

TOWN OF ADDISON, TEXAS

RESOLUTION NO. R10-015

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING AN AGREEMENT BETWEEN THE TOWN OF ADDISON AND RCC CONSULTANTS, INC. REGARDING THE PROVISION OF CERTAIN SERVICES BY RCC CONSULTANTS, INC. IN CONNECTION WITH THE METROCREST PUBLIC SAFETY SYSTEMS PROJECT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE SAID AGREEMENT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Addison, Texas (the "Town") heretofore entered into an agreement with the City of Carrollton, Texas ("Carrollton") and the City of Farmers Branch, Texas ("Farmers Branch") regarding the operation and funding by the Town, Carrollton and Farmers Branch of a Motorola four-site nine-channel 800Mhz Trunked Simulcast Public Safety Radio System (the "Radio System"); and

WHEREAS, two impending changes will impact the Radio System, one of which is the phasing out of technical and replacement parts support by Motorola (the Radio System equipment provider), and the other which is a federal government initiative known as the P25 interoperability initiative; and

WHEREAS, as a result of these impending changes, the Town, Carrollton and Farmers Branch must decide to either retain or replace the existing Radio System, and to facilitate that decision it is beneficial to retain the services of RCC Consultants, Inc., a public safety communications consultant, to study, evaluate, and make a recommendation regarding the same; and

WHEREAS, the City Council desires to retain the services of RCC Consultants, Inc. to perform such study, evaluation, and recommendation.

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

Section 1. The above and foregoing premises are true and correct and are incorporated into and made a part of this Resolution for all purposes.

Section 2. The City Council of the Town of Addison, Texas does hereby approve an agreement between the Town of Addison, Texas and RCC Consultants, Inc. entitled "Consultant Services Agreement" (the "Agreement") regarding the provision of consulting services for the Radio System as described hereinabove, a true and correct copy of which Agreement is attached hereto as Exhibit A. The City Manager is authorized to execute the Agreement on behalf of the Town.

Section 3. This Resolution shall take effect upon its passage and approval.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this the 13th day of July, 2010.


Joe Chow, Mayor

ATTEST:

By: 
Lea Dunn, City Secretary

APPROVED TO FORM:

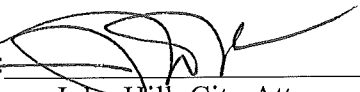
By: 
John Hill, City Attorney

EXHIBIT A
TO RESOLUTION NO. _____

[Attach copy of Agreement with RCC Consultants, Inc.]

CONSULTANT SERVICES AGREEMENT

THIS CONSULTANT SERVICES AGREEMENT ("Agreement") is made as of ^{July} April-
13, 2010 by and between the **Town of Addison, Texas** (hereinafter referred to as "Addison")
and **RCC Consultants, Inc.**, a Delaware corporation with its principal offices at 100
Woodbridge Center Drive, Suite 201, Woodbridge, NJ 07095 (hereinafter referred to as "RCC")
(Addison and RCC are sometimes referred to herein together as the "parties" and individually as
a "party").

WITNESSETH:

WHEREAS, Addison, in conjunction with the City of Carrollton, Texas, and the City of
Farmers Branch, Texas, is a participant in the Metrocrest Public Safety Systems Project (the
"Project"); and

WHEREAS, Addison and RCC are each participants in the Houston-Galveston Area
Council ("H-GAC") cooperative purchasing program (the "Program"); and

WHEREAS, Addison desires to engage RCC to perform certain services on the Project,
and RCC desires to accept such engagement, all subject to the terms and conditions of this
Agreement and the H-GAC Program.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the
parties hereto agree as follows:

ARTICLE I - Scope of Work

Addison hereby engages RCC to perform that portion of the consulting services identified
and described as Phase I (Needs Assessment, Alternatives Analysis & Master Plan) (the
"Services") in that certain proposal submitted by RCC to Addison and entitled "Proposal for
Public Safety Systems Consulting," dated February 25, 2010, a copy of which is annexed hereto
as Appendix "A" and incorporated herein by this reference (the "Proposal"), and RCC hereby
agrees to perform such Services, all on the terms and subject to the conditions set forth in this
Agreement, the Proposal, and the H-GAC Program. To the extent of any conflict between this
Agreement, the Proposal, and the H-GAC Program, the provisions of this Agreement shall
prevail over the Proposal and the H-GAC Program, and the H-GAC Program shall prevail over
the Proposal.

may be eligible for reimbursement hereunder) shall not exceed \$170,869.22. Beginning in the first month following the Commencement Date and continuing each month thereafter, RCC will submit to Addison monthly invoices for the portion of the Services undertaken and performed in the previous month. All such invoices shall include a summary statement of Services rendered and an itemized statement of reimbursable costs and expenses incurred and related administrative fees. RCC shall supply such supporting documentation for costs and expenses for the Services performed by RCC as may be required by Addison. Addison shall pay RCC the amount on the invoice within thirty (30) days of Addison's receipt of the invoice. Any invoices not paid by Addison on a timely basis will accrue interest in accordance with Section 2251.025, Tex. Gov. Code.

ARTICLE III - Submission of Reports

During the term of this Agreement, RCC shall provide to Addison or its designee such oral or written reports as are specified in the Proposal.

ARTICLE IV - Period of Performance

The performance of RCC's Services hereunder shall commence upon RCC's receipt of a written notice to proceed with such performance issued by Addison (the "Commencement Date"), and, subject to the provisions of this Agreement, including, without limitation, the provisions of ARTICLE VI hereof, shall terminate upon completion of the Services and payment to RCC of the total sum specified in the Proposal.

ARTICLE V - Independent Contractor

RCC's relationship with Addison shall at all times be that of an independent contractor, and nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or a joint enterprise. The method and manner in which RCC's services hereunder shall be performed shall be determined by RCC in its sole discretion, and Addison will not exercise control over RCC or its employees; provided, however that the Services shall be provided in compliance with all applicable standards, regulations, and laws governing the same. The employees, contractors, methods, equipment and facilities used by RCC shall at all times be under its exclusive direction and control. Nothing in this Agreement shall be construed to designate RCC, or any of its employees, as employees or agents of Addison.

ARTICLE VI - Termination; Disputes

(a) Either party (the "Terminating Party") may terminate this Agreement if the other

timely pay an invoice submitted by RCC for Services provided by RCC during any month prior to September, 2010, the same shall not constitute a failure for purposes of this subsection (a).

(b) If any invoice is disputed, Addison must specify the amount in dispute and the nature of the dispute and must pay the undisputed amount of the invoice (less two times the disputed amount) in accordance with the terms of this Agreement. If notice of dispute of an invoice is not sent to RCC within thirty (30) days of Addison's receipt of the invoice, the invoice will be deemed accepted by Addison and must be paid in accordance with the terms of this Agreement.

ARTICLE VII - Reports and Other Documentation; Confidentiality

Any reports, charts, and other data prepared by RCC specifically for Addison in the course of performing the Services shall be the property of Addison. In the event of termination or expiration of this Agreement, all finished or unfinished data, studies, reports and other items prepared by RCC shall become the property of Addison and RCC shall promptly deliver such items to Addison.

RCC agrees to protect the confidentiality of any information delivered to RCC by Addison in connection with this Agreement that is designated by Addison to be privileged or proprietary or that is prepared by RCC pursuant to this Agreement, except to the extent that (i) such information has entered the public domain other than by an act or omission of RCC or its officers, employees, or agents, (ii) is obtained by RCC from independent third parties not subject to any confidentiality or similar agreement with Addison, or (iii) disclosure of such information is required by law, rule or regulation or the valid order of a court or administrative agency.

RCC shall maintain the confidentiality of all protected health information to which it or its employees gain unintended access in accordance with all state and federal laws pursuant to which Addison maintains protected health information, including without limitation the applicable portions of the Texas Health and Safety Code and the HIPAA Privacy Rules.

RCC hereby acknowledges and agrees that the confidentiality of all protected health information to which it or its employees gain unintended access is protected by state and federal law. RCC further acknowledges and agrees that it will not and will ensure that its employees do not use or disclose any protected health information at any time or for any reason whatsoever.

ARTICLE VIII - Personnel

Each party agrees that during the term of this Agreement and for a period of one (1) year thereafter it will not seek to employ an employee of the other party.

ARTICLE IX - Warranties

Notwithstanding anything herein to the contrary, RCC agrees and acknowledges that Addison is entering into this Agreement in reliance on RCC's professional abilities with respect to performing the Services set forth herein.

RCC represents and warrants to Addison as follows:

1. RCC is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and which shall remain in good standing throughout the term of this Agreement, and has the requisite power and authority to carry on its business in the State of Texas. The execution, delivery and performance of this Agreement have been duly authorized by all required corporate action of RCC, and this Agreement is the valid and binding obligation of RCC, enforceable against it in accordance with its terms.

2. RCC is authorized to practice engineering in the State of Texas and that any necessary licenses, permits or other authorization to practice engineering and to provide the Services set forth herein have been heretofore acquired as required by law, rule or regulation.

3. RCC has the skills, qualifications, expertise, experience and financial capability necessary to perform the work and services described herein in an efficient and cost-effective manner with a high degree of quality and responsiveness, and has performed and continues to perform the same and similar services for others.

4. RCC will use its professional skill, judgment and abilities in the performance of its Services hereunder, and shall render Services under this Agreement and in connection with the Project in accordance with the professional standards of engineering prevailing in the Dallas-Fort Worth metroplex area and shall use the skill and care commensurate with the requirements of the engineering profession.

5. The Services, in accordance with the standard of care set forth herein, shall be sufficient and adequate for the Project which is the subject of this Agreement, and shall be free from material error.

6. RCC shall perform its Services in accordance with all laws, regulations, and rules in accordance with the standard of care set forth herein. RCC shall be liable to Addison for any and all damages, injuries, liability, or other harm of whatever nature to the extent caused by or resulting from any act or omission of RCC, or RCC's directors, partners, officers, employees, agents, contractors, subcontractors, or any person or entity for whom RCC is legally liable, in the provision of its Services under this Agreement.

7. RCC shall perform all Services and any other work hereunder in a manner satisfactory and acceptable to Addison in accordance with the terms and conditions of this Agreement, including (without limitation) the standard of care set forth in this Agreement. RCC shall perform all of its services in a timely and professional manner, utilizing at all times an economical and expeditious manner for performing such Services. No less than monthly, RCC shall keep Addison informed, orally or in writing (as requested by Addison), as to the status of all Services of RCC in process. All oral information shall be subsequently confirmed in writing.

RCC makes no other warranties, express or implied, and all other warranties are hereby expressly disclaimed, including without limitation the warranty of merchantability and the warranty of fitness for a particular purpose.

Addison represents to RCC that the execution of this Agreement has been duly authorized.

ARTICLE X - Indemnity/Liability

RCC shall FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS Addison and the elected officials, the officers, agents, representatives, and employees of the Town of Addison, Texas, individually or collectively, in both their official and private capacities (the Town of Addison, Texas, and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas each being an "Addison Person" and collectively the "Addison Persons"), from and against any and all claims, damages, harm, liens, fines, penalties, suits, proceedings, judgments, actions, causes of action, losses, expenses, costs, fees, including reasonable attorney's fees, and liabilities and costs of defense of any kind and nature whatsoever, made upon or incurred by any Addison Person, whether directly or indirectly, (collectively, the "Claims"), that arise out of, result from, or relate to an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by RCC or RCC's agent, consultant under contract, or another entity over which RCC exercises control. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS OBLIGATION SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF AN ADDISON PERSON. However, when Claims arise out of the co-negligence of an Addison Person and RCC or any RCC Persons, RCC's liability under this clause shall be reduced by that portion of the total amount of the Claims (excluding attorneys' fees and costs incurred in defense of Claims) equal to the Addison Person or Persons' proportionate share of the negligence that caused the loss attributable to such negligence. Likewise, RCC's liability for Addison Person's defense costs and attorneys' fees shall be reduced by that portion of the defense costs and attorneys' fees equal to Addison Person or Persons' proportionate share of the negligence that caused the loss attributable to such negligence.

RCC shall promptly advise Addison in writing of any claim or demand against any Addison Person or RCC related to or arising out of RCC's activities under this Agreement and shall see to the investigation and defense of such claim or demand at RCC'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 RCC of any of its obligations hereunder.

The provisions of this Article X shall survive the termination or expiration of this Agreement.

ARTICLE XI - Insurance

At all times in connection with this Agreement, RCC shall purchase, provide and maintain in a company or companies lawfully authorized to do business in Texas such insurance coverages as set forth below:

1. Workers Compensation at statutory limits, including Employers Liability coverage a minimum limits of \$1,000,000 each-occurrence each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease aggregate.

2. Commercial automobile liability insurance (including, but not limited to, insurance covering the operation of owned, non-owned, and hired automobiles, trucks and other vehicles) protecting RCC and City as an additional Insured at minimum combined single limits of \$1,000,000 per occurrence for bodily injury and property damage.

3. Commercial General Liability Insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations (\$1,000,000 products/completed operations aggregate) and contractual liability. Coverage for products/completed operations must be maintained for at least two (2) years after the construction work has been completed. Coverage must be amended to provide for an each-project aggregate limit of insurance.

4. Professional Liability coverage at minimum limits of \$2,000,000.00 per claim/annual aggregate covering claims resulting from negligent engineering errors and omissions. Such insurance shall be kept in effect for at least four (4) years after the completion of the Services and this Agreement. If RCC fails to maintain the insurance covered during that time, Addison may pay the premiums to keep the insurance in effect and recover the cost from RCC. If coverage is written on a claims-made basis, a policy retroactive date equivalent to the inception date of this Agreement (or earlier) must be maintained during the full term of this Agreement and for the four year period thereafter.

B. With reference to the foregoing insurance, RCC shall specifically endorse applicable insurance policies as follows:

1. The Town of Addison, Texas shall be named as an additional insured with respect to General Liability and Automobile Liability.

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

3. A waiver of subrogation in favor of the Town of Addison, Texas shall be contained in the Workers Compensation and all liability policies.

4. All insurance policies shall be endorsed to require the insurer to immediately notify the Town of Addison, Texas of any material change in the insurance coverage.

5. All insurance policies shall be endorsed to the effect that the Town of Addison, Texas will receive at least thirty (30) days' notice prior to cancellation or non-renewal of the insurance.

6. 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.

7. Required limits may be satisfied by any combination of primary and umbrella liability insurances.

8. RCC may maintain reasonable and customary deductibles, subject to approval by the Town of Addison, Texas

9. Insurance must be purchased from insurers that are financially acceptable to the Town of Addison, Texas.

C. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, delivered to Addison simultaneously with the execution of this Agreement, and shall contain provisions representing and warranting the following:

1. List each insurance coverage described and required herein. Such certificates will also include a copy of the endorsements necessary to meet the requirements and instructions contained herein.

2. Shall specifically set forth the notice-of-cancellation or termination provisions to the Town of Addison, Texas,

3. Upon request, RCC shall furnish the Town of Addison, Texas with certified copies of all insurance policies.

ARTICLE XII - Notice

Any notice, request, or other communication to either party by the other concerning this Agreement shall be in writing and shall be (i) hand-delivered, in which case such notice, request, or other communication shall be deemed given when actually received by the addressees, or (ii) sent by certified or registered United States mail, return receipt requested, postage prepaid, in which case such notice, request or other communication (if addressed as provided below) shall be deemed given three (3) days (excluding Saturdays, Sundays and holidays) after deposited with the U.S. Postal Service. All notices shall be addressed as follows:

If to Addison:

Addison Police Department

4799 Airport Parkway
Addison, Texas 75001
Attn: Ron Davis
Chief of Police

With a copy to: Addison Purchasing Manager
Addison Financial Building
5350 Belt Line Road
Dallas, Texas 75254

If to RCC: RCC Consultants, Inc.
100 Woodbridge Center Drive - Suite 201
Woodbridge, New Jersey 07095
Attn: Michael W. Hunter
President and Chief Executive Officer

With a copy to: RCC Consultants, Inc.
10700 North Freeway - Suite 610
Houston, Texas 77037
Attn: Gregory A. Munchrath, P.E.
Senior Vice President

Either party may change such address from time to time by notice given in accordance with the provisions of this ARTICLE XII.

ARTICLE XIII - General

A. Modifications. This Agreement may not be amended or modified, except by written agreement of the parties signed by the duly authorized officers of the parties.

Additional work, not covered in the Proposal annexed hereto, shall not be undertaken by RCC without submitting to Addison a written description of the work proposed to be performed and the proposed price for such work. The written proposal shall be submitted to the Purchasing Manager for Addison, and a change order, signed by Addison Purchasing Manager, shall be received by RCC prior to beginning the additional work. In no instance shall the cumulative value of change orders exceed twenty-five percent (25%) of the original contract price.

B. No Waiver. No omission or delay by either party to this Agreement at any time to enforce any right or remedy reserved to it, or to require performance of any of the terms of this Agreement, shall constitute a waiver of any such right or remedy; nor shall it affect the right of either party to enforce such provisions thereafter.

C. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas without regard to choice of law rules. This Agreement shall be performable and all compensation payable in Dallas County, Texas. Venue under this

Agreement lies exclusively in Dallas County, Texas, and RCC submits itself to the original jurisdiction of the courts located within Dallas County, Texas. This Agreement is subject to all applicable laws, ordinances, rules, codes, charters, regulations, directives, permits, orders, or standards of any governmental or quasi-governmental authority, entity, or agency (including, without limitation, the Town of Addison, Texas).

D. Severability. The provisions of this Agreement are severable, and if any provision of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity of all other provisions hereof shall in no way be affected thereby.

E. Successor and Assignees. Addison shall not assign or transfer this Agreement or any of its rights or obligations hereunder without the prior written consent of RCC. RCC shall not assign, subcontract or otherwise transfer this Agreement or any of its rights or obligations hereunder without the prior written consent of Addison. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

F. Force Majeure. In the event that performance by either party of any of its obligations or undertakings under this Agreement shall be interrupted or delayed by any occurrence not occasioned by the conduct of either party hereto, whether such occurrence be an act of God such as lightning, earthquakes, floods or other like causes, the common enemy, the result of war, riot, strike, lockout, civil commotion, sovereign conduct, explosion, fire, or the act or conduct of any person or persons not a party to or under the direction or control of a party hereto, then such performance shall be excused for such period of time as is reasonable necessary after such occurrence to remedy the effects thereof.

G. Entire Agreement. This Agreement (along with the Proposal, which is incorporated herein) constitutes the entire Agreement between the parties and supersedes all previous agreements and understandings relating to the subject matter hereof.

H. No Third Party Beneficiaries. This Agreement and all of its provisions are solely for the benefit of the parties hereto and do not and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

I. Remedies. Any rights and/or remedies of either party set forth in this agreement are and shall be in addition to any and all other rights or remedies a party may have at law, in equity, or otherwise. Any rights and/or remedies of either party may be pursued successively or concurrently as that party may elect. The exercise of any remedy by either party shall not be deemed an election of rights or remedies or preclude a party from exercising any other rights or remedies in the future.

J. Language. 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.

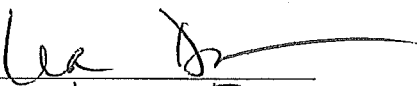
K. Authorized Persons. The undersigned officers and/or representatives of the parties hereto are the properly authorized persons and have the necessary authority to execute this Agreement on behalf of the respective parties hereto.

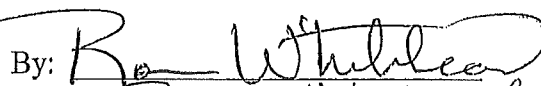
L. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives as of the date first written above.

Witness/Attest:

TOWN OF ADDISON, TEXAS

By: 
Name: Lea Dunn
Title: Deputy City Manager
Date: 7-20-2010

By: 
Name: Ron Whitehead
Title: City Manager
Date: 7-20-2010

Witness/Attest:

RCC CONSULTANTS, INC.

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____