



Addison City Council Meeting

October 24, 2023

Addison Conference Centre

15650 Addison Road

Addison, Texas 75001

Amended 10/20/2023 - Corrected Resolution 5c
Amendment 10/26 - Questions/Answers; Park Bylaws

Email comments may be submitted using the Public Comment Form located on Addison's website by 3:00 PM on the meeting day. The meeting will be live-streamed at www.addisontexas.net.

WORK SESSION

The Addison City Council will convene in the Council Chambers beginning at 6:00 PM.

1. **Call Meeting to Order and Announce that a Quorum is Present.**
2. **Citizen Comments on the Consent Agenda Items.** This item allows citizens to speak on any item listed on the Consent Agenda prior to its consideration. 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 beginning of this item.
3. **Council Member Clarification Requests Regarding Consent Agenda Items.**
4. **Council Questions and Answers.**
5. **Closed Meeting.** The Addison City Council will enter a Closed Meeting pursuant to Texas Government Code Sections 551-071 through 090 to discuss the following item(s):
 - 551.071(1)(A) Consultation with Attorney to seek advice on pending or contemplated litigation

- White Rock Chapel;
- 551.071(2): Consultation with Attorney on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter;
- 551.087(1): Economic Development Negotiations to discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; and
- Section 551.087(2): Economic Development Negotiations to deliberate the offer of a financial or other incentive to a business prospect described by Subdivision (1).
 - Addison Circle Transit Oriented Development Project

6. **Open Meeting.** In accordance with Texas Government Code Chapter 551, the Addison City Council will reconvene in an Open Meeting to consider action, if any, on the matters discussed in the Closed Meeting.

7. **Work Session Reports**

- a. Present and discuss Public Safety updates.

COUNCIL MEETING

The Addison City Council will convene for a Council Meeting beginning at 7:30 PM in the Council Chambers.

1. **Pledge of Allegiance.** United States and Texas Flags
2. **Proclamations / Presentations**
 - a. City Manager's Announcements
 - b. Employee Recognition

3. **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.

4. **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.
 - a. Consider action on the minutes from the October 10, 2023 City Council Meeting.

 - b. Consider action on a Resolution approving a service agreement between the Town of Addison and the Metrocrest Chamber of Commerce in an amount not to exceed \$38,500.

 - c. Consider action on a Resolution approving a Grant Funding Agreement between the Town of Addison and Addison Arbor Foundation and authorizing the City Manager to execute the Grant Funding Agreement in an amount not to exceed \$65,000.

 - d. Consider Action on a Resolution Approving a Grant Funding Agreement Between the Town of Addison and Metrocrest Services and Authorizing the City Manager to Execute the Grant Funding Agreement in an Amount Not to Exceed \$139,653.

 - e. Consider action on a Resolution approving a Grant Funding Agreement between the Town of Addison and Outcry Theatre and authorizing the City Manager to execute the Grant Funding Agreement in an amount not to exceed \$2,500.

- f. Consider action on a Resolution approving a Grant Funding Agreement with WaterTower Theatre and authorizing the City Manager to execute the Agreement in an amount not to exceed \$425,000 in cash and in-kind contributions.
- g. Consider action on a resolution approving a Grant Funding Agreement between the Town of Addison and Dallas Cat Lady and authorizing the City Manager to execute the Grant Funding Agreement in an amount not to exceed \$5,000.
- h. Consider action on a Resolution approving a Grant Funding Agreement between the Town of Addison and Dallas County Mental Health & Retardation d/b/a Metrocare Services and authorizing the City Manager to execute the Grant Funding Agreement in an amount not to exceed \$2,500.
- i. Consider action on a Resolution approving a Grant Funding Agreement with On Eagles Wings, Inc. d/b/a Woven Health Clinic and authorizing the City Manager to execute the Grant Funding Agreement in an amount not to exceed \$6,500.
- j. Consider action approving an agreement with Sunbelt Pools for Swimming Pool repair work for the Addison Athletic Club in an amount not to exceed \$339,743.00.
- k. Consider action on a resolution authorizing Town membership in the Texas Smart Buy purchasing cooperative.
- l. Consider action on an Ordinance to amend the Code of Ordinances by amending Chapter 66 (Solid Waste) Article II (Collection And Disposal), Division 2 (Service Charge) Section 66-52 increasing from \$13.24 to \$14.28 the monthly fee for each residential unit.
- m. Consider Action on a Resolution Adopting an Investment Strategy and Approving Brokers, Dealers, and Financial Institutions for Fiscal Year 2023-2024.
- n. Resolution approving an Events Agreement between the Town of Addison and DCO Realty, Inc. for the management, operation, coordination, and control of a variety of events at Vitruvian Park and authorizing the City Manager to execute the agreement in an amount not to exceed \$185,000.

5. **Items for Individual Consideration.**

- a. Present, discuss and consider action on a Resolution approving a fifth Amended and Restated Memorandum of Understanding (MOU) between the Town of Addison and Developer AMLI Residential for the Addison Circle Area Transit Oriented Mixed-Use Development Project and authorizing the City Manager to execute the fifth Amended and Restated MOU.
- b. Consider action on a Resolution to approve a Master Lease Agreement between the Town of Addison and Dallas Area Rapid Transit (DART), setting forth the terms and conditions of a ground lease of DART's Addison Transit Center property for inclusion in a future Transit Oriented Development (TOD) project.
- c. Present, discuss and consider action on a Resolution for appointments to the South Quorum Road Study Advisory Committee.
- d. Consider action to approve a Resolution for an agreement with Granicus for website design services for the Town's main website, intranet, and four (4) subsites; and to authorize the City Manager to execute the agreement in an amount not to exceed \$76,240.

6. **Items of Community Interest.** The City Council will have this opportunity to address items of community interest, including: expressions of thanks, congratulations, or condolence; information regarding holiday schedules; an honorary or salutary recognition; a reminder about an upcoming event organized or sponsored by the Town of Addison; information regarding a social, ceremonial, or community event that was or will be attended by an Addison City Council member or an official; and, announcements involving an eminent threat to public health and safety in Addison that has arisen since posting this agenda.

7. **Adjourn Meeting.**

NOTE: The City Council reserves the right to meet in a Closed Meeting at any time during this meeting to discuss matters listed on the agenda, as authorized by the Texas Open Meetings Act, Texas Government Code, Chapter 551. Any decision held on such matters will be conducted in an Open Meeting following the conclusion of the Closed Meeting.

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

Posted by: _____

Date posted: 10/19/2023 Time posted: 6:30 pm

Date removed from bulletin board: _____

Removed by: _____

City Council (FY24)

4.

Meeting Date: 10/24/2023

Department: General Services

AGENDA CAPTION:

Council Questions and Answers.

BACKGROUND:

The Council Questions and Answer document, along with any handout(s) provided during the meeting, will be attached below. Due to the requirement to post the agenda prior to these attachments being created, the Council Questions and Answers document will be uploaded just prior to the meeting. Any handouts presented during the meeting will be added on the next business day.

RECOMMENDATION:

Information only. No action required.

Attachments

Council Questions & Answers



Answers to Council Questions – October 24, 2023

Individual Consideration

Item #5.b: Consider action on a Resolution to approve a Master Lease Agreement between the Town of Addison and Dallas Area Rapid Transit (DART), setting forth the terms and conditions of a ground lease of DART's Addison Transit Center property for inclusion in a future Transit Oriented Development (TOD) project.

Question 1: Is there an Index to the Ground Lease that can be provided? Also, could a copy of what will be used as Exhibit A (Site Map) be provided?

Response: The adjustments to the ground lease are not based on an inflation index. Instead, the Annual Base Rent is adjusted using the Property Valuation Process. The valuation periods occur initially after the first 5 years and then every 10 years thereafter. Between these valuation periods, the rent adjusts annually by a minimum of 2% and a maximum of 3% since the last adjustment.



City Council (FY24)

7. a.

Meeting Date: 10/24/2023

Department: Police

Pillars: Gold Standard in Public Safety

Milestones: Promote and protect the Addison Way

AGENDA CAPTION:

Present and discuss Public Safety updates.

BACKGROUND:

Public Safety updates regarding the following topics:

- Statistical summary and activity report,
- Crime prevention,
- Community Policing, and
- Homelessness.

RECOMMENDATION:

Information only, no action required.

Attachments

Public Safety Update

Addison Police Department

Town of Addison Public Safety Update



Police Chief Paul Spencer
Presented to Addison City Council on October 24, 2023

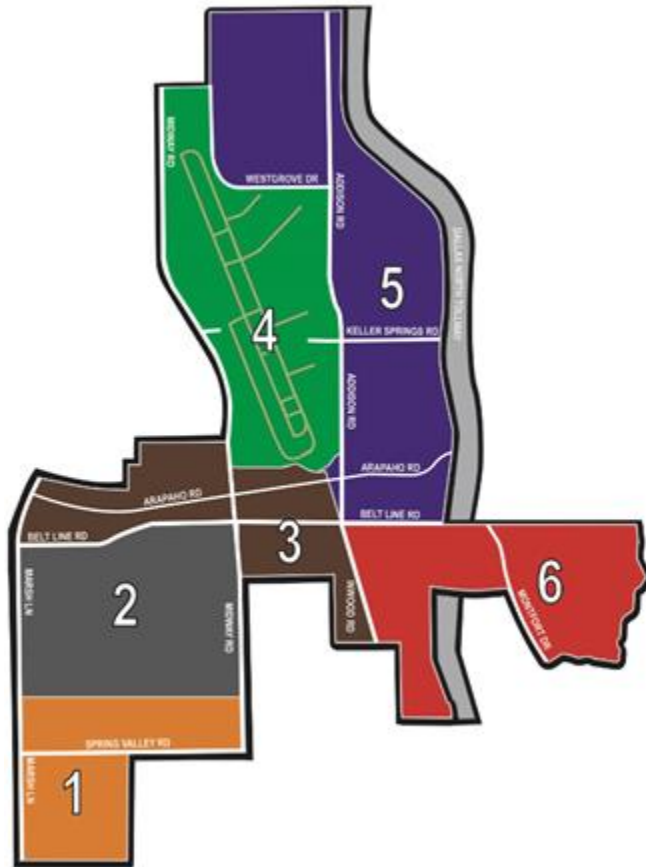


Statistical Summary and Activity Report

Town of Addison: Overview



10/16/22 – 10/16/23



- Calls for service: 20,938
- Self-initiated activity: 49,263
- Offense reports written: 4,595

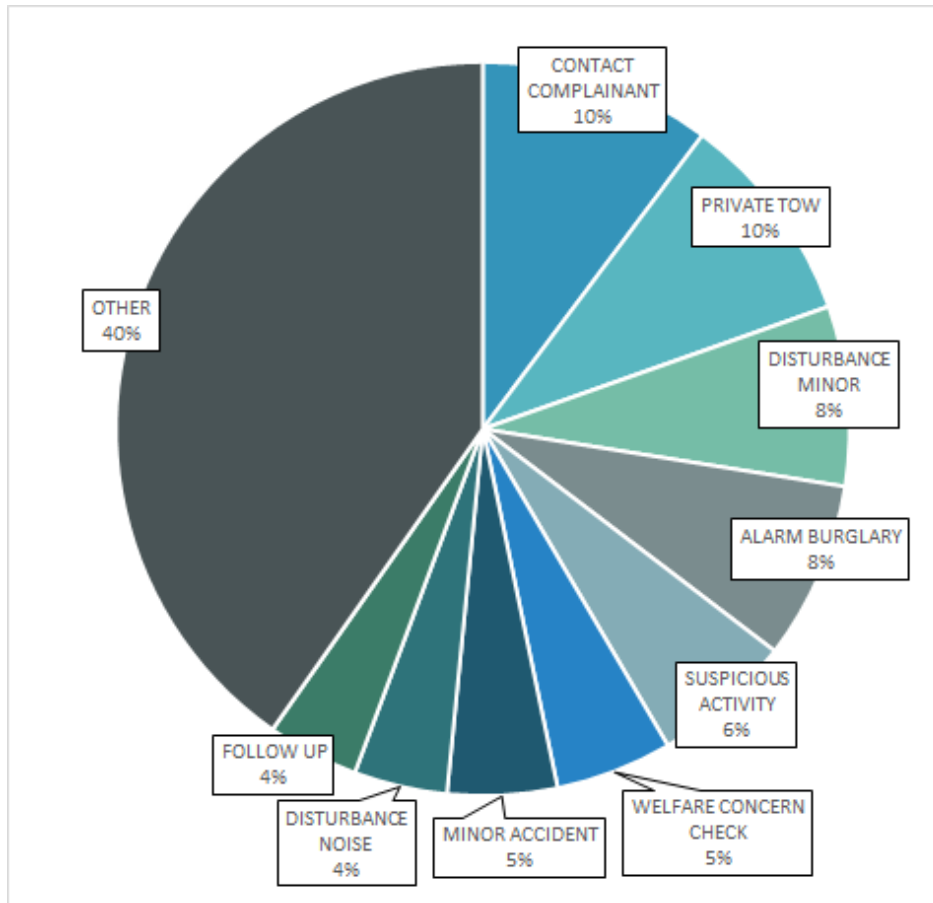
Calls for Service



10/16/22 – 10/16/23

“Other” calls for service include:

- 911 hang up
- Theft of motor vehicle
- Disturbance major
- Burglary motor vehicle
- Animal complaint

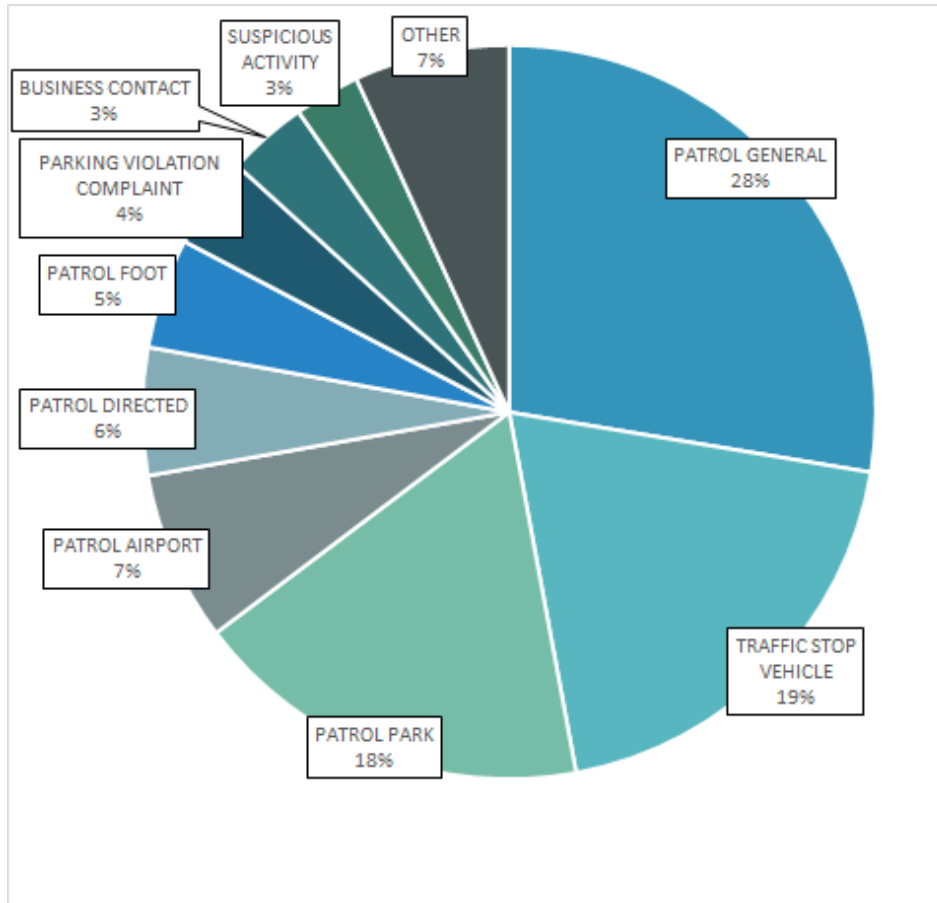


“Contact Complainant” is a general catch-all for citizen inquiries, concerns, and questions about various types of law.

Self-Initiated Activity



10/16/22 – 10/16/23



- “Other” markouts include:
- Crime risk
 - Follow up
 - Animal complaint
 - Contact complainant
 - Assist motorist

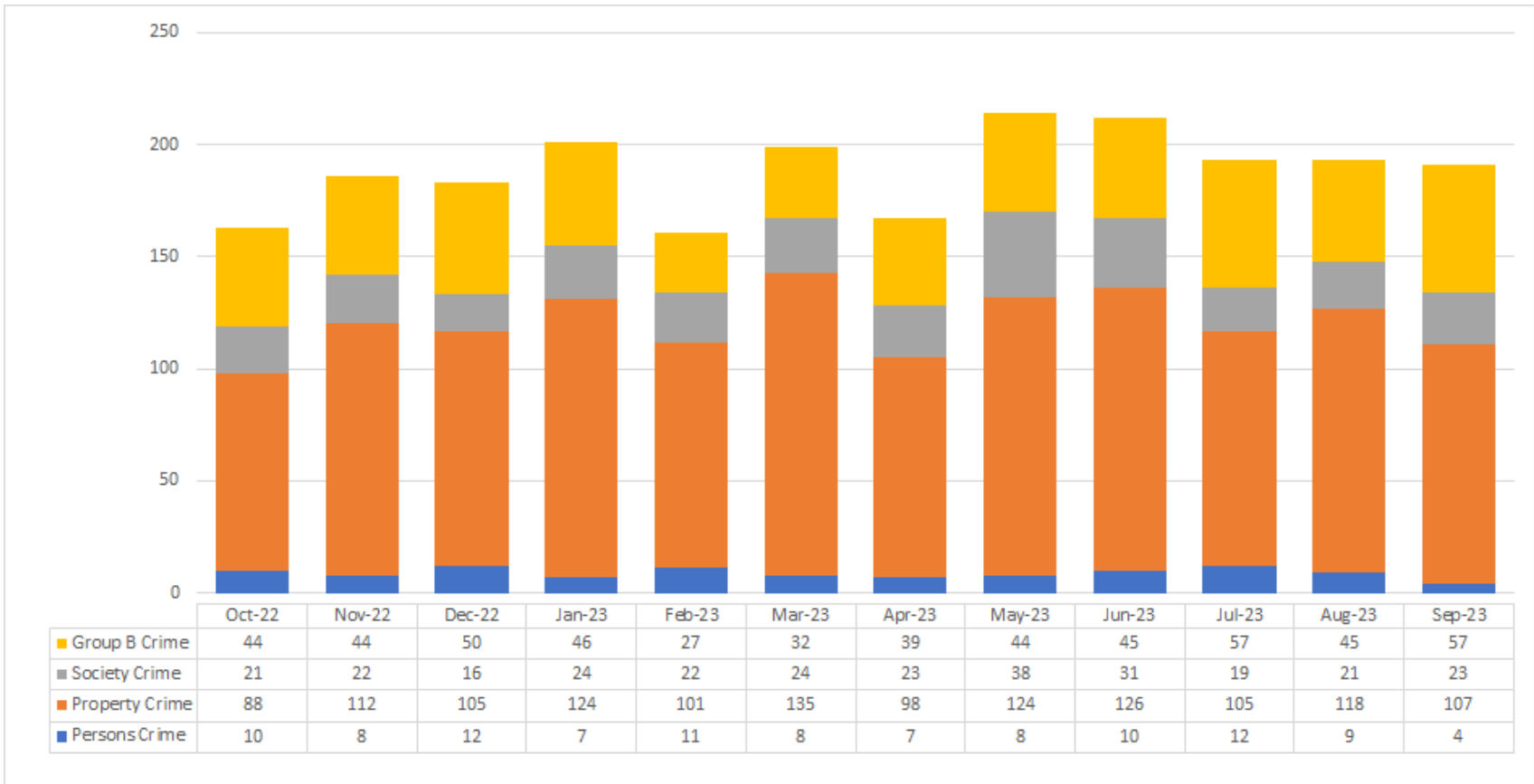
“Patrol Directed” refers to a mandatory directive for officers to check on a house or business at least twice a day for two weeks.

These can be submitted by residents going on vacation or detectives working a case.

NIBRS Comparison



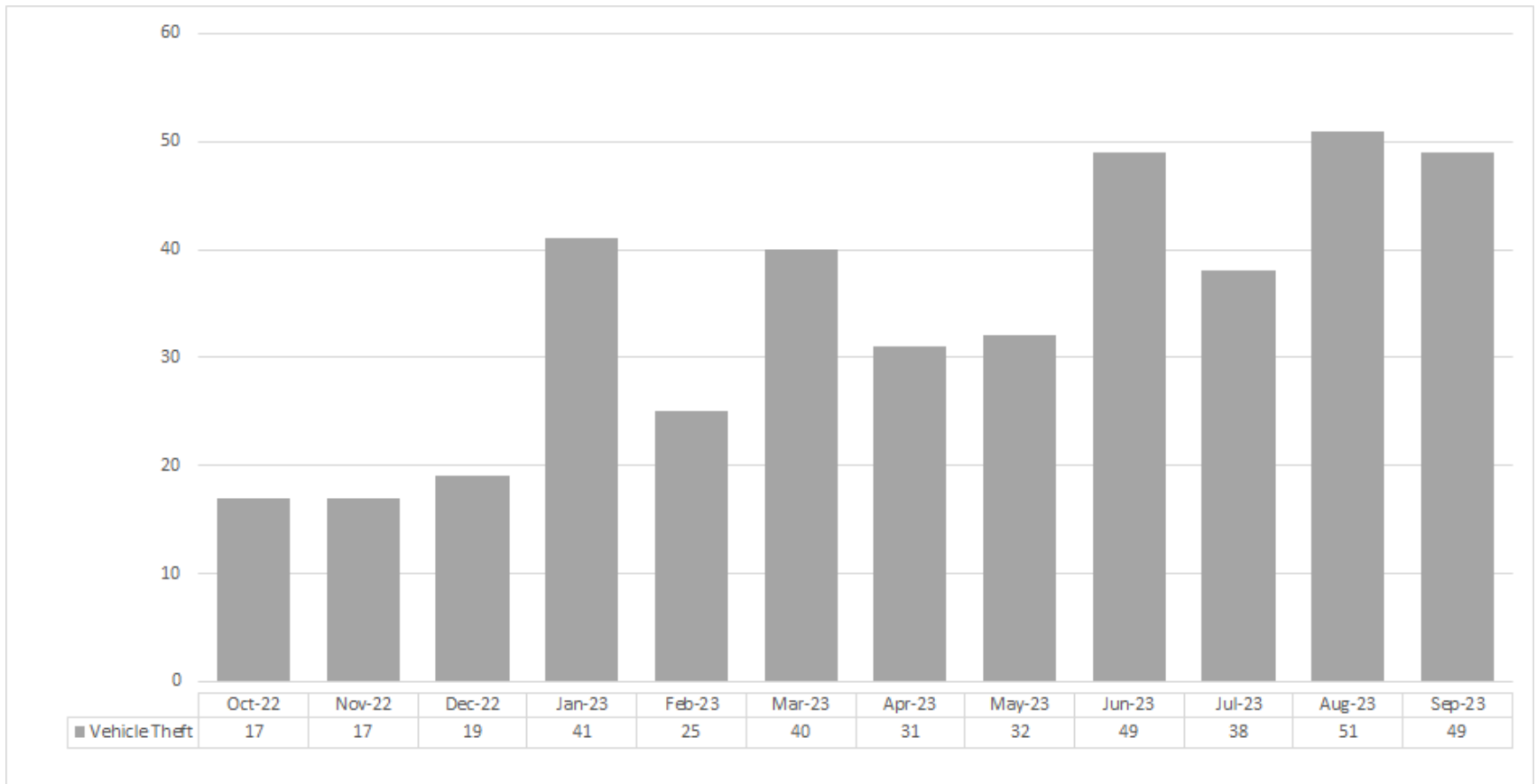
10/1/22 – 10/1/23



Vehicle Theft



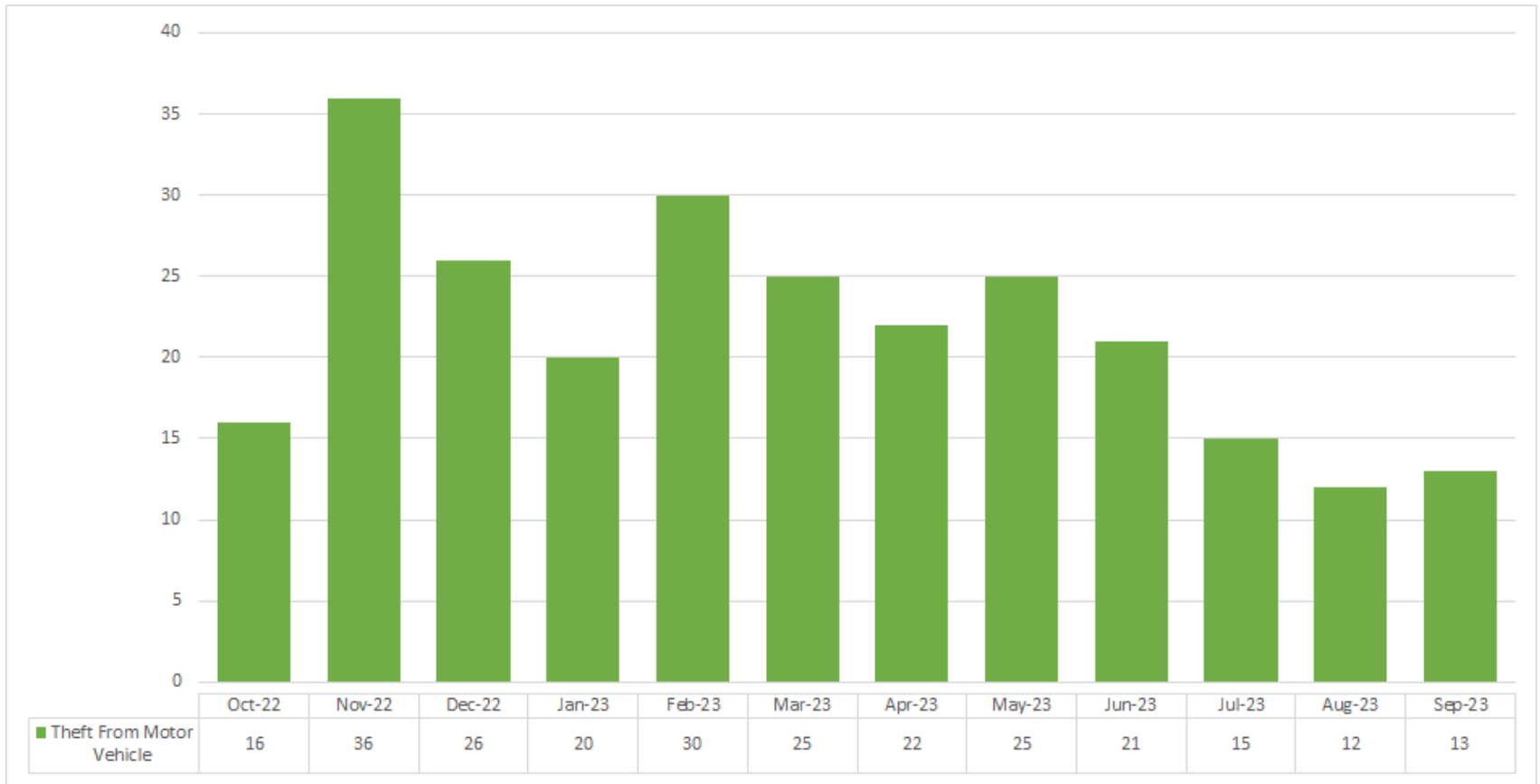
10/1/22 – 10/1/23



Theft From Motor Vehicle



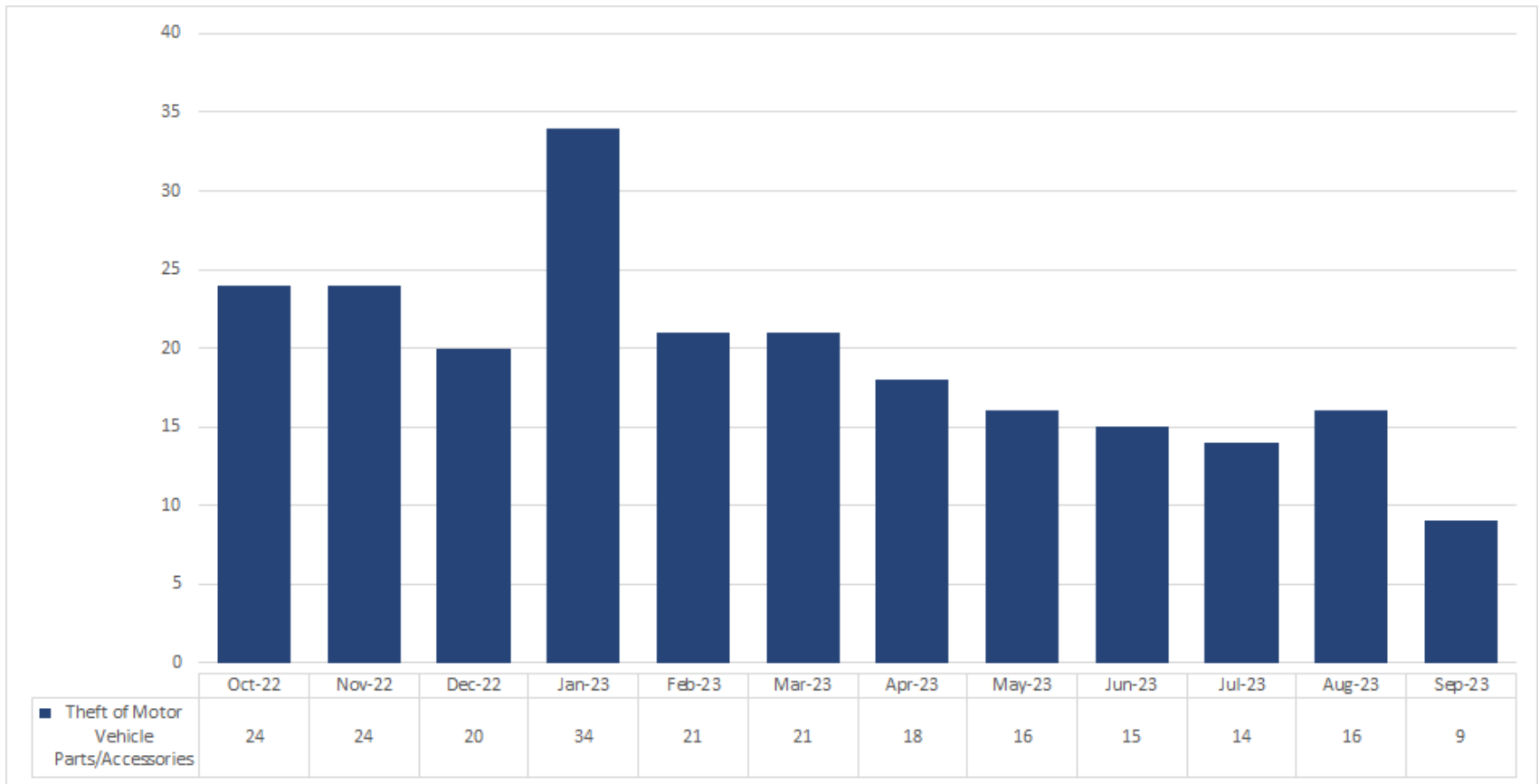
10/1/22 – 10/1/23



Theft of Motor Vehicle Parts/Accessories



10/1/22 – 10/1/23



Crime Trend: 5000 & 5100 Belt Line Rd

The logo for Addison, featuring the word "ADDISON" in white, uppercase letters inside a blue circle. A small registered trademark symbol (®) is located at the bottom right of the circle.

Recent property crime at east Belt Line restaurants, bars, and shopping centers:

- Organized groups of suspects are stealing high value sports cars and trucks.
 - Chevy Camaros, Corvettes, and Dodge Chargers, Challengers are targeted.
- Suspects exploit vehicle manufacture vulnerabilities using electronic control module (ECM) manipulation or vehicle key reprogramming to disable tracking and drive away within two minutes.
- Suspects arrive in stolen vehicles bearing stolen license plates and frequently evade police, making identification more difficult.

Offenses in the past year:

- | | |
|------------------------------------|--|
| • Addison Walk (5000 Belt Line Rd) | • Village on the Parkway (5100 Belt Line Rd) |
| • 14 vehicle thefts | • 81 vehicle thefts |
| • 4 vehicle burglaries | • 44 vehicle burglaries |
| • 3 catalytic converter thefts | • 15 catalytic converter thefts |

Crime Trend: 5000 & 5100 Belt Line Rd, Cont.

The logo for Addison, featuring the word "ADDISON" in white, uppercase letters inside a blue circle. A small registered trademark symbol (®) is located at the bottom right of the circle.

Patrol, CID, and administrative response:

- All appropriate enforcement action increased: multiple arrests made, at large warrants written and served, pursuits authorized, slight increase in vehicle recoveries.
- Heavy increase in visible, marked unit patrolling.
- Intelligence-led patrolling strategies use thorough analysis of hot spots and focus times/locations.
- Overtime shifts worked during most likely offense times.
- Investigative assistance from federal and regional partners.
- Covert surveillance and unmarked unit patrolling.
- Communication with local businesses for witness information, leads, video footage, and general awareness.
- Daily intel sharing of known and unknown suspects between local police departments.



Crime Prevention

Crime Prevention: Police Efforts

ADDISON®

Crime prevention efforts by the Addison Police Department:

- License Plate Recognition and Optical Camera program.
- Community outreach seminars.
- Neighborhood and HOA crime meetings.



Daily patrol officer activities:

- Driving, walking, and riding our parks and trails.
- Vacation watches and directed patrols.
- Suspicious activity markouts on vehicles and people.
- Property checks on open doors and windows, fresh damage, and malfunctioning city equipment.
- Crime risk cards for vehicles left open, unlocked, or with valuables visible.

Crime Prevention: Community Policing



Crime prevention is a partnership with our community.

- The Addison Police Department is committed to preserving order and protecting the lives and property.
- Addison's strong sense of community comes from building trust and relationships.
- We are striving to strengthen trust by building a partnership between the police and the community.



Crime Prevention: Community Policing

ADDISON

Prevention is the best way to reduce the chances of theft.

Taking care of your vehicle at home:

- Close garage doors and any gates.
- Remove garage door openers from vehicles parked outside.
- Roll up car windows, take your keys with you, and lock the doors.

Remove commonly targeted items in your vehicle while out and about:

- Any empty or full backpacks, bags, or boxes.
- Coats or blankets placed over bulky items.
- Items stored under seats or in visible lockboxes
- Purses, wallets, or bags left on the seat or floor—even for a moment!

Safety tips for your home and neighborhood:

- Light up the entrance to your home and your driveway.
- Consider installing exterior cameras and joining a video sharing website with your neighbors.





Community Policing



The police department's outreach plan has three distinct areas of focus:

1. Neighborhood Policing
2. Event Programming
3. Information Sharing/Social Media

Neighborhood Policing

ADDISON

The department understands the importance of officer presence within our neighborhoods.

- Increased focus on patrol officers spending time in residential areas.
- Continued responsiveness to neighborhood traffic complaints, parking issues, etc.
- Partnership with HOA's.



Community outreach programming is critical to building and maintaining trust.

- Continued quarterly programming at the Addison Athletic Center
- Participate in nationally recognized community events such as National Night Out, Prescription Drug Take-Back, etc.
- Work with AAC Staff to generate ideas and seek input from residents.

Event Programming, Continued.



- Participation in AAC social events such as Senior bingo, and Senior Social.
- “Meet and Greet” in the morning and/or early evenings for officers to interact with residents in the AAC lobby.
 - Positive interactions
 - Answer questions and concerns.

Timely and accurate communication is critical.

- Working with IT and our crime analyst to create a dashboard or web portal where the community can access up-to-date crime statistics.
 - Address shortcomings of Community Crime Maps
- Focus on making our Facebook page a more active place.
- Need to tell our story.



Increased frequency of social media posts:

- Informative posts (crime trends, prevention tips, etc.)
- Promotion of significant arrests and major convictions
- Recognize employee milestones & accomplishments

Possible Next Steps



- Public Safety Open House
- Citizens Police Academy
- Summer outdoor event at AAC
- Neighborhood police officer positions



Homelessness

Homelessness continues to be a regional problem as the DFW cost-of-living and population increases.

- Partnership with Metrocrest Services to keep people from becoming unhoused or, to try and get those who are on the street to accept help.
- Metrocrest Services Community Response team for those we encounter that need assistance.
- Other local resources such as shelters and NGOs
 - Our Calling, etc.



Education is key to understanding the complexities of the homelessness problem.

- Informational seminar for residents presented by the Town of Addison Police Department and Metrocrest Services on November 6, 2023, at the Addison Conference Center.
- Staff training sessions
- Environmental design and signage to address panhandling.
- Business support and outreach
- Will bring back a comprehensive approach to addressing homelessness.

Questions?

City Council (FY24)

2. a.

Meeting Date: 10/24/2023

Department: General Services

AGENDA CAPTION:

City Manager's Announcements

BACKGROUND:

The City Manager will make announcements of interest to the Town.

RECOMMENDATION:

Information only.

City Council (FY24)

2. b.

Meeting Date: 10/24/2023

Department: General Services

AGENDA CAPTION:

Employee Recognition

BACKGROUND:

The City Manager will recognize an employee for his/her service to the Town.

RECOMMENDATION:

Information only.

City Council (FY24)

4. a.

Meeting Date: 10/24/2023

Department: City Secretary

AGENDA CAPTION:

Consider action on the minutes from the October 10, 2023 City Council Meeting.

BACKGROUND:

The minutes for the October 10, 2023 City Council Meeting have been prepared for consideration.

RECOMMENDATION:

Administration recommends approval.

Attachments

Minutes - October 10, 2023

DRAFT

OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL

October 10, 2023

Addison Conference Centre
15650 Addison Road, Addison, TX 75001
6:00 p.m. Executive Session & Work Session
7:30 p.m. Regular Meeting

Present: Mayor Bruce Arfsten; Mayor Pro-Tempore Eileen Resnik; Deputy Mayor Pro-Tempore Guillermo Quintanilla; Council Member Nancy Craig; Council Member Darren Gardner; Council Member Dan Liscio; Marlin Willesen

WORK SESSION

The Addison City Council convened for a Work Session in the Council Chambers beginning at 6:00 p.m.

1. **Call Meeting to Order and Announce that a Quorum is Present.**

Mayor Arfsten called the meeting to order and announced there was a quorum present with Council Member Gardner participating via ZOOM.

2. **Citizen Comments on the Consent Agenda Items.** *This item allows citizens to speak on any item listed on the Consent Agenda prior to its consideration. 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 beginning of this item.*

3. **Council Member Clarification Requests Regarding Consent Agenda Items.**

4. **Council Questions and Answers.** *(posted 10/11/2023)*

5. **Closed Meeting.** The Addison City Council will enter a Closed Meeting pursuant to Texas Government Code Sections 551-071 through 090 to discuss the following item(s):

- 551.071(1)(A) Consultation with Attorney to seek advice on pending or contemplated litigation -
 - White Rock Chapel;
 - 551.071(2): Consultation with Attorney on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter;
 - 551.087(1): Economic Development Negotiations to discuss or deliberate regarding commercial or financial information that the governmental body has received from a
-

business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; and

- Section 551.087(2): Economic Development Negotiations to deliberate the offer of a financial or other incentive to a business prospect described by Subdivision (1).
 - Addison Circle Transit Oriented Development Project

Mayor Arfsten closed the Open Meeting to convene the City Council into Closed Session at 6:05 pm.

6. **Open Meeting.** In accordance with Texas Government Code Chapter 551, the Addison City Council will reconvene in an Open Meeting to consider action, if any, on the matters discussed in the Closed Meeting.

Mayor Arfsten convened the City Council into Open Session at 7:30 pm. No action was taken as a result of Closed Session.

7. **Work Session Reports**

- a. **Present and discuss Addison Kaboom Town! ® recap.** [*Special Events Director Abby Morales, Senior Accountant Ismael Villalta*]

Addison Kaboom Town! ® is a major festival produced by the Town annually to promote tourism while supporting Addison hotels, restaurants, and other businesses. It continues to be one of the nation's most impressive and unique Independence Day celebrations. The festivities kick-off with the Addison Airport Airshow, followed by fireworks that can be viewed town-wide from a restaurant watch party, hotel balcony, or the award-winning festival in Addison Circle Park. The event was held July 3, 2023 and showcased flights, sights, and an amazing night of boom!

COUNCIL MEETING

The Addison City Council convened for the Council Meeting at 7:30 PM in the Council Chambers.

1. **Pledge of Allegiance.** United States and Texas Flags
2. **Proclamations / Presentations**
 - a. City Manager's Announcements
 - b. Employee Recognition
 - Director of Development Services Ken Schmidt recognized Planning & Development Manager Lesley Nyp
 - Director of Public Works & Engineering Shannon Hicks recognized Major Capital Projects Construction Inspector Rafael Ceballos
3. **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.

None

4. **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.
- a. **Consider Action on the Minutes from the September 26, 2023 City Council Meeting.**
 - b. **Consider action on the purchase of water meters from Thirkettle Corporation (d/b/a Aqua-Metric Sales Company, Inc.) through HGACBuy and authorize the City Manager to execute the Purchase Order in an amount not to exceed \$165,000.**
 - c. **Consider action on the purchase of an asphalt trailer from Kirby Smith Machinery, Inc. through BuyBoard for an amount not to exceed \$64,598.**
 - d. **Consider action on the purchase of traffic signal system purchases from Paradigm Traffic Systems, Inc., through BuyBoard and authorize the City Manager to execute the purchase order in an amount not to exceed \$161,500.**
 - e. **Consider action on the purchase of a Model 435 street sweeper from TYMCO through BuyBoard and authorize the City Manager to execute the purchase order in an amount not to exceed \$217,357.**
 - f. **Resolution No. R23-R078: Consider action on a Resolution approving a Professional Services Agreement (PSA) between the Town of Addison and Pure Technologies to provide non-destructive testing of the transmission water main line and authorizing the City Manager to execute the agreement in an amount not to exceed \$71,515.**
 - g. **Consider action on Change Order #1 to the contract with Rey-Mar Construction, LLC. (Rey-Mar) for a permanent increase of \$100,000 per fiscal year and authorize the City Manager to execute the change order in an amount not to exceed \$100,000.**

Mayor Arfsten called for any Items to be removed for separate discussion. Deputy Mayor Pro-Tempore Quintanilla requested that Consent Item (a) be removed.

MOTION: Mayor Pro-Tempore Resnik moved to approve Consent Agenda Items (b), (c), (d), (e), (f) and (g) as presented. Deputy Mayor Pro-Tempore Quintanilla seconded the motion. Motion carried unanimously.

* * * * **CONSENT AGENDA (a)** * * * *

Deputy Mayor Pro-Tempore Quintanilla requested to amend the Minutes from the September 26, 2023 City Council Meeting to add the following:

Mayor Arfsten noted if any member of this Committee decides to run for City Council at the May 2024 General Election, they would automatically be required to resign from this Committee.

MOTION: Deputy Mayor Pro-Tempore Quintanilla moved to amend minutes with this statement included. Mayor Pro-Tempore Resnik seconded the motion. Motion carried unanimously.

5. **Public Hearings.**

- a. **Ordinance No. O23-47: Hold a public hearing, present, discuss, and consider action on a request for a Special Use Permit (SUP) for property located at 4980 Belt Line Road, Suite 200, that is currently zoned Planned Development (PD), through Ordinance No. 001-002, to allow a restaurant with the sale of alcoholic beverages for on-premises consumption. Case 1888-SUP/4980 Belt Line Road, Suite 200 (The Alley).**
[Planning & Development Manager Lesley Nyp]

The subject property is located at 4980 Belt Line Road, Suite 200. The proposed restaurant, The Alley, would occupy a second-floor suite within the existing building that was formerly occupied by Pete’s Dueling Piano Bar. The site is zoned Planned Development (PD), Ordinance No. 001-002. This site also has several Special Use Permits (SUP) to allow the existing restaurants. The Alley is a full-service restaurant and sports bar that offers a variety of upscale food offerings. Addison will be the first location for this concept; however, the applicant has experience in the restaurant industry, including operating a Wing Zone restaurant in Athens, Georgia. The applicant proposed initial operating hours of 4:00 PM – 2:00 AM, seven days a week, and eventually expanding to offer lunch with hours of 11:00 AM – 2:00 AM.

The restaurant proposes to include interior seating and will periodically feature entertainment opportunities, which may include trivia, karaoke, live music, board game nights, and beer/wine tasting events. The Alley would also offer alcohol sales for on-premises consumption. According to the applicant, BYOB will not be allowed. The applicant has made an application for a TABC permit. The PD Ordinance allows restaurants and the sale of alcoholic beverages for on-premises consumption through the approval of an SUP. The proposed use complies with the ordinance.

With this request, The Alley proposes to utilize a 5,659 square foot suite for a new restaurant. The proposed restaurant will provide seating for 247 individuals. The interior floor plan is comprised of existing kitchen and service areas, two bars, and a stage. Table and bar seating are proposed to be provided within the dining area. The applicant plans to install several televisions and a projector to showcase various sporting events for customers.

There are no modifications proposed to the parking. PD, Ordinance No. 001-002, adopted the parking requirements established within the Local Retail (LR) zoning district, with the following modifications: Use Parking Ratio Restaurant 1 space per 160 square feet Restaurant with designated valet parking 1 space per 100 square feet The shopping center is occupied by a variety of retail, personal services, and restaurants. The only establishment that utilizes valet parking is The Addison Improv. The Alley is not proposing to offer valet to customers. Based upon the current uses, the shopping center exceeds the required parking by three (3) spaces.

No modifications are proposed to the exterior facades or to the landscaping and open space. The Alley will occupy a currently vacant suite that was formerly used as an entertainment and restaurant venue. Given the subject properties location, interior improvements, and current market demands, it is unlikely that suite will be converted to a different use, such as an office or retail. Staff recommends approval of these requests, subject to the following condition:

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

The Addison Planning and Zoning Commission, meeting in regular session on September 19, 2023, voted to recommend approval of a request for a Special Use Permit (SUP) to allow a restaurant with the sale of alcohol for on-premises consumption on a property located at 4980 Belt Line Road, Suite 200, which is currently zoned Planned Development (PD), Ordinance No. 001-002, with condition as stated above.

Public Hearing: There were no citizen or audience member comments and/or requests.

MOTION: Mayor Pro-Tempore Resnik moved to approve Case 1888-SUP/4980 Belt Line Road, Suite 200 for The Alley as presented with exception as noted. Council Member Liscio seconded the motion. Motion carried unanimously.

- b. **Ordinance No. 023-48: Hold a public hearing, present, discuss, and consider action on a request to rezone a 1.77± acre property located at 3790 Belt Line Road, from Planned Development (PD) to a new Planned Development (PD) zoning district with a Special Use Permit (SUP), to allow for the construction of a proposed restaurant with dine-in and drive-through facilities, through the approval of development plans. Case 1891-Z/3790 Belt Line Road (Chick-Fil-A).** [Planning & Development Manager Lesley Nyp]

This request is specific to the 1.77-acre property located at 3790 Belt Line Road. The property is currently occupied by a vacant building and associated site improvements, formerly known as Capital One Bank. The site is zoned Planned Development (PD), Ordinance No. 091-068, as amended by Ordinance Nos. 092-048, 093-018, 004-030, and 006-016. The applicant, Chick-Fil-A, proposed to rezone the subject property to a new Planned Development (PD) zoning district (with modified Local Retail (LR) district standards) and a Special Use Permit (SUP) with the adoption of development plans to allow a restaurant with drive-through facilities.

Chick-Fil-A is a fast-food restaurant that was founded in 1967. Chick-Fil-A has had a location in Addison since 1994 at 3781 Belt Line Road, which is across the street from the subject property. The restaurant has expressed interest in expanding their restaurant and drive-through facilities, however, limitations at their existing site made that unfeasible. This request will allow a significant increase in drive-through stacking, covered ordering and pick-up areas, and an outdoor patio space. The applicant proposes to cease operations at the existing location (3781 Belt Line Road) with approval and development of this request. The zoning ordinance allows restaurants with drive-thru facilities through the approval of an SUP. The proposed use complies with the ordinance.

With this request, Chick-Fil-A proposed to demolish the existing building and site improvements and construct a new restaurant with a two-lane drive-through. The development plan includes a one-story 4,927 square foot structure, which will include dine-in seating, a 425 square foot outdoor patio, and two canopy structures to support the two-lane drive-through. Site improvements will include new pavement and curbing for the proposed parking areas, drive-thru, 2 site access drives, and pedestrian connectivity to the existing sidewalk along Belt Line Road. Additional site improvements will include a solid waste enclosure and site landscaping. The floor plan of the restaurant indicates most of the building to be dedicated to kitchen and service restroom areas. The dine-in area will include 1,148 square feet with table and booth seating for 68 customers. The outdoor patio will be 425 square feet and will provide seating for 12 customers.

The off-street parking requirement for a restaurant is 1 space for each 70 square feet of floor area. The development plan identifies 77 parking spaces to serve the 5,352 square foot restaurant and patio space, which meets the requirement. The site will also provide 4 accessible parking spaces. The site will maintain the existing access from Business Avenue and a cross access easement along the west property line. The applicant does not propose additional driveway connections to this site.

Given that Chick-Fil-A restaurants often generate a significant amount of activity, the Town required the applicant to complete a Traffic Impact Analysis (TIA) to determine what effect the proposed development would have on the existing roadway network. TIAs are based on traffic engineering standards and best practices. It is common practice to utilize traffic data assumptions published by the Institute of Transportation Engineers (ITE), which combines multiple studies of actual traffic counts from different uses to establish the average number of one-way trips that similar uses can be expected to generate in a day, as well as in the AM peak hour, midday peak hour, and PM peak hour. In this instance, the Town recommended using actual traffic counts from an existing Chick-Fil-A of similar size and configuration to the proposal to complete the TIA to reflect anticipated conditions more accurately. Based upon that information, the following trip generation is anticipated with the proposed development:

Use	Size	Average Weekday Daily Trips	AM Peak Hour Trips	Midday Peak Hour Trips	PM Peak Hour Trips
Chick-Fil-A Restaurant with 2-Lane Drive-Thru	4,927 SF	4,118	252	524	278

An increase in site traffic is anticipated due to the current vacancy and underutilization of the subject property, however, the TIA determined that the current roadway network has sufficient capacity to serve the restaurant. The analysis recommended minimal traffic mitigation measures, including slight modification to timing of the existing traffic signal during peak hours at the Belt Line Road and Business Avenue intersection. With this project replacing an existing Chick-Fil-A directly across Belt Line Road, the projected net increase in traffic includes 248 daily trips, 2, am peak hour trips, 137, midday peak hour trips, and 80, pm peak hour trips. The analysis was conducted by Lee Engineering, a Dallas-based traffic engineering firm. The analysis was reviewed by Town staff and traffic engineers at Kimley-Horn and Associates. Kimley-Horn’s traffic engineering group provides traffic engineering and transportation planning services to the Town,

which includes development of the Town’s Master Transportation Plan. Based on their review, Kimley-Horn determined that the applicant’s traffic impact assessment was accurate.

The proposed facades are comprised primarily of brick veneer and the canopy structures will be constructed with steel and aluminum. The façade consists of neutral colors with black accents. The primary entrance of the restaurant will be on the west façade, with a secondary access on the north façade. The building proposes to reach a maximum height of approximately 21 feet and the canopy structures will be 9 feet 8 inches tall. All mechanical equipment will be screened from the public rights-of-way. The proposed solid waste enclosure will be positioned at the southeast corner of the site and constructed to match the building façade.

Chick-Fil-A has met or exceeded Town requirements for the provision of minimum landscape area, landscape buffer, tree plantings, and parking lot interior landscaping. With the redevelopment of the site, 259 caliper inches are proposed to be removed. Tree mitigation includes 170 caliper inches provided on site with new plantings. The remaining 89 caliper inches are proposed to be mitigated by payment into the tree mitigation fund at \$192 per caliper inch, resulting in a total fee of \$17,088.

Due to this site being situated in the vicinity of the Asbury Circle neighborhood, the applicant offered to conduct a neighborhood meeting with members of the Asbury Circle HOA. The Asbury Circle HOA made the determination that the meeting was not necessary as they felt that the impact would be minimal to their neighborhood.

The Addison Planning and Zoning Commission, meeting in regular session on September 19, 2023, voted to recommend approval of a request changing the zoning on property located at 3790 Belt Line Road, which property is currently zoned Planned Development (PD), to a new Planned Development (PD) district with Local Retail (LR) district standards and approval of a Special Use Permit (SUP) for a restaurant with dine-in and drive-thru facilities.

Public Hearing: There were no citizen or audience member comments and/or requests.

MOTION: Council Member Gardner moved to approve Case 1891-Z/3790 Belt Line Road, Chik-Fil-A request as presented. Mayor Pro-Tempore Resnik seconded the motion. Motion carried unanimously.

6. Items for Individual Consideration.

7. **Items of Community Interest.** *The City Council will have this opportunity to address items of community interest, including: expressions of thanks, congratulations, or condolence; information regarding holiday schedules; an honorary or salutary recognition; a reminder about an upcoming event organized or sponsored by the Town of Addison; information regarding a social, ceremonial, or community event that was or will be attended by an Addison City Council member or an official; and, announcements involving an eminent threat to public health and safety in Addison that has arisen since posting this agenda.*

8. Adjourn Meeting.

There being no further business to come before the City Council, the meeting was adjourned at

8:22 p.m.

TOWN OF ADDISON, TEXAS

Bruce Arfsten, Mayor

ATTEST:

Irma G. Parker, City Secretary

City Council (FY24)

4. b.

Meeting Date: 10/24/2023

Department: Economic Development

Pillars: Innovation in Entrepreneurship & Business
Optimize the Addison Brand

Milestones: Leverage Addison's assets to grow and expand placemaking business programs and events that will set Addison apart to attract talent and businesses

AGENDA CAPTION:

Consider action on a Resolution approving a service agreement between the Town of Addison and the Metrocrest Chamber of Commerce in an amount not to exceed \$38,500.

BACKGROUND:

The Town of Addison has provided grant funding to the Metrocrest Chamber of Commerce for the last several years. Two years ago, the agreement transitioned from a grant funding agreement to a service agreement managed by the Economic Development Department. The attached Resolution includes the proposed service agreement for Fiscal Year 2024. The service agreement defines a work plan and quarterly reports that must be provided to the Town in order to qualify for payments. The following is what they have proposed to achieve for the Town:

A. Economic Development Marketing:

1. Provide marketing support to the Addison Economic Development Department, including support and participation in the Annual Economic Development Luncheon.
2. Conduct a Business Expo with marketing targeted at Addison Businesses and provide educational sessions for attendees.
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 the Addison Economic Development Department.
5. Collaborate on BREP (Business Retention and Expansion Program) targeted at Addison-based businesses and headquarters.

B. Entrepreneur Development/Small Business Support:

1. Highlight local resources available to entrepreneurs (e.g., SBDCs and SCORE)

2. Host at least one educational event geared towards small businesses.
3. Reach out to Addison Coworking spaces to provide resources to their members.
4. Provide support to the Addison Economic Development Department on new entrepreneurial initiatives.

C. Addison Business Profile Support:

1. Organize and conduct the annual Mayors' Forum showcasing the State of the City addresses from the Addison, Carrollton, and Farmers Branch Mayors.
2. Provide development opportunities for local leadership via Leadership Metrocrest.
3. Provide ribbon-cutting support for new Chamber members in the Addison area.
4. Provide support to George Herbert Walker Bush Elementary School to connect them with the business community.

D. Develop Strategies to Connect the Addison Airport Community with the Addison Business Community

1. Provide opportunities for airport management, tenants, and users to attend and benefit from Chamber events such as the Business Expo and Chairman's Circle.
2. Increase awareness of the airport, customs facility, and the three Fixed Base Operators to Chamber members and work with key airport staff to develop strategic community engagement.
3. Work with airport staff to host at least one event at the airport (e.g., virtual/in-person State of the Airport, Airport Appreciation program, etc.)

E. Metrocrest Chamber of Commerce Event Sponsorship:

1. Provide the Addison Economic Development Department with top sponsorship acknowledgement at the following events: Annual Awards Luncheon and Economic Development Luncheon.
2. Any and all advertising materials, publications, and websites for the events outlined in Subsection E(1) herein shall reflect the Addison Economic Development Department's sponsorship.

The FY2024 Metrocrest Chamber of Commerce Service Agreement is included as an attachment to this agenda item.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution - Metrocrest Chamber Service Agreement 23-24



RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A SERVICE AGREEMENT BETWEEN THE TOWN OF ADDISON AND METROCREST CHAMBER OF COMMERCE IN AN AMOUNT NOT TO EXCEED \$38,500.00 FOR NON-EXCLUSIVE ECONOMIC DEVELOPMENT SERVICES; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the Town of Addison, Texas (“City Council”) has determined that it is in the best interest of the Town of Addison, Texas (“Town”) to encourage and promote business development within the Town; and

WHEREAS, the Metrocrest Chamber of Commerce (“Metrocrest”) has a similar mission to create economic prosperity for its members by providing programs, resources, and support services that assist and benefit businesses, government, and citizens; and

WHEREAS, the Town desires to enter into an agreement with Metrocrest in an amount not to exceed \$38,500 in exchange for Metrocrest providing non-exclusive economic development services to the Town, including marketing services, entrepreneur development and small business support services, and services connecting the Addison Airport community with the Addison business community.

WHEREAS, the Town and Metrocrest desire to enter into a Service Agreement to set forth the terms and conditions regarding Metrocrest’s provision of non-exclusive economic development services.

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

SECTION 1. The Services Agreement between the Town of Addison and Metrocrest Chamber of Commerce in an amount not to exceed \$38,500.00, a copy of which is attached to this Resolution as Exhibit A, is hereby approved. The City Manager is hereby authorized to execute said agreement.

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

DULY RESOLVED AND ADOPTED by the City Council of the Town of Addison, Texas, on this the 24th day of October 2023.

TOWN OF ADDISON, TEXAS

Bruce Arfsten, Mayor

ATTEST:

Irma Parker, City Secretary

EXHIBIT A

STATE OF TEXAS §
 § **SERVICE AGREEMENT**
COUNTY OF DALLAS §

This Service Agreement (the “Agreement”) is made and entered into this the 24th day of October, 2023 by and between the Town of Addison, Texas (the “City” or “Addison”) and Metrocrest Chamber of Commerce (the “Chamber” or “Organization”) (collectively, the “Parties”).

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 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, 2024 (the “Expiration Date”), except as otherwise provided for herein, and subject to the earlier termination pursuant to Article V 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:*
 - 1. Provide marketing support to the Addison Economic Development Department, including support and participation in the Annual Economic Development Luncheon.

2. Conduct Business Expo with marketing targeted at Addison Businesses and provide educational sessions for attendees.
3. Encourage Addison-based Chamber members to renew Business Registration with the City by sending email reminders to membership in November and December of the Term.
4. Conduct Economic Development Committee meetings with members, investors, local elected officials, and tri-city departments to advance the goals and mission of the Addison Economic Development Department. At a minimum, Chamber shall meet with the Economic Development Directors of the cities of Farmers Branch and Carrollton biannually and with the Addison Economic Development Director monthly.
5. Collaborate on BREP (business retention and expansion program) targeted at Addison-based businesses and headquarters.

B. *Entrepreneur Development/Small Business Support:*

1. Highlight local resources available to entrepreneurs (i.e. SBDCs, SCORE, etc.).
2. Host at least one educational event geared towards small business.
3. Reach out to Addison Coworking spaces to provide resources to their members.
4. Provide support to the Addison Economic Development Department on new entrepreneurial initiatives.

C. *Addison Business Profile Support:*

1. Organize and conduct annual Mayors' Forum showcasing the State of the City addresses from the Addison, Carrollton, and Farmers Branch Mayors.
2. Provide local leadership development opportunity via Leadership Metrocrest.
3. Provide ribbon-cutting support for new Chamber members in the Addison area.
4. Provide support to George Herbert Walker Bush Elementary School to connect them with the business community.

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.

2. Increase awareness of airport, new customs facility, and third Fixed Base Operator 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 the airport (virtual/in-person State of the Airport, Airport Appreciation program, etc.)

E. *Metrocrest Chamber of Commerce Event Sponsorship:*

1. Allow the Addison Economic Development Department to co-sponsor the Annual Awards Luncheon as a Rising Star Sponsor with the cities of Farmers Branch and Carrollton in the amount of \$1000.00. In the event that Farmers Branch and/or Carrollton elect not to co-sponsor for said event, Chamber will notify Addison and give Addison the opportunity to either pay the remaining balance for a Rising Star Sponsorship or provide sponsorship at a different funding level, at Addison's discretion.
2. Allow the Addison Economic Development Department to sponsor the Economic Development Luncheon as a Gold Level Sponsor in the amount of \$1,000.00.
3. Any and all advertising materials, publications, and websites for the events outlined in Subsection E(1) herein shall reflect the Addison Economic Development Department's sponsorship.

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

A. 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, 2023; (ii) second quarter shall be provided by March 31, 2024; (iii) third quarter shall be provided by June 30, 2024; and (iv) fourth quarter shall be provided by September 30, 2024. Each 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.

B. In connection with the Services, the Chamber warrants and represents to the City that:

1. The Chamber has the skills, qualifications, expertise, experience and financial capability necessary to perform the Services with a high degree of quality and responsiveness;
2. The Services and work will be provided in a professional and timely manner, consistent with the commercially accepted best practices and standards;
3. The Services shall comply with all applicable federal, state or local statutes, ordinances, laws, rules, standards, codes and regulations;
4. 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) has the requisite power and authority to carry on its business as it is now being conducted; (iii) has the legal capacity to enter into this Agreement; and, (iv) warrants that 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
5. 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.

C. 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 (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-eight Thousand Five Hundred Dollars (\$38,500.00)**, to be paid in four installments as follows: (1) The first installment (“first installment”) of \$9,625.00 shall be paid by January 15, 2024, (2) the second installment (“second installment”) of \$9,625.00 shall be paid by April 15, 2024, (3) the third installment (the “third installment”) of \$9,625.00 shall be paid by July 15, 2024, and (4) the fourth and final installment (the “fourth installment”) of \$9,625.00 shall be paid by October 15, 2024 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, 2024 Report and all Reports required prior thereto, in a form and providing content reasonably acceptable to the City.

V. TERMINATION

A. *Without cause.* Either party may terminate this Agreement at any time by giving at least thirty (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.*

1. **Default; Notice to Cure.** The Chamber shall be deemed in default of this Agreement if (a) the Chamber fails to perform any of the its duties or responsibilities as set forth in the Services as reasonably determined by the City, or (b) the Chamber fails to fulfill in a timely and professional manner its obligations under this Agreement, or (c) the Chamber violates any of the terms or provisions of this Agreement, or (d) 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. In the event of a default, the City shall provide the Chamber with written notice specifically identifying the default and providing a reasonable period of time in which the Chamber shall remedy said default, as determined by the City.
2. If such default is not corrected within the time prescribed in the City’s written notice to the Chamber regarding the same, the City shall have the right to terminate this Agreement for cause effective immediately upon the City giving notice thereof in writing to the Chamber
3. 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 months outlined in the chart herein, 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 2023	Amount of first installment to the City
January 2024	\$4,812.50
February 2024	\$2,406.25
March 2024	Amount of Second installment to the City
April 2024	\$4,812.50
May 2024	\$2,406.25
June 2024	Amount of Third installment to the City
July 2024	\$4,812.50
August 2024	\$2,406.25
September 2024	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

A. 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:

- 1. Commercial General Liability: \$1,000,000.00
- 2. General Aggregate \$1,000,000.00
- 3. Product/Completed Operations Aggregate \$1,000,000.00
- 4. Personal & Adv. Injury \$1,000,000.00
- 5. Per Occurrence \$1,000,000.00
- 6. Medical Coverage \$5,000.00 (any one person)

- 7. Liquor Liability Endorsement \$1,000,000.00 (if selling beer and/or wine)
- 8. Fire Liability (any one fire) \$ 50,000.00
- 9. Statutory Limits of Workers Compensation Insurance

B. 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 the City 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 the City 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:

To the City:
 Town of Addison, Texas
 5300 Belt Line Road
 Dallas, Texas 75254-7606
 Attn: City Manager

To Metrocrest Chamber of Commerce:
 Metrocrest Chamber of Commerce
 1671 S Broadway Street, Office 7
 Carrollton, Texas 75006
 Attn: Megan Holloway

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

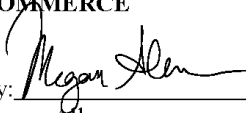
Pursuant to Texas Government Code Chapter 2271, the Organization's execution of this Agreement shall serve as verification that the Organization does not presently boycott Israel and will not boycott Israel during the term of this Agreement.

SIGNED by each of the respective parties on the date set forth below.

TOWN OF ADDISON, TEXAS

**METROCREST CHAMBER OF
COMMERCE**

By: _____
David Gaines, City Manager

By:  _____
Megan Allen,
Events & Marketing Coordinator

Date: _____

Date 10/16/2023

EXHIBIT A
Metrocrest Chamber of Commerce/Town of Addison
2023-24 Service Agreement
Total Amount: \$38,500.00

<p>1. Economic Development Marketing (\$16,500):</p> <ul style="list-style-type: none"> a) Provide marketing support to Addison Economic Development Department, including support and participation in the Annual Economic Development Luncheon. b) Conduct Business Expo with marketing targeted at Addison Businesses and provide educational sessions. c) Encourage Addison-based Chamber members to renew Business Registration with the City by sending email reminders to membership in November and December of the Term. d) Conduct Economic Development Committee meetings with members, investors, local elected officials, and tri-city departments to advance the goals and mission of the Addison Economic Development Department. At a minimum, Chamber shall meet with the Economic Development Directors of the cities of Farmers Branch and Carrollton biannually and with the Addison Economic Development Director monthly. e) Collaborate on BREP (business retention and expansion program) targeted at Addison-based businesses and headquarters. 		
Item	Date	Accomplishment/Milestone/Progress
<p>2. Entrepreneur Development/Small Business Support (\$6,000):</p> <ul style="list-style-type: none"> a) Highlight local resources available to entrepreneurs (i.e. SBDCs, SCORE, etc.). b) Host at least one educational event geared towards small business. c) Reach out to Addison Coworking spaces to provide resources to their members. d) Provide support to the Addison Economic Development Department on new entrepreneurial initiatives 		
Item	Date	Accomplishment/Milestone/Progress
<p>3. Addison Business Profile Support (\$8,000):</p> <ul style="list-style-type: none"> a) Organize and conduct annual Mayors' Forum showcasing the State of the City addresses from the Addison, Carrollton, and Farmers Branch Mayors. b) Provide local leadership development opportunity via Leadership Metrocrest. c) Provide ribbon-cutting support for new Chamber members in the Addison area. d) Provide support to George Herbert Walker Bush Elementary School to connect them with the business community. 		
Item	Date	Accomplishment/Milestone/Progress
<p>4. Develop strategies to connect the Addison Airport community and the Addison business community (\$6,000):</p> <ul style="list-style-type: none"> a) Provide airport management, tenants, and users opportunities to attend and benefit from Chamber events such as the Business Expo, Chairman's Circle, etc. b) Increase awareness of airport, new customs facility, and third Fixed Base Operators to Chamber members, work with key airport staff to development strategic community engagement. c) Work with airport staff to host at least one event at airport (virtual/in-person State of the Airport, Airport Appreciation program, etc.) 		
Item	Date	Accomplishment/Milestone/Progress

<p>5. Metrocrest Chamber Event Sponsorship (\$2,000):</p> <p>a) Allow the Addison Economic Development Department to co-sponsor the Annual Awards Luncheon as a Rising Star Sponsor with the cities of Farmers Branch and Carrollton in the amount of \$1000.00. In the event that Farmers Branch and/or Carrollton elect not to co-sponsor for said event, Chamber will notify Addison and give Addison the opportunity to either pay the remaining balance for a Rising Star Sponsorship or provide sponsorship at a different funding level, at Addison’s discretion.</p> <p>b) Allow the Addison Economic Development Department to sponsor the Economic Development Luncheon as a Gold Level Sponsor in the amount of \$1,000.00.</p> <p>c) Any and all advertising materials, publications, and websites for the events outlined in Subsection 5(a) herein shall reflect the Addison Economic Development Department’s sponsorship.</p>		
Item	Date	Accomplishment/Milestone/Progress

City Council (FY24)

4. c.

Meeting Date: 10/24/2023

Department: Finance

Pillars: Gold Standard in Financial Health

AGENDA CAPTION:

Consider action on a Resolution approving a Grant Funding Agreement between the Town of Addison and Addison Arbor Foundation and authorizing the City Manager to execute the Grant Funding Agreement in an amount not to exceed \$65,000.

BACKGROUND:

Town staff has developed a grant funding process that allows non-profit organizations within the Town of Addison to submit a request for funds for their organization that directly enhances the Town. Town staff and Council evaluate applications for respective organizations individually. Town staff reviews all applicable financials of the non-profit organizations and verifies the organization is in good standing with both the IRS and Texas Secretary of State. To clearly reflect the impact of the grant to Addison and non-Addison residents, Quarterly Grant Reports are required by all non-profit organizations through the end of the Town's Fiscal Year. The Quarterly Grant Reports contain the non-profit organization's goals, objectives and performance measures as identified in the Grant Uses section of the agreement. Financial statements may or may not be required, but Town staff can request them at any time.

The Addison Arbor Foundation (AAF) submitted an application to the Town requesting a \$65,000 primary grant for Fiscal Year 2024. During the Council Budget Work Session on August 4, 2023, Council discussed grant funding allocations for multiple non-profits included in the Fiscal Year 2024 budget. During the discussion about the AAF, Council directed staff to grant the AAF their requested amount of \$65,000, but as a \$50,000 primary grant and \$15,000 in matching funds.

This grant funding agreement allocates \$50,000 and an additional \$15,000 in matching funds at the sole discretion and determination of the Town, once the Organization can demonstrate to the satisfaction of the Town that it has accumulated additional funding from sources outside of the Town for \$15,000 within the Terms of the Agreement. The Town has reviewed and evaluated the application determining that the non-profit organization's request outlined in the

application is for a public purpose that directly enhances the Town of Addison.

The Addison Arbor Foundation grant funding agreement is included as an attachment to this agenda item.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution-Addison Arbor Foundation FY2024

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING AN AGREEMENT FOR GRANT FUNDING BETWEEN THE TOWN OF ADDISON AND ADDISON ARBOR FOUNDATION, IN AN AMOUNT NOT TO EXCEED \$50,000.00; APPROVING ADDITIONAL MATCHING FUNDING NOT TO EXCEED \$15,000.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the Town of Addison, Texas (“City Council”) has investigated and determined that it is in the best interest of the Town of Addison, Texas (“Town”) to provide a grant of public funds to various non-profit organizations that provide public programs directly benefiting the Town’s citizens as well as the general public; and

WHEREAS, the City Council has adopted a non-profit organization donation grant program (“Program”) whereby these organizations may apply on an annual basis for public funds that will be used for public purposes within the Town, as determined by the Town; and

WHEREAS, the City Council has authorized funding for the Program in the Town’s current fiscal year budget; and

WHEREAS, Addison Arbor Foundation submitted a Program application to the Town for consideration; and

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

WHEREAS, the Town and Addison Arbor Foundation desire to enter into the attached agreement to set forth the terms and conditions regarding Addison Arbor Foundation’s use of the allocated Program funding.

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 Grant Funding between the Town and Addison Arbor Foundation in an amount not to exceed \$50,000.00 and providing for a dollar-for-dollar match of additional funding not to exceed \$15,000.00, 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 24th day of OCTOBER 2023.

TOWN OF ADDISON, TEXAS

Bruce Arfsten, Mayor

ATTEST:

APPROVED AS TO FORM:

Irma Parker, City Secretary

Whitt Wyatt, City Attorney

EXHIBIT A

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

This Agreement for Grant Funding (“Agreement”) is made and entered into as of the 1st day of October, 2023 by and between the Town of Addison, Texas (the “City”) and Addison Arbor Foundation (the “Organization”).

WITNESSETH:

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

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

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

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

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

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

I. TERM

The term of this Agreement shall be for a period of one year from the 1st day of October, 2023, through the 30th day of September, 2024, except as otherwise provided for herein, and subject to the earlier termination of this Agreement (“Term”). The Program, hereinafter defined, must be completed during the Term of the Agreement to the satisfaction of the City.

II. GRANT USE

Any Funding received by the Organization pursuant to this Agreement shall be for the benefit of and for the promotion of public purposes within the Addison community and must not conflict with the Organization’s Application which is herein incorporated by reference. This Agreement does not bind the Organization to complete any specific program detailed below, however, the Organization shall, in good faith, complete all programs to the best of their ability pursuant to this

Agreement. If the Organization determines that any program cannot be completed, it shall immediately inform the City in writing.

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

- (a) Continue active discussions with the Town Parks Department staff about potential sites for future projects as well as exploring concepts and artists for additional public art, including kinetic, interactive, and a variety of media;
- (b) Will work with the Town and the developer to bring public art, landscaping, and interactive media for the DART Silver Line rail station and surrounding areas;
- (c) Will work with the Parks Department to identify tree and shrub replacement opportunities and park enhancements; and
- (d) Fund the Organization's operating expenses.

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

January 30, 2024
April 30, 2024
July 30, 2024
October 30, 2024

In satisfaction hereof and as determined by the City, the Program may be provided directly by the Organization or funding of the Program may be provided to the City by the Organization. The Program will be provided upon the prior approval by the City. Design for any of the Program provided by the Organization is subject to the City's approval prior to installation thereof.

III. FUNDING

The City shall pay to the Organization the sum of no more than Fifty Thousand and No/100 Dollars (\$50,000.00) ("Funding") as follows: fifty percent (50%) of the Funding shall be paid to the Organization within thirty (30) days of the City's execution of this Agreement, and the remaining fifty percent (50%) of the Funding shall be paid to the Organization on May 30, 2024. However, the Organization may send a written request to the City Manager's Office for an advance of the second fifty percent (50%) distribution prior to May 30, 2024. Approval of such an advance of Funding shall be at the City Manager or City Manager designee's sole discretion. All Funding shall be made contingent upon the Organization's compliance with the Agreement terms and conditions herein. While funding is generally limited to the current fiscal year, due to the nature of the projects that are commissioned by the Organization, it is understood that Program undertaken by the Organization may not be completed within the Term. If the Organization fails to complete the Program, the Organization may be allowed to continue the Program, provided that it complies with the terms of this Agreement, including quarterly reporting on the expenditure of Funding. If the

Organization fails to complete the Program identified herein to the satisfaction of the City within the Term, then the Organization shall return any and all unexpended Funding to the City immediately upon request, and the Organization may be ineligible for the receipt of Funding the following year.

Notwithstanding anything to the contrary provided herein, the parties agree that the Organization is eligible for a dollar for dollar match not to exceed Fifteen Thousand and No/100 Dollars (\$15,000.00) at the sole discretion and determination of the City, if the Organization can demonstrate to the satisfaction of the City that it has accumulated additional funding from private donations outside of the City within the Term of this Agreement ("Matching Funds"), in accordance with the provisions of Exhibit "A" attached hereto and incorporated herein for all purposes. For the purpose of calculating the Matching Funds, Private Donations, as defined in Exhibit "A" attached hereto and incorporated herein for all purposes, received by the Organization as a result of the North Texas Giving Day on September 21, 2023, may be included in the calculation for Fiscal Year 2024. However, a subsequent North Texas Giving Day within the Fiscal Year 2024 may not be included in the calculation.

The Funding (including all Matching Funds) 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 Funding 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 agreement made by the Organization. None of the obligations of the City under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

IV. RESPONSIBILITY; INDEMNIFICATION

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

(B) INDEMNITY OWED BY THE ORGANIZATION. THE ORGANIZATION COVENANTS AND AGREES TO FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN OF ADDISON, TEXAS AND THE ELECTED AND APPOINTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS, INDIVIDUALLY OR COLLECTIVELY, IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES (THE TOWN OF ADDISON, TEXAS AND THE ELECTED AND APPOINTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS

EACH BEING AN "ADDISON PERSON" AND COLLECTIVELY THE "ADDISON PERSONS"), FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, HARM, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, JUDGMENTS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY, AND SUITS, OF ANY KIND AND NATURE WHATSOEVER MADE UPON OR INCURRED BY ANY ADDISON PERSON, WHETHER DIRECTLY OR INDIRECTLY, (THE "CLAIMS"), THAT ARISE OUT OF, RESULT FROM, OR RELATE TO: (1) THE PROGRAM AS DESCRIBED IN SECTION II OF THIS AGREEMENT; (2) REPRESENTATIONS OR WARRANTIES BY THE ORGANIZATION UNDER THIS AGREEMENT; AND/OR (3) ANY OTHER ACT OR OMISSION UNDER OR IN PERFORMANCE OF THIS AGREEMENT BY THE ORGANIZATION, OR ANY OWNER, OFFICER, DIRECTOR, MANAGER, EMPLOYEE, AGENT, REPRESENTATIVE, CONSULTANT, CONTRACTOR, SUBCONTRACTOR, LICENSEE, INVITEE, PATRON, GUEST, CUSTOMER, OR CONCESSIONAIRE OF OR FOR THE ORGANIZATION, OR ANY OTHER PERSON OR ENTITY FOR WHOM THE ORGANIZATION IS LEGALLY RESPONSIBLE, AND THEIR RESPECTIVE OWNERS, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS, REPRESENTATIVES, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INVITEES, PATRONS, GUESTS, CUSTOMERS, AND CONCESSIONAIRES. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

THE PARTIES SHALL PROMPTLY ADVISE THE EACH OTHER IN WRITING OF ANY CLAIM OR DEMAND AGAINST ANY ADDISON PERSON OR THE ORGANIZATION RELATED TO OR ARISING OUT OF THE ORGANIZATION'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT THE ORGANIZATION'S SOLE COST AND EXPENSE (NOT TO EXCEED \$350.00 PER HOUR). THE ADDISON PERSONS SHALL HAVE THE RIGHT, AT THE ADDISON PERSONS' OPTION AND AT OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING THE ORGANIZATION OF ANY OF ITS OBLIGATIONS HEREUNDER.

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

V. TERMINATION

This Agreement may be cancelled and terminated by either party at any time and for any reason or no reason upon giving at least thirty (30) days written notice. Notice of termination shall be sent in compliance with Section XVII herein. IMMEDIATELY UPON TERMINATION OF THIS AGREEMENT, ANY FUNDING NOT PROPERLY ALLOCATED TO THE PROGRAM

HEREIN, AS DETERMINED BY THE CITY IN ITS SOLE DISCRETION, SHALL BE RETURNED.

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

VI. CONFLICT OF INTEREST

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

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

VII. ACCOUNTING

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

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

The Organization shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of Funding received pursuant to this Agreement. On request of the City at any time, the Organization shall make all its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of the Organization's fiscal year, the Organization shall provide the City with a financial statement signed by the Chairman of the Organization's Board of Directors (or other person acceptable to the City) setting forth the Organization's income, expenses, assets and liabilities. SUCH OBLIGATION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

Beginning FY 2017, and every other year thereafter, so long as the Organization is a recipient of grant funding, the Organization shall provide the City financial statement(s) prepared by its

accountant or financial officer within ninety (90) days of the end of the applicable fiscal year. Likewise, beginning FY 2018 and every other year thereafter, so long as the Organization is a recipient of grant funding, the City may request a compilation report prepared by an independent accounting firm prior to the end of the applicable fiscal year. The Organization shall deliver the compilation report to the City within one hundred twenty (120) days of the end of the applicable fiscal year. If this Agreement is terminated prior to its expiration, the Organization shall provide such reports as required for the City for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof.

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

VIII. ADDITIONAL REQUIREMENTS OF THE ORGANIZATION

The Organization agrees to the following:

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

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

(c) The City, through its official logo(s), shall be prominently recognized as a supporter of the Organization in all marketing materials produced or published by the Organization during the term hereof (including all print and digital marketing materials regardless of platform). The Organization shall notify the City in writing of its intent to produce or publish any such marketing materials and provide the City a reasonable opportunity to elect to have its logo(s) removed from the materials prior to publication. The Organization shall use the City's designated logo(s) in strict conformance with the City's currently adopted branding guidelines. The City hereby grants the Organization a limited, non-exclusive license to use the City's logo solely for the foregoing purposes and the trade names, trademarks, service marks, logos, designs, identification, decals, artwork and other symbols and devices associated with the City ("City Marks") shall at all times remain the sole and exclusive property of the City. The Organization shall not license, sublicense, or use the City Marks in any manner, other than as expressly permitted in this subsection (c), without the prior written approval of the City.

IX. INDEPENDENT CONTRACTOR

In completing the Program under this Agreement, the relationship between the City and the Organization is that of independent contractor, and the City and the Organization by the execution of this Agreement do not change the independent status of the Organization. The Organization is an independent contractor, and no term or provision of this Agreement or action by the Organization in

the performance of this Agreement is intended nor shall be construed as making the Organization the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship, or to allow the City to exercise discretion or control over the manner in which the Organization performs the Program which is described in this Agreement.

X. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT

The parties agree the Organization has no authority to assign, transfer, or otherwise convey, by any means whatsoever, this Agreement or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City. Any attempted assignment, transfer, or other conveyance of this Agreement without such approval shall be null and void and be cause for immediate termination of this Agreement by the City.

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

XI. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

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

XII. NON-DISCRIMINATION

During the term of this Agreement, the Organization agrees that it shall not discriminate against any employee or applicant for employment because of race, age, color, sex (as defined by applicable state and federal law), religion, ancestry, national origin, disability, veteran status, place of birth, or handicap.

XIII. LEGAL COMPLIANCE; AGREEMENT SUBJECT TO LAWS; RECITALS

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

The Organization acknowledges that any and all records of the Organization, 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. The Organization 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 the Organization 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, the Organization 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 the Organization's confidential information. Notwithstanding the foregoing, the Organization agrees that the City may, but shall be under no obligation to, submit arguments to the Attorney General relating to reasons the Organization's confidential information is exempt from disclosure to the public under the Act, regardless of whether the Organization has asserted its own arguments to the Attorney General.

XIV. VENUE; GOVERNING LAW

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

XV. COUNTERPARTS

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

XVI. NO WAIVER; RIGHTS CUMULATIVE

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

XVII. NOTICES

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

The City's address:
Attn: City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

The Organization's address:
Dr. Jay M. Ihrig
Addison Arbor Foundation
P.O. Box 1649
Addison, Texas 75001

Email Address for Financial Reports:
ivillalta@addisontx.gov

XVIII. SEVERABILITY

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

XIX. AUTHORITY TO EXECUTE AGREEMENT

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

XX. ENTIRE AGREEMENT

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

XXI. SOVEREIGN IMMUNITY

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

XXII. NO BOYCOTT ISRAEL

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

[signature page follows]

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

TOWN OF ADDISON, TEXAS

ADDISON ARBOR FOUNDATION

By: _____
David Gaines
City Manager

By: _____
Dr. Jay M. Ihrig, President & Director

Date: _____

Date: _____

City Council (FY24)

4. d.

Meeting Date: 10/24/2023

Department: Finance

Pillars: Gold Standard in Financial Health

AGENDA CAPTION:

Consider Action on a Resolution Approving a Grant Funding Agreement Between the Town of Addison and Metrocrest Services and Authorizing the City Manager to Execute the Grant Funding Agreement in an Amount Not to Exceed \$139,653.

BACKGROUND:

Town staff has developed a grant funding process that allows non-profit organizations within the Town of Addison to submit a request for funds for their organization that directly enhances the Town. Town staff and Council evaluate applications for respective organizations individually. Town staff reviews all applicable financials of the non-profit organizations and verifies the organization is in good standing with both the IRS and Texas Secretary of State. To clearly reflect the impact of the grant to Addison and non-Addison residents, Quarterly Grant Reports are required by all non-profit organizations through the end of the Town's Fiscal Year. The Quarterly Grant Reports contain the non-profit organization's goals, objectives and performance measures as identified in the Grant Uses section of the agreement. Financial statements may or may not be required, but Town staff can request them at any time.

Metrocrest Services submitted an application to the Town requesting \$82,650 for Fiscal Year 2024. Metrocrest Services sent a letter requesting an updated Fiscal Year 2024 funding amount of \$139,653. During the Council Budget Work Session on August 4, 2023, Council discussed grant funding allocations for multiple non-profits included in the Fiscal Year 2024 budget. During continued discussions after the budget work session about Metrocrest Services, Council directed staff to grant Metrocrest Services their updated, requested amount of \$139,653. The Town has reviewed and evaluated the application and determined that the non-profit organization's request outlined in the application is for a public purpose that directly enhances the Town of Addison.

The Metrocrest Services grant funding agreement is included as an attachment to this agenda item.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution-Metrocrest Services FY2024

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING AN AGREEMENT FOR GRANT FUNDING BETWEEN THE TOWN OF ADDISON AND METROCREST SERVICES, IN AN AMOUNT NOT TO EXCEED \$139,653.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the Town of Addison, Texas (“City Council”) has investigated and determined that it is in the best interest of the Town of Addison, Texas (“Town”) to provide a grant of public funds to various non-profit organizations that provide public programs directly benefiting the Town’s citizens as well as the general public; and

WHEREAS, the City Council has adopted a non-profit organization donation grant program (“Program”) whereby these organizations may apply on an annual basis for public funds that will be used for public purposes within the Town, as determined by the Town; and

WHEREAS, the City Council has authorized funding for the Program in the Town’s current fiscal year budget; and

WHEREAS, Metrocrest Services submitted a Program application to the Town for consideration; and

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

WHEREAS, the Town and Metrocrest Services desire to enter into the attached agreement to set forth the terms and conditions regarding Metrocrest Services’ use of the allocated Program funding.

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 Grant Funding between the Town and the Metrocrest Services in an amount not to exceed \$139,653.00, 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 24th day of **OCTOBER** 2023.

TOWN OF ADDISON, TEXAS

Bruce Arfsten, Mayor

ATTEST:

APPROVED AS TO FORM:

Irma Parker, City Secretary

Whitt Wyatt, City Attorney

EXHIBIT A

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

This Agreement for Grant Funding (“Agreement”) is made and entered into as of the 1st day of October, 2023 by and between the Town of Addison, Texas (the “City”) and Metrocrest Services (the “Organization”).

WITNESSETH:

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

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

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

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

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

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

I. TERM

The term of this Agreement shall be for a period of one year from the 1st day of October, 2023, through the 30th day of September, 2024, except as otherwise provided for herein, and subject to the earlier termination of this Agreement (“Term”). The Program, hereinafter defined, must be completed during the Term of the Agreement to the satisfaction of the City.

II. GRANT USE

Any Funding received by the Organization pursuant to this Agreement shall be for the benefit of and for the promotion of public purposes within the Addison community and must not conflict with the Organization's Application which is herein incorporated by reference. This Agreement does not bind the Organization to complete any specific program detailed below, however, the Organization shall, in good faith, complete all programs to the best of their ability pursuant to this Agreement. If the Organization determines that any program cannot be completed, it shall immediately inform the City in writing.

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

- (a) Comprehensive bundle of programs to holistically end poverty;
 - 1) Housing Stabilization
 - a. Rent and Mortgage Assistance
 - b. Utilities Assistance
 - 2) Food Assistance
 - a. Client-Choice Food Pantry
 - b. Mobile Food Pantry
 - c. Seasonal Programs (Thanksgiving, Holidays, and Sack Summer Hunger)
 - 3) Financial Empowerment
 - a. Financial Education
 - b. Household Budgeting
 - 4) Workforce Development
 - a. Employment Counseling
 - b. Job Fairs
 - c. Certifications through Dallas College
 - d. Computer Lab
 - 5) Homeless Resources and Street Outreach
 - 6) Senior Programs
 - a. Senior and Adults with Disabilities Transportation
 - b. Home Delivered Meals
 - c. Home Safety Modifications
 - 7) Educational Programs
 - a. GED Preparation
 - b. ESL Training
 - c. Various Certifications
 - 8) Shared Partners (On-Site)
 - a. Healthcare
 - b. Mental Health
 - c. Domestic Violence

- (b) Provide indirect assistance to residents and citizens for the City of which includes:
- 1) Collaboration with others in the community for awareness of need and maximum utilization of resources;
 - 2) Community education about issues, needs, and resources;
 - 3) Inquiry into the causes of identified problems;
 - 4) Participation in the development of plans and strategies to address the causes; and
 - 5) Provisions of volunteer opportunities for community-wide involvement in the programs of the Organization.

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

January 30, 2024
April 30, 2024
July 30, 2024
October 30, 2024

III. FUNDING

The City shall pay to the Organization the sum of no more than One Hundred Thirty-Nine Thousand Six Hundred Fifty-Three and No/100 Dollars (\$139,653.00) (“Funding”) as follows: fifty percent (50%) of the Funding shall be paid to the Organization within thirty (30) days of the City’s execution of this Agreement, and the remaining fifty percent (50%) of the Funding shall be paid to the Organization on May 30, 2024. However, the Organization may send a written request to the City Manager’s Office for an advance of the second fifty percent (50%) distribution prior to May 30, 2024. Approval of such an advance of Funding shall be at the City Manager or City Manager designee’s sole discretion. All Funding shall be made contingent upon the Organization’s compliance with the Agreement terms and conditions herein. Funding shall never carry over into the subsequent fiscal year. If the Organization fails to complete any Program within the Term, the Organization shall immediately inform the City in writing.

The Funding 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 Funding 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 agreement made by the Organization. None of the obligations of the City under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

IV. RESPONSIBILITY; INDEMNIFICATION

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

(B) INDEMNITY OWED BY THE ORGANIZATION. THE ORGANIZATION COVENANTS AND AGREES TO FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN OF ADDISON, TEXAS AND THE ELECTED AND APPOINTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS, INDIVIDUALLY OR COLLECTIVELY, IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES (THE TOWN OF ADDISON, TEXAS AND THE ELECTED AND APPOINTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS EACH BEING AN "ADDISON PERSON" AND COLLECTIVELY THE "ADDISON PERSONS"), FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, HARM, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, JUDGMENTS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY, AND SUITS, OF ANY KIND AND NATURE WHATSOEVER MADE UPON OR INCURRED BY ANY ADDISON PERSON, WHETHER DIRECTLY OR INDIRECTLY, (THE "CLAIMS"), THAT ARISE OUT OF, RESULT FROM, OR RELATE TO: (1) THE PROGRAM AS DESCRIBED IN SECTION II OF THIS AGREEMENT; (2) REPRESENTATIONS OR WARRANTIES BY THE ORGANIZATION UNDER THIS AGREEMENT; AND/OR (3) ANY OTHER ACT OR OMISSION UNDER OR IN PERFORMANCE OF THIS AGREEMENT BY THE ORGANIZATION, OR ANY OWNER, OFFICER, DIRECTOR, MANAGER, EMPLOYEE, AGENT, REPRESENTATIVE, CONSULTANT, CONTRACTOR, SUBCONTRACTOR, LICENSEE, INVITEE, PATRON, GUEST, CUSTOMER, OR CONCESSIONAIRE OF OR FOR THE ORGANIZATION, OR ANY OTHER PERSON OR ENTITY FOR WHOM THE ORGANIZATION IS LEGALLY RESPONSIBLE, AND THEIR RESPECTIVE OWNERS, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS, REPRESENTATIVES, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INVITEES, PATRONS, GUESTS, CUSTOMERS, AND CONCESSIONAIRES. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE

BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

THE ORGANIZATION SHALL PROMPTLY ADVISE THE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST ANY ADDISON PERSON OR THE ORGANIZATION RELATED TO OR ARISING OUT OF THE ORGANIZATION'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT THE ORGANIZATION'S SOLE COST AND EXPENSE (NOT TO EXCEED \$350.00 PER HOUR). THE ADDISON PERSONS SHALL HAVE THE RIGHT, AT THE ADDISON PERSONS' OPTION AND AT OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING THE ORGANIZATION OF ANY OF ITS OBLIGATIONS HEREUNDER.

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

V. TERMINATION

This Agreement may be canceled and terminated by either party at any time and for any reason or no reason upon giving at least thirty (30) days written notice to the other party hereto. Notice of termination shall be sent in compliance with Section XVII herein. IMMEDIATELY UPON TERMINATION OF THIS AGREEMENT, ANY FUNDING NOT PROPERLY ALLOCATED TO THE PROGRAM HEREIN, AS DETERMINED BY THE CITY IN ITS SOLE DISCRETION, SHALL BE RETURNED.

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

VI. CONFLICT OF INTEREST

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

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

VII. ACCOUNTING

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

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

The Organization shall maintain complete and accurate financial records of all revenues, expenses, assets and liabilities, including, without limitation, each expenditure of Funding received pursuant to this Agreement. Financial records shall be sent to the City quarterly in the form of both a profit-loss statement and balance sheet in accord with generally accepted accounting principles (GAAP). Upon request by the City, the Organization shall make its financial records available for inspection and review by the City or its designated representative(s).

Within ninety (90) days of the end of the Organization's fiscal year, the Organization shall provide the City with a financial statement signed by the Chairman of the Organization's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, at the Organization's expense, setting forth the Organization's income, expenses, assets and liabilities. SUCH OBLIGATION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT. If this Agreement is terminated prior to its expiration, the Organization shall provide such reports as required for the City for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof.

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

VIII. ADDITIONAL REQUIREMENTS OF THE ORGANIZATION

The Organization agrees to the following:

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

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

(c) The City, through its official logo(s), shall be prominently recognized as a supporter of the Organization in all marketing materials produced or published by the Organization during the term hereof (including all print and digital marketing materials regardless of platform). The Organization shall notify the City in writing of its intent to produce or publish any such marketing materials and provide the City a reasonable opportunity to elect to have its logo(s) removed from the materials prior to publication. The Organization shall use the City's designated logo(s) in strict conformance with the City's currently adopted branding guidelines. The City hereby grants the Organization a limited, non-exclusive license to use the City's logo solely for the foregoing purposes and the trade names, trademarks, service marks, logos, designs, identification, decals, artwork and other symbols and devices associated with the City ("City Marks") shall at all times remain the sole and exclusive property of the City. The Organization shall not license, sublicense, or use the City Marks in any manner, other than as expressly permitted in this subsection (c), without the prior written approval of the City.

IX. INDEPENDENT CONTRACTOR

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

X. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT

The parties agree the Organization has no authority to assign, transfer, or otherwise convey, by any means whatsoever, this Agreement or any of the rights, duties or responsibilities hereunder

without obtaining the prior written approval of the City. Any attempted assignment, transfer, or other conveyance of this Agreement without such approval shall be null and void and be cause for immediate termination of this Agreement by the City.

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

XI. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

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

XII. NON-DISCRIMINATION

During the term of this Agreement, the Organization agrees that it shall not discriminate against any employee or applicant for employment because of race, age, color, sex (as defined by applicable state and federal law), religion, ancestry, national origin, disability, veteran status, place of birth, or handicap.

XIII. LEGAL COMPLIANCE; AGREEMENT SUBJECT TO LAWS; RECITALS

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

The Organization acknowledges that any and all records of the Organization, 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. The Organization 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 the Organization 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, the Organization 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 the Organization's confidential information. Notwithstanding the foregoing, the Organization agrees that the City may, but shall be under no obligation to, submit arguments to the Attorney General relating to reasons the Organization's confidential information is exempt from

disclosure to the public under the Act, regardless of whether the Organization has asserted its own arguments to the Attorney General.

The above and foregoing recitals to this Agreement are true and correct and incorporated herein and made a part hereof.

XIV. VENUE; GOVERNING LAW

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

XV. COUNTERPARTS

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

XVI. NO WAIVER; RIGHTS CUMULATIVE

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

XVII. NOTICES

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

The City's address:
Attn: City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

The Organization's address:
Mr. Tracy Eubanks
Metrocrest Services
1145 N. Josey Ln.
Carrollton, Texas 75006

Email Address for Financial Reports:
ivillalta@addisontx.gov

XVIII. SEVERABILITY

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

XIX. AUTHORITY TO EXECUTE AGREEMENT

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

XX. ENTIRE AGREEMENT

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

XXI. SOVEREIGN IMMUNITY

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

XXII. NO BOYCOTT ISRAEL

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

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

TOWN OF ADDISON, TEXAS

METROCREST SERVICES

By: _____
David Gaines City Manager

By: _____
Mr. Tracy Eubanks, CEO

Date: _____

Date: _____

City Council (FY24)

4. e.

Meeting Date: 10/24/2023

Department: Finance

Pillars: Gold Standard in Financial Health

AGENDA CAPTION:

Consider action on a Resolution approving a Grant Funding Agreement between the Town of Addison and Outcry Theatre and authorizing the City Manager to execute the Grant Funding Agreement in an amount not to exceed \$2,500.

BACKGROUND:

Town staff has developed a grant funding process that allows non-profit organizations within the Town of Addison to submit a request for funds for their organization that directly enhances the Town. Town staff and Council evaluate applications for respective organizations individually. Town staff reviews all applicable financials of the non-profit organizations and verifies the organization is in good standing with both the IRS and Texas Secretary of State. To clearly reflect the impact of the grant to Addison and non-Addison residents, Quarterly Grant Reports are required by all non-profit organizations through the end of the Town's Fiscal Year. The Quarterly Grant Reports contain the non-profit organization's goals, objectives and performance measures as identified in the Grant Uses section of the agreement. Financial statements may or may not be required, but Town staff can request them at any time.

Outcry Theatre submitted an application to the Town requesting \$10,000 for Fiscal Year 2024. During the Council Budget Work Session on August 4, 2023, Council discussed grant funding allocations for multiple non-profits included in the Fiscal Year 2024 budget. During the discussion about Outcry Theatre, Council directed staff to grant Outcry Theatre \$2,500. The Town has reviewed and evaluated the application and determined that the non-profit organization's request outlined in the application is for a public purpose that directly enhances the Town of Addison.

The Outcry Theatre grant funding agreement is included as an attachment to this agenda item.

RECOMMENDATION:

Administration recommends approval.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING AN AGREEMENT FOR GRANT FUNDING BETWEEN THE TOWN OF ADDISON AND OUTCRY THEATRE, IN AN AMOUNT NOT TO EXCEED \$2,500.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the Town of Addison, Texas (“City Council”) has investigated and determined that it is in the best interest of the Town of Addison, Texas (“Town”) to provide a grant of public funds to various non-profit organizations that provide public programs directly benefiting the Town’s citizens as well as the general public; and

WHEREAS, the City Council has adopted a non-profit organization donation grant program (“Program”) whereby these organizations may apply on an annual basis for public funds that will be used for public purposes within the Town, as determined by the Town; and

WHEREAS, the City Council has authorized funding for the Program in the Town’s current fiscal year budget; and

WHEREAS, Outcry Theatre submitted a Program application to the Town for consideration; and

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

WHEREAS, the Town and Outcry Theatre desire to enter into the attached agreement to set forth the terms and conditions regarding Outcry Theatre’s use of the allocated Program funding.

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 Grant Funding between the Town and the Outcry Theatre in an amount not to exceed \$2,500.00, 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 24th day of **OCTOBER** 2023.

TOWN OF ADDISON, TEXAS

Bruce Arfsten, Mayor

ATTEST:

APPROVED AS TO FORM:

Irma Parker, City Secretary

Whitt Wyatt, City Attorney

EXHIBIT A

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

This Agreement for Grant Funding ("Agreement") is made and entered into as of the 1st day of October, 2023 by and between the Town of Addison, Texas (the "City") and Outcry Theatre (the "Organization").

WITNESSETH:

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

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

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

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

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

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

I. TERM

The term of this Agreement shall be for a period of one year from the 1st day of October, 2023, through the 30th day of September, 2024, except as otherwise provided for herein, and subject to the earlier termination of this Agreement ("Term"). The Program, hereinafter defined, must be completed during the Term of the Agreement to the satisfaction of the City.

II. GRANT USE

Any Funding received by the Organization pursuant to this Agreement shall be for the benefit of and for the promotion of public purposes within the Addison community and must not conflict with the Organization's Application which is herein incorporated by reference. This Agreement does not bind the Organization to complete any specific program detailed below, however, the Organization shall, in good faith, complete all programs to the best of their ability pursuant to this

Agreement. If the Organization determines that any program cannot be completed, it shall immediately inform the City in writing.

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

- (a) Production costs for the productions performed at the Addison Theatre Centre. Funding will go towards sets, props, and other production specific expenses.

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

- January 30, 2024
- April 30, 2024
- July 30, 2024
- October 30, 2024

III. FUNDING

The City shall pay to the Organization the sum of no more than Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) ("Funding") as follows: fifty percent (50%) of the Funding shall be paid to the Organization within thirty (30) days of the City's execution of this Agreement, and the remaining fifty percent (50%) of the Funding shall be paid to the Organization on May 30, 2024. However, the Organization may send a written request to the City Manager's Office for an advance of the second fifty percent (50%) distribution prior to May 30, 2024. Approval of such an advance of Funding shall be at the City Manager or City Manager designee's sole discretion. All Funding shall be made contingent upon the Organization's compliance with the Agreement terms and conditions herein. Funding shall never carry over into the subsequent fiscal year. If the Organization fails to complete any Program within the Term, the Organization shall immediately inform the City in writing.

The Funding 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 Funding 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 agreement made by the Organization. None of the obligations of the City under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

IV. RESPONSIBILITY; INDEMNIFICATION

(A) THE ORGANIZATION AGREES TO ASSUME AND DOES HEREBY ASSUME ALL RESPONSIBILITY AND LIABILITY FOR DAMAGES OR INJURIES SUSTAINED BY PERSONS OR PROPERTY, WHETHER REAL OR ASSERTED, BY OR FROM THE PERFORMANCE OF THE PROGRAM PERFORMED AND TO BE PERFORMED HEREUNDER BY THE ORGANIZATION OR BY ITS OFFICIALS,

OFFICERS, EMPLOYEES, OWNERS, MEMBERS, AGENTS, SERVANTS, INVITEES, GUESTS, VOLUNTEERS, CONTRACTORS, SUBCONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE.

(B) INDEMNITY OWED BY THE ORGANIZATION. THE ORGANIZATION COVENANTS AND AGREES TO FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN OF ADDISON, TEXAS AND THE ELECTED AND APPOINTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS, INDIVIDUALLY OR COLLECTIVELY, IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES (THE TOWN OF ADDISON, TEXAS AND THE ELECTED AND APPOINTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS EACH BEING AN "ADDISON PERSON" AND COLLECTIVELY THE "ADDISON PERSONS"), FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, HARM, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, JUDGMENTS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY, AND SUITS, OF ANY KIND AND NATURE WHATSOEVER MADE UPON OR INCURRED BY ANY ADDISON PERSON, WHETHER DIRECTLY OR INDIRECTLY, (THE "CLAIMS"), THAT ARISE OUT OF, RESULT FROM, OR RELATE TO: (1) THE PROGRAM AS DESCRIBED IN SECTION II OF THIS AGREEMENT; (2) REPRESENTATIONS OR WARRANTIES BY THE ORGANIZATION UNDER THIS AGREEMENT; AND/OR (3) ANY OTHER ACT OR OMISSION UNDER OR IN PERFORMANCE OF THIS AGREEMENT BY THE ORGANIZATION, OR ANY OWNER, OFFICER, DIRECTOR, MANAGER, EMPLOYEE, AGENT, REPRESENTATIVE, CONSULTANT, CONTRACTOR, SUBCONTRACTOR, LICENSEE, INVITEE, PATRON, GUEST, CUSTOMER, OR CONCESSIONAIRE OF OR FOR THE ORGANIZATION, OR ANY OTHER PERSON OR ENTITY FOR WHOM THE ORGANIZATION IS LEGALLY RESPONSIBLE, AND THEIR RESPECTIVE OWNERS, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS, REPRESENTATIVES, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INVITEES, PATRONS, GUESTS, CUSTOMERS, AND CONCESSIONAIRES. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

THE ORGANIZATION SHALL PROMPTLY ADVISE THE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST ANY ADDISON PERSON OR THE ORGANIZATION RELATED TO OR ARISING OUT OF THE ORGANIZATION'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT THE ORGANIZATION'S SOLE COST AND EXPENSE (NOT TO EXCEED \$350.00 PER HOUR). THE ADDISON PERSONS SHALL HAVE THE RIGHT, AT THE ADDISON PERSONS' OPTION AND AT OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING THE ORGANIZATION OF ANY OF ITS OBLIGATIONS HEREUNDER.

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

V. TERMINATION

This Agreement may be canceled and terminated by either party at any time and for any reason or no reason upon giving at least thirty (30) days written notice to the other party hereto. Notice of termination shall be sent in compliance with Section XVII herein. IMMEDIATELY UPON TERMINATION OF THIS AGREEMENT, ANY FUNDING NOT PROPERLY ALLOCATED TO THE PROGRAM HEREIN, AS DETERMINED BY THE CITY IN ITS SOLE DISCRETION, SHALL BE RETURNED.

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

VI. CONFLICT OF INTEREST

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

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

VII. ACCOUNTING

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

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

The Organization shall maintain complete and accurate financial records of all revenues, expenses, assets and liabilities, including, without limitation, each expenditure of Funding received pursuant to this Agreement. Financial records shall be sent to the City quarterly in the form of both a profit-loss statement and balance sheet in accord with generally accepted accounting principles (GAAP). Upon request by the City, the Organization shall make its financial records available for inspection and review by the City or its designated representative(s).

Within ninety (90) days of the end of the Organization's fiscal year, the Organization shall provide the City with a financial statement signed by the Chairman of the Organization's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, at the Organization's expense, setting forth the Organization's income, expenses, assets and liabilities. SUCH OBLIGATION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT. If this Agreement is terminated prior to its expiration, the Organization shall provide such reports as required for the City for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof.

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

VIII. ADDITIONAL REQUIREMENTS OF THE ORGANIZATION

The Organization agrees to the following:

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

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

(c) The City, through its official logo(s), shall be prominently recognized as a supporter of the Organization in all marketing materials produced or published by the Organization during the term hereof (including all print and digital marketing materials regardless of platform). The Organization shall notify the City in writing of its intent to produce or publish any such marketing materials and provide the City a reasonable opportunity to elect to have its logo(s) removed from the materials prior to publication. The Organization shall use the City's designated logo(s) in strict conformance with the City's currently adopted branding guidelines. The City hereby grants the Organization a limited, non-exclusive license to use the City's logo solely for the foregoing purposes and the trade names, trademarks, service marks, logos, designs, identification, decals, artwork and other symbols and devices associated with the City ("City Marks") shall at all times remain the sole and exclusive property of the City. The Organization shall not license, sublicense, or use the City Marks in any

manner, other than as expressly permitted in this subsection (c), without the prior written approval of the City.

IX. INDEPENDENT CONTRACTOR

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

X. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT

The parties agree the Organization has no authority to assign, transfer, or otherwise convey, by any means whatsoever, this Agreement or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City. Any attempted assignment, transfer, or other conveyance of this Agreement without such approval shall be null and void and be cause for immediate termination of this Agreement by the City.

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

XI. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

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

XII. NON-DISCRIMINATION

During the term of this Agreement, the Organization agrees that it shall not discriminate against any employee or applicant for employment because of race, age, color, sex (as defined by applicable state and federal law), religion, ancestry, national origin, disability, veteran status, place of birth, or handicap.

XIII. LEGAL COMPLIANCE; AGREEMENT SUBJECT TO LAWS; RECITALS

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

The Organization acknowledges that any and all records of the Organization, 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. The Organization 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 the Organization 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, the Organization 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 the Organization's confidential information. Notwithstanding the foregoing, the Organization agrees that the City may, but shall be under no obligation to, submit arguments to the Attorney General relating to reasons the Organization's confidential information is exempt from disclosure to the public under the Act, regardless of whether the Organization has asserted its own arguments to the Attorney General.

The above and foregoing recitals to this Agreement are true and correct and incorporated herein and made a part hereof.

XIV. VENUE; GOVERNING LAW

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

XV. COUNTERPARTS

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

XVI. NO WAIVER; RIGHTS CUMULATIVE

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

XVII. NOTICES

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

The City's address:
Attn: City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

The Organization's address:
Becca Johnson-Spinos
Outcry Theatre, Inc.
1915 N. Central Expy., #120
Plano, Texas 75075

Email Address for Financial Reports:
ivillalta@addisontx.gov

XVIII. SEVERABILITY

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

XIX. AUTHORITY TO EXECUTE AGREEMENT

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

XX. ENTIRE AGREEMENT

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

XXI. SOVEREIGN IMMUNITY

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

XXII. NO BOYCOTT ISRAEL

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

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

TOWN OF ADDISON, TEXAS

OUTCRY THEATRE

By: _____
David Gaines
City Manager

By: _____
Ms. Becca Johnson-Spinos
Artistic Director

Date: _____

Date: _____

City Council (FY24)

4. f.

Meeting Date: 10/24/2023

Department: Finance

Pillars: Gold Standard in Financial Health

AGENDA CAPTION:

Consider action on a Resolution approving a Grant Funding Agreement with WaterTower Theatre and authorizing the City Manager to execute the Agreement in an amount not to exceed \$425,000 in cash and in-kind contributions.

BACKGROUND:

Town staff has developed a grant funding process that allows non-profit organizations within the Town of Addison to submit a request for funds for their organization that directly enhances the Town. Town staff and Council evaluate applications for respective organizations individually. Town staff reviews all applicable financials of the non-profit organizations and verifies the organization is in good standing with both the IRS and Texas Secretary of State. To clearly reflect the impact of the grant to Addison and non-Addison residents, Quarterly Grant Reports are required by all non-profit organizations through the end of the Town's Fiscal Year. The Quarterly Grant Reports contain the non-profit organization's goals, objectives and performance measures as identified in the Grant Uses section of the agreement. Financial statements may or may not be required, but Town staff can request them at any time.

The WaterTower Theatre (WTT) submitted an application to the Town requesting a \$450,000 primary grant for Fiscal Year 2024. During the Council Budget Work Session on August 4, 2023, Council discussed grant funding allocations for multiple non-profits included in the Fiscal Year 2024 budget. During the discussion about the WTT, Council directed staff to grant the WTT \$376,589 (\$226,589 and \$150,000 in matching funds). This grant funding agreement allocates \$226,589 and an additional \$150,000 in matching funds at the sole discretion and determination of the Town if the Organization can demonstrate to the satisfaction of the Town that it has accumulated additional funding from sources outside of the Town for \$150,000 within the Terms of the Agreement. Additionally, the Town agrees to the following in-kind amounts: \$16,400 in office rent and \$32,011 in production rent. Creating a net value of a \$425,000 grant. The Town has reviewed and evaluated the application and determined that the non-profit organization's request outlined in the application is for a public purpose that directly enhances the Town of Addison.

The WaterTower Theatre grant funding agreement is included as an attachment to this agenda item.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution-WaterTower Theatre FY2024

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING AN AGREEMENT FOR GRANT FUNDING BETWEEN THE TOWN OF ADDISON AND WATER TOWER THEATRE, IN AN AMOUNT NOT TO EXCEED \$425,000.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the Town of Addison, Texas (“City Council”) has investigated and determined that it is in the best interest of the Town of Addison, Texas (“Town”) to provide a grant of public funds to various non-profit organizations that provide public programs directly benefiting the Town’s citizens as well as the general public; and

WHEREAS, the City Council has adopted a non-profit organization donation grant program (“Program”) whereby these organizations may apply on an annual basis for public funds that will be used for public purposes within the Town, as determined by the Town; and

WHEREAS, the City Council has authorized funding for the Program in the Town’s current fiscal year budget; and

WHEREAS, Water Tower Theatre submitted a Program application to the Town for consideration; and

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

WHEREAS, the Town and Water Tower Theatre desire to enter into the attached agreement to set forth the terms and conditions regarding Water Tower Theatre’s use of the allocated Program funding.

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 Grant Funding between the Town and the Water Tower Theatre in an amount not to exceed \$425,000.00, including the primary funding of \$226,589.00, matching funds and in-kind office and production rent, 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 24th day of **OCTOBER** 2023.

TOWN OF ADDISON, TEXAS

Bruce Arfsten, Mayor

ATTEST:

APPROVED AS TO FORM:

Irma Parker, City Secretary

Whitt Wyatt, City Attorney

EXHIBIT A

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

This Agreement for Grant Funding (“Agreement”) is made and entered into as of the 1st day of October, 2023 by and between the Town of Addison, Texas (the “City”) and WaterTower Theatre (the “Organization”).

WITNESSETH:

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

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

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

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

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

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

I. TERM

The term of this Agreement shall be for a period of one year from the 1st day of October, 2023, through the 30th day of September, 2024, except as otherwise provided for herein, and subject to the earlier termination of this Agreement (“Term”). The Program, hereinafter defined, must be completed during the Term of the Agreement to the satisfaction of the City.

II. GRANT USE

Any Funding received by the Organization pursuant to this Agreement shall be for the benefit of and for the promotion of public purposes within the Addison community and must not conflict with the Organization’s Application which is herein incorporated by reference. This Agreement does not bind the Organization to complete any specific program detailed below, however, the Organization shall, in good faith, complete all programs to the best of their ability pursuant to this

Agreement. If the Organization determines that any program cannot be completed, it shall immediately inform the City in writing.

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

- (a) NEW Free Live Music Cabaret Series;
- (b) Main Stage Season of 4 shows (12 in person performances each, 48 total);
- (c) 2 workshops of new musicals and plays with public final performance;
- (d) Multiple Educational Programs:
 - a. Continued development of a magnate music theatre program at Rowlett High School.
 - b. Classes for local professionals including the return of Meisner Method Acting Classes.
 - c. NEW Penguin Project- WTT has been accepted as a new home for theatre performance opportunities for children with disabilities.
- (e) Summer Internships, paid producing internships & technical internships for 18-22 year olds;
- (f) Quarterly WaterTower Pipeline events in partnership with local Addison restaurants;
- (g) Exclusive discounts on WTT tickets for Addison Residents; and
- (h) Possible Commercial Production of "The Manic Monologues" in secondary markets.

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

January 30, 2024
April 30, 2024
July 30, 2024
October 30, 2024

III. FUNDING

The City shall pay to the Organization the sum of no more than Two Hundred Twenty-Six Thousand Five Hundred Eighty-Nine and No/100 Dollars (\$226,589.00) ("Funding") as follows: fifty percent (50%) of the Funding shall be paid to the Organization within thirty (30) days of the City's execution of this Agreement, and the remaining fifty percent (50%) of the Funding shall be paid to the Organization on May 30, 2024. However, the Organization may send a written request to the City Manager's Office for an advance of the second fifty percent (50%) distribution prior to May

30, 2024. Approval of such an advance of Funding shall be at the City Manager or City Manager designee's sole discretion. All Funding shall be made contingent upon the Organization's compliance with the Agreement terms and conditions herein. Funding shall never carry over into the subsequent fiscal year. If the Organization fails to complete any Program within the Term, the Organization shall immediately inform the City in writing.

The City agrees to make an in-kind donation to the Organization in an amount not to exceed Forty-Eight Thousand Four Hundred Eleven and No/100 Dollars (\$48,411.00). Sixteen Thousand Four Hundred and No/100 Dollars (\$16,400.00) of which shall be designated for Office Rent and Thirty-Two Thousand Eleven and No/100 Dollars (\$32,011.00) of which shall be designated for Production Rent.

Notwithstanding anything provided in this Section and in accord with the description of "Matching Funds" and the process for distribution of Matching Funds, attached hereto as **Exhibit "A"** and incorporated herein by reference, the parties agree that the Organization is eligible for an additional **One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00)** at the sole discretion and determination of the City if the Organization can demonstrate to the satisfaction of the City that it has accumulated additional Program funding from sources outside of the City in the amount of **One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00)** within the Term of this Agreement ("Matching Funds").

The Funding (including all Matching Funds) 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 Funding 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 agreement made by the Organization. None of the obligations of the City under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

IV. RESPONSIBILITY; INDEMNIFICATION

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

(B) INDEMNITY OWED BY THE ORGANIZATION. THE ORGANIZATION COVENANTS AND AGREES TO FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN OF ADDISON, TEXAS AND THE ELECTED AND APPOINTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS

OF THE TOWN OF ADDISON, TEXAS, INDIVIDUALLY OR COLLECTIVELY, IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES (THE TOWN OF ADDISON, TEXAS AND THE ELECTED AND APPOINTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS EACH BEING AN "ADDISON PERSON" AND COLLECTIVELY THE "ADDISON PERSONS"), FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, HARM, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, JUDGMENTS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY, AND SUITS, OF ANY KIND AND NATURE WHATSOEVER MADE UPON OR INCURRED BY ANY ADDISON PERSON, WHETHER DIRECTLY OR INDIRECTLY, (THE "CLAIMS"), THAT ARISE OUT OF, RESULT FROM, OR RELATE TO: (1) THE PROGRAM AS DESCRIBED IN SECTION II OF THIS AGREEMENT; (2) REPRESENTATIONS OR WARRANTIES BY THE ORGANIZATION UNDER THIS AGREEMENT; AND/OR (3) ANY OTHER ACT OR OMISSION UNDER OR IN PERFORMANCE OF THIS AGREEMENT BY THE ORGANIZATION, OR ANY OWNER, OFFICER, DIRECTOR, MANAGER, EMPLOYEE, AGENT, REPRESENTATIVE, CONSULTANT, CONTRACTOR, SUBCONTRACTOR, LICENSEE, INVITEE, PATRON, GUEST, CUSTOMER, OR CONCESSIONAIRE OF OR FOR THE ORGANIZATION, OR ANY OTHER PERSON OR ENTITY FOR WHOM THE ORGANIZATION IS LEGALLY RESPONSIBLE, AND THEIR RESPECTIVE OWNERS, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS, REPRESENTATIVES, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INVITEES, PATRONS, GUESTS, CUSTOMERS, AND CONCESSIONAIRES. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

THE ORGANIZATION SHALL PROMPTLY ADVISE THE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST ANY ADDISON PERSON OR THE ORGANIZATION RELATED TO OR ARISING OUT OF THE ORGANIZATION'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT THE ORGANIZATION'S SOLE COST AND EXPENSE (NOT TO EXCEED \$350.00 PER HOUR). THE ADDISON PERSONS SHALL HAVE THE RIGHT, AT THE ADDISON PERSONS' OPTION AND AT OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING THE ORGANIZATION OF ANY OF ITS OBLIGATIONS HEREUNDER.

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

V. TERMINATION

This Agreement may be canceled and terminated by either party at any time and for any reason or no reason upon giving at least thirty (30) days written notice to the other party hereto. Notice of termination shall be sent in compliance with Section XVII herein. IMMEDIATELY UPON TERMINATION OF THIS AGREEMENT, ANY FUNDING NOT PROPERLY ALLOCATED TO THE PROGRAM HEREIN, AS DETERMINED BY THE CITY IN ITS SOLE DISCRETION, SHALL BE RETURNED.

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

VI. CONFLICT OF INTEREST

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

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

VII. ACCOUNTING

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

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

The Organization shall maintain complete and accurate financial records of all revenues, expenses, assets and liabilities, including, without limitation, each expenditure of Funding received pursuant to this Agreement. Financial records shall be sent to the City quarterly in the form of both a profit-loss statement and balance sheet in accord with generally accepted accounting principles (GAAP). Upon request by the City, the Organization shall make its financial records available for inspection and review by the City or its designated representative(s).

Within ninety (90) days of the end of the Organization's fiscal year, the Organization shall provide the City with a financial statement signed by the Chairman of the Organization's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, at the Organization's expense, setting forth the Organization's income, expenses, assets and liabilities. SUCH OBLIGATION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT. If this Agreement is terminated prior to its expiration, the Organization shall provide such reports as required for the City for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof.

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

VIII. ADDITIONAL REQUIREMENTS OF THE ORGANIZATION

The Organization agrees to the following:

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

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

(c) The City, through its official logo(s), shall be prominently recognized as a supporter of the Organization in all marketing materials produced or published by the Organization during the term hereof (including all print and digital marketing materials regardless of platform). The Organization shall notify the City in writing of its intent to produce or publish any such marketing materials and provide the City a reasonable opportunity to elect to have its logo(s) removed from the materials prior to publication. The Organization shall use the City's designated logo(s) in strict conformance with the City's currently adopted branding guidelines. The City hereby grants the Organization a limited, non-exclusive license to use the City's logo solely for the foregoing purposes and the trade names, trademarks, service marks, logos, designs, identification, decals, artwork and other symbols and devices associated with the City ("City Marks") shall at all times remain the sole and exclusive property of the City. The Organization shall not license, sublicense, or use the City Marks in any manner, other than as expressly permitted in this subsection (c), without the prior written approval of the City.

IX. INDEPENDENT CONTRACTOR

In completing the Program under this Agreement, the relationship between the City and the Organization is that of independent contractor, and the City and the Organization by the execution of this Agreement do not change the independent status of the Organization. The Organization is an independent contractor, and no term or provision of this Agreement or action by the Organization in

the performance of this Agreement is intended nor shall be construed as making the Organization the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship, or to allow the City to exercise discretion or control over the manner in which the Organization performs the Program which is described in this Agreement.

X. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT

The parties agree the Organization has no authority to assign, transfer, or otherwise convey, by any means whatsoever, this Agreement or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City. Any attempted assignment, transfer, or other conveyance of this Agreement without such approval shall be null and void and be cause for immediate termination of this Agreement by the City.

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

XI. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

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

XII. NON-DISCRIMINATION

During the term of this Agreement, the Organization agrees that it shall not discriminate against any employee or applicant for employment because of race, age, color, sex (as defined by applicable state and federal law), religion, ancestry, national origin, disability, veteran status, place of birth, or handicap.

XIII. LEGAL COMPLIANCE; AGREEMENT SUBJECT TO LAWS; RECITALS

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

The Organization acknowledges that any and all records of the Organization, 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. The Organization 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 the Organization 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, the Organization 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 the Organization's confidential information. Notwithstanding the foregoing, the Organization agrees that the City may, but shall be under no obligation to, submit arguments to the Attorney General relating to reasons the Organization's confidential information is exempt from disclosure to the public under the Act, regardless of whether the Organization has asserted its own arguments to the Attorney General.

The above and foregoing recitals to this Agreement are true and correct and incorporated herein and made a part hereof.

XIV. VENUE; GOVERNING LAW

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

XV. COUNTERPARTS

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

XVI. NO WAIVER; RIGHTS CUMULATIVE

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

XVII. NOTICES

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

The City's address:
Attn: City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

The Organization's address:
Mr. Shane Peterman
WaterTower Theatre
15650 Addison Road
Addison, Texas 75001

Email Address for Financial Reports:
ivillalta@addisontx.gov

XVIII. SEVERABILITY

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

XIX. AUTHORITY TO EXECUTE AGREEMENT

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

XX. ENTIRE AGREEMENT

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

XXI. SOVEREIGN IMMUNITY

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

XXII. NO BOYCOTT ISRAEL

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

[signature page follows]

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

TOWN OF ADDISON, TEXAS

WATERTOWER THEATRE

By: _____
David Gaines
City Manager

By: _____
Mr. Shane Peterman
Producing Artistic Director

Date: _____

Date: _____

EXHIBIT "A"

**DESCRIPTION OF "MATCHING FUNDS" AND PROCESS
FOR DISTRIBUTION OF MATCHING FUNDS
FOR WATERTOWER THEATRE
INCORPORATED FROM HOTEL/MOTEL
TAX FUNDS**

For each One Dollar of Theatre Funds (as defined herein) actually received by WaterTower Theatre ("WTT"), the City shall pay to WTT an equal amount ("Matching Funds") up to but not exceeding One Hundred Fifty Thousand and No/100 Dollars (\$150,000). In order to receive Matching Funds, WTT shall provide to the City such proof of its receipt of Theatre Funds as the City shall reasonably require. **Beginning January 1, 2024, WTT may make application on or before the 15th day of each month for distribution of Matching Funds and the City shall pay such matching funds provided the City has received adequate proof, in the City's sole opinion, of the actual receipt of Theatre Funds by WTT as set forth in each application. Disbursements are made in a minimum of \$5,000 increments.**

For the purposes of this Agreement, the term "Theatre Funds" shall mean and include: (i) cash funds actually received by WTT during the term hereof from any gifts, grants, donations, or other cash contributions from any person or business entity (whether for-profit or non-profit), and (ii) the qualifying season ticket funds, which shall be determined by multiplying (a) the number of 2023-2024 WTT season tickets sold by WTT between January 1, 2023 and November 15, 2023, times (b) the average cost of a single season subscription¹, times (c) 25%. (e.g., total # of tickets x average cost x .25 = qualifying season ticket funds).

¹ The average costs will include all regular season tickets (\$149) together with all early-purchased season tickets (\$129) sold during the applicable period.

City Council (FY24)

4. g.

Meeting Date: 10/24/2023

Department: Finance

Pillars: Gold Standard in Financial Health

AGENDA CAPTION:

Consider action on a resolution approving a Grant Funding Agreement between the Town of Addison and Dallas Cat Lady and authorizing the City Manager to execute the Grant Funding Agreement in an amount not to exceed \$5,000.

BACKGROUND:

Town staff has developed a grant funding process that allows non-profit organizations within the Town of Addison to submit a request for funds for their organization that directly enhances the Town. Town staff and Council evaluate applications for respective organizations individually. Town staff reviews all applicable financials of the non-profit organizations and verifies the organization is in good standing with both the IRS and Texas Secretary of State. To clearly reflect the impact of the grant to Addison and non-Addison residents, Quarterly Grant Reports are required by all non-profit organizations through the end of the Town's Fiscal Year. The Quarterly Grant Reports contain the non-profit organization's goals, objectives and performance measures as identified in the Grant Uses section of the agreement. Financial statements may or may not be required, but Town staff can request them at any time.

The Dallas Cat Lady submitted an application to the Town requesting \$5,000 for Fiscal Year 2024. During the Council Budget Work Session on August 4, 2023, Council discussed grant funding allocations for multiple non-profits included in the Fiscal Year 2024 budget. During the discussion about the Dallas Cat Lady, Council directed staff to grant the Dallas Cat Lady \$5,000. The Town has reviewed and evaluated the application and determined that the non-profit organization's request outlined in the application is for a public purpose that directly enhances the Town of Addison.

The Dallas Cat Lady grant funding agreement is included as an attachment to this agenda item.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution-Dallas Cat Lady FY2024

RESOLUTION NO. _____

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

WHEREAS, the City Council of the Town of Addison, Texas (“City Council”) has investigated and determined that it is in the best interest of the Town of Addison, Texas (“Town”) to provide a grant of public funds to various non-profit organizations that provide public programs directly benefiting the Town’s citizens as well as the general public; and

WHEREAS, the City Council has adopted a non-profit organization donation grant program (“Program”) whereby these organizations may apply on an annual basis for public funds that will be used for public purposes within the Town, as determined by the Town; and

WHEREAS, the City Council has authorized funding for the Program in the Town’s current fiscal year budget; and

WHEREAS, Dallas Cat Lady submitted a Program application to the Town for consideration; and

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

WHEREAS, the Town and Dallas Cat Lady desire to enter into the attached agreement to set forth the terms and conditions regarding Dallas Cat Lady’s use of the allocated Program funding.

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

SECTION 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 **24th** day of **OCTOBER 2023**.

TOWN OF ADDISON, TEXAS

Bruce Arfsten, Mayor

ATTEST:

APPROVED AS TO FORM:

Irma Parker, City Secretary

Whitt Wyatt, City Attorney

EXHIBIT A

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

This Agreement for Grant Funding (“Agreement”) is made and entered into as of the 1st day of October, 2023 by and between the Town of Addison, Texas (the “City”) and Dallas Cat Lady (the “Organization”).

WITNESSETH:

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

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

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

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

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

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

I. TERM

The term of this Agreement shall be for a period of one year from the 1st day of October, 2023, through the 30th day of September, 2024, except as otherwise provided for herein, and subject to the earlier termination of this Agreement (“Term”). The Program, hereinafter defined, must be completed during the Term of the Agreement to the satisfaction of the City.

II. GRANT USE

Any Funding received by the Organization pursuant to this Agreement shall be for the benefit of and for the promotion of public purposes within the Addison community and must not conflict with the Organization’s Application which is herein incorporated by reference. This Agreement does not bind the Organization to complete any specific program detailed below, however, the Organization shall, in good faith, complete all programs to the best of their ability pursuant to this

Agreement. If the Organization determines that any program cannot be completed, it shall immediately inform the City in writing.

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

(a) To continue/expand spay/neuter services for stray, feral and adoptable cats. These efforts will help to reduce the stray and feral cat population overwhelming communities and city resources. The goal is to help reduce those numbers; and

(b) To subsidize increased medical costs for those that are rehoming or abandoning their cats because of moves, deaths in the family, economic issues, etc.

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

January 30, 2024
April 30, 2024
July 30, 2024
October 30, 2024

III. FUNDING

The City shall pay to the Organization the sum of no more than Five Thousand and No/100 Dollars (\$5,000.00) ("Funding") as follows: fifty percent (50%) of the Funding shall be paid to the Organization within thirty (30) days of the City's execution of this Agreement, and the remaining fifty percent (50%) of the Funding shall be paid to the Organization on May 30, 2024. However, the Organization may send a written request to the City Manager's Office for an advance of the second fifty percent (50%) distribution prior to May 30, 2024. Approval of such an advance of Funding shall be at the City Manager or City Manager designee's sole discretion. All Funding shall be made contingent upon the Organization's compliance with the Agreement terms and conditions herein. Funding shall never carry over into the subsequent fiscal year. If the Organization fails to complete any Program within the Term, the Organization shall immediately inform the City in writing.

The Funding 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 Funding 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 agreement made by the Organization. None of the obligations of the City under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

IV. RESPONSIBILITY; INDEMNIFICATION

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

(B) INDEMNITY OWED BY THE ORGANIZATION. THE ORGANIZATION COVENANTS AND AGREES TO FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN OF ADDISON, TEXAS AND THE ELECTED AND APPOINTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS, INDIVIDUALLY OR COLLECTIVELY, IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES (THE TOWN OF ADDISON, TEXAS AND THE ELECTED AND APPOINTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS EACH BEING AN "ADDISON PERSON" AND COLLECTIVELY THE "ADDISON PERSONS"), FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, HARM, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, JUDGMENTS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY, AND SUITS, OF ANY KIND AND NATURE WHATSOEVER MADE UPON OR INCURRED BY ANY ADDISON PERSON, WHETHER DIRECTLY OR INDIRECTLY, (THE "CLAIMS"), THAT ARISE OUT OF, RESULT FROM, OR RELATE TO: (1) THE PROGRAM AS DESCRIBED IN SECTION II OF THIS AGREEMENT; (2) REPRESENTATIONS OR WARRANTIES BY THE ORGANIZATION UNDER THIS AGREEMENT; AND/OR (3) ANY OTHER ACT OR OMISSION UNDER OR IN PERFORMANCE OF THIS AGREEMENT BY THE ORGANIZATION, OR ANY OWNER, OFFICER, DIRECTOR, MANAGER, EMPLOYEE, AGENT, REPRESENTATIVE, CONSULTANT, CONTRACTOR, SUBCONTRACTOR, LICENSEE, INVITEE, PATRON, GUEST, CUSTOMER, OR CONCESSIONAIRE OF OR FOR THE ORGANIZATION, OR ANY OTHER PERSON OR ENTITY FOR WHOM THE ORGANIZATION IS LEGALLY RESPONSIBLE, AND THEIR RESPECTIVE OWNERS, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS, REPRESENTATIVES, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INVITEES, PATRONS, GUESTS, CUSTOMERS, AND CONCESSIONAIRES. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

THE ORGANIZATION SHALL PROMPTLY ADVISE THE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST ANY ADDISON PERSON OR THE ORGANIZATION RELATED TO OR ARISING OUT OF THE ORGANIZATION'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF

SUCH CLAIM OR DEMAND AT THE ORGANIZATION'S SOLE COST AND EXPENSE (NOT TO EXCEED \$350.00 PER HOUR). THE ADDISON PERSONS SHALL HAVE THE RIGHT, AT THE ADDISON PERSONS' OPTION AND AT OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING THE ORGANIZATION OF ANY OF ITS OBLIGATIONS HEREUNDER.

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

V. TERMINATION

This Agreement may be canceled and terminated by either party at any time and for any reason or no reason upon giving at least thirty (30) days written notice to the other party hereto. Notice of termination shall be sent in compliance with Section XVII herein. IMMEDIATELY UPON TERMINATION OF THIS AGREEMENT, ANY FUNDING NOT PROPERLY ALLOCATED TO THE PROGRAM HEREIN, AS DETERMINED BY THE CITY IN ITS SOLE DISCRETION, SHALL BE RETURNED.

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

VI. CONFLICT OF INTEREST

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

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

VII. ACCOUNTING

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

creates a fiduciary duty in the Organization with respect to the Funding provided under this Agreement.

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

The Organization shall maintain complete and accurate financial records of all revenues, expenses, assets and liabilities, including, without limitation, each expenditure of Funding received pursuant to this Agreement. Financial records shall be sent to the City quarterly in the form of both a profit-loss statement and balance sheet in accord with generally accepted accounting principles (GAAP). Upon request by the City, the Organization shall make its financial records available for inspection and review by the City or its designated representative(s).

Within ninety (90) days of the end of the Organization's fiscal year, the Organization shall provide the City with a financial statement signed by the Chairman of the Organization's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, at the Organization's expense, setting forth the Organization's income, expenses, assets and liabilities. SUCH OBLIGATION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT. If this Agreement is terminated prior to its expiration, the Organization shall provide such reports as required for the City for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof.

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

VIII. ADDITIONAL REQUIREMENTS OF THE ORGANIZATION

The Organization agrees to the following:

- (a) The City may conduct an on-site visit to the Organization during the Term;
- (b) Within thirty (30) days of the City's execution of this Agreement, the Organization shall provide to the City a current list of all Organization board members and a schedule of all board meetings. A representative from the City may choose to attend any scheduled board meetings. The City shall be immediately notified in writing of any changes to the schedule; and
- (c) The City, through its official logo(s), shall be prominently recognized as a supporter of the Organization in all marketing materials produced or published by the Organization during the term hereof (including all print and digital marketing materials regardless of platform). The Organization shall notify the City in writing of its intent to produce or publish any such marketing materials and provide the City a reasonable opportunity to elect to have its logo(s) removed from the materials prior to publication. The Organization shall use the City's designated logo(s) in strict conformance with

the City's currently adopted branding guidelines. The City hereby grants the Organization a limited, non-exclusive license to use the City's logo solely for the foregoing purposes and the trade names, trademarks, service marks, logos, designs, identification, decals, artwork and other symbols and devices associated with the City ("City Marks") shall at all times remain the sole and exclusive property of the City. The Organization shall not license, sublicense, or use the City Marks in any manner, other than as expressly permitted in this subsection (c), without the prior written approval of the City.

IX. INDEPENDENT CONTRACTOR

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

X. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT

The parties agree the Organization has no authority to assign, transfer, or otherwise convey, by any means whatsoever, this Agreement or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City. Any attempted assignment, transfer, or other conveyance of this Agreement without such approval shall be null and void and be cause for immediate termination of this Agreement by the City.

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

XI. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

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

XII. NON-DISCRIMINATION

During the term of this Agreement, the Organization agrees that it shall not discriminate against any employee or applicant for employment because of race, age, color, sex (as defined by applicable state and federal law), religion, ancestry, national origin, disability, veteran status, place of birth, or handicap.

XIII. LEGAL COMPLIANCE; AGREEMENT SUBJECT TO LAWS; RECITALS

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

The Organization acknowledges that any and all records of the Organization, 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. The Organization 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 the Organization 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, the Organization 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 the Organization's confidential information. Notwithstanding the foregoing, the Organization agrees that the City may, but shall be under no obligation to, submit arguments to the Attorney General relating to reasons the Organization's confidential information is exempt from disclosure to the public under the Act, regardless of whether the Organization has asserted its own arguments to the Attorney General.

The above and foregoing recitals to this Agreement are true and correct and incorporated herein and made a part hereof.

XIV. VENUE; GOVERNING LAW

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

XV. COUNTERPARTS

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

XVI. NO WAIVER; RIGHTS CUMULATIVE

The failure by either party to exercise any right or power, or option given to it by this Agreement, or to insist upon strict compliance with the terms of this Agreement, shall not constitute a waiver of the terms and conditions of this Agreement with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict

compliance with all the terms hereof. The rights or remedies under this Agreement are cumulative to any other rights or remedies, which may be granted by law.

XVII. NOTICES

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

The City's address:
Attn: City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

The Organization's address:
Leigh Sessler
Dallas Cat Lady
P.O. Box 181671
Dallas, Texas 75218

Email Address for Financial Reports:
ivillalta@addisontx.gov

XVIII. SEVERABILITY

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

XIX. AUTHORITY TO EXECUTE AGREEMENT

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

XX. ENTIRE AGREEMENT

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

XXI. SOVEREIGN IMMUNITY

AGREEMENT FOR GRANT FUNDING 2023-2024 (Dallas Cat Lady)

8

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

XXII. NO BOYCOTT ISRAEL

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

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

TOWN OF ADDISON, TEXAS

DALLAS CAT LADY

By: _____
David Gaines
City Manager

By: _____
Ms. Leigh Sessler, Exec. Director

Date: _____

Date: _____

City Council (FY24)

4. h.

Meeting Date: 10/24/2023

Department: Finance

Pillars: Gold Standard in Financial Health

AGENDA CAPTION:

Consider action on a Resolution approving a Grant Funding Agreement between the Town of Addison and Dallas County Mental Health & Retardation d/b/a Metrocare Services and authorizing the City Manager to execute the Grant Funding Agreement in an amount not to exceed \$2,500.

BACKGROUND:

Town staff has developed a grant funding process that allows non-profit organizations within the Town of Addison to submit a request for funds for their organization that directly enhances the Town. Town staff and Council evaluate applications for respective organizations individually. Town staff reviews all applicable financials of the non-profit organizations and verifies the organization is in good standing with both the IRS and Texas Secretary of State. To clearly reflect the impact of the grant to Addison and non-Addison residents, Quarterly Grant Reports are required by all non-profit organizations through the end of the Town's Fiscal Year. The Quarterly Grant Reports contain the non-profit organization's goals, objectives and performance measures as identified in the Grant Uses section of the agreement. Financial statements may or may not be required, but Town staff can request them at any time.

The Dallas County Mental Health & Retardation d/b/a Metrocare Services submitted an application to the Town requesting \$10,000 for Fiscal Year 2024. During the Council Budget Work Session on August 4, 2023, Council discussed grant funding allocations for multiple non-profits included in the Fiscal Year 2024 budget. During the discussion about Metrocare Services, Council directed staff to grant Metrocare Services \$2,500. The Town has reviewed and evaluated the application and determined that the non-profit organization's request outlined in the application is for a public purpose that directly enhances the Town of Addison.

The Dallas County Mental Health & Retardation d/b/a Metrocare Services grant funding agreement is included as an attachment to this agenda item.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution-Metrocare Services FY2024

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING AN AGREEMENT FOR GRANT FUNDING BETWEEN THE TOWN OF ADDISON AND DALLAS COUNTY MHMR D/B/A METROCARE SERVICES, IN AN AMOUNT NOT TO EXCEED \$2,500.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the Town of Addison, Texas (“City Council”) has investigated and determined that it is in the best interest of the Town of Addison, Texas (“Town”) to provide a grant of public funds to various non-profit organizations that provide public programs directly benefiting the Town’s citizens as well as the general public; and

WHEREAS, the City Council has adopted a non-profit organization donation grant program (“Program”) whereby these organizations may apply on an annual basis for public funds that will be used for public purposes within the Town, as determined by the Town; and

WHEREAS, the City Council has authorized funding for the Program in the Town’s current fiscal year budget; and

WHEREAS, Dallas County MHMR d/b/a Metrocare Services submitted a Program application to the Town for consideration; and

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

WHEREAS, the Town and Dallas County MHMR d/b/a Metrocare Services desire to enter into the attached agreement to set forth the terms and conditions regarding Dallas County MHMR d/b/a Metrocare Services’ use of the allocated Program funding.

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 Grant Funding between the Town and the Dallas County MHMR d/b/a Metrocare Services in an amount not to exceed \$2,500.00, 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 24th day of **OCTOBER** 2023.

TOWN OF ADDISON, TEXAS

Bruce Arfsten, Mayor

ATTEST:

APPROVED AS TO FORM:

Irma Parker, City Secretary

Whitt Wyatt, City Attorney

EXHIBIT A

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

This Agreement for Grant Funding (“Agreement”) is made and entered into as of the 1st day of October, 2023 by and between the Town of Addison, Texas (the “City”) and Dallas County MHMR d/b/a Metrocare Services (the “Organization”).

WITNESSETH:

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

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

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

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

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

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

I. TERM

The term of this Agreement shall be for a period of one year from the 1st day of October, 2023, through the 30th day of September, 2024, except as otherwise provided for herein, and subject to the earlier termination of this Agreement (“Term”). The Program, hereinafter defined, must be completed during the Term of the Agreement to the satisfaction of the City.

II. GRANT USE

Any Funding received by the Organization pursuant to this Agreement shall be for the benefit of and for the promotion of public purposes within the Addison community and must not conflict with the Organization’s Application which is herein incorporated by reference. This Agreement does not bind the Organization to complete any specific program detailed below, however, the Organization shall, in good faith, complete all programs to the best of their ability pursuant to this

Agreement. If the Organization determines that any program cannot be completed, it shall immediately inform the City in writing.

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

- (a) Grow the Children's Gala which will maximize the impact of grant dollars; and
- (b) Support for our mental health educational offerings, including Mental Health First Aid (MHFA) and/or Applied Suicide Intervention Skills Training (ASIST) courses.

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

- January 30, 2024
- April 30, 2024
- July 30, 2024
- October 30, 2024

III. FUNDING

The City shall pay to the Organization the sum of no more than Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) ("Funding") as follows: fifty percent (50%) of the Funding shall be paid to the Organization within thirty (30) days of the City's execution of this Agreement, and the remaining fifty percent (50%) of the Funding shall be paid to the Organization on May 30, 2024. However, the Organization may send a written request to the City Manager's Office for an advance of the second fifty percent (50%) distribution prior to May 30, 2024. Approval of such an advance of Funding shall be at the City Manager or City Manager designee's sole discretion. All Funding shall be made contingent upon the Organization's compliance with the Agreement terms and conditions herein. Funding shall never carry over into the subsequent fiscal year. If the Organization fails to complete any Program within the Term, the Organization shall immediately inform the City in writing.

The Funding 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 Funding 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 agreement made by the Organization. None of the obligations of the City under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

IV. RESPONSIBILITY; INDEMNIFICATION

(A) THE ORGANIZATION AGREES TO ASSUME AND DOES HEREBY ASSUME ALL RESPONSIBILITY AND LIABILITY FOR DAMAGES OR INJURIES

SUSTAINED BY PERSONS OR PROPERTY, WHETHER REAL OR ASSERTED, BY OR FROM THE PERFORMANCE OF THE PROGRAM PERFORMED AND TO BE PERFORMED HEREUNDER BY THE ORGANIZATION OR BY ITS OFFICIALS, OFFICERS, EMPLOYEES, OWNERS, MEMBERS, AGENTS, SERVANTS, INVITEES, GUESTS, VOLUNTEERS, CONTRACTORS, SUBCONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE.

(B) INDEMNITY OWED BY THE ORGANIZATION. THE ORGANIZATION COVENANTS AND AGREES TO FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN OF ADDISON, TEXAS AND THE ELECTED AND APPOINTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS, INDIVIDUALLY OR COLLECTIVELY, IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES (THE TOWN OF ADDISON, TEXAS AND THE ELECTED AND APPOINTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS EACH BEING AN "ADDISON PERSON" AND COLLECTIVELY THE "ADDISON PERSONS"), FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, HARM, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, JUDGMENTS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY, AND SUITS, OF ANY KIND AND NATURE WHATSOEVER MADE UPON OR INCURRED BY ANY ADDISON PERSON, WHETHER DIRECTLY OR INDIRECTLY, (THE "CLAIMS"), THAT ARISE OUT OF, RESULT FROM, OR RELATE TO: (1) THE PROGRAM AS DESCRIBED IN SECTION II OF THIS AGREEMENT; (2) REPRESENTATIONS OR WARRANTIES BY THE ORGANIZATION UNDER THIS AGREEMENT; AND/OR (3) ANY OTHER ACT OR OMISSION UNDER OR IN PERFORMANCE OF THIS AGREEMENT BY THE ORGANIZATION, OR ANY OWNER, OFFICER, DIRECTOR, MANAGER, EMPLOYEE, AGENT, REPRESENTATIVE, CONSULTANT, CONTRACTOR, SUBCONTRACTOR, LICENSEE, INVITEE, PATRON, GUEST, CUSTOMER, OR CONCESSIONAIRE OF OR FOR THE ORGANIZATION, OR ANY OTHER PERSON OR ENTITY FOR WHOM THE ORGANIZATION IS LEGALLY RESPONSIBLE, AND THEIR RESPECTIVE OWNERS, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS, REPRESENTATIVES, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INVITEES, PATRONS, GUESTS, CUSTOMERS, AND CONCESSIONAIRES. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

THE ORGANIZATION SHALL PROMPTLY ADVISE THE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST ANY ADDISON PERSON OR THE ORGANIZATION RELATED TO OR ARISING OUT OF THE ORGANIZATION'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT THE ORGANIZATION'S SOLE COST AND EXPENSE (NOT TO EXCEED \$350.00 PER HOUR). THE ADDISON PERSONS SHALL HAVE THE

RIGHT, AT THE ADDISON PERSONS' OPTION AND AT OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING THE ORGANIZATION OF ANY OF ITS OBLIGATIONS HEREUNDER.

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

V. TERMINATION

This Agreement may be canceled and terminated by either party at any time and for any reason or no reason upon giving at least thirty (30) days written notice to the other party hereto. Notice of termination shall be sent in compliance with Section XVII herein. IMMEDIATELY UPON TERMINATION OF THIS AGREEMENT, ANY FUNDING NOT PROPERLY ALLOCATED TO THE PROGRAM HEREIN, AS DETERMINED BY THE CITY IN ITS SOLE DISCRETION, SHALL BE RETURNED.

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

VI. CONFLICT OF INTEREST

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

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

VII. ACCOUNTING

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

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

The Organization shall maintain complete and accurate financial records of all revenues, expenses, assets and liabilities, including, without limitation, each expenditure of Funding received pursuant to this Agreement. Financial records shall be sent to the City quarterly in the form of both a profit-loss statement and balance sheet in accord with generally accepted accounting principles (GAAP). Upon request by the City, the Organization shall make its financial records available for inspection and review by the City or its designated representative(s).

Within ninety (90) days of the end of the Organization's fiscal year, the Organization shall provide the City with a financial statement signed by the Chairman of the Organization's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, at the Organization's expense, setting forth the Organization's income, expenses, assets and liabilities. SUCH OBLIGATION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT. If this Agreement is terminated prior to its expiration, the Organization shall provide such reports as required for the City for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof.

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

VIII. ADDITIONAL REQUIREMENTS OF THE ORGANIZATION

The Organization agrees to the following:

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

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

(c) The City, through its official logo(s), shall be prominently recognized as a supporter of the Organization in all marketing materials produced or published by the Organization during the term hereof (including all print and digital marketing materials regardless of platform). The Organization shall notify the City in writing of its intent to produce or publish any such marketing materials and provide the City a reasonable opportunity to elect to have its logo(s) removed from the materials prior to publication. The Organization shall use the City's designated logo(s) in strict conformance with the City's currently adopted branding guidelines. The City hereby grants the Organization a limited, non-exclusive license to use the City's logo solely for the foregoing purposes and the trade names, trademarks, service marks, logos, designs, identification, decals, artwork and other symbols and

devises associated with the City ("City Marks") shall at all times remain the sole and exclusive property of the City. The Organization shall not license, sublicense, or use the City Marks in any manner, other than as expressly permitted in this subsection (c), without the prior written approval of the City.

IX. INDEPENDENT CONTRACTOR

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

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The parties agree the Organization has no authority to assign, transfer, or otherwise convey, by any means whatsoever, this Agreement or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City. Any attempted assignment, transfer, or other conveyance of this Agreement without such approval shall be null and void and be cause for immediate termination of this Agreement by the City.

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

XI. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

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

XII. NON-DISCRIMINATION

During the term of this Agreement, the Organization agrees that it shall not discriminate against any employee or applicant for employment because of race, age, color, sex (as defined by applicable state and federal law), religion, ancestry, national origin, disability, veteran status, place of birth, or handicap.

XIII. LEGAL COMPLIANCE; AGREEMENT SUBJECT TO LAWS; RECITALS

The Organization shall observe and abide by, and this Agreement is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without

limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended.

The Organization acknowledges that any and all records of the Organization, 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. The Organization 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 the Organization 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, the Organization 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 the Organization's confidential information. Notwithstanding the foregoing, the Organization agrees that the City may, but shall be under no obligation to, submit arguments to the Attorney General relating to reasons the Organization's confidential information is exempt from disclosure to the public under the Act, regardless of whether the Organization has asserted its own arguments to the Attorney General.

The above and foregoing recitals to this Agreement are true and correct and incorporated herein and made a part hereof.

XIV. VENUE; GOVERNING LAW

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

XV. COUNTERPARTS

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

XVI. NO WAIVER; RIGHTS CUMULATIVE

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

XVII. NOTICES

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

The City's address:
Attn: City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

The Organization's address:
Dr. John W. Burruss
Dallas County MHMR
d/b/a Metrocare Services

1345 River Bend Drive, Suite 200
Dallas Texas 75247

Email Address for Financial Reports:
ivillalta@addisontx.gov

XVIII. SEVERABILITY

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

XIX. AUTHORITY TO EXECUTE AGREEMENT

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

XX. ENTIRE AGREEMENT

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

XXI. SOVEREIGN IMMUNITY

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

XXII. NO BOYCOTT ISRAEL

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

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

TOWN OF ADDISON, TEXAS

METROCARE SERVICES

By: _____
David Gaines
City Manager

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

Date: _____

Date: _____

City Council (FY24)

4. i.

Meeting Date: 10/24/2023

Department: Finance

Pillars: Gold Standard in Financial Health

AGENDA CAPTION:

Consider action on a Resolution approving a Grant Funding Agreement with On Eagles Wings, Inc. d/b/a Woven Health Clinic and authorizing the City Manager to execute the Grant Funding Agreement in an amount not to exceed \$6,500.

BACKGROUND:

Town staff has developed a grant funding process that allows non-profit organizations within the Town of Addison to submit a request for funds for their organization that directly enhances the Town. Town staff and Council evaluate applications for respective organizations individually. Town staff reviews all applicable financials of the non-profit organizations and verifies the organization is in good standing with both the IRS and Texas Secretary of State. To clearly reflect the impact of the grant to Addison and non-Addison residents, Quarterly Grant Reports are required by all non-profit organizations through the end of the Town's Fiscal Year. The Quarterly Grant Reports contain the non-profit organization's goals, objectives and performance measures as identified in the Grant Uses section of the agreement. Financial statements may or may not be required, but Town staff can request them at any time.

On Eagles Wings, Inc. d/b/a Woven Health Clinic submitted an application to the Town requesting \$8,000 for Fiscal Year 2024. During the Council Budget Work Session on August 4, 2023, Council discussed grant funding allocations for multiple non-profits included in the Fiscal Year 2024 budget. During continued discussions after the budget work session about Woven Health Clinic, Council directed staff to grant Woven Health Clinic \$6,500. The Town has reviewed and evaluated the application and determined that the non-profit organization's request outlined in the application is for a public purpose that directly enhances the Town of Addison.

The On Eagles Wings, Inc. d/b/a Woven Health Clinic grant funding agreement is included as an attachment to this agenda item.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution-Woven Health Clinic FY2024

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING AN AGREEMENT FOR GRANT FUNDING BETWEEN THE TOWN OF ADDISON AND EAGLES WINGS, INC. D/B/A WOVEN HEALTH CLINIC, IN AN AMOUNT NOT TO EXCEED \$6,500.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the Town of Addison, Texas (“City Council”) has investigated and determined that it is in the best interest of the Town of Addison, Texas (“Town”) to provide a grant of public funds to various non-profit organizations that provide public programs directly benefiting the Town’s citizens as well as the general public; and

WHEREAS, the City Council has adopted a non-profit organization donation grant program (“Program”) whereby these organizations may apply on an annual basis for public funds that will be used for public purposes within the Town, as determined by the Town; and

WHEREAS, the City Council has authorized funding for the Program in the Town’s current fiscal year budget; and

WHEREAS, Eagles Wings, Inc. d/b/a Woven Health Clinic submitted a Program application to the Town for consideration; and

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

WHEREAS, the Town and Eagles Wings, Inc. d/b/a Woven Health Clinic desire to enter into the attached agreement to set forth the terms and conditions regarding Eagles Wings, Inc. d/b/a Woven Health Clinic’s use of the allocated Program funding.

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 Grant Funding between the Town and the Eagles Wings, Inc. d/b/a Woven Health Clinic in an amount not to exceed \$6,500.00, 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 24th day of **OCTOBER** 2023.

TOWN OF ADDISON, TEXAS

Bruce Arfsten, Mayor

ATTEST:

APPROVED AS TO FORM:

Irma Parker, City Secretary

Whitt Wyatt, City Attorney

EXHIBIT A

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

This Agreement for Grant Funding (“Agreement”) is made and entered into as of the 1st day of October, 2023 by and between the Town of Addison, Texas (the “City”) and On Eagles Wings, Inc. d/b/a Woven Health Clinic (the “Organization”).

WITNESSETH:

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

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

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

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

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

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

I. TERM

The term of this Agreement shall be for a period of one year from the 1st day of October, 2023, through the 30th day of September, 2024, except as otherwise provided for herein, and subject to the earlier termination of this Agreement (“Term”). The Program, hereinafter defined, must be completed during the Term of the Agreement to the satisfaction of the City.

II. GRANT USE

Any Funding received by the Organization pursuant to this Agreement shall be for the benefit of and for the promotion of public purposes within the Addison community and must not conflict with the Organization’s Application which is herein incorporated by reference. This Agreement does not bind the Organization to complete any specific program detailed below, however, the Organization shall, in good faith, complete all programs to the best of their ability pursuant to this

Agreement. If the Organization determines that any program cannot be completed, it shall immediately inform the City in writing.

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

- (a) Funding will be used as part of the Organization’s general operating fund to:
 - 1) Deliver primary healthcare services;
 - 2) Mental health care;
 - 3) Chronic disease management and disease prevention programs;
 - 4) Vaccinations, medical supplies, pharmaceuticals, immunizations, and radiology; and
 - 5) Patient education, patient health events, and community related events.

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

- January 30, 2024
- April 30, 2024
- July 30, 2024
- October 30, 2024

III. FUNDING

The City shall pay to the Organization the sum of no more than Six Thousand Five Hundred and No/100 Dollars (\$6,500.00) (“Funding”) as follows: fifty percent (50%) of the Funding shall be paid to the Organization within thirty (30) days of the City’s execution of this Agreement, and the remaining fifty percent (50%) of the Funding shall be paid to the Organization on May 30, 2024. However, the Organization may send a written request to the City Manager’s Office for an advance of the second fifty percent (50%) distribution prior to May 30, 2024. Approval of such an advance of Funding shall be at the City Manager or City Manager designee’s sole discretion. All Funding shall be made contingent upon the Organization’s compliance with the Agreement terms and conditions herein. Funding shall never carry over into the subsequent fiscal year. If the Organization fails to complete any Program within the Term, the Organization shall immediately inform the City in writing.

The Funding 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 Funding 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 agreement made by the Organization. None of the obligations of the City under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

IV. RESPONSIBILITY; INDEMNIFICATION

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

(B) INDEMNITY OWED BY THE ORGANIZATION. THE ORGANIZATION COVENANTS AND AGREES TO FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN OF ADDISON, TEXAS AND THE ELECTED AND APPOINTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS, INDIVIDUALLY OR COLLECTIVELY, IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES (THE TOWN OF ADDISON, TEXAS AND THE ELECTED AND APPOINTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS EACH BEING AN "ADDISON PERSON" AND COLLECTIVELY THE "ADDISON PERSONS"), FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, HARM, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, JUDGMENTS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY, AND SUITS, OF ANY KIND AND NATURE WHATSOEVER MADE UPON OR INCURRED BY ANY ADDISON PERSON, WHETHER DIRECTLY OR INDIRECTLY, (THE "CLAIMS"), THAT ARISE OUT OF, RESULT FROM, OR RELATE TO: (1) THE PROGRAM AS DESCRIBED IN SECTION II OF THIS AGREEMENT; (2) REPRESENTATIONS OR WARRANTIES BY THE ORGANIZATION UNDER THIS AGREEMENT; AND/OR (3) ANY OTHER ACT OR OMISSION UNDER OR IN PERFORMANCE OF THIS AGREEMENT BY THE ORGANIZATION, OR ANY OWNER, OFFICER, DIRECTOR, MANAGER, EMPLOYEE, AGENT, REPRESENTATIVE, CONSULTANT, CONTRACTOR, SUBCONTRACTOR, LICENSEE, INVITEE, PATRON, GUEST, CUSTOMER, OR CONCESSIONAIRE OF OR FOR THE ORGANIZATION, OR ANY OTHER PERSON OR ENTITY FOR WHOM THE ORGANIZATION IS LEGALLY RESPONSIBLE, AND THEIR RESPECTIVE OWNERS, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS, REPRESENTATIVES, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INVITEES, PATRONS, GUESTS, CUSTOMERS, AND CONCESSIONAIRES. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

THE ORGANIZATION SHALL PROMPTLY ADVISE THE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST ANY ADDISON PERSON OR THE ORGANIZATION RELATED TO OR ARISING OUT OF THE ORGANIZATION'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF

SUCH CLAIM OR DEMAND AT THE ORGANIZATION'S SOLE COST AND EXPENSE (NOT TO EXCEED \$350.00 PER HOUR). THE ADDISON PERSONS SHALL HAVE THE RIGHT, AT THE ADDISON PERSONS' OPTION AND AT OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING THE ORGANIZATION OF ANY OF ITS OBLIGATIONS HEREUNDER.

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

V. TERMINATION

This Agreement may be canceled and terminated by either party at any time and for any reason or no reason upon giving at least thirty (30) days written notice to the other party hereto. Notice of termination shall be sent in compliance with Section XVII herein. IMMEDIATELY UPON TERMINATION OF THIS AGREEMENT, ANY FUNDING NOT PROPERLY ALLOCATED TO THE PROGRAM HEREIN, AS DETERMINED BY THE CITY IN ITS SOLE DISCRETION, SHALL BE RETURNED.

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

VI. CONFLICT OF INTEREST

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

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

VII. ACCOUNTING

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

creates a fiduciary duty in the Organization with respect to the Funding provided under this Agreement.

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

The Organization shall maintain complete and accurate financial records of all revenues, expenses, assets and liabilities, including, without limitation, each expenditure of Funding received pursuant to this Agreement. Financial records shall be sent to the City quarterly in the form of both a profit-loss statement and balance sheet in accord with generally accepted accounting principles (GAAP). Upon request by the City, the Organization shall make its financial records available for inspection and review by the City or its designated representative(s).

Within ninety (90) days of the end of the Organization's fiscal year, the Organization shall provide the City with a financial statement signed by the Chairman of the Organization's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, at the Organization's expense, setting forth the Organization's income, expenses, assets and liabilities. SUCH OBLIGATION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT. If this Agreement is terminated prior to its expiration, the Organization shall provide such reports as required for the City for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof.

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

VIII. ADDITIONAL REQUIREMENTS OF THE ORGANIZATION

The Organization agrees to the following:

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

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

(c) The City, through its official logo(s), shall be prominently recognized as a supporter of the Organization in all marketing materials produced or published by the Organization during the term hereof (including all print and digital marketing materials regardless of platform). The Organization shall notify the City in writing of its intent to produce or publish any such marketing materials and provide the City a reasonable opportunity to elect to have its logo(s) removed from the materials prior to publication. The Organization shall use the City's designated logo(s) in strict conformance with

the City's currently adopted branding guidelines. The City hereby grants the Organization a limited, non-exclusive license to use the City's logo solely for the foregoing purposes and the trade names, trademarks, service marks, logos, designs, identification, decals, artwork and other symbols and devices associated with the City ("City Marks") shall at all times remain the sole and exclusive property of the City. The Organization shall not license, sublicense, or use the City Marks in any manner, other than as expressly permitted in this subsection (c), without the prior written approval of the City.

IX. INDEPENDENT CONTRACTOR

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

X. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT

The parties agree the Organization has no authority to assign, transfer, or otherwise convey, by any means whatsoever, this Agreement or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City. Any attempted assignment, transfer, or other conveyance of this Agreement without such approval shall be null and void and be cause for immediate termination of this Agreement by the City.

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

XI. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

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

XII. NON-DISCRIMINATION

During the term of this Agreement, the Organization agrees that it shall not discriminate against any employee or applicant for employment because of race, age, color, sex (as defined by applicable state and federal law), religion, ancestry, national origin, disability, veteran status, place of birth, or handicap.

XIII. LEGAL COMPLIANCE; AGREEMENT SUBJECT TO LAWS; RECITALS

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

The Organization acknowledges that any and all records of the Organization, 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. The Organization 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 the Organization 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, the Organization 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 the Organization's confidential information. Notwithstanding the foregoing, the Organization agrees that the City may, but shall be under no obligation to, submit arguments to the Attorney General relating to reasons the Organization's confidential information is exempt from disclosure to the public under the Act, regardless of whether the Organization has asserted its own arguments to the Attorney General.

The above and foregoing recitals to this Agreement are true and correct and incorporated herein and made a part hereof.

XIV. VENUE; GOVERNING LAW

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

XV. COUNTERPARTS

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

XVI. NO WAIVER; RIGHTS CUMULATIVE

The failure by either party to exercise any right or power, or option given to it by this Agreement, or to insist upon strict compliance with the terms of this Agreement, shall not constitute a waiver of the terms and conditions of this Agreement with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict

compliance with all the terms hereof. The rights or remedies under this Agreement are cumulative to any other rights or remedies, which may be granted by law.

XVII. NOTICES

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

The City's address:
Attn: City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

The Organization's address:
Ms. Lisa Rigby
On Eagles Wings, Inc.
d/b/a Woven Health Clinic
1 Medical Parkway, Plaza 1, Suite 149
Farmers Branch, Texas 75234

Email Address for Financial Reports:
ivillalta@addisontx.gov

XVIII. SEVERABILITY

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

XIX. AUTHORITY TO EXECUTE AGREEMENT

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

XX. ENTIRE AGREEMENT

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

XXI. SOVEREIGN IMMUNITY

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

XXII. NO BOYCOTT ISRAEL

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

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

TOWN OF ADDISON, TEXAS

WOVEN HEALTH CLINIC

By: _____
David Gaines
City Manager

By: _____
Ms. Lisa Rigby, Exec. Director

Date: _____

Date: _____

City Council (FY24)

4. j.

Meeting Date: 10/24/2023

Department: Parks & Recreation

Pillars: Excellence in Asset Management

Milestones: Implement the Asset Management Plan in accordance with the Asset Management Policy, utilizing information systems

AGENDA CAPTION:

Consider action approving an agreement with Sunbelt Pools for Swimming Pool repair work for the Addison Athletic Club in an amount not to exceed \$339,743.00.

BACKGROUND:

The purpose of this item is to address the plaster and tile for the outdoor pools at the Addison Athletic Club, which have met their lifespan and are in need of replacement. Funds in the amount of \$339,743 for the replacement of these items were included in the FY2023 - 2024 budget. The scope of work includes re-plastering the upper, lower and kiddie pools, an alternate price for an additional layer of plaster removal, replacement of the stonescape pebble zero-entry for the kiddie pool and replacement of tile for the upper, lower and kiddie pools. The base cost includes removal of up to two layers of plaster. It is not known if a third layer is present until the removal process begins. Therefore, an alternate for this work has been included in the contract. This work will only be authorized if deemed necessary by staff. An owner's allowance to cover any unforeseen items is also included in the agreement in the amount of \$3,600. Those funds would require authorization by staff in order to be utilized by the contractor. This work will be purchased through Buy Board, a Cooperative Purchasing Agreement that meets the State's procurement requirements.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution - Sunbelt

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING AN AGREEMENT WITH SUNBELT POOLS FOR SWIMMING POOL REPAIR WORK FOR THE ADDISON ATHLETIC CENTER (AAC) IN AN AMOUNT NOT TO EXCEED \$339,743.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council desires to authorize an agreement with Sunbelt Pools for swimming pool repair work for the AAC in conformance with the City’s requirements.

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

SECTION 1. The City Council hereby approves the agreement between the Town of Addison and Sunbelt Pools in an amount not-to-exceed of \$339,743.00, a copy of which is attached to this Resolution as **Exhibit A**. 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 **10th** day of **OCTOBER**, 2023.

TOWN OF ADDISON, TEXAS

Bruce Arfsten, Mayor

ATTEST:

Irma Parker, City Secretary

Exhibit A

CONTRACT SERVICES AGREEMENT

Swimming Pool Repair Work
for Addison Athletic Center (AAC)
Bid # 701-23

This Contract Services Agreement (“Agreement”) is made by and between the **Town of Addison, Texas** (“City”), and **Sunbelt Pools** (“Contractor”) (each a “party” and collectively the “parties”), acting by and through their respective authorized representatives.

RECITALS

WHEREAS, City desires to engage Contractor to perform certain work and services, hereinafter referred to only as “services”, as further specified in the Scope of Services defined in Section 1 of this Agreement; and

WHEREAS, Contractor has expressed a willingness to perform said services in conformance with this Agreement.

NOW, THEREFORE, for and in consideration of the covenants and promises made one to the other herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1. Scope of Services

Upon notice to proceed by City, Contractor agrees to provide the necessary services, labor, materials, equipment and supplies related to City’s Bid #701-23 for swimming pool repair work, such services being more fully described herein and pursuant to the Contract Documents. Contractor shall not be entitled to any claim for extra services, additional services or changes in the services, except as expressly authorized in writing in advance by City.

Section 2. Term of Agreement

The term of this Agreement shall begin on the last date of execution hereof (the “Effective Date”) and shall continue until Contractor completes the services required herein to the satisfaction of City and has been paid in full by City, unless sooner terminated in conformance with this Agreement.

Section 3. Contract Documents

This Agreement is a part of the “Contract Documents”, which include:

- (1) This Agreement, including all exhibits and addenda hereto;
- (2) City’s Solicitation for Bid #701-23;
- (3) City’s written notice(s) to proceed to the Contractor;
- (4) Properly authorized change orders;
- (5) Contractor’s Bid Proposal (**Exhibit A**); and
- (6) Any other materials distributed by the City that relate to the services.

In the event there exists a conflict between any term, provision and/or interpretation of the Contract Documents, the documents shall take precedent and control in the order listed above in this section. If discrepancies are found that may impact construction of the services, it shall be the Contractor’s obligation

to seek clarification as to which requirements or provisions control before undertaking any work on that component of the services. Should the Contractor fail or refuse to seek a clarification of such conflicting or inconsistent requirements or provisions prior to any work on that component of the services, the Contractor shall be solely responsible for the costs and expenses - including additional time - necessary to cure, repair and/or correct that component of the services.

Section 4. Contractor's Obligations

(a) Performance of Services. Contractor shall furnish and pay for all labor, tools, materials, equipment, supplies, transportation and management necessary to perform the services. To the extent reasonably necessary, Contractor may engage the services of any agents, assistants, or other persons that Contractor may deem proper to assist in the performance of the services under this Agreement; provided, that Contractor shall be responsible for all costs related thereto, except as expressly authorized in writing in advance by City.

(b) Standard of Care. Contractor shall perform the services with the skill and care ordinarily provided by competent Contractors practicing in the same or similar locality and under the same or similar circumstances and Contractor licenses. Contractor shall be responsible for the Contractor quality, technical accuracy, and the coordination of all services under this Agreement. Contractor shall, without additional compensation, correct or revise any errors or deficiencies in the services. Contractor shall further make, without expense to City, such revisions to the services as may be required to meet the needs of City and which are within the Scope of Services.

(c) City Directives. Contractor shall comply with and timely execute the City's directives in all matters related to the operation of the City's special events parking including, without limitation, operating procedures, security, traffic control, hours of operation, locations and priority of space assignments, space markings, and general customer service matters. Contractor acknowledges that the parking areas identified in the Contract Documents may vary from time to time and that City retains sole discretion to determine the actual location of the parking areas for all City events.

(d) Customer Claims and Complaints. Contractor shall investigate and report to the City, in a manner satisfactory to the City; all complaints and all claims made for loss of or damage to vehicles or other property related to the services. In the event that any written complaint with respect to Contractor's services under this Agreement is delivered to the Contractor, Contractor agrees that it will deliver a copy of the complaint to the City within twenty-four (24) hours after Contractor's receipt of the complaint and will promptly prepare a response for the City to review, making a good-faith attempt to explain, resolve, or rectify the cause of the complaint. The City reserves the right to respond to such complaint directly.

(e) Additional Services. Should City require additional services not included under this Agreement, Contractor shall make reasonable effort to provide such additional services at mutually agreed charges or rates, and within the time schedule prescribed by City; and without decreasing the effectiveness of the performance of services required under this Agreement.

(f) No Waiver of City's Rights. Neither City's review, approval/acceptance of, nor payment for any of the services required under this Agreement, shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Contractor shall be and remain liable to City in accordance with applicable law for all damages to City caused by Contractor's negligent performance of any of the services furnished under this Agreement.

(g) Independent Contractor. It is understood and agreed by and between the parties that Contractor, while performing under this Agreement, is acting independently, and that City assumes no responsibility or liabilities to any third party in connection with Contractor's actions. All services to be performed by Contractor pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of City. Contractor shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement. There is no intended third-party beneficiary to this Agreement.

(h) Inspection of Records. Contractor grants City and its designees the right to audit, examine or inspect, at City's election, all of Contractor's Records relating to the performance of services under this Agreement, during the term of the Agreement and any retention period herein. City's audit, examination or inspection of Contractor's Records may be performed by a City designee, which may include its internal auditors or an outside representative engaged by City. Contractor agrees to retain Contractor's Records for a minimum of four (4) years following termination of the Agreement, unless there is an ongoing dispute under the contract; then, such retention period shall extend until final resolution of the dispute. "Contractor's Records" shall include any and all information, materials and data of every kind and character generated as a result of the services under this Agreement. City agrees that it will exercise its right to audit, examine or inspect Contractor's Records only during regular business hours. Contractor agrees to allow City and its designees access to all of Contractor's Records, Contractor's facilities and the current or former employees of Contractor, deemed necessary by City or its designee(s), to perform such audit, inspection or examination.

(i) Confidential Information. Contractor agrees it will notify City in writing if it considers specific information to be confidential or proprietary trade secrets and will use its best efforts to clearly mark all such information as "Confidential" and/or "Proprietary – Trade Secret" at the time it is delivered or made accessible to City. City acknowledges that all such designated information is considered by Contractor to be confidential and the exclusive property of Contractor. Notwithstanding the foregoing, Contractor acknowledges that this Agreement, and all services performed hereunder, are subject to the legal requirements of the Texas Public Information Act and that City will have no obligation to protect or otherwise limit disclosure of any confidential or proprietary information if Contractor has not notified City of such designation in conformance with this section. Contractor agrees and covenants to protect any and all proprietary rights of City in any materials provided to Contractor. Additionally, any materials provided to Contractor by City shall not be released to any third party without the consent of City and shall be returned intact to City upon termination or completion of this Agreement or if instructed to do so by City. In the event City delivers to Contractor information that it has expressly marked "Confidential" or has notified Contractor is confidential or is the proprietary information of a third-party, Contractor agrees it shall not disclose to anyone directly or indirectly during the term of this Agreement or at any time thereafter, any such information, nor shall it use any such information for any purpose other than in connection with Contractor's performance of the services under this Agreement. Contractor shall further, at its own expense, defend all suits or proceedings instituted against City and pay any award of damages or loss resulting from an injunction, against City, insofar as the same are based on any claim that materials or services provided under this Agreement constitute an infringement of any patent, trade secret, trademark, copyright or other intellectual property rights.

(j) Certification of No Conflicts. Contractor hereby warrants to the City that Contractor has made full disclosure in writing of any existing or potential conflicts of interest related to Contractor's services under this Agreement. In the event that any conflicts of interest arise after the Effective Date of this Agreement, Contractor hereby agrees immediately to make full disclosure to the City in writing.

Section 5. Performance Schedule

(b) Time for Performance. Contractor shall perform all services as provided for under this Agreement in a proper, efficient, timely, and Contractor manner in accordance with City's requirements. In the event Contractor's performance of this Agreement is delayed or interfered with by acts of the City or others, Contractor may request an extension of time in conformance with this Section 5 for the performance of same as hereinafter provided but shall not be entitled to any increase in fee or price, or to damages or additional compensation as a consequence of such delays.

(c) Extensions; Written Request Required. No allowance of any extension of time, for any cause whatever (including an event of Force Majeure as defined herein below), shall be claimed or made to Contractor, unless Contractor shall have made written request upon City for such extension within forty-eight (48) hours after the cause for such extension occurred, and unless City and Contractor have agreed in writing upon the allowance of additional time to be made.

Section 6. Payment.

(a) Payment Terms. City agrees to pay Contractor for all services authorized in writing and properly performed by Contractor in general conformance with the fee schedule(s) established in the Contract Documents, subject to changes in the Scope of Services or additional services agreed upon in writing. Unless otherwise agreed by the parties, all payments to Contractor by City shall be based on detailed monthly invoices submitted by Contractor for work performed and accepted by City, less any previous payments. Payment will be due within 30 days of the City's receipt and acceptance of an approved invoice. Notwithstanding the foregoing, City reserves the right to delay, without penalty, any payment to Contractor when, in the opinion of City, Contractor has not made satisfactory progress on any component of the services described in the Scope of Services

(b) Compensation. Contractor's total compensation for the services under this Agreement shall not exceed \$339,743.00 (the "Contract Price"), subject to the parties' mutual agreement for Contractor to provide additional services in conformance with this Agreement. The Contract Price includes the following components:

Replaster Upper and Lower Pool	\$128,205.00
Replaster Kiddie Pool and Stonescape Pebbles	\$ 47,050.00
Add Alternate Additional Plaster Removal Upper, Lower and Kiddie	\$ 29,538.00
Remove and Replace Upper and Lower Pool Tile	\$107,250.00
Remove and Replace Kiddie Pool Waterline Tile	\$ 24,100.00
Owner's Allowance	\$ 3,600.00
TOTAL	<u>\$339,743.00</u>

City may deduct from any amounts due or to become due to Contractor any sum or sums owing by Contractor to City. In the event of any breach by Contractor of any provision or obligation of this Agreement, or in the event of the assertion by other parties of any claim or lien against City, or City's premises, arising out of Contractor's performance of this Agreement, City shall have the right to retain out of any payments due or to become due to Contractor an amount sufficient to completely protect City from any and all reasonably anticipated loss, damage or expense therefrom, until the breach, claim or lien has been satisfactorily remedied or adjusted by Contractor.

(c) Appropriation of Funding. All payments made hereunder shall be paid solely from lawfully available funds that have been appropriated by the City. Under no circumstances shall the City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Consequently, notwithstanding any other provision of this Agreement, the City shall have no obligation or liability to pay any amount due under this Agreement unless the City appropriates funds to make such payment during the budget year in which said amount is payable; provided that during the term of this Agreement the City will take such steps as necessary to appropriate funding for the Project each fiscal year in an amount sufficient to satisfy the reasonably anticipated payment(s) that will become due to Contractor during the ensuing fiscal year. City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by the Contractor. None of the City's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

Section 6. Default; Force Majeure

(a) Default; Notice to Cure. A party shall be deemed in default under this Agreement if the party is in breach of a material provision of this Agreement and said breach is not cured within fifteen (15) days written notice of default by the other party. In the event the breaching party has notified the other party in writing that it is diligently working to cure the breach and has provided reasonable evidence in support of the same, the breaching party shall not be deemed in default until the thirtieth (30th) day following the non-breaching party's notice of default.

(b) Default by Contractor. In addition to default under Section 6(a) above, Contractor shall be in default under this Agreement if Contractor fails to comply or becomes disabled and unable to comply with the provisions of this Agreement related to Contractor's performance of the services, including the quality or character of the services or time of performance for any material component of the services. If such default is not corrected within ten (10) days from the date of City's written notice to Contractor regarding the same, City may, at its sole discretion without prejudice to any other right or remedy:

- (i) Terminate this Agreement and be relieved of the payment of any further consideration to Contractor except for all services determined by City to be satisfactorily completed prior to termination. Payment for services satisfactorily completed shall be for actual costs, including reasonable salaries and travel expenses of Contractor to and from meetings called by City at which Contractor is required to attend, but shall not include any loss of profit of Contractor. In the event of such termination, City may proceed to complete the services in any manner deemed proper by City, either by the use of its own forces or by re-subletting to others; or
- (ii) City may, without terminating this Agreement or taking over the services, furnish the necessary labor, materials, equipment, supplies and/or assistance necessary to remedy the situation, at the expense of Contractor.

(c) Force Majeure. To the extent either party of this Agreement shall be wholly or partially prevented from the performance of any obligation or duty placed on such party by reason of or through work strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, court judgment, or a government restriction, quarantine or mandatory closure order enacted in response to a pandemic or other public health crises, or other specific cause reasonably beyond the parties control and not attributable to its malfeasance, neglect or nonfeasance (each an event of "Force Majeure"), the time for performance of such obligation (other than a payment obligation) may be extended for a period equal to the time lost by reason such event, provided, that the party complies with the provisions of this section. Specifically, the party asserting Force

Majeure (i) shall give prompt notice to the other party of the prevention of performance as soon as the asserting party is reasonably aware of such prevention, and (ii) has the burden of demonstrating (A) how and why their performance was so prevented, (B) the period of time during which they were so prevented from performing (which under the facts may be equal to, or shorter or longer than, the duration of the Force Majeure event itself), and (C) that the party used commercially reasonable efforts to mitigate and/or eliminate such prevention and resumed performance under this Agreement as soon as reasonably practicable.

Section 7. Termination; Suspension

(a) Termination Upon Default. Either party may terminate this Agreement upon written notice if the other party is in default of this Agreement, subject to the defaulting party's right to cure in conformance with the terms of this Agreement.

(b) Termination by City. City shall be entitled to terminate this Agreement, with or without cause, by providing thirty (30) days prior written notice to Contractor.

(c) Termination Following Request for Modification. Should City require a modification of this Agreement with Contractor, and in the event City and Contractor fail to agree upon a modification to this Agreement, City shall have the option of terminating this Agreement and Contractor's services hereunder at no additional cost other than the payment to Contractor, in accordance with the terms of this Agreement, for the services reasonably determined by City to be properly performed by Contractor prior to such termination date.

(d) Suspension. City reserves the right to suspend this Agreement for the convenience of City by issuing a written notice of suspension which shall describe City's reason(s) for the suspension and the expected duration of the suspension. Such expected duration shall, in no way, guarantee what the total number of days of suspension shall occur. Such suspension shall take effect immediately upon Contractor's receipt of said notice. Should such suspension extend past the expected duration identified by City in its latest notice of suspension, Contractor shall have the right to terminate this Agreement if Contractor if (i) Contractor provides not less than thirty (30) days prior written notice to City requesting to recommence the services, and (ii) City does not recommence the services within the time requested.

Section 8. Insurance

Contractor shall during the term hereof maintain in full force and effect all policies of insurance reasonably required by City. Contractor's obligation to provide acceptable certificates of insurance is a material condition of this Agreement, and services under this Agreement shall not commence until certificates of insurance have been received, reviewed, and accepted by City. The minimum coverages and limits of liability for the policies of insurance required under this Agreement are maintained by and accessible through the City's purchasing department.

Section 9. Indemnification; Notice.

CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE SERVICES OF CONTRACTOR PURSUANT TO THIS AGREEMENT. CONTRACTOR HEREBY WAIVES ALL CLAIMS AGAINST CITY, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "CITY INDEMNITEES") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE

OTHER THAN THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY INDEMNITEES. CONTRACTOR AGREES TO INDEMNIFY AND SAVE HARMLESS THE CITY INDEMNITEES FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, REASONABLE ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY TO THE EXTENT CAUSED BY THE NEGLIGENT PERFORMANCE OF SERVICES UNDER THIS AGREEMENT OR BY REASON OF ANY NEGLIGENT ACT OR OMISSION ON THE PART OF CONTRACTOR, ITS OFFICERS, DIRECTORS, SERVANTS, EMPLOYEES, REPRESENTATIVES, CONSULTANTS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO THE NEGLIGENCE OR WILFUL MISCONDUCT OF A CITY INDEMNITEE, IN WHOLE OR IN PART, IN WHICH CASE CONTRACTOR SHALL INDEMNIFY THE CITY INDEMNITEE TO THE EXTENT OR PROPORTION OF NEGLIGENCE ATTRIBUTED TO CONTRACTOR, ITS OFFICERS, AGENTS, OR EMPLOYEES AS DETERMINED BY A COURT OR OTHER FORUM OF COMPETENT JURISDICTION).

Notices of Claim. Contractor shall promptly advise City in writing of any claim or demand against the City, related to or arising out of Contractor's acts or omissions under this Agreement and shall see to the investigation and defense of such claims or demand at Contractor's sole cost and expense; provided, that City, at its option and at its own expense, may participate in such defense without relieving Contractor of any of its obligations hereunder. Contractor's obligations under this section shall not be limited to the limits of coverage of insurance maintained or required to be maintained by Contractor under this Agreement.

THE PROVISIONS OF THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT FOR A PERIOD OF FOUR (4) YEARS.

Section 10. Notice.

All notices required by this Agreement shall be in writing and addressed to the parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by the receiving party from time to time in accordance with this section). All notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or e-mail of a PDF document (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a notice is effective only (a) upon receipt by the receiving party, and (b) if the party giving the notice has complied with the requirements of this section.

Section 11. Verifications by Contractor

Contractor's execution of this Agreement shall serve as its formal acknowledgement and written verification that:

(a) if the requirements of Subchapter J, Chapter 552, Government Code, apply to this Agreement and Contractor agrees that the Agreement can be terminated if Contractor knowingly or intentionally fails to comply with a requirement of that subchapter;

(b) pursuant to Texas Government Code Chapter 2270, that Contractor's organization does not presently boycott Israel and will not boycott Israel during the term of this Agreement; and

(c) pursuant to Texas Government Code Chapter 2251, that Contractor's organization does not current discriminate against firearm and ammunition industries and will not for the term of the contract. Discriminating 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 the firearm or ammunition industry or with a person or entity doing business in the firearm or ammunition industry, but does not include an action made for ordinary business purposes.

Section 12. Miscellaneous

(a) Contractor shall not assign or sublet this Agreement, in whole or in part, without the prior written consent of City. (b) Contractor shall comply with all federal, state, county and municipal laws, ordinances, resolutions, regulations, rules, and orders applicable to the services under this Agreement. (c) The laws of the State of Texas shall govern this Agreement; and venue for any action concerning this Agreement shall be in the state district courts of Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said courts. (d) This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and there are no oral understandings, statements or stipulations bearing upon the meaning or effect of this Agreement which have not been incorporated herein. (e) The exhibits attached hereto, if any, are incorporated herein and made a part hereof for all purposes. (f) Unless expressly provided otherwise herein, this Agreement may only be modified, amended, supplemented or waived by a mutual written agreement of the parties. (g) 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 any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it. (h) Any of the representations 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. (i) This Agreement may be executed by the parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the parties. (j) Each party represents that it has full capacity and authority to grant all rights and assume all obligations granted and assumed under this Agreement. (k) Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

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

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the Effective Date.

For City:

For Contractor:

TOWN OF ADDISON, TEXAS

SUNBELT POOLS

By: _____

David Gaines
City Manager

By: _____

Name: _____

Title: _____

Date: _____

Date: _____

Notice Address:

Town of Addison
Attn: David Gaines, City Manager
5300 Belt Line Road
Town of Addison, Texas 75254
E: dgaines@addisontx.gov

Notice Address:

Sunbelt Pools
Attn: Rob Morgan
10555 Plano Road
Dallas, Texas 75238-1305
E: daveb@sunbeltpools.com



SUNBELT POOLS Exhibit A

Addison Athletic Center

September 2023

Buy Board Contract 701-23 Swimming Pool Chemicals, Supplies and Equipment: Category 8 Swimming Pool Coatings and Compounds

Property to drain and refill pools and turn off and restart equipment/lights.

Scope of Work for Upper/Lower Pool and Kiddie Pool

Strip two layers of Plaster to Gunite and Resurface Upper and Lower Pool with Diamond Brite Blue Quartz

1. Saw cut and chisel beneath all the water line tile
2. Saw cut and chisel around all lights, fittings, main drains and other surface penetrations
3. Strip two layers of existing plaster finish to gunite by hydroblasting
4. Install 2" x 2" blue or black non skid spotter tiles on steps.
5. Install 4" wide blue or black non skid tile for delineator tile as needed
6. Acid wash the pool surface with muriatic acid to remove oils and surface impurities and neutralize the acid salts
7. Apply a 3/8" thick light colored Diamond Brite to the pool surface using large stainless steel trowels and work the finish until it is uniformly smooth and hard.
8. Acid wash the newly finished surface to expose the diamond brite quartz.
9. Sunbelt to remove plaster dust from pool once the pool is filled.
10. Balance chemicals for start up
11. Remove and debris from replaster work and clean up

Standard Cost:	\$160,256.25
Buy Board 20% Discount:	\$32,051.25
Total Cost:	\$128,205.00

Add Alt 1: Remove additional layer of plaster if necessary to reach and scarify gunite.
\$22,615.00 per layer

Strip two layers of Plaster to Gunite and Resurface Kiddie Pool with Diamond Brite Blue Quartz

1. Saw cut and chisel beneath all the water line tile
2. Saw cut and chisel around all lights, fittings, main drains and other surface penetrations
3. Strip two layers of existing plaster finish to gunite by hydroblasting
4. Acid wash the pool surface with muriatic acid to remove oils and surface impurities and neutralize the acid salts
5. Apply a 3/8" thick light colored Diamond Brite to the pool surface using large stainless steel trowels and work the finish until it is uniformly smooth and hard.
6. Acid wash the newly finished surface to expose the diamond brite quartz.
7. Sunbelt to remove plaster dust from pool once the pool is filled.
8. Balance chemicals for start up
9. Remove and debris from replaster work and clean up

10555 PLANO ROAD DALLAS, TEXAS 75238-1305

214 343.1133 1 800 548.9115 FAX 214 343.1201

www.sunbeltpools.com robm@sunbeltpools.com



Standard Cost:	\$53,505.00
Buy Board 20% Discount:	\$10,701.00
Total Cost:	\$42,804.00

Add Alt 1: Remove additional layer of plaster if necessary to reach and scarify gunite.
\$6,923.00 per layer

Add Alt 2: Strip **one** layer of tan plastered zero entry area (above gutter grate) and replaster with Stonescapes Regular Pebbles **\$7,846.00**

Note: If Kiddie pool done at same time as large pool, \$3,600.00 credit.

Pricing good through September 2023

If credit card is used, additional 4% charge will be added to final total

Exclusions

Any item not specifically included in previous scope of work

Crack Repair

Undetermined Conditions: Conditions not determinable until plaster preparation has been completed are not included in the price, unless specifically mentioned as included and will be charged for in a Change Order when a determination of the additional cost is known.

Pressure test of plumbing and/or repairs of pool equipment or plumbing

Condition and watertightness of existing pool structure

Damage to landscaping before, during, or after construction by others

Main drain covers or sump modifications or replacement of frames

Sales tax

Money lost because area is closed

Performance Bond - 2.5% up to \$100,000 and \$1.5 over \$100,000

Please contact Dave Beverage at 214-537-7127 or daveb@sunbeltpools.com for any questions.

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214 343.1133 1 800 548.9115 FAX 214 343.1201

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Addison Athletic
Kiddie Pool

September 2023

BUYBOARD QUOTE

Buy Board Contract 701-23 Swimming Pool Chemicals, Supplies and Equipment
Category 8 Swimming Pool Coatings and Compounds

Property to drain and refill Pool. Property to turn off lights and equipment. Property to start up equipment and balance pool chemicals

Scope of Work for Kiddie Pool

Remove existing pool tile (step tile excluded) and haul off. Install new waterline tile (standard – non specialty – step tile excluded) with depth marker tiles with numbers in the upper 4.5 inches per code

Exclusions

Any scope item not specifically included in the previous scope
Pressure test of plumbing and/or repairs of pool equipment or plumbing
Beam repair other than standard grinding or minor crack repair to beam
Deck Depth Markers of No Diving Markers unless specified
Condition and watertightness of existing pool structure
Main drain sump modifications or plumbing to meet code
Sales tax
Performance Bond - 2.5% up to \$100,000 and \$1.5 over \$100,000
Damage to landscaping before, during, or after construction by others

Standard Cost:	\$30,125.00
Buy Board 20% Discount:	\$6,025.00
Total Cost:	\$24,100.00

Pricing good through November 2023

Please contact Dave Beverage at 214-537-7127 or daveb@sunbeltpools.com for any questions.

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214 343.1133 1 800 548.9115 FAX 214 343.1201

www.sunbeltpools.com robm@sunbeltpools.com



**Addison Athletic
Outdoor Upper and Lower Pool**

September 2023

BUYBOARD QUOTE

Buy Board Contract 701-23 Swimming Pool Chemicals, Supplies and Equipment
Category 8 Swimming Pool Coatings and Compounds

Property to drain and refill Pool. Property to turn off lights and equipment. Property to start up equipment and balance pool chemicals

Scope of Work for Outdoor Upper and Lower Pool

Remove existing pool tile (step tile excluded) and haul off. Install new waterline tile (standard – non specialty – step tile excluded) with depth marker tiles with numbers in the upper 4.5 inches per code

Exclusions

Any scope item not specifically included in the previous scope
Pressure test of plumbing and/or repairs of pool equipment or plumbing
Beam repair other than standard grinding or minor crack repair to beam
Deck Depth Markers of No Diving Markers unless specified
Condition and watertightness of existing pool structure
Main drain sump modifications or plumbing to meet code
Sales tax
Performance Bond - 2.5% up to \$100,000 and \$1.5 over \$100,000
Damage to landscaping before, during, or after construction by others

Standard Cost:	\$134,062.50
Buy Board 20% Discount:	\$26,812.50
Total Cost:	\$107,250.00

Pricing good through November 2023

Please contact Dave Beverage at 214-537-7127 or daveb@sunbeltpools.com for any questions.

10555 PLANO ROAD DALLAS, TEXAS 75238-1305

214 343.1133 1 800 548.9115 FAX 214 343.1201

www.sunbeltpools.com robm@sunbeltpools.com

City Council (FY24)

4. k.

Meeting Date: 10/24/2023

Department: Finance

Pillars: Gold Standard in Customer Service

Milestones: Promote and protect the Addison Way

AGENDA CAPTION:

Consider action on a resolution authorizing Town membership in the Texas Smart Buy purchasing cooperative.

BACKGROUND:

Texas Smart Buy is a purchasing cooperative initiated by the State of Texas. The contracts offered through this cooperative have gone through the procurement process and the contracts have been awarded to qualified vendors. As a member of Texas Smart Buy, the Town of Addison will have access to hundreds of competitively bid state contracts. Joining does not create a purchasing obligation or liability and having the ability to use the cooperative will create procurement efficiencies by streamlining the purchase process, saving both time and money.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution - TX Smart Buy

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A RESOLUTION FOR THE TOWN OF ADDISON'S COOPERATIVE PURCHASING MEMBERSHIP WITH TEXAS SMARTBUY; AUTHORIZING THE MAYOR TO EXECUTE THE RESOLUTION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council desires to authorize a resolution with Texas SmartBuy for the Town of Addison's participation in the Cooperative Purchasing Membership program.

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

SECTION 1. The City Council hereby approves the resolution between the Town of Addison and Texas SmartBuy for the Town's participation in the Cooperative Purchasing Membership program, a copy of which is attached to this Resolution as **Exhibit A**. The Mayor is hereby authorized to execute the resolution.

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 **24th** day of **OCTOBER 2023**.

TOWN OF ADDISON, TEXAS

Bruce Arfsten, Mayor

ATTEST:

Irma Parker, City Secretary

EXHIBIT A



Texas SmartBuy Membership Program

Resolution

State of Texas, County of Dallas (County Entity Located In)

Whereas, the Texas Comptroller of Public Accounts is authorized to provide purchasing services for local governments pursuant to §§271.082 and 271.083 of the Local Government Code.

Whereas, the City Council (Enter Board of Directors, City Council, Commissioner's Court, School Board, etc.)

of the Town of Addison (Enter Name of Qualified Applicant/Entity), is a:

(Check One of the Following)
List of entity types with radio buttons: Appraisal District, Community Supervision/Corrections Department, County, Fire Prevention District, Judicial District, Library District, Municipality (checked), State-funded Assistance Organization, Special District, Workforce Development Board, Charter/Academy School, Council of Governments/Planning Commissions, Education Service Center, Hospital District, Junior/Community College, Mental Health/Mental Disability Organization, School District, Texas Rising Star Care Provider, Utility District, Drainage, Municipal, Special.

defined as an entity qualified to participate in the Texas SmartBuy Membership Program of the Texas Comptroller of Public Accounts pursuant to §271.081 of the Local Government Code.

Steven Glickman, Chief Financial Officer and Primary Contact and Title

Wil Newcomer, Purchasing Manager Secondary Contact and Title

is/are authorized to execute all documentation for the Town of Addison (Entity Name) pertaining to its participation in the

Texas Comptroller of Public Accounts Cooperative Purchasing Program; and

Whereas, the Town of Addison (Entity Name) acknowledges its obligation to pay annual participation fees established by the Texas Comptroller of Public Accounts.

Now, Therefore Be it Resolved, that request be made to the Texas Comptroller of Public Accounts to approve the Town of Addison (Entity Name) for participation in the Texas Comptroller of Public Accounts Cooperative Purchasing Program.

Adopted this day of by the Town of Addison (Entity Name)

By: Signature of Chair, Signature of Primary Contact, Signature of Secondary Contact

Bruce Afrsten, Mayor Printed Name and Title of Chair Steven Glickman, CFO Printed Name and Title of Primary Contact Wil Newcomer, Purchasing Manager Printed Name and Title of Secondary Contact



Glenn Hegar Texas Comptroller of Public Accounts

Publication 96-1356-3 (09/22)

City Council (FY24)

4. I.

Meeting Date: 10/24/2023

Department: Finance

Pillars: Gold Standard in Financial Health

Milestones: Continuously improve processes and policies to include the voice of the customer and ensure the policies are easily accessible

AGENDA CAPTION:

Consider action on an Ordinance to amend the Code of Ordinances by amending Chapter 66 (Solid Waste) Article II (Collection And Disposal), Division 2 (Service Charge) Section 66-52 increasing from \$13.24 to \$14.28 the monthly fee for each residential unit.

BACKGROUND:

The Town contracts with Community Waste Disposal (CWD) for the provision of residential garbage and recycling collections for all single-family homes in Addison. This contract began October 1, 2020 and automatically renews for an additional year for five years if neither party requests termination.

As stated in the contract, beginning with year three (3) and every year thereafter, prices will increase or decrease by one hundred percent (100%) in wholesale price as measured by the Consumer's Price Index for All Urban Consumers (CPI-U) U.S. City Average, Garbage and Trash not seasonally adjusted 12-month average in May of the adjustment year. According to the Bureau of Labor Statistics, the percent change in the CPI-U U.S. City Average, Garbage and Trash not seasonally adjusted 12-month average from May 2022 to May 2023 was an increase of 7.9%. This increase results in a monthly garbage and recycling rate increase from \$13.24 to \$14.28, per single-family home. The increase will take effect November 1, 2023 and be reflected on the December utility bill.

RECOMMENDATION:

Administration recommends approval.

Attachments

Ordinance - Solid Waste Fees

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING THE CODE OF ORDINANCES OF THE CITY, CHAPTER 66 (SOLID WASTE), ARTICLE II (COLLECTION AND DISPOSAL), DIVISION 2 (SERVICE CHARGE), SECTION 66-52 TO INCREASE THE MANDATORY MONTHLY FEE FOR GARBAGE COLLECTION, HAULING AND DISPOSAL (CURBSIDE PICKUP) FROM EACH RESIDENTIAL UNIT WITHIN THE TOWN FROM \$13.24 TO \$14.28; PROVIDING THAT SUCH INCREASED RATE SHALL BE EFFECTIVE NOVEMBER 1, 2023 AND REFLECTED IN THE DECEMBER 2023 BILLING CYCLE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Addison (“City”) charges a monthly fee for residential solid waste collection services as authorized in Chapter 66 of the City’s Code of Ordinances and in conformance with the City’s current agreement for third-party residential collection services (the “Service Agreement”); and

WHEREAS, the City Council has determined that it is necessary to increase the monthly fee charged for residential solid waste collection in conformance with the Service Agreement, effective November 1, 2023; and

WHEREAS, the City Council has determined that the passage of this ordinance is in the best interest of the health, safety, and welfare of the public.

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

SECTION 1. The above and foregoing recitals are true and correct and are incorporated herein and made a part of this Ordinance.

SECTION 2. The Code of Ordinances of the Town of Addison, Texas, Chapter 66 (Solid Waste), Article II (Collection and Disposal), Division 2 (Service Charge), Section 66-52 (Single dwelling units) is hereby amended to read in its entirety as follows:

“Section 66-52. – Residential Units.

- (a) All owners, occupants, tenants or lessees of residential units receiving solid waste and recycling collection services shall be charged a mandatory monthly fee for garbage collection, hauling and disposal as follows:

Curbside pickup for each residential unit, exclusive of sales tax and applicable state fees . . . \$14.28.”

- (b) As used in subsection (a), above, the term *residential unit* shall mean a residential dwelling within the corporate limits of the town having an individual water meter,

generally intended for single-family occupancy.”

SECTION 3. The change in the mandatory monthly fee for garbage collection, hauling and disposal from residences as set forth in Section 1 above shall become effective on November 1, 2023 and shall be applied to monthly customer bills beginning with the December 2023 billing cycle.

SECTION 4. 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.

SECTION 5. 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 portion of this Ordinance, and the City Council hereby declares that it would have passed such remaining portion of this Ordinance despite such invalidity, which remaining portion shall remain in full force and effect.

SECTION 6. This Ordinance shall become effective from and after its passage and approval and its publication as may be required by law.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas on this 24th day of OCTOBER 2023.

TOWN OF ADDISON, TEXAS

Bruce Arfsten, Mayor

ATTEST:

APPROVED AS TO FORM:

Irma Parker, City Secretary

Whitt Wyatt, City Attorney

City Council (FY24)

4. m.

Meeting Date: 10/24/2023

Department: Finance

Pillars: Gold Standard in Financial Health

Milestones: Continuously improve processes and policies to include the voice of the customer and ensure the policies are easily accessible

AGENDA CAPTION:

Consider Action on a Resolution Adopting an Investment Strategy and Approving Brokers, Dealers, and Financial Institutions for Fiscal Year 2023-2024.

BACKGROUND:

The Public Funds Investment Act (PFIA) requires the Council to annually adopt the Town's Investment Policy. The document has been drafted to comply with all aspects of the PFIA. This policy applies to the investment and management of all funds of the Town. Direct management responsibility for the investment program is delegated by the City Council to the Chief Financial Officer. The investment policy has 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

Finance staff determined that no changes are needed to the Town's investment policy.

The attached Resolution includes the Town's Investment Policy in Exhibit A.

The list of recommended qualified brokers, dealers, and financial institutions were vetted by Town staff in accordance with the requirements of the adopted Investment Policy which requires the Town Council to review, revise, and adopt the list at least annually. The recommended list includes the removal of Vining Sparks from the list and the addition of Great Pacific Securities to the list that was approved on October 25, 2022.

The attached Resolution includes the list of brokers, dealers, and financial

institutions in Exhibit B.

Also attached to this item is the Certification of Investment Policy from the Government Treasurer's Organization of Texas for the two-year period ending September 30, 2025.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution - Fiscal Year 2023-2024 Investment Policy
Investment Policy Certification

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS
ADOPTING AN INVESTMENT STRATEGY AND APPROVING BROKERS,
DEALERS, AND FINANCIAL INSTITUTIONS FOR FISCAL YEAR 2023-2024;
PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the Texas Public Funds Investment Act (“PFIA”) requires the City Council of the Town of Addison, Texas (“City”) to annually review the City’s investment policy (the “Policy”); and

WHEREAS, the City’s Staff has developed the City’s Policy and investment strategy to comply with all aspects of the PFIA;

WHEREAS, City staff has received and reviewed all documentation required by the City’s Policy for each approved broker, dealer, and financial institution listed in conformance with Section XI of the Policy; and

WHEREAS, for Fiscal Year 2023-2024, City Staff is recommending no changes from the Fiscal Year 2022-2023 approved investment strategy.

**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 City Council does hereby adopt and approve the investment Policy and strategy for Fiscal Year 2023-2024 attached hereto as **Exhibit A** and incorporated herein.

SECTION 3. In conformance with Section XI of the Policy, the City Council does hereby adopt and approve the list of qualified brokers, dealers, and financial institutions for Fiscal Year 2023-2024 attached hereto as **Exhibit B** and incorporated herein.

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

DULY RESOLVED AND ADOPTED by the City Council of the Town of Addison, Texas, on this the 24th day of **OCTOBER** 2023.

ATTEST:

TOWN OF ADDISON, TEXAS

Irma Parker, City Secretary

Bruce Arfsten, Mayor

EXHIBIT A

TOWN OF ADDISON

INVESTMENT POLICY

For

FY 2023-2024

Section I.	SCOPE
Section II.	OBJECTIVES
Section III.	INVESTMENT STRATEGY
Section IV.	DELEGATION OF AUTHORITY
Section V.	INVESTMENT ADVISORS
Section VI.	STANDARD OF CARE
Section VII.	AUTHORIZED SECURITIES INVESTMENTS
Section VIII.	OTHER INVESTMENT GUIDELINES
Section IX.	PORTFOLIO MATURITIES
Section X.	INVESTMENT LIMITS
Section XI.	SELECTION OF BROKER/DEALERS
Section XII.	SELECTION OF DEPOSITORIES
Section XIII.	SAFEKEEPING AND CUSTODY
Section XIV.	RECORDKEEPING AND REPORTING
Section XV.	ETHICS AND CONFLICTS OF INTEREST
Section XVI.	COLLATERAL REQUIREMENTS
Section XVII.	POLICY REVISIONS

Section I. SCOPE

The Public Funds Investment Act, Chapter 2256, Texas Government Code, prescribes that each Town is to adopt rules governing its investment practices and to define the authority of the investment officer. The following Investment Policy addresses the methods, procedures, and practices which must be exercised to ensure effective and judicious fiscal management of the Town's funds. This Policy shall not apply to the selection, retention or other issues concerning the depositories of the Town's funds in demand and time deposits as provided under Chapter 105 of the Local Government Code.

This Policy shall apply to the investment and management of all funds of the Town under its control, other than those expressly excluded herein or by applicable law or valid agreement. This Policy shall not supersede the restrictions on investment and use applicable to any specific fund and, in the event of any conflict between this Policy and the requirements of any fund subject hereto, the specific requirement applicable to such fund shall be followed as well as all other provisions of this Policy other than those in conflict. The Employees Deferred Compensation Agency Fund is excluded from coverage under this Policy.

This Policy also requires the formal adoption of an "Investment Strategy Statement" that specifically addresses each of the Town's fund groups. Each Investment Strategy Statement will describe its objectives concerning:

- a. Suitability of investment type
- b. Preservation and safety of principal
- c. Liquidity
- d. Marketability of each investment
- e. Diversification of the portfolio
- f. Yield

In order to make effective use of the Town's resources, all monies shall be pooled into one investment bank account, except for those monies required to be accounted for in other bank accounts as stipulated by applicable laws, bond covenants or contracts. The income derived from this pooled investment account shall be distributed in accordance with the Town's internal procedures.

Section II. OBJECTIVES

The Town's principal investment objectives in order of priority are:

1. Conformance with all Federal regulations, State of Texas statutes and other legal requirements including the Town Charter and Town Ordinances, including this Policy.
2. Preservation of capital and the protection of investment principal.
3. Maintenance of sufficient liquidity to meet anticipated disbursement and cash flows.
4. Diversification to avoid incurring unreasonable risks regarding securities owned; and
5. Attainment of a market rate of return equal to or higher than the performance measure established from time to time by the Chief Financial Officer of the Town which is commensurate with the acceptable risk and liquidity objectives of this Policy

Section III. INVESTMENT STRATEGY

The Town of Addison may maintain portfolios which utilize three specific investment strategy considerations designed to address the unique characteristics of the fund groups represented in the investment portfolios.

- A. Operating funds shall have their primary objective to assure that anticipated cash outflows are matched with the adequate investment liquidity. The secondary objective is to create a portfolio structure which will experience minimal volatility during economic cycles. This may be accomplished by purchasing high quality, short-to-medium term securities which will complement each other in a ladder or barbell maturity structure.
- B. Debt service funds shall have as the primary objective the assurance of investment liquidity adequate to cover the debt service obligation on the required payment date. If the annual debt service obligation is covered, then securities may be purchased that have a stated final maturity date which exceeds the debt service payment date.
- C. Capital project funds shall have as their primary objective to assure that anticipated cash outflows are matched with adequate investment liquidity. These portfolios should have liquid securities to allow for unanticipated project expenditures or accelerated project outlays due to a better than expected or changed construction schedule. Funds invested for capital projects may be from bond proceeds that are subject to arbitrage rebate regulations.

Section IV. DELEGATION OF AUTHORITY

The City Manager appoints the Chief Financial Officer (CFO) and the Chief Financial Officer's designee(s) as the "Investment Officers" of the Town. Direct management responsibility for the investment program is delegated by the City Council to the Chief Financial Officer (hereinafter referred to as the "CFO"). The Investment Officers' authority will at all times be limited by all applicable laws and regulations in effect from time to time and this Policy. The Investment Officers shall exercise the judgment and care, under prevailing circumstances, that a prudent person would exercise in the management of the person's own affairs. Unless authorized by law, a person may not deposit, withdraw, transfer, or manage in any other manner the funds of the investing entity.

With written approval from the City Manager, the CFO may delegate any phase of the investment management program to any of the Investment Officers. Such approval shall state specifically the functions such person is authorized to perform or that the person is authorized to perform all activities of the CFO under this Policy. The CFO and Controller shall obtain and maintain, at the Town's expense, fidelity bonds in amounts determined adequate by the CFO (which shall not be less than \$250,000) for each fiscal year as shown by the approved budget. No person may engage in an investment transaction except as provided under the terms of this Policy and the internal procedures established by the CFO. A current list of persons authorized to transact investment business and wire funds on behalf of the Town shall be maintained by the CFO.

The CFO shall develop and maintain written administrative procedures for the operation of the investment program consistent with this Policy. The controls shall be designed to prevent, identify, and control losses of public funds arising from deviation from this Policy, fraud, employee error, and misrepresentation by third parties, or imprudent actions by employees and officers of the Town.

In the discretion of the City Council and in any event upon the termination or reassignment of any Investment Officer authorized to conduct transactions for the Town pursuant to this Policy, the authority of such person shall be revoked and such revocation of authority shall be immediately communicated by the CFO orally and in writing to each and every depository, broker/dealer, investment advisor, custodian and other agency or entity with whom the Town has any existing or continuing relationship in the management of its investments.

The CFO and all Investment Officers shall attend at least ten (10) hours of training relating to the treasurer's or officer's responsibilities within twelve (12) months after taking office or assuming duties; and attend a training session not less than once in a two-year period that begins on the first day of the Town's fiscal year and consists of the two consecutive fiscal years after that date, and receive not less than eight (8) hours of training. Such training from an independent source shall be approved or endorsed by the Government Finance Officers Association, Government Finance Officers Association of Texas, Government Treasurers Organization of Texas, Texas Municipal League, or the North Central Texas Council of Governments to include education in investment controls, security risks, strategy risks, market risks, and compliance with the Public Funds Investment Act.

Section V. INVESTMENT ADVISORS

The Town may, in the discretion of the CFO, and the approval of the City Council, appoint one or more Investment Advisors to assist the Town's financial staff in the management of the Town's funds. The Investment Advisor must be registered with the Securities and Exchange Commission under the Investment Advisors Act of 1940 and also be registered with the Texas State Securities Board as an Investment Advisor. To be eligible for consideration, an Investment Advisor shall demonstrate to the CFO knowledge of, and experience in, the management of public funds. The CFO will satisfy himself as to the Advisor's qualifications by all appropriate means, including reference checks with the Advisor's other clients, the State Securities Board and the Securities and Exchange Commission. An appointed Investment Advisor shall act solely in an advisor and administrative capacity, within the guidelines of this Investment Policy and without any discretionary authority to transact business on behalf of the Town.

Each Investment Advisor, appointed by the Town, shall agree that its investment advice shall at all times be given with the judgment and care, under circumstances then prevailing, which persons paid for their special prudence, discretion and intelligence, in such matters exercise in the management of their client's affairs, not for speculation by the client or production of fee income by the advisor or broker but for investment by the client with emphasis on the probable safety of the capital while considering the probable income to be derived.

Appointment of an Investment Advisor shall otherwise be according to the Town's normal purchasing procedures for selecting professional services. Any approved investment advisor may be terminated with the approval of the City Manager, if in the opinion of the CFO, the advisor has not performed adequately. The term of any Investment Advisor contract may not exceed five years. Any renewal or extension of the Investment Advisor contract must be made by the City Council by resolution.

Section VI. STANDARD OF CARE

As provided for in the Public Funds Investment Act, the standard of care for the Town's investments shall be that such "investments shall be made with judgment and care, under prevailing circumstances, that a person of prudence, discretion and intelligence would exercise in the management of the person's own affairs, not for speculation, but for investment, considering the probable safety of capital and the probable income to be derived."

The overall investment program shall be designed and managed with a degree of professionalism that is worthy of the public trust. The CFO and the Investment Officers shall recognize that the investment activities of the Town are a matter of public record.

The CFO and the Investment Officers, acting in accordance with written procedures and exercising the proper standard of care, shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided that this Policy and the CFO's procedures were followed. In determining whether the CFO or an Investment Officer has exercised the proper standard of care, all investments over which the individual had responsibility will be considered rather than a single investment.

Section VII. AUTHORIZED SECURITIES INVESTMENTS

Subject to any limitations otherwise imposed by applicable law, regulations, bond indentures or other agreements, (including but not limited to Chapter 2256 Texas Government Code, the Public Funds Investment Act), the following securities and deposits are the only ones permitted as investments for the Town's funds:

- a. Direct obligations of the United States government with a maturity not to exceed five (5) years from the date of purchase; U.S. Treasury Bills, U.S. Treasury Notes, U.S. Treasury Bonds, and U.S. Treasury Strips (book entry U.S. Treasury securities whose coupon has been removed).
- b. Senior debt obligations with a maturity not to exceed five (5) years from the date of purchase issued by, guaranteed by, or for which the credit of any of the following Federal Agencies and Instrumentalities is pledged for payment: Federal National Mortgage Association (FNMA), Federal Home Loan Bank (FHLB), Federal Farm Credit Bank (FFCB), and Federal Home Loan Mortgage Corporation (FHLMC). Mortgage-backed securities may be held as collateral although principal-only and interest-only mortgage-backed securities as well as all types of collateralized mortgage obligations (CMOs) and real estate mortgage investment conduits (REMICs) are expressly prohibited.
- c. Bonds or other interest-bearing obligations of which the principal and interest are guaranteed by the full faith and credit of the United States government, or fully insured by the Federal Deposit Insurance Corporation (FDIC), with a stated maturity not to exceed five (5) years from the date of purchase.
- d. Time Certificates of Deposit with a maturity not to exceed five (5) years from the date of purchase, secured by a combination of insurance from the Federal Deposit Insurance Corporation (FDIC) or its successor, and collateral as described in Section XV of this investment policy in depository institutions that have a main office or a branch office in the state of Texas which have been approved by the Town in accordance with Section XI of this Investment Policy.

In addition, separate CDs issued by depositories wherever located, bundled together into a single investment with the full amount of principal and interest of each CD federally insured may be purchased through a broker that has its main office or a branch office in Texas and is selected from a list adopted by the City Council, or from a depository institution with its main office or branch office in Texas. The broker or depository shall act as the custodian for the various certificates on behalf of the Town.

- e. Prime commercial paper with an original maturity of two hundred seventy (270) days or less which at the time of purchase, is rated at least:

A-1 by Standard & Poor's,
P-1 by Moody's
F1 by Fitch

- (1) At the time of purchase, the commercial paper must be rated by at least two (2) of the above stated ratings agencies at the above stated minimum credit rating.

- (2) If more than two (2) of the above stated agencies rates an issuer, all the rating agencies must rate the issuer in accordance with the above stated minimum credit criteria.
- (3) If the commercial paper issuer has senior debt* outstanding, the senior debt must be rated by each service that publishes a rating of the issue at least:

A-I by Moody's,
A+ by Standard and Poor's
A+ by Fitch

**Senior Debt is defined as the most senior secured or unsecured debt of an issuer with an original maturity exceeding one year.*

- f. Eligible Bankers Acceptances with original maturities not exceeding one hundred eighty (180) days, issued on domestic banks operating under the banking laws of the United States, whose senior long-term debt is rated, at the time of purchase, A-I or higher by Moody's, A+ by Standard and Poor's, or A+ by Fitch.
- g. Repurchase agreements with a defined termination date of ninety (90) days or less on U.S. Treasury and Federal Agency securities listed in items "a" and "c" above, collateralized initially at a minimum market value of 102% of the dollar value of the transaction, with the accrued interest accumulated on the collateral included in the calculation. An exception to the maturity may be made for bond proceeds, provided the repurchase agreement allows for multiple draws at the Town's discretion and the maturity date does not exceed the expected final expenditure date.

If the market value of the collateral falls below 101 percent the dollar value of the transaction, the collateral will be required to be brought up to the 102 percent initial maintenance level. A Repurchase Agreement is defined as a simultaneous agreement to buy, hold for ninety (90) days or less, and then sell back an obligation described in item (g) above, the principal and interest of which are guaranteed by the United States.

Repurchase Agreements shall be entered into only with dealers who:

- 1) are recognized as primary reporting dealers with the Market Reports Division of the Federal Reserve Board of New York; and
- 2) have an executed, Town approved Master Repurchase Agreement. Collateral (purchased securities) shall be held by the Town's custodian bank or in a segregated account registered in the name of the Town of Addison with an approved third-party safekeeping agent and the market value of the collateral securities shall be marked-to-the market no less than weekly.

For the purpose of item "g" of this section, the term "collateral" shall mean "purchased securities" under the terms of the Town approved Master Repurchase Agreement. Collateral bearing no coupon will have a maturity not to exceed five (5) years. All other eligible collateral shall have a maturity limit of ten (10) years.

The term repurchase agreements include reverse repurchase agreements. The term of a reverse repurchase agreement shall not exceed ninety (90) days and any investments acquired with the proceeds from the reverse repurchase agreement shall not exceed the term of that agreement.

- h. Money Market Funds meeting the following criteria:
 - (h-1) Registered with and regulated by the Securities and Exchange Commission.
 - (h-2) Providing the Town with a prospectus and other information required by the Securities Exchange Act of 1934 or the Investment Company Act of 1940.
 - (h-3) Charging no commission fee on the purchase or sale of shares.
 - (h-4) Stating a fund objective to maintain a constant daily net asset value of \$1.00 per share.
 - (h-5) Limiting fund assets to those securities listed in paragraphs "a", "b", "c" and

"g" above; and

(h-6) Having a maximum stated maturity of thirteen (13) months and dollar weighted average portfolio maturity of not more than sixty (60) days. A list of Town approved Money Market Funds shall be kept by the CFO.

- i. State investment pools organized under the Interlocal Cooperation Act that meet the requirements of Chapter 2256 Texas Government Code and have been specifically approved by the CFO and authorized by the City Council.
- j. Local investment pools organized under the Interlocal Cooperation Act that meet the requirements of Chapter 2256 Texas Government Code and have been specifically approved by the CFO and authorized by the City Council.
- k. Other obligations, the principal of and interest on which are unconditionally guaranteed or insured by the State of Texas or the United States with a maturity not to exceed five (5) years from the date of purchase.
- l. Obligations of states, agencies, counties, cities, and other political subdivisions of any State having 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.
- m. Interest bearing bank deposits insured by the FDIC or National Credit Union Share Insurance Fund.

Section VIII. OTHER INVESTMENT GUIDELINES

The Town seeks active management of its portfolio assets. In the effort of meeting the objectives of this Policy, the Town may from time to time sell securities that it owns in order to better position its portfolio assets. Sales of securities prior to maturity shall be documented and approved by the CFO before such a transaction is consummated. Sales of securities, yielding net proceeds less than 98 percent of the book value of the securities, must be approved in advance and in writing by both the City Manager and the CFO.

Each investment transaction must be based upon competitive quotations received from at least three (3) broker/dealers who have been approved by the Town in accordance with Texas law except for government securities purchased through a primary dealer at par.

The purchase and sale of all securities shall be on a delivery-versus-payment or payment-versus-delivery basis for securities purchases, monies will not be released by the Town's safekeeping bank until securities are received at the Federal Reserve Bank for further credit to the Town's safekeeping bank. In the case of securities sales, monies will be received by the Town's safekeeping bank via the Federal Reserve Bank, as the securities are simultaneously released to the purchaser). In this manner, the Town will always have possession of either its securities or its monies.

An investment that requires a minimum credit rating does not qualify as an AUTHORIZED SECURITIES INVESTMENT during the period the investment does not have the minimum credit rating even if the investment had the appropriate rating at the time of purchase. As stated in Section 2256.017 of the PFIA, 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 securing the investment in determining whether to hold the investment until maturity or to redeem the investment.

Section IX. PORTFOLIO MATURITIES

Maturities shall be selected which provide for both stability of income and reasonable liquidity.

At all times, the Town shall maintain 10 percent of its total investment portfolio in instruments maturing in

ninety (90) days or less. The weighted average maturity of all securities in the Town's total investment portfolio at any given time shall not exceed twenty-four (24) months.

In the case of callable securities, the first "call" date may be used as the "maturity" date for investment purposes in this Article if in the opinion of the CFO there is little doubt that the security will be called prior to maturity. At all times, the stated final maturity shall be used in portfolio average life calculations and reported as outlined in this Policy.

Investment of bond proceeds shall be invested in the investment types listed in Section VI. "a", "b", "c", "h", "i", and "j" for a period of time not to exceed five (5) years. Additionally, bond proceeds may be invested in a repurchase agreement that exceeds ninety (90) days if reductions are allowed from the agreement without penalty for legitimate bond proceeds expenditures and the final maturity is within the "temporary period" as defined by the Internal Revenue Service (this arrangement is commonly referred to as a "flexible repurchase agreement").

Section X. INVESTMENT LIMITS

It is the policy of the Town to avoid concentration of assets by limiting the maximum investment in a specific issuer to 25% of the entire investment portfolio, except for securities listed in Section VII. "a", "b", "i", and "j". The asset allocation in the portfolio should, however, be flexible depending upon the outlook for the economy and the securities markets.

The Town will not exceed the following maximum limits as a percentage of the total portfolio for each of the categories listed below:

- 20 percent in Money Market Funds
- 50 percent in Certificates of Deposit
- 30 percent in Commercial Paper
- 30 percent in Bankers Acceptances
- 70 percent in Local Government Investment Pools
- 70 percent in State Government Investment Pools
- 70 percent in Instrumentality Securities
- 50 percent in Municipal Bonds

In addition to the limitations set forth above the Town's investment in any single money market fund shall never exceed 10 percent of the total assets of the money market fund.

The CFO and investment officers shall evaluate how each security purchased fits into the Town's overall investment strategy.

Bond proceeds shall be exempt from the maximum limitation stated above for State Government Pools, but only for the period of time required to develop a comprehensive draw-down schedule for the project for which the proceeds are intended, the maximum being sixty (60) days, at which time the funds representing bond proceeds must be prudently diversified.

Section XI. SELECTION OF BROKER/DEALERS

The Town shall maintain a list of approved security broker/dealers maintaining minimum capital of \$10,000,000 and being in business for at least five years. These may include "primary" dealers or regional dealers that qualify under Securities and Exchange Commission (SEC) Rule 15C3-1 (uniform net capital rule). Securities may only be purchased from those authorized institutions and firms identified in the above list.

Broker/dealers and other financial institutions will be selected by the CFO on the basis of expected financial stability, experience in selling fixed income securities to other local governments as well as perceived ability to service the Town's account. Each broker/dealer authorized to conduct business with the Town, shall be

required to submit a Broker/Dealer questionnaire as well as updated financial statements. In addition, all firms shall provide a detailed resume of the firm's primary sales representative, appropriate references and wiring instructions. The CFO shall maintain a file on each firm containing the most recent information.

The CFO shall review the quality of service and financial stability of each broker/dealer and financial institution approved under this Section at least annually. Any approved broker/dealer or financial institution may be removed from the list of approved broker/dealers with the approval of the CFO, if in the opinion of the CFO, the firm has not performed adequately, or its financial condition is considered inadequate. The City Council shall, at least annually, review, revise, and adopt the list of qualified broker/dealers and financial institutions which are authorized to engage in investment transactions with the Town.

All business organizations (specifically, local government investment pools and discretionary investment managers) eligible to transact investment business with the Town shall be presented a written copy of this Policy. The qualified representative of the business organization seeking to transact investment business with the Town shall execute a written instrument substantially to the effect that the qualified representative has:

- 1) Received and thoroughly reviewed this Policy, and
- 2) Acknowledged that the business organization has implemented reasonable procedures and controls in an effort to preclude imprudent investment activities with the Town.

The Town shall not enter into an investment transaction with a business organization prior to receiving the written instrument described above. In addition, each Investment Advisor appointed by the Town shall execute the written instrument described above.

If the City Council has contracted with a Registered Investment Advisor for the management of its funds, the advisor shall be responsible for performing due diligence on and maintaining a list of broker/dealers with which it shall transact business on behalf of the Town. The advisor shall determine selection criteria. The advisor shall annually present a list of its authorized broker/dealers to the Town for review and likewise shall execute the aforementioned written instrument stating that the advisor has reviewed the Town's investment policy and has implemented reasonable procedures and controls in an effort to preclude imprudent investment activities with the Town. The advisor shall obtain and document competitive bids and offers on all transactions and present these to the Town as part of its standard trade documentation.

Section XII. SELECTION OF DEPOSITORIES

Certificates of Deposit (CD) may be placed with banking institutions doing business in the state of Texas which offer competitive and documented interest rates, both at or above interest rates available on government securities to similar maturity dates. All deposits exceeding the current FDIC deposit insurance amount shall be fully collateralized in order to be eligible as Town investments.

In addition to maintaining proper collateral, bank financial positions shall be considered to best assure prudent investment. Relevant criteria shall include capital ratios, liquidity, profitability, and asset growth. Information sources for financial data may include www.bankrate.com and the FDIC website at www.fdic.gov. Because the financial condition of banks may change rapidly, primary focus shall be on maintaining adequate levels of collateral to support deposit amounts. If the Town utilizes the services of an investment advisor, the advisor shall assist in the evaluation of both the financial institution and assigned collateral.

Section XIII. SAFEKEEPING AND CUSTODY

Investment securities purchased for the Town will be delivered by either book entry or physical delivery and shall be held in third-party safekeeping by a Federal Reserve Member financial institution designated as the Town's safekeeping and custodian bank. The Town may designate more than one (1) custodian bank. In no event shall the Town's custodial or safekeeping institution also be the counterparty (broker or dealer) to

the purchase or sale of those securities. The Town shall execute a written Safekeeping Agreement with each bank prior to utilizing the custodian's safekeeping services. Only a state or national bank located within the State of Texas may be utilized as a custodian of securities pledged to secure certificates of deposit. The safekeeping agreement must provide that the safekeeping bank will immediately record the receipt of purchased or pledged securities in its books and promptly issue and deliver a signed safekeeping receipt showing the receipt and the identification of the security, as well as the Town's perfected interest.

The CFO shall maintain a list of designated custodian banks and a copy of the Safekeeping Agreement executed with each custodian bank.

The CFO must approve release of securities, in writing, prior to their removal from the custodial account. A telephonic facsimile of a written authorization shall be sufficient if the custodian orally confirms receipt of the transmission and an exact copy of the document is retained in the Town's files.

All securities shall be confirmed in the name of the Town and delivered to an approved custodial bank or carried at a Federal Reserve Bank in the name of the Town. The Custodian shall not otherwise deposit purchased or pledged securities. All book entry securities, owned by the Town, shall be evidenced by a safekeeping receipt issued to the Town and signed by the appropriate officer at the custodian bank stating that the securities are held in the Federal Reserve system in a CUSTOMER ACCOUNT naming the Town as the "customer". In addition, the custodian bank will, when requested, furnish a copy of the delivery advice received by the custodian bank from the Federal Reserve Bank.

The original safekeeping receipt for each transaction including purchased securities under a repurchase agreement and collateral securing deposits will be forwarded to the CFO or his designee and held in a secured file by the Town.

Securities delivered as part of a repurchase agreement may be held with an independent third-party safekeeping agent, provided that they are fully registered in the Town's name, segregated in account designated in the name of the Town and governed by a fully executed custodial agreement.

Section XIV. RECORDKEEPING AND REPORTING

A record shall be maintained of all bids and offerings for securities transactions in order to ensure that the Town receives competitive pricing. All transactions shall be documented by the person authorizing the transaction in a form that shows that person's name, the party instructed to execute the transaction, the date, a description of the transaction and a brief statement of the reason(s) for the transaction.

Each depository institution of the Town's funds and purchased securities shall maintain separate, accurate and complete records relating to all deposits of the Town's funds, the securities pledged to secure such deposits and all transactions relating to the pledged securities. Each approved custodian shall maintain separate, accurate and complete records relating to all securities received on behalf of the Town, whether pledged, purchased, or subject to repurchase agreement, as well as all transactions related to such securities. In addition, each depository shall file all reports required by the Texas State Depository Board. Each depository and custodian shall agree to make all the records described in this paragraph available to the CFO's designee and the Town's auditors at any reasonable time.

At least once each quarter, the CFO or investment officers shall verify that all securities owned by the Town or pledged to the Town are held in safekeeping in the Town's custodial bank with proper documentation. At least annually the Town's investment program, including the records of custodians and depositories, shall be audited by independent certified public accountants selected by the City Council. This annual audit shall include a compliance audit of the management controls on investments and adherence to the Town's Investment Policy and strategies.

All broker/dealers, custodians, depositories, and investment advisors shall maintain complete records of all transactions that they conducted on behalf of the Town and shall make those records available for

inspection by the CFO or other representatives designated by the City Council or City Manager.

All sales of securities for less than the book value of the security shall be approved by the CFO and reported to the City Council at the next regular meeting. Sales of securities for less than 98 percent of the book value of the securities must be approved by both the City Manager and the CFO.

All contracted Investment Advisors shall report at least monthly on the straight-line book value, the market value of investment holdings, and total earnings yield and such other information required by the CFO. Unrealized profits or losses in the Town's investment portfolio will be disclosed but will not be used in the calculation of income earned for the month. Contracted Investment Advisors shall provide monthly reports to the CFO no later than 15 business days following receipt of all depository bank statements, investment pool statements and money market fund statements as necessary to provide a full accounting of the Town's investment and cash position.

An investment report shall be prepared by the CFO within 60 days of the quarter end that:

- a) Describes in detail the investment position of the Town.
- b) States the reporting period beginning book and market values, additions or changes to the book and market values during the period and ending book and market values for the period of each pooled fund group.
- c) States the reporting period beginning book and market value and ending book and market value for each investment security by asset type and fund type.
- d) States the maturity date of each investment security.
- e) States the fund for which each investment security was purchased.
- f) States fully accrued interest for the reporting period.
- g) States the compliance of the investment portfolio with the Town's Investment Policy, Investment Strategy Statement, and the Public Funds Investment Act.
- h) Summarizes quarterly transactions, including a detailed list of the gains and losses recognized; and
- i) Explains the total earnings yield during the previous quarter and compares the portfolio's performance to other benchmarks of performance.

This report will be presented to the City Council and signed by all of the Town's Investment Officers.

Market valuations of investments shall be provided by the Investment Advisor on a monthly basis. The Investment Advisor shall use independent market pricing sources including, but not limited to, Interactive Data Corporation (IDC) and Bloomberg, to monitor the market price of investments acquired with the Town's funds.

Within sixty (60) days after the end of the Town's fiscal year the CFO shall prepare, sign and deliver to the City Manager and the City Council an annual report on the Town's investment program and investment activity which has also been signed by each officer and employee of the Town authorized to conduct any of the Town's investment activity. The annual report shall include full year earnings yield. Such annual report shall include an analysis of the compliance with this Policy as well as changes in applicable laws and regulations during the previous year and may include any other items of significance related to the investment program.

If the Town places funds in any investment other than registered investment pools or accounts offered by its depository bank, the above reports shall be formally reviewed at least annually by an independent auditor, and the result of the review shall be reported to the City Council.

Section XV. ETHICS AND CONFLICTS OF INTEREST

Officers and employees of the Town involved in the investment process shall refrain from personal business activity that involves any of the Town's approved custodians, depositories, broker/dealers, or investment advisors and shall refrain from investing in any security issue held by the Town. Employees and officers shall not utilize investment advice concerning specific securities or classes of securities obtained in the

transaction of the Town's business for personal investment decisions, shall in all respects subordinate their personal investment transactions to those of the Town particularly with regard to the timing of purchases and sales and shall keep confidential all investment advice obtained on behalf of the Town, and all transactions contemplated and completed by the Town, except when disclosure is required by law.

All Investment Officers of the Town shall file with the Texas Ethics Commission and the City Council a statement disclosing any personal business relationship with business organization seeking to sell investments to the Town or any relationship within the second degree by affinity or consanguinity to an individual seeking to sell investments to the Town.

Section XVI. COLLATERAL REQUIREMENTS

Any and all deposits, including both principal as well as any and all interest that is directly applied to the security, shall be collateralized at the minimum margin of 102%, less applicable FDIC insurance, over the life of the security. Deposits shall be collateralized by securities listed in items "a", "b" and "c" below, and the collateral shall be held by a third-party custodian bank approved by the Town.

- a. Direct obligations of the United States government; U.S. Treasury Bills, U.S. Treasury Notes, U.S. Treasury Bonds, and U.S. Treasury Strips (book entry U.S. Treasury securities whose coupon has been removed).
- b. Debt obligations issued by, including letter of credit, issued by, guaranteed by, or for which the credit of any of the following Federal Agencies and Instrumentalities is pledged for payment: Government National Mortgage Association (GNMA), Federal National Mortgage Association (FNMA), Federal Home Loan Bank (FHLB), Federal Farm Credit Bank (FFCB), and Federal Home Loan Mortgage Corporation (FHLMC). Mortgage-backed securities are eligible as collateral, but principal-only and interest-only mortgage-backed securities and collateralized mortgage obligations (CMOs) and real estate mortgage investment conduits (REMICs) are expressly prohibited.
- c. Direct obligations of the State of Texas or its agencies or instrumentalities.

Consistent with the requirements of State law, the Town requires all bank and savings bank deposits to be federally insured or collateralized with eligible securities. Financial institutions serving as Town depositories will be required to sign a Security Agreement with the Town and the Town's custodian. The agreement shall define the Town's rights to the collateral in case of default, bankruptcy, or closing and shall establish a perfected security interest in compliance with Federal and State regulations including:

- a. The Agreement must be in writing.
- b. The Agreement has to be executed by the Depository and the Town contemporaneously with the acquisition of the asset.
- c. The Agreement must be approved by the Board of Directors or the loan committee of the Depository and a copy of the meeting minutes must be delivered to the Town; and
- d. The Agreement must be part of the Depository's "official record" continuously since its execution.

Section XVII. POLICY REVISIONS

The Investment Policy and Investment Strategy Statements will be reviewed at least annually by the CFO and the City Council and may be amended as conditions warrant by the City Council.

EXHIBIT B

Authorized Broker/Dealer/Financial Institutions/Banks/Investment Pools

Comerica Securities, Inc. 39400 Woodward Avenue Suite 255, MC: 7951 Bloomfield Hills, MI 48304	Chris Theut Senior Vice President Kyle Rademaker Vice President	(248) 645-4173 (248) 645-4171	ctheut@comerica.com ksrademaker@comerica.com
FHN Financial Capital Markets 920 Memorial City Way 11 th Floor Houston, TX 77024	John Buddy Saragusa Vice President Zach Brewer Senior Vice President	(713) 435-4475 (817) 471-7646 C (713) 435-4351 (281) 642-4350 C	buddy.saragusa@fhnfinancial.com zach.brewer@fhnfinancial.com
Great Pacific Securities 151 Kalmus Drive Suite H-8 Costa Mesa, CA 92626	Garrett Ng Account Executive Christopher Vinck-Luna CEO	(714) 619-3000 (808) 457-7528 C	gng@greatpac.com cvinck@greatpac.com
Hilltop Securities Inc. 1201 Elm Street Suite 3500 Dallas, TX 75270	Gilbert Ramon Vice President	(713) 654-8606 (713) 724-4178 C	gilbert.ramon@hilltopsecurities.com
Stifel Nicolaus & Co., Inc. 100 Motor Parkway 2 nd Floor Hauppauge, NY 11788	Luke Donenfeld Director of Sales Mark Davidoff Managing Director	(631) 656-4471 (917) 846-8398 C	ldonenfeld@stifel.com mdavidoff@stifel.com
The Baker Group 1601 NW Expressway 20 th Floor Oklahoma City, OK 73118	Rick Hansing Managing Director	(405) 415-7237 (800) 998-8392	rick@gobaker.com
Wells Fargo Securities, LLC 1445 Ross Avenue Suite 210 Dallas, TX 75202	Susan Ward Sales Representative Pamela Steuben Sales Assistant	(214) 740-1586 (214) 777-4078	wardst@wellsfargo.com pamela.K.Steuben@wellsfargo.com
East West Bank 9090 Katy Freeway 3 rd Floor Houston, TX 77024	Jia Li Client Service Lead Esau C. Liu Senior Vice President	(832) 973-8934 (281) 386-1889 C (832) 973-8938	jia.li@eastwestbank.com esau.liu@eastwestbank.com
Texas Security Bank 1212 Turtle Creek Boulevard Dallas, TX 75207	Christian Garcia Treasury Mgmt Specialist Jasmine Evans Vice President	(469) 398-4817 (469) 398-4816	christian.garcia@texassecuritybank.com jasmine.evans@texassecuritybank.com
Texas Class 2435 N. Central Expressway Suite 1200 Richardson, TX 75080	Karen Proctor Regional Director	(214) 473-4224	karen.proctor@texasclass.com
TexPool Participant Services 1001 Texas Avenue Suite 1400 Houston, TX 77002	Denise Hamala Unit Manager	(866) 839-7665	dhamala@federatedinv.com
TexSTAR/LOGIC 1201 Elm Street Suite 3500 Dallas, TX 75270	Mary Ann Dunda Managing Director	(214) 953-4086	maryann.dunda@hilltopsecurities.com



Government Treasurers' Organization of Texas
Certification of Investment Policy

Presented to the
Town of Addison

for developing an investment policy that meets the requirements of the Public Funds Investment Act and the standards for prudent public investing established by the Government Treasurers' Organization of Texas.

Heather Harlbert

Government Treasurers' Organization of Texas
President

Connie L. Steya

Investment Policy Review Committee

For the two-year period ending September 30, 2025

City Council (FY24)

4. n.

Meeting Date: 10/24/2023

Department: Special Events

Pillars: Optimize the Addison Brand

AGENDA CAPTION:

Resolution approving an Events Agreement between the Town of Addison and DCO Realty, Inc. for the management, operation, coordination, and control of a variety of events at Vitruvian Park and authorizing the City Manager to execute the agreement in an amount not to exceed \$185,000.

BACKGROUND:

The Town of Addison and DCO Realty, Inc., the developer/manager of Vitruvian Park, entered into an event sponsorship reimbursement agreement in 2012 that is presented to Council for renewal annually.

DCO Realty, Inc. desires to conduct and present a variety of public events within the Vitruvian Park area during Fiscal Year (FY) 2024. The Town desires to participate in these events and activities as a sponsor. To facilitate this, the Town will enter into an agreement with DCO Realty, Inc. for sponsorship reimbursement purposes for an amount not to exceed \$185,000.

These funds are used for the following projects:

- Vitruvian Lights Holiday Display
- Vitruvian Nights Live
- Vitruvian Salsa Festival
- Additional events as funds are available

These funds are included in the approved FY 2024 budget within the Hotel Fund.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution - DCO Realty, Inc.: Vitruvian Park Events

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING AN EVENTS AGREEMENT WITH DCO REALTY, INC. TO CONDUCT AND PRESENT A VARIETY OF PUBLIC EVENTS AND ACTIVITIES IN VITRUVIAN PARK; PROVIDING FOR CITY SPONSORSHIP OF THE SCHEDULED EVENTS IN AN NOT TO EXCEED \$185,000.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council desires to authorize an agreement with DCO Realty, Inc. to conduct and present a variety of public events and activities in Vitruvian Park with the City’s sponsorship participation during the City’s 2023-2024 fiscal year (the “Events”).

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

SECTION 1. The City Council hereby approves the Events Agreement between the Town of Addison and DCO Realty, Inc. for the above-described Events, which includes an annual sponsor fee amount not-to-exceed of \$185,000.00, a copy of which is attached to this Resolution as **Exhibit A**. 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 **24th** day of **OCTOBER**, 2023.

TOWN OF ADDISON, TEXAS

Bruce Arfsten, Mayor

ATTEST:

Irma Parker, City Secretary

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

EVENTS AGREEMENT

This Events Agreement (“Agreement”) is made and entered into as of the 1st day of October, 2023 (“Effective Date”) by and between the Town of Addison, Texas (“City” or “Addison”) and DCO Realty, Inc., a Delaware corporation (“DCO”) (the City and DCO are sometimes referred to herein together as the “parties” and individually as a “party”).

Recitals:

1. Except for properties owned by the City, DCO is the owner, manager, or otherwise has control over that area within the City that is known as Vitruvian Park and that is generally located along each side of Vitruvian Way, south of Spring Valley Road, and east of Marsh Lane.

2. DCO desires to conduct and present a variety of public events and activities within that area as described herein, and the City desires to participate in the public events and activities as set forth in this Agreement.

3. The public events and activities within Vitruvian Park attract individuals throughout the region to the City.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the City and DCO do hereby contract and agree as follows:

Section 1. Events; Term. DCO will conduct, present, manage, operate, coordinate, and control a variety of events, including Vitruvian Lights, Vitruvian Nights Live, and Vitruvian Salsa Festival (collectively, the “Events” and each an “Event”), during the period of time from October 1, 2023 to September 30, 2024 (the “Events Period”). The Events will be conducted at and within that area of the City depicted and described in the attached Exhibit A (“Event Site”). A portion of the Event Site is a public park and open space area generally referred to as Vitruvian Park, which portion is shown on Exhibit A (and is referred to herein as the “Vitruvian Park Portion”). DCO is solely responsible for the Events.

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

Bands and music performers selected to perform at the Events shall not conflict with those scheduled to perform at events produced by City. For the following events, DCO will provide the names of contracted performers as follows:

- Vitruvian Lights (November 2023- January 2024) – DCO will provide names of contracted performers (bands) by October 1, 2023.

- Vitruvian Nights Live (June-August 2024) – DCO will provide names of contracted performers (bands) by April 1, 2024.
- Vitruvian Salsa Festival (June - September 2024) – DCO will provide names of contracted performers (bands) by April, 1, 2024.

This Agreement shall be effective as of the Effective Date first set forth above and continue in effect through September 30, 2024, subject, however, to the termination provisions of this Agreement.

Section 2. Sponsorship; Sponsorship Benefits. The City will be a sponsor of the Events, as set forth herein. The City shall make available to DCO an annual sponsor fee (the “Sponsor Fee”) in an annual amount not to exceed \$185,000.00 to help cover actual costs of the Events during the Event Period. Parties agree that the Sponsor Fee shall be divided between the Events and made available to DCO not to exceed the amounts provided in the schedule attached hereto as Exhibit D. DCO agrees to use commercially reasonable efforts to ensure that the Vitruvian Lights annual holiday light show conforms to the standards provided in Exhibit C (“Lighting Requirements”). DCO will submit invoices to the City accompanied by receipts or other reasonable evidence of amounts actually incurred in connection with the Events and the City will reimburse DCO within thirty (30) days of receipt of such invoice, not to exceed the Sponsor Fee.

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

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

Section 3. Event Promotion, Advertising. Any promotion or advertising by, for, or on behalf of DCO or the City of any of the Events that references Addison or the Vitruvian Park Portion shall, before being used for promotion or advertising purposes, first be submitted to Addison or DCO, as applicable, for its prior review and approval (if any), which approval shall not be unreasonably withheld, conditioned or delayed. In the event Addison or DCO, as applicable,

fails to disapprove (with specific comments regarding the reason(s) for such disapproval) such promotion or advertising within ten (10) calendar days after the same is submitted (or resubmitted after modifications, as the case may be) to Addison or DCO, as applicable, such promotion or advertising shall be deemed approved. The parties agree that the type of promotions and advertising provided for the same or similar events in the Town of Addison prior to this Agreement are acceptable.

The City will promote the Events and will, among other things, (a) list the Events on the City's website (www.addisontexas.net) with a link to DCO's website (www.vitruvianpark.com), (b) display digital ads (as approved by the City, if at all and in the City's sole discretion, and subject to availability) across Belt Line Road advertising the Events (which digital ads, if any, will be supplied by DCO to the City no later than one (1) month prior to event), and (c) promote the Events on the City's social media sites.

Section 4. Termination.

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

Upon termination of this Agreement by Addison pursuant to this subsection 4(a), Addison will pay to DCO any amounts then due pursuant to this Agreement through the date of such notice of breach, but no further or additional payments will be made. Upon termination of this Agreement by DCO pursuant to this subsection 4(a), Addison will pay to DCO any amounts then due pursuant to this Agreement through the date of such termination.

(b) This Agreement may also be terminated by either party hereto for any reason or for no reason upon giving at least thirty (30) days written notice of such termination to the other party hereto. If Addison terminates this Agreement pursuant to this subsection 4(b), Addison will pay to DCO any amounts then due pursuant to this Agreement through the date of such termination. If DCO terminates this Agreement pursuant to this subsection 4(b), Addison will pay to DCO any amounts then due pursuant to this Agreement through the date of such termination but no further or additional payments will be made.

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

Section 5. Insurance. At all times in connection with this Agreement, DCO shall purchase

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

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

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

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

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

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

Section 6. **Responsibility, Assumption of Risk.** In connection with the Events and this Agreement and for the consideration set forth herein, DCO agrees to assume and does hereby assume all responsibility and liability for any and all damages or destruction of any property or personal injuries (including death) to any person of whatsoever kind or nature caused by, arising out of, or in connection with DCO's conducting, presentation, management, operation, coordination, and control of the Events as set forth in Section 1 of this Agreement or by any act or omission of any DCO Persons (as defined in Section 7, below). Addison assumes, and shall have, no responsibility for any property placed by DCO or by any DCO Persons on the Event Site, and DCO hereby RELEASES Addison and all Addison Persons from any and all claims or liabilities of any kind or nature whatsoever for any loss, injury or damages whatsoever to persons or property that are sustained by reason of the occupancy of the Event Site.

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

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

Section 7. **DCO'S INDEMNITY OBLIGATION.** FOR THE CONSIDERATION SET FORTH IN THIS AGREEMENT, DCO COVENANTS AND AGREES TO FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS ADDISON, ITS ELECTED AND APPOINTED OFFICIALS, ITS OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS, INDIVIDUALLY OR COLLECTIVELY, IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES (COLLECTIVELY, "ADDISON PERSONS" AND EACH AN "ADDISON PERSON"), FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITY, JUDGMENTS, LAWSUITS, DEMANDS, HARM, LOSSES, DAMAGES, PROCEEDINGS, SUITS, ACTIONS, CAUSES OF ACTION, LIENS, FEES, FINES, PENALTIES, EXPENSES, OR COSTS, OF ANY KIND AND NATURE WHATSOEVER MADE UPON OR INCURRED BY THE CITY OR ANY OTHER ADDISON PERSON, WHETHER DIRECTLY OR INDIRECTLY, (THE "CLAIMS"), THAT ARISE OUT OF, RESULT FROM, OR RELATE TO:

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

PERSON OR ENTITY FOR WHOM DCO IS LEGALLY RESPONSIBLE, BY

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

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

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

EACH PARTY SHALL PROMPTLY ADVISE THE OTHER PARTY IN WRITING OF ANY CLAIM OR DEMAND AGAINST ANY ADDISON PERSON, DCO, OR ANY DCO PERSON RELATED TO OR ARISING OUT OF DCO'S ACTIVITIES UNDER THIS AGREEMENT, AND, TO THE EXTENT REQUIRED UNDER THIS SECTION 7, DCO SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT DCO'S SOLE COST AND EXPENSE. THE ADDISON PERSONS SHALL HAVE THE RIGHT, AT THE ADDISON PERSONS' OPTION AND AT OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING DCO OF ANY OF ITS OBLIGATIONS HEREUNDER.

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

Section 8. Miscellaneous.

(a) *Notices.* For purposes of this Agreement and except as otherwise provided for in this Agreement, notices and all other communications provided for herein shall be in writing,

addressed as provided hereinafter to the party to whom the notice or request is given, and shall be either (i) delivered personally, (ii) sent by United States certified mail, postage prepaid, return receipt requested, or (iii) placed in the custody of Federal Express Corporation or other nationally recognized carrier to be delivered next business day. Notice shall be deemed given when received if delivered personally or if sent by Federal Express or other nationally recognized carrier; or seventy-two (72) hours after deposit if sent by certified mail.

Addresses for notices and communications are as follows:

To DCO:

c/o UDR, Inc.
1745 Shea Center Drive, Suite 200
Highlands Ranch, CO 80129
Attn: Legal Department

To Addison:

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

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

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

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

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

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

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

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

(h) *Immunity.* Notwithstanding any other provision of this Agreement, nothing in this Agreement shall or may be deemed to be, or shall or may be construed to be, a waiver or relinquishment of any immunity, defense, or tort limitation to which the City, its officials, officers, employees, representatives, and agents are or may be entitled, including, without limitation, any waiver of immunity to suit.

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

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

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

(l) *Authorized Signatories.* The officers and/or agents of the parties hereto executing this Agreement are the properly authorized officials or representatives and have the necessary authority to execute this Agreement on behalf of each of the respective parties, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

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

(n) *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.

(o) *Force Majeure.* Except for a party's obligation to make payment hereunder, neither party shall be liable for any failure or delay in the performance of its obligations due to fire, flood,


earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil disorder, rebellions, epidemic, pandemic, outbreak of communicable disease, quarantines, national or regional emergencies, or other similar cause beyond the reasonable control of the party affected, provided such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented, and provided further that the party hindered or delayed notifies the other party describing the circumstances causing such failure or delay.

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

TOWN OF ADDISON, TEXAS

DCO REALTY, INC.

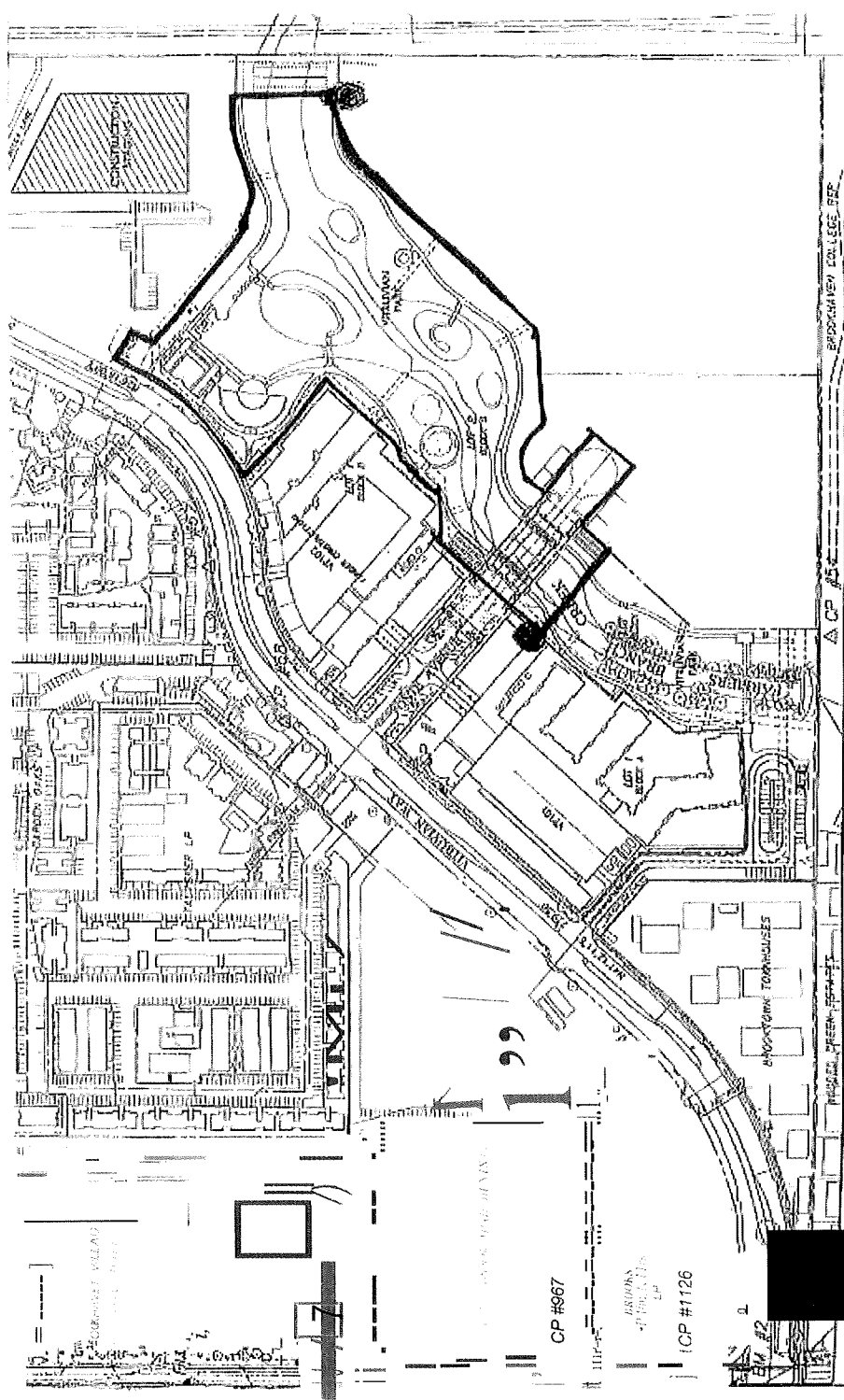
By: _____
David Gaines, City Manager

By:  _____
Harry G. Alcock, Authorized Agent

Date: _____

10-5-23

EXHIBIT A.



EV 6 11 A 0 6 2 3 5 11 V 11 V 11 11

11 0

EXHIBIT B

Section 67-16(b)(4). Code of Ordinances

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

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

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

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

EXHIBIT C

Vitruvian Lights Tree Lighting Requirements

Approximately 555 trees are to be wrapped with LED lights for a nightly display that runs from the November 18 through January 1. The lights shall be fully operational and turned on from 5:00 p.m. to 11:00 p.m. daily during the stated period.

In addition to the nightly light display, DCO will host two (2) special events at Vitruvian Park. These shall take place on November 18 and November 25 (with the option to reschedule due to inclement weather as needed).

I. Installation Timeline

1. Light installation will be completed in early November.
2. The artificial tree, historically installed, will be installed by mid-November.
3. A minimum of two (2) lighting tests will be completed November 18.
4. The lighting display will operate daily from November 18 through January 1 from 5:00 p.m. to 11:00 p.m.
5. Light removal from all Town of Addison trees shall be completed in the first two (2) weeks of January.
6. Light removal from all remaining trees shall be completed by the end of January.

II. Installation Locations

1. Tree Lights
 - i. Vitruvian Park
 - a. Monument Sign
 - b. Interior
 - c. Amphitheater
 - d. Grotto
 - e. Islands
 - f. Observation Deck
 - g. Trail
 - h. Belvedere
 - i. Restrooms
2. Vitruvian Way
 - i. Medians
 - ii. Vitruvian Way & Ponte Avenue corners
 - iii. Vitruvian Way & Spring Valley corners
3. Access Road & Bella Lane
4. Ponte Avenue
 - i. Retail areas
 - ii. Ponte Avenue Parking Lot
5. Artificial Tree
 - i. Ponte Avenue Circle

III. DCO Responsibilities

1. Select, hire and compensate a vendor for lighting installation, management and removal.
 - i. Ensure vendor complies with all applicable laws, rules, regulations and procedures in the execution of this project.
 - ii. Ensure vendor receives clear direction and management in the execution of this project.

2. Supply functional LED lights to vendor.
3. Ensure electrical outlets and timers on electrical panels are functional
 - i. Ponte Avenue Parking Lot
 - ii. Sand Volleyball Courts

IV. Town of Addison Responsibilities

1. Provide at least one Parks Department staff member for onsite support during all two (2) special events.
2. Provide at least one Public Works & Engineering Department staff member for onsite support during the Lighting Ceremony on November 18.
3. Ensure electrical outlets and timers on electrical panels are functional in all areas owned and/or managed by the Town of Addison.
4. Provide at least one Public Works & Engineering Department staff member for onsite support when the vendor accesses Town of Addison electrical cabinets. Date and time for such access to be coordinated between DCO, Town of Addison and vendor.

EXHIBIT D

Schedule of Sponsor Fee Payment

Subject to the payment terms and conditions detailed above in Section 2 of this Agreement, the parties agree that all Event-specific Sponsor Fees shall be paid following successful completion of the related Event. If successful completion of an individual Event is not possible due to Force Majeure, as defined in Section 8(o) of the Agreement, Addison agrees to pay DCO the Event-specific Sponsor Fee amount in accordance with the Agreement.

NAME OF EVENT	SPONSOR FEE TOTAL
Vitruvian Lights Light Show	\$155,000.00
Vitruvian Lights Event	\$10,000.00
Vitruvian Nights Live Event	\$5,000.00
Vitruvian Salsa Festival Event	\$15,000.00
TOTAL	\$185,000.00

City Council (FY24)

5. a.

Meeting Date: 10/24/2023

Department: City Manager

Pillars: Optimize the Addison Brand

Milestones: Effectively utilize and promote the Silver Line development with a first mile/last mile solution

AGENDA CAPTION:

Present, discuss and consider action on a Resolution approving a fifth Amended and Restated Memorandum of Understanding (MOU) between the Town of Addison and Developer AMLI Residential for the Addison Circle Area Transit Oriented Mixed-Use Development Project and authorizing the City Manager to execute the fifth Amended and Restated MOU.

BACKGROUND:

At its April 12, 2022 meeting, City Council approved an MOU between the Town and a co-developer team of AMLI Residential and Stream Realty Partners to execute a multi-phase, transit-oriented mixed use development on Town and DART-owned land in the vicinity of the future Addison Silver Line Station. Four subsequent amendments to the MOU were approved as the Town and the developer team worked to address the due diligence, zoning, and concept plan process as well as the draft incentive agreements, ground leases, and other documents necessary to advance the project.

Since approval of the fourth MOU amendment in June 2023, Stream Realty Partners has withdrawn from the project and will no longer develop the office portion. This fifth MOU amendment does not change any of the current provisions relating to incentives or the anticipated office, retail and residential uses and design of the project, but extends the term of the MOU until January 31, 2024. This extension will give the Town and AMLI Residential time to identify and select a new office developer. If this occurs, further amendments to the MOU will be necessary to address any updated terms and changes to the project schedule.

RECOMMENDATION:

Administration recommends approval.

Attachments

Presentation - TOD MOU Amendment

Resolution - TOD MOU Amendment
TOD MOU - 4th & 5th Comparison
Staff Report - TOD MOU Amendment
TOD 5th Amended MOU

**Fifth Amendment to the
Memorandum of
Understanding for
Development Around the
Addison Silver Line Station**

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 has a white diagonal line running from the top-left to the bottom-right, creating a triangular shape on the right side of the page.

Fifth Amended Memorandum of Understanding

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

- In April 2022, the Town entered into a Memorandum of Understanding (MOU) with AMLI Residential and Stream Realty Partners as co-developers of a transit oriented development around the future Addison Silver Line Station
- The development plans include office, retail and residential components in an urban mixed-use environment
- The MOU addresses the public incentives, various development agreements, ground leases and minimum development standards required for the project
- Four subsequent amendments to the original MOU were approved to address changes in the project design, increased construction and financing costs, and the public-private partnership between the co-developers and the Town

Fifth Amended Memorandum of Understanding

Since approval of the fourth MOU amendment, Stream Realty Partners has withdrawn as the co-developer for the office component of the project

This fifth amendment to the MOU addresses the following:

- The current provisions related to incentives, the mix of uses and design remain as approved in the fourth amendment
- The term of the MOU will be extended to January 31, 2024 to allow time for AMLI Residential and the Town to identify and engage another office developer
- If a new office co-developer is mutually agreed upon, further amendments to the MOU are anticipated to address changes in the terms of the agreement and to the project schedule

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A FIFTH AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING (MOU) FOR THE ADDISON CIRCLE AREA TRANSIT ORIENTED MIXED-USE DEVELOPMENT PROJECT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE MOU; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, in April 2021, the City Council solicited proposals from qualified developers for the creation of a distinctive and creative regional destination linking the new DART Silver Line rail station with Addison Circle Park, combining a mix of non-residential and residential uses and urban densities appropriate for the location, and compatible with Addison Circle and the surrounding area (the “Project”); and

WHEREAS, on April 12, 2022, the City Council accepted the proposal submitted by co-developers AMLI Residential and Stream Realty (collectively, “Co-developers”) for development of the Project and authorized the execution of a Memorandum of Understanding (the “MOU”) with Co-developers providing a master concept plan and preliminary schedule for various components of the Project; and

WHEREAS, the parties have previously amended the MOU to provide for various modifications to the Project, including modified development plans, incentive terms and project schedules; and

WHEREAS, following execution of the fourth amended MOU in June 2023, Stream Realty Acquisition, LLC notified the parties that it will no longer participate as a co-developer on the Project; and

WHEREAS, the Town and AMLI now desire to further amend the MOU to extend the term until January 31, 2024, to provide the parties additional time to select a new co-developer for the Project.

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

SECTION 1. The City Council hereby approves the Fifth Amended and Restated Memorandum of Understanding (MOU) between the Town of Addison and Co-Developer AMLI Residential Partners, LLC for the Addison Circle TOD Project, a copy of which is attached to this Resolution as **Exhibit A**. The City Manager is hereby authorized to execute the same.

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 **24th** day of **OCTOBER 2023**.

TOWN OF ADDISON, TEXAS

Bruce Arfsten, Mayor

ATTEST:

Irma Parker, City Secretary

EXHIBIT A

**FIFTH AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING
BETWEEN THE TOWN OF ADDISON AND AMLI RESIDENTIAL
FOR THE ADDISON CIRCLE AREA
TRANSIT ORIENTED DEVELOPMENT PROJECT**

This Fifth Amended and Restated Memorandum of Understanding (“MOU”) is effective as of June 27, 2023 (the “Effective Date”) between the Town of Addison, Texas (“City” or “Addison”), and AMLI Residential Partners, LLC (“AMLI”, further a ‘co-developer’) (each a “party” and collectively the “parties”), acting by and through their authorized representatives.

RECITALS

WHEREAS, the parties entered into this MOU to engage in negotiations related to a proposed mixed-use development within the City that will create a first-class regional destination by extending Addison Circle to the new DART Silver Line rail station (the “Project”); and

WHEREAS, the purpose of this MOU is to set forth the general understanding of the parties with regard to the Project and the terms and conditions of the Definitive Agreements that will ultimately govern the development of the Project: and

WHEREAS, the parties previously executed a First Amended MOU approved by the City on November 8, 2022, a Second Amended MOU approved by the City on January 10, 2023, a Third Amended MOU approved by the City on April 25, 2023, and a Forth Amended MOU approved by Council on June 27, 2023; and

WHEREAS, the office co-developer, Stream Realty Acquisition, LLC has notified the parties that it will no longer participate as a co-developer on the Project, consequently, the parties are presently working together to identify a new co-developer for the office component of the Project; and

WHEREAS, the parties have entered into this Fifth Amended MOU to extend the term of the MOU through January 31, 2024 to provide the parties an opportunity to identify and select a new co-developer for the office component of the Project; and

WHEREAS, in the event the parties mutually agree upon a new co-developer prior to January 31, 2024, the parties will further amend this MOU to set forth the updated deal terms for the office component of the Project and a corresponding update to the Project schedule.

NOW, THEREFORE, in consideration of the expressions of intent and representations set forth herein, the parties agree as follows:

1. PROJECT DESCRIPTION

1.1. Master Concept Plan. The Project will be a mixed-use, transit-oriented development (“TOD”) consisting of three (3) phases that will be developed in general conformance with the formal proposal submitted by AMLI and the developer mutually selected for the office component of the Project (collectively referred to herein as “Co-Developers”), including all agreed amendments thereto (the “Proposal”), and the revised Master Concept Plan attached as Exhibit A to this MOU (the “Master Concept Plan”), subject to the terms, covenants, and conditions contained in the Definitive Agreements (defined herein). It is acknowledged and agreed by City and Co-Developers that the Master Concept Plan is subject to

additional modification upon mutual agreement of the parties prior to execution of the Definitive Agreements.

1.2. Project Improvements. The completed Phase 1 of the Project will, at a minimum, include the following improvements: (i) Class A office building¹, (ii) Class A residential high-rise facilities, (iii) high-quality retail/restaurant/entertainment facilities designed to encourage activation of Project site, (iv) outdoor park and open space activation features, (vii) upgraded hardscapes, landscapes and pedestrian areas, (viii) and other features customarily found in a first-class urban mixed-use development in general conformance with the Proposal in design and quality (subject to City staff review and the Definitive Agreements), as further described in Section 2 of this MOU. The completed Phases 2 and 3 of the Project are anticipated to include the following improvements: (i) Class A office building, (ii) a DART transit station and associated parking, (iii) a boutique hotel, (iv) upgraded hardscapes, landscapes and pedestrian areas, (v) and other features customarily found in a first-class urban mixed-use development in general conformance with the Proposal in design and quality (subject to negotiation of deal terms between the Parties, City staff review and the Definitive Agreements), as further described in Section 2 of this MOU. The minimum required improvements described in this section are collectively referred to herein as the "Improvements".

1.3. Project Administration. Co-Developers will be generally responsible for Project administration and agrees that it will finance, design, develop, construct and market the Project in conformance with this MOU and the Definitive Agreements. Co-Developers will be required to consult with City regarding the administration of the Project in conformance with the terms of the Definitive Agreements.

1.4. Minimum Developer Investment; Incentives. The parties anticipate that the Project will be developed in three (3) phases with a total development cost of not less than \$466,040,000.00, including a minimum investment of \$367,773,000 by Co-Developers in phase 1 of the Project (inclusive of incentives), as more particularly described in Section 2 of this MOU. For all purposes of this MOU, the minimum investment amount includes hard construction costs as well as soft costs attributable to the Project (including design costs, development fees, feasibility studies, legal costs, permitting, contributions, incentives, operating deficit reserves, internal financing and fees). The parties acknowledge that maintaining the agreed minimum investment in the Project is essential to the successful development of the Project and shall be a condition precedent to City's obligation to provide the various public incentives set forth in this MOU. Co-Developers will therefore be required to certify the development costs for each component and phase of the Project. In the event Co-Developers' minimum investment is below the agreed minimum investment for any component of the Project, the City's incentives related to that component of the Project will be offset by an amount equal to the difference between the agreed minimum investment and the actual investment (e.g., the cap on permit fees and/or infrastructure costs may be increased in an equivalent amount).

1.5. Definitive Agreements. Promptly following the Effective Date of this MOU, the parties will negotiate in good faith mutually satisfactory Definitive Agreements and related documents with respect to the Project (the "Definitive Agreements"), which shall provide for construction of the Improvements and be phased in conformance with Section 2, below. The parties anticipate that the Definitive Agreements will include the following:

- (a) AMLI Tower Ground Lease
- (b) AMLI Podium Ground Lease

¹ The parties acknowledge that the Project is presently contingent upon selection of a new co-developer for the office component of the Project.

be approximately 3,800 sf of retail at the ground level of the office building.

Parking Garage: Approximately 466 stall parking garage. The final number of spaces shall be subject to the parking study described in Section 2.2(a)(2) below.

Other: The project shall be built substantially as shown in PD O23-8, as amended, in design and quality, subject to City staff review and the Definitive Agreements; Office Co-Developer may utilize a condominium structure to allow for the parceling of specific units within a platted lot (i.e., office, parking, retail components, etc.). Office Co-Developer and City agree that amendment of this MOU shall not be required for minor modifications to the square footage or number of parking spaces provided for in this MOU (not to exceed 10%), provided that such modifications are agreed upon by both parties and memorialized in a written ‘side letter’ to this MOU, which shall become an addendum hereto. Notwithstanding the foregoing, there shall be no reduction in building height, net rentable office area, or retail floor area without written amendment of this MOU approved by the City Council.

(e) *Multifamily/Retail/Entertainment*. AMLI will construct multifamily buildings with ground level retail, public retail parking facilities and a retail/restaurant/entertainment parcel (“AMLI Phase 1”), further described as follows:

AMLI Phase 1 Land Details:

The AMLI Phase 1 will be constructed upon the three parcels of real property generally described below and depicted on the Master Concept Plan attached hereto as Exhibit A (to be more particularly defined in the Definitive Agreements). AMLI will be responsible for all required survey and platting required for the below properties.

<u>Parcel</u>	<u>Description</u>	<u>Anticipated Use</u>
Lot 3, Block A:	Approximately 2.32 acres	14, 7 and 5-story residential tower with 10,000 sf of ground level retail.
Lot 1, Block B and Lot 1X, Block C:	Approximately 3.32 acres	7-story residential podium project with 5,000 sf of ground level retail on approximately 2.88 acres; with realignment of Spectrum Drive and approximately 0.44 acres of public open space.
Lot 2, Block A:	Approximately 1.76 acres	Stand-alone retail/restaurant/entertainment

operation as shown on the Master Concept Plan with a minimum twenty percent (20%) of the total lot area to serve as public open space.

AMLI Phase 1 Multifamily Building Details:

Number of Buildings: 2 residential structures consisting of:

- 14, 7 and 5-story tower (the “Tower”) with:
 - Units: 270
 - NRSF: 290,000 – 310,000 sf
 - Ground level retail: 10,000 sf
 - Parking spaces (including retail/restaurant/entertainment district): 510 – 570, where compliance with the UC zoning district residential parking standards is achieved, and where public parking is provided in the parking garage in accordance with the requirements specified in this MOU.

- 7-story podium (the “Podium”) building with:
 - Units: approximately 412
 - NRSF: 365,000 – 375,000 sf
 - Ground level retail: 5,000 sf
 - Parking spaces: 580 - 630, where compliance with the UC zoning district residential parking standards is achieved, and where public parking is provided in the parking garage in accordance with the requirements specified in this MOU.

Multifamily Building
Development Parameters:

Minimum
Units: 675 residential units
NRSF: 655,000 sf
Parking spaces: 1,090 parking spaces in two structures;

Maximum
Units: 700 residential units
NRSF: 675,000 sf
Parking spaces: 1,200 parking spaces in two structures.

Net Rentable Area:	15,000 sf of retail below residential; 22,000 sf retail/restaurant/entertainment component and associated outdoor space exclusively dedicated to programming for entertainment and other authorized activation.
Parking Garage:	2-separate parking garages for each residential building for residences, with approximately 150 public parking spaces in the Tower parking structure to support the ground level retail and the retail/restaurant/entertainment parcel.
Other:	The project shall be built substantially as shown in the Master Concept Plan and in general conformance with Co-Developer's proposal in design and quality, subject to City staff review and the Definitive Agreements. AMLI and City agree that amendment of this MOU shall not be required for minor modifications that do not exceed a 10% total reduction to the square footage or number of parking spaces provided for in this MOU, a reduction in the number of residential units to not less than 650 leasable units, or an increase in the number of residential units to not more than 700 leasable units. Any such modifications shall be agreed upon by both parties and memorialized in a written 'side letter' to this MOU, which shall become an addendum hereto. Notwithstanding the foregoing, there shall be no reduction in multifamily building height or net rentable floor area for the ground floor retail integrated within the multifamily buildings, nor any increase in the number of residential units beyond the maximum number of units currently identified herein without written amendment of this MOU approved by the City Council.

2.2 Phase 1 Economics

(a) *Office Phase 1 Economics*.³ The parties agree to the following general economic terms for the Office Phase 1, which shall be defined in further detail in the Definitive Agreements:

- (1) City will convey to Office Co-Developer for nominal consideration approximately 2.08 acres of land for the office building (the market value of which land the Town

³ The parties anticipate the current Office Phase 1 improvements and corresponding economic incentives set forth in this Fifth Amended MOU will be modified upon selection of a new co-developer for the office component of the Project.

estimates is \$1,718,773 (\$18.97 per sq. ft.). The final acreage shall be as mutually agreed and set forth in the definitive purchase and sale agreement between City and Office Co-Developer.

- (2) Office Co-Developer has commissioned a parking study at its sole cost and expense to ensure the proper amount of parking for the Office Phase 1 development. The result of that parking study shows that 466 parking spaces is adequate. The parking study has been submitted to City for its review and approval.
- (3) City will commit to a 2.5-year master lease (the "Master Lease") for 60,000 square feet of space (40% of the building) at \$57.50 per square foot gross (\$3,450,000 per year, not to exceed \$8,625,000 in total). The Master Lease shall commence upon final certificate of occupancy of the office building and shall not provide the City with the right to physically occupy any space in the office building, except for City's rights with respect to the Optional Permanent Lease (as defined below). During the term of the Master Lease, the City will have an option to lease all or a portion of City's leased space at market rate, plus triple net and will include a tenant allowance in the amount of \$65 per square foot ("Optional Permanent Lease"). The term of the Optional Permanent Lease shall be for a minimum of seven (7) years. If City elects to enter into the Optional Permanent Lease, all payments made by the City under such Optional Permanent Lease will be credited against the City's obligation to pay rent under the Master Lease.
- (4) City's lease obligations will be reduced on a 50/50 basis until City's lease obligation is removed entirely. Reduction of City's lease obligation will take place three (3) months after lease commencement date for leases less than 50,000 RSF and six (6) months after lease commencement date for leases greater than 50,000 RSF. For example purposes only, if Office Co-Developer leases 20,000 square feet to a third-party tenant, City's lease obligation will be reduced by 10,000 square feet and will continue to have a lease obligation of 50,000 square feet. Once Office Co-Developer has executed leases for 120,000 square feet, City's lease obligations will be removed entirely. As a material inducement for the City's lease obligation incentive, Office Co-Developer agrees that it will use commercially reasonable efforts to market and lease (including pre-leasing during construction) the Office Phase 1 office to prospective tenants. Office Co-Developer further acknowledges that it is the intent of the parties to limit competing projects in the area and agrees that it will not build a competitive project within a 1.5 mile radius of the Project until such time as the City's lease obligation has been removed entirely, by way of lease up or terminated by mutual agreement between both parties. The parties do not intend to limit Office Co-Developer's third-party service business from leasing or managing speculative new-build office buildings nor exclude Office Co-Developer from developments where it has no financial investment (i.e., fee developments). The foregoing will be fully documented in the Definitive Agreements.
- (5) The City will reimburse Office Co-Developer in an amount not-to-exceed \$4,100,000 for approved construction costs incurred by it for construction of a 2-bay office parking garage.
- (6) City and Office Co-Developer will enter into a perpetual parking license or other agreement for the office garage whereby the garage (other than 10% of the spaces, which may be reserved for office tenants after hours) will be made available for all

patrons and public users of the Addison Circle development during nights, weekends and for special events, including the retail/restaurant/entertainment district and Tower ground-level retail parking at no cost.

- (7) In lieu of providing retail space at the ground floor of the parking garage at the Festival Way frontage, Office Co-Developer will provide increased office area in accordance with Section 2.1(d), as well as alternative forms of street activation and screening as depicted in the final approved development plans.
 - (8) Office Co-Developer will provide payment and completion guarantees from a reputable entity (ies) approved by City, which may be in the form of an irrevocable letter of credit, or equivalent guarantee (to be further defined in the Definitive Agreements), with such guarantees to be released when final certificate of occupancy is issued. The guarantees will be a material provision of Office Co-Developer's obligations under the Definitive Agreements and will apply to the Office Phase 1 office and parking facilities.
 - (9) City agrees that its permit fees will be capped at \$150,000 and Office Co-Developer will not have an obligation for offsite infrastructure costs for the office component of the Project.
 - (10) A transfer tax of 25 basis points will be assessed on all subsequent sales of the property, excluding transfers to affiliated entities (to be defined in the Definitive Agreements). This will be recorded in the deed and run with the land in perpetuity. This tax will need to be accounted for each time the property sells and will be a seller expense.
- (b) *AML Phase 1 Economics for Multifamily with Ground Level Retail*. The parties agree to the following general economic terms for the multifamily and retail components of the AML Phase 1, which shall be defined in further detail in the Definitive Agreements:
- (1) Ground Lease: AMLI will enter into a 99-year ground lease with City for approximately 7.4 acres of land that includes the general terms and conditions set forth in this Section 2.2(b).
 - (2) Deposit and Pre-Paid Ground Rent: AMLI will pay to City \$2,000,000 as pre-paid ground rent for the three (3) AML Phase 1 properties (subject to the provisions of this Section 2.2) in the form of a single, lump sum payment pursuant to the negotiated terms of the Definitive Agreements (the "Pre-Paid Ground Rent"). The Pre-Paid Ground Rent will initially be held in escrow and applied to rent in conformance with the respective ground leases. The Pre-Paid Ground Rent will be non-refundable, provided, upon AMLI's timely submittal (and City's acceptance) of both a completed infrastructure plan reasonably acceptable to City and AMLI on or before April 15, 2024 and application for a building permit for the Tower on or before October 31, 2024, AMLI will be entitled to a refund of the Pre-Paid Ground Rent during the period of time commencing upon AMLI's submittal of its application for a building permit for the Tower and ending ninety (90) days following submittal, but in no event later than January 30, 2025.

- (3) **Ground Rent:** The initial ground rent will be \$500,000 which will be adjusted annually by CPI, with a maximum annual increase of no greater than 3.0% on a non-cumulative basis.
- (4) **Rent Commencement Date:** The earlier of (i) 84 months from commencement of construction of AMLI Phase 1 or (ii) December 30, 2032 (as used herein, the “Rent Commencement Date”). Addison will receive the first ground rent payment no later than January 30, 2035, after the Pre-Paid Ground Rent is depleted.
- (5) **Economic Development Incentive Grant:** Beginning the first full year following stabilization of the AMLI Tower (defined as 94.25% occupancy), City will provide to AMLI six (6) consecutive annual economic development grants from the City’s ad valorem taxes actually collected by City for the applicable grant year, subject to the payment terms set forth herein and in the Master Incentive Agreement. Each year of the grant period AMLI will provide their Net Operating Income per GAAP before ground lease payments, capital expenditures, tenant improvement allowances and leasing commissions, certified by their Chief Financial Officer (the “Certified NOI”). The Certified NOI (numerator) will be divided by AMLI’s Actual Certified Construction Costs (denominator) to calculate an Annual Return on Cost (ROC) for the Project. If the Annual Return on Cost is below the ROC thresholds outlined in the schedule below, AMLI will be entitled to receive a grant not to exceed \$1,600,000 each year there is a gap between the computed Actual ROC and the Required ROC threshold. The ROC thresholds for each grant year shall be:

Grant Year	Threshold (%)
Year 1	6.91
Year 2	6.98
Year 3	7.20
Year 4	7.42
Year 5	7.45
Year 6	7.40

AMLI will be entitled to roll over any amount greater than the \$1,600,000 each year to the following grant year, but in no event shall the reimbursement amount exceed \$1,600,000 annually and \$8,000,000 cumulatively for the entire grant period. AMLI will provide annual audited financial statements for each grant year.

- (6) **Other AMLI Phase 1 Terms:**
 - (i) City will contribute an amount not-to-exceed \$3,400,000 for the construction of public parking upon Lot 3, Block A (the Tower parcel). The public parking will be constructed by AMLI as a portion of the Tower parking garage. The public parking will be in a location mutually agreed upon between AMLI and the City, provided, all public parking will be reasonably accessible for retail users and all other patrons of the Addison Circle development. The public portion of the garage will include a minimum number of public parking spaces equivalent to the percentage of the City’s contribution proportionate to the total cost to construct the garage. For example purposes only, if AMLI’s total cost to construct the garage is \$10,000,000, then the number of public parking spaces would be equivalent to 34% of the total number of spaces in the garage ($\$3,400,000 / \$10,000,000$)

= .34 (34%)). AMLI acknowledges that City intends to issue debt to fund the City's contribution to construction of the public portion of parking garage and, to legally qualify as city-issued debt, the funds are required to be used for public infrastructure; meaning the public portion of parking garage shall be available for public use in the manner required by the terms of such financing. City and AMLI will enter into a one or more definitive parking agreements whereby AMLI will have certain management authority for, and be generally responsible for, construction, operation and maintenance of the parking garage, including all costs associated therewith.

- (ii) In order to consistently maintain a Class A mixed-use TOD project to City's standards throughout the term of the ground lease, AMLI (or future tenant) may be required to make capital improvements from time to time. Ten years after the Rent Commencement Date, AMLI will have the right, with City's approval, not to be unreasonably withheld, to offset the cost of certain capital improvements in excess of \$1,000,000 (as adjusted for inflation) against the annual ground lease rent once every ten years. The amount of offset shall not exceed the ground rent in the year the capital improvement project is undertaken. The offset assumes AMLI (or future tenant) has spent the first \$1,000,000 and will be paid on any amounts above the first \$1,000,000. A detailed description of allowable capital improvement projects will be further defined in the ground lease.
- (iii) If City elects to offer its fee interest in the residential or retail/restaurant/entertainment parcel for sale, then AMLI will have the right of first refusal (ROFR) to purchase the fee simple interest in such parcels at the determined fair market value (FMV) to be further defined in the Definitive Agreements.
- (iv) AMLI will be prohibited from transferring its interest in the ground lease for a period of ten years after the Rent Commencement Date without City's approval unless to a qualified owner, such as an institutional owner having similar experience managing over one million square feet of similar "Class A" TOD, mixed-use developments or ownership of over \$500,000,000 of "Class A" multifamily properties (to be further defined in the ground lease).
- (v) The timelines and deadlines in the ground leases and other Definitive Agreements shall be subject to change based on events of force majeure and other unforeseen circumstances outside of AMLI's reasonable control which affect construction progress (to be defined in the Definitive Agreements).
- (vi) AMLI has completed (and City has approved) a Master Streetscape Development Plan dated February 15, 2023 ("Streetscape Plan") prepared for the office, retail, park, and streetscape plan in the surrounding areas from the North Dallas Tollway to Addison Road and from Addison Circle to Beltline Road, but if necessary to be consistent with the attached Master Concept Plan, an amendment to the Streetscape Plan will be approved prior to October 30, 2023. The purpose of this Streetscape Plan is to enhance and promote the retail and transit experience to "Complete the Circle." This will include but is not limited to tree relocation along Festival Way, burying power lines along +/- 150' of Quorum Drive, and the realignment of

Spectrum Road. Other potential improvements addressed in the Streetscape Plan are enhanced paving, planting, improved lighting, signage, and wayfinding to attract more patrons to the circle. The Streetscape Plan will include all offsite infrastructure improvements for the office component of the Project, including the parking garage. All infrastructure improvements shall be as reasonably agreed by City and AMLI and the characterization of items as infrastructure improvements shall not conflict with other components of this MOU.

- (vii) City agrees that AMLI's permit fees for the AMLI phase 1 multifamily improvements will be capped at \$250,000, with the off-site infrastructure being incurred by Town as an incentive in conformance with the Definitive master incentive agreement. If Spectrum Road is unable to be re-aligned, the parties agree to discuss alternative design options that will maintain the quality and overall vision for the affected components of the Project. The parties may further agree to equitably share in the additional costs or savings associated with the alternative design.
- (viii) AMLI will provide payment and completion guarantees from a reputable entity(ies) approved by City, which may be in the form of an irrevocable letter of credit, or equivalent guarantee (to be further defined in the Definitive Agreements), with such guarantees to be released when final certificate of occupancy is issued. The guarantees will be a material provision of AMLI's obligations under the Definitive Agreements and will apply to AMLI phase 1 facilities.
- (ix) There will be no construction or permanent debt placed on the residential property of any kind through final certificate of occupancy. All residential construction and development costs will be financed using equity provided by AMLI on the residential development.
- (x) Within twelve months after issuance of the initial multifamily building permit, AMLI will donate \$200,000 to the Addison Arbor Foundation to fund public art in the right of way and public spaces within the development (to be further defined in the Definitive Agreements).
- (xi) A transfer tax of 25 basis points will be assessed on all subsequent sales of the property, excluding transfers to affiliated entities (to be defined in the Definitive Agreements). This will be recorded in the deed and run with the land in perpetuity. This tax will need to be accounted for each time the property sells and will be a seller expense.

(c) *AMLI Phase 1 Economics for the Retail, Restaurant, and Entertainment Parcel*

- (1) Lot 2, Block A of AMLI Phase I (approximately 1.76 acres) will be subject to a ground lease on substantially the same terms as the ground leases for Lot 3, Block A, Lot 1, Block B, and Lot 1X, Block C of AMLI Phase 1; provided, that subject to mutual agreement of the parties, the retail/restaurant/entertainment area may be sub-leased (not assigned) to a third-party developer and/or operator. Notwithstanding, AMLI will be required to obtain the written consent of Addison (which shall not be

unreasonably withheld) prior to entering into a sub-lease for the foregoing property and/or its operation by a third party.

- (2) The City and AMLI will work in good faith to select the operator/developer, and to establish deadlines for AMLI to apply for and obtain permits and commence construction of the improvements on Lot 2 following selection of the operator/developer. The City and AMLI will define said deadlines and establish penalties for noncompliance within the Definitive Agreements.
- (3) The following incentive is subject to and intended to support the recruitment of a high-quality retail/restaurant/entertainment operator to implement a concept that meets the intent of this first class urban mixed-use development. This incentive shall be conditioned upon evaluation of and consideration of the merits of the proposed retail/restaurant/entertainment operation, and final approval of the same by the City:
 - (i) Public Infrastructure Incentive Grant. City will reimburse up to \$1,500,000 for public infrastructure costs associated with phase 1 of the Project (on terms to be further defined in the Definitive Agreements).
- (4) A transfer tax of 25 basis points will be assessed on all subsequent sales of the property, excluding transfers to affiliated entities (to be defined in the Definitive Agreements). This will be recorded in the deed and run with the land in perpetuity. This tax will need to be accounted for each time the property sells and will be a seller expense.
- (5) AMLI will, at its sole cost, activate the 0.23 acre Lot 4X, Block A by constructing and installing fitness-oriented improvements (e.g., outdoor fitness court(s), pavilion, pickle ball court(s), etc.) and associated site furnishings and landscape, as approved by City. City will retain fee title ownership to the foregoing parcel and will be solely responsible for all maintenance associated with the foregoing improvements following City’s final inspection and acceptance of the same.

2.3 Phase 2 Scope:

- (a) *Minimum Investment*. Co-Developers will invest a minimum of \$104,200,000 in connection with the Improvements for phase 2 of the Project.
- (b) *Office Phase 2 (Office)*. Office Co-Developer will construct an office building with ground level retail and a public parking garage (“Office Phase 2”), further described as follows:

Land Area:	3.966 acres
Net Rentable Area:	150,000 sf of office; 4,000 sf of DART Station Improvements
Parking Garage:	850 stall public parking garage
Other:	The project shall be built substantially as shown in the Proposal in design and quality, subject to City staff review and the Definitive Agreements.

2.4 Phase 2 Economics:

- (a) *Phase 2 Economics*. The parties agree that the following general economic terms shall apply to phase 2 of the Project, which shall be defined in further detail in the Definitive Agreements:
- (1) Office Co-Developer will sub-lease from City as defined in the DART Interlocal Agreement.
 - (2) All ground lease rent will be abated until one year after substantial completion of the Office Phase 2 office tower.
 - (3) City incentives (if any) for Office Phase 2 will be negotiated based on current market dynamics and required timeframe to develop the asset. In addition, the projects will be heavily coordinated with City and DART to ensure the proper level of service and amenities are provided.
 - (4) The costs of the additional 300 parking spaces required in the garage for Phase 2 and any other DART specific requirements will be addressed in the Definitive Agreements.
 - (5) The parties anticipate construction of a ground enclosed DART Station (not just a platform) that will be in conformance with the quality and vision of the other Project elements. Office Co-Developer commits to funding a portion of the development costs consistent with its submitted proposal, which provides for Office Co-Developer committing \$160,000 based upon a construction cost of \$1,600,000 (to be further defined in the Definitive Agreements). The station will replace the existing DART platform and provide service for all DART riders (subject to DART's approval).
 - (6) DART, City and Office Co-Developer will enter into a perpetual parking agreement whereby public parking is available for DART and retail patrons during the day and the entire Addison Circle development on nights and weekends and for special events, subject to the final interlocal agreement with DART and as subject to the terms of the Definitive Agreements.
 - (7) Office Co-Developer will provide payment and completion guarantees from a reputable entity (ies) approved by City, which may be in the form of an irrevocable letter of credit, or equivalent guarantee (to be further defined in the Definitive Agreements), with such guarantees to be released when final certificate of occupancy is issued. The guarantees will be a material provision of Office Co-Developer's obligations under the Definitive Agreements and will apply to Office Co-Developer's phase 2 office and parking facilities.
 - (8) A transfer tax of 25 basis points will be assessed on all subsequent sales of the property, excluding transfers to affiliated entities (to be defined in the Definitive Agreements). This will be recorded in the deed and run with the land in perpetuity. This tax will need to be accounted for each time the property sells and will be a seller expense.

2.5 Phase 3 Scope:

- (a) *Minimum Investment.* Co-Developers will invest a minimum of \$23,500,000 in connection with the Improvements for phase 3 of the Project.
- (b) *Scope.* The Definitive Agreements shall include the following general terms and conditions with regard to the scope for phase 3 of the Project:

Boutique Hotel:

Land Area:	1.156 acres
Number of Rooms:	120
Other:	The project shall be built substantially as shown in the Proposal in design and quality, subject to City staff review and the Definitive Agreements.

2.6 Phase 3 Economics:

- (a) *Phase 3 Economics.* The parties agree that the following general economic terms shall apply to phase 3 of the Project, which shall be defined in further detail in the Definitive Agreements:
 - (1) Office Co-Developer will sub-lease from City as defined in the DART Interlocal Agreement.
 - (2) City incentives (if any) for this phase will be negotiated based on current market dynamics and required timeframe to develop the asset. In addition, the projects will be heavily coordinated with City and DART to ensure the proper level of service and amenities are provided.
 - (3) Office Co-Developer will provide payment and completion guarantees from a reputable entity (ies) approved by City, which may be in the form of an irrevocable letter of credit, or equivalent guarantee (to be further defined in the Definitive Agreements), with such guarantees to be released when final certificate of occupancy is issued. The guarantees will be a material provision of Office Co-Developer's obligations under the Definitive Agreements and will apply to phase 3 hotel and related development.
 - (4) A transfer tax of 25 basis points will be assessed on all subsequent sales of the property, excluding transfers to affiliated entities (to be defined in the Definitive Agreements). This will be recorded in the deed and run with the land in perpetuity. This tax will need to be accounted for each time the property sells and will be a seller expense.

3. PROJECT SCHEDULE; DUE DILIGENCE PERIOD

3.1. Project Schedule. The parties acknowledge that time is of the essence with regard to the Project and agree that each will use its best efforts to proceed in conformance with the proposed Project schedule set forth below:

PHASE 1	Date of Completion
Revised zoning entitlements approved by City Council	January 31, 2024
Execution of all Definitive Agreements	January 31, 2024
AML I submittal of infrastructure plan	April 15, 2024
Submittal building permit application for office/parking	October 30, 2024
AML I submittal of Tower building permit application	October 30, 2024
Construction start on office/parking	March 2025
AML I construction start on Tower	March 2025
AML I construction start on Podium	May 2026
PHASES 2 & 3	Date of Completion
Construction start on office/parking	TBD*
Construction start on hotel	TBD
Office/parking final CO issued	TBD
Hotel final CO issued	TBD

**The parties acknowledge that a required date of completion will be established for Phase 2 as soon as practicable and will be subject, in part, to the interlocal agreement between DART and Addison.*

3.2. Modification of Project Schedule. The dates for completion identified in the Project schedule set forth in Section 3.1, above, may not be modified or extended, except by mutual written agreement of the parties. Notwithstanding the foregoing, a party shall be entitled to an extension when the party unable to comply with the Project schedule as a direct result of an event of Force Majeure. As used in this section, the term “Force Majeure” shall mean that the party is prevented or delayed in performing in compliance with the Project schedule, in whole or in part, to such an extent that the party would not be able to meet a required date of completion therein by reason of or through work strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, court judgment, quarantine or mandatory closure order enacted in response to a pandemic or other public health crises, or other specific cause reasonably beyond the party’s control and not attributable to its malfeasance, neglect or nonfeasance. The party asserting Force Majeure (i) shall give prompt notice to the other party of the prevention of performance as soon as the asserting party is reasonably aware of such prevention, and (ii) has the burden of demonstrating (a) how and why their performance was so prevented, (b) the period of time during which they were so prevented from

performing (which under the facts may be equal to, or shorter or longer than, the duration of the Force Majeure event itself), and (iii) that the party used commercially reasonable efforts to mitigate and/or eliminate such prevention and resumed performance under this MOU as soon as reasonably practicable.

3.3. Due Diligence Period. The Due Diligence Period commenced on the Effective Date of the original MOU and will expire on the earlier of (i) January 31, 2024, or (ii) the date upon which the parties have mutually executed all Definitive Agreements required for the Project. The parties will conduct all due diligence with respect to the Project as the parties may deem necessary or appropriate, and the parties shall fully cooperate with each other in this regard. Each party shall be solely responsible for its own costs in connection with the due diligence required for the Project, except as otherwise mutually agreed by the parties. The Due Diligence Period may be extended by mutual written agreement of the parties.

3.4. Exclusivity. During the Due Diligence Period, City will negotiate exclusively with Co-Developers in good faith to execute the Definitive Agreements for the Project, and will not engage any party other than Co-Developers to act as a developer (or co-developer) of the Project; however, notwithstanding the foregoing, during the Due Diligence Period, City shall have the right to solicit proposals from, and discuss the terms for, other parties to act as a developer (or co-developer) of the Project or a portion thereof. Further, from and after the expiration of the Due Diligence Period, if the Definitive Agreements have not been finalized and executed, City shall have the right to immediately terminate this MOU as to one or both Co-Developers and thereafter (i) engage (or seek to engage) one or more other parties to act as a developer (or co-developer) of the Project or a portion thereof, and/or (ii) abandon the current Project and proceed to solicit proposals from the development community for a new concept and project at the current Project site.

3.5. Project Feasibility Assessments. Co-Developers agree that each will promptly, and without undue delay, conduct the feasibility assessments described below during the Due Diligence Period:

- (a) *Property Inspections.* All property due diligence (title examination, surveys, environmental site assessments, soil conditions tests and other physical inspections and similar items) relating to the feasibility of the development of the Project;
- (b) *Zoning and Entitlements.* All required zoning and real property entitlements necessary to develop the Project in conformance with the terms of this MOU and the Definitive Agreements; and
- (c) *Financial Due Diligence.* All financial due diligence reasonably necessary to ensure Co-Developers will be able to secure firm commitments from all lenders, investors, and/or other financing sources related to the design, development, construction, and administration of the Project as contemplated by the parties.

Co-Developers acknowledge that each has already engaged all consultants and/or other third-parties necessary to complete the above-referenced feasibility assessments.

4. MISCELLANEOUS

4.1. Mutual Cooperation; Site Access. The parties agree to work together at all times in good faith, meet regularly, and keep each other informed as to activities of the other, and maintain at all times a formal representative who shall serve as a point of contact for communications related to this MOU. City

will furnish such rights-of-access to the Project site as reasonably necessary for the parties to conduct their respective due diligence obligations under this MOU.

4.2. Costs and Expenses. Each party shall be responsible for all costs and expenses associated with the preparation and adoption of this MOU, the preparation and adoption of the Definitive Agreements, and future actions related thereto.

4.3. Certification of No Conflicts. Co-Developers hereby warrant to City that each has made full disclosure in writing of any existing or potential conflicts of interest related to its participation in the Project as contemplated in this MOU. In the event that any conflicts of interest arise after the Effective Date of this MOU, Co-Developers hereby agree to immediately disclose the same to City.

4.4. Public Information Act. Co-Developers acknowledge that this MOU, and all documents provided to City in connection with the Project are subject to the legal requirements of the Texas Public Information Act and that City will have no obligation to protect or otherwise limit disclosure of any confidential or proprietary information received by City in connection with the same unless a party has previously notified City in writing that it considers the information to be confidential or proprietary trade secrets and has clearly marked all such information as “Confidential” and/or “Proprietary – Trade Secret” at the time it is delivered or made accessible to City (including City’s officers, officials, employees, consultants, attorneys and/or other authorized representatives). In the event City delivers to Co-Developers information that it has expressly marked “Confidential” or has notified Co-Developers is confidential or is the proprietary information of a third-party, Co-Developers agree neither shall disclose to anyone directly or indirectly during the term of this MOU or at any time thereafter, any such information, nor shall either use any such information for any purpose other than in connection with the Project contemplated in this MOU.

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

4.6. Exhibits. The exhibits to this MOU are incorporated herein.

4.7. Amendment. This MOU may only be amended by mutual written agreement executed by all parties.

4.8. Counterparts. This MOU 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.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY –
SIGNATURES ON FOLLOWING PAGE(S)]

IN WITNESS WHEREOF, the parties have executed and delivered this Fifth Amended MOU as of the Effective Date.

For City:

For Co-Developer AMLI:

TOWN OF ADDISON, TEXAS

AMLI RESIDENTIAL PARTNERS, LLC
a Delaware limited liability company

By: _____
David Gaines, City Manager

By: _____
Taylor Bowen, Authorized Signatory

Date: _____

Date: _____

NOTICE ADDRESS:

NOTICE ADDRESS:

Town of Addison
Attn: City Manager
P.O. Box 9010
Addison, Texas 75001
E: dgaines@addisontx.gov

AMLI Residential Partners, LLC
5057 Keller Springs Road, Suite 250
Addison, TX 75001
Attn: Taylor Bowen and Joe Bruce
E: TBowen@amli.com and JBruce@amli.com

Council Meeting

Meeting Date: 10/24/23

Department: Development Services

Pillars: Optimize the Addison Brand

Milestones: Promote Silver Line Development

AGENDA CAPTION:

Present, Discuss and Consider Action on a **Resolution Approving a Fifth Amended and Restated Memorandum of Understanding (MOU) Between the Town of Addison and Developer AMLI Residential for the Addison Circle Area Transit Oriented Mixed-Use Development Project and Authorizing the City Manager to Execute the Fifth Amended and Restated MOU**

BACKGROUND:

At its April 12, 2022 meeting, City Council approved a Memorandum of Understanding (MOU) between the Town and a co-developer team of AMLI Residential and Stream Realty Partners to execute a multi-phase, transit-oriented mixed use development on Town and DART owned land in the vicinity of the future Addison Silver Line Station. Four subsequent amendments to the MOU were approved as the Town and the developer team worked to address the due diligence, zoning and concept plan process as well as the draft incentive agreements, ground leases and other documents necessary to advance the project.

Since approval of the fourth MOU amendment in June 2023, Stream Realty Partners has withdrawn from the project and will no longer develop the office portion. This fifth MOU amendment does not change any of the current provisions relating to incentives or the anticipated office, retail and residential uses and design of the project, but extends the term of the MOU until January 31, 2024. This extension will give the Town and AMLI Residential time to identify and select a new office developer. If this occurs, further amendments to the MOU will be necessary to address any updated terms and changes to the project schedule.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution – Fifth Amended MOU

MOU – Fifth Amended MOU

MOU – Redline Fifth Amended

**FIFTH AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING
BETWEEN THE TOWN OF ADDISON AND AMLI RESIDENTIAL
FOR THE ADDISON CIRCLE AREA
TRANSIT ORIENTED DEVELOPMENT PROJECT**

This Fifth Amended and Restated Memorandum of Understanding (“MOU”) is effective as of October 24, 2023 (the “Effective Date”) between the Town of Addison, Texas (“City” or “Addison”), and AMLI Residential Partners, LLC (“AMLI”, further a ‘co-developer’) (each a “party” and collectively the “parties”), acting by and through their authorized representatives.

RECITALS

WHEREAS, the parties entered into this MOU to engage in negotiations related to a proposed mixed-use development within the City that will create a first-class regional destination by extending Addison Circle to the new DART Silver Line rail station (the “Project”); and

WHEREAS, the purpose of this MOU is to set forth the general understanding of the parties with regard to the Project and the terms and conditions of the Definitive Agreements that will ultimately govern the development of the Project: and

WHEREAS, the parties previously executed a First Amended MOU approved by the City on November 8, 2022, a Second Amended MOU approved by the City on January 10, 2023, a Third Amended MOU approved by the City on April 25, 2023, and a Forth Amended MOU approved by Council on June 27, 2023; and

WHEREAS, previous co-developer Stream Realty Acquisition, LLC has notified the parties that it will no longer participate as a co-developer on the Project, consequently, the parties are presently working together to identify a new co-developer for the Phase 1 Office Site (defined in Section 2.1(d)); and

WHEREAS, the parties have entered into this Fifth Amended MOU to extend the term of the MOU through January 31, 2024 to provide the parties an opportunity to identify and select a new co-developer for the Phase 1 Office Site (the “Office Site Developer”); and

WHEREAS, in the event the parties mutually agree upon a new co-developer prior to January 31, 2024, the parties will further amend this MOU to set forth the updated deal terms for the Phase 1 Office Site and a corresponding update to the Project schedule.

NOW, THEREFORE, in consideration of the expressions of intent and representations set forth herein, the parties agree as follows:

1. PROJECT DESCRIPTION

1.1. Master Concept Plan. The Project will be a mixed-use, transit-oriented development (“TOD”) consisting of three (3) phases that will be developed in general conformance with the formal proposal submitted by AMLI and the new developer mutually selected for the Office Site (collectively referred to herein as “Co-Developers”), including all agreed amendments thereto (the “Proposal”), and the revised Master Concept Plan attached as Exhibit A to this MOU (the “Master Concept Plan”), subject to the terms, covenants, and conditions contained in the Definitive Agreements (defined herein). It is acknowledged and agreed by City and Co-Developers that the Master Concept Plan is subject to additional modification upon mutual agreement of the parties prior to execution of the Definitive Agreements.

1.2. Project Improvements. The completed Phase 1 of the Project is anticipated to include the following improvements: (i) Class A office building¹, (ii) Class A residential high-rise facilities, (iii) high-quality retail/restaurant/entertainment facilities designed to encourage activation of Project site, (iv) outdoor park and open space activation features, (vii) upgraded hardscapes, landscapes and pedestrian areas, (viii) and other features customarily found in a first-class urban mixed-use development in general conformance with the Proposal in design and quality (subject to City staff review and the Definitive Agreements), as further described in Section 2 of this MOU. The completed Phases 2 and 3 of the Project are anticipated to include the following improvements: (i) Class A office building, (ii) a DART transit station and associated parking, (iii) a boutique hotel, (iv) upgraded hardscapes, landscapes and pedestrian areas, (v) and other features customarily found in a first-class urban mixed-use development in general conformance with the Proposal in design and quality (subject to negotiation of deal terms between the Parties, City staff review and the Definitive Agreements), as further described in Section 2 of this MOU. The minimum required improvements described in this section are collectively referred to herein as the “Improvements”.

1.3. Project Administration. Co-Developers will be generally responsible for Project administration and agrees that it will finance, design, develop, construct and market the Project in conformance with this MOU and the Definitive Agreements. Co-Developers will be required to consult with City regarding the administration of the Project in conformance with the terms of the Definitive Agreements.

1.4. Minimum Developer Investment; Incentives. The parties anticipate that the Project will be developed in three (3) phases with a total development cost of not less than \$466,040,000.00, including a minimum investment of \$367,773,000 by Co-Developers in phase 1 of the Project (inclusive of incentives), as more particularly described in Section 2 of this MOU. For all purposes of this MOU, the minimum investment amount includes hard construction costs as well as soft costs attributable to the Project (including design costs, development fees, feasibility studies, legal costs, permitting, contributions, incentives, operating deficit reserves, internal financing and fees). The parties acknowledge that maintaining the agreed minimum investment in the Project is essential to the successful development of the Project and shall be a condition precedent to City’s obligation to provide the various public incentives set forth in this MOU. Co-Developers will therefore be required to certify the development costs for each component and phase of the Project. In the event Co-Developers’ minimum investment is below the agreed minimum investment for any component of the Project, the City’s incentives related to that component of the Project will be offset by an amount equal to the difference between the agreed minimum investment and the actual investment (e.g., the cap on permit fees and/or infrastructure costs may be increased in an equivalent amount).

1.5. Definitive Agreements. Promptly following the Effective Date of this MOU, the parties will negotiate in good faith mutually satisfactory Definitive Agreements and related documents with respect to the Project (the “Definitive Agreements”), which shall provide for construction of the Improvements and be phased in conformance with Section 2, below. The parties anticipate that the Definitive Agreements will include the following:

- (a) AMLI Tower Ground Lease
- (b) AMLI Podium Ground Lease
- (c) AMLI Retail Ground Lease
- (d) Office Purchase and Sale Agreement

¹ The parties acknowledge that the Project is presently contingent upon selection of a new co-developer for the Phase 1 Office Site.

- (e) Office Master Office Lease
- (f) Parking Agreements between Addison and Co-Developers
- (g) Master Incentive Agreement between AMLI, Office Site Developer and Addison
- (h) AMLI and Office Form of Guarantee
- (i) Addison License Agreement (for activation of Festival Way, Quorum Drive, and park/open space area)
- (j) POA and CCR for Phase 1
- (k) Approved Phase 1 Concept Plans
- (l) Addison PD Ordinance Number O-23-8 (including any subsequent amendments thereto)

2. PROJECT PHASES; SCOPE AND ECONOMICS

2.1 Phase 1 Scope:

- (a) *Minimum Investment.* Co-Developers will invest a minimum of \$367,773,000 in connection with the Improvements for phase 1 of the Project. The parties anticipate that Office Site Developer will invest a minimum development cost of \$75,000,000 and AMLI will invest a minimum development cost of \$292,773,000 for phase 1 of the Project.
- (b) *Platting; Governing Property Agreements.* The parties anticipate that each component of the development will be platted as a separate lot to accommodate future disposition of the various components. The parties (together with DART) will agree to amenable CC&Rs allowing for a cohesive class-A TOD mixed-use development that provides superior connectivity, security, and maintenance obligations commensurate to other high-quality, similar TOD developments in DFW. The parties will also create a property owner's association (POA) to maintain the open/shared space in the development, which the parties anticipate will outline Addison's obligations for the maintenance, security, public events (festivals), and daily programming of Addison Circle Park.
- (c) *City License Agreement.* The parties anticipate entering into a license agreement for the park/open space area and along Festival Way and Quorum to support activation of the retail connection and programming in Addison Circle Park.
- (d) *The Phase 1 Office Site.*² The parties are actively seeking to engage a new co-developer for Lot 1, Block A, as shown in Exhibit A (the "Office Site"). In the event office improvements are constructed on the site, the parties anticipate the improvements will generally conform with the following:

Land Area:	Approximately 2.08 acres (subject to mutual agreement between Addison and the new co-developer).
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Minimum Area:	160,000 sf of office floor area, inclusive of approximately 157,000 net rentable square feet of office space. The exact square footage is to be adjusted based on BOMA calculations by the architect and again at construction completion,
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² The parties anticipate the current Phase 1 improvements and corresponding economic incentives for the Office Site set forth in this Fifth Amended MOU for the Office Site will be modified upon final selection of the Office Site Developer.

tolerance to be within one percent (1%); there will be approximately 3,800 sf of retail at the ground level of the office building.

Parking Garage: Approximately 466 stall parking garage. The final number of spaces shall be subject to the parking study described in Section 2.2(a)(2) below.

Other: The project shall be built substantially as shown in PD O23-8, as amended, in design and quality, subject to City staff review and the Definitive Agreements; Office Site Developer may utilize a condominium structure to allow for the parceling of specific units within a platted lot (i.e., office, parking, retail components, etc.). Office Site Developer and City agree that amendment of this MOU shall not be required for minor modifications to the square footage or number of parking spaces provided for in this MOU (not to exceed 10%), provided that such modifications are agreed upon by both parties and memorialized in a written ‘side letter’ to this MOU, which shall become an addendum hereto. Notwithstanding the foregoing, there shall be no reduction in building height, net rentable office area, or retail floor area without written amendment of this MOU approved by the City Council.

(e) *Multifamily/Retail/Entertainment*. AMLI will construct multifamily buildings with ground level retail, public retail parking facilities and a retail/restaurant/entertainment parcel (“AMLI Phase 1”), further described as follows:

AMLI Phase 1 Land Details:

The AMLI Phase 1 will be constructed upon the three parcels of real property generally described below and depicted on the Master Concept Plan attached hereto as Exhibit A (to be more particularly defined in the Definitive Agreements). AMLI will be responsible for all required survey and platting required for the below properties.

<u>Parcel</u>	<u>Description</u>	<u>Anticipated Use</u>
Lot 3, Block A:	Approximately 2.32 acres	14, 7 and 5-story residential tower with 10,000 sf of ground level retail.
Lot 1, Block B and Lot 1X, Block C:	Approximately 3.32 acres	7-story residential podium project with 5,000 sf of ground level retail on approximately 2.88 acres; with realignment of Spectrum Drive and approximately 0.44 acres of public open space.

Lot 2, Block A: Approximately 1.76 acres Stand-alone retail/restaurant/entertainment operation as shown on the Master Concept Plan with a minimum twenty percent (20%) of the total lot area to serve as public open space.

AML Phase 1 Multifamily Building Details:

- Number of Buildings: 2 residential structures consisting of:
- 14, 7 and 5-story tower (the “Tower”) with:
 - Units: 270
 - NRSF: 290,000 – 310,000 sf
 - Ground level retail: 10,000 sf
 - Parking spaces (including retail/restaurant/entertainment district): 510 – 570, where compliance with the UC zoning district residential parking standards is achieved, and where public parking is provided in the parking garage in accordance with the requirements specified in this MOU.
 - 7-story podium (the “Podium”) building with:
 - Units: approximately 412
 - NRSF: 365,000 – 375,000 sf
 - Ground level retail: 5,000 sf
 - Parking spaces: 580 - 630, where compliance with the UC zoning district residential parking standards is achieved, and where public parking is provided in the parking garage in accordance with the requirements specified in this MOU.

Multifamily Building Development Parameters:

Minimum
 Units: 675 residential units
 NRSF: 655,000 sf
 Parking spaces: 1,090 parking spaces in two structures;

Maximum
 Units: 700 residential units
 NRSF: 675,000 sf
 Parking spaces: 1,200 parking spaces in two structures.

Net Rentable Area:	15,000 sf of retail below residential; 22,000 sf retail/restaurant/entertainment component and associated outdoor space exclusively dedicated to programming for entertainment and other authorized activation.
Parking Garage:	2-separate parking garages for each residential building for residences, with approximately 150 public parking spaces in the Tower parking structure to support the ground level retail and the retail/restaurant/entertainment parcel.
Other:	The project shall be built substantially as shown in the Master Concept Plan and in general conformance with Co-Developer's proposal in design and quality, subject to City staff review and the Definitive Agreements. AMLI and City agree that amendment of this MOU shall not be required for minor modifications that do not exceed a 10% total reduction to the square footage or number of parking spaces provided for in this MOU, a reduction in the number of residential units to not less than 650 leasable units, or an increase in the number of residential units to not more than 700 leasable units. Any such modifications shall be agreed upon by both parties and memorialized in a written 'side letter' to this MOU, which shall become an addendum hereto. Notwithstanding the foregoing, there shall be no reduction in multifamily building height or net rentable floor area for the ground floor retail integrated within the multifamily buildings, nor any increase in the number of residential units beyond the maximum number of units currently identified herein without written amendment of this MOU approved by the City Council.

2.2 Phase 1 Economics

(a) *Office Phase 1 Economics*.³ The parties agree to the following general economic terms for the Office Phase 1, which shall be defined in further detail in the Definitive Agreements:

- (1) City will convey to Office Site Developer for nominal consideration approximately 2.08 acres of land for the office building (the market value of which land the Town

³ The parties anticipate the current Office Phase 1 improvements and corresponding economic incentives for the Office Site set forth in this Fifth Amended MOU will be modified upon selection of the Office Site Developer.

estimates is \$1,718,773 (\$18.97 per sq. ft.). The final acreage shall be as mutually agreed and set forth in the definitive purchase and sale agreement between City and Office Site Developer.

- (2) The previous office developer has commissioned a parking study at its sole cost and expense to ensure the proper amount of parking for the Office Phase 1 development. The result of that parking study shows that 466 parking spaces is adequate. The parking study has been submitted to City for its review and approval.
- (3) City will commit to a 2.5-year master lease (the “Master Lease”) for 60,000 square feet of space (40% of the building) at \$57.50 per square foot gross (\$3,450,000 per year, not to exceed \$8,625,000 in total). The Master Lease shall commence upon final certificate of occupancy of the office building and shall not provide the City with the right to physically occupy any space in the office building, except for City’s rights with respect to the Optional Permanent Lease (as defined below). During the term of the Master Lease, the City will have an option to lease all or a portion of City’s leased space at market rate, plus triple net and will include a tenant allowance in the amount of \$65 per square foot (“Optional Permanent Lease”). The term of the Optional Permanent Lease shall be for a minimum of seven (7) years. If City elects to enter into the Optional Permanent Lease, all payments made by the City under such Optional Permanent Lease will be credited against the City’s obligation to pay rent under the Master Lease.
- (4) City’s lease obligations will be reduced on a 50/50 basis until City’s lease obligation is removed entirely. Reduction of City’s lease obligation will take place three (3) months after lease commencement date for leases less than 50,000 RSF and six (6) months after lease commencement date for leases greater than 50,000 RSF. For example purposes only, if Office Site Developer leases 20,000 square feet to a third-party tenant, City’s lease obligation will be reduced by 10,000 square feet and will continue to have a lease obligation of 50,000 square feet. Once Office Site Developer has executed leases for 120,000 square feet, City’s lease obligations will be removed entirely. As a material inducement for the City’s lease obligation incentive, Office Site Developer agrees that it will use commercially reasonable efforts to market and lease (including pre-leasing during construction) the Office Phase 1 office to prospective tenants. Office Site Developer further acknowledges that it is the intent of the parties to limit competing projects in the area and agrees that it will not build a competitive project within a 1.5 mile radius of the Project until such time as the City’s lease obligation has been removed entirely, by way of lease up or terminated by mutual agreement between both parties. The parties do not intend to limit Office Site Developer’s third-party service business from leasing or managing speculative new-build office buildings nor exclude Office Site Developer from developments where it has no financial investment (i.e., fee developments). The foregoing will be fully documented in the Definitive Agreements.
- (5) The City will reimburse Office Site Developer in an amount not-to-exceed \$4,100,000 for approved construction costs incurred by it for construction of a 2-bay office parking garage.
- (6) City and Office Site Developer will enter into a perpetual parking license or other agreement for the office garage whereby the garage (other than 10% of the spaces, which may be reserved for office tenants after hours) will be made available for all

patrons and public users of the Addison Circle development during nights, weekends and for special events, including the retail/restaurant/entertainment district and Tower ground-level retail parking at no cost.

- (7) In lieu of providing retail space at the ground floor of the parking garage at the Festival Way frontage, Office Site Developer will provide increased office area in accordance with Section 2.1(d), as well as alternative forms of street activation and screening as depicted in the final approved development plans.
 - (8) Office Site Developer will provide payment and completion guarantees from a reputable entity (ies) approved by City, which may be in the form of an irrevocable letter of credit, or equivalent guarantee (to be further defined in the Definitive Agreements), with such guarantees to be released when final certificate of occupancy is issued. The guarantees will be a material provision of Office Site Developer's obligations under the Definitive Agreements and will apply to the Office Phase 1 office and parking facilities.
 - (9) City agrees that its permit fees will be capped at \$150,000 and Office Site Developer will not have an obligation for offsite infrastructure costs for the office component of the Project.
 - (10) A transfer tax of 25 basis points will be assessed on all subsequent sales of the property, excluding transfers to affiliated entities (to be defined in the Definitive Agreements). This will be recorded in the deed and run with the land in perpetuity. This tax will need to be accounted for each time the property sells and will be a seller expense.
- (b) *AMLI Phase 1 Economics for Multifamily with Ground Level Retail.* The parties agree to the following general economic terms for the multifamily and retail components of the AMLI Phase 1, which shall be defined in further detail in the Definitive Agreements:
- (1) Ground Lease: AMLI will enter into a 99-year ground lease with City for approximately 7.4 acres of land that includes the general terms and conditions set forth in this Section 2.2(b).
 - (2) Deposit and Pre-Paid Ground Rent: AMLI will pay to City \$2,000,000 as pre-paid ground rent for the three (3) AMLI Phase 1 properties (subject to the provisions of this Section 2.2) in the form of a single, lump sum payment pursuant to the negotiated terms of the Definitive Agreements (the "Pre-Paid Ground Rent"). The Pre-Paid Ground Rent will initially be held in escrow and applied to rent in conformance with the respective ground leases. The Pre-Paid Ground Rent will be non-refundable, provided, upon AMLI's timely submittal (and City's acceptance) of both a completed infrastructure plan reasonably acceptable to City and AMLI on or before April 15, 2024 and application for a building permit for the Tower on or before October 31, 2024, AMLI will be entitled to a refund of the Pre-Paid Ground Rent during the period of time commencing upon AMLI's submittal of its application for a building permit for the Tower and ending ninety (90) days following submittal, but in no event later than January 30, 2025.

- (3) Ground Rent: The initial ground rent will be \$500,000 which will be adjusted annually by CPI, with a maximum annual increase of no greater than 3.0% on a non-cumulative basis.
- (4) Rent Commencement Date: The earlier of (i) 84 months from commencement of construction of AMLI Phase 1 or (ii) December 30, 2032 (as used herein, the “Rent Commencement Date”). Addison will receive the first ground rent payment no later than January 30, 2035, after the Pre-Paid Ground Rent is depleted.
- (5) Economic Development Incentive Grant: Beginning the first full year following stabilization of the AMLI Tower (defined as 94.25% occupancy), City will provide to AMLI six (6) consecutive annual economic development grants from the City’s ad valorem taxes actually collected by City for the applicable grant year, subject to the payment terms set forth herein and in the Master Incentive Agreement. Each year of the grant period AMLI will provide their Net Operating Income per GAAP before ground lease payments, capital expenditures, tenant improvement allowances and leasing commissions, certified by their Chief Financial Officer (the “Certified NOI”). The Certified NOI (numerator) will be divided by AMLI’s Actual Certified Construction Costs (denominator) to calculate an Annual Return on Cost (ROC) for the Project. If the Annual Return on Cost is below the ROC thresholds outlined in the schedule below, AMLI will be entitled to receive a grant not to exceed \$1,600,000 each year there is a gap between the computed Actual ROC and the Required ROC threshold. The ROC thresholds for each grant year shall be:

Grant Year	Threshold (%)
Year 1	6.91
Year 2	6.98
Year 3	7.20
Year 4	7.42
Year 5	7.45
Year 6	7.40

AMLI will be entitled to roll over any amount greater than the \$1,600,000 each year to the following grant year, but in no event shall the reimbursement amount exceed \$1,600,000 annually and \$8,000,000 cumulatively for the entire grant period. AMLI will provide annual audited financial statements for each grant year.

- (6) Other AMLI Phase 1 Terms:
 - (i) City will contribute an amount not-to-exceed \$3,400,000 for the construction of public parking upon Lot 3, Block A (the Tower parcel). The public parking will be constructed by AMLI as a portion of the Tower parking garage. The public parking will be in a location mutually agreed upon between AMLI and the City, provided, all public parking will be reasonably accessible for retail users and all other patrons of the Addison Circle development. The public portion of the garage will include a minimum number of public parking spaces equivalent to the percentage of the City’s contribution proportionate to the total cost to construct the garage. For example purposes only, if AMLI’s total cost to construct the garage is \$10,000,000, then the number of public parking spaces would be equivalent to 34% of the total number of spaces in the garage ($\$3,400,000 / \$10,000,000$)

= .34 (34%)). AMLI acknowledges that City intends to issue debt to fund the City's contribution to construction of the public portion of parking garage and, to legally qualify as city-issued debt, the funds are required to be used for public infrastructure; meaning the public portion of parking garage shall be available for public use in the manner required by the terms of such financing. City and AMLI will enter into a one or more definitive parking agreements whereby AMLI will have certain management authority for, and be generally responsible for, construction, operation and maintenance of the parking garage, including all costs associated therewith.

- (ii) In order to consistently maintain a Class A mixed-use TOD project to City's standards throughout the term of the ground lease, AMLI (or future tenant) may be required to make capital improvements from time to time. Ten years after the Rent Commencement Date, AMLI will have the right, with City's approval, not to be unreasonably withheld, to offset the cost of certain capital improvements in excess of \$1,000,000 (as adjusted for inflation) against the annual ground lease rent once every ten years. The amount of offset shall not exceed the ground rent in the year the capital improvement project is undertaken. The offset assumes AMLI (or future tenant) has spent the first \$1,000,000 and will be paid on any amounts above the first \$1,000,000. A detailed description of allowable capital improvement projects will be further defined in the ground lease.
- (iii) If City elects to offer its fee interest in the residential or retail/restaurant/entertainment parcel for sale, then AMLI will have the right of first refusal (ROFR) to purchase the fee simple interest in such parcels at the determined fair market value (FMV) to be further defined in the Definitive Agreements.
- (iv) AMLI will be prohibited from transferring its interest in the ground lease for a period of ten years after the Rent Commencement Date without City's approval unless to a qualified owner, such as an institutional owner having similar experience managing over one million square feet of similar "Class A" TOD, mixed-use developments or ownership of over \$500,000,000 of "Class A" multifamily properties (to be further defined in the ground lease).
- (v) The timelines and deadlines in the ground leases and other Definitive Agreements shall be subject to change based on events of force majeure and other unforeseen circumstances outside of AMLI's reasonable control which affect construction progress (to be defined in the Definitive Agreements).
- (vi) AMLI has completed (and City has approved) a Master Streetscape Development Plan dated February 15, 2023 ("Streetscape Plan") prepared for the office, retail, park, and streetscape plan in the surrounding areas from the North Dallas Tollway to Addison Road and from Addison Circle to Beltline Road, but if necessary to be consistent with the attached Master Concept Plan, an amendment to the Streetscape Plan will be approved prior to October 30, 2023. The purpose of this Streetscape Plan is to enhance and promote the retail and transit experience to "Complete the Circle." This will include but is not limited to tree relocation along Festival Way, burying power lines along +/- 150' of Quorum Drive, and the realignment of

Spectrum Road. Other potential improvements addressed in the Streetscape Plan are enhanced paving, planting, improved lighting, signage, and wayfinding to attract more patrons to the circle. The Streetscape Plan will include all offsite infrastructure improvements for the office component of the Project, including the parking garage. All infrastructure improvements shall be as reasonably agreed by City and AMLI and the characterization of items as infrastructure improvements shall not conflict with other components of this MOU.

- (vii) City agrees that AMLI's permit fees for the AMLI phase 1 multifamily improvements will be capped at \$250,000, with the off-site infrastructure being incurred by Town as an incentive in conformance with the Definitive master incentive agreement. If Spectrum Road is unable to be re-aligned, the parties agree to discuss alternative design options that will maintain the quality and overall vision for the affected components of the Project. The parties may further agree to equitably share in the additional costs or savings associated with the alternative design.
- (viii) AMLI will provide payment and completion guarantees from a reputable entity(ies) approved by City, which may be in the form of an irrevocable letter of credit, or equivalent guarantee (to be further defined in the Definitive Agreements), with such guarantees to be released when final certificate of occupancy is issued. The guarantees will be a material provision of AMLI's obligations under the Definitive Agreements and will apply to AMLI phase 1 facilities.
- (ix) There will be no construction or permanent debt placed on the residential property of any kind through final certificate of occupancy. All residential construction and development costs will be financed using equity provided by AMLI on the residential development.
- (x) Within twelve months after issuance of the initial multifamily building permit, AMLI will donate \$200,000 to the Addison Arbor Foundation to fund public art in the right of way and public spaces within the development (to be further defined in the Definitive Agreements).
- (xi) A transfer tax of 25 basis points will be assessed on all subsequent sales of the property, excluding transfers to affiliated entities (to be defined in the Definitive Agreements). This will be recorded in the deed and run with the land in perpetuity. This tax will need to be accounted for each time the property sells and will be a seller expense.

(c) *AMLI Phase 1 Economics for the Retail, Restaurant, and Entertainment Parcel*

- (1) Lot 2, Block A of AMLI Phase I (approximately 1.76 acres) will be subject to a ground lease on substantially the same terms as the ground leases for Lot 3, Block A, Lot 1, Block B, and Lot 1X, Block C of AMLI Phase 1; provided, that subject to mutual agreement of the parties, the retail/restaurant/entertainment area may be sub-leased (not assigned) to a third-party developer and/or operator. Notwithstanding, AMLI will be required to obtain the written consent of Addison (which shall not be

unreasonably withheld) prior to entering into a sub-lease for the foregoing property and/or its operation by a third party.

- (2) The City and AMLI will work in good faith to select the operator/developer, and to establish deadlines for AMLI to apply for and obtain permits and commence construction of the improvements on Lot 2 following selection of the operator/developer. The City and AMLI will define said deadlines and establish penalties for noncompliance within the Definitive Agreements.
- (3) The following incentive is subject to and intended to support the recruitment of a high-quality retail/restaurant/entertainment operator to implement a concept that meets the intent of this first class urban mixed-use development. This incentive shall be conditioned upon evaluation of and consideration of the merits of the proposed retail/restaurant/entertainment operation, and final approval of the same by the City:
 - (i) Public Infrastructure Incentive Grant. City will reimburse up to \$1,500,000 for public infrastructure costs associated with phase 1 of the Project (on terms to be further defined in the Definitive Agreements).
- (4) A transfer tax of 25 basis points will be assessed on all subsequent sales of the property, excluding transfers to affiliated entities (to be defined in the Definitive Agreements). This will be recorded in the deed and run with the land in perpetuity. This tax will need to be accounted for each time the property sells and will be a seller expense.
- (5) AMLI will, at its sole cost, activate the 0.23 acre Lot 4X, Block A by constructing and installing fitness-oriented improvements (e.g., outdoor fitness court(s), pavilion, pickle ball court(s), etc.) and associated site furnishings and landscape, as approved by City. City will retain fee title ownership to the foregoing parcel and will be solely responsible for all maintenance associated with the foregoing improvements following City's final inspection and acceptance of the same.

2.3 Phase 2 Scope:

- (a) *Minimum Investment*. Co-Developers will invest a minimum of \$104,200,000 in connection with the Improvements for phase 2 of the Project.
- (b) *Office Phase 2 (Office)*. It is anticipated that the newly selected Office Site Developer will construct an office building with ground level retail and a public parking garage ("Office Phase 2"), further described as follows:

Land Area:	3.966 acres
Net Rentable Area:	150,000 sf of office; 4,000 sf of DART Station Improvements
Parking Garage:	850 stall public parking garage
Other:	The project shall be built substantially as shown in the Proposal in design and quality,

subject to City staff review and the Definitive Agreements.

2.4 Phase 2 Economics:

- (a) *Phase 2 Economics*. The parties agree that the following general economic terms shall apply to phase 2 of the Project, which shall be defined in further detail in the Definitive Agreements:
- (1) Office Site Developer will sub-lease from City as defined in the DART Interlocal Agreement.
 - (2) All ground lease rent will be abated until one year after substantial completion of the Office Phase 2 office tower.
 - (3) City incentives (if any) for Office Phase 2 will be negotiated based on current market dynamics and required timeframe to develop the asset. In addition, the projects will be heavily coordinated with City and DART to ensure the proper level of service and amenities are provided.
 - (4) The costs of the additional 300 parking spaces required in the garage for Phase 2 and any other DART specific requirements will be addressed in the Definitive Agreements.
 - (5) The parties anticipate construction of a ground enclosed DART Station (not just a platform) that will be in conformance with the quality and vision of the other Project elements. Office Site Developer commits to funding a portion of the development costs consistent with its submitted proposal, which provides for Office Site Developer committing \$160,000 based upon a construction cost of \$1,600,000 (to be further defined in the Definitive Agreements). The station will replace the existing DART platform and provide service for all DART riders (subject to DART's approval).
 - (6) DART, City and Office Site Developer will enter into a perpetual parking agreement whereby public parking is available for DART and retail patrons during the day and the entire Addison Circle development on nights and weekends and for special events, subject to the final interlocal agreement with DART and as subject to the terms of the Definitive Agreements.
 - (7) Office Site Developer will provide payment and completion guarantees from a reputable entity (ies) approved by City, which may be in the form of an irrevocable letter of credit, or equivalent guarantee (to be further defined in the Definitive Agreements), with such guarantees to be released when final certificate of occupancy is issued. The guarantees will be a material provision of Office Site Developer's obligations under the Definitive Agreements and will apply to Office Site Developer's phase 2 office and parking facilities.
 - (8) A transfer tax of 25 basis points will be assessed on all subsequent sales of the property, excluding transfers to affiliated entities (to be defined in the Definitive Agreements). This will be recorded in the deed and run with the land in perpetuity.

This tax will need to be accounted for each time the property sells and will be a seller expense.

2.5 Phase 3 Scope:

- (a) *Minimum Investment.* Co-Developers will invest a minimum of \$23,500,000 in connection with the Improvements for phase 3 of the Project.
- (b) *Scope.* The Definitive Agreements shall include the following general terms and conditions with regard to the scope for phase 3 of the Project:

Boutique Hotel:

Land Area: 1.156 acres

Number of Rooms: 120

Other: The project shall be built substantially as shown in the Proposal in design and quality, subject to City staff review and the Definitive Agreements.

2.6 Phase 3 Economics:

- (a) *Phase 3 Economics.* The parties agree that the following general economic terms shall apply to phase 3 of the Project, which shall be defined in further detail in the Definitive Agreements:
 - (1) Office Site Developer will sub-lease from City as defined in the DART Interlocal Agreement.
 - (2) City incentives (if any) for this phase will be negotiated based on current market dynamics and required timeframe to develop the asset. In addition, the projects will be heavily coordinated with City and DART to ensure the proper level of service and amenities are provided.
 - (3) Office Site Developer will provide payment and completion guarantees from a reputable entity (ies) approved by City, which may be in the form of an irrevocable letter of credit, or equivalent guarantee (to be further defined in the Definitive Agreements), with such guarantees to be released when final certificate of occupancy is issued. The guarantees will be a material provision of Office Site Developer's obligations under the Definitive Agreements and will apply to phase 3 hotel and related development.
 - (4) A transfer tax of 25 basis points will be assessed on all subsequent sales of the property, excluding transfers to affiliated entities (to be defined in the Definitive Agreements). This will be recorded in the deed and run with the land in perpetuity. This tax will need to be accounted for each time the property sells and will be a seller expense.

3. PROJECT SCHEDULE; DUE DILIGENCE PERIOD

3.1. Project Schedule. The parties acknowledge that time is of the essence with regard to the Project and agree that each will use its best efforts to proceed in conformance with the proposed Project schedule set forth below:

PHASE 1	Date of Completion⁴
Revised zoning entitlements approved by City Council	January 31, 2024
Execution of all Definitive Agreements	January 31, 2024
AMLI submittal of infrastructure plan	April 15, 2024
Submittal building permit application for office/parking	October 30, 2024
AMLI submittal of Tower building permit application	October 30, 2024
Construction start on office/parking	March 2025
AMLI construction start on Tower	March 2025
AMLI construction start on Podium	May 2026
PHASES 2 & 3	Date of Completion
Construction start on office/parking	TBD*
Construction start on hotel	TBD
Office/parking final CO issued	TBD
Hotel final CO issued	TBD

**The parties acknowledge that a required date of completion will be established for Phase 2 as soon as practicable and will be subject, in part, to the interlocal agreement between DART and Addison.*

3.2. Modification of Project Schedule. The dates for completion identified in the Project schedule set forth in Section 3.1, above, may not be modified or extended, except by mutual written agreement of the parties. Notwithstanding the foregoing, a party shall be entitled to an extension when the party unable to comply with the Project schedule as a direct result of an event of Force Majeure. As used in this section, the term “Force Majeure” shall mean that the party is prevented or delayed in performing in compliance with the Project schedule, in whole or in part, to such an extent that the party would not be able to meet a required date of completion therein by reason of or through work strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, court judgment, quarantine or mandatory closure order enacted in

⁴ The parties acknowledge the Phase 1 dates are subject to modification upon final selection of an Office Site Developer.

response to a pandemic or other public health crises, or other specific cause reasonably beyond the party's control and not attributable to its malfeasance, neglect or nonfeasance. The party asserting Force Majeure (i) shall give prompt notice to the other party of the prevention of performance as soon as the asserting party is reasonably aware of such prevention, and (ii) has the burden of demonstrating (a) how and why their performance was so prevented, (b) the period of time during which they were so prevented from performing (which under the facts may be equal to, or shorter or longer than, the duration of the Force Majeure event itself), and (iii) that the party used commercially reasonable efforts to mitigate and/or eliminate such prevention and resumed performance under this MOU as soon as reasonably practicable.

3.3. Due Diligence Period. The Due Diligence Period commenced on the Effective Date of the original MOU and will expire on the earlier of (i) January 31, 2024, or (ii) the date upon which the parties have mutually executed all Definitive Agreements required for the Project. The parties will conduct all due diligence with respect to the Project as the parties may deem necessary or appropriate, and the parties shall fully cooperate with each other in this regard. Each party shall be solely responsible for its own costs in connection with the due diligence required for the Project, except as otherwise mutually agreed by the parties. The Due Diligence Period may be extended by mutual written agreement of the parties.

3.4. Exclusivity. During the Due Diligence Period, City will negotiate exclusively with Co-Developers in good faith to execute the Definitive Agreements for the Project, and will not engage any party other than Co-Developers to act as a developer (or co-developer) of the Project; however, notwithstanding the foregoing, during the Due Diligence Period, City shall have the right to solicit proposals from, and discuss the terms for, other parties to act as a developer (or co-developer) of the Project or a portion thereof. Further, from and after the expiration of the Due Diligence Period, if the Definitive Agreements have not been finalized and executed, City shall have the right to immediately terminate this MOU as to one or both Co-Developers and thereafter (i) engage (or seek to engage) one or more other parties to act as a developer (or co-developer) of the Project or a portion thereof, and/or (ii) abandon the current Project and proceed to solicit proposals from the development community for a new concept and project at the current Project site.

3.5. Project Feasibility Assessments. Co-Developers agree that each will promptly, and without undue delay, conduct the feasibility assessments described below during the Due Diligence Period:

- (a) *Property Inspections.* All property due diligence (title examination, surveys, environmental site assessments, soil conditions tests and other physical inspections and similar items) relating to the feasibility of the development of the Project;
- (b) *Zoning and Entitlements.* All required zoning and real property entitlements necessary to develop the Project in conformance with the terms of this MOU and the Definitive Agreements; and
- (c) *Financial Due Diligence.* All financial due diligence reasonably necessary to ensure Co-Developers will be able to secure firm commitments from all lenders, investors, and/or

other financing sources related to the design, development, construction, and administration of the Project as contemplated by the parties.

Co-Developers acknowledge that each has already engaged all consultants and/or other third-parties necessary to complete the above-referenced feasibility assessments.

4. MISCELLANEOUS

4.1. Mutual Cooperation; Site Access. The parties agree to work together at all times in good faith, meet regularly, and keep each other informed as to activities of the other, and maintain at all times a formal representative who shall serve as a point of contact for communications related to this MOU. City will furnish such rights-of-access to the Project site as reasonably necessary for the parties to conduct their respective due diligence obligations under this MOU.

4.2. Costs and Expenses. Each party shall be responsible for all costs and expenses associated with the preparation and adoption of this MOU, the preparation and adoption of the Definitive Agreements, and future actions related thereto.

4.3. Certification of No Conflicts. Co-Developers hereby warrant to City that each has made full disclosure in writing of any existing or potential conflicts of interest related to its participation in the Project as contemplated in this MOU. In the event that any conflicts of interest arise after the Effective Date of this MOU, Co-Developers hereby agree to immediately disclose the same to City.

4.4. Public Information Act. Co-Developers acknowledge that this MOU, and all documents provided to City in connection with the Project are subject to the legal requirements of the Texas Public Information Act and that City will have no obligation to protect or otherwise limit disclosure of any confidential or proprietary information received by City in connection with the same unless a party has previously notified City in writing that it considers the information to be confidential or proprietary trade secrets and has clearly marked all such information as “Confidential” and/or “Proprietary – Trade Secret” at the time it is delivered or made accessible to City (including City’s officers, officials, employees, consultants, attorneys and/or other authorized representatives). In the event City delivers to Co-Developers information that it has expressly marked “Confidential” or has notified Co-Developers is confidential or is the proprietary information of a third-party, Co-Developers agree neither shall disclose to anyone directly or indirectly during the term of this MOU or at any time thereafter, any such information, nor shall either use any such information for any purpose other than in connection with the Project contemplated in this MOU.

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

4.6. Exhibits. The exhibits to this MOU are incorporated herein.

4.7. Amendment. This MOU may only be amended by mutual written agreement executed by all parties.

4.8. Counterparts. This MOU 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.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY –
SIGNATURES ON FOLLOWING PAGE(S)]

IN WITNESS WHEREOF, the parties have executed and delivered this Fifth Amended MOU as of the Effective Date.

For City:

For Co-Developer AMLI:

TOWN OF ADDISON, TEXAS

AMLI RESIDENTIAL PARTNERS, LLC
a Delaware limited liability company

By: _____
David Gaines, City Manager

By: _____
Taylor Bowen, Authorized Signatory

Date: _____

Date: _____

NOTICE ADDRESS:

NOTICE ADDRESS:

Town of Addison
Attn: City Manager
P.O. Box 9010
Addison, Texas 75001
E: dgaines@addisontx.gov

AMLI Residential Partners, LLC
5057 Keller Springs Road, Suite 250
Addison, TX 75001
Attn: Taylor Bowen and Joe Bruce
E: TBowen@amli.com and JBruce@amli.com

City Council (FY24)

5. b.

Meeting Date: 10/24/2023

Department: City Manager

Pillars: Excellence in Transportation Systems

Milestones: Effectively utilize and promote the Silver Line development with a first mile/last mile solution

AGENDA CAPTION:

Consider action on a Resolution to approve a Master Lease Agreement between the Town of Addison and Dallas Area Rapid Transit (DART), setting forth the terms and conditions of a ground lease of DART’s Addison Transit Center property for inclusion in a future Transit Oriented Development (TOD) project.

BACKGROUND:

In 2021, the Town solicited development proposals for a TOD project on city-owned property north of DART’s Addison Transit Center in anticipation of the opening of rail service on the Silver Line, with an option to include DART’s property in future phases. The Town and DART subsequently approved an Interlocal Agreement (ILA) that set forth the terms and conditions for the Town to enter into a long-term ground lease of the transit center property, which is 5.5+- acres in size. DART’s property holdings include the existing transit center and the adjacent office building (the “Baumann Building”).

The basic provisions of the Master Lease Agreement, which are in accordance with the ILA, are:

Term

- An initial term of 49 years, with two 25-year extension options.
- DART may terminate the Master Lease Agreement if no construction has commenced on the DART property within 60 months of its approval. The lease may also be terminated on the Baumann Building property if construction has not commenced within ten (10) years.
- The Town may terminate the Master Lease Agreement if no sublease or development agreement with a Master Developer has been approved within 48 months after the effective date of the Master Lease Agreement.

Base Rent

- The lease provides a Pre-Development Period of up to 60 months for the Town to select a Master Developer, who in turn must acquire financing and complete the surveying/zoning/planning/platting and permitting process. DART receives no base rent during the Pre-Development Period. Rent will commence when the Pre-Development Period ends, or the Town issues a

Certificate of Occupancy for the first building on the DART property, or when DART's ability to use the transit facilities is adversely impacted, whichever occurs first. DART will continue to collect all rent and other revenue from lease of the Baumann Building until Base Rent becomes payable.

- Annual base rent is calculated as follows:
 - For the first five (5) years of the lease, the base rent for DART's land is determined by an "as developed" appraisal conducted immediately after selection of the Master Developer, based on the proposed development plan, but also taking into consideration the impact of DART's operational and infrastructure requirements. The appraised value of DART's land will be multiplied by 4% to establish the base rent.
 - Appraisals will be conducted by one appraiser selected by the Town and DART and another chosen by the Master Developer. If the two appraisals are within 5% of the same value, the average will be used to calculate the base rent. If the difference in the two appraisals differs by more than 5%, the two appraisers shall jointly select a third appraiser to make that determination.
 - A reappraisal shall be conducted initially after five (5) years, and then every ten (10) years to reset the base rent. During these periods, the base rent will be adjusted by not less than 2% but not more than 3% per year since the previous adjustment.
 - In addition, if the improvements actually constructed on the DART property deviate significantly from the original development plan, DART or Addison may require an adjustment to the annual base rent. The appraisal for this adjustment would be based on the actual improvements on DART's property.

- Excess Rent – Although unlikely, if the Town receives annual rent from the Master Developer for DART's property that exceeds the rent payable to DART, the excess rent is shared equally between the Town and DART. Property tax, sales tax, and other tax receipts are not considered base rent, nor is any rent paid by the Master Developer, which is rebated, credited, or refunded by the Town for reimbursement of development costs.

Unsubordinated Ground Lease – the Master Lease Agreement will be unsubordinated but with appropriate protection for subtenants and lenders.

Covenants, Conditions and Restrictions (CCR) – The Town and DART will enter into a set of CCRs that prohibits noxious uses on all properties but promotes the development of a high-density, mixed-use transit-oriented development. Development and uses shall comply with DART's adopted TOD Guidelines. Specific uses, such as self-storage and a stand-alone parking garage, are prohibited on DART's property.

Capital and Operational Expenditures

- **Project Capital and Operational Expenditures** – The Master Developer will be responsible for all capital expenditures for infrastructure and facility improvements and replacements, and for property management. DART will remain responsible for capital expenditures related to the rail line and platform, ticket kiosks, information boards, and associated infrastructure, as well as operating expenses related to transit operations.
- **DART Operational and Infrastructure Requirements** – DART’s ongoing bus and rail operations must be accommodated and continued as part of the development in accordance with the requirements attached as Exhibit “B” to the lease.

Master Developer Selection – The Town has exclusive authority to solicit proposals from developers, to select the Master Developer, and enter into a sublease for DART’s property and associated development agreements. DART will review correspondence and documents related to any development proposals, development agreements, and sublease documents.

FTA Compliance – The lease and use of DART’s property is subject to compliance with Federal Transit Administration requirements.

General Provisions – The lease also contains general provisions such as requirements for insurance, utility, and tax payments; provisions for use of maintenance of the property and improvements; and the terms for subleasing to the Master Developer.

RECOMMENDATION:

Administration recommends approval.

Attachments

Staff Report - DART Master Lease
Presentation - DART Master Lease
DART Master Lease

Council Meeting 2023

Meeting Date: 10/24/2023

Department: Development Services

Pillars: Excellence in Transportation Systems

Milestones: Promote Silver Line Development

Agenda Caption:

Consider Action on a Resolution to Approve a Master Lease Agreement Between the Town of Addison and Dallas Area Rapid Transit (DART), Setting Forth the Terms and Conditions of a Ground Lease of DART's Addison Transit Center Property for inclusion in a Future Transit Oriented Development Project

Background:

In 2021, the Town solicited development proposals for a transit oriented development project on city-owned property north of DART's Addison Transit Center, in anticipation of the opening of rail service on the Silver Line, with an option to include DART's property in future phases. The Town and DART subsequently approved an Interlocal Agreement (ILA) that set forth the terms and conditions for the Town to enter into a long-term ground lease of the transit center property, which is 5.5+- acres in size. DART's property holdings include the existing transit center and the adjacent office building (the "Baumann Building").

The basic provisions of the Master Lease Agreement, which are in accordance with the ILA, are:

Term

- An initial term of 49 years, with two 25-year extension options.
- DART may terminate the Master Lease Agreement if no construction has commenced on the DART property within 60 months of its approval. The lease may also be terminated on the Baumann Building property if construction has not commenced within 10 years.
- The Town may terminate the Master Lease Agreement if no sublease or development agreement with a Master Developer has been approved within 48 months after the effective date of the Master Lease Agreement.

Base Rent

- The lease provides a Pre-Development Period of up to 60 months for the Town to select a Master Developer, who in turn must acquire financing and complete the surveying/zoning/planning/platting and permitting process. DART receives no base rent during the Pre-Development Period. Rent will commence when the Pre-Development Period ends, or the Town issues a Certificate of Occupancy for the

first building on the DART property, or when DART's ability to use the transit facilities is adversely impacted, whichever occurs first. DART will continue to collect all rent and other revenue from lease of the Baumann Building until Base Rent becomes payable.

- Annual base rent is calculated as follows:
 - For the first 5 years of the lease, the base rent for DART's land is determined by an "as developed" appraisal conducted immediately after selection of the Master Developer, based on the proposed development plan, but also taking into consideration the impact of DART's operational and infrastructure requirements. The appraised value of DART's land will be multiplied by 4% to establish the base rent.
 - Appraisals will be conducted by one appraiser selected by the Town and DART and another chosen by the Master Developer. If the two appraisals are within 5% of the same value, the average will be used to calculate the base rent. If the difference in the two appraisals differs more than 5%, the two appraisers shall jointly select a third appraiser to make that determination.
 - A reappraisal shall be conducted initially after 5 years, and then every 10 years to reset the base rent. During these periods the base rent shall be adjusted by not less than 2% but not more than 3% per year since the previous adjustment.
 - In addition, if the improvements actually constructed on the DART property deviate significantly from the original development plan, DART or Addison may require an adjustment to the annual base rent. The appraisal for this adjustment would be based on the actual improvements on DART's property.

- Excess Rent – Although unlikely, if the Town receives annual rent from the Master Developer for DART's property that exceeds the rent payable to DART, the excess rent is shared equally between the Town and DART. Property tax, sales tax and other tax receipts are not considered base rent, nor is any rent paid by the Master Developer which is rebated, credited or refunded by the Town for reimbursement of development costs.

Unsubordinated Ground Lease – the Master Lease Agreement will be unsubordinated, but with appropriate protections for subtenants and lenders.

Covenants, Conditions and Restrictions – The Town and DART will enter into a set of CCRs that prohibits noxious uses on all properties but promotes the development of a high density, mixed-use transit-oriented development. Development and uses shall comply with DART's adopted Transit Oriented Development Guidelines and specific uses,

such as self-storage and a stand-alone parking garage are prohibited on DART's property.

Capital and Operational Expenditures

- **Project Capital and Operational Expenditures** – The Master Developer will be responsible for all capital expenditures for infrastructure and facility improvements and replacements, and for property management. DART will remain responsible for capital expenditures related to the rail line and platform, ticket kiosks, information boards and associated infrastructure as well as operating expenses related to transit operations.
- **DART Operational and Infrastructure Requirements** – DART's ongoing bus and rail operations must be accommodated and continued as part of the development, in accordance with the requirements attached as Exhibit "B" to the lease.

Master Developer Selection – The Town has exclusive authority to solicit proposals from developers, to select the Master Developer and enter into a sublease for DART's property and associated development agreements. DART will review correspondence and documents related to any development proposals, development agreements and sublease documents.

FTA Compliance – The lease and use of DART's property is subject to compliance with Federal Transit Administration requirements.

General Provisions – The lease also contains general provisions such as requirements for insurance, utility and tax payments; provisions for use of maintenance of the property and improvements; and the terms for subleasing to the Master Developer.

Recommendation:

Recommend approval of the resolution and Master Lease Agreement.

Master Ground Lease for DART's Addison Transit Center Property

**City Council Presentation
October 24, 2023**

The logo for Addison, featuring the word "ADDISON" in blue, uppercase, sans-serif font centered within a white circle. The circle is set against a blue background that has a white diagonal line running from the top-left to the bottom-right, creating a triangular shape on the right side of the slide.

DART Master Ground Lease

ADDISON

- The Master Ground Lease establishes the terms and conditions for the Town's lease of DART's Addison Transit Center property for inclusion in the planned transit-oriented development around the Silver Line rail station
- The provisions of the lease are in accordance with the Interlocal Agreement approved in 2021 by the Town and DART



DART Master Ground Lease

- The Master Ground Lease includes the following provisions:
- Property
 - The lease includes the transit center, parking lot and the adjacent office building, for a total of 5.5 acres
- Term
 - DART ground leases its property to the Town for an initial term of 49 years, with two 25-year extension options
 - The Town has 48 months to enter into a sublease and development agreement with a master developer or the ground lease terminates
 - DART may also terminate the lease with the Town if no construction has occurred on the DART property within 60 months of approval. Development must commence on the current office building property in 10 years

- Base Rent
 - By statute, DART must receive a market rate for its leased properties
 - No base rent is paid during a Pre-Development period that provides up to 60 months for the master developer to acquire financing and complete the planning and permitting process
 - Rent payments commence when the Pre-Development period ends, the Town issues a CO for the first building on the DART property or when the transit operations are adversely impacted, whichever comes first
 - DART continues to collect rent from its tenants in the office building

DART Master Ground Lease

- Annual Base Rent Calculation

- For the first 5 years of the lease, the base rent for DART's land is determined by an "as developed" appraisal based on the Master Developer's proposed development plan, but also taking into consideration the impact of DART's operational and infrastructure requirements. The appraised value of DART's land will be multiplied by 4% to establish the initial base rent
- A reappraisal shall be conducted initially after 5 years, and then every 10 years to reset the base rent. During these periods the base rent shall be adjusted by not less than 2% but not more than 3% per year since the previous adjustment
- DART or the Town may require an interim adjustment to the base rent if the improvements constructed on the DART property differ significantly from the original plan
- If the Town receives annual rent that exceeds the rent payable to DART, the excess rent is shared equally between DART and the Town

DART Master Ground Lease

- Capital and Operating Expenditures

- The master developer will be responsible for all capital expenditures for infrastructure and facility improvements and replacements and for property maintenance and management
- DART will remain responsible for capital expenditures related to the rail line and platform, ticket kiosks, information boards and operating expenses related to bus and rail operations
- The master developer must meet certain operational and infrastructure requirements for bus and rail operations, such as a certain number of bus bays, restrooms, and parking spaces (Exhibit “B” of the lease)

- Other Provisions

- The ground lease with DART will be unsubordinated, but with appropriate protections for subtenants and lenders
- The Town and DART will ultimately enter into a set of covenants, conditions and restrictions to prohibit noxious uses on DART's property but also promote the development of a high-density, mixed-use TOD
- Any parking garages on the DART property would need to be integrated into and serve other uses
- The lease and use of DART's property is subject to compliance with Federal Transit Administration requirements
- The lease includes provisions for subleasing to the Master Developer, payment of insurance, utilities, and taxes, and provisions for the use and continued maintenance of the property and improvements

QUESTIONS?

GROUND LEASE

Between

DALLAS AREA RAPID TRANSIT

As Landlord

and

THE TOWN OF ADDISON, TEXAS

As Tenant

SCHEDULE OF EXHIBITS

Exhibit A – Site Map

Exhibit B – Landlord’s Operational & Infrastructure Requirements

Exhibit C – TOD Policy/Guidelines

GROUND LEASE

THIS GROUND LEASE (this “**Lease**”) is executed by and between DALLAS AREA RAPID TRANSIT, a regional transportation authority created and existing pursuant to Chapter 452, Texas Transportation Code (“**Landlord**”), and the TOWN OF ADDISON, TEXAS (“**Tenant**”) on ____ day of _____, 2023 (“**Effective Date**”).

RECITALS

WHEREAS, Landlord is the fee simple owner of approximately 5.5 acres of land (the “**Property**”) located in the immediate vicinity of the Addison Transit Center (“**Addison Station**”), which is depicted in Exhibit A attached hereto; and

WHEREAS, Landlord desires to lease the Property to Tenant and Tenant desires to lease the Property from Landlord for the purpose of implementing a transit-oriented development at Addison Station (“**Development**”); and

WHEREAS, this Lease is executed and exchanged between Landlord and Tenant pursuant to the terms of that certain Interlocal Agreement, dated July 8, 2021, related to the Development (as may be amended from time to time, the “**ILA**”); and

WHEREAS, Chapter 791 of the Texas Government Code provides authorization for local governments to contract with each other for the performance of governmental functions and services; and

WHEREAS, the terms of this Lease are consistent with the terms of a market rate ground lease taking into consideration the future operational requirements of Landlord with respect to transit services that must be accommodated in the Development; and

NOW, THEREFORE, for and in consideration of the mutual agreements and covenants hereinafter set forth and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows.

ARTICLE 1 Definitions

“**Addison Station**” means the Addison Transit Center located at 4925 Arapaho Road, Addison, Texas, as depicted in Exhibit A attached hereto.

“**Annual Base Rent**” means the amount of base rent due to Landlord from Tenant on an annual basis, as provided in Section 3.2.

“**Additional Rent**” means all amounts, costs, expenses, liabilities and obligations which Tenant is required to pay pursuant to the terms of this Lease other than Annual Base Rent, including amounts, costs, expenses, liabilities and obligations due to or incurred by Landlord as a result of or in connection with the exercise of any right of Landlord under this Lease resulting from Tenant’s failure to perform any obligation hereunder.

“**Casualty**” means damage or destruction to any Improvement by fire, windstorm, flooding, or other accident, mishap, or disaster.

“**Claims**” means any and all liabilities, obligations, claims, damages (excluding, consequential damages), losses, penalties, demands, causes of action (whether in tort or contract, in law or at equity, or otherwise), suits, judgments, liens, disbursements, charges, assessments, costs and expenses (including reasonable attorneys’ and experts’ fees and expenses) of any kind, nature or description.

“**Compliance Matters**” has the meaning set forth in Section 6.3.

“**Development**” means Tenant’s planned transit-oriented development at the Addison Station.

“**Development Agreement**” means the agreement (which may be a sublease) executed or to be executed by Tenant and Master Developer within forty-eight (48) months from the Effective Date that provides for the design and construction of the Development by Master Developer.

“**Default Rate**” means the lesser of (i) the sum of the Prime Rate plus 4%, or (ii) the maximum rate of interest which, under Texas Law, Landlord is then permitted to charge Tenant with respect to the obligation in question.

“**Effective Date**” means _____, 2023.

“**Exempt Transfer**” means the acquisition by any Leasehold Mortgagee or its designee of the Leasehold through the exercise of any right or remedy of such Leasehold Mortgagee under a bona fide Leasehold Mortgage, including any assignment of the Leasehold to the Leasehold Mortgagee or its designee made in lieu of foreclosure.

“**FTA**” means the United States Department of Transportation Federal Transit Administration.

“**ILA**” means the Interlocal Agreement, dated July 8, 2021, between Landlord and Tenant related to the implementation of a transit-oriented development at the Addison Station, as amended by the First Amendment to the Interlocal Agreement, dated July 8, 2022.

“**Full Insurable Value**” means actual replacement value (exclusive of cost of excavation, foundations, and footings below the surface of the ground or below the lowest basement level and other items not customarily insurable under all risk policies from time to time).

“**Improvements**” means any and all buildings, structures, utility installations, paving, landscaping and other improvements now or hereafter located on the Property, including any subsequent alterations, additions or replacements, and all fixtures and non-movable equipment owned or leased by Tenant.

“**Landlord Parties**” mean Landlord and Landlord’s directors, officers, agents, employees, contractors, partners, and lenders.

“**Leasehold**” means the leasehold estate of Tenant created by this Lease.

“Leasehold Mortgage” means a mortgage that encumbers, as security for one or more loans, indebtedness or obligations, only Tenant’s right to use and occupy the Property as herein provided, the Leasehold, all of Tenant’s right, title and interest in and to any Improvements at any time located on the Property, and any other property so affixed to the Property as to be a part thereof.

“Leasehold Mortgagee” means the holder of a Leasehold Mortgage.

“Legal Requirements” means all laws, statutes, codes, acts, constitutions, ordinances, judgments, decrees, injunctions, orders including court orders, resolutions, rules, regulations, permits, licenses, authorizations, administrative orders, opinions, decisions, and other requirements of any governmental authority with jurisdiction over the Property.

“Master Agreement” means that certain United States Department of Transportation Federal Transit Administration Master Agreement dated November 2, 2022, for Federal Transit Administration Agreements authorized by 49 U.S.C. chapter 53 and Title 23, United States Code (Highways), as amended by the Infrastructure Investment and Jobs Act of 2021, the Fixing America’s Surface Transportation (FAST) Act, the Moving Ahead for Progress in the 21st Century Act (MAP-21), the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), the SAFETEA-LU Technical Corrections Act of 2008, or other federal laws that FTA administers, as the same may be amended and supplemented from time to time.

“Master Developer” means the developer to be selected by Tenant to design and construct the Development in accordance with the ILA and the Development Agreement. In the event the initial Master Developer is replaced by another developer selected by Tenant to design and construct the Development in accordance with the ILA and the Development Agreement, then “Master Developer shall then mean such substituted developer.

“Offer” has the meaning set forth in Section 16.21.

“Permitted Exceptions” means all recorded documents which are valid and subsisting and affect title to the Property as of the Effective Date.

“Pre-Development Period” shall mean the sixty (60) months following the Effective Date, during which Tenant shall be performing some or all of the following activities: finalizing the Development Agreement selection, survey/platting, securing entitlements, financing, completion of permitting, and commencement of construction.

“Property” means the approximately 5.5 acres of land located in the immediate vicinity of the Addison Station, depicted in Exhibit A attached hereto.

“Property Value” means the as-developed fair market value of the Property, as determined through the Property Valuation Process set out in Section 3.2.

“Property Valuation Process” means the process for determining the Property Value, set out in Section 3.2.

“Remedial Work” has the meaning set forth in Section 14.1.

“**Rent Reduction Percentage**” has the meaning set forth in Section 11.3.

“**ROFR Election Notice**” has the meaning set forth in Section 16.21.

“**Security Device**” has the meaning set forth in Section 12.3(b).

“**Taxes**” means taxes, general and special assessments and other public charges of every description levied or assessed against the Property, any personal property located on the Property, and the Leasehold and which are attributable to the Term following the Rent Commencement Date.

“**Tenant Parties**” mean Tenant and Tenant’s officers, directors, agents, employees, contractors, partners and lenders of Tenant.

“**Tenant’s Adjoining Property**” means the approximately _____ acre tract depicted on Exhibit A attached hereto.

“**Term**” means the Initial Term, First Extension Term (if applicable), and Second Extension Term (if applicable), collectively.

“**Third-Party Purchaser**” has the meaning set forth in Section 16.21.

“**TOD Policy/Guidelines**” means the DART Transit Oriented Development Policy, as amended in February 2020 by DART Board Resolution No. 200033 and the DART Transit Oriented Development guidelines published in September 2020, attached hereto as Exhibit C.

ARTICLE 2 Grant of Term

2.1. Grant.

For and in consideration of the mutual covenants and agreements contained herein, subject to the Permitted Exceptions, Landlord hereby grants and leases to Tenant, and Tenant hereby takes and leases from Landlord, the Property, TO HAVE AND TO HOLD the Property, together with the rights, privileges, and appurtenances thereto, exclusively unto Tenant and its successors and permitted assigns, for the Term, on the terms and conditions set forth in this Lease. Landlord shall WARRANT AND FOREVER DEFEND unto Tenant and its successors and permitted assigns the Leasehold against every Person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under Landlord, but not otherwise, subject to the Permitted Exceptions and easements and other rights contained in and/or arising pursuant to the Development Agreement. Landlord will deliver actual possession of the Property under this Lease to Tenant on the Effective Date.

2.2. Term.

Initial Term. The initial term of this Lease (the “**Initial Term**”) shall commence upon the expiration of the Pre-Development Period and continue for forty-nine (49) full calendar years.

First Extension Term. Tenant may extend this Lease for a period of twenty-five (25) full calendar years (the “**First Extension Term**”), commencing on the day immediately following the day of expiration of the Initial Term, by providing written notice to Landlord no later than ninety (90) days before the expiration of the Initial Term. Tenant may not have a default that remains uncured after the expiration of all applicable notice and cure periods as of the time of the extension.

Second Extension Term. Tenant may extend this Lease for a period of twenty-five (25) full calendar years (the “**Second Extension Term**”), commencing on the day immediately following the day of expiration of the First Extension Term, by providing written notice to Landlord no later than ninety (90) days before the expiration of the First Extension Term. Tenant may not have a default that remains uncured after the expiration of all applicable notice and cure periods as of the time of the extension.

2.3. “AS IS” Condition.

Tenant accepts the Property “AS IS, WHERE IS, AND WITH ALL FAULTS”. Landlord makes no representations or warranties as to the condition of the Property and Landlord expressly disclaims all such representations and warranties. Tenant represents and warrants to Landlord that it has made its own inspections and investigations of the Property and is not relying on any representations or warranties from Landlord. Tenant’s obligation to pay rent (without offset, credit, abatement or other reduction) and perform its other obligations under this Lease is not dependent upon the condition of the Property or its suitability for any particular purpose.

After the Effective Date, as between Landlord and Tenant only, Tenant ASSUMES THE RISK of liability or expense for environmental problems, even if arising from events before the Effective Date, regardless of whether the environmental problems were known or unknown at the Effective Date. Upon the Effective Date, Tenant RELEASES Landlord from any liability for environmental problems affecting the Property, including liability under Environmental Laws, excluding any Claims resulting directly from the acts or omissions of a Landlord Party after the Effective Date. For clarity, in no event shall Tenant be deemed to have assumed any liability to any third parties for any environmental problems that arise from events occurring before the date Tenant is given possession of the Property.

2.4. Reservations by Landlord.

Landlord expressly reserves the right to proceed with the construction, operation and maintenance of its public transit system, including rail, bus, and ancillary facilities in the Landlord’s right-of-way adjacent to the Property or in any property (other than the Property) owned or used by Landlord in the vicinity of the Property. Tenant recognizes and acknowledges that the activities of Landlord may cause noise, vibrations, fumes, deposits of dust, fuel particles incident to normal operations, interference with sleep and other activities, and any other nuisance in connection with any of the foregoing. It is understood by Tenant that Landlord may proceed with the construction, operation and maintenance of its public transit system in Landlord’s right-of-way adjacent to the Property or in any property owned or used by Landlord in the vicinity of the Property without building, installing or otherwise providing any noise or vibration reduction or mitigation structures or improvements, except as may be consistent with good construction and transit operation practices. Should Tenant or Master Developer determine that additional noise or vibration

reduction or mitigation is required in connection with the use and operation of the Property by Tenant and/or Master Developer, Landlord agrees to reasonably cooperate with Tenant and Master Developer in the implementation of such noise or vibration reduction and mitigation, to the extent the normal operation of Landlord's public transit system is not adversely impacted in any material respect. Tenant and Master Developer shall be responsible for the payment of the additional out of pocket costs incurred by Landlord in connection with the implementation of the additional noise or vibration reduction or mitigation required by Tenant or Master Developer. By acceptance of this Lease, Tenant RELEASES, DISCHARGES and FOREVER ACQUITS Landlord, its successors, assigns and affiliates, and their respective directors, officers, agents, contractors, successors and assigns, from all liabilities claims, demands and causes of action now existing or that may hereafter arise for damage, loss or injury to the Property or any Improvements thereon or to any person occupying the Property or the Improvements thereon due to any noise, vibration, fumes, deposits of dust, fuel particles incidental to the normal operation of a public transit system, interference with sleep and other activities, or any other nuisance in connection with any of the foregoing resulting from the use of Landlord's or any affiliate of Landlord's property for the normal operation of a public transit system (including, without limitation, for construction, installation, operation and maintenance). Landlord agrees to at all times operate its public transit system in compliance with all applicable laws, codes and ordinances.

ARTICLE 3 Annual Base Rent and Net Lease

3.1. Manner and Timing of Payment.

No Annual Base Rent shall be due or payable until the date (the "**Rent Commencement Date**") that is the first to occur of the following: (i) sixty (60) months after Effective Date ("**Pre-Development Period**"), (ii) the date Landlord's ability to use the transit facilities located on the Property is materially and adversely impacted by development or construction activities unless alternate transit facilities reasonably comparable to Landlord's current transit facilities are provided by Tenant for Landlord's use within reasonable proximity to the current transit facilities; and (iii) the date of issuance of a Certificate of Occupancy for the first building completed by Tenant or Master Developer on the Property. Annual Base Rent shall be payable to Landlord in equal monthly installments, beginning on the Rent Commencement Date. For clarity, Annual Base Rent shall not be payable prior to the Rent Commencement Date.

Throughout the Term, Landlord shall be responsible for the payment of all expenses relating to its transit operations. Landlord may continue to collect, for its own account, all rent and other revenue from the Bowman Building (identified on Exhibit A) and other areas of the Property currently leased by Landlord to third parties, if any, until the Rent Commencement Date. All operating and capital expenses incurred prior to the Rent Commencement Date shall be Landlord's responsibility.

3.2. Amount of Annual Base Rent.

Within ninety (90) days of Landlord and Tenant's approval of the final site plan for the Development, the Parties shall determine Annual Base Rent for the first five (5) years following the Rent Commencement Date by multiplying the Property Value, as determined by the Property Valuation Process set out below, by four percent (4%); *provided, however*, if the Rent

Commencement Date occurs prior to the Parties' determination of the Annual Base Rent, then Annual Base Rent will begin accruing on the Rent Commencement Date but shall not be due and payable to Landlord until the Parties' have conducted the Property Valuation Process and determined the Annual Base Rent. Tenant shall promptly pay all accrued Annual Base Rent due to Landlord upon determination of the Annual Base Rent.

Adjustment to Annual Base Rent. In the event the Improvements actually being constructed on the Property represent a significant departure from the improvements set forth in the Development Agreement, either Party shall have the option to require an adjustment of Annual Base Rent by providing written notice to the other Party.

Following written notice requiring an adjustment of the Annual Base Rent, the Parties shall determine the as-developed fair market value of the Property ("**Property Value**") through the following process ("**Property Valuation Process**"):

- (a) Landlord and Tenant shall jointly select an appraiser and Master Developer shall select an appraiser to determine the Property Value, taking into consideration the "as stabilized" value of all improvements to be constructed on the Property according to Master Developer's development plan, any property dedicated solely to Landlord, and Landlord's operational and infrastructure requirements outlined in Exhibit B. For clarity, the value of the improvements shall not be included in the Property Value except as such improvements may increase the value of the land.
- (b) If the higher of two (2) appraisals does not exceed the lower appraisal by more than five percent (5%), the Property Value shall be the average of the two (2) appraisals. If the difference in the respective determinations of Property Value is greater than five (5%), the two (2) appraisers shall jointly select a third appraiser and the determination of the Property Value shall be made by such third appraiser.

The Property Value, as determined by the Property Valuation Process, shall be binding on the Parties.

Periodic Adjustments to Annual Base Rent. Annual Base Rent shall be adjusted using the Property Valuation Process no later than (i) 180 days preceding the expiration of the fifth (5th) year following the Rent Commencement Date and every tenth (10th) year thereafter, and (ii) 180 days preceding the commencement of the First Extension Term and Second Extension Term (if exercised), respectively, and every tenth (10th) year thereafter; provided, however, Annual Base Rent shall never be periodically adjusted by less than two percent (2%) per year (on a non-cumulative, non-compounding basis) nor by more than three percent (3%) per year for the period since the most recent Annual Base Rent adjustment.

3.3. Net Lease.

Annual Base Rent shall be payable to Landlord on an absolute net basis; accordingly, Tenant agrees to pay all operating and capital expenses in connection with the operation, maintenance, repair, restoration, use or occupation of the Property including the costs, charges and assessments related to utilities, taxes, and insurance (subject only to Landlord's obligations with respect to all operating expenses related to Landlord's transit operations, including operation of

any dedicated patron parking, bus lane pavement, the transit platform and rail lines), without offset for any reason or cause whatsoever. Nothing contained in this Lease shall require Landlord to furnish to Tenant or any other occupant of the Property any water, sewer, gas, heat, electricity, light, power, or any other facilities, labor, materials, or services of any kind whatsoever.

3.4. Utilities.

From and after the Rent Commencement Date, Tenant shall pay or cause to be paid when due any and all charges for water, electricity, gas, storm sewer, sanitary sewer, sewage, waste, utility installations and connections, trash and garbage disposal, cable television, telephone, internet access and other utility services furnished to the Property (excluding charges for any utilities provided for Landlord's transit operations, which charges shall be paid by Landlord).

3.5. Taxes.

Tenant shall pay, or cause to be paid, to the appropriate taxing authority all taxes, general and special assessments and other public charges of every description (collectively called "Taxes") levied on or assessed against the Property, any personal property located on the Property (other than personal property of Landlord located on the Property) and the Leasehold which are attributable to the Term following the Rent Commencement Date. Tenant shall pay, or cause to be paid, the Taxes, or any installment thereof if permitted to be paid in installments, before the day on which any interest or penalty is imposed upon such payment whether belonging to or chargeable against Landlord or Tenant. Tenant shall not be required to pay, and the term "Taxes" shall not include, any income, estate, gift, inheritance, transfer, capital levy franchise profits or similar tax that may be payable by Landlord or any tax measured by or based on the net income of Landlord. Landlord confirms that Landlord is not currently subject to tax under applicable state or federal laws, and Landlord shall use diligent efforts to preserve such tax status throughout the Term.

Tenant and Landlord shall act in cooperation to attempt to (i) cause the Property and the Leasehold to be carried on the assessment records and tax rolls separate from other property owned by Landlord, and (ii) cause the bills for Taxes to be issued directly to Tenant rather than Landlord. A copy of the bill for Taxes shall be furnished by Tenant to Landlord promptly upon receipt of the same and evidence of payment in full shall be sent to Landlord at the time Tenant pays such bill to the taxing authorities. If received by Landlord, Landlord shall furnish all tax bills relating to the Property and the Leasehold to Tenant promptly upon receipt. Upon Landlord's written request, Tenant shall promptly furnish to Landlord receipts indicating payment, the certification of Tenant's chief financial officer, or other reasonable proof that Taxes have been paid.

Tenant shall use commercially reasonable efforts to cause the Improvements on the Property to be assessed and taxed as a tax parcel separate and apart from the Property.

3.6. Late Payment.

If any Annual Base Rent payment is not made when due, and if such failure continues for a period of ten (10) days after Tenant's receipt of written notice of such failure, then a late payment fee in an amount equal to three percent (3%) of the amount of such Annual Base Rent shall be owed and paid by Tenant to Landlord together with such payment of Annual Base Rent and such payment of Annual Base Rent shall also bear interest, prorated on a daily basis, at the Default Rate,

from the due date until paid. Late payment fees and interest shall be due on late payments without any notice and regardless of whether or not a Default or an Event of Default ever occurs with respect thereto.

ARTICLE 4

Early Termination Without Default

4.1. Early Termination by Landlord.

Landlord may terminate this Lease in the event construction has not commenced on the Property within sixty (60) months after the Effective Date. In addition, Landlord may terminate this Lease with respect to the platted lot upon which the Bowman Building is located, as shown on Exhibit A attached hereto, if construction has not commenced on such lot within ten (10) years after the Effective Date, in which case the Annual Base Rent shall be equitably adjusted by the Parties to account for the part of the Property released from this Lease.

Landlord does not, by reason of this Section 4.1, waive any right to assert a cause of action or counterclaim against Tenant for its breach of this Lease.

4.2 Early Termination by Tenant.

In the event Tenant is unable to enter into the Development Agreement or subleases with Master Developer within forty-eight (48) months after the Effective Date, Tenant may terminate this Lease by providing written notice to Landlord.

Except as expressly provided in this Section 4.2 or as may otherwise be expressly set forth in this Lease, Tenant shall not have any right to terminate this Lease during the Term. The obligations of Tenant under this Lease shall be separate and independent covenants and agreements. Annual Base Rent and all other sums payable by Tenant hereunder shall continue to be payable in all events, and the obligations of Tenant under this Lease shall continue unaffected until this Lease has been terminated pursuant to this Article 4 or another section of this Lease pursuant to which Tenant has the right to terminate this Lease.

ARTICLE 5

Use Provisions and Maintenance

5.1. Permitted Uses.

Tenant and all subtenants, sub-subtenants, licensees and concessionaires may only use the Property as part of a mixed use transit-oriented development consistent with the DART Transit Oriented Development Policy, as amended in February 2020 by DART Board Resolution No. 200033 and the DART Transit Oriented Development guidelines published in September 2020, attached as Exhibit C hereto, including without limitation, mid- to high-density urban mixed use development supporting office, residential, entertainment, retail and maker space uses, public and private parking requirements, and specialized transit infrastructure requirements of Landlord that are associated with the operations of bus, rail and ancillary facilities at Addison Station. The permitted use of the Property must be consistent with a best-in-class transit-oriented urban mixed-

use development in terms of density and mix of uses and is subject to and conditioned on Landlord's reservations set out in Section 2.4.

Tenant shall ensure that Master Developer and all other subtenants comply with, at a minimum, the operational and infrastructure requirements for continuation of Landlord's transit services and public accommodation on the Property, as described in Exhibit B attached hereto, at all times. Any modification or improvement to the Property that directly and adversely impacts Landlord's operational needs, as described in Exhibit B attached hereto, shall be subject to the review and approval of Landlord in advance, which approval shall not be unreasonably withheld, delayed, or conditioned.

The Property shall not be used for any of the noxious uses described in Exhibit B attached hereto, for mini-storage or mini-warehouse purposes, or for a stand-alone parking garage that is not integrated into the Development to provide parking support for a hotel, office building, retail building, transit center or other building on the Property.

5.2. Compliance with Legal Requirements.

Tenant shall obey, perform and comply, and shall cause the Property to comply, with any and all Legal Requirements existing at any time during the Term in any way affecting the Property, or the use or condition thereof, including the construction, alteration or demolition of the Improvements, or in any other way affecting this Lease. Tenant shall not permit or suffer the Property to be used in any manner which violates applicable Legal Requirements. Tenant shall have the right to contest in good faith the validity of any such Legal Requirements. Tenant shall at its sole expense and risk obtain any and all licenses and permits necessary for its use of the Property. Upon request of Tenant, Landlord will join in the applications for any such licenses and permits or otherwise as necessary to comply with the Legal Requirements, provided Landlord shall not be required to incur or pay any costs or expenses in connection therewith.

Tenant shall observe, perform and comply with, and cause the Property to comply with, and carry out the Permitted Exceptions and any covenants, restrictions or agreements affecting the Property and the Leasehold, or either, which are hereafter created by or consented to by Tenant, including the payment of any fines, assessments, expenses, or other costs.

Landlord shall at all times observe, perform and comply with all Legal Requirements applicable to Landlord's transit operations.

5.3. Maintenance, Repair and Replacement Generally.

During the Term, Tenant shall maintain, repair and replace the Property and each part thereof so that the same is in good and safe condition and repair and sightly in appearance as compared to other first-class comparable projects in the vicinity of the Property, normal wear and tear and damage from casualty and condemnation excepted. If Tenant fails to perform maintenance or promptly make the repairs or replacements as required in this Section 5.3, and if such failure continues for thirty (30) days after Tenant's receipt of written notice of such failure, Landlord may, at Landlord's sole option, perform maintenance or make such repairs or replacements, and the actual, out of pocket cost of such maintenance or repairs and replacements will be charged to Tenant as Additional Rent and will become due and payable by Tenant within

ten (10) days after demand therefor by Landlord. Tenant must maintain the Land and the Improvements in a clean, orderly and sanitary condition and must not commit or allow any waste to be committed on any portion of the Property. Tenant will repair or replace, at Tenant's cost, any damage to the Property or the Improvements, regardless of the cause of such damage, subject to the terms of Articles 10 and 11. Notwithstanding anything to the contrary set forth above or otherwise, in no event shall Tenant or Master Developer have any obligation to maintain or repair the facilities relating to Landlord's public transit operations, including Landlord's dedicated patron parking, bus lanes, rail lines and Landlord's transit platform, all of which shall be maintained, repaired and replaced by Landlord, at Landlord's sole cost and expense, in good and safe condition and repair and sightly in appearance as compared to other comparable public transit projects in the vicinity of the Property, normal wear and tear and damage from casualty and condemnation excepted.

5.4. Nondiscrimination.

Tenant shall not engage in, and Tenant shall require that Master Developer and any other subtenant, not engage in, any discrimination against or segregation of any person or group of persons on account of race, color, national origin, religion, sex, sexual orientation, age, disability, marital status, ancestry, genetic information, or veteran status in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any part thereof, and Tenant shall not establish or knowingly permit any such practice or practices of discrimination or segregation.

ARTICLE 6 Improvements

6.1. Tenant Improvements and Development Responsibilities.

Tenant shall have the right to tear down, raze or remove Improvements upon the Property in accordance with the provisions of this Lease, the ILA, and the Development Agreement. Tenant acknowledges and agrees that it has no rights under this Lease, the ILA, the Development Agreement or otherwise to construct any Improvements or facilities that will interfere in any material way with Landlord's transit system (including electrical systems or underground utilities) or the use thereof by the public.

Tenant shall be responsible for oversight of Master Developer (and any subsequent Master Developer), including ensuring that Master Developer: appropriately accommodates Landlord's ongoing operational and infrastructure requirements associated with the Addison Station in the transition of the Property to commercial development uses; and complies with Exhibits B and C, attached hereto.

Tenant shall ensure that any Improvements on the Property preserve, at a minimum, the levels of service provided in the DART January 2022 Service Changes and Bus Network Plan, approved on August 24, 2021, by DART Board Resolution No. 210124. This requirement may be met by the introduction of additional acreage or other means and is not restricted solely to operations at the Property.

6.2. Capital and Operational Expenditures.

Tenant shall be responsible for ensuring Master Developer, as subtenant, pays all expenditures related to the Development and Improvements on the Property, including all property management, leasing, maintenance, repair, insurance and taxes, all capital expenditures for infrastructure, grounds, and facility modifications and replacements, and any incremental costs attributable to Legal Requirements enacted in the future. Tenant shall also ensure Master Developer pays all costs related to all off-site and infrastructure contributions or agreements required by any governmental authority or adjoining property owner in order to complete the Development. Tenant shall use commercially reasonable efforts to enforce Master Developer's compliance with these obligations.

Landlord shall be responsible for all capital expenditures relating to the construction and installation of its rail line (including the track and platform), ticket kiosks, informational boards, and all operating expenses related to Landlord's transit operations.

The terms of this Section 6.2 shall not be applicable to any portions of such Improvements damaged or destroyed by a Casualty and restored as later provided in this Lease.

6.3. Landlord Review of Plans and Specifications; Inspections.

Tenant shall deliver to Landlord preliminary plans and specifications for the Improvements (on an "as completed" basis). Landlord shall be afforded ten (10) days to review the plans and specifications for the sole purpose of verifying that the Improvements conform to the TOD Policy/Guidelines and that the Improvements do not directly and adversely affect Landlord's operational needs as outlined on Exhibit B attached hereto and that, to the extent applicable and required under the terms of the Master Agreement, the Improvements comply with the Master Agreement (such matters, collectively, the "**Compliance Matters**"). In the event Landlord disapproves of the plans and specifications for the Improvements as non-conforming, then, Landlord and Tenant shall promptly, reasonably, and in good faith work to resolve any dispute as to the conformity of the Improvements with respect to the Compliance Matters. For clarity, in no event shall Landlord have any right to review or approve any plans or specifications for any Improvements, except to the limited extent set forth above in this Section 6.3 with respect to the Compliance Matters.

Any review of any plans and specifications for the Development shall be solely for the benefit and protection of Landlord and may not be relied on by Tenant (and not any third party) for any reason or purpose whatsoever. Landlord's review of any such drawings, plans and specifications by Landlord shall not be any representation, confirmation or certification that such drawings, plans or specifications comply with any Legal Requirements, the Development Agreement or any other Permitted Exceptions.

Landlord may, at all reasonable times, inspect the Improvements (provided Landlord does not unreasonably interfere with the work being performed by Tenant or any contractors or subcontractors, and complies with each contractor's customary job site requirements). If Landlord shall give written notice of faulty construction or any other deviation from the requirements of the ILA or Development Agreement, Tenant shall use commercially reasonable efforts to cause the contractors to make corrections promptly. However, neither the privilege herein granted to

Landlord to make such inspections, nor the making of such inspections by Landlord, shall operate as a waiver of any rights of Landlord to require good and workmanlike construction and Improvements constructed in accordance with the requirements of the Development Agreement and any applicable drawings, plans, specifications, construction documents or other documents. Any inspections made at any time by Landlord of the Improvements shall be solely for the benefit and protection of Landlord and may only be relied on by Tenant (and not any third party) to evidence Tenant's satisfaction of its obligation to allow Landlord the right to inspect the Improvements.

6.4. Landlord Responsibilities and Reservations.

Landlord shall work in a collaborative and timely manner with Tenant and Master Developer in planning and design construction activities, in particular as those pertain to interactions with the North Central Texas Council of Governments, Texas Department of Transportation, FTA and other relevant state or federal agencies. Landlord shall also provide assistance with the location of electric power, on-location permits and fiber access, when available and as may be mutually agreeable.

Landlord expressly reserves the right to redevelop and rebuild its operational and infrastructure improvements at any future date as long as Landlord pays all costs of doing so; however, in no event shall any such redevelopment or rebuilding adversely affect any other portions of the Development, including any other buildings or parking areas on the Property, except to the extent necessary for Landlord's continued compliance under the Master Agreement or approved by Tenant, which approval may be given or withheld by Tenant in Tenant's sole and absolute discretion.

6.5. Mechanic's Liens.

Tenant shall be responsible for ensuring that the Property (other than the leasehold interest of any subtenant) is free and clear of all liens. Should a lien or claim of lien be filed against the Property or any part thereof or any interest therein (other than the leasehold interest of any subtenant) or any interest of Landlord therein by any contractor, subcontractor, mechanic, laborer, materialman or any other person (other than a Mortgagee of Landlord's interest in the Land or this Lease) claiming by, through or under Tenant, Tenant shall, within thirty (30) days after notice of the existence of a lien, cause the same to be discharged of record by payment, bond or otherwise. In no event shall Tenant have any responsibility for liens arising by, through, or under Landlord.

Notwithstanding the foregoing, Tenant and other persons shall have the right to contest the amount or validity of any such lien or claim of lien by appropriate proceedings. In such event, Tenant shall, within thirty (30) days after notice of the existence of a lien from Landlord, bond or cause to be bonded such lien by a statutory bond in the manner provided by Section 53.171 of the Texas Property Code (or any comparable provision in the future) with a responsible surety company licensed to do business in Texas to prevent foreclosure against the Property or any part thereof or any interest therein (other than the leasehold interest of any Subtenant) under such lien or claim of lien. Tenant shall prosecute (or cause to be prosecuted) such proceedings with due diligence and dispatch.

Nothing in this Lease and no action or inaction by Landlord shall be deemed or construed to mean that Landlord has granted to Tenant any right, power or permission to do any act or to make any agreement which may create, give rise to, or be the foundation for, any right, interest, claim or lien in or upon the estate of Landlord in any of the Property.

6.6. Title to Improvements.

Title to any and all Improvements constructed by Tenant on the Property shall be and remain in Tenant during the Term, and title to any and all Improvements constructed by Master Developer on the Property shall be and remain in Master Developer during the term of the sublease between Tenant, as sublessor, and Master Developer, as sublessee. Upon the expiration or earlier termination of the Term, title to all Improvements, and all then-in-force warranties and guarantees for any Improvements, shall automatically pass to, vest in and belong to Landlord without further action on the part of any Tenant or any person. Upon Landlord's request, Tenant shall reasonably cooperate with Landlord to cause such then-in-force warranties and guarantees to be transferred to Landlord at Landlord's expense. During the Term, Tenant and Master Developer, respectively, as applicable, shall be entitled to claim depreciation on the Improvements for all taxation and accounting purposes.

6.7. Removal of Improvements by Landlord.

Neither Landlord nor any person claiming by, through or under Landlord shall have the right during the Term to remove, demolish, construct, alter, maintain, repair or add to any Improvements.

6.8. "As-Built" Construction Plans.

Upon substantial completion of any Improvements constructed on the Property, Tenant shall deliver, or shall require Master Developer to deliver, to Landlord "as built" construction plans of such Improvements within thirty (30) days after substantial completion of such Improvements.

ARTICLE 7 Assignments and Subleases

7.1. Landlord Consent.

Tenant may sublease the Property to Master Developer without any consent of Landlord being required; provided, however, Landlord shall be afforded at least fifteen (15) business days to review the sublease agreement for the sole purpose of confirming it does not conflict with this Lease, the Master Agreement, or the ILA. In the event Landlord reasonably and in good faith determines that a sublease conflicts with this Lease, the Master Agreement, or the ILA, then Landlord and Tenant shall promptly, reasonably, and in good faith work to resolve the disapproval. Master Developer shall have the right to sub-sublease and license and enter into concession agreements for all or parts of the Property consistent with the uses contemplated under the Development Agreement without any consent of Landlord being required. Master Developer, as a subtenant, shall have the same rights as those available to a Leasehold Mortgagee pursuant to the provisions of Article 8 below.

Other than a sublease with Master Developer, Tenant shall not otherwise have the right to sublease this Lease without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

Tenant shall not have the right to assign this Lease without the prior written consent of Landlord, which consent shall not be unreasonably withheld, delayed or conditioned; provided, however, Landlord's consent is not required for the acquisition by any Leasehold Mortgagee or its designee of the Leasehold through the exercise of any right or remedy of such Leasehold Mortgagee under a bona fide Leasehold Mortgage, including any assignment of the Leasehold to the Leasehold Mortgagee or its designee made in lieu of foreclosure.

7.2. Conditions to Assignments and Subleases.

Tenant shall not have the right to assign or sublet this Lease at any time that an Event of Default has occurred and has not been cured. Further, the following requirements shall apply to all assignments (irrespective of whether Landlord's prior written consent is required):

(a) Tenant must, in the case of an assignment of this Lease, deliver an instrument to Landlord in recordable form pursuant to the terms of which the assignee of Tenant's interest in this Lease assumes all of the burdens, terms, covenants, conditions and obligations of Tenant hereunder accruing from and after the date of such an assignment;

(b) Notwithstanding any assignment of this Lease, Tenant shall remain liable for all obligations and liabilities which have arisen or accrued prior to and after such assignment under this Lease. Further, upon any assignment of this Lease (whether or not the assignor and assignee have entered into an assignment agreement as hereinabove provided), the assignee thereunder shall be deemed automatically to have assumed all obligations and liabilities of Tenant accruing from and after the effective date of such assignment. The assignee and Tenant will be jointly and severally liable under the Lease for obligations and liabilities accruing from and after the date of such assignment;

(c) Tenant shall give Landlord at least fifteen (15) business days prior written notice of any such proposed assignment, together with the agreements relating to the assignment, and Landlord shall have the right to approve the form of such agreements and the assignee which shall not be unreasonably withheld, delayed or conditioned; such agreements shall include Tenant's representation that, after diligent search, to its current, actual knowledge, no event or circumstance exists or would exist on the effective date of the assignment that, with the giving of notice and passage of time, would constitute an Event of Default under this Lease. Tenant shall pay all reasonable, out of pocket attorneys' fees and expenses incurred by Landlord in connection with Landlord's review of any proposed assignment; and

(d) The use of the Property by the assignee or transferee must be consistent with the terms of this Lease. All of the terms and provisions of this Lease will continue to apply after a transfer, unless otherwise expressly provided herein.

7.3. Merger, Consolidation, Etc.

Any merger, sale or transfer of ownership interests, consolidation or other business combination involving Tenant, or its Affiliates, shall be deemed an assignment of this Lease but

shall not require Landlord's consent or approval; so long as (a) no such transaction shall relieve Tenant of its liabilities or obligations under this Lease (whether accruing prior or subsequent to the effective date of such deemed assignment), (b) the successor Tenant as a result of such transaction shall be deemed to have assumed all obligations and liabilities of Tenant under this Lease, whether accrued prior or subsequent to the effective date of such transaction and (c) the provisions of Section 7.7 below shall apply in all events to any such transaction and Landlord's consent shall be required.

7.5. Invalidity.

Any assignment made in violation of the terms of this Article 7 shall be void unless Landlord, after full knowledge and information relating to the nature of the assignment and the assignee, expressly ratifies the assignment transaction in writing. Tenant's material violation of the provisions of this Article 7 which is not cured within ten (10) business days after Tenant's receipt of written notice of such violation shall constitute an Event of Default, as that term is defined below.

7.6. Subleases; Excess Rent.

Subleases for all or any portion of the Property shall provide that the rights of the subtenant thereunder shall be subject and subordinate to this Lease and the rights of Landlord hereunder.

In the event Tenant actually receives Annual Base Rent under one or more subleases which is in excess of the Annual Base Rent then payable by Tenant under this Lease, such excess Annual Base Rent shall be shared fifty percent (50%) by Tenant and fifty percent (50%) by Landlord. Property taxes, sales taxes, and other tax receipts shall not be considered base rent, nor shall any rent by Master Developer under a sublease which is rebated, credited or refunded to Master Developer by Tenant as reimbursement for development costs (such as infrastructure improvements, signalization or other public improvements).

7.7. Restriction on Transfers.

Notwithstanding anything herein to the contrary, Tenant shall not transfer this Lease or any interest in this Lease to: (a) any entity that is at that time disbarred or disqualified from performing work for any federal or Texas government entity; (b) any entity the Transfer to which would violate any laws or executive orders relating to terrorism, money laundering or otherwise result in a Transfer to a prohibited person as provided therein; (c) any entity that would interfere with Landlord's powers under Landlord's enabling legislation, cause Landlord to be in violation of Landlord's enabling legislation, or cause Landlord not to be able to receive funds from any governmental entity; (d) any entity that is competing with Landlord as a provider of mass transit services within the areas Landlord serves in any manner; and (e) any entity that would cause Landlord to be in violation of any Legal Requirements. For clarification, Landlord in no event is required to release Tenant nor shall be deemed to release Tenant from any obligations hereunder without specifically doing so in a writing executed by Landlord.

ARTICLE 8

Mortgages

8.1. Right to Finance; Unsubordinated.

Tenant and any subtenant shall have the right to encumber by one or more mortgages as security for one or more loans, indebtedness or obligations, only Tenant's right to use and occupy the Property as herein provided, the Leasehold, the subleasehold of the subtenant (if applicable), all of Tenant's or subtenant's (if applicable) right, title and interest in and to any Improvements at any time located on the Property, and any other property so affixed to the Property as to be a part thereof ("**Leasehold Mortgage**"). Any such indebtedness or obligation and any such Leasehold Mortgage shall be for such amount and on such other terms and conditions as Tenant may agree to in its sole discretion; provided that any such Leasehold Mortgage, shall at all times be subject and subordinate to Landlord's fee simple estate in the Property, the terms and provisions of this Lease and the rights, titles and interests of Landlord arising by virtue of this Lease. IN NO EVENT WILL LANDLORD BE REQUIRED TO "SUBORDINATE" LANDLORD'S FEE SIMPLE ESTATE IN THE PROPERTY OR THIS LEASE FOR FINANCING OBTAINED BY TENANT OR OTHERWISE OR ANY OTHER OBLIGATIONS OF TENANT, I.E., LANDLORD WILL NOT BE OBLIGATED (i) TO EXECUTE ANY SUBORDINATION OF ITS FEE SIMPLE ESTATE IN THE PROPERTY OR THIS LEASE OR (ii) TO EXECUTE ANY DEED OF TRUST SECURING ANY INDEBTEDNESS OF TENANT, OR OTHERWISE ENCUMBER ITS FEE SIMPLE ESTATE IN THE PROPERTY OR THIS LEASE WITH ANY LIEN SECURING ANY INDEBTEDNESS OF TENANT. Any limitations on Tenant's right to assign this Lease shall not apply to the granting of a Leasehold Mortgage by Tenant or the foreclosure (or transfer in lieu of foreclosure) of same by such Leasehold Mortgagee, but no such granting of a Leasehold Mortgage or the foreclosure (or transfer in lieu of foreclosure) of the same by such Leasehold Mortgagee shall relieve Tenant of any of its obligations under this Lease. Landlord shall recognize any transferee or assignee of the Leasehold as tenant under this Lease, and, upon any Leasehold Mortgagee's request, enter into an agreement with such Leasehold Mortgagee pursuant to which Landlord agrees to recognize the interest of any such transferee or assignee, the form of which agreement must be reasonably acceptable to Landlord and such Leasehold Mortgagee. Tenant or such Leasehold Mortgagee shall reimburse Landlord for its reasonable, out of pocket attorneys' fees incurred with the review and negotiation of each such recognition agreement.

8.2. Notices to Leasehold Mortgagee.

If at any time Tenant or a Leasehold Mortgagee notifies Landlord in writing that a Leasehold Mortgage will be given and executed by Tenant, Tenant shall furnish Landlord with the address including contact person or department and email address to which such Leasehold Mortgagee desires copies of notices to be delivered (or designate some person or corporation as the agent and/or representative of such mortgagee for the purpose of receiving copies of notices). Landlord hereby agrees that Landlord will thereafter until instructed otherwise by Tenant and such Leasehold Mortgagee but in any event for not more than fifteen (15) years from the date furnished with such address including contact person or department and email address unless such written notice is renewed prior to the expiration of such fifteen (15) years by Tenant and such Leasehold Mortgagee, in addition to any other notice Landlord shall be required by this Lease to deliver to such Leasehold Mortgagee, deliver to each such Leasehold Mortgagee or agent thereof, in the manner specified in Section 16.1 for the delivery of notices between the parties, and at the same

time that such notice is placed in the mail or otherwise delivered to Tenant, duplicate copies of any and all notices in writing which Landlord may from time to time deliver or serve upon Tenant under and pursuant to the terms and provisions of this Lease, including, but not by way of limitation, any notices of default required to be sent by virtue of Section 13.1. Nothing contained herein shall require Landlord (i) to copy such Landlord Mortgagee with routine correspondence to Tenant, but the same shall not be prohibited, or (ii) to deliver such notices to more than any two such Landlord Mortgagees so designated, but the same shall not be prohibited. Tenant hereby agrees that, absent current actual knowledge of the invalidity of a notice from a purported Leasehold Mortgagee, Landlord shall be entitled to rely upon the genuineness of any such notice from a person or entity asserting that it is a Leasehold Mortgagee and Tenant releases Landlord and agrees to hold it harmless from any and all loss, cost or damage which Landlord or Tenant may suffer by reason of sending notices pursuant to any notice it receives from a person or entity asserting that it is a Leasehold Mortgagee notwithstanding any demand by Tenant to cease sending such notice. Landlord shall have the right to send all such notices until instructed otherwise by such Leasehold Mortgagee or the expiration of the aforesaid fifteen (15) year period unless the same is renewed by such Leasehold Mortgagee by written notice to Landlord prior to the expiration of such period.

8.3. Right to Cure.

Any Leasehold Mortgagee, at the option of such Leasehold Mortgagee, acting either directly or indirectly through a designee, may pay any of the Rents or may effect any insurance, or may pay any Impositions, or may make any repairs and improvements, or may make any deposits, or may do any other act or thing or make any other payment required of Tenant by the terms of this Lease, or may do any act or thing which may be necessary and proper to be done in the observance of the covenants and conditions of this Lease, or to prevent the forfeiture of this Lease; and all payments so made and all things so done and performed by such mortgagee or designee shall be the same as if they have been done and performed by Tenant instead of by any such Leasehold Mortgagee or designee at the time done and performed by any such Leasehold Mortgagee or designee.

From and after the date a notice pursuant to Section 8.2 has been given to a Leasehold Mortgagee, such Leasehold Mortgagee shall have the same period, after the giving of such notice upon it, for remedying any Default or acts or omissions which are the subject matter of such notice, or causing the same to be remedied, as is given Tenant after the giving of such notice to Tenant to remedy, commence remedying or cause to be remedied the Defaults or acts or omissions which are specified in such notice. Landlord shall accept such performance by or at the instigation of such Leasehold Mortgagee as if the same had been done by Tenant. Tenant authorizes each Leasehold Mortgagee to take any such action at such Leasehold Mortgagee's option and Landlord (but only to the extent authorized by this Lease to do so) and Tenant does hereby authorize entry upon the Property by the Leasehold Mortgagee for such purpose.

8.4. No Liability.

No Leasehold Mortgagee of the rights or interests of Tenant hereunder shall be or become liable to Landlord as an assignee of this Lease or otherwise, unless such Leasehold Mortgagee or designee succeeds to the rights or interests of Tenant, through foreclosure, transfer in lieu of foreclosure, or expressly assumes by written instrument such liability, in which event such

Leasehold Mortgagee shall be liable to Landlord to the extent set forth in this Lease for the obligations of Tenant accruing during the period of such Leasehold Mortgagee's ownership of the Leasehold. Nothing contained in this Section 8.4, however, shall diminish or in any manner limit Landlord's rights and remedies set forth in Section 13.2 against Tenant, or to enter upon the Property and do whatever Tenant is obligated to do under the terms of this Lease.

8.5. Modifications to Lease.

Landlord shall not agree to any termination, written modification, or amendment of this Lease without the prior written consent thereto by the Leasehold Mortgagee to whom Landlord is to deliver notices pursuant to Section 8.2, and any attempt to do so without such written consent shall be void and of no force and effect. Notwithstanding the foregoing, nothing contained herein shall diminish Landlord's ability to pursue its rights hereunder (including, without limitation, termination of this Lease) upon an Event of Default by Tenant under this Lease.

Landlord agrees to give consideration to any request by a Leasehold Mortgagee or prospective Leasehold Mortgagee to modify this Lease from time to time for the purpose of incorporating herein such additional mortgagee protective provisions as may be reasonably requested by any such Mortgagee, provided (i) Landlord will not be obligated to accept any modifications requested, and (ii) Tenant shall pay any reasonable, out of pocket legal fees incurred by Landlord in connection with any such request, regardless of whether or not the request results in any modifications.

8.6. Rights Cumulative.

All rights of a Leasehold Mortgagee under this Lease shall be cumulative. Leasehold Mortgagees only have third party beneficiary rights to the extent provided in Article 8.

ARTICLE 9 Insurance and Indemnity

9.1. Property Insurance.

Tenant will secure and maintain during the Term, and shall require Master Developer to secure and maintain during the term of each sublease, insurance on the Improvements against loss or damage by fire and any other risk now and from time to time insured against by "all risk" property insurance policies generally in force on improvements of like type in Dallas County, Texas (and/or by builder's risk insurance during construction) in amounts sufficient to provide coverage for the Full Insurable Value of the Improvements. The policy for such insurance shall have a replacement cost endorsement or similar provision. "Full Insurable Value" means actual replacement cost value of buildings, equipment, and personal property (exclusive of cost of excavation, foundations, and footings below the surface of the ground or below the lowest basement level and other items not customarily insurable under all risk policies from time to time).

9.2. Liability and Workers' Compensation.

Tenant shall secure and maintain during the Term, and shall require Master Developer to secure and maintain during the term of each sublease: (1) commercial general liability insurance, including contractual liability specifically applying to the provisions of this Lease and completed operations liability, with limits of not less than \$5,000,000 per occurrence, \$5,000,000 general aggregate, and \$5,000,000 products-completed operations aggregate, with respect to bodily injury or death and property damage to any number of persons in any one accident or occurrence; (2) excess liability insurance with limits not less than \$10,000,000 per occurrence; (3) and workers' compensation with statutory limits in accordance with the State of Texas, and employer's liability insurance with limits of \$1,000,000 bodily injury per accident, \$1,000,000 bodily injury by disease per person, and \$1,000,000 bodily injury by disease policy limit. Every fifth (5th) Lease Year during the Term, Landlord may from time to time, upon not less than thirty (30) days prior written notice, during the Term require Tenant to carry greater amounts of insurance and different types of insurance than set forth above, provided that such greater amounts and different types are commercially reasonable and normally and customarily carried by owners or operators of structures similar to the Improvements that comprise the Property. All policies of insurance shall have a reasonable deductible similar to those in insurance policies carried by owners or operators of structures similar to the Improvements in Dallas, Texas.

9.3. Policies.

All insurance required by this Lease must:

(a) be provided by an insurance company licensed to do business in the State of Texas at the time the policy is issued and shall be written with an A.M. Best's rating of not less than A-:VII (or in the future a comparable rating by a comparable company if A.M. Best no longer publishes such ratings);

(b) with respect to Property insurance, be carried in the name of Tenant, Master Developer, any Leasehold Mortgagees, as their interests may appear; and with respect to Liability insurance, be carried in the name of Tenant, Master Developer, any Leasehold Mortgagees, with Landlord, and any mortgagee of the fee estate added as additional insureds, as their interests may appear;

(c) be reasonably satisfactory to Landlord and any mortgagee of the fee estate;
and

(d) as regards all additional insureds, they shall each be timely furnished by Tenant, from time to time, as appropriate, a certificate of insurance issued by the insurance carrier, or broker, certifying, and including copy of policy endorsements, that each such person is an additional insured, on a primary and non-contributory basis, with a waiver of subrogation in its favor, and shall receive at least thirty (30) days advance written notice of policy cancellation or modification.

9.4. Indemnity.

To the extent allowed by applicable Legal Requirements, Tenant shall require that Master Developer, for itself and on behalf of its general contractors and all other subtenants indemnify, defend and hold Landlord Parties and Tenant Parties harmless from third-party claims arising from the Development and the construction, use, operation, maintenance, repair, and replacement of Improvements on the Property, except for claims solely and directly arising from Landlord's transit operations or any capital improvement projects by Landlord that may occur at the Addison Station.

To the extent allowed by law, Tenant WAIVES and RELEASES, and shall require that Master Developer, for itself and on behalf of its contractors and subcontractors, and all other subtenants WAIVE and RELEASE, any and all claims for injury, death, or damage to property against Landlord Parties arising from or related to this Agreement, except for injury, death or damage proximately caused by Landlord Parties' gross negligence.

If a Landlord Party desires to claim indemnification by Master Developer, or by its general contractor, pursuant to the provisions of this Section 9.4, such Landlord Party shall promptly deliver to Master Developer a written notice (i) stating that such Landlord Party has received a Claim which such Landlord Party believes to be a matter indemnified by such Master Developer, for itself or on behalf of its general contractors, and (ii) specifying the nature of the Claim, describing the Claim, and including with the Notice of Claim all information actually known by such Landlord Party to be in its possession or known by such Landlord Party relating to the Claim; provided, however, failure to so notify such Master Developer shall not automatically relieve Master Developer from liability, and if judicially determined to relieve Master Developer due to prejudice, Master Developer shall be so relieved only if and to the extent it is actually prejudiced thereby.

After receiving written notice of a claim, Master Developer, at its expense, must assume on behalf of the indemnified party and conduct with due diligence and in good faith the defense of the identified matters indemnified. Master Developer may contest the validity of any Claims, as it deems appropriate, but that contest does not change or limit Master Developer's obligations under this Section 9.4. The defense must be by counsel satisfactory to such Landlord Party, but such Landlord Party agrees not to unreasonably withhold, condition, or delay its approval of such counsel. A Landlord Party shall provide Master Developer prompt and complete disclosure of all pertinent information in its possession or available to it in connection with any matter indemnified by Master Developer and shall extend full and timely assistance and cooperation in the investigation of the defense of any matter indemnified by Master Developer, all at Master Developer's expense. Any final settlement by Master Developer of any action or proceeding in connection with a matter indemnified by Master Developer, for itself or on behalf of its general contractor, and which involves or includes a Claim against a Landlord Party, must be approved by such Landlord Party, which approval may not be unreasonably withheld, conditioned, or delayed. Each Landlord Party has the right, at its option, to be represented by advisory counsel of its own selection and at its own expense.

In the event of failure by Master Developer to fully perform in accordance with this indemnification within thirty (30) days after receiving written notice from such Landlord Party of such failure, or such shorter notice as the circumstances may require, and the reason(s) for such failure, each Landlord Party, at its option, and without relieving Master Developer of its

obligations under this Section 9.4, may so perform that item or items that Master Developer failed to perform for such thirty (30) day period, and Master Developer must reimburse such Landlord Party for all costs and expenses so incurred.

THE PROVISIONS OF THIS SECTION 9.4 ARE PERPETUAL AND SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS LEASE.

9.5. Landlord's Right to Pay Premiums.

Tenant must furnish to Landlord and any mortgagees of the Property or the fee estate with certificates of insurance with endorsements to evidence particulars of all insurance coverage required in this Lease; and must furnish to Landlord evidence of renewal of each policy, at least ten (10) days in advance of the then applicable expiration date of such policy. Tenant agrees that, if it or Master Developer does not furnish to Landlord evidence of renewal of each policy within the time frame required under this Lease, Landlord may notify Tenant, and if Tenant does not deliver to Landlord within ten (10) days after receipt of such notice certificates showing all such insurance to be in full force and effect, Landlord may, at its option, take out the necessary insurance to comply with the provisions of this Lease and pay the premiums on the items specified in such notice, in which event Tenant covenants within thirty (30) days after demand to reimburse and pay Landlord, as additional rent, any amount so paid or expended in the payment of the insurance premiums required in this Lease and specified in the notice, together with interest on such amount at the maximum lawful rate of interest (not to exceed 18% per annum) from the date of such payment by Landlord until repaid by Tenant. Subject to the notice requirements contained in Section 16.1 below, the failure of Tenant to reimburse Landlord any amount required pursuant this Section 9.5 constitutes an Event of Default under this Lease.

9.6. Waiver of Subrogation.

TENANT AND LANDLORD HEREBY WAIVE, and Tenant will require Master Developer to waive during the term of each sublease, any and all rights of recovery, claims, actions, and causes of action against Tenant and Landlord, or their respective directors, agents, officers, and employees, for any property loss or damage that may occur regardless of the cause or origin, whether such property loss or damage is due to the negligence of Landlord or Tenant or their respective agents, employees, contractors or subcontractors, if such property loss or damage is insured pursuant to the requirements of this Lease by valid and collectible property insurance policies and then only to the extent of the proceeds collected or collectible under such property insurance policies; provided, however, that the foregoing waiver shall not be operative in any case where the effect thereof is to invalidate any insurance coverage of the waiving party or increase the cost of such insurance coverage. Landlord and Tenant agree, and Tenant will require Master Developer to agree, to give written notice of the terms of this waiver to each insurance company which has issued, or in the future may issue, policies of physical damage, and to have said insurance policies properly endorsed to prevent the invalidation of said insurance coverage by reason of said waiver.

Landlord and Tenant covenant, and Tenant will require Master Developer to covenant during the term of the sublease, that no insurance company providing a property insurance policy shall hold any right of subrogation against Landlord or Tenant. A waiver of subrogation shall be effective even though that person would otherwise have a duty of indemnification, contractual or

otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person had an insurable interest in the property damaged. Landlord and Tenant agree that neither Landlord or Tenant has any obligation to obtain or maintain any insurance policies pursuant to this Lease.

9.7. Coverage.

All insurance described in this Article 9 may be obtained by Tenant, or Master Developer, by endorsement or equivalent means under any blanket insurance policies maintained by Tenant or Master Developer, provided that the coverage and other terms of such insurance otherwise comply with this Article 9.

9.8. Change in Coverage.

Landlord and Tenant reserve the right to review the types of insurance policies and insurance requirements set forth during the Term, and to agree upon reasonable adjustments as to insurance coverage, limits, and exclusions.

9.9. Insurance During Construction.

During the course of construction of the Development, and until Substantial Completion of the Development, Tenant shall require that Master Developer's general contractors maintain property, liability, and workers compensation/employer's liability insurance, reasonably consistent with the insurance requirements in this Article 9; and to indemnify Landlord Parties and Tenant Parties in accordance with Article 9.4.

ARTICLE 10 Damage or Destruction

10.1 Casualty Loss.

If any of the Improvements are damaged or destroyed by fire, windstorm or other casualty (collectively, a "**Casualty**") (such damaged Improvements, the "**Damaged Improvements**"), Tenant covenants, as soon as reasonably practicable, to repair or replace and rebuild, or cause Master Developer to repair or replace and rebuild, the same promptly so as to restore such Damaged Improvements to a condition that is substantially similar to their condition immediately before such occurrence (collectively, to "**Restore**", or a "**Restoration**"), and Tenant or Master Developer(s), as applicable, shall use the proceeds of any insurance which it is required to maintain pursuant to Section 9.1 on the Damaged Improvements for the costs and expenses of such Restoration or its own funds if Tenant or Master Developer, as applicable, failed to maintain such insurance and for the deductible.

Landlord and Tenant acknowledge that, at the time Tenant has the obligation to Restore such Damaged Improvements, it may be advantageous to build improvements of a character different from the Damaged Improvements. If Tenant determines that it would be advantageous to do so, Tenant shall have the right to replace the damaged Improvements with the different Improvements (the "**Different improvements**"); provided, that the Different Improvements have an "as completed" market value equal to or greater than the then "as is" market value of the

Damaged Improvements (immediately before the Casualty and without regard to the leasing status of the Damaged Improvements), as determined by agreement of Landlord and Tenant or, if they are unable to reach agreement, by the arbitration procedure described in Section 16.31.

ARTICLE 11 Condemnation

11.1. Definitions.

For purposes of this Article 11, the following terms shall have the respective meanings set forth below:

(a) “Award” means the amount of any award made, consideration paid, or damages ordered as a result of a Taking less any reasonable costs in obtaining such award, such as reasonable legal fees and costs, consultant fees, appraisal costs.

(b) “Date of Taking” means the date upon which title to the Property, or a portion thereof, passes to and vests in the condemnor or the effective date of any order for possession if issued prior to the date title vests in the condemnor.

(c) “Partial Taking” means any Taking which does not constitute a Significant Taking or a Total Talking.

(d) “Significant Taking” means a Taking of Property and Improvements on the Property which, in the reasonable determination of both Landlord and Tenant, materially and adversely affects Tenant’s use of the Property and Tenant’s net income from the Property.

(e) “Taking” means a taking of the Property, or a portion thereof, or any damage related to the exercise of the power of eminent domain and including a voluntary conveyance to any agency, authority, public utility, Person, or corporate entity empowered to condemn property in lieu of court proceedings.

(f) “Total Taking” means the permanent Taking of the entire Property.

11.2. Partial Taking.

In the event of a Partial Taking of the Property during the Term which takes any portion of the Property, the following shall occur: (i) the rights of Tenant under this Lease and the Leasehold in and to the portion of the Property taken shall cease and terminate as of the Date of Taking; and (ii) this Lease shall otherwise continue in full effect with no reduction in the Rent payable hereunder. Tenant shall, promptly after any such Partial Taking, at its expense, repair or cause to be repaired any damage caused thereby so that, thereafter, the Property (including any Improvements thereon) shall be, as nearly as reasonably possible, in a condition as good as the condition thereof immediately prior to such Partial Taking.

After Tenant has completed such repairs as required herein, it shall give written notice thereof to Landlord.

In the event of any Partial Taking, Tenant shall be entitled to the entire Award attributable to the period following the Award and before the expiration of the Term and there shall be no reduction in Rent.

11.3. Significant Taking.

In the event of a Significant Taking of the Property during the Term, after which Tenant reasonably determines that Tenant can effectively continue its business in the Property, the following shall occur: (i) the rights of Tenant under this Lease and the Leasehold in and to the portion of the Property taken shall cease and terminate as of the Date of Taking; and (ii) this Lease shall otherwise continue in full effect except that Base Rent shall be reduced as set forth below (however other sums payable by Tenant hereunder shall continue unreduced notwithstanding any such Taking). Tenant shall, promptly after any such Significant Taking, at its expense, repair or cause to be repaired any damage caused thereby so that, thereafter, the Property (including any Improvements) shall be, as nearly as possible, in a condition as good as the condition thereof immediately prior to such Significant Taking. After such repairs have been completed, Base Rent shall be reduced (effective upon the date of the Significant Taking) by the product of the Base Rent multiplied by a fraction (the “**Rent Reduction Percentage**”), the denominator of which is the total land area of the Property prior to the Taking and the numerator of which is the total land area of the Property subject to such Significant Taking. After Tenant has completed or caused to be completed such repairs as required herein, it shall give written notice thereof to Landlord. Within fifteen (15) days after receipt of such written notice, Landlord shall pay to Tenant an amount equal to what would have been the reduction in Base Rent for the period between the effective date of the Significant Taking and the date upon which such repairs were completed, based on the assumption that the reduction in Base Rent commenced effective as of the date of the Significant Taking.

11.4. Total Taking.

In the event of a Total Taking, Tenant’s Leasehold shall terminate as of the Date of Taking and all rights and obligations of Landlord and Tenant under this Lease shall terminate except for the rights and obligations under this Section 11.4 and that otherwise survive termination of this Lease; however, performance by the parties of their obligations hereunder which arose or accrued prior to or as a result of such termination shall survive such termination.

11.5. Notice of Condemnation Proceeding.

Landlord and Tenant each agree to promptly provide written notice to the other of the commencement of any condemnation proceeding relating to the Property of which they become aware. Tenant and Landlord shall each be entitled to separately pursue any and all Condemnation Awards to which they may legally be entitled with respect to the Property and any Taking. Except provided above with respect to a Partial Taking, all compensation awarded for any Taking of the Property or Landlord’s ownership interest in the Property shall be the property of Landlord. All compensation awarded for any Taking of Tenant’s ownership interest in Improvements shall be the property of Tenant. Landlord and Tenant agree that if the compensation provided for any Taking of the Property (or any portion thereof) is awarded in a single award and they are unable to agree between themselves upon their relative share of compensation awarded with respect to such single award within thirty (30) days after the determination of such award, either Landlord or

Tenant shall submit such dispute to binding arbitration in Dallas, Texas, pursuant to the rules and procedures of the American Arbitration Association then applicable as provided in Section 16.31.

ARTICLE 12

Other Agreements

12.1. Memorandum of Lease.

Landlord and Tenant shall execute in recordable form a Memorandum of this Lease on the Rent Commencement Date. The Memorandum of Lease shall be recorded in the Real Property Records of Dallas County, Texas. This Lease, and not the Memorandum of Lease, is what creates the Leasehold and whether or not this Lease is terminated or expires is governed by the terms of this Lease. Therefore, the termination of the Memorandum of Lease does not terminate the Leasehold. If the Memorandum of Lease is terminated before this Lease is terminated, then even if third parties have relied on that termination, the Party claiming that this Lease is still in effect will have a claim against the Party that prematurely terminated the Memorandum of Lease. Upon expiration of the Term or other termination of this Lease, Landlord will deliver to Tenant a written termination agreement (in the case of a termination of this Lease) and Tenant will promptly execute and return such document to Landlord for filing in the Real Property Records of Dallas County, Texas. Any termination of the Memorandum of Lease that is signed and acknowledged by Landlord and Tenant shall be conclusive evidence that the Memorandum of Lease was terminated. Neither Landlord nor Tenant shall record this Lease or any Memorandum of Lease or any other document referring to this Lease in any manner at any time prior to the Rent Commencement Date.

12.2 Declaration of Covenants, Conditions, and Restrictions (“CCRs**”).**

Landlord, Tenant, and Master Developer shall jointly prepare CCRs for the benefit of Landlord and Tenant in connection with the development, use, maintenance, and operation of the Development. The CCRs shall be consistent with Exhibit C attached hereto and contain, among other items, the permitted and prohibited uses of the Property set out Section 5.1 and Exhibit B attached hereto. Landlord shall record the CCRs in the Real Property Records of Dallas County, Texas at the time a memorandum of this Lease is recorded.

12.3. Landlord’s Right to Finance, Subordination, Non-Disturbance, and Attornment Agreements.

(a) **Landlord’s Right to Finance.** Landlord may at any time, and from time to time, without consent of Tenant, encumber by Mortgage, any of Landlord’s right, title or interest in the Property or in this Lease.

(b) **Subordination.** Subject to the requirements of Section 12.2(d), this Lease and the Leasehold granted hereby shall be subject and subordinate to any Mortgage, and to any amendment, modification, renewal, consolidation, replacement or extension thereof (collectively, “**Security Device**”), now or hereafter placed by Landlord upon any of Landlord’s right, title or interest in the Property, or in this Lease, and to any and all advances made on the security thereof. Tenant agrees that the lender or lenders from time to time holding any such Security Device shall have no duty, liability or obligation to perform any of the obligations of Landlord under this Lease, but that in the event of Landlord’s default with respect to any such obligation, Tenant will give

any lender whose name and address have been furnished Tenant in writing for such purpose notice of Landlord's Default pursuant to Section 13.8.

(c) **Attornment.** Subject to the requirements of Section 12.2(d), Tenant agrees to attorn to a lender or any other party who acquires ownership of the Property by reason of a foreclosure of a Security Device or a deed in lieu of such foreclosure, and that in the event of such foreclosure or deed in lieu thereof, such new owner shall not: (i) be liable for any act or omission of any prior Landlord or with respect to events occurring prior to acquisition of ownership of the Property, (ii) be subject to any offsets or defenses which Tenant might have against any prior Landlord (other than the defense of payment and performance, which is hereby expressly reserved by Tenant), (iii) be bound by prepayment of more than one (1) month's rent, or (iv) be bound by any modification or amendment of this Lease that does not comply with Section 16.7 of this Lease and a memorandum of which has not been duly filed and recorded among the Real Property Records of Dallas County, Texas.

(d) **Non-Disturbance.** Tenant's subordination of this Lease to any Security Device and attornment thereunder shall be subject to, and conditioned upon, Tenant's receipt of a commercially reasonable non-disturbance agreement from the holder of the Security Device, which shall be in a mutually agreeable form and provides that Tenant's possession, this Lease and the Leasehold will not be disturbed or otherwise affected so long as an Event of Default by Tenant does not exist, and Tenant attorns to the record owner of the Property.

(e) **Self-Executing.** Subject to the requirements of Section 12.2(d), the agreements contained in this Section 12.2 shall be effective without the execution of any further documents; provided, however, that within thirty (30) days of a written request from Landlord, any holder of a Security Device, Tenant or any Leasehold Mortgagee, or a lender in connection with a sale, financing or refinancing of Property, Tenant and Landlord shall execute such further writings as may be reasonably required to separately document any such subordination or non-subordination, attornment and/or non-disturbance agreement as is provided for herein, all such agreements to be in forms reasonably acceptable to Landlord and Tenant.

ARTICLE 13

Defaults and Remedies

13.1. Default.

Tenant shall be in "Default" under this Lease, if at any time during the Term any one or more of the following events shall occur (each an "Event of Default"):

(a) Tenant fails to pay any monthly installment of Annual Base Rent or any other amount payable under this Lease when due and such failure continues for a period of thirty (30) days after Tenant's receipt of written notice from Landlord; or

(b) Tenant fails to observe or perform any of its other covenants, agreements or obligations hereunder, and such failure is not cured within sixty (60) days after Landlord's notice to Tenant of such failure; provided, however, that if the nature of Tenant's obligation is such that more than sixty (60) days are reasonably required for performance, then Tenant shall not be in

Default if Tenant commences performance within such sixty (60) day period and thereafter diligently prosecutes the same to completion.

13.2. Remedies.

If and for so long as an Event of Default exists, then Landlord, at its option and without limitation of the provisions of Article 8, may pursue any one or more of the following remedies without any additional notice or demand whatsoever:

(a) Terminate this Lease by written notice to Tenant. Upon termination, Tenant must immediately surrender the Property to Landlord, but Tenant shall remain liable for all of its obligations hereunder through the date herein fixed for expiration of the Term, including liability for payment of Rent under this Lease. If Tenant fails to so surrender the Property, Landlord may, without prejudice to any other remedy which it may have for possession of the Property or arrearage in rent, enter upon and take possession of the Property and expel or remove Tenant and any other Person occupying such premises or any part of the Property. Tenant must pay to Landlord on demand the amount of all loss and actual (but not consequential, special or punitive) damage which Landlord may suffer by reason of such termination, whether through inability to relet the Property on satisfactory terms or otherwise.

(b) Enter upon the Property~~5~~ and do whatever Tenant is obligated to do under the terms of this Lease. Tenant agrees to pay Landlord on demand for the reasonable, out of pocket expenses which Landlord may incur in this effecting compliance with Tenant's obligations under this Lease, together with interest thereon at the Default Rate until paid. **LANDLORD IS NOT LIABLE FOR ANY DAMAGES RESULTING TO TENANT FROM SUCH ACTION, WHETHER CAUSED BY NEGLIGENCE OF LANDLORD OR OTHERWISE.**

(c) Take any other action or exercise any other remedy available to Landlord at law or in equity, including bringing an action to specifically enforce Tenant's obligations under this Lease.

Pursuit of any of the foregoing remedies does not preclude pursuit of any of the other remedies in this Lease provided or any other remedies provided by law or in equity, nor does pursuit of any remedy in this Lease constitute a forfeiture or waiver of any Annual Base Rent or other amount due to Landlord under this Lease or of any damages accruing to Landlord by reason of the violation of any of the terms, conditions and covenants in this Lease contained.

TENANT HEREBY WAIVES AND SURRENDERS for itself and all those claiming under it, including creditors of all kinds, any right and privilege which it or any of them may have under any present or future law to redeem any of the Property or to have a continuance of this Lease after lawful termination of this Lease or of Tenant's right of occupancy or possession pursuant to any court order or any provisions of this Lease.

13.3. Mitigation of Damages.

Both Landlord and Tenant shall use commercially reasonable efforts to mitigate damages resulting from a default of the other party under this Lease.

Landlord's obligation to mitigate damages after a default by Tenant under this Lease shall be satisfied in full if Landlord undertakes, consistent with industry standards then prevailing in the Dallas County, Texas area, to lease the Land to a substitute tenant in accordance with the following criteria:

(a) Landlord shall have no obligation to solicit or entertain negotiations with any other prospective tenants for the Property until Landlord obtains full and complete possession of the Land including the final and unappealable legal right to relet the Land free of any claim of Tenant, or anyone claiming by, through or under Tenant or its successors and assigns, to possession of the Property;

(b) Landlord shall not be required to lease the Property to anyone whose creditworthiness or whose managerial, financial and operational ability have not been approved by Landlord, which approval may be withheld in Landlord's reasonable discretion;

(c) Landlord shall not be obligated to lease the Property to a substitute tenant for a rental less than the current fair market rental then prevailing for the Property, nor shall Landlord be obligated to enter into a new lease under other terms and conditions that are unacceptable to Landlord in its reasonable discretion;

(d) Landlord shall not be required to expend any amount of money to alter, remodel, or otherwise make the Property suitable for use by a proposed substitute tenant UNLESS the substitute tenant pays any such sum to Landlord in advance of Landlord's execution of a substitute lease (which payment shall not be in lieu of any damages or other sums to which Landlord may be entitled as a result of Tenant's default under this Lease), or Landlord, in Landlord's sole discretion, determines that such expenditure is financially justified in connection with entering into any such substitute lease; and

(e) Landlord shall not be obligated to lease the Property to a substitute tenant: (i) that is at that time disbarred or disqualified from performing work for any federal or Texas government entity; (ii) to whom the transfer would violate any laws or executive orders relating to terrorism, money laundering or otherwise result in a transfer to a prohibited Person as provided therein; (iii) that would interfere with Landlord's powers under the Landlord enabling legislation, cause Landlord to be in violation of its enabling legislation, or cause Landlord not to be able to receive funds from any governmental entity; (iv) that is competing, or plans to compete with Landlord as a provider of mass transit services within the areas Landlord serves in any manner; or (v) that would cause Landlord to be in violation of any Legal Requirements.

Upon compliance with the above criteria regarding the leasing of the Land after a default by Tenant, Landlord shall be deemed to have fully satisfied Landlord's obligation to mitigate damages under this Lease and under any Legal Requirement in effect on the date of this Lease or at the time of Tenant's default, and Tenant waives and releases, to the fullest extent legally permissible, any right to assert in any action by Landlord to enforce the terms of this Lease, any defense, counterclaim, or rights of setoff or recoupment respecting the mitigation of damages by Landlord, unless and to the extent Landlord in bad faith fails to act in accordance with the requirements of this section.

13.4. Abandonment of Personal Property.

Upon Landlord's exercise of either of the remedies set forth in Section 13.2(a) and Section 13.2(b) above, Tenant shall have the right, but not the obligation, to remove Tenant's personal property from the Property. If, upon the date that is thirty (30) days after Landlord takes possession of the Property pursuant to the exercise of either of such remedies, any or all of the personal property of Tenant remains on the Property, then such personal property shall be deemed abandoned, and Landlord may dispose of such personal property at Landlord's sole discretion and with no obligation to preserve such personal property or account to Tenant for the disposition of such personal property. Tenant shall reimburse Landlord for the reasonable cost, if any, of any such disposal and Landlord shall have no duty to Tenant during such thirty (30) day period to secure and keep safe any personal property.

13.5. No Remedy Exclusive.

No remedy herein conferred upon or reserved to Landlord or Tenant is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity or by statute.

13.6. Holding Over.

If Tenant does not surrender the Property to Landlord at the expiration date of the Term, such continuance of possession by Tenant shall be deemed to be a month-to-month tenancy at the sufferance of Landlord terminable on thirty (30) days notice at any time by either party. All provisions of this Lease, except those pertaining to term and rent, shall apply to the month-to-month tenancy. Tenant shall pay a new Annual Base Rent in an amount equal to one hundred fifty percent (150%) of the monthly Rent payable for the last full calendar month during the regular Term, together with one hundred percent (100%) of all Taxes, utility charges and other costs payable pursuant to Article 3. Nothing contained in this Section 13.6 shall be deemed to prevent Landlord from pursuing a forcible entry and detainer action in accordance with Legal Requirements in the event of a holdover by Tenant hereunder.

13.7. Landlord's Default.

If Tenant believes that Landlord has failed to perform a material obligation of this Lease, Tenant must give Landlord written notice of the alleged default ("Landlord's Default"). Landlord must cure the Landlord's Default not later than thirty (30) days after receipt of the notice from Tenant, or within such longer period as is reasonably necessary to remedy the Landlord's Default, provided that Landlord diligently pursues its efforts to cure the Landlord's Default to completion.

If Landlord fails to cure the Landlord's Default, Tenant shall have the following rights and remedies, which rights and remedies shall be in addition to all other rights and remedies of Tenant as may exist at law or in equity:

(a) Compel specific performance of Landlord's obligations under this Lease and to seek other equitable and injunctive relief available under Legal Requirements;

(b) Pursue a claim for damages under Legal Requirements. However, Tenant may only recover actual damages, costs of suit or other proceeding, and reasonable attorneys' fees, and may not recover lost revenues or profits, consequential damages, punitive damages, special damages or any other measure of damages from Landlord or its successors, transferees, or assigns;

(c) Remedy any Landlord's Default, and in connection with such remedy, Tenant may pay all expenses and employ legal counsel, and all reasonable sums so expended or obligations incurred by Tenant in connection therewith shall be paid by Landlord to Tenant, upon written demand by Tenant, together with interest at the Default Rate; and

(d) Terminate this Lease by written notice to Landlord.

No remedy herein conferred upon or reserved to Tenant in this Section 13.7 is intended to be exclusive of any other available remedy or remedies described in this Section 13.7 or otherwise expressly provided in the Lease or available at law or in equity, but each and every such remedy shall be cumulative. No delay or omission to exercise any such right or power accruing upon any default of Landlord shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

ARTICLE 14

Tenant's Environmental Obligations

14.1. Environmental Matters.

Tenant may not use, generate, release, discharge, store, dispose, or transport any Hazardous Materials on, under, in, above, to, or from the Property during the Term, except for such quantities which are routinely utilized in connection with the lawful use of the Property, all of which are to be stored, used, handled, and disposed of by Tenant in full compliance with all Legal Requirements and Environmental Laws. Landlord may not use, generate, release, discharge, store, dispose, or transport any Hazardous Materials on, under, in, above, to, or from the Property during the Term, except for such quantities which are routinely utilized in connection with the lawful operation of Landlord's public transit system, all of which are to be stored, used, handled, and disposed of by Landlord in full compliance with all Legal Requirements and Environmental Laws.

Tenant must:

(a) Pay any cost, expense, claim, or liability arising out of any investigation, monitoring, cleanup, containment, removal, storage, or restoration work required by any Legal Requirements or Governmental Authority to be performed on, under or about the Property during the Term of this Lease or after the Term of this Lease if arising from events occurring or circumstances existing during the Term; and

(b) **EXCEPT TO THE EXTENT ARISING FROM A BREACH BY LANDLORD OF LANDLORD'S COVENANT SET FORTH ABOVE IN THIS SECTION 14.1 OR THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD AND TO THE EXTENT ALLOWED BY APPLICABLE LEGAL REQUIREMENTS, RELEASE AND WAIVE ANY CLAIMS AGAINST LANDLORD FOR LOSS, INJURY,**

EXPENSE, OR DAMAGE ARISING OUT OF THE PRESENCE, RELEASE, OR DISCHARGE OF ANY HAZARDOUS MATERIALS ON, UNDER, IN, ABOVE, TO, OR FROM THE PROPERTY FROM AND AFTER THE EFFECTIVE DATE.

EXCEPT TO THE EXTENT ARISING FROM A BREACH BY LANDLORD OF LANDLORD'S COVENANT SET FORTH ABOVE IN THIS SECTION 14.1 OR THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD, REQUIRE MASTER DEVELOPER TO INDEMNIFY, DEFEND, AND HOLD HARMLESS LANDLORD FROM ANY CLAIMS OF ANY PARTY FOR LOSS, INJURY, EXPENSE, OR DAMAGE ARISING OUT OF THE PRESENCE, RELEASE, OR DISCHARGE OF ANY HAZARDOUS MATERIALS ON, UNDER, IN, ABOVE, TO, OR FROM THE PROPERTY FROM AND AFTER THE EFFECTIVE DATE.

EXCEPT TO THE EXTENT ARISING FROM A BREACH BY TENANT OF TENANT'S COVENANT SET FORTH ABOVE IN THIS SECTION 14.1 AND TO THE EXTENT ALLOWED BY APPLICABLE LEGAL REQUIREMENTS, LANDLORD SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS TENANT AND MASTER DEVELOPER FROM ANY CLAIMS OF ANY PARTY FOR LOSS, INJURY, EXPENSE, OR DAMAGE ARISING OUT OF THE PRESENCE, RELEASE, OR DISCHARGE OF ANY HAZARDOUS MATERIALS ON, UNDER, IN, ABOVE, TO, OR FROM THE PROPERTY FROM AND AFTER THE EFFECTIVE DATE, TO THE EXTENT RESULTING FROM A BREACH OF LANDLORD'S COVENANT SET FORTH ABOVE IN THIS SECTION 14.1.

If any remedial work (the "**Remedial Work**") is required under any applicable Legal Requirements as a result of the use, generation, release, discharge, storage, disposal, or transport of Hazardous Materials on, under, in, above, to, or from the Property by Tenant, Tenant must perform or cause to be performed the Remedial Work to the extent required under such Legal Requirements. If any Remedial Work is required under any applicable Legal Requirements as a result of the use, generation, release, discharge, storage, disposal, or transport of Hazardous Materials on, under, in, above, to, or from the Property by Landlord, Landlord must perform or cause to be performed the Remedial Work to the extent required under such Legal Requirements. All Remedial Work must be performed by one or more contractors under the supervision of a consulting engineer, each selected by the party obligated to perform the applicable Remedial Work (the "**Obligated Party**") and approved in advance in writing by the other party, which approval shall not be unreasonably withheld or delayed. If the Obligated Party fails to begin and complete the Remedial Work within the time periods required by law, the other party may, at the Obligated Party's sole cost and expense, but is not required to, upon written notice to the Obligated Party of its intention to do so, cause the Remedial Work to be performed, subject fully to the indemnification provisions of this Article. Notwithstanding the provisions of the preceding sentence, however, in the event of emergency conditions relating to any Remedial Work, non-obligated party, acting in good faith, shall have the right, but not the obligation, to cause such Remedial Work to be performed, subject fully to the indemnification provisions of this Article, if necessary, with only such notice to the Obligated Party as is reasonable under the circumstances, including telephonic notice. Any such notice to the Obligated Party hereunder shall specify with particularity the nature of the Remedial Work. To effectuate any such Remedial Work, the non-obligated party shall have the right to permit the persons performing such Remedial Work to enter upon the Property to perform such work. This Article survives termination of this Lease.

ARTICLE 16
Miscellaneous

16.1. Notices.

Any notice required or permitted to be given hereunder shall be in writing and shall be (a) delivered by hand and a receipt is obtained, (b) delivered by reputable national or local courier (such as UPS or FEDEX), which maintains a record of deliveries, or (c) mailed by United States registered or certified mail, return receipt requested and postage prepaid. Any notice shall be addressed to each Party at its address as set forth below. Any such notice shall be considered given, received, and delivered on the date of such hand delivery, deposit with such courier for same day or next business day delivery, or three (3) business days after deposit in the United States mail, as the case may be, and the time period (if any is provided herein) in which to respond to such notice shall commence on the date of receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice. By giving to the other Party at least ten (10) days' notice thereof, any Party shall have the right from time to time during the Term to change the addresses thereof and to specify up to two (2) additional addresses to which copies of notices to it shall be sent. Any Leasehold Mortgagee shall be entitled to give any notice for and on behalf of Tenant, if permitted under the terms of the applicable Mortgage. No notice to Tenant shall be effective as regards any Leasehold Mortgagee unless such Leasehold Mortgagee (of whom Landlord has properly received notice and a valid address for any such notice as provided in Section 8.2) receives a duplicate copy thereof or is notified thereof by Tenant. Notice may be given on behalf of any Party by such Party's counsel.

- (a) Each notice to Landlord shall be addressed as follows:

DALLAS AREA RAPID TRANSIT
Attn.: President/Chief Executive Officer

If sent by USPS (or successor) addressed as follows:
P.O. Box 660163
Dallas, TX 75266-7201

If sent by Delivery addressed as follows:
1401 Pacific Street
Dallas, Texas 75202

With a copy to and addressed as follows:

DALLAS AREA RAPID TRANSIT
Attn.: General Counsel

If sent by USPS (or successor) addressed as follows:
P.O. Box 660163
Dallas, TX 75266-7255
Email: ggamez@dart.org

If sent by Delivery addressed as follows:
1401 Pacific Street
Dallas, Texas 75202
Email: ggamez@dart.org

- (b) Each notice to Tenant shall be addressed as follows:

TOWN OF ADDISON – CITY MANAGER
Attn: City Manager
5300 Belt Line Road
Dallas, Texas 75254
Email: dgaines@addisontx.gov

TOWN OF ADDISON - CITY ATTORNEY
Wyatt Hamilton Findlay, PLLC
Attn: Whitt L. Wyatt
5810 Long Prairie Road, Suite 700-220
Flower Mound, Texas 75028
Email: whitt@whflegal.com

With copies to:

Condon Tobin Sladek Thornton Nerenberg PLLC
Attn: William L. Sladek
8080 Park Lane, Suite 700
Dallas, Texas 75231
Email: bsladek@condontobin.com

A party's address may be changed by written notice to the other party as provided herein; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices specified above are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to Tenant shall be deemed given by Tenant and notices given by counsel to Landlord shall be deemed given by Landlord.

16.2. Transit Operations.

All inspections conducted by Tenant, and the construction and the operation of the Improvements and the other improvements and work performed by, or on behalf of, Tenant relating to the Property, shall comply with the TOD Policy/Guidelines set forth in Exhibit C attached hereto and shall not interfere in any material respect with Landlord's transit operations unless Landlord has provided Tenant or Master Developer advance written approval. Tenant acknowledges that any and all impact on Landlord's operations will require not only written approval by Landlord, but if approved also will require specific scheduling arrangements with internal Landlord operations personnel which may affect construction scheduling. **TENANT HEREBY RELEASES (AND SHALL CAUSE ITS SPACE TENANTS, SUBTENANTS, LICENSEES, CONCESSION HOLDERS AND OTHERS HOLDING ANY RIGHT TO OCCUPY ANY PORTION OF THE PROPERTY BY, THROUGH OR UNDER TENANT OR ITS SUCCESSORS AND**

ASSIGNS TO RELEASE), LANDLORD, ITS SUCCESSORS AND ASSIGNS AND ANY AFFILIATE OF LANDLORD AND ANY SUCCESSOR AND ASSIGN OF EACH SUCH AFFILIATE, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS AND CONSULTANTS, FROM ANY CLAIMS THAT LANDLORD'S USE OF THE PROPERTY OR REAL PROPERTY ADJACENT TO OR IN THE VICINITY OF THE PROPERTY FOR TRANSIT OPERATIONS (INCLUDING, WITHOUT LIMITATION, OPERATION OF A PUBLIC TRANSIT SYSTEM, INCLUDING BY EXAMPLE AND NOT LIMITATION, FOR RAILROAD AND BUS USE, OPERATION OF A TERMINAL FOR RAILWAY, BUS AND OTHER TRANSIT OPERATIONS, PARKING FACILITIES, ACCESS AND INGRESS TO AND EGRESS FROM, ANY SUCH FACILITIES, AND OPERATIONS BY LANDLORD NOW OR IN THE FUTURE, INCLUDING BY EXAMPLE AND NOT LIMITATION, OPERATIONS WHICH ARE NOT CONTEMPLATED, ENVISIONED OR POSSIBLE ON THE DATE OF THIS LEASE) CONSTITUTES A TRESPASS, NUISANCE, TAKING, CONDEMNATION OR EXERCISE OF EMINENT DOMAIN (CONSTRUCTIVE, INVERSE OR OTHERWISE) WITH RESPECT TO ANY PORTION OF SUCH PROPERTY, AND TENANT HEREBY WAIVES ANY RIGHT TO CLAIM THAT ANY SUCH TRANSIT OPERATIONS ARE OR EVER WOULD BE CONSIDERED OR DEEMED TO CONSTITUTE SUCH A TRESPASS, NUISANCE, TAKING, CONDEMNATION OR EXERCISE OF EMINENT DOMAIN (CONSTRUCTIVE, INVERSE OR OTHERWISE) (THE "RELEASE"). TENANT HEREBY WAIVES (AND SHALL CAUSE ITS SPACE TENANTS, SUBTENANTS, LICENSEES, CONCESSION HOLDERS AND OTHERS HOLDING ANY RIGHT TO OCCUPY ANY PORTION OF THE PROPERTY BY, THROUGH OR UNDER TENANT OR ITS SUCCESSORS AND ASSIGNS TO WAIVE) ANY CLAIMS, LIABILITY, LOSS, DAMAGES, DEMANDS, COSTS, JUDGMENTS AND EXPENSES, WHETHER NOW KNOWN OR OTHERWISE, AGAINST LANDLORD, ITS SUCCESSORS AND ASSIGNS AND ANY AFFILIATE OF LANDLORD AND ANY SUCCESSOR AND ASSIGN OF EACH SUCH AFFILIATE, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS AND CONSULTANTS, ARISING IN CONNECTION WITH OR AS A RESULT OF LANDLORD'S TRANSIT OPERATIONS ("WAIVER"). In no event shall the Release and Waiver be deemed a release or waiver of any claims resulting from the gross negligence or willful misconduct of Landlord or a Landlord Party. Such Release and Waiver shall be referenced in the Memorandum of Lease to be recorded pursuant to Section 12.1, and be included within any written lease, license or other occupancy agreement with respect to any portion of the Property. Tenant shall provide Landlord with copies of each such Release and Waiver upon execution and delivery thereof (or any instrument or agreement containing such Release and Waiver) and at any time upon request of Landlord.

16.3. Site Signage.

Tenant and/or Master Developer shall have the right to construct, install and maintain on the Property, at the sole cost and expense of Tenant and/or Master Developer, (a) directional site signage for both the Property and Tenant's Adjoining Property, and (b) building and monument/pylon signage for space tenants, subtenants and licensees of the Development. All pylon and monument signage installed by Tenant and/or Master Developer on the Property shall be in such locations and of such dimensions that do not materially and adversely affect the visibility of, or access to, Landlord's transit facilities, including Landlord's transit platform. Landlord shall

have the right to construct, install and maintain on the Property (at locations reasonably acceptable to Tenant), at the sole cost and expense of Landlord, directional site signage for Landlord's transit operations. Landlord and Tenant shall be respectively responsible to assure that all signage constructed, installed and maintained by Landlord and Tenant, respectively, complies with all applicable Legal Requirements and the TOD Policy/Guidelines. In no event shall any signage installed on the Property by Tenant and/or Master Developer directly and adversely impact Landlord's operational needs as described on Exhibit B attached hereto.

16.4. Waiver.

No consent or waiver, express or implied, by Landlord or Tenant to or of any breach or default by the other Party in the performance by such other Party of the obligations thereof under this Lease shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other Party of the same or any other obligations of such other Party under this Lease. Failure on the part of either Landlord or Tenant to complain of any act or failure to act by the other Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such Party of its rights under this Lease.

16.5. Severability.

If any provision of this Lease is held to be illegal, invalid, or unenforceable under Legal Requirements, such provision is fully severable; this Lease is to be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Lease; and the remaining provisions of this Lease remain in full force and effect and are not affected by the illegal, invalid or unenforceable provision or by its severance therefrom. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there is to be added automatically as a part of this Lease a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid and enforceable.

16.6. Amendments.

Neither this Lease nor any of its provision may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by all Parties.

16.7. Binding Effect.

Subject to the restrictions contained herein upon Tenant's right to assign this Lease, this Lease is binding upon, and inures to the benefit of, Landlord and Tenant, and their respective successors and assigns. The terms "Landlord" and "Tenant" include all persons, firms, corporations or entities at the time in question included within such term. If Landlord assigns its rights and obligations pursuant to this Lease to a bona fide third party who assumes Landlord's obligations hereunder in writing from the period from and after any such assignment, then Tenant agrees that the assigning Landlord shall have no obligation or liability hereunder as Landlord from and after any such assignment with respect to claims arising after such assignment. Landlord agrees to send to Tenant a true, correct and complete copy of such assignment promptly after the execution and delivery thereof

16.8. Interpretation.

No provision of this Lease shall be construed against or interpreted to the disadvantage of either Landlord or Tenant by any court or other governmental or judicial authority by reason of such Party having or being deemed to have written, structured or dictated such provision.

16.9. Relationship of Parties.

Nothing in this Lease creates a relationship of principal and agent or of partnership or joint venture between the parties to this Lease. Neither the computation of Annual Base Rent, nor any other provision contained in this Lease, nor any acts of the parties hereto, creates a relationship between the parties to this Lease other than the relationship of lessor and lessee.

16.10. Unavoidable Delays.

Landlord, Tenant, and any Leasehold Mortgagee shall be excused from performing any of their respective obligations or undertakings provided in this Lease, except any of Tenant's obligations to pay Rent or any other sum of money which is not excused by this section, for such periods of time as the performance of such obligation or undertaking is prevented by any act of God, fire, earthquake, flood, explosion, war, insurrection, riot, mob violence, sabotage, inability to procure labor, equipment, facilities, materials or supplies, strikes, lockouts, action of labor unions, condemnation, Legal Requirements, orders of any governmental authority, any injunction arising from litigation involving a Party relating to zoning, subdivision or other governmental action or inaction pertaining to the Property or any portion thereof, inability to obtain government permits or governmental approvals or casualty loss. The foregoing provisions of this section shall not excuse a Party from not performing any of its obligations or undertakings provided in this Lease if any such non-performance is a result of any act or omission of such Party.

16.11. Exhibits.

The exhibits identified in this Lease and attached hereto are incorporated herein in full by this reference.

16.12. No Merger of Estates.

The Parties intend that this Lease continue in effect and not be terminated or otherwise affected by the doctrine of merger of estates upon the ownership by the same Person of both the reversion and the leasehold estate under this Lease, except as reflected otherwise by such Person owning both estates in a written and recorded document consented to by all Mortgagees. So long as any Leasehold Mortgage is in existence, unless all Leasehold Mortgages shall otherwise expressly consent in writing, the fee title to the Property and the Leasehold shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and Leasehold by Landlord or by Tenant or by a third party, by purchase or otherwise. So long as any holder of a Security Device is in existence, unless all holders of Security Devices shall otherwise expressly consent in writing, the fee title to the Property and the Leasehold shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and Leasehold by Landlord or by Tenant or by a third party, by purchase or otherwise

16.13. APPLICABLE LAW.

THIS LEASE IS BEING EXECUTED AND DELIVERED AND IS INTENDED TO BE PERFORMED IN THE STATE OF TEXAS. THIS LEASE SHALL ONLY BE INTERPRETED AND CONSTRUED UNDER AND GOVERNED BY THE LAWS OF THE STATE OF TEXAS. VENUE FOR ANY ACTION BROUGHT IN CONNECTION WITH THIS LEASE SHALL BE ONLY IN DALLAS COUNTY, TEXAS OR THE FEDERAL DISTRICT COURT FOR THE DISTRICT IN WHICH THE PROPERTY IS LOCATED.

16.14. Date for Performance.

If the time period or date by which any right, option or election provided under this Lease must be exercised, or by which any act required hereunder must be performed, or by which any notice must be given, expires or occurs on a Saturday, Sunday or legal or bank holiday, then such time period or date shall be automatically extended through the close of business on the next regularly scheduled business day.

16.15. Brokerage Representation.

Tenant and Landlord each represents and warrants to the other that it has not dealt with any real estate broker, agent or salesman so as to create any legal right or claim in any such broker, agent or salesman for a real estate commission or similar fee or compensation with respect to the negotiation and/or execution of this Lease or the conveyance of the Leasehold by Landlord to Tenant.

16.16. No Third Party Beneficiaries.

The only Parties to this Lease are Landlord and Tenant and their successors in interests. There are no third party beneficiaries other than Mortgagees and Subtenants and condominium associations to the extent expressly provided herein. Except as heretofore provided, this Lease shall not be construed to benefit or be enforceable by any other Person other than the Parties hereto and their successors in interest and permitted assignees.

16.17. Exculpation.

Notwithstanding anything to the contrary contained herein, neither Landlord nor any Landlord Party shall be personally liable for any obligations of Landlord. No recourse may be had against the private property of any Landlord Party in order to satisfy any obligations of Landlord hereunder, or against any property of Landlord other than Landlord's interest in the Land. In any action, suit, or proceeding to enforce any of the provisions of this Lease against Landlord, Tenant shall look solely to Landlord's interest in the Land for satisfaction of any claim arising under this Lease. In any lawsuit or other proceeding the prevailing party shall only have the right to recover actual damages. Each Party hereby waives and agrees that it does not have the right to recover and the other Party shall not ever be responsible in any way for consequential, punitive damages and all other types of damages which are not actual.

Neither Tenant nor any Tenant Party shall be personally liable for any obligations of Tenant and no recourse may be had against the private property of any Tenant Party in order to satisfy any obligations of Tenant hereunder. If, under the provisions of this Lease, Tenant is obligated to spend insurance proceeds or condemnation awards for the restoration, repair, or demolition of the Improvements, Tenant shall be personally liable for the amount of insurance proceeds or condemnation awards actually received by Tenant (as opposed to a Tenant Mortgagee or other person), but only to the extent such insurance proceeds or condemnation award are not applied to the extent required for the restoration, repair, or demolition of the Improvements pursuant to this Lease. Notwithstanding the foregoing, nothing herein shall be deemed to waive any claims arising from fraud which are brought against any individual committing such fraud.

16.18. Time of the Essence.

Time is of the essence with respect in the payment and performance of all of the obligations of the Parties arising under this Lease.

16.19. Interest on Obligations.

If a Party is obligated to pay money to the other Party, the payment obligation shall accrue interest at the Default Rate from and after the date on which the payment obligation is due until it is paid.

16.20. Sale of the Property.

In the event of a sale or conveyance by Landlord (or any party comprising Landlord) of all or any part of the Property and this Lease, or either, and notwithstanding anything contained in this Lease to the contrary, the same shall operate to release Landlord (or such party) from any future liability upon any of the covenants or conditions, express or implied, herein contained in favor of Tenant, and in such event Tenant agrees to look solely to the responsibility of the successor in interest of Landlord (or such party) with respect to any liability of Landlord (or such party) accruing after such sale or conveyance. No such sale, however, by itself will release Landlord for any liability to Tenant that has accrued and is enforceable against Landlord as of the date of such sale or conveyance.

16.21. Right of First Refusal.

In the event Landlord receives a bona fide offer (the “**Offer**”) to purchase the Property from a third party (the “**Third-Party Purchaser**”) that is unaffiliated with Landlord and Landlord is willing to accept the Offer, Landlord shall provide a true and correct copy of such Offer to Tenant and Tenant shall thereafter have a period of thirty (30) days to elect to purchase the Property on the terms and conditions set forth in the Offer, which election shall be made by Tenant, if at all, by delivery to Landlord of written notice (the “**ROFR Election Notice**”) of such election within such 30-day period. In the event of such an election by Tenant to purchase the Property, Landlord and Tenant shall enter into a purchase and sale agreement in a form reasonably acceptable to Landlord and Tenant containing the terms and conditions set forth in the Offer. In the event Tenant rejects the Offer or fails to timely deliver a ROFR Election Notice within such 30-day period, Landlord shall have the right to sell the Property to the Third-Party Purchaser on the terms and

conditions set forth in the Offer.

16.22. Attorney's Fees and Costs.

In an action between Landlord and Tenant seeking enforcement of a term or provisions of this Lease, the prevailing party in such action may be awarded, in addition to any other relief awarded by the court, its reasonable costs and expenses, including reasonable attorneys' fees and court costs allowed by law.

16.23. Landlord's Attorneys' Fees and Consent.

If Tenant requests any approval or consent from Landlord or the holder of any Mortgage granted by Landlord with respect to this Lease or the Property, then Tenant will promptly pay all out of pocket costs and expenses (including reasonable attorneys' fees) incurred by Landlord and the holder of such Mortgage in connection with their review of such request and any related document, regardless of whether or not such approval or consent is granted.

16.24. Survival.

All obligations of any Party that are not fulfilled at the expiration or other termination of this Lease will survive such expiration or termination as continuing obligations of such Party. Any provision of this Lease which requires or contemplates performance by a party hereto after the termination of this Lease shall survive the termination of this Lease.

16.25. Prior Agreements.

This Lease, the ILA and the CCRs embody the entire agreement between the parties relating to the subject matter of this Lease, supersede all prior agreements and understandings, if any, relating to the subject matter of this Lease, and may be amended only by an instrument in writing executed jointly by Landlord and Tenant and supplemented only by documents delivered or to be delivered in accordance with the express terms of this Lease. To the extent any conflict exists between this Lease and the ILA, the terms of this Lease shall govern.

16.26. Statutory Waiver.

TENANT HEREBY WAIVES ANY STATUTORY RIGHTS OTHERWISE APPLICABLE UNDER SECTION 91.004(b) OF THE TEXAS PROPERTY CODE, AS SUCH SECTION NOW EXISTS OR AS SAME MAY BE HEREAFTER AMENDED OR SUCCEDED. Landlord and Tenant hereby each acknowledge and agree that they are knowledgeable and experienced in commercial transactions and further hereby acknowledge and agree that the provisions of this Lease for determining charges and amounts payable by Tenant are commercially reasonable and valid even though such methods may not state precise mathematical formulae for determining such charges. ACCORDINGLY, TENANT HEREBY VOLUNTARILY AND KNOWINGLY WAIVES ALL RIGHTS AND BENEFITS TO WHICH TENANT MAY BE ENTITLED UNDER SECTION 93.012 OF THE TEXAS PROPERTY CODE, AS SUCH SECTION NOW EXISTS OR AS SAME MAY BE HEREAFTER AMENDED OR SUCCEDED.

16.27. No Waiver.

Nothing in this Lease or any ancillary or related documents is intended to nor shall be deemed to have waived or diminished in any way either Party's governmental immunity, including, by example and not limitation, with regard to any applicable or particular defenses, taxable status or any other limitation or immunity from suit and liability.

16.28. FTA Assistance.

The Parties understand and agree that FTA is not financially contributing to the construction of Improvements on the Property; however, Landlord acquired the Property with FTA assistance. Landlord is not conveying any interest in the Property except the leasehold interest expressly granted in this Lease to Tenant, and Tenant may not transfer, convey, or assign any interest in the Property except as expressly provided herein. In accordance with the Master Agreement, the Property shall remain available for the transit purpose originally authorized by FTA and Landlord, with Tenant and Master Developer's cooperation as required under this Lease, shall satisfactorily maintain transit access and operation during and after development of the Property.

Tenant shall comply with, and shall require Master Developer and any other subtenant to comply with, FTA Circular 4702 (Title VI Requirements and Guidelines), FTA Circular 4710, (Americans with Disabilities Act Guidance), FTA Circular 4703 (Environmental Justice Policy Guidance); and FTA Circular 4704 (Equipment Employment Opportunity Requirements and Guidelines).

The balance of this page has been intentionally left blank.

Signature Pages Follow

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease.

LANDLORD:

DALLAS AREA RAPID TRANSIT,
a Texas Regional Transportation Authority

By: _____

Printed Name: _____

Title: _____

Date: _____

[Tenant Signature on Following Page]

TENANT:

TOWN OF ADDISON, TEXAS

By: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT A

[Insert Site Map]

EXHIBIT B
Landlord's Operational & Infrastructure Requirements

DART Minimal Operational Needs

Passenger Amenities:

1. Air-conditioned waiting space.
2. Two (2) Restrooms.
3. Benches.
4. Eight (8) Shelters equivalent to what exists on the site currently.
5. Service information.
6. Clear and unimpeded pedestrian access to nearby jobs and housing.

Current Transit Center Bus Operations:

1. Signalized access to bus bays sufficient to accommodate approximately 54 buses/hour at peak times (27 inbound and 27 outbound).
2. Operating hours 4:00 AM - 1 :00 am every day.
3. Parking - 300 spaces designated for "DART customers only" during DART's peak operating hours - the future number, location and sharing of parking spaces to be agreed upon by the parties.
4. Two bathrooms for operators and customers when operators are not using them.
5. Vending machines.
6. Contingency space (in addition to 12 bays) for paratransit and emergency rail shuttles.

Required future improvements to be maintained, redeveloped, or added to the Addison Transit Center and future Rail Station to be provided by the Master Developer may include a minimum of:

1. Crew room (a comfortable break room with restrooms dedicated to operators).
2. Pedestrian access (currently customers can access bus operations from the parking lot, Arapaho Road, Quorum Drive, and surrounding land uses without impediment).
3. Signalized bus access (dedicated access in both directions greatly increases safety; this feature must be maintained).
4. The construction of four (4) additional bus bays and shelters, for a total of 12, and the designation of space for the operation of at least 2 GoLink zones.
5. These estimates may be adjusted upon discussion and agreement with the Master Developer.
6. Future improvements shall not degrade current pedestrian access in any way for the average DART user.

Prohibited Uses on the DART Property

No portion of the DART Property shall be used for the following uses:

1. A stand-alone parking garage.
2. A dance hall.
3. An off-track betting business.
4. A billiard or pool hall.
5. For bingo or similar games of chance.
6. A massage parlor or tanning salon, except the foregoing shall not prohibit therapeutic massages such as provided by Massage Envy.
7. A game arcade or video game room.
8. A bowling alley.
9. A skating rink.
10. Automobile sales or a car wash, car repair or car rental agency.
11. A night club or discotheque.
12. An adult book or adult video tape store (which are defined as stores in which any portion of the inventory is not available for sale or rental to children under 18 years old because such inventory explicitly deals with or depicts human sexuality), or any establishment selling or exhibiting pornographic materials.
13. A "sexually oriented business", which shall mean (i) a sex parlor, nude studio, modeling studio, love parlor, adult bookstore, adult movie theater, adult video arcade, adult movie arcade, adult video store, adult motel, or (ii) a nightclub, bar, restaurant, or similar commercial enterprise that provides live nude or partially nude entertainment or live nude or partially nude performances.
14. Flea market, or any second-hand or surplus store.
15. Manufacturing facility (other than manufacturing of food items incidental to a restaurant or catering operation).
16. Any mortuary or funeral establishment.
17. Pawn shop.
18. Any central laundry or dry-cleaning plant or laundromat (except that this prohibition shall not be applicable to on-site service provided solely for pickup and delivery by the ultimate consumer, including nominal supporting facilities).
19. Any veterinary hospital, animal raising or facilities.
20. Any facility selling guns or firearms of any kind.
21. Any use which is a public or private nuisance as may be determined by the applicable municipal authorities.
22. Any use that is contrary to applicable zoning ordinances or private restrictions.
23. Any abortion, drug rehabilitation or methadone clinic.
24. Mini-warehouse or mini-storage.

EXHIBIT C

[Insert TOD Policy/Guidelines]

City Council (FY24)

5. c.

Meeting Date: 10/24/2023

Department: Parks & Recreation

Pillars: Innovation in Entrepreneurship & Business
Excellence in Transportation Systems
Gold Standard in Customer Service
Optimize the Addison Brand

Milestones: Continue to enhance and promote Addison's Identity

AGENDA CAPTION:

Present, discuss and consider action on a Resolution for appointments to the South Quorum Road Study Advisory Committee.

BACKGROUND:

On June 16, 2023, Council approved an agreement for professional services with Teague Nall and Perkins, Inc. for the design of the Quorum Road Reconstruction project which will extend from Arapaho Road to the Dallas North Tollway. The project will address needs identified in the Parks, Recreation, and Open Space Master Plan and the Visions for the Quorum Art Walk. The plans made recommendations regarding the need for the creation of pedestrian and activity spaces in the South Quorum Business District, which is south of Belt Line Road, and also involves businesses on Landmark Place and Landmark Boulevard.

Funds for the project were approved by Addison voters as part of Proposition B in the 2019 Bond Election.

Gathering input from residents and the business community is an important component of the process and the project scope includes meeting with a Public Advisory Committee to represent the community's needs and help inform the conceptual plan for the area. Staff solicited volunteers interested in participating on the committee between September 1 and October 12, 2023 and planned to recommend that 14 members be appointed to the committee. However, staff received just 12 applications from volunteers interested in serving on the Advisory Committee. The list of applicants has been included with this agenda item. One volunteer application was removed from consideration because proof of living or working in Addison could not be provided and another volunteer requested to be removed from consideration. Staff and the consultant recommend that the remaining ten (10) applicants be appointed to the advisory committee. Should the Council take action, the attached Resolution allows for Council to appoint members to the South Quorum Road Study Public Advisory Committee from the applications that have been submitted.

RECOMMENDATION:

Staff seeks Council Direction

Attachments

Quorum Advisory Committee Applications

Quorum Advisory Committee Application Matrix

Resolution - Quorum Advisory Committee

Amended - Bylaws

#1

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Sunday, September 03, 2023 11:39:31 AM
Last Modified: Sunday, September 03, 2023 11:47:51 AM
Time Spent: 00:08:19
IP Address: 108.224.56.81

Page 1: South Quorum Road Activation Advisory Committee Application

Q1

Name

Schnell Blanton

Q2

Contact Information

Address	[REDACTED]
City/Town	Addison
State/Province	TX
ZIP/Postal Code	75001
Email Address	[REDACTED]
Phone Number	[REDACTED]

Q3

I live in Addison

Which of the following best describes you?

Q4

55-69 years of age

To which age group do you belong?

Q5

0-5 years

How long have you lived or worked in the Town of Addison

Q6

Respondent skipped this question

If you work in the South Quorum Business District, which best describes how you predominantly commute to work?

South Quorum Road Activation Advisory Committee Application

Q7

Name of the Organization / Business you represent and your role at the company, along with the address (if applicable)

N/A

Q8

Why are you interested in being a member of this Advisory Committee?

I purchased my home almost three years ago and thought this would be a good opportunity to participate and volunteer.

Q9

What experiences do you have working with the Town of Addison?

I am currently a Project Manager. I also am on the board for my Home Owners Association

Q10

Please share your interest in parks, spending time outdoors, using trails and public art.

I enjoy art and would like to see more outdoor space dedicated to a larger dog park. I would also like to see my outdoor art designed and curated by Women of Color.

Q11

What role do you have in the community?

I have applied for another volunteer opportunity to serve for the Town of Addison

Q12

If you are affiliated with an organization or business, what benefits would you or your organization gain from this process?

No

Q13

Yes

Do you have the ability to serve this process (meetings approximately 3 and a few additional meetings over a 4-6 month period?)

Q14

Is there anything else you would like to tell us about yourself that will help the Town Council in its selection of Committee Members?

I would like to volunteer to get a first hand knowledge of what is going on in the town I love.

#2

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Friday, September 08, 2023 1:50:19 PM
Last Modified: Friday, September 08, 2023 2:04:07 PM
Time Spent: 00:13:47
IP Address: 107.218.238.77

Page 1: South Quorum Road Activation Advisory Committee Application

Q1

Name

Dr Jay M Ihrig

Q2

Contact Information

Address	[REDACTED]
City/Town	Addison
State/Province	Tx
ZIP/Postal Code	75001
Email Address	[REDACTED]
Phone Number	[REDACTED]

Q3

I live in Addison

Which of the following best describes you?

Q4

55-69 years of age

To which age group do you belong?

Q5

More than 20 years

How long have you lived or worked in the Town of Addison

Q6

Respondent skipped this question

If you work in the South Quorum Business District, which best describes how you predominantly commute to work?

Q7

Name of the Organization / Business you represent and your role at the company, along with the address (if applicable)

Addison Arbor Foundation —President

Q8

Why are you interested in being a member of this Advisory Committee?

Interested in developing the planned art walk to include art with walkability

Q9

What experiences do you have working with the Town of Addison?

Have served on a number of committees with the Town over thirty years and developed, along with the Addison Arbor Foundation, the concept and acquisition of a public art collection .

Q10

Please share your interest in parks, spending time outdoors, using trails and public art.

The parks were one of the primary reasons for purchasing my home in Addison. Use the trails frequently and identify and locate art to be placed in the parks.

Q11

What role do you have in the community?

Homeowner and 30 year resident.

Q12

Respondent skipped this question

If you are affiliated with an organization or business, what benefits would you or your organization gain from this process?

Q13

Yes

Do you have the ability to serve this process (meetings approximately 3 and a few additional meetings over a 4-6 month period?)

Q14

Is there anything else you would like to tell us about yourself that will help the Town Council in its selection of Committee Members?

Active volunteer and visionary on how our parks are an integral part of the overall Addison experience.

#3

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Friday, September 08, 2023 7:54:31 PM
Last Modified: Friday, September 08, 2023 8:04:57 PM
Time Spent: 00:10:25
IP Address: 184.104.233.32

Page 1: South Quorum Road Activation Advisory Committee Application

Q1

Name

Atif Taftaf

Q2

Contact Information

Address	[REDACTED]
City/Town	Addison
State/Province	Texas
ZIP/Postal Code	75001
Email Address	[REDACTED]
Phone Number	[REDACTED]

Q3

Which of the following best describes you?

I live in Addison

Q4

To which age group do you belong?

25-39 years of age

Q5

How long have you lived or worked in the Town of Addison

0-5 years

Q6

If you work in the South Quorum Business District, which best describes how you predominantly commute to work?

Respondent skipped this question

Q7 Respondent skipped this question

Name of the Organization / Business you represent and your role at the company, along with the address (if applicable)

Q8
Why are you interested in being a member of this Advisory Committee?

Community improvement passion.

Q9
What experiences do you have working with the Town of Addison?

None to date.

Q10
Please share your interest in parks, spending time outdoors, using trails and public art.

Love nature and art.

Q11
What role do you have in the community?

Active community volunteer.

Q12
If you are affiliated with an organization or business, what benefits would you or your organization gain from this process?

Enhanced community engagement.

Q13 Yes

Do you have the ability to serve this process (meetings approximately 3 and a few additional meetings over a 4-6 month period?)

Q14
Is there anything else you would like to tell us about yourself that will help the Town Council in its selection of Committee Members?

Licensed drone pilot; can capture aerial photos.

#4

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Friday, September 08, 2023 11:41:22 PM
Last Modified: Friday, September 08, 2023 11:51:32 PM
Time Spent: 00:10:09
IP Address: 162.227.85.95

Page 1: South Quorum Road Activation Advisory Committee Application

Q1

Name

Judy Barrett

Q2

Contact Information

Address	[REDACTED]
City/Town	Addison
State/Province	Tx
ZIP/Postal Code	75001
Email Address	[REDACTED]
Phone Number	[REDACTED]

Q3

Which of the following best describes you?

I live in Addison

Q4

To which age group do you belong?

70+ years if age

Q5

How long have you lived or worked in the Town of Addison

More than 20 years

Q6

If you work in the South Quorum Business District, which best describes how you predominantly commute to work?

Respondent skipped this question

Q7 Respondent skipped this question

Name of the Organization / Business you represent and your role at the company, along with the address (if applicable)

Q8
Why are you interested in being a member of this Advisory Committee?

Aesthetic development of the project

Q9
What experiences do you have working with the Town of Addison?

Member of the Addison Arbor Foundation

Q10
Please share your interest in parks, spending time outdoors, using trails and public art.
Very involved in public art. Retired interior designer, Dallas County Master Gardener, and practicing artist. Use the park trails every day

Q11
What role do you have in the community?
Active in town elections, husband served on City Council, graduated Addison Citizen's Academy, member of Addison Arbor Foundation board

Q12 Respondent skipped this question
If you are affiliated with an organization or business, what benefits would you or your organization gain from this process?

Q13 Yes
Do you have the ability to serve this process (meetings approximately 3 and a few additional meetings over a 4-6 month period?)

Q14 Respondent skipped this question
Is there anything else you would like to tell us about yourself that will help the Town Council in its selection of Committee Members?

#5

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Monday, September 11, 2023 1:46:12 PM
Last Modified: Monday, September 11, 2023 2:10:31 PM
Time Spent: 00:24:19
IP Address: 24.162.5.67

Page 1: South Quorum Road Activation Advisory Committee Application

Q1

Name

Barbara Papas

Q2

Contact Information

Address	[REDACTED]
Address 2	Barbara Papas
City/Town	ADDISON
State/Province	TX
ZIP/Postal Code	75001-4421
Email Address	[REDACTED]
Phone Number	[REDACTED]

Q3

I live in Addison

Which of the following best describes you?

Q4

Respondent skipped this question

To which age group do you belong?

Q5

More than 20 years

How long have you lived or worked in the Town of Addison

Q6

Respondent skipped this question

If you work in the South Quorum Business District, which best describes how you predominantly commute to work?

Q7

Name of the Organization / Business you represent and your role at the company, along with the address (if applicable)

Addison Arbor Foundation

Q8

Why are you interested in being a member of this Advisory Committee?

I am interested in enhancing the parks systems through public art, activities and amenities. The Quorum Art Walk could be a unique and fun feature for residents, businesses and visitors to Addison.

Q9

What experiences do you have working with the Town of Addison?

As a member/Vice President of the Addison Arbor Foundation, I have had the opportunity to participate in Town Council meetings, work with Town staff and discuss projects with Town Council and residents. Graduate of Addison Citizen's Academy and active participant in DART sessions for the TOD.

Q10

Please share your interest in parks, spending time outdoors, using trails and public art.

I walk my dog every day and visit Addison Circle Park frequently.

Q11

What role do you have in the community?

Active resident and Vice President of the Addison Arbor Foundation.

Q12

If you are affiliated with an organization or business, what benefits would you or your organization gain from this process?

Addison Arbor Foundation - involvement in this project would enable us to be involved in the discussions of the vision for this area which would be beneficial in identifying and selecting public art.

Q13

Yes

Do you have the ability to serve this process (meetings approximately 3 and a few additional meetings over a 4-6 month period?)

Q14

Respondent skipped this question

Is there anything else you would like to tell us about yourself that will help the Town Council in its selection of Committee Members?

#6

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Wednesday, September 27, 2023 1:24:34 PM
Last Modified: Wednesday, September 27, 2023 2:19:06 PM
Time Spent: 00:54:32
IP Address: 216.201.154.34

Page 1: South Quorum Road Activation Advisory Committee Application

Q1

Name

Stephen Springs

Q2

Contact Information

Address	[REDACTED]
Address 2	Suite 600
City/Town	Dallas
State/Province	TX
ZIP/Postal Code	75254
Email Address	[REDACTED]
Phone Number	[REDACTED]

Q3

Which of the following best describes you?

I work in the South Quorum Business District (Area south of Beltline Rd. bound by North Dallas Tollway and Inwood Road on the East and West and Addison's Town Limits to the South)

Q4

To which age group do you belong?

40-54 years of age

Q5

How long have you lived or worked in the Town of Addison

More than 20 years

Q6

Car

If you work in the South Quorum Business District, which best describes how you predominantly commute to work?

Q7

Name of the Organization / Business you represent and your role at the company, along with the address (if applicable)

BSW Architects / Senior Principal / Address listed above

Q8

Why are you interested in being a member of this Advisory Committee?

This is right up my alley. I feel I could contribute.

Q9

What experiences do you have working with the Town of Addison?

No direct experience. I have worked in this building for over 27 years. We have entertained relocating multiple times, both in and out of Addison over the years. Are doing so again right now, as our lease comes up again next year.

Q10

Please share your interest in parks, spending time outdoors, using trails and public art.

I specialize in recreation design and incorporation of art in public projects. I am speaking on that very topic at NRPA convention next month.

Q11

What role do you have in the community?

I am a former P&R commissioner in my hometown of Richardson. More recently, I spent nearly 10 years on Richardson's city plan commission. I am active as an "ambassador" for our current Comp Plan redo.

Q12

If you are affiliated with an organization or business, what benefits would you or your organization gain from this process?

We are looking at more walkable areas for potential relocation. It would be nice to have that here.

Q13

Yes

Do you have the ability to serve this process (meetings approximately 3 and a few additional meetings over a 4-6 month period?)

Q14

Is there anything else you would like to tell us about yourself that will help the Town Council in its selection of Committee Members?

Meeting availability subject to calendaring. But at least I am generally already here, so that should help.

#7

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Wednesday, September 27, 2023 10:37:38 AM
Last Modified: Thursday, September 28, 2023 3:46:56 PM
Time Spent: Over a day
IP Address: 15.181.199.195

Page 1: South Quorum Road Activation Advisory Committee Application

Q1

Name

Andrew Hervey

Q2

Contact Information

Address	[REDACTED]
Address 2	Suite 420
City/Town	Richardson
State/Province	Texas
ZIP/Postal Code	75080
Email Address	[REDACTED]
Phone Number	[REDACTED]

Q3

Which of the following best describes you?

I work in the South Quorum Business District (Area south of Beltline Rd. bound by North Dallas Tollway and Inwood Road on the East and West and Addison's Town Limits to the South)

Q4

To which age group do you belong?

25-39 years of age

Q5

How long have you lived or worked in the Town of Addison

11-15 years

Q6

Other

If you work in the South Quorum Business District, which best describes how you predominantly commute to work?

Q7

Name of the Organization / Business you represent and your role at the company, along with the address (if applicable)

Quorum South Protective Association

Q8

Why are you interested in being a member of this Advisory Committee?

My company is a third party manager for the Quorum South Protective Association which is made up of 16 commercial property owners (office, retail and hotel). We administer the protective covenants of the association, maintain the median area along Quorum Drive and manage the business relationships with the property managers.

Q9

What experiences do you have working with the Town of Addison?

We cooperate with the Town of Addison on projects through the Parks department, maintenance of the medians, and rezoning of land inside our association.

Q10

Please share your interest in parks, spending time outdoors, using trails and public art.

Spending time outdoors is vital for mental and physical health. Public art can also be a great way to engage local artists. We have received a lot of interest from our association members in the addition of parks and outdoor space.

Q11

What role do you have in the community?

My company is a third party association manager of several Quorum office, retail and hotel buildings. We work with the property managers and property owners of those buildings directly to maintain a high standard in their properties and keep them engaged in the Town of Addison.

Q12

If you are affiliated with an organization or business, what benefits would you or your organization gain from this process?

The Quorum Association has been in existence for a long time (since the 1980's) and has always had a great relationship with the Town of Addison. The building owners and tenants of these properties are eager to see improvements to the area and to better the Town of Addison including outdoor space and safety.

Q13

Yes

Do you have the ability to serve this process (meetings approximately 3 and a few additional meetings over a 4-6 month period?)

Q14

Is there anything else you would like to tell us about yourself that will help the Town Council in its selection of Committee Members?

As well as being a third party business association manager, I am a commercial real estate broker with over 12 years experience.

#8

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Friday, September 29, 2023 10:27:14 AM
Last Modified: Friday, September 29, 2023 10:33:54 AM
Time Spent: 00:06:40
IP Address: 68.168.147.214

Page 1: South Quorum Road Activation Advisory Committee Application

Q1

Name

Philip Postel

Q2

Contact Information

Address	[REDACTED]
Address 2	[REDACTED]
City/Town	Dallas
State/Province	TX
ZIP/Postal Code	75254
Email Address	[REDACTED]
Phone Number	[REDACTED]

Q3

Which of the following best describes you?

I work in the South Quorum Business District (Area south of Beltline Rd. bound by North Dallas Tollway and Inwood Road on the East and West and Addison's Town Limits to the South)

Q4

To which age group do you belong?

40-54 years of age

Q5

How long have you lived or worked in the Town of Addison

11-15 years

Q6

Car

If you work in the South Quorum Business District, which best describes how you predominantly commute to work?

Q7

Name of the Organization / Business you represent and your role at the company, along with the address (if applicable)

Community National Title-CEO

Q8

Why are you interested in being a member of this Advisory Committee?

Our headquarters is on Quorum and our title company works in the right of way industry so we are very familiar with the process of any road construction, development, etc...

Q9

What experiences do you have working with the Town of Addison?

Aside from getting permits when remodeling our office, we have worked on one or two right of way projects.

Q10

Please share your interest in parks, spending time outdoors, using trails and public art.

Definitely appreciate public art. In Austin, one of our partners has been involved in an outdoor art gallery. My family has spent a lot of time walking trails and going to parks (though mostly at parks for the playgrounds when they were younger and sports practices these days.

Q11

What role do you have in the community?

I am a small business owner in the community.

Q12

If you are affiliated with an organization or business, what benefits would you or your organization gain from this process?

I don't know that there is truly a benefit to me or my organization besides meeting new people that could have use for our title company services

Q13

Yes

Do you have the ability to serve this process (meetings approximately 3 and a few additional meetings over a 4-6 month period?)

Q14

Is there anything else you would like to tell us about yourself that will help the Town Council in its selection of Committee Members?

I am always looking for ways to help and get involved in my community or organizations I belong to. This one is of special interest since my office is right in the middle of this project.

#9

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Friday, September 29, 2023 1:12:12 PM
Last Modified: Friday, September 29, 2023 1:20:50 PM
Time Spent: 00:08:38
IP Address: 67.72.3.9

Page 1: South Quorum Road Activation Advisory Committee Application

Q1

Name

Arnold Broussard

Q2

Contact Information

Address	[REDACTED]
City/Town	Dallas, Tx
State/Province	Tx
ZIP/Postal Code	75254
Email Address	[REDACTED]
Phone Number	[REDACTED]

Q3

Which of the following best describes you?

I work in the South Quorum Business District (Area south of Beltline Rd. bound by North Dallas Tollway and Inwood Road on the East and West and Addison's Town Limits to the South)

Q4

To which age group do you belong?

55-69 years of age

Q5

How long have you lived or worked in the Town of Addison

6-10 years

Q6

If you work in the South Quorum Business District, which best describes how you predominantly commute to work?

Car

Q7

Name of the Organization / Business you represent and your role at the company, along with the address (if applicable)

Marriott Quorum Hotel Aimbridge

Q8

Why are you interested in being a member of this Advisory Committee?

Managment of the Marriott Quorum Hotel, Chief Engineer

Q9

What experiences do you have working with the Town of Addison?

Oktoberfest

Q10

Please share your interest in parks, spending time outdoors, using trails and public art.

Just enjoy being in the park under a tree reading a good book

Q11

What role do you have in the community?

Hotel Managment

Q12

If you are affiliated with an organization or business, what benefits would you or your organization gain from this process?

Would address the appearance of the hotel from the Quorum Street side

Q13

Yes

Do you have the ability to serve this process (meetings approximately 3 and a few additional meetings over a 4-6 month period?)

Q14

Is there anything else you would like to tell us about yourself that will help the Town Council in its selection of Committee Members?

I want to be more involved with the things that are going on in the City of Addison.

#10

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Tuesday, October 17, 2023 10:29:52 AM
Last Modified: Tuesday, October 17, 2023 12:14:28 PM
Time Spent: 01:44:35
IP Address: 75.38.18.61

Page 1: South Quorum Road Activation Advisory Committee Application

Q1

Name

Curtis Green

Q2

Contact Information

Address	[REDACTED]
Address 2	[REDACTED]
City/Town	Addison
State/Province	TX
ZIP/Postal Code	75001
Email Address	[REDACTED]
Phone Number	[REDACTED]

Q3

Which of the following best describes you?

I live in Addison

Q4

To which age group do you belong?

25-39 years of age

Q5

How long have you lived or worked in the Town of Addison

0-5 years

Q6

If you work in the South Quorum Business District, which best describes how you predominantly commute to work?

Respondent skipped this question

Q7

Name of the Organization / Business you represent and your role at the company, along with the address (if applicable)

NA

Q8

Why are you interested in being a member of this Advisory Committee?

I occasionally walk down Quorum from Addison Circle to visit restaurants, so I'm familiar with the area. Adding sidewalks and other pedestrian features would make getting to the restaurants in the area more pleasant and convenient, and adding an art walk to the area would add another potential destination

Q9

What experiences do you have working with the Town of Addison?

I don't have extensive experience but I have gone to a recent meeting and applied to the comprehensive plan committee

Q10

Please share your interest in parks, spending time outdoors, using trails and public art.

Once or twice a day my wife and I take a walk through and around Addison Circle including the Addison Circle park. Because of how frequently I visit the area I notice the relatively new public art like the wolves and the bear. I also like trying to see what restaurants I can comfortably & safely get to by foot or by bus

Q11

What role do you have in the community?

I've lived in Addison for a little over a year now so I recently decided to try to be more informed about my area and offer help as needed and appropriate. Currently I don't have much of a role in the community outside of a few reports on Addison fix-it, but I would like to give back to the community if I can be useful

Q12

If you are affiliated with an organization or business, what benefits would you or your organization gain from this process?

NA

Q13

Yes

Do you have the ability to serve this process (meetings approximately 3 and a few additional meetings over a 4-6 month period?)

Q14

Is there anything else you would like to tell us about yourself that will help the Town Council in its selection of Committee Members?

I enjoy walking anywhere that is safe and pleasant, so I look forward to the improvements and extensions to sidewalks and other pedestrian amenities in the area

Advisory Committee Applicants for the

South Quorum Road Study Advisory Committee

Name	Addison Resident	Work In South Quorum Business District	Age Group	Years in Addison	Organization / Business Representation
Dr. Jay M Ihrig	Yes		55-69 Years of Age	20+ Years	Addison Arbor Foundation
Arnold Broussard		Yes	55-69 Years of Age	6-10 Years	Marriott Quorum Hotel Aimbridge
Philip Postel		Yes	40-54 Years of Age	11-15 Years	Community National Title - CEO
Andrew Hervey		Yes	11-15 Years of Age	11-15 Years	Representative Quorum South Protective Association
Stephen Springs		Yes	40-54 Years of Age	20 + Years	BSW Architects / Senior Principal
Barbara Papas	Yes		Skipped	20+ Years	Addison Arbor Foundation
Judy Barrett	Yes		70+ Years of Age	20+ Years	Addison Arbor Foundation
Atif Taftaf	Yes		25-39 Years of Age	0-5 Years	
Curtis Green	Yes		25-39 Years of Age	0-5 Years	
Schnell Blanton	Yes		55-69 Years of Age	0-5 Years	

RESOLUTION NO. ____

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS
CREATING THE SOUTH QUORUM ROAD STUDY ADVISORY COMMITTEE;
ADOPTING COMMITTEE BYLAWS; AND APPOINTING COMMITTEE
MEMBERS.**

WHEREAS, the Town of Addison Parks Master Plan identifies a need to implement the Quorum Art Walk and Park Activation Areas in the South Quorum Business District; and

WHEREAS, the City Council finds that gathering input from the community is an important component of the process for developing a vision for the Quorum Art Walk and Park Activation Areas; and

WHEREAS, the City Council intends to herein establish the Quorum Road Study Advisory Committee ("Committee"), which will be comprised of ten (10) residents or business representatives of the Town of Addison; and

WHEREAS, the Committee's purpose will be to provide Town staff with community input in connection with the development of South Quorum Road streetscape, landscape and park improvements and which will be utilized to create a Vision for the Quorum Art Walk and South Quorum Park Activation Areas.

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

SECTION 1. The City Council hereby creates the South Quorum Road Study Advisory Committee to carry out the purposes set forth in this resolution.

SECTION 2. The Committee shall be advisory in nature and shall exist and operate in conformance with the Committee Bylaws attached hereto as **Exhibit A**. The Director of Parks and Recreation shall be the primary staff liaison for the Committee.

SECTION 3. The following ten (10) Addison residents are hereby appointed to serve on the Committee:

[_____]*

**Names to be filled once individuals are appointed by the City Council*

SECTION 4. This resolution shall be effective from and after the date of passage.

DULY RESOLVED AND ADOPTED by the City Council of the Town of Addison, Texas, on this **24TH** day of **OCTOBER**, 2023.

TOWN OF ADDISON, TEXAS

Bruce Arfsten, Mayor

ATTEST:

Irma Parker, City Secretary

EXHIBIT A

SOUTH QUORUM ROAD STUDY ADVISORY COMMITTEE

Committee Bylaws

(Adopted and Effective October 26, 2023)

PURPOSE

The Town of Addison ("Town") Parkland Dedication and Development Fee Study Advisory Committee ("Committee") will assist the City Council in fulfilling its responsibilities pertaining to parkland dedication requirements and park development fees in accordance with the Parks Master Plan, City Charter, Code of Ordinances, and applicable laws and regulations.

RESPONSIBILITIES

The Committee shall serve solely in an advisory capacity to the City Council. Among other matters that may be requested from time to time by the Council, the Committee may review and make recommendations to the City Council regarding the following matters:

- Quorum Art Walk;
- Park Activation Areas for the South Quorum Business District; and
- Landscape, streetscape and pedestrian amenities within the project boundaries.

Review and recommendations regarding the foregoing shall be informed by the adopted Addison Parks Master Plan and existing Town policies, as applicable.

DURATION

The Committee is a temporary advisory committee established to make final recommendations in conformance with the Committee's purpose. Accordingly, members will serve a temporary term ending upon the earlier of (i) the City Council's acceptance of the final recommendation(s) of the Committee, or (ii) October 24, 2024, subject to the resignation or removal of a member by the City Council.

COMPOSITION

The Committee will consist of ten (10) members appointed by the City Council. One (1) member will be nominated for appointment by each of the six City Council members. Members may be removed at any time (for any or no reason) by a simple majority vote of the City Council. In the event of removal or resignation of a member, the City Council will promptly fill the vacancy by a simple majority vote of the City Council. Members serving on the Committee must at all times be a resident of the Town of Addison or an employee that works for an Addison Business located within the project boundaries.

The committee may be terminated or discontinued by the City Council at any time in the City Council's sole discretion.

EXHIBIT A

MEETINGS

It is anticipated that the Committee will meet once per month, or as frequently as is necessary to carry out the Committee's purpose. Such meetings will be held on dates and at times as established by Town staff, provided, that staff will attempt to schedule meetings for dates and times when all Committee members can be present. All committee members are expected to attend each meeting in-person or, if available, remotely via a live two-way audio-video platform (e.g, Teams, Zoom, etc.).

Four (4) members of the Committee shall constitute a quorum of the Committee for all purposes. The affirmative vote of a majority of the members of the Committee present at a Committee meeting shall be necessary to for Committee action or to make a recommendation to the City Council.

The Director of Parks and Recreation or designee shall be present at all meetings. The committee may invite members of management, auditors, or any other persons to attend meetings. Meeting agendas will be prepared by Town staff and provided in advance to members, along with appropriate briefing materials. Meeting agendas will be posted on the Town's website and available to the public. Notwithstanding, the Committee is advisory in nature and is not required to conduct its meetings in conformance with Chapter 551 of the Texas Government Code.

[END OF COMMITTEE BYLAWS]

EXHIBIT A

**SOUTH QUORUM ROAD STUDY
ADVISORY COMMITTEE**

Committee Bylaws

(Adopted and Effective October 24, 2023)

PURPOSE

The Town of Addison (“Town”) South Quorum Road Study Advisory Committee (“Committee”) will assist the City Council in fulfilling its responsibilities pertaining to developing a vision for development of the Quorum Art Walk and Park Activation Areas.

RESPONSIBILITIES

The Committee shall serve solely in an advisory capacity to the City Council. Among other matters that may be requested from time to time by the Council, the Committee may review and make recommendations to the City Council regarding the following matters:

- Quorum Art Walk;
- Park Activation Areas for the South Quorum Business District; and
- Landscape, streetscape and pedestrian amenities within the project boundaries.

Review and recommendations regarding the foregoing shall be informed by the adopted Addison Parks Master Plan and existing Town policies, as applicable.

DURATION

The Committee is a temporary advisory committee established to make final recommendations in conformance with the Committee’s purpose. Accordingly, members will serve a temporary term ending upon the earlier of (i) the City Council’s acceptance of the final recommendation(s) of the Committee, or (ii) October 31, 2024, subject to the resignation or removal of a member by the City Council.

COMPOSITION

The Committee will consist of seven (7) members appointed by the City Council. One (1) member will be nominated for appointment by each of the seven City Council members. Members may be removed at any time (for any or no reason) by a simple majority vote of the City Council. In the event of removal or resignation of a member, the City Council will promptly fill the vacancy by a simple majority vote of the City Council. Members serving on the Committee must at all times be a resident of the Town of Addison or a full-time employee of a business with a physical location within the study area whose job duties are performed primarily in-person within the study area.

The Committee may be terminated or discontinued by the City Council at any time in the City Council’s sole discretion. Further, upon filing an application to run for any place on the City Council, a member’s position on the Committee shall be automatically vacated and may be filled by the City Council at any time.

EXHIBIT A

MEETINGS

It is anticipated that the Committee will meet once per month, or as frequently as is necessary to carry out the Committee's purpose. Such meetings will be held on dates and at times as established by Town staff, provided, that staff will attempt to schedule meetings for dates and times when all Committee members can be present. All committee members are expected to attend each meeting in-person or, if available, remotely via a live two-way audio-video platform (e.g, Teams, Zoom, etc.).

Four (4) members of the Committee shall constitute a quorum of the Committee for all purposes. The affirmative vote of a majority of the members of the Committee present at a Committee meeting shall be necessary to for Committee action or to make a recommendation to the City Council.

The Director of Parks and Recreation or designee shall be present at all meetings. The committee may invite members of management, auditors, or any other persons to attend meetings. Meeting agendas will be prepared by Town staff and provided in advance to members, along with appropriate briefing materials. Meeting agendas will be posted on the Town's website and available to the public. Notwithstanding, the Committee is advisory in nature and is not required to conduct its meetings in conformance with Chapter 551 of the Texas Government Code.

[END OF COMMITTEE BYLAWS]

City Council (FY24)

5. d.

Meeting Date: 10/24/2023

Department: Communications & Marketing

Pillars: Gold Standard in Customer Service

Milestones: Continue to enhance and promote Addison's Identity
Continue development and implementation of the Long-Term Financial Plan

AGENDA CAPTION:

Consider action to approve a Resolution for an agreement with Granicus for website design services for the Town's main website, intranet, and four (4) subsites; and to authorize the City Manager to execute the agreement in an amount not to exceed \$76,240.

BACKGROUND:

The Town's current website went live in February 2019 and was designed by Municode, which was recently acquired by CivicPlus. This summer, CivicPlus informed staff that the Town's current website platform (Drupal) had reached the 'end of its life.' Because Drupal is not CivicPlus' preferred platform, moving to a newer version of the platform would not produce the upgrades desired for the Town's website. The alternative is to create an entirely new website.

After discussions with numerous government website providers, staff recommends contracting with Granicus to create a new website. The scope of work includes creating the main Town website, an intranet, and four (4) subsites for Parks & Recreation, Economic Development, Addison Airport, and Police. The revised website does not include a subsite for VisitAddison.com as staff will present a tourism-focused alternative solution for this site at a future meeting.

Granicus' services will be secured through NAPC (North America Procurement Council, Inc.), a nationwide government procurement service that meets the State's procurement requirements.

The cost of this agreement is not to exceed \$76,240, which will be funded through the interest earned on the Information Technology Equipment Replacement Fund. The total includes a \$64,000 one-time expense and a \$12,240 prorated licensing fee. These fees include all services related to data analysis, user research and testing, and design of the main site, subsites, and intranet. The second-year licensing fee will be \$25,704, with an anticipated increase of 5% over a possible five-year performance period. The projected timeline for the redesign work is estimated to take eight months to complete. The

work would begin immediately after Council approval.

RECOMMENDATION:

Administration recommends approval.

Attachments

Presentation - Website Redesign

Resolution - Granicus

Website Redesign

October 24, 2023

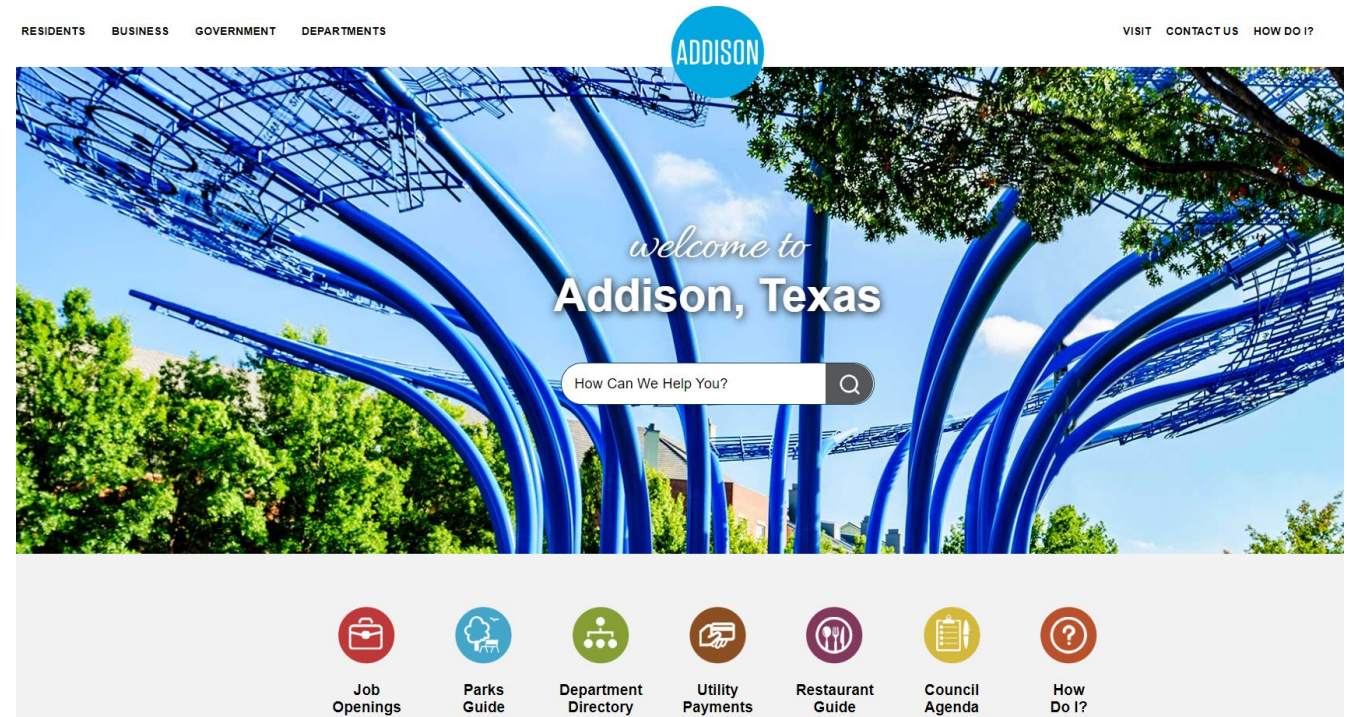
The logo for ADDISON, featuring the word "ADDISON" in a bold, blue, sans-serif font centered within a white circle. This circle is set against a blue background that is part of a larger graphic design on the right side of the slide, which includes diagonal grey and blue sections.

Item Summary

ADDISON

Contract with Granicus Includes:

- New Main Website
- Four Subsites
 - Airport
 - Economic Development
 - Parks and Recreation
 - Police
- Intranet



Total First Year Cost:

- One Time fee: \$64,000
- First Year Prorated Licensing Fee: \$12,240
- Funding source is the interest earning on the Information Technology Equipment Replacement Fund

About the Town's Current Website

- Launched in 2019
- Created by Municode with a number of “upgrades”
- Municode was purchased by CivicPlus
- Platform used for the website has reached its “end of life”
- Options included:
 - Move to a newer version of the current platform, but with fewer upgrades
 - Create a new website on a new platform

About Granicus

- Has created more than 1,500 government websites
- New site will include modern digital services including forms and signatures, online payments, and more
- Redesign will include data analysis of current website, user research and user testing
- Is an Esri Partner with better integration of GIS and location intelligence solutions
- Better integration with new agenda management software

Recommended Action

ADDISON

Administration recommends approval

Questions

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A MASTER SERVICE AGREEMENT BETWEEN THE TOWN OF ADDISON AND GRANICUS, LLC FOR WEBSITE DESIGN SERVICES FOR THE TOWN'S MAIN WEBSITE, INTRANET, AND FOUR (4) SUBSITES IN AN AMOUNT NOT TO EXCEED \$76,240.00; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT AND ANY OTHER NECESSARY DOCUMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council desires to authorize an agreement with Granicus, LLC for website design services for the Town’s main website, intranet, and four (4) subsites in an amount not to exceed \$76,240.00 and in conformance with the City’s requirements.

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

SECTION 1. The City Council hereby approves the agreement between the Town of Addison and Granicus, LLC website design services for the Town’s main website, intranet, and four (4) subsites in an amount not to exceed \$76,240.00, a copy of which is attached to this Resolution as **Exhibit A**. The City Manager is hereby authorized to execute the agreement and any other necessary documentation.

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 **24th** day of **October, 2023**.

TOWN OF ADDISON, TEXAS

Bruce Arfsten, Mayor

ATTEST:

Irma Parker, City Secretary

Town of Addison, Texas
Resolution No. _____

EXHIBIT A
[TO BE ATTACHED]

EXHIBIT A

Town of Addison, Texas
Resolution No. _____

Master Subscription Agreement

This Master Subscription Agreement (“**Agreement**”) is made by and between the party procuring Granicus Products and Services (“**Client**”) and Granicus, LLC, a Minnesota Limited Liability Company d/b/a Granicus (“**Granicus**”). Client and Granicus may each be referred to herein as “Party” or collectively as “Parties”.

By accessing the Granicus Products and Services, Client accepts this Agreement.

- 1. Definitions.** In addition to terms defined elsewhere in this Agreement, the following terms shall have the meaning specified:

“**Agreement Term**” means the total time covered by the Initial Term and all Extension Terms for each Order or SOW under this Agreement, further specified in Section 7.1.

“**Extension Term**” means any term that increases the length of the Initial Term of this Agreement or an Order Term of an Order or SOW.

“**Granicus Products and Services**” means the products and services made available to Client pursuant to this Agreement, which may include Granicus products and services accessible for use by Client on a subscription basis (“Software-as-a-Service” or “SaaS”), Granicus professional services, content from any professional services or other required equipment components or other required hardware, as specified in each Order or SOW.

“**Initial Term**” shall have the meaning specified in Exhibit A or Order or SOW between Granicus and Client for the first duration of performance that Client has access to Granicus Products and Services.

“**Order**” means a written order, proposal, or purchase document in which Granicus agrees to provide and Client agrees to purchase specific Granicus Products and Services.

“**Order Term**” means the then-current duration of performance identified on each Order or SOW, for which Granicus has committed to provide, and Client has committed to pay for, Granicus Products and Services.

“**Statement of Work**” or “**SOW**” means a written order, proposal, or purchase document that is signed by both Parties and describes the Granicus Products and Services to be provided and/or performed by Granicus. Each Order or SOW shall describe the Parties’ performance obligations and any assumptions or contingencies associated with the implementations of the Granicus Products and Services, as specified in each Order or SOW placed hereunder.

“**Support**” means the ongoing support and maintenance services performed by Granicus related to the Granicus Products and Services as specified in each Order or SOW placed between the Parties.

- 2. Ordering and Scope**

- 2.1. Ordering Granicus Products and Services.** The Parties may execute one or more Order or SOW related to the sale and purchase of Granicus Products and Services. Each Order or SOW will generally include an itemized list of the Granicus Products and Services as well as the Order Term for such Granicus Products and Services. Each Order or SOW must, generally, be signed by the Parties; although, when a validly-issued purchase order by Client accompanies the Order or SOW, then the Order or SOW need not be executed by the Parties. Each Order or SOW shall be governed by this Agreement regardless of any pre-printed legal terms on each Order or SOW, and by this reference is incorporated herein.

- 2.2. Support.** Basic support related to standard Granicus Products and Services is included within the fees paid during the Order Term. Granicus may update its Support obligations under this Agreement, so long as the functionality purchased by Client is not materially diminished.

2.3. Future Functionality. Client acknowledges that any purchase hereunder is not contingent on the delivery of any future functionality or features.

2.4. Cooperative Purchasing. To the extent permitted by law and approved by Client, the terms of this Agreement and set forth in one or more Order or SOW may be extended for use by other municipalities, school districts and governmental agencies upon execution of an addendum or other duly signed writing setting forth all of the terms and conditions for such use. The applicable fees for additional municipalities, school districts or governmental agencies will be provided by Granicus to Client and the applicable additional party upon written request.

3. Use of Granicus Products and Services and Proprietary Rights

3.1. Granicus Products and Services. The Granicus Products and Services are purchased by Client as subscriptions during an Order Term specified in each Order or SOW. Additional Granicus Products and Services may be added during an Order Term as described in Section 2.1.

3.2. Permitted Use. Subject to the terms and conditions of this Agreement, Granicus hereby grants during each Order Term, and Client hereby accepts, solely for its internal use, a worldwide, revocable, non-exclusive, non-transferrable right to use the Granicus Products and Services to the extent allowed in the relevant Order or SOW (collectively the “Permitted Use”).

3.2.1. Data Sources. Data uploaded into Granicus Products and Services must be brought in from Client sources (interactions with end users and opt-in contact lists). Client cannot upload purchased contact information into Granicus Products and Services without Granicus’ written permission and professional services support for list cleansing. Granicus certifies that it will not sell, retain, use, or disclose any personal information provided by Client for any purpose other than the specific purpose of performing the Services outlined within this Agreement.

3.2.2. Passwords. Passwords are not transferable to any third party. Client is responsible for keeping all passwords secure and all use of the Granicus Products and Services accessed through Client’s passwords.

3.2.3. Content. Client can only use Granicus Products and Services to share content that is created by and owned by Client and/or content for related organizations provided that it is in support of other organizations but not as a primary communication vehicle for other organizations that do not have a Granicus subscription. Any content deemed inappropriate for a public audience or in support of programs or topics that are unrelated to Client, can be removed or limited by Granicus.

3.2.3.1. Disclaimers. Any text, data, graphics, or any other material displayed or published on Client’s website must be free from violation of or infringement of copyright, trademark, service mark, patent, trade secret, statutory, common law or proprietary or intellectual property rights of others. Granicus is not responsible for content migrated by Client or any third party.

3.2.4. Advertising. Granicus Products and Services shall not be used to promote products or services available for sale through Client or any third party unless approved in writing, in advance, by Granicus. Granicus reserves the right to request and review the details of any agreement between Client and a third party that compensates Client for the right to have information included in Content distributed or made available through Granicus Products and Services prior to approving the presence of Advertising within Granicus Products and Services.

3.2.5. Granicus Subscriber Information for Communications Cloud Suite only

3.2.5.1. Data Provided by Client. Data provided by Client and contact information gathered through Client’s own web properties or activities will remain the

property of Client (“Direct Subscriber”), including any and all personally identifiable information (PII). Granicus will not release the data without the express written permission of Client, unless required by law.

3.2.5.2. Granicus shall not disclose the client’s data except to any third parties as necessary to operate the Granicus Products and Services (provided that the client hereby grants to Granicus a perpetual, noncancelable, worldwide, non-exclusive license to utilize any data, on an anonymous or aggregate basis only, that arises from the use of the Granicus Products and Services by the client, whether disclosed on, subsequent to, or prior to the Effective Date, to improve the functionality of the Granicus Products and Services and any other legitimate business purpose including the right to sublicense such data to third parties, subject to all legal restrictions regarding the use and disclosure of such information).

3.2.5.3. Data Obtained through the Granicus Advanced Network

3.2.5.3.1. Granicus offers a SaaS product, known as the Communications Cloud, that offers Direct Subscribers recommendations to subscribe to other Granicus Client’s digital communication (the “Advanced Network”). When a Direct Subscriber signs up through one of the recommendations of the Advanced Network, that subscriber is a “Network Subscriber” to the agency it subscribed to through the Advanced Network.

3.2.5.3.2. Access to the Advanced Network is a benefit of the GovDelivery Communications Cloud subscription with Granicus. Network Subscribers are available for use only on the GovDelivery Communications Cloud while Client is under an active GovDelivery Communications Cloud subscription. Network Subscribers will not transfer to Client upon termination of any Granicus Order, SOW or Exhibit. Client shall not use or transfer any of the Network Subscribers after termination of its Order, SOW or Exhibit placed under this Agreement. All information related to Network Subscribers must be destroyed by Client within 15 calendar days of the Order, SOW or Exhibit placed under this Agreement terminating.

3.2.5.3.3. Opt-In. During the last 10 calendar days of Client’s Order Term for the terminating Order, SOW or Exhibit placed under this Agreement, Client may send an opt-in email to Network Subscribers that shall include an explanation of Client’s relationship with Granicus terminating and that the Network Subscribers may visit Client’s website to subscribe to further updates from Client in the future. Any Network Subscriber that does not opt-in will not be transferred with the subscriber list provided to Client upon termination.

3.3. Restrictions. Client shall not:

3.3.1. Misuse any Granicus resources or cause any disruption, including but not limited to, the display of pornography or linking to pornographic material, advertisements, solicitations, or mass mailings to individuals who have not agreed to be contacted;

3.3.2. Use any process, program, or tool for gaining unauthorized access to the systems, networks, or accounts of other parties, including but not limited to, other Granicus Clients;

- 3.3.3.** Client must not use the Granicus Products and Services in a manner in which system or network resources are unreasonably denied to other Granicus clients;
 - 3.3.4.** Client must not use the Services as a door or signpost to another server.
 - 3.3.5.** Access or use any portion of Granicus Products and Services, except as expressly allowed by this Agreement or each Order or SOW placed hereunder;
 - 3.3.6.** Disassemble, decompile, or otherwise reverse engineer all or any portion of the Granicus Products and Services;
 - 3.3.7.** Use the Granicus Products and Services for any unlawful purposes;
 - 3.3.8.** Export or allow access to the Granicus Products and Services in violation of U.S. laws or regulations;
 - 3.3.9.** Except as expressly permitted in this Agreement, subcontract, disclose, rent, or lease the Granicus Products and Services, or any portion thereof, for third party use; or
 - 3.3.10.** Modify, adapt, or use the Granicus Products and Services to develop any software application intended for resale which uses the Granicus Products and Services in whole or in part.
- 3.4. Client Feedback.** Client assigns to Granicus any suggestion, enhancement, request, recommendation, correction or other feedback provided by Client relating to the use of the Granicus Products and Services. Granicus may use such submissions as it deems appropriate in its sole discretion.
- 3.5. Reservation of Rights.** Subject to the limited rights expressly granted hereunder, Granicus and/or its licensors reserve all right, title and interest in the Granicus Products and Services, the documentation and resulting product including all related intellectual property rights. Further, no implied licenses are granted to Client. The Granicus name, the Granicus logo, and the product names associated with the services are trademarks of Granicus or its suppliers, and no right or license is granted to use them.

4. Payment

- 4.1. Fees.** Client agrees to pay all fees, costs and other amounts as specified in each Order or SOW. Annual fees are due upfront according to the billing frequency specified in each Order or SOW. Granicus reserves the right to suspend any Granicus Products and Services should there be a lapse in payment. A lapse in the term of each Order or SOW will require the payment of a setup fee to reinstate the subscription. All fees are exclusive of applicable state, local, and federal taxes, which, if any, will be included in the invoice. It is Client's responsibility to provide applicable exemption certificate(s).
- 4.2. Disputed Invoiced Amounts.** Client shall provide Granicus with detailed written notice of any amount(s) Client reasonably disputes within thirty (30) days of the date of invoice for said amount(s) at issue. Granicus will not exercise its rights under 4.1 above if Client has, in good faith, disputed an invoice and is diligently trying to resolve the dispute. Client's failure to provide Granicus with notice of any disputed invoiced amount(s) shall be deemed to be Client's acceptance of the content of such invoice.
- 4.3. Price Increases.** Any price increases not negotiated in advance shall be provided by Granicus to Client at least thirty (30) days prior to the end of the Order Term. Upon each yearly anniversary during the term of this Agreement (including the Initial Term, all Extended Terms, and all Order Terms), the Granicus Product and Services fees shall increase from the previous term's fees by up to ten (10) percent per year.

5. Representations, Warranties and Disclaimers

- 5.1. Representations.** Each Party represents that it has validly entered into this Agreement and has the legal power to do so.
- 5.2. Warranties.** Granicus warrants that it takes all precautions that are standard in the industry to increase the likelihood of a successful performance for the Granicus Products and Services; however, the Granicus Products and Services are provided "AS IS" and as available.
- 5.3. Disclaimers.** EXCEPT AS PROVIDED IN SECTION 5.2 ABOVE, EACH PARTY HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY NATURE WHATSOEVER WHETHER ORAL AND WRITTEN, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. GRANICUS DOES NOT WARRANT THAT GRANICUS PRODUCTS AND SERVICES WILL MEET CLIENT'S REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR FREE.

6. Confidential Information

- 6.1. Confidential Information.** It is expected that one Party (Disclosing Party) may disclose to the other Party (Receiving Party) certain information which may be considered confidential and/or trade secret information ("Confidential Information"). Confidential Information shall include: (i) Granicus' Products and Services, (ii) non-public information if it is clearly and conspicuously marked as "confidential" or with a similar designation at the time of disclosure; (iii) non-public information of the Disclosing Party if it is identified as confidential and/or proprietary before, during, or promptly after presentation or communication and (iv) any information that should be reasonably understood to be confidential or proprietary to the Receiving Party, given the nature of the information and the context in which disclosed.

Subject to applicable law, each Receiving Party agrees to receive and hold any Confidential Information in strict confidence. Without limiting the scope of the foregoing, each Receiving Party also agrees: (a) to protect and safeguard the Confidential Information against unauthorized use, publication or disclosure; (b) not to reveal, report, publish, disclose, transfer, copy or otherwise use any Confidential Information except as specifically authorized by the Disclosing Party; (c) not to use any Confidential Information for any purpose other than as stated above; (d) to restrict access to Confidential Information to those of its advisors, officers, directors, employees, agents, consultants, contractors and lobbyists who have a need to know, who have been advised of the confidential nature thereof, and who are under express written obligations of confidentiality or under obligations of confidentiality imposed by law or rule; and (e) to exercise at least the same standard of care and security to protect the confidentiality of the Confidential Information received by it as it protects its own confidential information.

If a Receiving Party is requested or required in a judicial, administrative, or governmental proceeding to disclose any Confidential Information, it will notify the Disclosing Party as promptly as practicable so that the Disclosing Party may seek an appropriate protective order or waiver for that instance.

- 6.2. Exceptions.** Confidential Information shall not include information which: (i) is or becomes public knowledge through no fault of the Receiving Party; (ii) was in the Receiving Party's possession before receipt from the Disclosing Party; (iii) is rightfully received by the Receiving party from a third party without any duty of confidentiality; (iv) is disclosed by the Disclosing Party without any duty of confidentiality on the third party; (v) is independently developed by the Receiving Party without use or reference to the Disclosing Party's Confidential Information; or (vi) is disclosed with the prior written approval of the Disclosing Party.

6.3. Storage and Sending. In the event that Granicus Products and Services will be used to store and/or send Confidential Information, Granicus must be notified in writing, in advance of the storage or sending. Should Client provide such notice, Client must ensure that Confidential Information or sensitive information is stored behind a secure interface and that Granicus Products and Services be used only to notify people of updates to the information that can be accessed after authentication against a secure interface managed by Client.

6.4. Return of Confidential Information. Each Receiving Party shall return or destroy the Confidential Information immediately upon written request by the Disclosing Party; provided, however, that each Receiving Party may retain one copy of the Confidential Information in order to comply with applicable laws and the terms of this Agreement. Customer understands and agrees that it may not always be possible to completely remove or delete all personal data from Granicus' databases without some residual data because of backups and for other reasons.

7. Term and Termination

7.1. Agreement Term. The Agreement Term shall begin on the date of the initial Order or SOW and continue through the latest date of the Order Term of each Order or SOW under this Agreement, unless otherwise terminated as provided in this Section 7. Each Order or SOW will specify an Order Term for the Granicus Products and Services provided under the respective Order or SOW. Client's right to access or use the Granicus Products and Services will cease at the end of the Order Term identified within each Order or SOW, unless either extended or earlier terminated as provided in this Section 7. Unless a Party has given written notice to the other Party at least ninety (90) days prior to the end of the then-current Order Term, the Granicus Products and Services will automatically renew at the end of each term for an Extension Term of one (1) year.

7.2. Effect of Termination. If the Parties agree to terminate this Agreement and an Order or SOW is still in effect at the time of termination, then the terms and conditions contained in this Agreement shall continue to govern the outstanding Order or SOW until termination or expiration thereof. If the Agreement is terminated for breach, then unless otherwise agreed to in writing, all outstanding Orders or SOWs shall immediately terminate as of the Agreement termination date. Unless otherwise stated in this Agreement, in no event shall Client be entitled to a refund of any prepaid fees upon termination.

7.3. Termination for Cause. The non-breaching Party may terminate this Agreement upon written notice if the other Party is in material breach of this Agreement and fails to cure such breach within thirty (30) days after the non-breaching Party provides written notice of the breach. A Party may also terminate this Agreement immediately upon notice if the other Party: (a) is liquidated, dissolved, or adjudged to be in a state of bankruptcy or receivership; (b) is insolvent, unable to pay its debts as they become due, makes an assignment for the benefit of creditors or takes advantage of any law for the benefit of debtors; or (c) ceases to conduct business for any reason on an ongoing basis leaving no successor in interest. Granicus may, without liability, immediately suspend or terminate any or all Order or SOW issued hereunder if any Fees owed under this Agreement are past due pursuant to Section 4.1.

7.4. Rights and Obligations After Termination. In the event of expiration or termination of this Agreement, Client shall immediately pay to Granicus all Fees due to Granicus through the date of expiration or termination.

7.5. Survival. All rights granted hereunder shall terminate upon the latter of the termination or expiration date of this Agreement, or each Order or SOW. The provisions of this Agreement with respect to warranties, liability, choice of law and jurisdiction, and confidentiality shall survive termination of this Agreement and continue in full force and effect.

8. Limitation of Liability

8.1. EXCLUSION OF CONSEQUENTIAL AND RELATED DAMAGES. UNDER NO CIRCUMSTANCES SHALL GRANICUS BE LIABLE FOR ANY SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, GRANICUS SHALL NOT BE LIABLE FOR: (A) ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF CLIENT DATA; (B) COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY; (C) LOSS OF BUSINESS; (D) DAMAGES ARISING OUT OF ACCESS TO OR INABILITY TO ACCESS THE SERVICES, SOFTWARE, CONTENT, OR RELATED TECHNICAL SUPPORT; OR (E) FOR ANY MATTER BEYOND GRANICUS' REASONABLE CONTROL, EVEN IF GRANICUS HAS BEEN ADVISED OF THE POSSIBILITY OF ANY OF THE FOREGOING LOSSES OR DAMAGES.

8.2. LIMITATION OF LIABILITY. EXCEPT FOR CLIENT'S BREACH OF SECTION 3.3, IN NO INSTANCE SHALL EITHER PARTY'S LIABILITY TO THE OTHER PARTY FOR DIRECT DAMAGES UNDER THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR OTHERWISE) EXCEED THE FEES PAID BY CLIENT FOR THE GRANICUS PRODUCTS AND SERVICES DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE THE DAMAGED PARTY NOTIFIES THE OTHER PARTY IN WRITING OF THE CLAIM FOR DIRECT DAMAGES.

9. Indemnification

9.1. Indemnification by Granicus. GRANICUS WILL DEFEND CLIENT FROM AND AGAINST ALL LOSSES, LIABILITIES, DAMAGES AND EXPENSES ARISING FROM ANY CLAIM OR SUIT BY A THIRD PARTY UNAFFILIATED WITH EITHER PARTY TO THIS AGREEMENT ("CLAIMS") AND SHALL PAY ALL LOSSES, DAMAGES, LIABILITIES, SETTLEMENTS, JUDGMENTS, AWARDS, INTEREST, CIVIL PENALTIES, AND REASONABLE EXPENSES (COLLECTIVELY, "LOSSES," AND INCLUDING REASONABLE ATTORNEYS' FEES AND COURT COSTS), TO THE EXTENT ARISING OUT OF ANY CLAIMS BY ANY THIRD PARTY THAT GRANICUS PRODUCTS AND SERVICES INFRINGE A VALID U.S. COPYRIGHT OR U.S. PATENT ISSUED AS OF THE DATE OF THE APPLICABLE ORDER OR SOW. IN THE EVENT OF SUCH A CLAIM, IF GRANICUS DETERMINES THAT AN AFFECTED ORDER OR SOW IS LIKELY, OR IF THE SOLUTION IS DETERMINED IN A FINAL, NON-APPEALABLE JUDGMENT BY A COURT OF COMPETENT JURISDICTION, TO INFRINGE A VALID U.S. COPYRIGHT OR U.S. PATENT ISSUED AS OF THE DATE OF THE APPLICABLE ORDER OR SOW, GRANICUS WILL, IN ITS DISCRETION: (A) REPLACE THE AFFECTED GRANICUS PRODUCTS AND SERVICES; (B) MODIFY THE AFFECTED GRANICUS PRODUCTS AND SERVICES TO RENDER IT NON-INFRINGEMENT; OR (C) TERMINATE THIS AGREEMENT OR THE APPLICABLE ORDER OR SOW WITH RESPECT TO THE AFFECTED SOLUTION AND REFUND TO CLIENT ANY PREPAID FEES FOR THE THEN-REMAINING OR UNEXPIRED PORTION OF THE ORDER OR SOW TERM. NOTWITHSTANDING THE FOREGOING, GRANICUS SHALL HAVE NO OBLIGATION TO INDEMNIFY, DEFEND, OR HOLD CLIENT HARMLESS FROM ANY CLAIM TO THE EXTENT IT IS BASED UPON: (I) A MODIFICATION TO ANY SOLUTION BY CLIENT (OR BY ANYONE UNDER CLIENT'S DIRECTION OR CONTROL OR USING LOGINS OR PASSWORDS ASSIGNED TO CLIENT); (II) A MODIFICATION MADE BY GRANICUS PURSUANT TO CLIENT'S REQUIRED INSTRUCTIONS OR SPECIFICATIONS OR IN RELIANCE ON MATERIALS OR INFORMATION PROVIDED BY CLIENT; OR (III) CLIENT'S USE (OR USE BY ANYONE UNDER CLIENT'S DIRECTION OR CONTROL OR USING LOGINS OR PASSWORDS ASSIGNED TO CLIENT) OF ANY GRANICUS PRODUCTS AND SERVICES OTHER THAN IN ACCORDANCE WITH THIS AGREEMENT. THIS SECTION 9.1 SETS FORTH CLIENT'S SOLE AND EXCLUSIVE REMEDY, AND GRANICUS' ENTIRE LIABILITY, FOR ANY CLAIM THAT THE GRANICUS PRODUCTS AND SERVICES

OR ANY OTHER MATERIALS PROVIDED BY GRANICUS VIOLATE OR INFRINGE UPON THE RIGHTS OF ANY THIRD PARTY.

- 9.2. GRANICUS WILL DEFEND, INDEMNIFY AND HOLD HARMLESS CLIENT AND ITS AGENTS, OFFICIALS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL THIRD-PARTY CLAIMS, LOSSES, LIABILITIES, DAMAGES, COSTS, AND EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES AND COSTS) FOR (A) PERSONAL INJURY OR PROPERTY DAMAGE TO THE EXTENT CAUSED BY GRANICUS' NEGLIGENCE OR WILLFUL MISCONDUCT; OR (B) GRANICUS' VIOLATION OF A LAW APPLICABLE TO ITS PERFORMANCE UNDER THIS AGREEMENT.** Client must notify Granicus promptly in writing of the claim and give Granicus sole control over its defense or settlement. Client agrees to provide Granicus with reasonable assistance, cooperation, and information in defending the claim, at Granicus' expense.
- 9.3. Defense.** With regard to any Claim subject to indemnification pursuant to this Section 9: (a) the Party seeking indemnification shall promptly notify the indemnifying Party upon becoming aware of the Claim; (b) the indemnifying Party shall promptly assume sole defense and control of such Claim upon becoming aware thereof; and (c) the indemnified Party shall reasonably cooperate with the indemnifying Party regarding such Claim. Nevertheless, the indemnified Party may reasonably participate in such defense, at its expense, with counsel of its choice, but shall not settle any such Claim without the indemnifying Party's prior written consent. The indemnifying Party shall not settle or compromise any Claim in any manner that imposes any obligations upon the indemnified Party without the prior written consent of the indemnified Party.

10. General

- 10.1. Relationship of the Parties.** Granicus and Client acknowledge that they operate independent of each other. Nothing in this Agreement shall be deemed or construed to create a joint venture, partnership, agency, or employee/employer relationship between the Parties for any purpose, including, but not limited to, taxes or employee benefits. Each Party will be solely responsible for the payment of all taxes and insurance for its employees and business operations.
- 10.2. Headings.** The various section headings of this Agreement are inserted only for convenience of reference and are not intended, nor shall they be construed to modify, define, limit, or expand the intent of the Parties.
- 10.3. Amendments.** This Agreement may not be amended or modified except by a written instrument signed by authorized representatives of both Parties.
- 10.4. Severability.** To the extent permitted by applicable law, the Parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
- 10.5. Assignment.** Neither Party may assign, delegate, or otherwise transfer this Agreement or any of its rights or obligations hereunder, either voluntarily or by operation of law, without the prior written consent of the other Party (such consent not to be unreasonably withheld); provided, however, that either Party may assign this Agreement without the other Party's consent in the event of any successor or assign that has acquired all, or substantially all, of the assigning Party's business by means of merger, stock purchase, asset purchase, or otherwise. Any assignment or attempted assignment in violation of this Agreement shall be null and void.
- 10.6. No Third-Party Beneficiaries.** Subject to Section 10.5 this Agreement is binding upon, and insures solely to the benefit of the Parties hereto and their respective permitted successors and assigns; there are no third-party beneficiaries to this Agreement.

- 10.7. Notice.** Other than routine administrative communications, which may be exchanged by the Parties via email or other means, all notices, consents, and approvals hereunder shall be in writing and shall be deemed to have been given upon: (a) personal delivery; (b) the day of receipt, as shown in the applicable carrier's systems, if sent via FedEx, UPS, DHL, or other nationally recognized express carrier; (c) the third business day after sending by U.S. Postal Service, First Class, postage prepaid, return receipt requested; or (d) sending by email, with confirmed receipt from the receiving party. Either Party may provide the other with notice of a change in mailing or email address in which case the mailing or email address, as applicable, for that Party will be deemed to have been amended.
- 10.8. Force Majeure.** Any delay in the performance by either Party hereto of its obligations hereunder shall be excused when such delay in performance is due to any cause or event of any nature whatsoever beyond the reasonable control of such Party, including, without limitation, any act of God; any fire, flood, or weather condition; any computer virus, worm, denial of service attack; any earthquake; any act of a public enemy, war, insurrection, riot, explosion or strike; provided, that written notice thereof must be given by such Party to the other Party within twenty (20) days after occurrence of such cause or event.
- 10.9. Choice of Law and Jurisdiction.** This Agreement shall be governed by and interpreted under the laws of the State of Texas, without reference to the State's principles of conflicts of law. The Parties expressly consent and submit to the exclusive jurisdiction of the state and federal courts of Dallas County, Texas.
- 10.10. Entire Agreement.** This Agreement, together with all Orders or SOWs referenced herein, sets forth the entire understanding of the Parties with respect to the subject matter of this Agreement, and supersedes any and all prior oral and written understandings, quotations, communications, and agreements. Granicus and Client agree that any and all Orders or SOWs are incorporated herein by this reference. In the event of possible conflict or inconsistency between such documents, the conflict or inconsistency shall be resolved by giving precedence in the following order: (1) the terms of this Agreement; (2) Orders; (3) all other SOWs or other purchase documents; (4) Granicus response to Client's request for RFI, RFP, RFQ; and (5) Client's RFI, RFP, RFQ. If Client issues a purchase order, Granicus hereby rejects any additional or conflicting terms appearing on the purchase order or any other ordering materials submitted by Client. Upon request, Granicus shall reference a purchase order number on its invoices, provided, however, that Client acknowledges that it is Client's responsibility to provide the corresponding purchase order information (including a purchase order number) to Granicus upon the creation of such a purchase order. Client agrees that a failure to provide Granicus with the corresponding purchase order shall not relieve Client of its obligations to provide payment to Granicus pursuant to Section 4.1 above.
- 10.11. Reference.** Notwithstanding any other terms to the contrary contained herein, Client grants Granicus the right to use Client's name and logo in Client lists and marketing materials.
- 10.12. Injunctive Relief.** Granicus is entitled to obtain injunctive relief if Client's use of Granicus Products and Services is in violation of any restrictions set forth in this Agreement.

Granicus

By:

(Authorized Signature)

Name

:

(Print or Type Name of Signatory)

Title:

Date:

(Execution Date)

Addison, TX

By:

(Authorized Signature)

Name

:

(Print or Type Name of Signatory)

Title:

Date:

(Execution Date)

Attachments: Exhibit A (Proposal)

Granicus Proposal for Addison, TX

ORDER DETAILS

Prepared By: Allyson Bidy
Phone: (832) 415-6090
Email: allyson.bidy@granicus.com
Order #: Q-309341
Prepared On: 17 Oct 2023
Expires On: 11 Nov 2023

ORDER TERMS

Currency: USD
Payment Terms: Net 30 (Payments for subscriptions are due at the beginning of the period of performance.)
Period of Performance: The term of the Agreement will commence on the date this document is signed and will continue for 60 months.

PRICING SUMMARY

The pricing and terms within this Proposal are specific to the products and volumes contained within this Proposal.

One-Time Fees			
Solution	Billing Frequency	Quantity/Unit	One-Time Fee
Granicus Web - Enhanced Package	Milestones - 40/30/30	1 Each	\$16,500.00
GXG Information Architecture	Up Front	1 Each	\$22,500.00
Setup and configuration package: OpenForms License	Up Front	1 Each	\$0.00
Training: OpenForms	Upon Delivery	1 Each	\$0.00
Setup and configuration package: OpenForms Workflow add-on	Up Front	1 Each	\$0.00
Granicus Web - Intranet-Specialty services pack - Branded Subsite	Milestones - 40/30/30	1 Each	\$5,000.00
Granicus Web - Intranet-Specialty services pack - Branded Subsite	Milestones - 40/30/30	5 Each	\$20,000.00
SUBTOTAL:			\$64,000.00

New Subscription Fees					
Solution	Period of Performance	Billing Frequency	Quantity/Unit	Annual Fee	Prorated Fee
OpenForms Team License	01 Apr 2024 - 30 Sep 2024	Annual	1 Each	\$3,255.00	\$1,627.50
OpenCities SaaS License	01 Apr 2024 - 30 Sep 2024	Annual	1 Each	\$9,000.00	\$4,500.00
OpenForms Add-on: Workflow	01 Apr 2024 - 30 Sep 2024	Annual	1 Each	\$1,725.00	\$862.50
OpenCities Intranet License	01 Apr 2024 - 30 Sep 2024	Annual	1 Each	\$5,500.00	\$2,750.00
OpenCities Subsite License	01 Apr 2024 - 30 Sep 2024	Annual	5 Each	\$5,000.00	\$2,500.00
SUBTOTAL:				\$24,480.00	\$12,240.00

FUTURE YEAR PRICING

Solution(s)	Period of Performance			
	Year 2	Year 3	Year 4	Year 5
OpenForms Team License	\$3,417.75	\$3,588.64	\$3,768.07	\$3,956.47
OpenCities SaaS License	\$9,450.00	\$9,922.50	\$10,418.63	\$10,939.56
OpenForms Add-on: Workflow	\$1,811.25	\$1,901.81	\$1,996.90	\$2,096.75
OpenCities Intranet License	\$5,775.00	\$6,063.75	\$6,366.94	\$6,685.28
OpenCities Subsite License	\$5,250.00	\$5,512.50	\$5,788.13	\$6,077.53
SUBTOTAL:	\$25,704.00	\$26,989.20	\$28,338.67	\$29,755.59

PRODUCT DESCRIPTIONS

Solution	Description
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Solution	Description
Granicus Web - Enhanced Package	<p>The Enhanced package provides a citizen-focused website with a robust UX process. This package utilizes standard CMS functionality to create a modular homepage layout. It is recommended for organizations that have a small/medium website implementation team with the capacity to engage in a design process to feature their existing branding using proven design patterns for digital transformation.</p> <p>This package includes:</p> <ul style="list-style-type: none"> • Professional Project Management <ul style="list-style-type: none"> ○ Weekly / bi-weekly communication • Basic UX Consultation, which may include one (1) or more of the following based on consultation with client: <ul style="list-style-type: none"> ○ One (1) site analytics report based on Google Analytics ○ One (1) homepage heatmap analytics visualization ○ One (1) internal stakeholder survey ○ One (1) Community survey export ○ One (1) modular homepage wireframe based on predefined building blocks ○ Information Architecture (IA) best practices review • One (1) Content Rationalization Package (basic) <ul style="list-style-type: none"> ○ Best practices review, one (1) hour session ○ Site scrape loaded into AIM framework document • One (1) Visual Design Package <ul style="list-style-type: none"> ○ One (1) homepage design concept ○ Interior page sample ○ Mobile version sample ○ Up to three (3) rounds of design revisions • Up to two (2) CX features <ul style="list-style-type: none"> ○ choose from Granicus library • Development/CMS Implementation • Content Migration - up to one hundred (100) pages • QA & Accessibility Report • Remote Training <ul style="list-style-type: none"> ○ Delivered in three (3) non-consecutive sessions eight (8) hours total ○ Up to ten (10) people

Solution	Description
<p>OpenForms Team License</p>	<p>OpenForms is a digital forms builder specifically designed for Government. Government services can be complicated, but the experience for the residents accessing them shouldn't have to be. OpenForms is perfect for the business of government, with capabilities that will help you convert complex, multi-page forms and processes into simple, step-by-step online forms that adjust based on customers responses.</p> <p>The Team plan enables powerful form building for up to:</p> <ul style="list-style-type: none"> • 5 users, 50 published forms. <p>Key features include:</p> <ul style="list-style-type: none"> • Drag and drop form builder • Display logic and calculations • Payments • Insights dashboard • Form analytics • Support team access • Save responses • Unlimited responses • Data connections and API access • Up to: 10GB file uploads, 1,000 web API calls per hour <p>This package does not include premium features such as workflow, workspaces, form versioning or custom documents. For these features, please consider OpenForms Enterprise.</p>

Solution	Description
OpenCities SaaS License	<p>The OpenCities platform allows you to launch modern, easy to use websites that evolve to put the needs of your community at the center. The SaaS License includes:</p> <ul style="list-style-type: none"> • All OpenCities out of the box functionality (excluding optional/premium modules priced separately) • Platform setup and full project management • Managed cloud hosting via Microsoft AzureGov • Ongoing security updates • Ongoing product updates and enhancements • WCAG AA Accessibility maintained perpetually • 99.9% up-time guarantee and 24/7 support for Priority 1 issues (per SLA) • Comprehensive SLA and Support Ticketing system <p>See subscription agreement for details.</p>
GXG Information Architecture	<p>Updating your website's Information Architecture (IA) is key to improving the overall user experience. Our IA process involves website data analysis, user research and user testing, and other best-practice methodologies that serve to seamlessly bridge your goals with user needs. This effort will result in a strategic and scalable approach to content priorities, a development of a navigation structure for your new site, and the creation of an actionable implementation strategy for your existing content. Activities include:</p> <ul style="list-style-type: none"> • Kickoff: Align on goals, expectations, timelines, and deliverables • Data Audit: We'll review surveys, Google Analytics, and any other piece of data to get a sense of how the website is currently utilized, what the user priorities are, and how the current content is meeting their needs. • User engagement: Conduct up to one (1) card sort with up to forty (40) external users OR up to one (1) tree test with up to forty (40) external users <p>Deliverable:</p> <ul style="list-style-type: none"> • Recommendations & Implementation Report. Includes new Information Architecture map, connecting individual pages to their new categories and location in the site tree <p>Assumptions:</p> <ul style="list-style-type: none"> • Covers analysis and IA for sites with up to 2,500 URLs. • Three-month period of performance to be completed within the contract period. • Does NOT include a content audit. • Does NOT include content creation. • Client sources external users for testing. • Does NOT include document review.
Setup and configuration package: OpenForms License	Setup and configuration of OpenForms

Solution	Description
Training: OpenForms	1.5 hour OpenForms Training session for up to 25 people, delivered online.
OpenForms Add-on: Workflow	With workflow, once a resident hits submit on a form, OpenForms will allow you to set up multiple steps with automatic or decision based transitions to manage form response workflows.
Setup and configuration package: OpenForms Workflow add-on	Setup and configuration of workflow for OpenForms Team License
Granicus Web - Intranet-Specialty services pack - Branded Subsite	<p>Branded subsites allow a department or organization to customize their pages with a unique color scheme and branding utilizing the framework of the main site.</p> <p>This package includes:</p> <ul style="list-style-type: none"> • Landing page – a carbon copy of the main website homepage layout and functionality • Unique design theme, including color palette for landing and interior pages • Development/CMS Implementation • Ability to refine homepage content via CMS widget settings • Individual navigation structure • Individual domain name • Individual search capabilities

Solution	Description
OpenCities Intranet License	<p>Help all employees find and view the information they need through an elegant and intuitive online Intranet portal. Deliver content to specific employee groups securely. Enable HR functions such as company communications, vacation calendars or new hire onboarding. Organize policies. Surface and search key content. The OpenCities intranet provides a turn-key solution that captures years of local government digital learnings to bring people, processes and information together, providing your teams with everything they need to do their job better. Delivered as a mobile friendly, ADA / WCAG compliant, continually evolving cloud solution, an OpenCities Intranet is fast to deploy, easy to scale and provides the user experience a modern intranet needs. - OpenCities Project Manager from kick-off to go-live- Use the full power of OpenCities page types, content types and modules to create a functionality rich intranet- Staff directory and organization chart that syncs automatically with your Microsoft Azure Active Directory to ensure the information is always up to date- Enhance collaboration and communication with message boards- Allow users to create profiles, news, events and message boards in the intranet, without needing to access the CMS back-end- Does not include implementation services</p>
Granicus Web - Intranet- Specialty services pack - Branded Subsite	<p>Branded subsites allow a department or organization to customize their pages with a unique color scheme and branding utilizing the framework of the main site.</p> <p>This package includes:</p> <ul style="list-style-type: none"> • Landing page – a carbon copy of the main website homepage layout and functionality • Unique design theme, including color palette for landing and interior pages • Development/CMS Implementation • Ability to refine homepage content via CMS widget settings • Individual navigation structure • Individual domain name • Individual search capabilities

Solution	Description
<p>OpenCities Subsite License</p>	<p>This License is for a single subsite to be installed with an instance of OpenCities. Examples of subsites include: Libraries, leisure centers, festivals, tourism and more.</p> <p>Using our Subsite functionality, clients can create and manage subsites without the need to engage in custom web development. Using the site wizard, you can select what functions and layout needs you have for the site, set up publishers and permissions, and start entering content within a matter of days. Create and implement a visual theme in-house or partner with Granicus to deliver one for you.</p> <ul style="list-style-type: none"> • Use the full power of OpenCities modules to create functionally rich subsites • Reduce maintenance costs • All sites benefit from ongoing Accessibility, Browser, Device and UI updates • Easily share content such as events in between sites, even if each site looks different • Setup password protected sites to deliver secure information to authenticated users. • Subsites are supported under the same terms as the main site, with the same SLA and support and maintenance agreements. • Does not include implementation services

TERMS & CONDITIONS

- This quote, and all products and services delivered hereunder are governed by the terms located at <https://granicus.com/legal/licensing>, including any product-specific terms included therein (the "License Agreement"). If your organization and Granicus has entered into a separate agreement or is utilizing a contract vehicle for this transaction, the terms of the License Agreement are incorporated into such separate agreement or contract vehicle by reference, with any directly conflicting terms and conditions being resolved in favor of the separate agreement or contract vehicle to the extent applicable.
- If submitting a Purchase Order, please include the following language: The pricing, terms and conditions of quote Q-309341 dated 17 Oct 2023 are incorporated into this Purchase Order by reference and shall take precedence over any terms and conditions included in this Purchase Order.
- This quote is exclusive of applicable state, local, and federal taxes, which, if any, will be included in the invoice. It is the responsibility of Addison, TX to provide applicable exemption certificate(s).
- Any lapse in payment may result in suspension of service and will require the payment of a setup fee to reinstate the subscription.
- Billing Frequency Notes (Milestones - 40/30/30): An initial payment equal to 40% of the total; a payment equal to 30% of the total upon homepage design approval, and; a payment equal to 30% of the total upon go-live.
- Client will be invoiced for use of any product or service measured or capped by volume or amount of usage that exceeds the permitted amount set forth in this Quote at the same cost or rate set forth herein.
- **Updates to Shared Short Codes for SMS/Text Messaging:**
Granicus will be migrating all clients with SMS/Text Messaging Solutions using a shared short code option to a unique standard toll-free number within the United States (International numbers not supported). Short Codes are recommended for Text-to-Subscribe functionalities, if enabled where available, for an additional fee. Client must have explicit opt-in for all destinations sent to and adhere to all CTIA guidelines for the duration of its use.

BILLING INFORMATION

Billing Contact:		Purchase Order Required?	[] - No [] - Yes
Billing Address:		PO Number: <i>If PO required</i>	
Billing Email:		Billing Phone:	

If submitting a Purchase Order, please include the following language:

The pricing, terms, and conditions of quote Q-309341 dated 17 Oct 2023 are incorporated into this Purchase Order by reference and shall take precedence over any terms and conditions included in this Purchase Order.

AGREEMENT AND ACCEPTANCE

By signing this document, the undersigned certifies they have authority to enter the agreement. The undersigned also understands the services and terms.

Addison, TX	
Signature:	
Name:	
Title:	
Date:	