

GRANT FUNDING AGREEMENT
Metrocrest “Building Our Future” Campaign Grant

This Grant Funding Agreement (“Agreement”) is made by and between the Town of Addison, Texas (“City”) and Metrocrest Services (“Metrocrest”) (each a “party” and collectively the “parties”), acting by and through their respective authorized officers.

RECITALS:

WHEREAS, Metrocrest has served the local community for over 50 years, providing a comprehensive range of social services, including access to food, job skills training, senior assistance programs, rent assistance, and other critical services for the City’s residents; and

WHEREAS, approximately seventy-six percent (76%) of Metrocrest’s client households report that Metrocrest is the only nonprofit serving their family, and Metrocrest’s local community facilities are an essential resource for City residents in need of assistance; and

WHEREAS, the economic impacts of the COVID-19 pandemic have created an increase in demand for social services which has impacted the ability of Metrocrest to provide the necessary social services for the City’s residents; and

WHEREAS, Metrocrest has undertaken the ‘Building Our Future Campaign’ (the “Campaign”) to design, develop, and build the Community Support Facility for the purpose of improving the accessibility, capacity, and ability of Metrocrest to serve the City’s residents; and

WHEREAS, Metrocrest has requested that the City support the Campaign by providing a reimbursement grant in conformance with this Agreement; and

WHEREAS, the City is authorized by Chapter 380 of the Texas Local Government Code to provide financial incentives and grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has determined that making providing the Community Facility Support Grant to Metrocrest in accordance with this Agreement will promote local economic development, stimulate business and commercial activity, and promote the public health and welfare of the City’s residents.

NOW THEREFORE, in consideration of the foregoing, and other consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows.

Article I
Definitions

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

“Bankruptcy or Insolvency” shall mean the dissolution or termination of Metrocrest’s existence, insolvency, employment of receiver for any part of Metrocrest’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors or the commencement of any proceedings under any bankruptcy or insolvency laws by or against Metrocrest and such proceedings are not dismissed within ninety (90) days after the filing thereof.

“City” shall mean the Town of Addison, Texas.

“Commencement of Construction” shall mean that: (i) the building designs and plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the Community Support Facility; (ii) all necessary permits for the construction of the Community Support Facility pursuant to the respective plans therefore have been issued by all the applicable governmental authorities; and (iii) construction of the Community Support Facility has commenced.

“Community Support Facility” shall mean construction of an approximately forty-eight thousand (48,000) square foot facility within the City of Carrollton, Texas in accordance with this Agreement.

“Community Support Facility Grant” or “Grant” shall mean a reimbursement grant in the total amount of One Hundred and Twenty Thousand and 00/100 Dollars (\$120,000.00), to be paid by the City to Metrocrest in two (2) installments as set forth in this Agreement.

“Effective Date” shall mean the last date of execution hereof.

“Expiration Date” shall mean December 31, 2024.

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on Metrocrest with respect to the Community Support Facility or any property or any business owned by Metrocrest within the City.

“Metrocrest” shall mean Metrocrest Services, a Texas nonprofit corporation operating under 501(c)(3) of the Internal Revenue Code.

“Payment Request” shall mean a written request from Metrocrest to the City for payment of any portion of the Grant. The Payment Request shall be accompanied by copies of such invoices, bills, receipts, permits, and other information, as may reasonably be requested by the City to substantiate Metrocrest’s eligibility to receive payment, including evidence of the actual costs incurred and paid by Metrocrest in connection with the design or construction of the Community Support Facility as of the date of the applicable Payment Request.

“Related Agreement” shall mean any agreement by and between the City and Metrocrest, or any of its affiliated or related entities.

Article II Term

The term of this Agreement shall begin on the Effective Date and continue until the Expiration Date, unless sooner terminated as provided herein.

Article III The Community Facility Support Grant

3.1 Community Facility Support Grant. Subject to the continued satisfaction of all the terms and conditions of this Agreement by Metrocrest, and the obligation of Metrocrest to repay the Grant funds pursuant to this Agreement, City agrees to provide Metrocrest with the Community Facility Support Grant to be paid in two (2) installments as follows:

(a) *First Installment*. The first installment of the Grant in the amount of Sixty Thousand and 00/100 Dollars (\$60,000.00) shall be paid by the City to Metrocrest within thirty (30) days after receipt of a Payment Request following the Commencement of Construction.

(b) *Second Installment*. The second installment of the Grant in the amount of Sixty Thousand and 00/100 Dollars (\$60,000.00) shall be paid by the City to Metrocrest within thirty (30) days after receipt of a Payment Request that includes certification by Metrocrest that construction of the Community Support Facility is fifty percent (50%) complete. Failure to submit the Payment Request for the second installment by the Expiration Date shall operate as a forfeiture of the payment of the second installment under this Agreement.

3.3 Current Revenue. The Grant made hereunder shall be paid solely from lawfully available funds. Under no circumstances shall the obligations of the City hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. The Grant shall be paid from funds of the City consistent with Article III, Section 52(a) of the Texas Constitution. Further, the City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit specified herein, with any statute, rule, regulation, grant, contract provision, subsequent federal guidance or other state or federal law, rule, regulation, or other similar restriction that imposes additional or greater requirements than stated herein and that is directly applicable to the services rendered or funds provided under the terms of this Agreement.

Article IV Grant Conditions

The obligation of the City to pay the Grant shall be conditioned upon the compliance and satisfaction by Metrocrest of the terms and conditions of this Agreement, including each of the

conditions contained in this Article IV, which shall remain in effect throughout the entire term of this Agreement.

4.1 Payment Request. Metrocrest's submission of a completed Payment Request to the City shall be a condition precedent to City's payment of any portion of the Grant under this Agreement.

4.2 Community Support Facility Purpose; Available Services. Metrocrest agrees that the Community Support Facility will be designed, developed, and constructed for the purpose of providing the City's residents enhanced access to local social services including, but not limited to:

- (a) Expanded case management services, space, and staff;
- (b) Center for employment and continued education;
- (c) Expanded food pantry and warehouse;
- (d) Mobile pantry truck program capabilities;
- (e) Volunteer center with training kitchen;
- (f) Teaching garden with nutritional program; and
- (g) Shared space to offer complementary services.

4.3 Laws, Rules, and Regulations. Metrocrest shall ensure the Grant funds are expended in compliance with this Agreement together with all applicable federal, state, and local laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended.

4.4 Repayment of Unused Funds. If any Grant funds are not incurred during the term of this Agreement, they shall be returned by Metrocrest to the City within ten (10) business days following the Expiration Date.

4.4 Reporting; Records; Audit.

(a) *Reports.* The Metrocrest shall keep the City informed of all expenditures made under this Agreement during the term of this Agreement in any frequency or format of report or reporting as determined in the City's sole discretion including, but not limited to, annual reports, quarterly reports, and an annual update to the City Council in writing and a presentation to the City Council of the Town of Addison at a meeting of the City Council when requested by the City.

(b) *Access to Records.* Metrocrest agrees that City, or any of its duly authorized representatives, the state, or the federal government has the right of timely and unrestricted access to any books, documents, papers, reports or other records of Metrocrest that are pertinent to this Agreement, or order to make audit, examinations, excerpts, transcripts, and copies of such records. This right also includes timely and reasonable access to Metrocrest personnel for the for the purpose of reviewing, interviewing, evaluating, and monitoring related to such documents.

(c) *Maintenance of Records.* Metrocrest shall track and document all use and expenditures of the Grant. Metrocrest's records, books, and other documents reasonably related to this Agreement shall be kept and maintained in standard accounting form. Such records, books, and documents shall be made available for inspection by City, or any of its duly authorized representatives, upon request.

(e) *Records Retention.* All records, books, and documents reasonably related to this Agreement shall be maintained and kept by Metrocrest for a minimum of four (4) years after the termination or expiration of this Agreement. If any litigation, claim, or audit involving these documents or records begins before the specified period expires, Metrocrest must keep the records and documents for not less than four (4) years and until all litigation, claims, or audit findings are resolved, whichever is later.

(f) *Audit.* Should the City determine it reasonably necessary, Metrocrest shall make all of its records, books, and documents reasonably related to this Agreement available to City, including its personnel and authorized representatives, at reasonable times and within reasonable periods, for inspection or auditing purposes or to substantiate that the use of the Grant funds is in the compliance with this Agreement.

Article V Termination; Repayment

5.1 Termination. This Agreement shall terminate upon any one of the following:

- (a) upon the Expiration Date;
- (b) by written agreement of the parties;
- (c) upon written notice by either party in the event the other party breaches any of the terms or conditions of this Agreement or a Related Agreement and such breach is not cured within thirty (30) days after written notice thereof in accordance with this Agreement;
- (d) upon written notice by the City, if Metrocrest suffers an event of Bankruptcy or Insolvency;
- (e) upon written notice by the City, if any Impositions owed by Metrocrest shall become delinquent (provided, however, Metrocrest retains the right to timely and properly protest and contest any such Impositions); and
- (f) upon written notice by either party, if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable.

5.2 Repayment. In the event the Agreement is terminated by the City pursuant to Section 5.1(c), (d), (e), or (f) Metrocrest shall immediately repay to the City an amount equal to the total Grant previously paid by the City to Metrocrest, plus interest at the rate periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at

the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank reasonably selected by the City) as its prime or base commercial lending rate, which shall accrue from the date the Grant was initially paid to Metrocrest.

5.3 Right of Offset. The City may, at its sole option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to the City from Metrocrest, regardless of whether the amount due arises pursuant to the terms of this Agreement, a Related Agreement or otherwise and regardless of whether or not the debt due the City has been reduced to judgment by a court.

Article VI Miscellaneous

6.1 Binding Agreement; Assignment. This Agreement shall be binding upon and inure to the benefit of the heirs, successors, affiliates, administrators, executors, and permitted assigns of the respective parties. This Agreement may not be assigned by Metrocrest without the prior written consent of the City.

6.2 Independent Contractor. It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties. It is understood and agreed between the parties that Metrocrest, in satisfying the conditions of this Agreement, has acted independently and the City assumes no responsibilities or liabilities to third parties in connection with these actions.

6.3 Authorization. Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement. Metrocrest represents and warrants to the City that Metrocrest is a duly formed, validly existing legal entity in good standing under the laws of the state of Texas and is authorized to transact business in the state of Texas.

6.4 Entire Agreement. This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement.

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6.6 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below or on the day actually received as sent by courier or otherwise hand delivered.

If intended for City, to:

Attn: Wesley S. Pierson, City Manager
Town of Addison
5300 Belt Line Rd.
Addison, Texas 75254

With a copy to:

Attn: Whitt L. Wyatt, City Attorney
Wood Banowsky, PLLC
3710 Rawlins St., Suite 1000
Dallas, Texas 75219

If intended for Metrocrest, to:

Attn: Tracy Eubanks, CEO
Metrocrest Services
13801 Hutton Drive, Suite 150
Farmers Branch, Texas 75234

6.7 Governing Law. This Agreement shall be governed by the laws of the state of Texas; and venue for any action concerning this Agreement shall be in the state district court of Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

6.8 Amendment. This Agreement may be amended solely by mutual written agreement of the parties.

6.9 Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.10 Recitals. The recitals to this Agreement are incorporated herein.

6.11 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.12 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.13 Employment of Undocumented Workers. During the term of this Agreement Metrocrest agrees not to knowingly employ any undocumented workers and if convicted of a violation under 8 U.S.C. Section 1324a (f), Metrocrest shall repay the amount of the Grant and any other funds received by Metrocrest from the City as of the date of such violation within one hundred twenty (120) days after the date Metrocrest is notified by the City of such violation, plus interest at the rate of four

(4%) compounded annually from the date of violation until paid. Metrocrest is not liable for a violation of this section by a subsidiary, affiliate, or franchisee of Metrocrest or by a person with whom Metrocrest contracts.

6.14 Statutory Verifications. Metrocrest's execution of this Agreement shall serve as its verification that:

(a) Metrocrest (i) does not Boycott Israel and agrees that during the term of the Agreement will not Boycott Israel as that term is defined in Texas Government Code Section 808.001, as amended; (ii) does not Boycott Energy Companies and agrees that during the term of this Agreement will not Boycott Energy Companies as that term is defined in Texas Government Code Section 809.001, as amended; and (iii) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association as those terms are defined in Texas Government Code Section 2274.001, as amended, and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association; or

(b) Metrocrest is exempt from the forgoing verification because it (i) is a sole proprietor, (ii) a nonprofit entity, (iii) a governmental entity, or (iv) has fewer than ten (10) fulltime employees.

6.14 Public Information Act Requirements. Metrocrest acknowledges that any and all records of Metrocrest, including but not limited to documents which describe, relate to, convey and/or illustrate the obligations, terms and conditions set forth in this Agreement may be subject to the Texas Public Information Act (the "Act"), Texas Government Code Chapter 552, as amended. Metrocrest agrees to fully and promptly cooperate with the City in responding to requests for information received by the City for the foregoing information pursuant to the Act. In the event Metrocrest determines that any of its information responsive to a request under the Act is confidential and/or exempt from disclosure to the public under the provisions of the Act, Metrocrest shall, at its cost, be solely responsible for asserting arguments to the Office of the Attorney General pursuant to §552.305(b) of the Act, and for filing any and all subsequent appeals relating to an opinion of the Texas Attorney General that requires disclosure of Metrocrest's confidential information. Notwithstanding the foregoing, Metrocrest agrees that the City may, but shall be under no obligation to, submit arguments to the Attorney General relating to reasons Metrocrest's confidential information is exempt from disclosure to the public under the Act, regardless of whether Metrocrest has asserted its own arguments to the Attorney General.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK -
SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date of last execution hereof.

TOWN OF ADDISON, TEXAS

METROCREST SERVICES

By: _____
Wesley S. Pierson, City Manager

By: _____
Tracy Eubanks, CEO

Date: _____

Date: _____

ATTEST:

By: _____
Irma Parker, City Secretary

DRAFT