - Extreme Networks switch testing
 - Make necessary configuration changes as needed based on the outcome of end user device testing.

Ongoing Support

- **Wired Infrastructure** - Solid IT will provide remote technical support, consulting, and problem solving as necessary throughout the duration of the implementation project and for one month following for issues connected to the Extreme Networks switch implementation.

Customer Responsibilities and Assumptions

- Customer is supplying all server and network electronics (Switches, GBIC's, stack cables, etc.); installation hardware (Rack Mount Kits, Wire Management, Compatible Rack Screws) and software other than the hardware and/or software on the attached quote.
- Customer is responsible for loading/installing appliance applications into their VM infrastructure.
- Customer is responsible for the mounting and installing all wireless access points and cabling.
- Customer is responsible for supplying all patch cables.
- Configuration of any end user devices is not included in this scope of work.
- Testing of end user devices is the responsibility of Addison personnel.
- Configuration of any network/data center equipment (e.g., firewall, router, switches, access points, servers, etc.) not listed in the project outline above is not included in this scope of work.
- Customer will provide access to all sites/closets including after-hours/weekend access as necessary to maintain project schedule.
- Customer will provide 24/7 VPN access to all network devices involved in the project.
- Customer will provide 24/7 admin level credentials for configuration and testing for all network devices involved in the project.
- Customer will provide access to all sites/closets including after-hours/weekend access as necessary to maintain project schedule.
- Customer will provide an onsite resource to Solid IT Networks who has administrator access to all network/data center equipment on the network and who can provide configurations from the existing equipment.

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Extreme Networks Product Support and End of Life Policy

Effective January 1, 2019

General Disclaimer: Although Extreme Networks has attempted to provide accurate information with this document, Extreme Networks assumes no responsibility for the accuracy of the information. Extreme Networks may change its release schedules, programs, product specifications, or definitions mentioned in the document at any time without notice. Any reference to non-Extreme Networks products or services is for information purposes only and constitutes neither an endorsement nor a recommendation.

Introduction

This document provides Extreme Networks End of Life Policy for Software and Hardware products.

WARRANTY: Extreme Networks offers firmware, operating system software, and application software products, with various warranties included in the software purchase price. Please refer to specific product literature for warranty details.

SERVICES: Extreme Networks also offers various services at additional cost. Refer to the Services Solutions web page for details:
<http://www.extremenetworks.com/support/>.

Only products which are covered by an appropriate warranty or a valid service contract are eligible for software updates or upgrades, and technical support, per the specific terms of the warranty or service contract.

Product End of Life: Overview

The Extreme Networks Product End of Life Overview is described in this document, which is intended to help customer plan and manage the End of Life process for Extreme products and assist the transition to alternative Extreme products and technology.

The End of Life policy covers the period starting at the End of Sale Notification, and includes End of Sale (EOS), End of Software Maintenance (EOSM), and End of Services Life (EOSL).

The End of Life Policy only applies to End of Sale announcements which are published on or after January 1, 2019. The Policy does not apply to product that is already subject to an End of Life and/or End of Sale announcement; for those products, the dates announced in the respective End of Sale Notifications will continue to apply.

The general policy guidelines are defined below. Note that the exact End of Life schedule for a specific product will be defined in its End of Sale Notification, which may vary from the general guidelines below.

The Support and End of Life Policy describes entitlements which are available for products which are covered by active support contracts. Customers will need to ensure that there is a current and fully paid support contract with Extreme. Please contact your Support Account Manager regarding fees payable during the end-of-life period to ensure access to entitlements described in the End of Life policy. For information regarding Extreme product warranties, please refer to Extreme support policies located at
<https://www.extremenetworks.com/support/policies/>.

End of Sale Notification

Extreme will typically provide 6 months' notice of the affected product's End of Sale date. This notice will be published to the Extreme Support website at <https://www.extremenetworks.com/support/end-of-sale-and-end-of-support-products/>. Customers and Partners should check this site frequently to view any new Notifications, as well as any other information related to the End of Life process.

The End of Sale Notification will define the End of Sale date, End of Software Maintenance date, and End of Services Life date for the products specified in the Notification. The dates defined in the End of Sale Notification will supersede the general policy guidelines defined in this document.

End of Sale

The product End of Sale (EOS) date is the last date that a product is available for sale through Extreme systems, while supplies last. Product availability is not guaranteed through the End of Sale date, and products will be provided while supplies last.

End of Software Maintenance

The End of Software Maintenance (EOSM) date is the last date that Extreme will release any maintenance or patch releases for a specific major software revision. During the Software Maintenance period, Extreme reserves the right to determine which defects will be fixed. Note that a software upgrade to a later release may be necessary to correct a reported problem.

The table below defines the End of Software Maintenance period after End of Sale.

After EOSM for a period of 12 additional months Extreme may provide security/PSIRT patches for critical issues at its sole discretion.

End of Services Life

The End of Service Life (EOSL) date is the last date to receive service and support for the product. After this date, all support services for the product are unavailable, and the product becomes obsolete and software and other product related information will be removed from the Extreme support website.

Access to Extreme's Global Technical Assistance Center (GTAC) will be available for a period of 5 years from the End of Sale date for hardware and embedded operating system software issues and for a period of 3 years from the End of Sale date for application software issues. Note that a software upgrade to a later release may be necessary to correct a reported problem.

Access to Software releases will be available for a period of 5 years from the End of Sale date for embedded Operating System software, and for a period of 3 years from the End of Sale date for application software. Following the EOSL date, software may be removed from the Extreme support website.

Spares or replacement parts for hardware will be available for a period of 5 years from the End of Sale date. Extreme will replace the failed unit with either a new or previously used product which is equivalent to new in performance and reliability. Extreme may replace the failed unit with a product which is, in Extreme's sole opinion, equivalent to an original product that has been discontinued or is otherwise not available.

Additional Information

Additional information, access to previously published End of Sale Notifications, and other Policy documents are available from Extreme Networks Support at <https://www.extremenetworks.com/support/>.

Software	End of Software Maintenance (EOSM) (Note 1, Note 2)
Applications	12 Months after End of Sale
WING OS	24 Months after End of Sale
Extreme Wireless OS	24 Months after End of Sale
EXOS OS	24 Months after End of Sale
BOSS/ERS OS	24 Months after End of Sale
VOSS/VSP OS	24 Months after End of Sale
SLX, NOS, NI	36 Months after End of Sale

Note 1: End of Software Maintenance policy applies to products after their EOS date
 Note 2: Products with End of Sale announcements published prior to 1/1/2019 should refer to the published End of Sale Notification for EOSM and EOSL dates.



<http://www.extremenetworks.com/contact> / Phone +1-408-579-2800

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Standard Product Warranty Policy

The Start Date of the Warranty

As used in this Warranty Policy, the Start Date is (i) the date of shipment from Extreme Networks ("Extreme") or (ii) in the case of resale from an Authorized Distributor, the date of shipment from an Authorized Distributor.

Defined Terms. Capitalized terms in this Warranty Policy are defined in the Definitions section of this document.

Limited Hardware Warranty and Remedy

Extreme warrants that the Hardware will be free from defects in material and workmanship under normal authorized use, consistent with Extreme's then-current published Documentation. This warranty is subject to the limitations and conditions set forth in this policy. The warranty extends only to the original Customer.

During the Warranty Period, Extreme, at its option, shall repair or replace the non-conforming Hardware, or refund the fees paid for such Hardware following return of the non-conforming Hardware. Hardware replacements may be refurbished, or new equipment substituted at Extreme's option. Extreme may replace failed Hardware that has been discontinued or is otherwise unavailable with Hardware which is, in Extreme's sole opinion, functionally equivalent to the failed Hardware. This warranty remedy is exclusive and is conditioned upon Extreme being notified in writing of the non-conforming Hardware within the Warranty Period.

Limited Software Warranty and Remedy

Extreme warrants that the Software will perform substantially in accordance with its published Documentation for a period of ninety (90) days from the Start Date or the date of Your initial download of the Software from Extreme's website, as applicable, or such other minimum period required under applicable law. THIS LIMITED WARRANTY

APPLIES ONLY TO THE ORIGINAL END USER PURCHASER AND NOT TO A SUBSEQUENT PURCHASER OR USER. Refer to Extreme's [End User License Agreement \(EULA\)](#) for additional terms and conditions related to the Limited Software Warranty.

Warranty Exclusions

- A. The warranties set forth above shall not apply to:
- i. any third-party software or hardware, whether or not such third-party software or hardware is or was provided by Extreme;
 - ii. any Products that have been modified or repaired by anyone or any entity other than Extreme or as authorized by Extreme in writing;
 - iii. any Products that have not been maintained in accordance with the Documentation or other operating instructions supplied by Extreme;
 - iv. any Products that have been subjected to abnormal physical or electrical stress, abnormal environmental conditions, misuse, negligence, or accident;
 - v. Products that are used for beta, evaluation, testing or demonstration purposes or other situations whereby Extreme has not received payment of a purchase price or license fees, and in such cases, the Products are provided "AS IS" with all faults and without warranty of any kind, express or implied, and
 - vi. Expendable parts, such as fuses, lamps, filters, batteries, and other parts that are regularly replaced due to normal use.
- B. The Products are not designed or intended for use in:
- i. the design, construction, operation or maintenance of any nuclear facility;
 - ii. navigating or operating aircraft; or
 - iii. operating life-support or life-critical medical equipment, and Extreme disclaims any express or implied warranty of fitness for such uses.

- C. Extreme's warranty obligations do not include:
- i. Installation or reinstallation
 - ii. Configuration
 - iii. Maintenance services
 - iv. Professional services including but not limited to consulting, network design, optimization, complex topologies, and training.

Additionally, no warranty shall apply beyond the published End of Support date for the Products, as outlined in Extreme's End of Life Policy as set forth at [Extreme Policies and Warranties](#).

Warranty Assumptions

Extreme is not responsible for delays related to export or customs regulations or processes, in the event of a force majeure event, or due to transportation issues. Actual Product delivery times may vary depending on specific Customer location(s).

Replacement Products will be warranted for the remaining warranty period of the original Products that were replaced, and may be new, refurbished or functionally equivalent products.

As to Products repaired or replaced during the original warranty period for such Product, the warranty period for the replacement Product or the repaired Product shall terminate thirty (30) days after shipment to the Customer or upon the termination of the original warranty period, whichever is longer.

A replacement Product will be at the then-current minimum hardware, software and software release levels as published by Extreme for the Product being replaced.

For Products that are sold in a "bundled" manner or as an appliance as defined in Extreme's published price list, the warranty is per each individual Product part number that comprises the bundle, unless otherwise noted in the price list.

Warranty Disclaimer.

EXCEPT FOR THE EXPRESS LIMITED WARRANTIES AND CONDITIONS SET FORTH HEREIN AND IN THE EULA, EXTREME MAKES NO OTHER WARRANTIES OR CONDITIONS RELATING TO THE PRODUCTS, AND EXPRESSLY DISCLAIMS AND EXCLUDES ANY OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT,

SATISFACTORY QUALITY, NON-INTERFERENCE, OR WARRANTIES OR OBLIGATIONS ARISING FROM A COURSE OF DEALING, USAGE OF TRADE PRACTICE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

EXTREME DOES NOT WARRANT THAT THE SOFTWARE IS FREE OF INACCURACIES, ERRORS, BUGS, VIRUSES, INTERRUPTIONS OR OTHER HARMFUL COMPONENTS OR PROGRAM LIMITATIONS OR THAT ALL ERRORS WILL BE CORRECTED. EXTREME ALSO DOES NOT WARRANT THAT THE SOFTWARE WILL PROTECT AGAINST ALL POSSIBLE THREATS OR THAT THE SOFTWARE OR ANY EQUIPMENT, SYSTEM OR NETWORK ON WHICH THE SOFTWARE IS USED, WILL BE FREE OF VULNERABILITY TO INTRUSION OR ATTACK. EXTREME IS NOT RESPONSIBLE FOR ANY DELAYS, FAILURES OR ANY LOSS OR DAMAGE RESULTING FROM THE TRANSFER OF DATA OVER COMMUNICATIONS NETWORKS AND FACILITIES, INCLUDING THE INTERNET, AND YOU ACKNOWLEDGE THAT THE SOFTWARE AND DOCUMENTATION MAY BE SUBJECT TO LIMITATIONS, DELAYS AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATION FACILITIES.

TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE APPLICABLE WARRANTY PERIOD OR OTHERWISE TO THE MAXIMUM EXTENT PERMITTED BY LAW. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THE ABOVE LIMITATION MAY NOT APPLY TO CUSTOMER.

THIS WARRANTY GIVES CUSTOMER SPECIFIC LEGAL RIGHTS AND CUSTOMER MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION.

Limitation Of Liability.

TO THE FULLEST EXTENT NOT PROHIBITED BY LAW, IN NO EVENT WILL EXTREME NETWORKS OR ITS AFFILIATES, SUPPLIERS OR LICENSORS BE LIABLE FOR ANY LOSS OF USE OR BUSINESS OR ANTICIPATED SALES OR SAVINGS, INTERRUPTION OF BUSINESS, LOST PROFITS, LOST GOODWILL, LOSS OR CORRUPTION OF DATA, OR INDIRECT, SPECIAL, HYBRID, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF EXTREME NETWORKS, ITS AFFILIATES, SUPPLIERS OR LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, AND WHETHER OR NOT ANY REMEDY PROVIDED SHOULD FAIL OF ITS ESSENTIAL PURPOSE. EXTREME'S TOTAL

CUMULATIVE LIABILITY TO CUSTOMER, FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY, WILL BE LIMITED TO, AND WILL NOT EXCEED THE PURCHASE PRICE OF THE PRODUCT PAID BY CUSTOMER. EXTREME NETWORKS SHALL NOT BE LIABLE FOR CUSTOMER'S OR ANY THIRD PARTY SOFTWARE, FIRMWARE, INFORMATION, OR MEMORY DATA CONTAINED IN, SORTED ON, OR INTEGRATED WITH ANY PRODUCT RETURNED TO EXTREME, WHETHER OR NOT SUCH PRODUCT IS UNDER WARRANTY.

Product Returns

Customer is responsible for returning the defective Product to an Extreme-authorized return facility. In the event that Customer fails to return the defective Product within ten (10) business days of receipt of the replacement Product, Extreme reserves the right to invoice the Customer at the list price of the defective Product or product component.

Definitions

As used in this warranty policy, capitalized terms have the following meaning(s):

Customer means the original end user purchaser of the Extreme Hardware and Software Product(s) from an Extreme-authorized reseller or directly from Extreme.

Documentation means the then-current Extreme data sheet for the Product that Extreme makes available on www.extremenetworks.com.

Hardware means the Extreme hardware product on which Software is embedded or operates.

Products means an Extreme Hardware Product and/or Software that Extreme makes commercially available for purchase and license (in the case of Software).

Software means software in object code made commercially available by Extreme and subject to Extreme's End User Software License Agreement (EULA) in effect at the time of Customer's purchase of the license.

Warranty Start Date means (i) the date of shipment from Extreme or (ii) in the case of resale from an Authorized Distributor, the date of shipment from an Authorized Distributor.



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Extreme Networks Product Warranty Summary

Introduction: This is a summary of warranty information for Extreme's products. The table below provides general product warranty information by product family. Please refer to the [Extreme Warranty Finder](#) for specific warranty information for product SKUs. In cases where the product warranty information in the table below differs from the warranty information in the Warranty Finder for a specific product, the warranty in the Warranty Finder will apply.

Extreme's Product Warranty Policy is available at [Extreme Policies and Warranties](#).

GTAC Support: The Extreme GTAC delivery of service under warranty provides troubleshooting assistance only for product conformance with its published Documentation and hardware and software defects. To receive service from

Extreme's GTAC for priority assistance, 24x7x365 support, troubleshooting and guidance with set up, configuration, interoperability or any additional advance technical troubleshooting, your product must be covered under an active ExtremeWorks service support contract. For complete details regarding the difference between GTAC service delivery under warranty versus a support contract, please visit [Extreme's Maintenance Services](#) site.

Freemium Content: For customers who do not have warranty or service contract coverage, there are free resources available for assistance. These services include our [HUB community](#) and the [knowledge base](#). These self-service support options provide technical advice, feedback or recommendations to assist customers who are operating Extreme Network products and solutions.

Extreme Product Warranty Summary

Data Center Switching						
Product Family	Hardware Duration ¹	Hardware Replacement ^{2,7}	Technical Support ^{3,4}	Software OS Releases ^{5,6}	Portal ⁸	Warranty Name
SLX, MLX, VDX, CER	1 Year	Return and Replace	1 Year	90 Days	Lifetime	1 Year Warranty
Optics	1 Year	Return and Replace	1 Year	90 Days	Lifetime	1 Year Warranty
BD8K, BD3	1 Year	Return and Replace	1 Year	90 Days	Lifetime	1 Year Warranty
BFO, BNA, NVA	N/A	N/A	90 Days	90 Days	90 Days	Software Warranty
Campus Switching						
Product Family	Hardware Duration ¹	Hardware Replacement ^{2,7}	Technical Support ^{3,4}	Software OS Releases ^{5,6}	Portal ⁸	Warranty Name
E520	Lifetime	Advance Replacement	90 days	Lifetime updates and upgrades ⁵	Lifetime	Universal LLW
VSP7400, VSP4900, X465, X435, V400, V300, sold after 10/1/2020	Lifetime	Advance Replacement	90 days	Lifetime updates and upgrades ⁵	Lifetime	Universal LLW
VSP 8600, 8400	1 Year	Return and Replace	1 Year	90 days	Lifetime	1 Year Warranty
X460-G2, X450-G2, X440-G2, X620	Lifetime	Advance Replacement	Lifetime	Lifetime updates and upgrades ⁵	Lifetime	Limited Lifetime Warranty With Advanced Hardware Replacement - 2
VSP7400, 4900 (10G) sold prior to 10/1/2020	1 Year	Return and Replace	1 Year	90 days	Lifetime	1 Year Warranty
ERS 5900, 4900, 4800, 3600, 3500	Lifetime	Advance Replacement	Lifetime	Lifetime updates and upgrades ⁵	Lifetime	Limited Lifetime Warranty With Advanced Hardware Replacement - 2
VSP 8200, 7200, 4800, 4400	Lifetime	Advance Replacement	Lifetime	Lifetime updates ⁵	Lifetime	Limited Lifetime Warranty With Advanced Hardware Replacement
VSP 4900 (excluding 10G) sold prior to 10/1/2020	Lifetime	Advance Replacement	Lifetime	Lifetime updates ⁵	Lifetime	Limited Lifetime Warranty With Express Advanced Hardware Replacement
X465, X435 sold prior to 10/1/2020	Lifetime	Advance Replacement	Lifetime	Lifetime updates ⁵	Lifetime	Limited Lifetime Warranty With Advanced Hardware Replacement

Extreme Product Warranty Summary (cont.)

Campus Switching (cont.)						
Product Family	Hardware Duration ⁶	Hardware Replacement ⁷	Technical Support ^{12,13}	Software OS Releases ¹⁴	Portal ¹⁵	Warranty Name
V300, V400 sold prior to 10/1/2020	Lifetime	Advance Replacement	Lifetime	Lifetime updates ⁵	Lifetime	Limited Lifetime Warranty With Advanced Hardware Replacement
XA 14xx	1 Year	Return and Replace	1 Year	90 days	Lifetime	1 Year Warranty
X480, X590, X650, X67-, X670V, X670-G2, X690, X770, X870	1 Year	Return and Replace	1 Year	90 days	Lifetime	1 Year Warranty
X430, X440, X460	Lifetime	Advance Replacement	Lifetime	Lifetime updates ⁵	Lifetime	Limited Lifetime Warranty With Advanced Hardware Replacement
Optics and cables	1 Year	Return and Replace	1 Year	90 days	Lifetime	1 Year Warranty
Accessories, LRM/MACsex Adapter	1 Year	Return and Replace	1 Year	90 days	Lifetime	1 Year Warranty
E4G-200, E4G-400	1 Year	Return and Replace	1 Year	90 days	Lifetime	1 Year Warranty
K-Series, S-Series	1 Year	Return and Replace	1 Year	90 days	Lifetime	1 Year Warranty
Fastpath 210, 200	Lifetime	Return and Replace	Lifetime	Lifetime updates ⁵	Lifetime	Limited Lifetime Warranty With Advanced Hardware Replacement - B
ISW Switch	5 Years	Return and Replace	5 Years	2 years updates	5 Years	5 Year Warranty
7100	1 Year	Return and Replace	1 Year	90 days	Lifetime	1 Year Warranty
Wireless						
Product Family	Hardware Duration ⁶	Hardware Replacement ⁷	Technical Support ^{12,13}	Software OS Releases ¹⁴	Portal ¹⁵	Warranty Name
SR20xx, BR, XR	Lifetime	Return and Replace	90 Days	90 Days	1 Year	Limited Lifetime Warranty (WING)
Identify Wireless AP3935, AP3912, AP3915 Indoor AP	Lifetime	Advance Replacement	Lifetime	Lifetime Updates and Upgrades ⁵	Lifetime	Limited Lifetime Warranty with Express Advanced Hardware Replacement-2
Identify Wireless AP3916 Indoor AP	1 Year	Return and Replace	90 Days	90 Days	1 Year	1 Year Warranty
Identify Wireless AP3965, AP3917 Outdoor AP	1 Year	Return and Replace	1 Year	90 Days	Lifetime	1 Year Warranty
Accessories, Antennas, Cables, Mounting	1 Year	Return and Replace	1 Year	90 Days	Lifetime	1 Year Warranty
AP360, AP460, AP660 Outdoor AP	1 Year	Return and Replace	90 Days	90 Days	1 Year	1 Year Warranty WING
AP310, AP410, AP505 Outdoor AP	Lifetime	Return and Replace	90 Days	90 Days	Lifetime	Limited Lifetime Warranty (WING)
AP7522, AP7532, AP7602, AP7622, AP8432, AP8633, AP7612, AP7632 Indoor AP	Lifetime	Return and Replace	90 Days	90 Days	Lifetime	Limited Lifetime Warranty (WING)
AP7562, AP7662, AP2663 Outdoor AP	1 Year	Return and Replace	90 Days	90 Days	1 Year	1 Year Warranty WING
AH-AP-20x, AH-ATOM-20x, AP20x Indoor AP unless otherwise noted	Lifetime	Return and Replace	90 Days	90 Days	Lifetime	Limited Lifetime Warranty WING
WING Wireless Accessories, Antennas, Cables	1 Month	Return and Replace	N/A	N/A	N/A	1 Month Warranty WING
Optics	1 Year	Return and Replace	90 Days	90 Days	1 Year	1 Year Warranty WING
Controllers, Appliances, Servers, Power Supplies, Accessories	1 Year	Return and Replace	1 Year	90 Days	Lifetime	1 Year Warranty
Select APs (AH-AP-20xx-FCC, AP20xx/CX-FCC) - See Price List	Lifetime	Advance Replacement	90 Days	90 Days	Lifetime	Limited Lifetime Warranty-AHR Only
Applications and Licenses						
Product Family	Hardware Duration ⁶	Hardware Replacement ⁷	Technical Support ^{12,13}	Software OS Releases ¹⁴	Portal ¹⁵	Warranty Name
Applications	N/A	N/A	90 Days	90 Days	90 Days	Software Warranty
Licenses	N/A	N/A	90 Days	90 Days	90 Days	Software Warranty
Purview ApplID PV/x	1 Year	Return and Replace	1 Year	90 Days	Lifetime	1 Year Warranty
ExtremeManagement Appliance, ExtremeControl Appliance	1 Year	Return and Replace	1 Year	90 Days	Lifetime	1 Year Warranty

1. Access to Extreme's GTAC for product warranty support line via email, web form or telephone is available from 8 AM to 5 PM (Monday to Friday) local End User's time for the purpose of confirming product conformance and diagnosing of basic hardware and software defects.
2. **Services Not Included.** Installation, network design and troubleshooting, configuration recommendations, complex topologies, consultation, and optimization services are not covered under product warranty, but are available for purchase through Extreme's authorized channel partners.
3. Access to [Extreme Customer Support](#) website, which may include, but is not limited to: (i) information about status and/or review of known hardware and/or software issues/problems, (ii) access to technical documentation, (iii) the ability to log a case, (iv) information about the status of outstanding product RMAs.
4. Certain products are entitled to publicly available Base Operational Software or Base Operational Software Upgrades and/or Updates that Extreme may develop and generally release on covered products, for the warranty period. "Base Operational Software" means embedded software that is required to operate an Extreme-branded network device product and is offered for sale as an inclusive component of such hardware network device product. Customers who desire specific feature updates, patches and fixes to be prioritized into future releases should purchase the appropriate support services from Extreme.
5. Software release versions are indicated by A.B.C. "A" indicates a Major Release Number. Major software releases are **Upgrades**. "B" and "C" indicate Minor (sustaining) and Maintenance Release Numbers. Minor and Maintenance releases are Updates.
6. **Advance Replacement**
 - a. Extreme will process the Return Material Authorization (RMA) relating to the defective product per the Advanced Replacement Warranty RMA Times section of the Extreme Networks Service Availability Matrix at [Extreme Policies and Warranties](#), Monday through Friday, in order for the replacement product to ship by the end of day of the Next Business Day. Otherwise Second Business Day shipment will be provided.
 - b. The replacement part will be shipped via economy service with shipping charges prepaid. Shipments are designed to achieve delivery to the customer within 5 to 10 business days from an Extreme regional parts depot. Variation in business delivery days is possible depending on country of destination or geographical location with the country or other factors.
 - c. Extreme will pay for the return freight of defective products from Customer to Extreme, including any applicable taxes, duties and custom fees to country of shipment destination. Any government or brokers fees associated with the return of products from Customer to Extreme in the country of origin is the Customer's responsibility. Customer must be the Exporter of Record for all product returns to Extreme. Extreme pays the freight of the product shipped to customer, excluding any applicable taxes, duties and custom fees in Customer's destination country. Extreme will not be the importer of record on any shipments to Customer.
 - d. Customer is responsible for returning the defective Product to an Extreme-authorized return facility. If Customer fails to return the defective Product within ten (10) business days of receipt of the replacement Product, Extreme reserves the right to invoice the customer at the List Price of the defective Product or product component.
7. **Return and Replace**
 - a. Extreme will make commercially reasonable efforts to ship a repaired or replacement Product within ten (10) business days (depending upon affected product) of receipt of the defective Product at an Extreme facility.
 - b. The replacement product will be shipped via economy service with shipping charges prepaid. Shipments are designed to achieve delivery to the customer within 5 to 10 business days from an Extreme regional parts depot. Variation in business delivery days is possible, depending on country of destination or geographical location within the country or other factors.

- c. Customer pays for the return freight of the product to Extreme's designated location, including any applicable taxes, duties and custom fees in both country of origin and destination. Customer must be the Exporter of Record for all product returns to Extreme. Extreme pays the freight of the product shipped to Customer, excluding any applicable taxes, duties and custom fees. Customer must be the Importer of Record for all product returns to Customer.
8. **Product Lifetime** - Except where otherwise defined, a period of time commencing on the warranty start date and ending five years from the Product's announced end-of-sale date in accordance with Extreme's End of Life policy at [Extreme Policies and Warranties](#). The end-of-sale dates are defined in the Extreme End of Life Policy. **Exceptions:** Extreme Wireless Controllers Product Lifetime warranty duration is one year from the Product's end-of- sale date. Wireless LAN 9100 Product Limited Lifetime warranty duration is three years from the Product's end-of-sale date.



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ExtremeWorks® Return and Replace Service

Service: ExtremeWorks Return and Replace Service
Version: 1.2
Date: July 2018
Availability: Global
Order Code: 97001

1.0 Service Overview

Extreme Networks Return and Replace Service offering provides technical support, update and/or upgrade support, and return-to-factory parts replacement for Covered Products (as defined herein). Upon diagnosis of a reported failure, the service offering covers the replacement part within the response time specified, subject to the conditions defined herein.

Extreme service offerings further grant Customers telephone and web access to Extreme Networks Global Technical Assistance Center ("GTAC") 24 hours a day, 365 days a year (24x7) to report problems, ask product-related questions and receive assistance for Extreme Networks hardware and Operational Software.

2.0 Service Levels

ExtremeWorks Return and Replace Service is available with the following response times:

Service Order Code	Service Levels	Response Time*
97001	ExtremeWorks Parts Return and Replace	10 business day from receipt

*Diagnosis and troubleshooting required to identify the faulty Field Replaceable Unit ("FRU") to be replaced must be completed prior to requesting the replacement FRU. The response time interval starts after receipt of defective unit by Extreme Networks.

3.0 Availability

ExtremeWorks Return and Replace Service, contracted for a defined period, are available globally from key business locations, subject to the conditions herein. Please refer to Appendix A for additional information on availability and restrictions by geography.

4.0 Deliverables

ExtremeWorks Return and Replace Service offering includes the following:

- **GTAC Technical Support** -24x7 telephone support that provides technical assistance with diagnosis of defect or failures in the Extreme Networks hardware and Operational Software to conform to published documentation on Covered Products.
- **Escalation Management** - The GTAC is the escalation point for the customer for raising unsatisfactory conditions or immediate concerns associated with the service quality on Covered Products. Please see Appendix B for additional detail.
- **Return and Replace Service** - provides customers the opportunity to return their defective part to Extreme Networks. A request for a replacement FRU is validated by GTAC and a Return Material Authorization (RMA) number is assigned. Within ten (10) business days of receipt of such defective product, Extreme Networks will ship a like or equivalent part back to the customer.
- **Operational Software Updates and Upgrades** - Customer is entitled to receive any Operational Software or Operational Software upgrades that Extreme Networks may develop and generally release on Covered Products. Operational Software is defined as embedded software that is required to operate an Extreme Networks network device and is offered for sale as an inclusive component of such hardware network device product as described in Extreme Networks' published price list applicable to such hardware product ("Covered Product").

Operational Software updates and upgrades may be obtained through Extreme Networks' Website after establishing a web account and are only available for Covered Product that is registered and subject to Extreme's standard published product documentation and support/maintenance entitlements. Use of Operational Software updates and upgrades shall be subject to the ExtremeWorks Support Program Terms and Conditions, in addition to your applicable product license agreement and purchasing terms and conditions.

NOTE: Support for Application Software products, including subscription to include entitlement to major and minor releases of the Application Software products, if available, are not included with the ExtremeWorks Return and Replace Service. Subscription and support for Application ExtremeWorks Return and Replace Service - SDD 2 Software must be ordered separately via ExtremeWorks Software Subscription services offerings as further published for availability in accordance with Extreme Networks' then-current Price List (currently categorized as order code 97003).

5.0 Extreme Networks Responsibilities

Extreme Networks is responsible for:

- Assisting with fault diagnosis required to identify the FRU to be replaced and to occur prior to assignment of the RMA number.
- Assigning an RMA number to each FRU to be replaced and notifying the customer of the relevant RMA numbers.
- Extreme Networks will measure and categorize the case priority level of software problems reported by the customer based on the impact on the network and in accordance with the classification definitions contained in Appendix B. If it is not clear which priority level applies, then the priority level assigned by the customer will be used. However, if a problem clearly belongs in a given priority level, then that level will be used. Case severity and level assignment will be determined in Extreme's sole discretion.
- If Extreme Networks diagnoses that a reported problem is due to non-conformance to published specifications of a supported Operational Software version, then Extreme Networks will provide any Operational Software fix for the reported non-conformance available at the time the problem is reported, provided that customer is running on a version of Operational Software that is currently supported, as identified in the Extreme Networks Product End of Life Policy.

- Shipping a repaired or replacement FRU (feature, function and fit compatible) within 10 business days of receipt of the defective FRU at an Extreme Networks facility if the purchased service is Return and Replace. Return shipment of repaired or replaced FRU to the customer's designated location will be included with this SDD.

6.0 Customer Responsibilities

The Customer is responsible for:

- Advising Extreme Networks, in writing, of any change of location for Covered Products to ensure proper dispatch and delivery.
- Ensuring that all covered hardware is operational and up to the currently supported revision level before this service plan goes into effect. Failure to do so will exclude that hardware from coverage.
- Ensuring that the products are used and maintained in accordance with the applicable product documentation.
- Providing, at Customer's expense, reasonable access to the Product through the Internet or via modem to establish a data communication link between Customer and the Extreme Networks GTAC engineer. In addition, customer must provide systems' passwords so that problems may be diagnosed and, where possible, corrected remotely.
- Requesting technical assistance from Extreme Networks in diagnosing a fault prior to requesting parts replacement.
- Using all reasonable efforts to maintain Operational Software products major releases installed at sites at the most current release level.
- Using the versions of Operational Software currently supported by Extreme Networks. If the Operational Software is a version other than that which is currently supported, as identified in the Extreme Networks Product End of Life and Support Plan End of Life Policy, the customer is required to purchase the required versions of the product to obtain support. Support for Application Software must be purchased separately under Software Subscription as defined in Extreme's then-current Price List, if available.

7.0 Assumptions

The following assumptions govern the delivery of ExtremeWorks Return and Replace service:

- Acknowledging that the customer's right to use the Operational Software releases is subject to the software licensing terms of the applicable purchasing/licensing agreement under which the customer purchased/licensed its products from Extreme Networks, and any associated terms and conditions contained therein.
- Extreme Networks will make commercially reasonable efforts to ship, at its expense, a replaceable hardware FRU to arrive at the customer's designated location within the specified time frame and based on the parameters indicated in Appendix A. In certain geographies, the customer may be responsible for the cost of importing replacement product, including customs and duty fees. Please consult with Extreme Networks or your authorized Extreme Networks Services Partner to learn whether your location is included.
- For the purpose of providing support services, Extreme Networks will have the right at any time to audit a contracted site through software, remote polling or other reasonable means to verify the site's in-service inventory against the contracted equipment, to conform to the customer's network size and/or to verify the software eligibility status, except as otherwise may be prohibited by applicable law.
- If the customer's Operational Software is a version that is not currently supported, and the non-conformance is corrected in a supported version, then the customer will be advised to upgrade to obtain assistance. Extreme Networks will not incorporate software fixes or corrections into versions of Operational Software other than those currently supported in accordance with Extreme Networks' Product End of Life and Support Plan End of Life Policy. Extreme Networks does not represent or warrant that all nonconformance of the Operational Software can be corrected.
- Parts Repair and FRU delivery is subject to the hours of coverage and response times as identified in Appendix A.
- Operational Software products major releases and upgrades are provided for distribution only to the customer for use on or with the Extreme Networks-supplied products on which they operate, in accordance with the Extreme Networks published specifications.
- Operational Software upgrades may be obtained through Extreme Networks' Web site after establishing a web account and are only available for the Covered Product that is registered. Use of Operational Software upgrades shall be subject to the terms and conditions of said software.
- Customer will maintain and backup all configuration data.
- The [terms and conditions](#) of Extreme's performance of support and services are as posted [here](#). In the event of any conflict between the language in this Service Description Document and Extreme Networks published terms and conditions, Extreme Networks published terms and conditions shall govern.
- Unless required for operational reasons and elsewhere agreed between the customer and Extreme Networks, the replacement FRU will be at the then-current minimum hardware, software and software release levels as published by Extreme Networks.
- When the hardware or software is part of the same system, it must carry consistent service level coverage. This includes the chassis, modules, circuit packs, software and all other supportable components within the system configuration.

8.0 Exclusions

The following are completely out of the scope of ExtremeWorks Return and Replace Service entitlements and are not included herein. Professional Services offerings may be available for purchase and Extreme reserves the right to change for any costs incurred with performance of services affected by any of the following factors below.

- Extreme Networks is not required to provide any services for problems arising out of: (i) Company's failure to implement all Updates issued under the Services; (ii) alterations of or additions to the Products performed by parties other than Extreme; (iii) accident, natural disasters, terrorism, negligence, or misuse of the Products (such as, without limitation, fire, flood, water, wind, lightning or other acts of God, operation outside of environmental specifications or in a manner for which the Products were not designed); (iv) interconnection of the Products with other products not supplied by Extreme, or (v) certain components, including but not limited to the following: spare fan trays, blank panels, cables, cable kits, rack mount kits, brackets, antennas and consumable items.

- Extreme Networks shall only be obligated to support the then-current revision of the Products and the immediately prior revision. Support for any earlier versions or for other problems not covered under the Services may be obtained at then-current rates for special technical services and on Extreme Networks then-current terms and conditions for such services, subject to acceptance by Extreme Networks.
- Extreme Networks will have no liability or obligations for failure of the products to conform to published specifications resulting from the combination of the products with any third-party hardware or software not authorized in Extreme Networks published documentation or when caused by customer's inability to use the products if the products are operating substantially in accordance with published specifications.
- Service availability is subject to geographical limitations, as advised by Extreme Networks upon request. Extreme Networks will have no obligation to meet the response times outlined in the Appendix A if the customer's site is outside of the geographical zone of service availability. If the customer purchases this service for locations outside Extreme Networks advised geographical limitations, Extreme Networks will be required only to use commercially reasonable efforts to replace FRUs as soon as practical after receipt of a defective product from the customer.
- Services such as upgrades to hardware are excluded from the scope of this SDD and should be ordered separately.
- Labor charges for reinstalling the customer's system Operational Software (operational or application) or enduser configuration software, other than what is provided in the customer's backup copy, are not included within the scope of this service. This is a separately charged and scheduled activity. This service does not include support and maintenance of any third party software or hardware not provided by Extreme Networks.
- This service offering and any subsequent service renewals are subject to the terms and conditions of Extreme Networks Product End of Life and Support Plan End of Life policies.
- New releases and upgrades for Application Software, or software releases, updates or upgrades otherwise out-of-scope as defined herein.
- Unless elsewhere agreed in writing between the customer and Extreme Networks in a separate contract, this service does not include root-cause analysis, the provision of fault reports or lead-time/performance metrics.

Appendix A

Return and Replace Deliverables

Extreme Networks will make commercially reasonable efforts, at its expense (excluding any and all duties, taxes or government imposed fees if applicable) to see that the replacement hardware FRU arrives at the customer's designated location within the specified time period based upon the system's Response Service Level following completion of diagnostics and the assignment of an RMA Number. Extreme Networks will have no obligation to meet the response times outlined in the appropriate ExtremeWorks Service Description if the customer's site is outside the geographical zone of service availability. Extreme Networks is not responsible for any delays related to import/export or customs regulations or processes, or uncontrollable transportation issues including inability of the customer to allow the actual delivery. A current list of Extreme authorized servicing depots that correspond to the defined ExtremeWorks services offerings, including expected delivery response, defined herein is available on Extreme Networks website.

For Products covered with Return and Replace level of service, the customer pays for the return freight of the product to Extreme Networks, including any applicable taxes, duties and custom fees. Extreme Networks pays the freight of the unit shipped to the customer, excluding any applicable taxes, duties and custom fees.

Appendix B

Case Severity and Escalation Guidelines

Extreme Networks will measure and categorize the case priority level of hardware/software problems reported by the customer based on the impact on the network and in accordance with the classification in the table below. If it is not clear which case priority level applies, then the

case priority level assigned by the customer will initially be used. However, if a problem clearly belongs in a given case priority level as defined below, then that level will be used. Notwithstanding the foregoing, case severity and level assignment will be determined in Extreme's sole discretion.

Service Level Objectives Matrix

Case Priority	Response Time	Restore Time (Software Fix or Workaround)	Update Frequency
C1: Customer's network segment or management application is down or experiencing a consistent, measurable performance impact with no immediate resolution available	15 Minutes	4 Hours	Up to 4 hours
C2: Customer's network is experiencing intermittent failure or degradation of network or management application.	1 Hour	1 Day	Daily
C3: Customer has issues that do not affect normal network or management application operation and/or questions concerning product function or use.	8 Hours	10 Days	5 Days
C4: Submission of a product enhancement /new feature request	Immediate Acknowledgement	N/A	N/A

If you do not believe that your support issue is being addressed to meet your business needs you may escalate your request by asking for the GTAC manager on duty.

Additional information on GTAC processes and procedures can be found at the Services tab from the Extreme Networks home page.

Support Life Cycle Communication Matrix

Notification Levels	C1 - Critical	C2 - High Priority	C3 - Medium Priority
Support Engineer	Immediate	Immediate	Immediate
GTAC Manager	Immediate	Immediate	10 Days
Director, Global Technical Services	Immediate	48 Hours	10 Days
Vice President, Global Technical Services	2 Hours	72 Hours	20 Days
Executive Management (CTO/EVP Eng)	4 Hours	None	None



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ExtremeWorks[®] Software Support Service

Service: ExtremeWorks Software Support

Version: 2.0

Date: October 2019

Availability: Global

Order Code: 97003

1.0 Service Overview

Extreme Networks Software Support Service offering provide technical support, and update and/ or upgrade support, for Covered Products (as defined herein).

Extreme service offerings further grant Customers telephone and web access to Extreme Networks Global Technical Assistance Center ("GTAC") 24 hours a day, 365 days a year (24x7) to report problems, ask product-related questions and receive assistance for Extreme Networks Application Software.

2.0 Service Levels

ExtremeWorks Software Support Service is available with the following response times:

Service Order Code	Service Levels
97003	ExtremeWorks Software Support

3.0 Availability

ExtremeWorks Software Support Service, contracted for a defined period, are available globally, subject to the conditions herein.

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4.0 Deliverables

Each ExtremeWorks Software Support Service offering includes the following:

- **GTAC Technical Support** – 24x7 telephone support that provides technical assistance with diagnosis of defect or failures in the Extreme Networks hardware and Application Software to conform to published documentation on Covered Products.
- **Escalation Management** – The GTAC is the escalation point for the customer for raising unsatisfactory conditions or immediate concerns associated with the service quality on Covered Products. Please see Appendix A for additional detail.
- **Application Software Updates and Software Upgrades** - Customer is entitled to receive any Application Software or software upgrades that Extreme Networks may develop and generally release on Covered Products. Application Software is defined as software that is not required to operate a network device, such as management software. It is not an enhancement to the Operational Software and may reside on another network device. Application Software updates and upgrades may be obtained through Extreme Networks' Website after establishing a web account and are only available for Covered Product that is registered and subject to Extreme's standard published product documentation and support/maintenance entitlements. Use of Application Software updates and upgrades shall be subject to the ExtremeWorks Support Program Terms and Conditions, in addition to your applicable product license agreement and purchasing terms and conditions.
- **Access to Extreme Networks' Customer Support Website** – which may include but is not limited to (i) status review of known hardware and software problems (ii) access to technical documentation (iii) ability to log a case (iv) status view of outstanding RMAs.

NOTE: Support for Operational Software products, to include entitlement to major and minor releases of the Operational Software products, if available, are not included with the ExtremeWorks Software Support services. Support for Operational Software must be ordered separately via ExtremeWorks services offerings as further published for availability in accordance with Extreme Networks' then-current Price List. Operational Software is defined as embedded software that is required to operate an Extreme Networks network device and is offered for sale as an inclusive component of such hardware network device.

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5.0 Extreme Networks Responsibilities

Extreme Networks is responsible for:

- Extreme Networks will measure and categorize the case priority level of Application Software problems reported by the customer based on the impact on the network and in accordance with the classification definitions contained in Appendix A. If it is not clear which priority level applies, then the priority level assigned by the customer will be used. However, if a problem clearly belongs in a given priority level, then that level will be used. Case severity and level assignment will be determined in Extreme's sole discretion.
- If Extreme Networks diagnoses that a reported problem is due to non-conformance to published specifications of a supported Application Software version, then Extreme Networks will provide any Application Software fix for the reported non-conformance available at the time the problem is reported, provided that customer is running on a version of Application Software that is currently supported, as identified in the Extreme Networks Product End of Life and Support Plan End of Life Policy.

6.0 Customer Responsibilities

The Customer is responsible for:

- Ensuring that all covered Application Software is operational and up to the currently supported revision level before this service plan goes into effect. Failure to do so will exclude that software from coverage.
- Ensuring that the products are used and maintained in accordance with the applicable product documentation.
- Providing, at Customer's expense, reasonable access to the Product through the Internet or via modem to establish a data communication link between Customer and the Extreme Networks GTAC engineer. In addition, customer must provide systems' passwords so that problems may be diagnosed and, where possible, corrected remotely.
- Using all reasonable efforts to maintain Application Software products major releases installed at sites at the most current release level.
- Using the versions of Application Software currently supported by Extreme Networks. If the Application

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Software is a version other than that which is currently supported, as identified in the Extreme Networks Product End of Life and Support Plan End of Life Policy, the customer is required to purchase the required versions of the product to obtain support. Support for Operational Software must be purchased separately under Software Support as defined in Extreme's then-current Price List, if available.

- Using the versions of Application Software currently supported by Extreme Networks. If the Application Software is a version other than that which is currently supported, as identified in the Extreme Networks Product End of Life and Support Plan End of Life Policy, the customer is required to purchase the required versions of the product to obtain support.

7.0 Assumptions

The following assumptions govern the delivery of ExtremeWorks Software Support:

- Acknowledging that the customer's right to use the Application Software releases is subject to the software licensing terms of the applicable purchasing/licensing agreement under which the customer purchased/licensed its products from Extreme Networks, and any associated terms and conditions contained therein.
- For the purpose of providing support services, Extreme Networks will have the right at any time to audit a contracted site through software, remote polling or other reasonable means to verify the site's in-service inventory against the contracted equipment, to conform to the customer's network size and/or to verify the software eligibility status, except as otherwise may be prohibited by applicable law.
- If there is no available Application Software fix, Extreme Networks will use reasonable commercial efforts to remedy such non-conformance, which may include a workaround or other temporary or permanent fix to the Application Software, provided that the reported problem can be verified and/or recreated by Extreme Networks on the then current software version.
- If the customer's software is a version that is not currently supported, and the non-conformance is



corrected in a supported version, then the customer will be advised to upgrade to obtain assistance. Extreme Networks will not incorporate software fixes or corrections into versions of Application Software other than those currently supported in accordance with Extreme Networks' Product End of Life and Support Plan End of Life Policy. Extreme Networks does not represent or warrant that all nonconformance of the Application Software can be corrected.

- Application Software products major releases and upgrades are provided for distribution only to the customer for use on or with the Extreme Networks – supplied products on which they operate, in accordance with the Extreme Networks published specifications.
- Application Software upgrades may be obtained through Extreme Networks; Web site after establishing a web account and are only available for the Covered Product that is registered. Use of Application Software upgrades shall be subject to the terms and conditions of said software.
- Customer will maintain and backup all configuration data.
- The terms and conditions of Extreme's performance of support and services are as posted here. In the event of any conflict between the language in this Service Description Document and Extreme Networks published terms and conditions, Extreme Networks published terms and conditions shall govern.
- When the hardware or software is part of the same system, it must carry consistent service level coverage. This includes the chassis, modules, circuit packs, software and all other supportable components within the system configuration.

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8.0 Exclusions

The following are completely out of the scope of ExtremeWorks Software Support Service entitlements and are not included herein. Professional Services offerings may be available for purchase and Extreme reserves the right to charge for any costs incurred with performance of services affected by any of the following factors below.

- Extreme Networks is not required to provide any services for problems arising out of: (i) Company's failure to implement all Updates issued under the Services; (ii) alterations of or additions to the Products performed by parties other than Extreme; (iii) accident, natural disasters, terrorism, negligence, or misuse of the Products (such as, without limitation, fire, flood, water, wind, lightning or other acts of God, operation outside of environmental specifications or in a manner for which the Products were not designed); (iv) interconnection of the Products with other products not supplied by Extreme, or (v) certain components, including but not limited to the following: spare fan trays, blank panels, cables, cable kits, rack mount kits, brackets, antennas and consumable items.
- Extreme Networks shall only be obligated to support the then-current revision of the Products and the immediately prior revision. Support for any earlier versions or for other problems not covered under the Services may be obtained at then-current rates for special technical services and on Extreme Networks then-current terms and conditions for such services, subject to acceptance by Extreme Networks.
 - Extreme Networks will have no liability or obligations for failure of the products to conform to published specifications resulting from the combination of the products with any third-party hardware or software not authorized in Extreme Networks published documentation or when caused by customer's inability to use the products if the products are operating substantially in accordance with published specifications.
 - Labor charges for reinstalling the customer's system Software (operational or application) or end user configuration software, other than what is provided in the customer's backup copy, are not included within the scope of this service. This is a separately charged and scheduled activity.



- New releases and upgrades for Operational Software, or software releases, updates and upgrades otherwise out-of-scope as defined herein.
- Services such as upgrades to hardware are excluded from the scope of this SDD and should be ordered separately.
- The customer acknowledges that any hardware upgrades, improvements or changes required to install or use Application Software product major release or update, or any part thereof are charged separately from and are in addition to the charges of the current contract.
- This service does not include support and maintenance of any third-party software or hardware not provided by Extreme Networks.
- This service does not include the repair or replacement of defective hardware. If Extreme Networks determines that defective Extreme Networks hardware causes a reported problem, then Extreme Networks will advise customer thereof. If the customer desires to remedy such defect, Extreme Networks and the customer will agree upon service at the Extreme Networks then-published per-incident rates, and subsequently Extreme Networks will recommend an appropriate annual hardware contract to the customer of consideration.
- This service offering and any subsequent service renewals are subject to the terms and conditions of Extreme Networks Product End of Life and Support Plan End of Life policy.
- Unless elsewhere agreed in writing between the customer and Extreme Networks in a separate contract, this service does not include root-cause analysis, the provision of fault reports or lead-time/performance metrics.

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Appendix A: Case Severity and Escalation Guidelines

Extreme Networks will measure and categorize the case priority level of hardware/software problems reported by the customer based on the impact on the network and in accordance with the classification in the table below. If it is not clear which case priority level applies, then the case priority level assigned by the customer

will initially be used. However, if a problem clearly belongs in a given case priority level as defined below, then that level will be used. Notwithstanding the foregoing, case severity and level assignment will be determined in Extreme's sole discretion.

Service Level Objectives Matrix

Case Priority	Response Time	Restore Time (Software Fix or Workaround)	Update Frequency
C1: Customer's network segment or management application is down or experiencing a consistent, measurable performance impact with no immediate resolution available	15 minutes	4 hours	Up to 4 hours
C2: Customer's network is experiencing intermittent failure or degradation of network or management application.	1 hour	1 day	daily
C3: Customer has issues that do not affect normal network or management application operation and/or questions concerning product function or use.	8 hours	10 days	5 days
C4: Submission of a product enhancement /new feature request	Immediate Acknowledgment	N/A	N/A

If you do not believe that your support issue is being addressed to meet your business needs you may escalate your request by asking for the GTAC manager on duty.

Additional information on GTAC processes and procedures can be found at the Services tab from the Extreme Networks home page.

Support Life Cycle Communication Matrix

Notification Levels	C1 - Critical	C2 - High Priority	C3 - Medium Priority
Support Engineer	Immediate	Immediate	Immediate
GTAC Manager	Immediate	Immediate	10 days
Director, Global Technical Services	Immediate	48 hours	10 days
Vice President, Global Technical Services	2 hours	72 hours	20 days
Executive Management (CTO/EVP Eng.)	4 hours	None	None

ExtremeWorks® Software and Global Technical Assistance Center (GTAC) Service

Service: ExtremeWorks Software and Global Technical Assistance Center (GTAC) Service

Version: 1.2

Date: July 2018

Availability: Global

Order Code: 97000

1.0 Service Overview

Extreme Networks Software and GTAC Service offering provides technical support and update and/or upgrade support, for Covered Products (as defined herein).

Extreme service offerings further grant Customers telephone and web access to Extreme Networks Global Technical Assistance Center ("GTAC") 24 hours a day, 365 days a year (24x7) to report problems, ask product-related questions and receive assistance for Extreme Networks hardware and Operational Software.

2.0 Service Levels

ExtremeWorks Software and GTAC Support has the following Services Order Code:

Service Order Code	Service Levels
97000	Software and GTAC

3.0 Availability

ExtremeWorks Software and GTAC Service, contracted for a defined period, is available globally, subject to the conditions herein.

4.0 Deliverables

ExtremeWorks Software and GTAC service offering includes the following:

- **GTAC Technical Support** – 24x7 telephone support that provides technical assistance with diagnosis of defect or failures in the Extreme Networks hardware and Operational Software to conform to published documentation on Covered Products.

- **Escalation Management** – The GTAC is the escalation point for the customer for raising unsatisfactory conditions or immediate concerns associated with the service quality on Covered Products. See Appendix A for additional detail.

- **Operational Software Updates and Upgrades** – Customer is entitled to receive any Operational Software or Operational Software upgrades that Extreme Networks may develop and generally release on Covered Products. Operational Software is defined as embedded software that is required to operate an Extreme Networks network device and is offered for sale as an inclusive component of such hardware network device product as described in Extreme Networks' published price list applicable to such hardware product ("Covered Product").

Operational Software updates and upgrades may be obtained through Extreme Networks' Website after establishing a web account and are only available for Covered Product that is registered and subject to Extreme's standard published product documentation and support/maintenance entitlements. Use of Operational Software updates and upgrades shall be subject to the ExtremeWorks Support Program Terms and Conditions, in addition to your applicable product license agreement and purchasing terms and conditions.

NOTE: Support for Application Software products, including subscription to include entitlement to major and minor releases of the Application Software products, if available, are not included with the ExtremeWorks Software and GTAC Service. Subscription and support for Application Software must be ordered separately via ExtremeWorks Software Subscription services offerings as further published for availability in accordance with Extreme Networks' then-current Price List (currently categorized as order code 97003).

- Access to Extreme Networks' Customer Support Website - which may include, but is not limited to (i) status review of known hardware and software problems (ii) access to technical documentation (iii) ability to log a case (iv) status view of outstanding RMAs.

5.0 Extreme Networks Responsibilities

Extreme Networks is responsible for:

- Extreme Networks will measure and categorize the case priority level of software problems reported by the customer based on the impact on the network and in accordance with the classification definitions contained in Appendix A. If it is not clear which priority level applies, then the priority level assigned by the customer will be used. However, if a problem clearly belongs in a given priority level, then that level will be used. Case severity and level assignment will be determined in Extreme's sole discretion.
- If Extreme Networks diagnoses that a reported problem is due to non-conformance to published specifications of a supported Operational Software version, then Extreme Networks will provide any Operational Software fix for the reported non-conformance available at the time the problem is reported, provided that customer is running on a version of Operational Software that is currently supported, as identified in the Extreme Networks Product End of Life and Support Plan End of Life Policy.

6.0 Customer Responsibilities

The Customer is responsible for:

- Ensuring that all covered hardware is operational and up to the currently supported revision level before this service plan goes into effect. Failure to do so will exclude that hardware from coverage.
- Ensuring that the products are used and maintained in accordance with the applicable product documentation.
- Providing, at Customer's expense, reasonable access to the Product through the Internet or via modem to establish a data communication link between Customer and the Extreme Networks GTAC engineer and provide systems passwords so that problems may be diagnosed and, where possible, corrected remotely.
- Using all reasonable efforts to maintain Operational Software products major releases installed at sites at the most current release level.

- Using the versions of Operational Software currently supported by Extreme Networks. If the Operational Software is a version other than that which is currently supported, as identified in the Extreme Networks Product End of Life and Support Plan End of Life Policy, the customer is required to purchase the required versions of the product to obtain support. Support for Application Software must be purchased separately under Software Subscription as defined in Extreme's then-current Price List, if available.

7.0 Assumptions

The following assumptions govern the delivery of ExtremeWorks

Software and GTAC Support:

- Acknowledging that the customer's right to use the Operational Software releases is subject to the software licensing terms of the applicable purchasing/licensing agreement under which the customer purchased/licensed its products from Extreme Networks, and any associated terms and conditions contained therein.
- For the purpose of providing support services, Extreme Networks will have the right at any time to audit a contracted site through software, remote polling or other reasonable means to verify the site's in-service inventory against the contracted equipment, to conform to the customer's network size and/or to verify the software eligibility status, except as otherwise may be prohibited by applicable law.
- If there is no available Operational Software fix, Extreme Networks will use reasonable commercial efforts to remedy such non-conformance, which may include a workaround or other temporary or permanent fix to the Operational Software, provided that the reported problem can be verified and/or recreated by Extreme Networks on the then current software version.
- If the customer's Operational Software is a version that is not currently supported, and the non-conformance is corrected in a supported version, then the customer will be advised to upgrade to obtain assistance. Extreme Networks will not incorporate software fixes or corrections into versions of Operational Software other than those currently supported in accordance with Extreme Networks' Product End of Life and Support Plan End of Life Policy. Extreme Networks does not represent or warrant that all nonconformance of the Operational Software can be corrected.

- Operational Software products major releases and upgrades are provided for distribution only to the customer for use on or with the Extreme Networks-supplied products on which they operate, in accordance with the Extreme Networks published specifications.
- Operational Software upgrades may be obtained through Extreme Networks' Web site after establishing a web account and are only available for the Covered Product that is registered. Use of Operational Software upgrades shall be subject to the terms and conditions of said software.
- Customer will maintain and backup all configuration data.
- The [terms and conditions](#) of Extreme's performance of support and services are as posted [here](#). In the event of any conflict between the language in this Service Description Document and Extreme Networks published terms and conditions, Extreme Networks published terms and conditions shall govern.
- When the hardware or software is part of the same system, it must carry consistent service level coverage. This includes the chassis, modules, circuit packs, software and all other supportable components within the system configuration.

8.0 Exclusions

The following are completely out of the scope of ExtremeWorks Software and GTAC Service entitlements and are not included herein. Professional Services offerings may be available for purchase and Extreme reserves the right to change for any costs incurred with performance of services affected by any of the following factors below.

- Extreme Networks is not required to provide any services for problems arising out of: (i) Company's failure to implement all Updates issued under the Services; (ii) alterations of or additions to the Products performed by parties other than Extreme; (iii) accident, natural disasters, terrorism, negligence, or misuse of the Products (such as, without limitation, fire, flood, water, wind, lightning or other acts of God, operation outside of environmental specifications or in a manner for which the Products were not designed); (iv) interconnection of the Products with other products not supplied by Extreme, or (v) certain components, including but not limited to the following: spare fan trays, blank panels, cables, cable kits, rack mount kits, brackets, antennas and consumable items.
- Extreme Networks shall only be obligated to support the then-current revision of the Products and the immediately prior revision. Support for any earlier versions or for other problems not covered under the

Services may be obtained at then-current rates for special technical services and on Extreme Networks then-current terms and conditions for such services, subject to acceptance by Extreme Networks.

- Extreme Networks will have no liability or obligations for failure of the products to conform to published specifications resulting from the combination of the products with any third-party hardware or software not authorized in the Extreme Networks published documentation or when caused by customer's inability to use the products if the products are operating substantially in accordance with published specifications.
- Labor charges for reinstalling the customer's system Operational Software (operational or application) or enduser configuration software, other than what is provided in the customer's backup copy, are not included within the scope of this service. This is a separately charged and scheduled activity.
- Services such as upgrades to hardware are excluded from the scope of this SDD and should be ordered separately.
- The customer acknowledges that any hardware upgrades, improvements or changes required to install or use an Operational Software product major release or update or any part thereof are charged separately from and are in addition to the charges of the current contract.
- This service does not include support and maintenance of any third party software or hardware not provided by Extreme Networks.
- This service does not include the repair or replacement of defective hardware. If Extreme Networks determines that defective Extreme Networks hardware causes a reported problem, then Extreme Networks will advise customer thereof. If the customer desires to remedy such defect, Extreme Networks and the customer will agree upon service at the Extreme Networks then-published per-incident rates, and subsequently Extreme Networks will recommend an appropriate annual hardware contract to the customer for consideration.
- This service offering and any subsequent service renewal is subject to the terms and conditions of the applicable Extreme Networks Product End of Life and Support Plan End of Life policy.
- New releases and upgrades for Application Software, or software releases, updates or upgrades otherwise out-of-scope as defined herein.
- Unless elsewhere agreed in writing between the customer and Extreme Networks in a separate contract, this service does not include root-cause analysis, the provision of fault reports or lead-time/performance metrics.

Appendix A

Case Severity and Escalation Guidelines

Extreme Networks will measure and categorize the case priority level of hardware/software problems reported by the customer based on the impact on the network and in accordance with the classification in the table below. If it is not clear which case priority level applies, then the

case priority level assigned by the customer will initially be used. However, if a problem clearly belongs in a given case priority level as defined below, then that level will be used. Notwithstanding the foregoing, case severity and level assignment will be determined in Extreme's sole discretion.

Support Level Objectives Matrix

Case Priority	Response Time	Restore Time (Software Fix or Workaround)	Update Frequency
C1: Customer's network segment or management application is down or experiencing a consistent, measurable performance impact with no immediate resolution available	15 Minutes	4 hours	Up to 4 hours
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C3: Customer has issues that do not affect normal network or management application operation and/or questions concerning product function or use.	8 Hours	10 Days	5 Days
C4: Submission of a product enhancement /new feature request	Immediate Acknowledgement	N/A	N/A

If you do not believe that your support issue is being addressed to meet your business needs you may escalate your request by asking for the GTAC manager on duty.

Additional information on GTAC processes and procedures can be found at the Services tab from the Extreme Networks home page.

Support Life Cycle Communication Matrix

Notification Levels	C1 - Critical	C2 - High Priority	C3 - Medium Priority
Support Engineer	Immediate	Immediate	Immediate
GTAC Manager	Immediate	Immediate	10 Days
Director, Global Technical Services	Immediate	48 Hours	10 Days
Vice President, Global Technical Services	2 Hours	72 Hours	20 Days
Executive Management (CTO/EVP Eng)	4 Hours	None	None



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ExtremeWorks® AHR Service

Service: ExtremeWorks Advanced Hardware Replacement Service (Next Business Day and 4 Hour Response)

Version: 2.1

Date: July 2018

Availability: Global

Order Code: 97004 and 97007

1.0 Service Overview

Extreme Networks Advanced Hardware Replacement Services offerings provide technical support, update and/or upgrade support, and advanced parts replacement for Covered Products (as defined herein) according to particular levels of purchase. Upon diagnosis of a reported failure, service offerings cover the replacement part arrival within the response time specified for the service level purchased, subject to the conditions defined herein.

Extreme service offerings further grant Customers telephone and web access to Extreme Networks Global Technical Assistance Center ("GTAC") 24 hours a day, 365 days a year (24x7) to report problems, ask product-related questions and receive assistance for Extreme Networks hardware and Operational Software.

2.0 Service Levels

ExtremeWorks Advanced Hardware Replacement Services are available with the following response times depending upon the offering purchased:

Service Order Code	Service Levels	FRU Response Time*
97004	ExtremeWorks NBD Advanced Hardware Replacement	Next Business Day
97007	ExtremeWorks 4 Hour Advanced Hardware Replacement	24x7 - 4 Hours

*Diagnosis and troubleshooting required to identify the faulty Field Replaceable Unit ("FRU") to be replaced must be completed prior to requesting the replacement FRU. The response time interval starts after the GTAC validates the customer's request for a replacement FRU and assigns an RMA number.

3.0 Availability

ExtremeWorks Advanced Hardware Replacement Services, contracted for a defined period, are available globally from key business locations, subject to the conditions herein. Please refer to Appendix A for addition information on availability and restrictions by geography.

4.0 Deliverables

Each ExtremeWorks Advanced Hardware Replacement Service offer includes the following:

- **GTAC Technical Support** - 24x7 telephone support that provides technical assistance with diagnosis of defect or failures in the Extreme Networks hardware and Operational Software to conform to published documentation on Covered Products.
- **Escalation Management** - The GTAC is the escalation point for the customer for raising unsatisfactory conditions or immediate concerns associated with the service quality on Covered Products. Please see Appendix B for additional detail.
- **Advanced Shipment** - Extreme Networks provides for the advanced shipment of FRUs to the customer's contracted sites within the contract response time on Covered Products. A request for a replacement FRU is validated by GTAC and a Return Material Authorization (RMA) number is assigned. Extreme Networks will pick, pack and dispatch the replacement FRU using a commercial delivery service to make the delivery to the customer's contracted site. The replacement FRU will be delivered within the contracted response time, subject to the regional restrictions, response times, and diagnostic requirements identified in Appendix A.

- **Operational Software Updates and Upgrades** – Customer is entitled to receive any Operational Software or Operational Software upgrades that Extreme Networks may develop and generally release on Covered Products. Operational Software is defined as embedded software that is required to operate an Extreme Networks network device and is offered for sale as an inclusive component of such hardware network device product as described in Extreme Networks’ published price list applicable to such hardware product (“Covered Product”). Operational Software updates and upgrades may be obtained through Extreme Networks’ Website after establishing a web account and are only available for Covered Product that is registered and subject to Extreme’s standard published product documentation and support/ maintenance entitlements. Use of Operational Software updates and upgrades shall be subject to the ExtremeWorks Support Program Terms and Conditions, in addition to your applicable product license agreement and purchasing terms and conditions.

NOTE: Support for Application Software products, including subscription to include entitlement to major and minor releases of the Application Software products, if available, are not included with the ExtremeWorks Advanced Hardware Replacement Services. Subscription and support for Application Software must be ordered separately via ExtremeWorks Software Subscription services offerings as further published for availability in accordance with Extreme Networks’ then-current Price List (currently categorized as order code 97093).

- **Access to Extreme Networks’ Customer Support Website** – which may include, but is not limited to (i) status review of known hardware and software problems (ii) access to technical documentation (iii) ability to log a case (iv) status view of outstanding RMAs.

5.0 Extreme Networks Responsibilities

Extreme Networks is responsible for:

- Assisting with fault diagnosis required to identify the FRU to be replaced and to occur prior to assignment of the RMA number.
- Assigning an RMA number to each FRU to be replaced and notifying the customer of the relevant RMA numbers.
- Shipping an replacement FRU on an advance exchange basis to the customer’s location per the applicable availability and restrictions in Appendix A.
- Extreme Networks will measure and categorize the case priority level of software problems reported by the customer based on the impact on the network and in accordance with the classification definitions contained in Appendix B. If it is not clear which priority level applies, then the priority level assigned by the customer will be used. However, if a problem clearly belongs in a given priority level, then that level will be used. Case severity and level assignment will be determined in Extreme’s sole discretion.
- If Extreme Networks diagnoses that a reported problem is due to non-conformance to published specifications of a supported Operational Software version, then Extreme Networks will provide any Operational Software fix for the reported non-conformance available at the time the problem is reported, provided that customer is running on a version of Operational Software that is currently supported, as identified in the Extreme Networks Product End of Life Policy.

6.0 Customer Responsibilities

The Customer is responsible for:

- Advising Extreme Networks, in writing, of any change of location for Covered Products to ensure proper dispatch and delivery.
- Ensuring that all covered hardware is operational and up to the currently supported revision level before this service plan goes into effect. Failure to do so will exclude that hardware from coverage.
- Ensuring that the products are used and maintained in accordance with the applicable product documentation.
- Returning the defective FRU to an authorized Extreme Networks repair facility. In the event that you fail to return the defective FRU within ten (10) business days of receipt of the replacement FRU, Extreme Networks reserves the right to invoice you for such product or product component based on the current list price. Failure to return defective parts in a timely manner may result in the suspension of future advance hardware replacement service delivery from Extreme Networks.
- Providing, at Customer’s expense, reasonable access to the Product through the Internet or via modem to establish a data communication link between Customer and the Extreme Networks GTAC engineer. In addition, customer must provide systems’ passwords so that problems may be diagnosed and, where possible, corrected remotely.

- Using all reasonable efforts to maintain software products major releases installed at sites at the most current release level.
- Using the versions of Operational Software currently supported by Extreme Networks. If the Operational Software is a version other than that which is currently supported, as identified in the Extreme Networks Product End of Life and Support Plan End of Life Policy, the customer is required to purchase the required versions of the product to obtain support. Support for Application Software must be purchased separately under Software Subscription as defined in Extreme's then-current Price List, if available.

7.0 Assumptions

The following assumptions govern the delivery of ExtremeWorks Advance Hardware Replacement Service:

- Extreme Networks will make commercially reasonable efforts to ship, at its expense, a replaceable hardware FRU to arrive at the customer's designated location within the specified time frame and based on the parameters indicated in Appendix A. In certain geographies, the customer may be responsible for the cost of importing replacement product, including customs and duty fees. Please consult with Extreme Networks or your authorized Extreme Networks Services Partner to learn whether your location is included.
- For the purpose of providing support services, Extreme Networks will have the right at any time to audit a contracted site through software, remote polling or other reasonable means to verify the site's in-service inventory against the contracted equipment, to conform to the customer's network size and/or to verify the software eligibility status, except as otherwise may be prohibited by applicable law.
- FRU delivery is subject to the hours of coverage and response times as identified in Appendix A.
- If the customer's Operational Software is a version that is not currently supported, and the non-conformance is corrected in a supported version, then the customer will be advised to upgrade to obtain assistance. Extreme Networks will not incorporate software fixes or corrections into versions of Operational Software other than those currently supported in accordance with Extreme Networks' Product
- End of Life and Support Plan End of Life Policy. Extreme Networks does not represent or warrant that all nonconformance of the Operational Software can be corrected.

- Operational Software upgrades may be obtained through Extreme Networks' Web site after establishing a web account and are only available for the Covered Product that is registered. Use of Operational Software upgrades shall be subject to the terms and conditions of said software.
- Customer will maintain and backup all configuration data.
- The terms and conditions of Extreme's performance of support and services are as posted here. In the event of any conflict between the language in this Service Description Document and Extreme Networks published terms and conditions, Extreme Networks published terms and conditions shall govern.
- Unless required for operational reasons and elsewhere agreed between the customer and Extreme Networks, the replacement FRU will be at the then-current minimum hardware, software and software release levels as published by Extreme Networks.
- When the hardware or software is part of the same system, it must carry consistent service level coverage. This includes the chassis, modules, circuit packs, software and all other supportable components within the system configuration.

8.0 Exclusions

The following are completely out of the scope of ExtremeWorks Advance Hardware Replacement Services entitlements and are not included herein. Professional Services offerings may be available for purchase and Extreme reserves the right to charge for any costs incurred with performance of services affected by any of the following factors below.

- Extreme Networks is not required to provide any services for problems arising out of: (i) Company's failure to implement all Updates issued under the Services; (ii) alterations of or additions to the Products performed by parties other than Extreme; (iii) accident, natural disasters, terrorism, negligence, or misuse of the Products (such as, without limitation, fire, flood, water, wind, lightning or other acts of God, operation outside of environmental specifications or in a manner for which the Products were not designed); (iv) interconnection of the Products with other products not supplied by Extreme, or (v) certain components, including but not limited to the following: spare fan trays, blank panels, cables, cable kits, rack mount kits, brackets, antennas and consumable items.

- Extreme Networks shall only be obligated to support the then-current revision of the Products and the immediately prior revision. Support for any earlier versions or for other problems not covered under the Services may be obtained at then-current rates for special technical services and on Extreme Networks then-current terms and conditions for such services, subject to acceptance by Extreme Networks.
- Extreme Networks will have no liability or obligations for failure of the products to conform to published specifications resulting from the combination of the products with any third-party hardware or software not authorized in Extreme Networks published documentation or when caused by customer's inability to use the products if the products are operating substantially in accordance with published specifications.
- Service availability is subject to geographical limitations, as advised by Extreme Networks upon request. Extreme Networks will have no obligation to meet the response times outlined in the Appendix A if the customer's site is outside of the geographical zone of service availability. If the customer purchases this service for locations outside Extreme Networks advised geographical limitations, Extreme Networks will be required only to use commercially reasonable efforts to replace FRUs as soon as practical after receipt of a request from the customer.
- Services such as upgrades to hardware are excluded from the scope of this SDD and should be ordered separately.
- Labor charges for reinstalling the customer's system Operational Software (operational or application) or end user configuration software, other than what is provided in the customer's backup copy, are not included within the scope of this service. This is a separately charged and scheduled activity.
- This service does not include support and maintenance of any third party software or hardware not provided by Extreme Networks.
- This service offering and any subsequent service renewals are subject to the terms and conditions of Extreme Networks Product End of Life and Support Plan End of Life policy.
- New releases and upgrades for Application Software, or software releases, updates or upgrades otherwise out-of-scope as defined herein.
- Unless elsewhere agreed in writing between the customer and Extreme Networks in a separate contract, this service does not include root-cause analysis, the provision of fault reports or lead-time/ performance metrics.

Appendix A

ExtremeWorks Advance Hardware Replacement Services Deliverables

Extreme Networks will make commercially reasonable efforts, at its expense (excluding any and all duties, taxes or government imposed fees if applicable) to see that the replacement hardware FRU arrives at the customer's designated location within the specified time period based upon the system's Response Service Level following completion of diagnostics and the assignment of an RMA Number. Extreme Networks will have no obligation to meet the response times outlined in the appropriate ExtremeWorks Service Description if the customer's site is outside the geographical zone of service availability. Extreme Networks is not responsible for any delays related to import/export or customs regulations or processes, or uncontrollable transportation issues including inability of the customer to allow the actual delivery of services. Delivery targets for RMA's including but not limited to oversized/heavy weight items may fall outside the posted SLA. A current list of Extreme authorized servicing depots that correspond to the defined ExtremeWorks services offerings, including expected delivery response, defined herein is available [here](#).

Next Business Day

Where Next Business Day Advanced Hardware Replacement Services is available, Extreme Networks must process the RMA relating to the defective product per the Advanced Exchange RMA Times section of the Extreme Networks Service Availability Matrix, Monday through Friday, in order to deliver the replacement product to your site, by the end of day of the Next Business Day. Otherwise Second Business Day delivery will be provided for RMA's approved after the time indicated.

Next Business Day delivery is generally available in these geographical locations:

- North America: United State and Canada
- EMEA: Most European Union Countries, Switzerland and South Africa
- LATAM: Argentina, Brazil, Columbia, Mexico
- APJC: Australia, China, India, Japan, Philippines

NOTE: Please check the Extreme Networks Service Availability Matrix for locations that may be excluded.

Where Next Business Day delivery of the part is not available, Advanced Hardware Replacement will ship on the same business day provided Extreme Networks processed the RMA relating to the defective product per the Advanced Exchange RMA Times section of the Extreme Networks Service Availability Matrix, Monday through Friday in order to ship the replacement product to your site, otherwise Next Business Day shipment will be provided for RMA's processed after the time indicated. Estimated delivery times to country are available via the Extreme Networks [Service Availability Matrix](#).

4 Hour

4 Hour Advanced Hardware Replacement Service is only available to you within one hundred (100) miles (160 kilometers) of an Extreme Networks parts depot. All 4 Hour support contracts require customer site location pre approval from Extreme Networks before Extreme Networks will accept a purchase order for the applicable 4 Hour support plan.

Email 4houravailability@extremenetworks.com for confirmation of service delivery availability.

Extreme Networks provides parts at customer's designated location provided that Extreme Networks has validated a Hardware failure and a Return Material Authorization (RMA) number has been assigned. Four-Hour Advanced Hardware Replacement response is available twenty-four (24) hours per day, seven (7) days per week, including Extreme Networks observed holidays.

Please work with your regional service sales manager to determine coverage.

Appendix B

Case Severity and Escalation Guidelines

Extreme Networks will measure and categorize the case priority level of hardware/software problems reported by the customer based on the impact on the network and in accordance with the classification in the table below. If it is not clear which case priority level applies, then the case

priority level assigned by the customer will initially be used. However, if a problem clearly belongs in a given case priority level as defined below, then that level will be used. Notwithstanding the foregoing, case severity and level assignment will be determined in Extreme's sole discretion.

Case Priority	Response Time	Restore time (Software fix or workaround)	Update Frequency
C1: Customer's network segment or management application is down or experiencing a consistent, measurable performance impact with no immediate resolution available	15 minutes	4 hours	Up to 4 hours
C2: Customer's network is experiencing intermittent failure or degradation of network or management application.	1 hour	1 day	Daily
C3: Customer has issues that do not affect normal network or management application operation and/or questions concerning product function or use.	8 hours	10 days	5 days
C4: Submission of a product enhancement /new feature request	Immediate Acknowledgment	N/A	N/A

If you do not believe that your support issue is being addressed to meet your business needs you may escalate your request by asking for the GTAC manager on duty.

Additional information on GTAC processes and procedures can be found at the Services tab from the Extreme Networks home page.

Support Life Cycle Communication Matrix

Notification Levels	C1 - Critical	C2 - High Priority	C3 - Medium Priority
Support Engineer	Immediate	Immediate	Immediate
GTAC Manager	Immediate	Immediate	10 days
Director, Global Technical Services	Immediate	48 hours	10 days
Vice President, Global Technical Services	2 hours	72 hours	20 days
Executive Management (CTO/EVP Eng)	4 hours	None	None



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EXHIBIT B

INSURANCE REQUIREMENTS

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

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

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

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

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

With respect to the foregoing insurance,

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

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

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

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

AGREEMENT

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

Project/Bid# _____
Company: _____
Printed Name: _____
Signature: _____ **Date:** _____

EXHIBIT C



Contact: Kim Grenier
Phone: 346-229-2435
Email: kgrenier@soliditnetworks.com
Web: http://www.solidit.com

PREPARED FOR: City Of Addison Zeis Chen 5350 Belt Line Addison, TX 75240 zchen@addisontx.gov	DATE 09/17/2020	NUMBER 017072	VER 1
	PROJECT Extreme Wired Upgrade DIR-TSO-4339		

Extreme Wired Upgrade

ITEM	DESCRIPTION	LIST	PRICE	QTY	TOTAL
16179	Extreme Networks Summit X450-G2-48p-10GE4 Ethernet Switch - 48 Ports - Manageable - 3 Layer Supported - Twisted Pair, Optical Fiber - 1U High - Rack-mountable - Lifetime Limited Warranty	\$8,050.00	\$1,210.64	26	\$31,476.64
97000-16179	Extreme Networks ExtremeWorks Software and TAC - Technical support - phone consulting - 2190 Days - 24x7 - for P/N: 16179	\$1,512.00	\$682.17	26	\$17,736.42
10945	Extreme Networks Summit X460-G2 Fan Module FB - Front to Back Air Discharge Pattern	\$360.00	\$54.14	26	\$1,407.64
10951	Extreme Networks Summit 715W AC PSU FB - 715 W	\$1,092.00	\$164.23	52	\$8,539.96
10099	Extreme Networks Standard Power Cord - 120 V AC / 13 A - United States - 1	\$29.00	\$4.37	52	\$227.24
16190	Extreme Networks ExtremeXOS Advanced Edge - License - 1 Switch	\$1,031.00	\$154.98	7	\$1,084.86
97000-16190	Extreme Networks ExtremeWorks Software and TAC - Technical support - phone consulting - 2190 Days - 24x7 - for P/N: 16190	\$606.00	\$273.41	7	\$1,913.87
10311	Extreme Networks Fiber Optic Cable - 16.40 ft Fiber Optic Network Cable for Network Device - First End: 1 x QSFP+ - Second End: 1 x QSFP+	\$305.00	\$45.87	4	\$183.48
X695-48Y-8C	Extreme Networks ExtremeSwitching X695-48Y-8C - Switch - L3 - managed - 48 x 1/10/25 Gigabit SFP28 + 8 x 10 Gigabit / 25 Gigabit / 40 Gigabit / 50 Gigabit / 100 Gigabit QSFP28 - rack-mountable with no PS, no fans	\$24,995.00	\$3,759.00	8	\$30,072.00
97004-X695-48Y-8C	Extreme Networks ExtremeWorks NBD Advanced Hardware Replacement - Extended service agreement - advance parts replacement - 2190 Days - shipment - response time: NBD - for P/N: X695-48Y-8C	\$9,870.00	\$4,453.05	8	\$35,624.40
EXOS-CORE-FP-X695	Extreme Networks ExtremeX695 Core Feature License	\$5,995.00	\$901.59	4	\$3,606.36
97000-EXOS-CORE-FP-X695	Extreme Networks ExtremeWorks Software and TAC - Technical support - phone consulting - 2190 Days - 24x7 - for P/N: EXOS-CORE-FP-X695	\$2,772.00	\$1,250.64	4	\$5,002.56
XN-FAN-001-F	Extreme Networks VSP/SLX Front to Back Fan - 1 Fan - Front to Back Air Discharge Pattern	\$225.00	\$33.84	48	\$1,624.32
XN-ACPWR-750W-F	Extreme Networks VSP/SLX 750W AC PSU Front to Back Airflow	\$1,495.00	\$224.84	16	\$3,597.44

1/3

Solid IT Networks, Inc. 16507 Hedgecroft, Ste 100 Houston, TX 77060



Contact: Kim Grenier
Phone: 346-229-2435
Email: kgrenier@soliditnetworks.com
Web: http://www.solidit.com

Extreme Wired Upgrade

ITEM	DESCRIPTION	LIST	PRICE	QTY	TOTAL
10061	Extreme Networks Standard Power Cord - 110 V AC / 10 A	\$18.00	\$2.71	16	\$43.36
10411	Extreme Networks DAC QSFP28 Passive Optical Cable - 3.28 ft Fiber Optic Network Cable for Network Device, Switch - QSFP28 Network - QSFP28 Network - 100 Gbit/s	\$362.00	\$54.44	8	\$435.52
10301	Extreme Networks 10GBASE-SR SFP+ Module - 1 x 10GBase-SR	\$1,330.00	\$200.02	1	\$200.02
10304	Extreme Networks Network Cable - SFP Network - 3.28ft	\$148.00	\$22.26	24	\$534.24
XIQ-PIL-S-C-EW	Aerohive - XIQ Pilot SaaS EW SaaS Support - ExtremeCloud IQ Pilot SaaS Subscription and EW SaaS Support for One (1) Device (2190 Days)	\$900.00	\$350.91	34	\$11,930.94
Extreme Wired Upgrade Subtotal					\$155,241.27

2 Days of Switch/Install Configuration

ITEM	DESCRIPTION	LIST	PRICE	QTY	TOTAL
SRV-SIT-NW-INSTALL	Network Installation - 2 Days of Switch/Install Configuration	\$4,000.00	\$3,200.00	1	\$3,200.00
2 Days of Switch/Install Configuration Subtotal					\$3,200.00

Quote Totals

SECTION	TOTAL
Extreme Wired Upgrade	\$155,241.27
2 Days of Switch/Install Configuration	\$3,200.00
Total	\$168,441.27

Additional Taxes or shipping charges may apply. Payments by credit card will be subject to an additional 4% processing fee. Manufacturer and Distribution warranty, cancellation, and return policies will apply. Please note that pricing data is updated frequently and may change without notice.
 Solid IT Networks, Inc. asserts the information submitted in connection with this quotation is confidential, and if released, may give advantage to a competitor, and therefore should not be disclosed to third parties. In addition, Solid IT asserts the information submitted contains internal proprietary methods in preparing the network configuration and implementation of the work and also may constitute trade secrets which should not be disclosed.

Signature _____ Date _____



Contact: Kim Grenier
Phone: 346-229-2435
Email: kgrenier@soliditnetworks.com
Web: <http://www.solidit.com>

 Note

Due to Covid-19 and pandemic circumstances, product availability and lead times may vary. Also, tariffs on products imported from certain foreign countries may be imposed in the future. This may result in higher list prices on affected SKUs. We will be working closely with our networking manufacturers to try to minimize the effect for our customers. Note that we do not have control over product availability, import issues or border delays and this may result in orders being received after tariffs are increased and hence additional costs. We recommend that orders be processed ASAP.

Council Meeting

14.

Meeting Date: 10/27/2020

Department: Economic Development

Pillars: Entrepreneurship & Business Hub

Milestones: Economic development focus on attracting and retaining entrepreneurship and targeted industry sectors

AGENDA CAPTION:

Consider Action on a **Resolution to Approve an Agreement for Funding Between the Town of Addison and the Metrocrest Chamber of Commerce and Authorizing the City Manager to Execute the Agreement** in an Amount Not to Exceed \$35,000.

BACKGROUND:

For the last few years, the Town of Addison has provided grant funding to the Metrocrest Chamber of Commerce. This year, the agreement has transitioned from a grant funding agreement to a service agreement that will be managed by the Economic Development & Tourism Department. The service agreement defines a work plan and quarterly reports as part of their deliverables to the Town. The following is what they have proposed to achieve for the Town:

A. Economic Development Marketing:

1. Provide marketing support to Addison Economic Development Department, including support and participation in the Annual Economic Development Luncheon (virtual/in-person).
2. Conduct Business Expo in conjunction with Co-working in the Park with marketing targeted at Addison Businesses and provide educational sessions (virtual/in-person).
3. Target Addison-based Chamber members to renew Business Registration.
4. Conduct Economic Development Committee meetings with members, investors, local elected officials, and tri-city departments to advance the goals and mission of Addison Economic Development Department (virtual/in-person).
5. Collaborate on BREP (business retention and expansion program) targeted at Addison-based businesses and headquarters (virtual/in-person).

B. Entrepreneur Development Support:

1. Highlight local resources available to entrepreneurs (i.e. SBA, SBDCs, SCORE, etc.).
2. Host at least one Chamber event at the TreeHouse.

3. Provide complimentary one-year chamber membership to business start-ups officing and holding active membership with the Addison TreeHouse.
4. Encourage Treehouse memberships amongst chamber members; locate Chamber office at the Treehouse to help bridge business community and entrepreneurs/start-ups in Addison.
5. Encourage back to business small group meet-ups and opportunities to connect in Treehouse space; highlighting use of co-working space for business owners who have had to re-imagine office space due to COVID-19.

C. Addison Business Profile Support:

1. Organize and conduct annual Mayors' Forum (virtual/in-person).
2. Provide local leadership development opportunity via Leadership Metrocrest (virtual/in-person).
3. Provide ribbon-cutting support for new Chamber members in the Addison area (virtual/in-person).
4. Conduct annual educator appreciation programming for Bush Elementary (virtual/in-person).
5. Support Economic Development Department efforts in attracting and retaining businesses; conduct collaborative junctions when advantageous.

D. Develop Strategies to Connect the Addison Airport community and the Addison business community

1. Provide airport management, tenants, and users opportunities to attend and benefit from chamber events such as the Business Expo, Chairman's Circle, etc. (virtual/in-person).
2. Increase awareness of airport, new customs facility, and third FBO to chamber members, work with key airport staff to development strategic community engagement.
3. Work with airport staff to host at least one event at airport (virtual/in-person State of the Airport, Airport Appreciation program, etc.)
4. Support the grand opening of the new customs facility once online (virtual/in-person)

E. Tourism Support:

1. Consistent brand awareness for the Town of Addison, special events, and business amenities.
2. Work with Tourism Coordinator and Special Events Department to promote hotel packages for Addison's special events amongst chamber members and business community.

This service agreement is valued at \$35,000 which is the same level of funding as FY 2020. The FY 2021 work plan is very similar to FY 2020. The Metrocrest Chamber of Commerce successfully completed most of their requirements as highlighted in their FY 2020 Work Plan. The unanticipated impacts of COVID-19

resulting in the closure of the Addison Conference and Theater Center, closure of nonessential businesses, and limited group gathering restrictions by the County obviously impacted some of the planned programs for the Chamber in FY 2020. Despite this, the Chamber was able to pivot their work plan quickly by becoming more proactive in the dissemination of information to local businesses, offering support, and taking many of their in-person programs to virtual platforms. Because of the lingering impacts of COVID-19 into FY 2021, the Chamber has modified this agreement to be allowed to host many of their events virtually, but will make a good faith effort to host in-person events as long as social distancing protocols can be adhered to to ensure the health and safety of participants.

Funding for this service agreement has been approved as part of the Fiscal Year 2021 Budget.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution - Metrocrest Chamber of Commerce Service Agreement

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A SERVICE AGREEMENT FOR FUNDING BETWEEN THE TOWN OF ADDISON AND METROCREST CHAMBER OF COMMERCE IN AN AMOUNT NOT TO EXCEED \$35,000.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT FOR FUNDING; 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 Metrocrest Chamber of Commerce (“Metrocrest”) 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 Metrocrest desire to enter into the service Agreement for Funding to set forth the terms and conditions regarding Metrocrest’s use of the public funds.

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

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

SECTION 2. The Agreement for Funding between the Town of Addison and Metrocrest Chamber of Commerce in an amount not to exceed \$35,000.00, 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 3. 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 **27th** day of **OCTOBER 2020**.

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 FUNDING
COUNTY OF DALLAS §

This Agreement for Funding (the "Agreement") is made and entered into this the 27th day of October, 2020 by and between the Town of Addison, Texas (the "City" or "Addison") and Metrocrest Chamber of Commerce (the "Chamber" or "Organization").

WITNESSETH:

WHEREAS, the City Council has investigated and determined that it is in the best interest of the City to provide public funds to the Chamber through its Economic Development and Tourism Department (the "Department"). These funds help support the economic development efforts of the community; and

WHEREAS, the mission of the Organization is to create economic prosperity for their members by providing programs, resources, and support that assist and benefit businesses, government and citizens resulting in a vibrant place to live and work; and

WHEREAS, the City has reviewed the scope of non-exclusive services, hereinafter defined, for the Organization and feels they help fulfill a public purpose and will benefit its businesses and 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, Addison and the Organization do hereby agree as follows:

I. TERM

The term of this Agreement shall begin on the date of adoption and execution of this Agreement by both Parties, through the 30th day of September, 2021 (the "Expiration Date"), 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. SERVICES

In connection with this Agreement, the Chamber will provide to the City the following non-exclusive services ("Services"):

A. *Economic Development Marketing:*

- i.) Provide marketing support to the Department, including support and participation in the Annual Economic Development Luncheon (virtual/in-person).
- ii.) Conduct a Business Expo, in conjunction with Coworking in the Park, with targeted marketing for Addison Businesses and provide educational sessions for small

businesses (virtual/in-person) as determined by the needs of the local business community.

- iii.) Target Addison-based Chamber members to renew Business Registration.
- iv.) Conduct Economic Development Committee meetings with members, investors, local elected officials, and tri-city departments to advance the goals and mission of the Department (virtual/in-person).
- v.) Collaborate on BREP (business retention and expansion program) targeting Addison-based businesses and headquarters (virtual/in-person).

B. Entrepreneur Development Support:

- i.) Highlight local resources available to entrepreneurs (i.e. Small Business Association, The Dallas Metropolitan Small Business Development Center, Dallas SCORE, etc.).
- ii.) Host at least one Chamber event at the Addison TreeHouse (the “TreeHouse”).
- iii.) Provide complimentary one-year chamber membership to business start-ups officing and holding active membership with the TreeHouse.
- iv.) Encourage Treehouse memberships amongst Chamber members; maintain Chamber office at the Treehouse to help bridge business community and entrepreneurs/start-ups in Addison.
- v.) Encourage small group meet-ups, known as the “Back to Business” program, aimed at (1) helping small businesses safely operate and reopen as COVID-19 occupancy limits are eased, (2) opportunities to connect in Treehouse space, and (3) highlighting use of coworking space for business owners who have had to reimagine office space due to COVID-19.

C. Addison Business Profile Support:

- i.) Organize and conduct annual Mayors’ Forum (virtual/in-person).
- ii.) Provide local leadership development opportunity via Leadership Metrocrest (virtual/in-person).
- iii.) Provide ribbon-cutting support for new Chamber members in the Addison area (virtual/in-person).
- iv.) Conduct annual educator appreciation programming for Bush Elementary (virtual/in-person).
- v.) Support the Department efforts in attracting and retaining businesses; conduct collaborative junctions when advantageous.

D. *Develop Strategies to Connect the Addison Airport community and the Addison business community*

- i.) Provide airport management, tenants, and users opportunities to attend and benefit from chamber events such as the Business Expo, Chairman's Circle, etc. (virtual/in-person).
- ii.) Increase awareness of the Addison airport, its new customs facility, and its third fixed base operator to chamber members, work with key airport staff to development strategic community engagement.
- iii.) Work with airport staff to host at least one event at airport (virtual/in-person State of the Airport, Airport Appreciation program, etc.)
- iv.) Support the grand opening of the new customs facility once online (virtual/in-person)

E. *Tourism Support:*

- i.) Consistent brand awareness for Addison, special events, and business amenities.
- ii.) Work with Tourism Coordinator and Special Events Department to promote hotel packages for Addison's special events amongst chamber members and business community.

A table reflecting and including these Services is attached to this Agreement as **Exhibit A** and incorporated herein and made a part hereof.

III. PERFORMANCE REPORTS

The Chamber shall provide the City with a quarterly report (the "Report") regarding all Chamber work and activities for the quarter immediately preceding the Report date. The Report shall include, without limitation, (i) all marketing activities of the Chamber, (ii) all expenses and the payment thereof (e.g., payments to performers, other third parties, and proof of such payment), and (iii) all additional activities of the Chamber other than the above and foregoing Services. Quarterly Reports shall be due as follows: (i) first quarter shall be provided by December 31, 2020; (ii) second quarter shall be provided by March 31, 2021; (iii) third quarter shall be provided by June 30, 2021; and (iv) fourth quarter shall be provided by September 30, 2021. Each such report shall be in a form and provide content satisfactory to the City, and shall provide supporting information, including any supporting documentation as the City may reasonably request. Upon the expiration or earlier termination of this Agreement, the Chamber shall provide any and all outstanding Reports, partial reports included, to the City not later than the 25th day following the Expiration Date or the date of termination, as applicable, and the obligation to provide such report shall survive the expiration or earlier termination of this Agreement.

In connection with the Services, the Chamber warrants and represents to the City that:

- A. The Chamber has the skills, qualifications, expertise, experience and financial capability necessary to perform the Services with a high degree of quality and responsiveness;

- B. The Services and work will be provided in a professional and timely manner, consistent with the commercially accepted best practices and standards;
- C. The Services shall comply with all applicable federal, state or local statutes, ordinances, laws, rules, standards, codes and regulations;
- D. The Chamber: (i) is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, and shall remain in good standing throughout the term of this Agreement; (ii) it has the requisite power and authority to carry on its business as it is now being conducted; (iii) it has the legal capacity to enter into this Agreement; and, (iv) the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been authorized and approved by all action required on the part of the Chamber; and
- E. The execution and delivery of this Agreement by the Chamber does not: (i) conflict with, or result in any violation or breach of, any provision of the Chamber’s charter documents; (ii) result in any violation or breach of, or constitute a default under, or require a consent or waiver under, any of the terms, conditions or provisions of any license, contract or other agreement to which the Chamber is a party; or (iii) materially conflict with or violate any franchise, license, judgment, order, statute, law, rule or regulation applicable to the Chamber.

All Services shall be provided by the Chamber in cooperation and coordination with the City Staff, and in particular with the Addison Director of Economic Development & Tourism (the “Director”). Any and all promotional or other materials regarding the Services which are to be prepared, given or delivered by the Chamber shall be first presented to the Director for the Director’s review and approval prior to the public dissemination of any such materials. Standardized language agreed upon by both parties prior to any public dissemination thereof may, after such agreement, be disseminated in Chamber materials without prior review of those materials. Prior to solicitation of any activities and other vendors, the Chamber shall use its reasonable efforts to first obtain the pre-approval from the Director regarding such solicitation; however, the parties hereto recognize that the Chamber may not be able, in all instances, to obtain the pre-approval of the Director prior to a solicitation, and in such event the Organization shall nevertheless, in conducting any solicitation, abide by and comply with such communication standards as the Director shall establish. The Services shall be provided by the Chamber in a professional manner. In identifying, selecting, and recommending entertainers, activities, and vendors pursuant to this Agreement, and in performing all of its Services hereunder, the Chamber understands and recognizes that the events under this agreement are not for religious or political purposes (and are not events that promote or suggest any religious or political agenda), and the Chamber will perform its Services hereunder in accordance therewith.

IV. COMPENSATION

For the Services provided by the Chamber in accordance with the terms and conditions of this Agreement and subject to the termination provisions of this Agreement, the City will pay the Chamber a fee as follows:

The City will pay the Chamber **Thirty-five Thousand and No/100 Dollars (\$35,000.00)**, to be paid in four installments as follows: (1) The first installment (“first Installment”) of \$8,750.00

shall be paid by January 15, 2021, (2) the second installment (“second installment”) of \$8,750.00 shall be paid by April 15, 2021, (3) the third installment (the “third installment”) of \$8,750.00 shall be paid by July 15, 2021, and (4) the fourth and final installment (the “fourth installment”) of \$8,750.00 shall be paid by October 15, 2021 upon (i) the completion of the Services (that is, upon completion of all of the Services), and (ii) the satisfactory performance, as reasonably determined by the City, of all Services performed by the Chamber, including, without limitation, the City’s timely receipt of the September 2021 Report and all Reports required prior thereto, in a form and providing content reasonably acceptable to the City. Payment of the third installment shall be by no later than September 31, 2021.

V. TERMINATION

- A. *Without cause.* Either party may terminate this Agreement at any time by giving at least 30 days written notice of such termination to the other party. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. In the event of termination or upon the expiration of this Agreement, all finished or unfinished data, studies, reports and other materials and items (whether kept electronically, in writing, or otherwise) prepared by the Chamber shall be and become the property of the City and the Chamber shall promptly deliver such items to the City.
- B. *With cause.*
- (i) If (a) the Chamber fails to perform any of its duties or responsibilities as reasonably determined by the City, or (b) if the Chamber fails to fulfill in a timely and professional manner its obligations under this Agreement, or (c) if the Chamber violates any of the terms or provisions of this Agreement, or (d) if the Chamber, its agents or employees fail to exercise good behavior either during or outside of working hours that is of such a nature as to bring discredit upon the City, as determined reasonably but solely by the City, then the City shall have the right to terminate this Agreement effective immediately upon the City giving notice thereof, either oral or in writing, to the Chamber.
 - (ii) Notwithstanding subparagraph B(i) above, such right of termination shall not be exercised by the City unless and until the Chamber has been has received notification specifically identifying the failure and the failure remains uncured for a reasonable period of time, as determined by the City.
 - (iii) If the City’s termination of this Agreement for cause is defective for any reason, including but not limited to the City’s reliance on erroneous facts concerning the Chamber’s performance, or any defect in notice thereof, the City’s maximum liability shall not exceed the amount payable to the Chamber under Section IV above through the quarter in which the termination for cause takes place.
- C. If this Agreement is terminated during the following times, the Chamber shall promptly reimburse the City the corresponding amount. Following such termination, the Chamber shall be entitled to no further payment or compensation hereunder, and all finished or unfinished data, studies, reports and other items (whether kept electronically, in writing, or otherwise) prepared by the Chamber shall be and become

the property of the City and the Chamber shall promptly deliver such items to the City. The reimbursement obligation set forth herein shall survive the termination of this Agreement.

Termination Date	Reimbursement to City
December 2020	Amount of first installment to the City
January 2021	\$4,375.00
February 2021	\$2,187.50
March 2021	Amount of Second installment to the City
April 2021	\$4,375.00
May 2021	\$2,187.5
June 2021	Amount of Third installment to the City
July 2021	\$4375.00
August 2021	\$2,187.5.
September 2021	Amount of Fourth installment to the City

VI. RELATIONSHIP OF PARTIES

The Chamber, during the Term of this Agreement, is and shall be an independent contractor, and nothing in this Agreement is intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, a joint enterprise, or to allow the City to exercise discretion or control over the professional manner in which the Chamber performs the Services which are the subject matter of the Agreement; provided always however that the Services to be provided by the Chamber shall be provided in a manner consistent with all applicable standards, regulations, and laws governing such Services.

VII. INSURANCE

At all times in connection with this Agreement, the Chamber shall purchase and maintain in a company or companies lawfully authorized to do business in Texas such insurance coverages as set forth below:

- | | | |
|----|--|--|
| a. | Commercial General Liability: | \$1,000,000.00 |
| b. | General Aggregate | \$1,000,000.00 |
| c. | Product/Completed Operations Aggregate | \$1,000,000.00 |
| d. | Personal & Adv. Injury | \$1,000,000.00 |
| e. | Per Occurrence | \$1,000,000.00 |
| f. | Medical Coverage | \$5,000.00 (any one person) |
| g. | Liquor Liability Endorsement | \$1,000,000.00 (if selling beer and/or wine) |
| h. | Fire Liability (any one fire) | \$ 50,000.00 |
| i. | Statutory Limits of Workers Compensation Insurance | |

All such insurance shall: (i) be issued by a carrier which is rated "A-1" or better by A.M. Best's Key Rating Guide and licensed to do business in the State of Texas, (ii) name the City as an additional insured and contain a waiver of the subrogation endorsement in favor of the City, (iii) endorsed to read as primary coverage regardless of the application of other insurance, and (iv) contain no cross liability exclusions or insured versus insured restrictions. Certified copies of all such policies shall be delivered to Addison upon the execution of this Agreement, but in any event

no later than two weeks prior to the event; provided, however, that Addison, in its sole discretion and in lieu of certified copies of such policies, may permit the delivery of certificates of insurance (listing each insurance coverage described and required herein) together with the declaration page of such policies, along with a copy of the endorsements necessary to meet the requirements and instructions contained herein, including, without limitation, the endorsement naming Addison as an additional insured, and shall specifically set forth the notice of cancellation and termination provisions to the City. Each such policy shall provide that it shall not be canceled without at least 30-days written notice thereof being given to Addison. Coverage for Products/Completed Operations must be maintained at least two (2) years after Agreement termination, including any renewal thereof or extensions thereto.

VIII. RECORDS

The Chamber shall keep complete and accurate records for the Services performed pursuant to this Agreement and any records required by law or government regulation and shall make such records available to City upon request. The Chamber shall assure the confidentiality of any records that are required by law to be so maintained. The Chamber shall prepare and forward such additional or supplementary records as City may reasonably request.

IX. NOTICE

For purposes of this Agreement, if written notice or other communication is given, such notice or other communication shall be in writing, addressed as provided hereinafter to the party to whom the notice or request is given, and shall be either (i) delivered personally, (ii) sent by United States certified mail, postage prepaid, return receipt requested, or (iii) placed in the custody of Federal Express Corporation or other nationally recognized carrier to be delivered overnight. Notice shall be deemed given: when received if delivered personally; seventy-two (72) hours after deposit if sent by mail; and twenty-four (24) hours after deposit if sent by Federal Express or other nationally recognized carrier. Addresses for notice are as follows:

<u>To the City:</u>	<u>To Metrocrest Chamber of Commerce:</u>
Town of Addison, Texas	Metrocrest Chamber of Commerce
5300 Belt Line Road	14681 Midway Road, Suite 200
Dallas, Texas 75254-7606	Addison, Texas 75001
Attn: Wesley S. Pierson	Attn: Erin Carter

The addresses and addressees for the purpose of this Section may be changed by giving notice of such change in the manner herein provided for giving notice. Unless and until such written notice is received the last addresses and addressee stated by written notice, or provided herein if no written notice of change has been sent or received, shall be deemed to continue in effect for all purposes hereunder.

X. REPORTS CONFIDENTIAL

No Reports, information (either in writing or oral), documents, or other materials given to or prepared by the Chamber under this Agreement which the City requests in writing to be kept confidential, shall be made available to any individual or organization by the Chamber without the prior written approval of the City.

XI. AUTHORITY TO EXECUTE

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.

XII. OWNERSHIP OF REPORTS

The reports, documents and materials prepared by the Chamber under or pursuant to this Agreement shall be the sole property of the City.

XIII. ASSIGNMENT

Inasmuch as this Agreement is intended to secure the specialized services of the Chamber, the Chamber has no authority or power to and may not assign, transfer, delegate, subcontract or otherwise convey any interest herein without the prior written consent of the City, and any such assignment, transfer, delegation, subcontract or other conveyance without the City's prior written consent shall be considered null and void *ab initio*.

XIV. RIGHTS AND REMEDIES CUMULATIVE; NON-WAIVER

The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise. The failure by either party to exercise any right, 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 for any reason whatsoever, including with respect to any such right, power or option or to such compliance or to any other or subsequent default or breach hereof, nor a waiver by either party of its rights at any time to exercise any such right, power or option or to require exact and strict compliance with all the terms hereof. Any rights and remedies either party may have with respect to the other arising out of this Agreement shall survive the cancellation, expiration or termination of this Agreement.

XV. APPLICABLE LAW; VENUE

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.

XVI. ENFORCEABILITY

If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

XVII. FORCE MAJEURE

In the event either the City or the Chamber shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of fire, casualty, strikes, lockouts, labor trouble, inability to procure materials or supplies, failure of electrical grid, governmental authority, federal or state executive order, riots, insurrections, war or other reason of like nature, where such delay, hindrance or prevention of performance shall not be within the reasonable control of the party obligated to perform and not be avoidable by diligence, the party so delayed shall promptly give notice to the other party, and thereupon performance of such act shall be excused for such period of delay.

XVIII. NO THIRD-PARTY BENEFICIARIES

This Agreement and all of its terms and provisions are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

XIX. INCORPORATION OF RECITALS

The above and foregoing recitals to this Agreement are true and correct and are incorporated herein and made a part hereof for all purposes.

XX. CONSTRUCTION OF CERTAIN TERMS

Section and subsection headings herein are for convenience only and shall not be used in interpretation of this Agreement. The words “includes” and “including” are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

XXI. SEVERABILITY

The sections, paragraphs, sentences, phrases, words, and all other provisions of this Agreement are severable, and if any part of this Agreement is determined by a court of competent jurisdiction to be illegal, unlawful, unconstitutional, or void for any reason, the parties intend that the remaining provisions of this Agreement shall remain in full force and effect. In lieu of any such illegal, unlawful, unconstitutional, or void provision, the parties agree to seek to negotiate to add to this Agreement another provision that would be permitted that is as close to the intent of the original provision as possible.

XXII. ENTIRE AGREEMENT AND MODIFICATION

This Agreement supersedes all previous agreements and constitutes the entire understanding of the parties hereto. No changes, amendments or alterations shall be effective unless in writing and signed by both parties.

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 2271, the 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.

SIGNED by each of the respective parties on the date set forth below.

TOWN OF ADDISON, TEXAS

**METROCREST CHAMBER OF
COMMERCE**

By: _____
Wesley S. Pierson, City Manager

By:  _____
Erin Carter, President

Date: _____

Date: 10/19/2020 _____

EXHIBIT A

**Metrocrest Chamber of Commerce/Town of Addison
2020-21 Service Agreement
Request: \$35,000**

1. <i>Economic Development Marketing (\$15,000):</i>		
i. Provide marketing support to Addison Economic Development department, including support and participation in the Annual Economic Development Luncheon (virtual/in-person).		
ii. Conduct Business Expo in conjunction with Coworking in the Park with marketing targeted at Addison Businesses and provide educational sessions (virtual/in-person).		
iii. Target Addison-based Chamber members to renew Business Registration.		
iv. Conduct Economic Development Committee meetings with members, investors, local elected officials, and tri-city departments to advance the goals and mission of Addison Economic Development Department (virtual/in-person).		
v. Collaborate on BREP (business retention and expansion program) targeted at Addison-based businesses and headquarters (virtual/in-person).		
Item	Date	Accomplishment/Milestone/Progress
2. <i>Entrepreneur Development/Small Business Support (\$5,000):</i>		
i.) Highlight local resources available to entrepreneurs (i.e. SBA, SBDCs, SCORE, etc.).		
ii.) Host at least one Chamber event at the TreeHouse.		
iii.) Provide complimentary one-year chamber membership to business start-ups officing and holding active membership with the Addison TreeHouse.		
iv.) Encourage Treehouse memberships amongst chamber members; locate Chamber office at the Treehouse to help bridge business community and entrepreneurs/start-ups in Addison.		
v.) Encourage back to business small group meet-ups and opportunities to connect in Treehouse space; highlighting use of coworking space for business owners who have had to reimagine office space due to COVID-19.		
Item	Date	Accomplishment/Milestone/Progress
3. <i>Addison Business Profile Support (\$8,000):</i>		
i.) Organize and conduct annual Mayors' Forum (virtual/in-person).		
ii.) Provide local leadership development opportunity via Leadership Metrocrest (virtual/in-person).		
iii.) Provide ribbon-cutting support for new Chamber members in the Addison area (virtual/in-person).		
iv.) Conduct annual educator appreciation programming for Bush Elementary (virtual/in-person).		
v.) Support Economic Development Department efforts in attracting and retaining businesses; conduct collaborative junctions when advantageous.		
Item	Date	Accomplishment/Milestone/Progress

<p>4. <i>Develop strategies to connect the Addison Airport community and the Addison business community (\$5,000):</i></p> <ul style="list-style-type: none"> i.) Provide airport management, tenants, and users opportunities to attend and benefit from Chamber events such as the Business Expo, Chairman’s Circle, etc. (virtual/in-person). ii.) Increase awareness of the Addison airport, its new customs facility, and its third Fixed Base Operator to Chamber members, work with key airport staff to development strategic community engagement. iii.) Work with airport staff to host at least one event at airport (virtual/in-person State of the Airport, Airport Appreciation program, etc.) iv.) Support the grand opening of the new customs facility once online (virtual/in-person). 		
Item	Date	Accomplishment/Milestone/Progress
<p>5. <i>Tourism Support (\$2,000):</i></p> <ul style="list-style-type: none"> i. consistent brand awareness for the Town of Addison, special events, and business amenities. ii. Work with Tourism Coordinator and Special Events Department to promote hotel packages for Addison’s special events amongst chamber members and business community. 		
Item	Date	Accomplishment/Milestone/Progress

Council Meeting

15.

Meeting Date: 10/27/2020

Department: Development Services

AGENDA CAPTION:

Present, Discuss, and Consider Action on an **Ordinance Granting a Meritorious Exception from the Code of Ordinances Chapter 62 for Fish Gallery, Located at 15003 Inwood Road, in Order to Permit Two Signs with a Height of 33 inches, One on the East Facade and One on the South Facade.**

BACKGROUND:

Fish Gallery is a pet supply chain focusing on fresh and saltwater fish with locations in the Dallas and Houston areas. In 2017, the company purchased the building located at 15003 Inwood Road, previously Seigel’s Liquor Store.

Staff has been in correspondence with Roger DeGregori, the president of Fish Gallery, regarding the attached east façade sign and south façade sign for the property. Mr. DeGregori informed Staff that he purchased the signs for the building and upon review it was apparent that the letter/logo heights for the signs were not in compliance with the Town’s regulations.

The Sign Code, Chapter 62 of the Code of Ordinances, regulates attached signage as follows:

(5) Maximum letter/logo height of attached signs shall not exceed twice the allowable effective area as specified in subsections (1) and (2) of this section. The street curb referenced in Schedule B shall be the street curb closest and/or adjacent to the property where the sign is to be installed. Maximum letter/logo height of attached signs shall be determined by Schedule A or Schedule B as follows:

Schedule A:

Sign Height Above Grade (Feet)	Maximum Letter/Logo Height (Inches)
0-36	16

Schedule B:

Horizontal Distance of Sign From Street Curb (Feet)	Maximum Letter/Logo Height (Inches)
---	-------------------------------------

b. Not more than 50 percent of the letters in each individual sign height category in Schedules A and B may be 25 percent taller than the specified maximum letter/logo height.

The east facing sign has been proposed at 18 feet above grade and is setback about 94 feet from Inwood Road. The south façade sign is also proposed at 18 feet above grade with a setback of 102 feet. The sign reads: Fish Gallery with a water wave underline for the logo.

The Fish Gallery logo is proposed at 33 inches tall exceeding the height allowance for signs installed below 36 feet. Per the Sign Code Section 62-163 (5) b, the letter/logo is allowed to be a maximum of 20 inches tall for the east façade sign and 30 inches tall for the south façade.

The applicant is requesting a meritorious exception to install the sign as proposed, with a height of 33 inches tall, on the east and south façades of the building.

The proposed logo does not comply with the height requirement set forth in Sign Code Ordinance Section 62-163, exceeding the allowed maximum letter/logo height by 13 inches on the east façade and 3 inches on the south façade. This equates to a 65% increase in size from what is allowed by the Code for the east façade and a 10% increase on the south façade.

RECOMMENDATION:

Administration recommends denial.

Attachments

Ordinance - Meritorious Sign Exception for Fish Gallery
Meritorious Exception Application

TOWN OF ADDISON, TEXAS

ORDINANCE NO. O20-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS GRANTING A MERITORIOUS EXCEPTION TO SECTION 62-163 OF CHAPTER 62 OF THE CODE OF ORDINANCES TO ALLOW TWO 33-INCH TALL LOGOS ON THE FRONT ELEVATION, ON THE PROPERTY LOCATED AT 15003 INWOOD 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 A VIOLATION OCCURS OR CONTINUES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Chapter 62 of the Code of Ordinances regulates signage in the Town of Addison; and

WHEREAS, Section 62-33 permits the City Council to approve exceptions to the provisions of Chapter 62 in cases that have obvious merit in not only being appropriate to the particular site or location, but also in making a positive contribution to the visual environment; and

WHEREAS, the City Council has determined that the grant of the meritorious exception contained herein is in the best interest of the public and promotes the visual environment of the Town.

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

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

Section 2. That a meritorious exception to Section 62-163 of Chapter 62 of the Code of Ordinances is hereby granted to allow a 33-inch tall logo on the east facade, front elevation, and the south façade, front elevation as detailed in **Exhibit A**, for Fish Gallery, located at 15003 Inwood Road. No other additional signage is permitted unless it complies with Chapter 62 of the Code of Ordinances.

Section 3. Any person, firm, corporation, or other business entity violating any of the provisions or terms of this Ordinance shall, in accordance with Section 62-35 of the Town of Addison Code of Ordinance (Violations), be fined, upon conviction, in an amount of not more than Five Hundred and No/100 Dollars (\$500.00), and a separate offense shall be deemed committed each day during or on which a violation occurs or continues.

Section 4. That this Ordinance shall take effect from and after its date of adoption and publication as required by law.

Ordinance No. _____

PASSED AND APPROVED BY THE CITY COUNCIL OF THE TOWN
OF ADDISON, TEXAS, on this the 26th day of March, 2019.

Joe Chow, Mayor

ATTEST:

Irma Parker, City Secretary

APPROVED AS TO FORM:

Brenda N. McDonald, City Attorney

Ordinance No. _____

Exhibit A

150" LENGTH



33" TALL

**FISH GALLERY
BACK LIT CHANNEL LETTER SIGN**

Exhibit A



The sign is located 18 feet from grade.

Ordinance No. _____



MERITORIOUS EXCEPTION APPLICATION

To be completed by Town staff:
Application date: _____ Application/Fee Received: _____ Fee paid: _____

APPLICANT CONTACT

I hereby certify that the information in this application is true and correct to the best of my knowledge.
Name: (printed) ROGER DEGREGORI
Company name: FISH GALLERY - ADDISON PET YARDS DEVELOPMENT
Address: 15003 INWOOD ROAD
Phone: 713-875-3898 Email: rdegregori@thefishgallery.com
Status of Applicant: Property Owner Tenant Contractor Other: _____
Applicant's Signature:

INFORMATION ABOUT THE REQUEST

Address or location: 15003 INWOOD ROAD - ADDISON
Reasons for Meritorious Exception: _____
MULTIPLE REASONS FOR CONSIDERATION - THE OVERALL SCALE OF THE BUILDING PRODUCES
A HIGH VERTICAL WALL THAT IS SET BACK FROM THE STREET. WITH BRISK TRAFFIC ON MAIN RD.
IT WILL BE VERY DIFFICULT TO VIEW SUCH A SMALL BACK LIT SIGN THE REQUESTED
SIGN WILL BE PROPORTIONED TO THE SIZE OF THE BUILDING AND WILL BE AESTHETICALLY PLEASING
TO RESIDENTS. WITH INFLATED COSTS AND COVID PANDEMIC WE ARE REQUESTING TO NOT HAVE
TO INVEST IN A NEW \$15K+ SIGN AND UTILIZE AN EXISTING NEW SIGN THAT WAS RECENTLY REMOVED FROM ANOTHER LOCATION.

SUBMITTAL REQUIREMENTS

- You must submit 2 paper copies (11x17) and a PDF of the following items:
- Site Plan showing:
 - Lot Lines
 - Names of Adjacent Streets
 - Location of Existing Buildings and Signs
 - Setbacks from the Proposed Sign/s
 - Sign Plans of All Proposed Signs with:
 - Scales
 - Dimensions
 - All Letter/Logo Heights
 - Total Square Footage

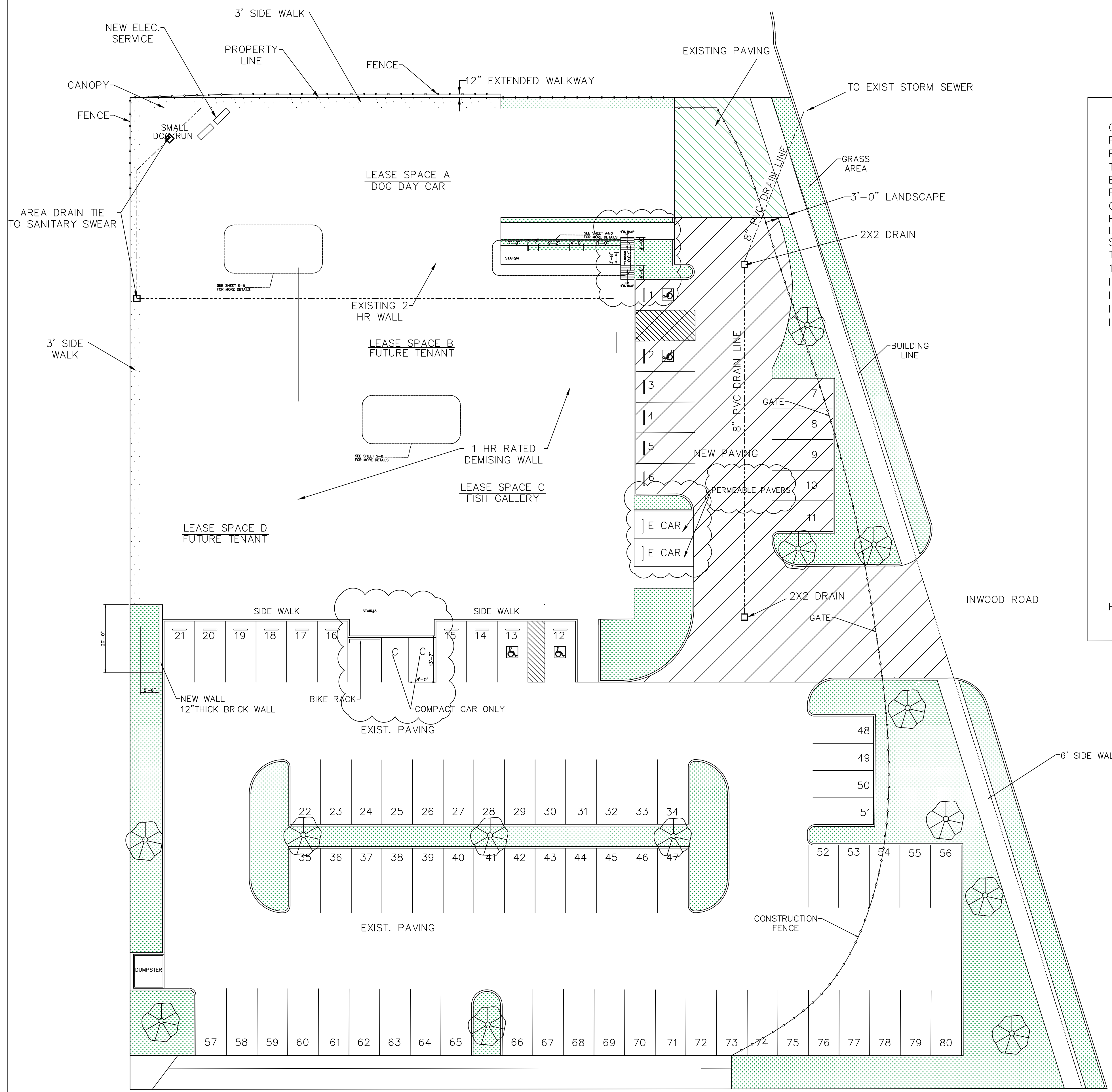
150" LENGTH

33" TALL



**FISH GALLERY
BACK LIT CHANNEL LETTER SIGN**

REVISIONS AND ISSUANCE		
NO.	DATE	DESCRIPTION



CURRENT ZONING: COMMERCIAL 1
 PROPOSED SUP: DOG KENNEL (10,464 SQ FT)
 PROPOSED USES: OFFICE/KENNEL/RETAIL
 TOTAL LOT AREA: 65,583 SQ. FT (1.506 ACRES)
 BUILDING AREA: 28,138 SQ FT
 REQUIRED GREEN SPACE: 20%/13,117 S Q. FT.
 GREEN SPACE PROVIDED: 20%/13,003 SQ. FT
 HEIGHT: 27 FT., 1 STORY
 LOT COVERAGE: 30%
 SQ. FT. OF IMPERVIOUS SURFACE: 52,380 SQ. FT
 TOTAL PARKING: 1/PER 200 RETAIL,
 1 PER/300 OFFICE, 1 PER/1,000 WAREHOUSE (EST. 83 NEEDED) CURRENT NUMBER OF PARKING: 81

I. RETAIL: 1/200 = 6216/200	=31 SPACES
II. MEDICAL: 1/200 = 4200/200	=21 SPACES
II. OFFICE: 1/300 = 1600/300	=6 SPACES
IJ. WAREHOUSE 1/1000 = 16122/1000	=17 SPACES
TOTAL = 28,138 SQ. FT	=75 CAR REQUIRED

a. SUITE A TOTAL = 10,464 SQ FT
 KENNEL = 9,464 SQ FT =9.4 PARKING SPACE
 OFFICE = 1000 SQ FT =3.3 PARKING SPACE

b. SUITE B TOTAL = 3,500 SQ FT
 RETAIL = 2,000 SQ FT =10 PARKING SPACE
 WAREHOUSE = 1,500 SQ FT =1.5 PARKING SPACE

c. SUITE C TOTAL = 7,176 SQ FT
 RETAIL = 4,216 SQ FT =21 PARKING SPACE
 OFFICE = 600 SQ FT =2 PARKING SPACE
 WAREHOUSE = 2,560 SQ FT = 2.6 PARKING SPACE

d. SUITE D TOTAL = 6,798 SQ FT
 WAREHOUSE = 2,598 SQ FT =2.6 PARKING SPACE
 MEDICAL = 4,200 SQ FT = 21 PARKING SPACE

TOTAL PARKING = 75 PARKING SPACE

HANDICAP PARKING IS PROVIDED IN ACCORDANCE WITH ADA STANDARDS

ADDISON PET YARD
 15003 INWOOD RD.
 ADDISON, TEXAS 75001



DRAWING TITLE

SITE PLAN

DRAWN BY: HR CHECKED BY: JM

DATE: 06/12/20 JOB NO.:

DRAWING NO.:

SITE PLAN
 SCALE: 1/16"=1'-0"

A1.0

7/30/20

The sign is located 18 feet from grade.



Council Meeting

16.

Meeting Date: 10/27/2020

Department: City Manager

Pillars: Excellence in Transportation Systems

Milestones: Promote Silver Line Development

AGENDA CAPTION:

Present, Discuss, and Consider Action on the **Appointment of a Selection Committee for the Addison Circle/Silver Line Station Transit-oriented Development Project.**

BACKGROUND:

Cushman and Wakefield, the Town's real estate advisor/broker for the properties located adjacent to the DART Silver Line Transit Station, is initiating the process to select a master developer and development proposal in accordance with the adopted vision for the area. The appointment of a Selection Committee composed of Council members is part of this effort. The Selection Committee will update and make recommendations to the City Council on the following:

- The parameters to be used in the selection of a master developer through a RFP process;
- The developers chosen to advance to the second phase of the selection process; and
- The selection of the preferred development partner based on formal proposals which will include a development concept and information on how they will finance the development.

The Selection Committee's meetings will start in November and continue until the ultimate preferred developer is chosen. Staff recommends the appointment of 3 City Council Members to the Selection Committee.

RECOMMENDATION:

Staff seeks direction from Council.
