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50 YEARS OF FUN!

Post Office Box 9010 Addison, Texas 75001-9010 5300 Belt Line Road (972) 450-7000
FAX (972) 450-7043

AGENDA

REGULAR MEETING OF THE CITY COUNCIL

OCTOBER 28, 2003

7:30 P.M.

COUNCIL CHAMBERS

5300 BELT LINE ROAD

REGULAR SESSION

Item #R1 – Consideration of Old Business

Item #R2 – Consent Agenda

CONSENT AGENDA

- #2a – Approval of the Minutes for the October 14, 2003 Council Meeting.
-
- #2b – Consideration of a Resolution authorizing the City Manager to enter into a contract in an amount not to exceed \$3,000.00 with Trinity River Authority (TRA) for wastewater testing services.
-
- #2c – Consideration of a Resolution authorizing the City Manager to enter into a contract in the amount of \$223,820.00 with Jim Bowman Construction Company, L.P. for the Airport Parkway realignment project.
-
- #2d – Consideration of a Resolution authorizing the City Manager to enter into a contract in the amount of \$222,740.50 for the Richard Byrd Drive pavement reconstruction project.
-
- #2e – Consideration of a Resolution approving sponsorship in the amount of \$50,000.00 for the Cavanaugh Flight Museum to assist the museum in their marketing efforts.
-
- #2f – Consideration of a Resolution authorizing the City Manager to enter into an agreement with Hand & Associates Marketing Communications for advertisement in the November 2003 and March 2004 editions of the Addison/North Dallas Corridor Guide publication.
-

Item #R3 – Proclamation for Municipal Court Week, November 3-7, 2003.

Item #R4 – **PUBLIC HEARING** and **SECOND READING** of an Ordinance granting a gas utility franchise to TXU Gas Company to construct, maintain and operate pipelines and equipment in the Town for the transporting, delivery, sale and distribution of natural gas in, out of, and through the Town, and providing for the payment of a fee by TXU Gas Company for the use of public rights-of-ways and for other terms and conditions in connection with the provision of natural gas.

Attachments:

1. Council Agenda Item Overview
 2. Memorandum from Clarence A. West
-

Item #R5 – Presentation and discussion of the Railroad Crossing Reliability Partnership Program.

Attachment:

1. Council Agenda Item Overview
-

Item #R6 – Consideration of an Ordinance amending the Code of Ordinances of the Town by amending Chapter 22 (Businesses) by adding a new article relating to solicitation and prohibiting solicitation by coercion and restricting solicitations near automated teller machines, financial institutions, exterior pay public telephones, self-service car washes, self-service fuel pumps, public transportation stops, and valet parking service stands, and amending Chapter 70 (Streets, Sidewalks, and Other Public Places) of the said Code of Ordinances by adding a new article prohibiting solicitations for rides, contributions, employment, signatures, businesses, and publications from the occupant of any vehicle on a public roadway, and containing other provisions in connection therewith and relating hereto.

Attachments:

1. Council Agenda Item Overview
2. Ordinance

Administrative Recommendation:

Administration recommends approval.

Item #R7 – Consideration of a Resolution authorizing the City Manager to enter into a contract in the amount of \$49,750.00 with Caswell International Corporation to replace and install the bullet trap for the Addison Police Department.

Attachments:

1. Council Agenda Item Overview
2. Memorandum from Ron Davis
3. Contract

Administrative Recommendation:

Administration recommends approval.

Item #R8 - Consideration of a Resolution authorizing the City Manager to contribute \$10,000.00 to the "Save The Game" Committee to keep the Texas/OU game in the Dallas Metroplex.

Attachments:

1. Council Agenda Item Overview
2. Memorandum from Ron Melton and Sandi Bailey

Administrative Recommendation:

Administration recommends approval.

Adjourn Meeting

Posted 5:00 p.m.
October 24, 2003
Carmen Moran
City Secretary

**THE TOWN OF ADDISON IS ACCESSIBLE TO PERSONS
WITH DISABILITIES. PLEASE CALL (972) 450-2819 AT LEAST
48 HOURS IN ADVANCE IF YOU NEED ASSISTANCE.**

OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL

October 14, 2003
7:30 p.m. - Council Chambers
5300 Belt Line Road

Present: Mayor Wheeler, Councilmembers Chow, Hirsch, Mallory, Niemann, Silver,
Turner
Absent: None

Item #R1 – Consideration of Old Business

The following employees were introduced to the Council: Jason Rodriquez (Police), John Godley (Facilities and Fleet Services) and Gerald Johnson (Parks).

Ron Whitehead, City Manager, announced upcoming events: Oaks North Homeowners meeting, October 16, 2003; Addison Garage Sale, October 18, 2003; Winefest, October 18, 2003; and a Table Top Emergency Exercise, October 24, 2003.

Councilmember Chow presented Mayor Wheeler with a gift from Banchiau, Taiwan, the Town's Sister City.

Item #R2 – Consent Agenda

Item #2a – Approval of the Minutes for the September 23, 2003 Council meeting.

Councilmember Mallory moved to duly approve the Minutes of the September 23, 2003 Council meeting. Councilmember Silver seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner
Voting Nay: None
Absent: None

Item #R3 – **PUBLIC HEARING** and consideration of an Ordinance approving a Special Use Permit for a convenience store in a Planned Development District (001-002), located at 4980 Belt Line Road, Suite 100, on application from 7-Eleven Corporation, represented by Mr. Mostafa Setayesh of the Dimension Group.

Mayor Wheeler opened the meeting as a public hearing.

Elizabeth Knott, 14925 Oaks North Drive, spoke in opposition of this item.

There were no other questions or comments. Mayor Wheeler closed the meeting as a public hearing.

Kirk Williams, 5400 Renaissance Tower, represented the applicant and Larry Vinyard, Dunhill properties spoke on behalf of the applicant.

Councilmember Silver moved to duly pass an Ordinance approving a Special Use Permit for a convenience store in a Planned Development District (001-002), located at 4980 Belt Line Road, Suite 100, on application from 7-Eleven Corporation, represented by Mr. Mostafa Setayesh of the Dimension Group. Councilmember Chow seconded. The motion did not carry.

Voting Aye: Chow, Silver
Voting Nay: Wheeler, Hirsch, Mallory, Niemann, Turner
Absent: None

Item #R4 – **PUBLIC HEARING** and consideration of an Ordinance approving an amendment to an existing Special Use Permit for a restaurant and an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 5100 Belt Line Road, Suite 796 (formerly Tin Star) in the Village on the Parkway on application from Café Miso, represented by Ms. Maria Park.

Mayor Wheeler opened the meeting as a public hearing. There were no other questions or comments. Mayor Wheeler closed the meeting as a public hearing

Councilmember Niemann moved to duly pass Ordinance No. 003-035 approving an amendment to an existing Special Use Permit for a restaurant and an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 5100 Belt Line Road, Suite 796 (formerly Tin Star) in the Village on the Parkway on application from Café Miso, subject to no conditions. Councilmember Mallory seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner
Voting Nay: None
Absent: None

Item #R5 – Presentation of the 2003 Addison Citizen Survey.

No action taken.

Councilmember Niemann recused himself and left Council chambers.

Item #R6 – **PUBLIC HEARING** and **FIRST READING** of an Ordinance granting a gas utility franchise to TXU Gas Company to construct, maintain and operate pipelines and equipment in the Town for the transporting, delivery, sale and distribution of natural gas in, out of, and through the Town, and providing for the payment of a fee by TXU Gas Company for the use of public rights-of-ways and for other terms and conditions in connection with the provision of natural gas.

Mayor Wheeler opened the meeting as a public hearing. There were no questions or comments. Mayor Wheeler closed the meeting as a public hearing.

No action taken.

Councilmember Niemann returned to the Council chambers.

Item #R7 – Consideration of a Resolution authorizing the City Manager to enter into an agreement in the amount of \$16,500.00 with Crescent Spectrum Center, L.P. for installation and operation of infrastructure equipment to support the Public Safety Radio Simulcast system.

Councilmember Turner moved to duly pass Resolution No. R03-096 authorizing the City Manager to enter into an agreement in the amount of \$16,500.00 with Crescent Spectrum Center, L.P. for installation and operation of infrastructure equipment to support the Public Safety Radio Simulcast system, subject to the “Telecom Space” in the agreement to include “Cable Pathways”. Councilmember Mallory seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner
Voting Nay: None
Absent: None

Item #R8 – Consideration of a Resolution authorizing the City Manager to enter into an agreement with Xelerate Group to provide marketing, events and sponsorship services October 1, 2003-September 30, 2004 for the Town of Addison.

Councilmember Mallory moved to duly pass Resolution No. R03-097 authorizing the City Manager to enter into an agreement with Xelerate Group to provide marketing, events and sponsorship services October 1, 2003-September 30, 2004 for the Town of Addison, subject to City Manager and City Attorney review. Councilmember Chow seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner
Voting Nay: None
Absent: None

There being no further business before the Council, the meeting was adjourned.

Mayor

Attest:

City Secretary

Council Agenda Item: #2b

SUMMARY:

Annual contract with the Trinity River Authority to provide inspection, sampling and laboratory analysis on certain industries in Addison to comply with wastewater pretreatment laws as required by EPA.

FINANCIAL IMPACT:

Budgeted Amount: \$0

Cost: \$0

If over budget or not budgeted, what is the budget impact?

N/A

BACKGROUND:

The EPA requires that industries categorized as significant industrial users (SIUs) regarding their wastewater discharges be scrutinized by the local governing authority for compliance with federal law. Since the Trinity River Authority (TRA) treats all of the wastewater generated in the industrially zoned areas in Addison and is the agency responsible to the EPA, in the interest of impartiality and credibility, we felt it is prudent to continue our relationship with TRA for EPA required services.

Being that the actual expenditures to TRA are recoverable from SIUs, no monies are budgeted for this regulatory program. An enterprise account (#01-000-11505) in the Utility Fund has been created to handle this financial arrangement. For your information, we do not expect expenditures for the term of this contract to exceed \$3,000. Find attached a cover letter from TRA and two (2) contracts for Mr. Whitehead's signature. Please forward both signed contracts to TRA for their signature and provide to me a copy of the fully executed contract when it returns from TRA.

RECOMMENDATION:

Staff recommends approval

#26-2

Trinity River Authority of Texas



Central Regional Wastewater System

3110.500.040.100

July 16, 2003

Mr. Neil Gayden
Supervisor, Environmental Services
City of Addison
P.O. Box 9010
Addison, Texas 75001-9010

Dear Mr. Gayden:

Subject: Contract for Services - Fiscal Year 2004
Revised Technical Services Fee Schedule
Central Regional Wastewater System

The Trinity River Authority Board of Directors, in Board Action June, 2003, approved the Technical Services Fee Schedule for Fiscal Year 2004 which is in connection with all contracting work relating to the analysis of water and wastewater, industrial inspections, and/or sampling services. As in past years we propose to continue performing associated services to all Authority Contributing Parties under the provisions of a contract for services. Enclosed please find two (2) copies of the Trinity River Authority Contract for Services and Fee Schedules for Fiscal Year 2004 attached for your review and official authorization. Upon the City's approval for requested services between the City and Trinity River Authority, please return both notarized or sealed copies with Attachment A - Technical Services Fee Schedules for final execution to this office. After execution by the Authority's General Manager, one (1) original Contract for Services will be returned for your files unless otherwise noted by the City.

Please address and refer the correspondence regarding this matter to:

Trinity River Authority
Central Regional Wastewater System
6500 West Singleton Blvd.
Dallas, Texas 75212
Attention: Wm. B. Cyrus, Manager
Technical Services

6500 W. Singleton Blvd.
Dallas, Texas 75212
Metro (972) 263-2251
Admin Fax (972) 331-4412
Tech Services Fax (972) 331-4414

July 16, 2003
FY-2004 Contract for Services
Page 2

To coordinate our efforts accordingly, the Authority requests the approval of the contract to begin on October 1, 2003, and terminate on date specified by the contracting party in Section VI. Please note that the contract may now be greater than one (1) year at the contracting party's preference.

Also enclosed are additional copies of our Board Approved Fiscal Year 2004 Services Fee Schedule for your use and files. The service fees are effective December 1, 2003 through November 30, 2004. Historically the fee schedule for these services is derived annually from the direct costs of performing each test, including manpower, materials, supplies, and equipment costs. Additionally, the cost associated with maintaining quality assurance is included in the cost of the test.

Should you have any questions concerning this contract or changes in fee schedule, please contact this office at your convenience.

Sincerely,



WM. B. CYRUS
Manager, Technical Services

BC/jc

Enclosures

CONTRACT FOR TECHNICAL SERVICES

I. CONTRACTING PARTIES

The Receiving Agency: **Town of Addison**, whose authorized address is:
PO Box 9010
Addison, Texas 75001
Attn: Neil Gayden, R.S. Environmental Services Official

The Performing Agency: Trinity River Authority of Texas, whose authorized address is 5300 South Collins, P. O. Box 240, Arlington, Texas 76004-0240, Attention: Danny F. Vance, General Manager (or his designated representative).

II. STATEMENT OF SERVICES TO BE PERFORMED

In order to discharge the responsibilities associated with the enforcement of Federal, State, and City regulations, the Receiving Agency requires services of a laboratory qualified to perform water and wastewater analysis, and of personnel to conduct industrial inspection and/or sampling services, such services detailed in Section A, Subsection(s) **1, 2 & 3**, below.

A. PERFORMANCE OF SERVICES

1. Industrial Inspection Services

In keeping with the foregoing, the Receiving Agency employs the Performing Agency and the Performing Agency agrees to perform industrial inspection services within the parameters listed on the attached schedule sheet.

The Performing Agency (Trinity River Authority of Texas) shall perform all Industrial Pretreatment Inspections, review permit applications and prepare for submittal Permits to Discharge Industrial Wastes to the Sanitary Sewer in accordance with procedures established by the Trinity River Authority of Texas in accordance with 40 CFR Part 403.8. Industrial Pretreatment Inspections, Application reviews and Permit preparations and submittals shall be in compliance with the Receiving Agency's Industrial Waste Ordinances, Sewer Ordinances Number **003-003**, and EPA General Pretreatment Regulations for Existing and New Sources. Records of Inspections, Applications and Permits shall be maintained as required by EPA General Pretreatment Regulations, 40 CFR Part 403.12.

2. Industrial Sampling Services

In keeping with the foregoing, the Receiving Agency employs the Performing Agency and the Performing Agency agrees to perform industrial sampling services within the parameters listed on the attached schedule sheet and in accordance with the Receiving Agency's Industrial Waste Ordinances and Sewer Ordinances Number **003-003**.

The Performing Agency (Trinity River Authority of Texas) shall perform all sample collections, sample preservation, and maintenance of chain-of-custody records in accordance to the approved procedures set forth in Test Methods for Evaluating Solid Waste, EPA Manual SW-846, Methods for Chemical Analysis of Water and Wastes, EPA Manual EPA-600/4-79-020, and the Handbook for Sampling and Sample Preservation of Water and Wastewater, EPA Manual EPA-600/4-82-029. The samples shall be properly collected, preserved and delivered by the Performing Agency to the Performing Agency's laboratory located at 6500 West Singleton Blvd., Dallas, Texas. When feasible flow or time composited sampling will be conducted. When composited sampling is not feasible, grab sampling will be appropriate.

3. Analytical Services

In keeping with the foregoing, the Receiving Agency employs the Performing Agency and the Performing Agency agrees to perform analytical services within the parameters listed on the attached schedule sheet.

The Receiving Agency will collect samples and deliver them to the laboratory for analysis. It is understood that these samples will be properly collected and preserved in accordance with applicable sections of A Practical Guide to Water Quality Studies of Streams, Federal Water Pollution Control Administration publication and Methods for Chemical Analysis for Water and Wastes, EPA manual, as well as the latest edition of Standard Methods for the Examination of Water and Wastewater. A chain-of-custody procedure shall be maintained in the field and the laboratory in accordance with procedures to be established by the Receiving Agency. The Receiving Agency will furnish chain-of-custody tags.

The Performing Agency (Trinity River Authority of Texas) will perform all analyses according to the approved procedures set forth in Standard Methods for the Examination of Water and Wastewater, current edition or the latest edition of Methods for Chemical Analysis of Water and Wastes, EPA manual. Samples will be analyzed by these methods on the production basis, to include appropriate analytical quality assurance procedures. Records will be kept for documentation of the Performing Agency's quality assurance program and copies will be available to the Receiving Agency upon request. Unusual interferences and problems will be reported to the Receiving Agency at its authorized address noted above. Research into specific techniques to overcome these difficulties will be undertaken when practical, and by mutual agreement. The sample information sheet submitted with each sample will designate the particular analysis or analyses to be made of each sample submitted. The laboratories will be operated in such a manner as to insure the legal sufficiency of the sample handling; analytical and reporting procedures; and to remedy effects in the procedures should such be discovered.

The various laboratory personnel shall be directed upon receipt of written notice from the Receiving Agency 72 hours in advance, to appear and testify in enforcement actions. In such event, the Receiving Agency shall pay travel and per diem expenses for such employees. Travel and per diem for court appearances hereunder shall be based on current State laws.

Receiving Agency may deliver to Performing Agency samples for analysis separate and apart from those samples collected by the Performing Agency. When the Receiving Agency delivers samples to the Performing Agency for analysis, the Receiving Agency shall indicate the nature and extent of the analyses it desires to be conducted. Performing Agency shall not be responsible for the manner of collection or chain-of-custody tags or sheets which are matters entirely outside Performing Agency's control. Performing Agency shall receive, log and perform such analyses of samples in accordance with that part of the chain-of-custody procedures identified as Transfer of Custody and Shipment attached hereto.

Samples analyzed to maintain the normal quality assurance program which the Performing Agency presently maintains in its laboratory will be charged to the Receiving Agency at the same rate as submitted samples.

B. TERMINATION

Either party to this Contract may terminate the Contract by giving the other party thirty (30) days notice in writing at their authorized address as noted previously. Upon delivery of such notice by either party to the other and before expiration of the thirty (30) day period, the Performing Agency will proceed promptly to cancel all existing orders, contracts, and obligations which are chargeable to this Contract. As soon as practicable after notice of termination is given, the Performing Agency will submit a voucher for work performed under this Contract through its termination. The Receiving Agency will pay the Performing Agency for the work performed less all prior payments. Copies of all completed or partially completed reports, documents, and studies prepared under this Contract will be delivered by the Performing Agency to the Receiving Agency when and if this Contract is terminated prior to the completion of the prescribed work.

C. AMENDING THE CONTRACT

The parties hereto without invalidating this Contract may alter or amend this Contract upon advance written agreement of both parties to exclude work being performed or to include additional work to be performed and to adjust the consideration to be paid hereunder by virtue of alterations or amendments.

III. BASIS FOR CALCULATING REIMBURSABLE COSTS

The financial basis for calculating reimbursable costs shall be as stated in Attachment A, said attachment A shall be revised and updated annually. A cost analysis shall be prepared each year by the Trinity River Authority of Texas and shall be approved by the Trinity River Authority of Texas Board of Directors prior to effective date of said revision.

The expenditures by the Trinity River Authority of Texas of funds paid to it under this Contract shall be subject to such State or Federal audit procedures as may be required by law and by accepted practices of the State or Federal auditor, or both, if requested. The Trinity River Authority of Texas shall be responsible for maintaining books of account that clearly, accurately and currently reflect financial transactions. The financial records must include all documents supporting entries on the account records which substantiate costs. The Trinity River Authority of Texas must keep the records readily available for examination for a period of three (3) years after the close of the last expenditure.

Reimbursement for the inspection, sampling, and/or analytical costs, and cost for any travel and per diem expenses shall not exceed **Three Thousand Dollars (\$3,000)** for the period of this Contract.

IV. CONTRACT AMOUNT

The total amount of this Contract shall not exceed **Three Thousand Dollars (\$3,000)** nor be less than **One Thousand Five Hundred Dollars (\$1,500)**, per annum, unless mutually agreed by the parties hereto.

V. PAYMENT FOR SERVICES

The Performing Agency shall bill the Receiving Agency monthly for services performed. Charges for these services shall be based on the attached cost schedules.

The Receiving Agency shall pay the monthly billings of the Performing Agency within thirty (30) days of their receipt.

VI. TERM OF CONTRACT

This Contract is to begin **October 1, 2003** and shall terminate **September 30, 2004**, subject to Section II, paragraph B of this contract.

VII. INTERLOCAL AGREEMENT

Inasmuch as the Receiving Agency and the Performing Agency are political subdivisions of this state, and inasmuch as the testing of water and wastewater are critical to the maintenance of public health and such testing is therefore, a governmental function and service, this contract shall be deemed authorized by the Interlocal Cooperation Act, art. 4413(32c), Tex. Rev. Civ. Stat.

Receiving Agency:

Performing Agency:

CITY OF _____

TRINITY RIVER AUTHORITY OF TEXAS

BY: _____

BY: _____

TITLE: _____

GENERAL MANAGER

DATE: _____

DATE: _____

ATTEST: _____

ATTEST: _____

(SEAL)

(SEAL)

CHAIN-OF-CUSTODY PROCEDURES

Sample Collection

1. To the maximum extent achievable, as few people as possible should handle a sample.
2. Stream and effluent samples should be obtained using standard field sampling techniques and preservation procedures.
3. Chain-of-Custody tags or sheets should be attached to each sample at the time it is collected.

The tag or sheet contains basically laboratory (requested parameters) information; however, certain identifying items including City, City Code, Type Sample, Material Sampled, and Method of Preservation must be completed by the field personnel collecting the sample.

In completing the Chain-of-Custody tag or sheet, care should be utilized to insure that all necessary information is correctly and legibly entered onto the form. A black ballpoint with water proof ink should be used at all times.

Transfer of Custody and Shipment

1. All samples should be handled by the minimum possible number of persons.
2. All incoming samples shall be received by the custodian, or his alternate, and logged into a record book (log book). Information to be entered into the Log Book shall include the sample number, date received, source, time(s) sampled, date(s) sampled, and analyses requested.
3. Promptly after logging, the custodian will distribute the sample to an analyst or place the sample in the sample room, which will be locked at all times except when samples are removed or replaced by analysts.
4. The custodian shall ensure that heat-sensitive samples, or other sample materials having unusual physical characteristics, or requiring special handling, are properly stored and maintained.
5. Samples shall be kept in the sample storage security area at all times when not actually being used by analysts, such as during overnight absences.
6. The analysis sheet will be signed and dated by the person performing the tests and retained as a permanent record in the laboratory.
7. Test results shall be sent by the laboratory to the appropriate Receiving Agency control point.

Council Agenda Item: #2c

SUMMARY:

This item is for the award of contract to Jim Bowman Construction Company, L.P., in the amount of \$223,820.00, for the Airport Parkway Realignment Project.

FINANCIAL IMPACT:

Budgeted Amount: \$285,000 (Including Engineering)

Cost: \$223,820.00

Funding Source: Airport Fund 2004 Budget

BACKGROUND:

In conjunction with the proposed Frito Lay Improvements at the Addison Airport, a portion of Airport Parkway, currently west of Addison Road and south of the existing airport administration building, must be realigned. The new Frito Lay facilities will be located within the existing alignment of the roadway. The firm of HNTB Corporation prepared engineering plans and specifications for construction of these improvements.

Attached is a bid tabulation for this project. The bid proposal for construction was structured to provide an incentive/disincentive method of bidding the improvements. Specifically, each bid submitted was required to consist of two parts whereby:

- a. The Contractor submits a standard bid (A), which is the summation of the products of the estimated quantities shown in the proposal, multiplied by their bid unit prices.
- b. In addition, the Contractor submits a time bid (B), which is the product of the number of calendar days required to construct the project, determined by the Contractor, and Daily Value established by the Town. The Daily Value was established in the contract at \$250.00. The number of calendar days is intended to include inclement weather, holidays, etc.

The lowest bid (Total) for award of the contract was determined as the lowest sum of the standard bid (A) plus time bid (B). The contract establishes the actual contract amount for payment to the successful contractor to be the value indicated in the standard bid (A). Also included in the bidding process was a provision whereby the Contractor is awarded an incentive payment if construction is completed prior to the number of calendar days he submitted. The total amount of the incentive is the product of the Daily Value (\$250) and number of days the Contractor completes the project prior to the established contract time. Accordingly, the contract provides for a disincentive amount to be established based on the product of the Daily Value (\$250) and amount of time that the Contractor

exceeds the established contract time. The total incentive payment cannot exceed \$5,000.00. However, there is no limit to the amount of disincentive reduction from the Contractor's final payment that the Town will impose for going over the contract time limit.

Six bids were received for this project. Jim Bowman Construction Company, L.P. submitted the lowest Total bid (A + B), in the amount of \$245,070.00 and 85 calendar days. The actual amount of the standard bid (A) recommended for award is \$223,820.00. This amount is within the engineering estimate of \$262,305.00. The Contractor, Jim Bowman Construction Company, L.P. has successfully performed several similar construction projects for the Town of Addison at a high level of performance.

RECOMMENDATION:

Staff recommends that Council authorize the City Manager to enter into a contract with Jim Bowman Construction Company, L.P., in the amount of \$223,820.00, for the Airport Parkway Realignment Project.

**Airport Parkway Realignment
 BID NO 03-31**

**DUE: October 16, 2003
 3:00 PM**

BIDDER	SIGNED	Bid Bond	a1	a2	a3	(A) Standard Bid	calendar days	(B) calendar Days x 250	Total (A+B)
Rycon	Y	Y	Y	Y	Y	238,345.00	60	15,000.00	253,345.00
Jim Bowman	Y	Y	Y	Y	Y	223,820.00	85	21,250.00	245,070.00
Rebcon	Y	Y	Y	Y	Y	237,907.00	90	22,500.00	260,407.00
Gibson & Assts	Y	Y	Y	Y	Y	245,285.76	70	17,500.00	262,785.76
Constructors	Y	Y	Y	Y	Y	401,408.71	75	18,750.00	420,158.71
Ed A Wilson	Y	Y	Y	Y	Y	228,034.00	80	20,000.00	248,034.00

Minok Suh

Minok Suh, Purchasing Coordinator

Corey Gayden

Corey Gayden, Witness

Council Agenda Item: #2d

SUMMARY:

This item is for the award of contract to Rebcon, in the amount of \$222,740.50, for the Richard Byrd Drive Pavement Reconstruction Project.

FINANCIAL IMPACT:

Budgeted Amount: \$400,750

Cost: \$222,740.50

Funding Source: WSAAV 2004 Operating Budget

BACKGROUND:

Washington-Staubach determined that the pavement on Richard Byrd Drive was severely deteriorated and in need of immediate reconstruction. Currently, there are several large failures in the pavement that are being temporarily covered by metal plates for access and safety. The firm of HNTB Corporation prepared engineering plans and specifications for construction of these improvements. The project was programmed by the Addison Airport and will be funded from the operating fund account.

Attached is a bid tabulation for this project. The bid proposal for construction was structured to provide an incentive/disincentive method of bidding the improvements. Specifically, each bid submitted was required to consist of two parts whereby:

- a. The Contractor submits a standard bid (A), which is the summation of the products of the estimated quantities shown in the proposal, multiplied by their bid unit prices.
- b. In addition, the Contractor submits a time bid (B), which is the product of the number of calendar days required to construct the project, determined by the Contractor, and Daily Value established by the Town. The Daily Value was established in the contract at \$250.00. The number of calendar days is intended to include inclement weather, holidays, etc.

The lowest bid (Total) for award of the contract was determined as the lowest sum of the standard bid (A) plus time bid (B). The contract establishes the actual contract amount for payment to the successful contractor to be the value indicated in the standard bid (A). Also included in the bidding process was a provision whereby the Contractor is awarded an incentive payment if construction is completed prior to the number of calendar days he submitted. The total amount of the incentive is the product of the Daily Value (\$250) and number of days the Contractor completes the project prior to the established contract time. Accordingly, the contract provides for a disincentive amount to be established based on the product of the Daily Value (\$250) and amount of time that the Contractor

exceeds the established contract time. The total incentive payment cannot exceed \$5,000.00) However, there is no limit to the amount of disincentive reduction from the Contractor's final payment that the Town will impose for going over the contract time limit.

Twenty-one contractors picked up the plans for the project, but only three attended the mandatory pre-bid meeting, and only two bids were received. The two bids were within 7% of each other. Rebcon submitted the lowest Total bid (A + B), in the amount of \$237,740.50 and 60 calendar days. The actual amount of the standard bid (A) recommended for award is \$222,740.50. This amount is within the engineering estimate of \$473,890.00. The Engineer performed a necessary reference check on Rebcon, and received excellent recommendations for work performed on similar construction improvements.

RECOMMENDATION:

Staff recommends that Council authorize the City Manager to enter into a contract with Rebcon, for the Richard Byrd Drive Pavement Reconstruction Project, in the amount of \$222,740.00

**BID SCHEDULE I
RICHARD BYRD DRIVE PAVEMENT REPLACEMENT
ENGINEERS ESTIMATE**

ITEM NO.	DESCRIPTION & UNIT PRICE IN WORDS	BID 1			BID 2				
		UNIT	UNIT PRICE	EST. QTY.	AMOUNT BID	UNIT PRICE	REBCON	UNIT PRICE	Bowman
101	Mobilization	L.S.	\$ 15,000.00	1	\$ 15,000.00		\$ 11,000.00	\$ 19,700.00	\$ 19,700.00
102	Maintenance of Traffic	L.S.	\$ 5,000.00	1	\$ 5,000.00		\$ 29,000.00	\$ 22,700.00	\$ 22,700.00
103	Unclassified Pavement excavation	C.Y.	\$ 10.00	2,820	\$ 28,200.00		\$ 8.00	\$ 22,560.00	\$ 36,519.00
104	Furnish, place and compact 8" thick lime stabilized subgrade, including proofrolling	S.Y.	\$ 5.00	7,240	\$ 36,200.00		\$ 2.20	\$ 15,928.00	\$ 20,272.00
105	Furnish and place hydrated lime (8% per Soils Report)	TON	\$ 100.00	180	\$ 18,000.00		\$ 87.00	\$ 15,660.00	\$ 26,280.00
106	Furnish and place 3" Cement Treated Base	S.Y.	\$ 15.00	7,240	\$ 108,600.00		\$ 8.00	\$ 57,920.00	\$ 53,576.00
107	Furnish and place 3" Bituminous Pavement	TON	\$ 200.00	1,225	\$ 245,000.00		\$ 52.00	\$ 63,700.00	\$ 51,450.00
108	Tack Coat (0.15 Gall/SY)	GAL	\$ 10.00	1,100	\$ 11,000.00		\$ 1.50	\$ 1,650.00	\$ 3,575.00
109	Furnish and place 6" Solid Yellow Taxiway Centerline Stripe	L.F.	\$ 3.50	1,075	\$ 3,762.50		\$ 2.50	\$ 2,687.50	\$ 1,935.00
110	Furnish and place 6" Double Solid Yellow Stripe	L.F.	\$ 3.50	65	\$ 227.50		\$ 3.00	\$ 195.00	\$ 227.50
111	Silt Fence	L.F.	\$ 2.50	1,120	\$ 2,800.00		\$ 2.00	\$ 2,240.00	\$ 1,680.00
112	SW3P - Inlet Protection	EA	\$ 100.00	1	\$ 100.00		\$ 200.00	\$ 200.00	\$ 100.00

TOTAL AMOUNT BID FOR MATERIALS AND SERVICES, SCHEDULE I,
ITEMS 101 THROUGH 112, INCLUSIVE

\$ 473,890.00 \$ 222,740.50 \$ 238,014.50

**BID SCHEDULE SUMMARY
RICHARD BYRD DRIVE PAVEMENT REPLACEMENT**

Bid Schedule & Description	ENGINEERS ESTIMATE		BID 1		BID 2	
	Total Amount	Materials & Services	Rebcon		Jim Bowman	
I. Pavement Replacement	\$473,890.00		\$ 222,740.50		\$ 238,014.50	
TOTAL BID FOR SCHEDULE I			\$ 222,740.50		\$ 238,014.50	
= TOTAL OF STANDARD BID (A):	\$		\$		\$	
TOTAL OF TIME BID:	0	(Calendar Days)	60		75	
TOTAL OF CALENDAR DAYS x \$250.00 (B):			15000		18750	
BASIS FOR COMPARISON OF BIDS:						
(A) + (B) = TOTAL BID:	\$473,890.00		\$ 237,740.50		\$ 256,764.50	

#2d-2

Council Agenda Item: #2e

SUMMARY:

Approval to fund the Cavanaugh Flight Museum sponsorship request in the amount of \$50,000 to assist the Museum in their marketing efforts.

FINANCIAL IMPACT:

Budgeted Amount: \$50,000

Cost: \$50,000

BACKGROUND:

For the past several years, the Town has provided funding to the Cavanaugh Flight Museum to assist the Museum in their marketing efforts. These funds are used for promotional purposes and advertising special events hosted by the Museum, and are matched on a dollar for dollar basis. In return for the sponsorship, the Town will be listed as a sponsor on all print advertising. Staff believes this is a good partnership because it not only increases attendance at the museum but it also increases the Town's exposure to the visitor market and our event activity.

RECOMMENDATION:

Staff recommends approval.

Attachment: Proposal and letter from Kevin Rawlie

#2e-2



September 4, 2003

Ron Whitehead, City Manager
Town of Addison
5300 Beltline Road
Addison, Texas 75001

RE: Request for Sponsorship

Dear Ron:

On behalf of the Cavanaugh Flight Museum, I want to thank you for your continued support of the museum through sponsorship of our advertising. Working with the Town and its staff has been an enjoyable and rewarding experience. I look forward to another year of shared success for both the Cavanaugh Flight Museum and the Town of Addison!

I respectfully request your genuine consideration for funding for the fiscal year 2003-2004 in the amount of \$50,000. These funds will be used for promotional purposes and advertising for upcoming special events hosted by the museum and will be matched dollar for dollar. Please see the attached schedule detailing the breakdown of the museum's expenses for fiscal year 2003-2004. I strongly believe that our growth will go hand in hand with the growth of the Town of Addison for many years to come. Without financial support from the Town of Addison and the outstanding town staff this growth could not be possible.

As the Town continues to grow and develop its Arts & Entertainment District, we look forward to bolstering that growth and our own through cooperative efforts.

Thanks in advance.

Kevin Raulie
Assistant Museum Director & Pilot

**Cavanaugh Flight Museum
Advertising Costs
Fiscal Year 2004**

<u>Advertisement</u>	<u>Total Annual Costs</u>
CFM 10th Anniversary Celebration	\$ 10,000
Warbirds Over Addison	10,000
Dallas Morning News Weekend Guide	\$ 45,792
Travel Host	6,792
DFW Tourism Council	5,820
East TX Tourism Assoc.	3,240
Lamar (Billboard)	50,460
Totals	<u>\$ 132,104</u>

Total Annual Costs \$ 132,104
Addison's Proposed Contribution 50,000

Balance Paid by CFM **\$ 82,104**

Council Agenda Item: #2f

SUMMARY:

Approval of an agreement with Hand & Associates Marketing Communications to advertise in the November 2003 and March 2004 editions of the Addison/ North Dallas Corridor Guide publication.

FINANCIAL IMPACT:

Budgeted Amount: \$84,500
\$70,000 for advertising (\$35,000 per edition)
\$ 4,500 for distribution to the top 100 employers and 25
principal buildings within the designated area
\$10,000 (\$5,000 per edition) for the restaurant and retail
Co-op advertising program

Cost: \$84,500

BACKGROUND:

In the Fall of 1998 the Town entered into agreement with Hand & Associates to buy advertising in the Addison/ North Dallas Visitors Guide for the purpose of promoting Addison and the surrounding area to visitors. For the past two years the Guide has been produced three times a year. Because of the financial shape of the Hotel Fund, staff eliminated one of proposed issues and is recommending that the Guide be published two times this fiscal year.

In addition a new component, an advertising co-op program for Addison restaurants, retailers and attractions is included in the agreement. As proposed, the Town would provide up to \$5,000 per issue in advertising dollars for Addison restaurants, retailers and attractions that elect to advertise in the Guide. The dollars would be provided on a matching basis with the Town matching 25% of the cost of the ad to the businesses 75%.

The Guide continues to be well received and is distributed to all the hotel rooms in Addison and the LBJ corridor as well as the lobbies of the 25 principal buildings and the top 100 employers within the defined geographic area.

RECOMMENDATION:

Staff recommends approval.

STATE OF TEXAS

Addison/North Dallas Advertising Agreement

COUNTY OF DALLAS

This Agreement is made as October 28, 2003 by and between the Town of Addison, Texas (the "Town") and Rodney Hand & Associates Marketing Communications, LP ("Hand").

WHEREAS, the Town is a duly incorporated municipality pursuant to the laws of the State of Texas; and

WHEREAS, Hand is a sole proprietorship doing business in the State of Texas; and

WHEREAS, Hand is the owner of a publication known as the Addison/North Dallas Publication (the "Publication"), and the Town desires to advertise in the Publication for the purpose of promoting the Town and the surrounding area to visitors through distribution in hotel rooms in the Town and North Dallas; and

WHEREAS, the Town and Hand agree that the Publication shall be produced and distributed in accordance with the terms of this Agreement (including Exhibit A attached hereto and incorporated herein).

NOW, THEREFORE, for and in consideration of the above and foregoing premises, the mutual promises and covenants contained herein, and other good and valuable consideration, the Town of Addison, Texas and Hand & Associates Marketing Communications do contract and agree as follows:

1. Incorporation of Premises. The above and foregoing premises are true and correct and are incorporated herein in their entirety.
2. Term. This Agreement shall be in effect from the date of execution hereof by the Town and shall terminate, except as otherwise provided for herein, upon completion of the second issue of the Publication, including its distribution.
3. Conduct of Publication. Hand shall be the owner/publisher of the Publication and the Town shall be considered an advertiser.
4. Obligations, Representations and Warranties; Indemnification.
 - A. Hand: Hand represents, warrants and covenants that:
 - (1) Hand shall acquire any and all licenses, agreements, permits, waivers, releases, registrations, approvals, authorizations, or any other permit or document required or necessary to produce the Publication.
 - (2) In the production of the Publication, Hand shall comply with all applicable federal, state and local laws, rules and regulations.

- (3) During the term of this Agreement, neither Hand nor any of Hand's associates or employees shall participate, whether directly or indirectly, financially or otherwise, in the production of any other publication related to Addison or the North Dallas area.
- (4) Hand shall keep and hold all information provided to it by the Town in connection with this Agreement in confidence and shall not disclose such information to any third party. This paragraph shall survive the termination hereof.
- (5) Hand shall defend and indemnify the Town, its agents, officers and employees against, and hold the Town, its agents, officers, officials, and employees harmless from, any and all claims, actions, causes of action, liability, lawsuits, judgments, damages, injuries costs or expenses, including reasonable attorney's fees, for personal injury (including death), property damage or destruction, or any other harm for which any type of recovery is sought, resulting from or based upon, in whole or in part, any act or omission of Hand, its agents, officers, employees, representatives, and contractors performed in connection with or pursuant to this Agreement. The provisions of this paragraph shall survive the termination of this Agreement.
- (6) Hand, its officers, agents and employees do hereby waive any and all claims for damage, injury or loss to any person or property, including the death of any person, that may be caused, in whole or in part, by the act or failure to act of any officer, agent or employee of the Town. Hand, its officers agents and employees assume the risk of all conditions whether dangerous or otherwise, in and about the premises of the Town, and waive any and all specific notice of the existence of any defective or dangerous condition in or about the said premises. The provisions of this paragraph shall survive the termination of this Agreement.

B. Town: The Town represents, warrants, and covenants that:

- (1) The Town shall pay Hand a sum of \$35,000 for 18 pages of R.O.B. (Run of Book) advertising in the November 2003 issue of the Publication and \$35,000 for 18 pages of R.O.B. advertising in the March 2004 issue of the Publication. Such payment shall be made in accordance with the terms of this Agreement, including Exhibit A.
- (2) The Town shall pay Hand a sum of \$1,500 for distribution of each of the November 2003 and the March 2004 Publication respectively to the top 100 employers in that area which includes the Town and extends from the borders of the Town south to LBJ Freeway (IH 635), north to Frankfort Road, east to Hillcrest Road, and west to Marsh Lane. The top 100 employers shall be determined by the Town. Such sum shall be paid by the Town to Hand upon the Town

receiving proof acceptable to the Town of the completion of the distribution.

- (3) The Town shall pay Hand a sum of \$750.00 for distribution of each of the November 2003 and the March 2004 Publications in the lobbies of the principal 25 buildings located in that area which includes the Town and extends from the borders of the Town south to LBJ Freeway (IH 635), north to Frankfort Road, east to Hillcrest Road, and west to Marsh Lane. The principal 25 buildings shall be determined by the Town. Such sum shall be paid by the Town to Hand upon the Town receiving proof acceptable to the Town of the completion of the distribution.
- (4) In an effort to increase overall advertising participation from restaurants, retailers and attractions having a place of business within the Town (together, "Addison Advertisers"), the Town will pay to Hand an amount equal to 25% of the amount owed to Hand by Addison Advertisers for advertising in the November 2003 and the March 2004 Publication. Such amount paid by the Town shall not exceed \$5,000 for each of the Publications.

5. Termination. This Agreement may be terminated at any time by either party hereto in the event that the other party is in breach of any term of this Agreement and such breach continues for more than three (3) days after receipt by the breaching party of written notice of the breach from the non-breaching party. In the event of such termination Hand shall be compensated for all services properly performed to the date of termination. In the event of such termination, should Hand have been paid by the Town for services not yet properly performed then Hand shall reimburse the Town all such payments. Acceptance or payment of such reimbursement shall not constitute a waiver of any claim that may otherwise arise out of this Agreement.
 6. Delays. No delay by either of the parties hereto in performing their respective duties, or obligations hereunder shall be deemed a breach of this Agreement if such delay arises from causes beyond the reasonable control of party, including delays resulting from labor disputes, strikes, wars, riots, insurrection, civil commotion, government regulations, fire, flood, storm, or acts of God, provided that such affected party uses its best efforts to avoid non-performance and resumes full performance hereunder as soon as practical. Shortage of material or equipment or changes in price of materials or equipment shall not constitute valid grounds for delay.
- b. It will constitute a breach of this Agreement, allowing for termination and/or recovery of damages which the non-breaching party sustains if:
 - (i) The Town fails to make any payment due hereunder within thirty (30) days following the receipt of an invoice therefor, (and each such invoice shall include a summary statement of services rendered; and

Hand shall supply such supporting documentation with each invoice regarding the services performed by Hand as may be requested by Town from its Staff employees), or

- (ii) Hand fails to deliver the November 2003 issue of the Publication, in the required quantities (see Exhibit A) on or before November 21, 2003 or the March 2004 issue in the required quantities (see Exhibit A) on or before March 19, 2004, provided, however, that the Town agrees to allow Hand a period not to exceed five (5) business days from the delivery date set out above to fully complete Hand's required distribution of the Publications. Failure by Hand to deliver on the dates set above shall result in a late fee of \$400.00 per day which the Town shall deduct from the final amount then payable.

- 7. Notice: Where the terms of this Agreement require that notice in writing be provided, such notice shall be deemed received by the party to whom it is directed upon being hand-delivered or upon three (3) days following the deposit of the notice in the United States mail, postage pre-paid, and sent by certified mail, return receipt requested and properly addressed as follows:

To Addison:

Town of Addison
P. O. Box 9010
Addison, TX 75001
Attn: Lea Dunn
Deputy City Manager

To Hand:

Rodney Hand & Associate
Communications, LP
PO Box 7444
Dallas, TX 75209
Attn: Rodney Hand

- 8. Assignment. This Agreement shall not be assigned or otherwise conveyed in whole or in part by Hand without the prior written consent of the Town. Because this is a services contract, the Town is not obligated to consent to any assignment or other conveyance of any portion of this Agreement. Any attempted assignment or other conveyance hereof by Hand shall be null, void and of no force or effect.
- 9. Independent Contractor. The relationship of Hand to the Town is that of an independent contractor. Neither the Town nor Hand shall be deemed to be the agent of the other and neither is authorized to take any action binding upon the other. No term or provision of this Agreement or any action in the performance hereof is intended nor shall be construed as making Hand the agent, servant or employee of the Town, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship.
- 10. Texas Law to Apply. This Agreement and Exhibit "A" shall be governed by the laws of the State of Texas (without reference to its conflict of law provisions), and shall be performable and all compensation payable in Dallas County Texas. Venue under this Agreement lies in Dallas County, Texas.

11. Entire Agreement. This Agreement and the attached “Exhibit A” represents the entire and integrated agreement between the Town and Hand 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 parties.
12. Severability. If any clause, paragraph, section or 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.
13. Authority to Execute. The undersigned officers and/or agents of the Town and Hand are properly authorized officials of the said parties and have the authority necessary to execute this Agreement on behalf of the respective party, and the parties hereby certify one to the other that any necessary resolutions extending said authority have been duly passed and are now in full force and effect.

EXECUTED at Dallas County, Texas on the day and year first written above.

TOWN OF ADDISON, TEXAS

**RODNEY HAND & ASSOCIATES
MARKETING
COMMUNICATIONS, LP**

By: _____ By: _____
Ron Whitehead, City Manager Rodney Hand, Principal

Attest: _____
Carmen Moran, City Secretary

THERE ARE NO
ATTACHMENTS FOR
ITEM #R3

Council Agenda Item: #R4

SUMMARY:

Council will have the second reading of an ordinance granting a franchise for TXU Gas Company and hold a public hearing.

FINANCIAL IMPACT:

The Town will receive the same fee under the new franchise as it did under the expired franchise: 4% of gross receipts. The amount included in the 2004 budget is \$139,030.

BACKGROUND:

The Town enlisted the services of Clarence West, an attorney who is very familiar with right-of-way issues and who assisted the Town with its ROW ordinance, to negotiate with TXU a new franchise agreement. Attached is a memorandum from Mr. West that summarizes the terms of the franchise.

The process for approving franchise agreements is established in the Town's charter. On October 14 the first reading of the ordinance occurred and a public hearing was held. The second reading will occur along with a public hearing at the October 28, 2003 Council meeting. Council will give final approval of the ordinance at its November 25, 2003 meeting. The ordinance will then be published in the paper for the next four consecutive weeks and will finally become effective December 25, 2003.

RECOMMENDATION:

It is recommended Council entertain second reading of the attached franchise ordinance.

CLARENCE A. WEST

Counselor and Attorney at Law
1201 RIO GRANDE, SUITE 200
AUSTIN, TEXAS 78701
www.cawestlaw.com

Direct Dial: 512.499.8838
Fax: 512.322.0884
cawest@cawestlaw.com

MEMORANDUM

TO: Randy Moravec, Town of Addison

FROM: Clarence A. West, Esq.

RE: **Proposed TXU Gas Company Franchise**

DATE: September 30, 2003

Background

The Town of Addison entered in a gas franchise with Lone Star Gas Company, a predecessor of TXU Gas Company, on April 29, 1982 (Ordinance No. 783, as amended July 1982, by Ordinance No. 818) (“Lone Star Gas Franchise”). The 1982 Gas Franchise provided for a 20-year gas franchise and was scheduled to expire on December 31, 2002.

Since 1982 the Lone Star Gas Franchise was amended once and extended recently. The amendment was to conform the Franchise to the *Denton v. TXU Gas Franchise* litigation settlement concerning the gross revenue franchise fee base and calculation of payments. The Gas Franchise was formally extended last year, pending the negotiations on a new franchise.

Proposed New TXU Gas Franchise

Term – The term of this franchise is the same as the prior franchise; it is 20 years and expires on December 31, 2023. (Section 1)

Police Power Reservation of Rights – The franchise ensures that the City retains all of its rights to regulate the rights-of-ways and the construction of facilities in its rights-of-ways through its police powers. (Section 2)

Franchise Fees – Franchise fees are to be paid consistent with the *Denton v. TXU Gas Franchise* litigation. The fee is 4% on the gross revenues of TXU. Gross revenue is a defined term which includes four principal items:

1. All revenue from all classes of customers (residential, industrial, ect.);
2. Revenue from the “transportation” of gas in TXU facilities in the Town;
3. The value of gas transported by third-parties in TXU facilities; and
4. Miscellaneous revenue, to include: (a) charges to connect, disconnect, or reconnect gas; (b) charges to handle returned checks; (c) other service charges and charges and (d) contributions in aid of construction (“CIAC”). (Gross Revenue does not include sales tax or interest income.)

With each payment of franchise fees, the franchise expressly requires that a report be given with each payment, detailing the various revenue classes upon which the franchise is based.

The franchise fee provision also provides that in the event another city is paid more in franchise fees, then this franchise would be revised accordingly. (Section 6)

Relocation of Utility Facilities – This franchise provides that in the event that the City requires the relocation of gas utility facilities for changes in the rights-of-ways for construction for city projects, then those facilities would be moved at the gas company’s cost. (Section 2). (State law does allow this relocation cost to be recouped by TXU in a “surcharge” or as a direct pass-through” to the Town’s customers over a 1 to 3 year period.)

Indemnity and Insurance – This franchise allows TXU Gas to be self-insured. However, if they self-insure, they are required to provide the same type of defense representation and coverage as an insurance carrier. (Section 3)

Extensions for Residential Customers – The franchise preserves the current extension of distribution lines for new customers in the rights-of-ways until that is replaced by an approved tariff, which is now pending in the current gas rate case at the Texas Rail Road Commission. (Section 4)

Termination and Compliance Enforcement Provisions – The franchise expressly provides that in the event there is noncompliance with the franchise after notice is given, that the City can pursue court action to terminate the franchise. (Section 11)

Council Agenda Item: #R5

SUMMARY:

This item is to inform Council of recent actions taken by staff regarding the Railroad Crossing Reliability Partnership Program that is a call-for-projects that uses federal funds to improve selected rail crossings. The Regional Transportation Council (RTC) of the North Texas Council of Governments (NCTCOG) is managing this program. The Town of Addison Public Works Department is pursuing funding for crossing improvements necessary for the creation of a “Quiet Zone.”

FINANCIAL IMPACT:

Budgeted Amount: Not budgeted

Cost: \$126,000

Funding Source: DART Local Assistance Program (LAP) funds are available

BACKGROUND:

The Public Works Department has been investigating the creation of a “Quiet Zone” along the railroad corridor known as the old Cotton Belt Line currently owned by DART and operated by Dallas, Garland and Northeastern Railroad (DGNO). This corridor runs east and west beginning with the crossing at Knoll Trail and ending at the Marsh Lane crossing. The Quorum Drive through Marsh Lane crossings are within Town of Addison jurisdiction.

State law requires that the engineer of a locomotive sound the train horn one-quarter mile in advance of a grade crossing. With the institution of certain supplementary or alternate safety measures, a “Quiet Zone” can be created eliminating the requirement for the sounding of a train horn. Only two of the five Addison railroad crossings (Addison Road and Surveyor Boulevard) require additional safety measures. These safety measures include the installation of Quad gates (as neither crossing has a roadway median) and vehicle detection to prevent vehicles from be trapped between the quad gates. Wayside horns (a quieter warning system) will also be installed to warn motorists.

The funding available from the Railroad Crossing Reliability Program will provide 80% (\$504,000) of the funds required for these improvements if the Town of Addison provides the remaining 20% (\$126,000)

RECOMMENDATION:

No Council action is requested. This item is for information only.

Council Agenda Item: #R6

SUMMARY:

Approval of an ordinance that would prohibit solicitation by coercion in public spaces.

FINANCIAL IMPACT: N/A

BACKGROUND:

The Mayor requested that staff develop an ordinance that would prohibit solicitation by coercion in public places. The attached proposed ordinance is modeled on the ordinance recently adopted by the City of Dallas.

RECOMMENDATION:

Staff recommends approval.

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS (CITY) AMENDING THE CODE OF ORDINANCES OF THE CITY BY (I) AMENDING CHAPTER 22 (BUSINESSES) BY ADDING A NEW ARTICLE V THERETO ENTITLED "SOLICITATION BY COERCION; SOLICITATION NEAR DESIGNATED LOCATIONS AND FACILITIES", AND PROHIBITING SOLICITATION BY COERCION AND RESTRICTING SOLICITATIONS NEAR AUTOMATED TELLER MACHINES, FINANCIAL INSTITUTIONS, EXTERIOR PAY PUBLIC TELEPHONES, SELF-SERVICE CAR WASHES, SELF-SERVICE FUEL PUMPS, PUBLIC TRANSPORTATION STOPS, AND VALET PARKING SERVICE STANDS, AND PROVIDING DEFINITIONS, AND ESTABLISHING WHO MAY FILE A COMPLAINT CONCERNING A PROHIBITED SOLICITATION, SALE, OR DISTRIBUTION, AND BY (II) AMENDING CHAPTER 70 (STREETS, SIDEWALKS, AND OTHER PUBLIC PLACES) BY ADDING A NEW ARTICLE IX THERETO ENTITLED "SOLICITATIONS TO OCCUPANTS OF VEHICLES ON PUBLIC ROADWAYS PROHIBITED", AND PROHIBITING SOLICITATIONS FOR RIDES, CONTRIBUTIONS, EMPLOYMENT, SIGNATURES, OR BUSINESSES, INCLUDING THE SALE OF DISTRIBUTION OF GOODS, SERVICES, AND PUBLICATIONS, TO THE OCCUPANT OF ANY VEHICLE ON A PUBLIC ROADWAY, AND PROVIDING DEFINITIONS AND DEFENSES, AND ESTABLISHING WHO MAY FILE A COMPLAINT CONCERNING A PROHIBITED SOLICITATION, SALE, OR DISTRIBUTION; PROVIDING A PENALTY NOT TO EXCEED THE SUM OF FIVE HUNDRED DOLLARS (\$500.00) FOR EACH OFFENSE AND A SEPARATE OFFENSE SHALL BE DEEMED COMMITTED EACH DAY DURING OR ON WHICH A VIOLATION OCCURS OR CONTINUES; PROVIDING A SAVINGS CLAUSE; INCORPORATING THE PREMISES OF THIS ORDINANCE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the Town of Addison, Texas (the "City") finds that solicitation by coercion is disturbing and disruptive to residents and businesses and contributes to the loss of access to and enjoyment of public places and to a sense of fear, intimidation and disorder, and includes approaching or following pedestrians, repetitive soliciting despite refusals, the use of abusive or profane language to cause fear and intimidation, unwanted physical contact, or the intentional blocking of pedestrian and vehicular traffic; and

WHEREAS, the City Council further finds that solicitations conducted near automated teller machines create a safety hazard and an increased potential for criminal activity against persons using the machines, since those persons are often in isolated locations with cash conspicuously in their possession, thereby making them more vulnerable to and intimidated by solicitors; and

WHEREAS, the City Council further finds that solicitations conducted near entrances and exits of banks, credit unions, and other similar financial institutions create a safety hazard and an increased potential for criminal activity against persons using those institutions, since those persons are often entering or exiting those institutions with cash conspicuously in their possession, thereby making them more vulnerable to and intimidated by solicitors; and

WHEREAS, the City Council further finds that solicitations conducted near exterior public pay telephones create a safety hazard and an increased potential for criminal activity against persons using the telephones, since those persons are often in isolated locations with their attention distracted from their surroundings, thereby making them more vulnerable to and intimidated by solicitors; and

WHEREAS, the City Council further finds that solicitations conducted near self-service car washes create a safety hazard and an increased potential for criminal activity against persons using the self-service car washes, since those persons are often in isolated locations with cash conspicuously in their possession and are usually a captive audience, with their attention distracted from their surroundings, as they have their vehicles in various stages of cleaning, thereby making those persons more vulnerable to and intimidated by solicitors; and

WHEREAS, the City Council further finds that solicitations conducted near self-service fuel pumps create a safety hazard and an increased potential for criminal activity against persons using the self-service fuel pumps, since those persons are often in isolated locations with cash conspicuously in their possession and are usually a captive audience, with their attention distracted from their surroundings, as they fill up their vehicles with gas or other fuel, thereby making those persons more vulnerable to and intimidated by solicitors; and

WHEREAS, the City Council finds that solicitations conducted near public transportation stops create a safety hazard and an increased potential for criminal activity against persons using the public transportation stops, since those persons are usually a captive audience, often with their attention distracted from their surroundings, as they wait and watch for necessary transportation, thereby making them more vulnerable to and intimidated by solicitors; and

WHEREAS, the City Council further finds that solicitations conducted near valet parking service stands create a safety hazard and an increased potential for criminal activity against persons using the valet parking service stand, since those persons are usually a captive audience, often with their attention distracted from their surroundings, as they wait and watch for necessary transportation, thereby making them more vulnerable to and intimidated by solicitors; and

WHEREAS, the City Council further finds that amendment to the Code of Ordinances of the City relating to solicitation by coercion is intended to protect citizens from the fear and intimidation accompanying certain kinds of solicitation and not to limit a constitutionally protected activity, and believes it is in the best interest of the public health, safety, and welfare to restrict the distances at which solicitations may be conducted near the locations and facilities described herein; and

WHEREAS, the City Council further finds that solicitations for rides, contributions, employment, signatures, or business, including the sale or distribution of goods, services, and publications, to the occupants of vehicles on public roadways distract drivers, obstruct and impede the orderly flow of traffic, cause traffic congestion, and create traffic and safety hazards that pose a danger to the solicitors, the persons solicited, and the traveling public in general; and

WHEREAS, the City Council believes it is in the best interest of the public health, safety, and welfare to prohibit such solicitations to all occupants of vehicles on public roadways.

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

Section 1. Amendment to Code of Ordinances. The Code of Ordinances (the "Code") of the Town of Addison, Texas (the "City") is hereby amended as follows:

A. Chapter 22 (Businesses) of the Code is amended by adding a new Article V entitled "Solicitation by Coercion; Solicitation Near Designated Locations and Facilities" to read as follows:

ARTICLE V. SOLICITATION BY COERCION; SOLICITATION NEAR DESIGNATED LOCATIONS AND FACILITIES

(a) In this article:

(1) *automated teller machine* means a machine, other than a telephone:

(A) that is capable of being operated by a customer of a financial institution;

(B) by which the customer may communicate to the financial institution a request to withdraw a benefit for the customer or for another person directly from the customer's account or from the customer's account under a line of credit previously authorized by the financial institution for the customer; and

(C) the use of which may or may not involve personnel of a financial institution.

(2) *coercion* means:

(A) to approach or speak to a person in such a manner as would cause a reasonable person to believe that the person is being threatened with:

(i) imminent bodily injury; or

(ii) the commission of a criminal act upon the person or another person, or upon property in the person's immediate possession;

(B) to persist in a solicitation after the person solicited has given a negative response;

(C) to block, either individually or as part of a group of persons, the passage of a solicited person; or

(D) to engage in conduct that would reasonably be construed as intended to compel or force a solicited person to accede to demands.

(3) *exterior public pay telephone* means any coin or credit card reader telephone that is:

(A) installed or located anywhere on a premises except exclusively in the interior of a building located on the premises; and

(B) accessible and available for use by members of the general public.

(4) *public transportation stop* means an area officially marked and designated as a place to wait for a bus, a light rail vehicle, or any other public transportation vehicle that is operated on a scheduled route with passengers paying fares on an individual basis.

(5) *self-service car wash* means a structure:

(A) at which a vehicle may be manually washed by its owner or operator with equipment that is activated by the deposit of money in a coin-operated machine; and

(B) that is accessible and available for use by members of the general public.

(6) *self-service fuel pump* means a fuel pump:

(A) from which a vehicle may be manually filled with gasoline or other fuel directly by its owner or operator, without the aid of an employee or attendant of the premises at which the fuel pump is located; and

(B) that is accessible and available for use by members of the general public.

(7) *solicitation* means to ask, beg, solicit, or plead, whether orally or in a written or printed manner, for the purpose of receiving contributions, alms, charity, or gifts of items of value for oneself or another person.

(8) *valet parking service* means a business, or any part of a business, which provides a driver to operate a person's vehicle on or across a public right-of-way and to and from a parking location so that the person and any passengers in the person's vehicle may unload and load at their immediate destination.

(9) *valet parking service stand* means a stand, booth, stall, station, or other place from which a valet parking service is operated.

(b) A person commits an offense if he conducts a solicitation by coercion.

(c) A person commits an offense if he conducts any solicitation within 25 feet of:

- (1) an automated teller machine;
- (2) an entrance or exit of a bank, credit union, or other similar financial institution;
- (3) an exterior public pay telephone;
- (4) a self-service car wash;
- (5) a self-service fuel pump;
- (6) a public transportation stop; or
- (7) a valet parking service stand.

(d) For purposes of paragraph (c) of this Article V, measurement will be made in a straight line, without regard to intervening structures or objects, from the nearest point at which a solicitation is being conducted to whichever is applicable of the following:

- (1) the nearest entrance or exit of a facility in which an automated teller machine is enclosed or, if the machine is not enclosed in a facility, to the nearest part of the automated teller machine;
- (2) the nearest entrance or exit of a bank, credit union, or other similar financial institution;

- (3) the nearest part of an exterior public pay telephone;
- (4) the nearest part of the structure of a self-service car wash;
- (5) the nearest part of a self-service fuel pump;
- (6) the nearest point of any sign or marking designating an area as a public transportation stop; or
- (7) the nearest part of a valet parking service stand.

(e) In addition to any enforcement action by a peace officer for a violation of this section, any person who is a victim of a solicitation prohibited under paragraphs (b) or (c) of this Article V, or who witnesses a violation of paragraph (c) of this Article V, may file a complaint with the city's municipal court. Evidence to support a conviction for a violation of this Article may include, but is not limited to, testimony of witnesses, videotape evidence of the violation, and other admissible evidence.

B. Chapter 70 (Streets, Sidewalks, and Other Public Places) of the Code is amended by adding a new Article IX entitled "Solicitations to Occupants of Vehicles on Public Roadways Prohibited" to read as follows:

ARTICLE IX. SOLICITATION TO OCCUPANTS OF VEHICLES ON PUBLIC ROADWAYS PROHIBITED

(a) In this Article:

- (1) *city* means the Town of Addison, Texas.
- (2) *goods* means property of every kind.
- (3) *public property* means:
 - (A) any property open or devoted to public use or owned by the city; and
 - (B) any area dedicated to the public use for sidewalk, street, highway, or other transportation purposes, including, but not limited to, any curb, median, parkway, shoulder, sidewalk, alley, drive, or public right-of-way.
- (4) *roadway* has the meaning given that term in Chapter 541, Texas Transportation Code.
- (5) *services* means any work done for the benefit of another person.
- (6) *solicitation* means any conduct or act whereby a person:

(A) either orally or in writing, asks for a ride, employment, goods, services, financial aide, monetary gifts, or any article representing monetary value, for any purpose;

(B) either orally or in writing, sells or offers for sale goods, services, or publications;

(C) distributes without remuneration goods, services, or publications; or

(D) solicits signatures on a petition or opinions for a survey.

(7) *vehicle* has the meaning given that term in Chapter 541, Texas Transportation Code.

(b) A person commits an offense if, while occupying any public property adjacent to any public roadway in the city, he knowingly conducts a solicitation directed to, or intended to attract the attention of, the occupant of any vehicle stopped or traveling on the roadway. An offense occurs when the solicitation is made, whether or not an actual employment relationship is created, a transaction is completed, or an exchange of money, goods, or services takes place.

(c) It is a defense to prosecution under paragraph (b) of this Article IX that the person was:

(1) summoning aid or requesting assistance in an emergency situation; or

(2) a law enforcement officer in the performance of official duties.

(d) In addition to any enforcement action by a peace officer for a violation of this Article IX, any person who is a victim of a solicitation prohibited under paragraph (b) of this Article, or who witnesses a violation of paragraph (b), may file a complaint with the city municipal court. Evidence to support a conviction for a violation of this Article may include, but is not limited to, testimony of witnesses, videotape evidence of the violation, and other admissible evidence.

Section 2. Penalty. It shall be unlawful for any person to violate any provision of this Ordinance, and any person violating or failing to comply with any provision hereof shall be fined, upon conviction, in an amount not to exceed Five Hundred Dollars (\$500.00), and a separate offense shall be deemed committed each day during or on which a violation occurs or continues.

Section 3. Savings. This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of those ordinances or of the Code of Ordinances except in those instances where the provisions of those

ordinances or of the Code are in direct conflict with the provisions of this Ordinance; provided, however, that an offense committed before the effective date of this Ordinance is governed by the prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for that purpose.

Section 4. Incorporation of premises. The above and foregoing premises are true and correct and are incorporated herein by this reference.

Section 5. Severability. The terms and provisions of this Ordinance are severable, and if such terms or provision or application thereof to any person or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares that it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 6. Effective Date. This Ordinance shall take effect from and after its date of adoption and publication, and it is accordingly so ordained.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this the ___ day of _____, 200__.

R. Scott Wheeler, Mayor'

ATTEST:

By: _____
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: _____
Ken Dippel, City Attorney

Council Agenda Item: #R7

SUMMARY:

Council approval is required to replace the bullet trap for the police department's indoor firing range. The item is to authorize the City Manager to enter into an agreement with Caswell International Corporation for the amount of \$49,750 to replace and install the bullet trap. Since we are only replacing the bullet trap and not the range electronics, this will be a sole source purchase.

FINANCIAL IMPACT:

In the 2003 / 2004 budget Council included \$50,000 for the bullet trap replacement. This item is within the amount authorized.

BACKGROUND:

The bullet trap is an original piece of equipment installed when the building was opened in 1984. The average life of a bullet trap is ten years but due to our lower use of the range than most departments and by periodically reversing the steel impact plates we have managed to extend the life of the bullet trap. However, during our last annual preventive maintenance inspection the Caswell service representative reported that the steel plates have lost their ability to deflect bullets safely. In order to continue to use the range this replacement is necessary. The new bullet trap will use the latest technology that incorporates rubber from ground up tires to stop rather than deflect bullets. With average use the life expectancy of the new bullet trap is over 20 years.

Recommendation:

Staff recommends approval.

#R72

**Addison Police
Department**

Memo

To: Jennie Prince
From: Ron Davis
CC: Chief Don Franklin, Bryan Langley, Randy Moravec
Date: 9/15/2003
Re: Bullet Trap Replacement

The police department has been approved to replace the bullet trap on the range. Since the existing range was manufactured by, Caswell International Incorporated, we plan to contract with Caswell to provide and install the new equipment as a sole source procurement. We are not bidding the project because of the infrastructure we already have in the existing Caswell installation. Were we to go with another vendor we would need to replace the range electronics in addition to the bullet trap. Doing so would at least double the cost of the project from \$50,000 to close to \$100,000. We have had an excellent relationship with Caswell since the range was installed in 1984 and feel very comfortable continuing our business relationship with them.

October 14, 2003

Addison Police Department
4799 Airport Pkwy.
Addison, TX 75001
Attn: Ron Davis
FAX : 972-450-7186

QUOTATION

Dear Ron Davis:

We herewith offer our quotation price of \$49,750.00 for the furnishing and delivery, F.O.B. jobsite, the equipment listed herein. In addition to the quotation price, you will be responsible for all Federal, State, or Local Taxes, Licenses, Permits, and Fees applicable to the sale. The above quoted price does not include any charges for Bid, Payment, or Performance Bonds. This quotation is null and void if not accepted, in writing, and received by CASWELL INTERNATIONAL CORPORATION by 12/31/03.

Terms are 100% due no later than 30 days after receipt of invoice. Any deviation must be mutually agreed upon in writing.

Delivery is normally 90-120 days after return receipt of approved order. This quotation and attached pages will be attached to and made part of any forthcoming purchase order. Indication of acceptance shall be by signature in the space provided on each page of the quotation herein.

Sincerely,

CASWELL INTERNATIONAL CORPORATION

David O'Meara

David O'Meara
Customer Account Representative

APPROVED: _____

DATE: _____

QUOTATION - EQUIPMENT LISTING

<u>QUANTITY</u>	<u>MODEL</u>	<u>DESCRIPTION</u>
1	LE7500	Reclining Grantrap
1	JA8C	Enclosure Guard
1	Clean-2	Trap-Vacuum
1	NS-Steel	Trap Sidewall
1	Lot	Installation
1	Lot	Training
1	Lot	CWU upgrade all lanes

Other Comments: The removal and disposal shall be done by the customer.

APPROVED: _____

DATE: _____

Terms and Conditions

Dated: 10-14-03

The following Terms and Conditions are a part of Caswell International Corporation's ("Caswell") quote to the Town of Addison, Texas for the Bullet Trap Replacement project (the "project"). These Terms and Conditions will be part of any contract, purchase order or signed quote that Caswell enters into with you, your department or company.

- 1. Caswell's Terms and Conditions contained herein, along with the enclosed quote take precedent over all other project documents. Any earlier quote along with those terms and conditions are immediately null and void.
- 2. Caswell excludes the following items unless specifically included as a line item at the end of this paragraph.
 - A. Line voltage electrical, connections, line or control conduits (empty or full), electrical boxes, receptacles, target or general lights and any other devices generally considered for high voltage.
All temp utilities for construction (including adequate lighting and 115v power for hand-tools) are the responsibility of the General Contractor.
 - B. Bridging, structural supports or any other material that is required as support for Caswell's baffle or safety ceiling.
All coordination for baffle, safety ceiling, and bullet trap (and the associated hanging provisions) is the responsibility of the General Contractor. Caswell will provide accurate submittal drawings for this purpose.
 - C. Unloading and/or moving/placement of Caswell equipment into the range area.
 - D. Removal / disposal of existing equipment
 - E. Removal / disposal of lead or other hazardous waste
 - F. Relocation of existing piping, ventilation ducts, electrical conduit, etc

Items that are specifically included with this quote:

[Remainder of Page Intentionally Left Blank]

3. Caswell will not be responsible for payment of the following statutory items unless specifically included as a line item at the end of this paragraph:
- A. Taxes
 - B. Permits
 - C. Fees
 - D. Bonds
 - E. Licenses
 - F. Other Charges

Statutory items that are specifically included with this quote: NONE

4. Caswell represents and warrants:

- (i) That Caswell's services and work will be provided in a professional, good and workman-like manner, consistent with the commercially accepted practices and standards that are in use in Caswell's line of business as of the time such services and work are provided. Caswell warrants and represents that it has the skills, qualifications, expertise and experience necessary to perform the services described in the project specifications applicable thereto.
- (ii) Caswell will perform its work in accordance with, and for the period of time set forth in, the specifications applicable thereto.
- (iii) That any support and other services that Caswell provides to the Town under this Agreement, directly or through its subcontractors, shall be provided by personnel who are trained and skilled in the provision of such services consistent with commercially accepted practices.

5. Caswell is a non-union manufacturer. Caswell will provide prevailing wages (Davis-Bacon) or pay for union workers only if specifically included as a line item below.

N/A

6. The payment amount included in the attached quote shall be payable to Caswell as follows: Terms are 100% due no later than 30 days after receipt of invoice. Any deviation must be mutually agreed upon in writing.

DN

7. If Caswell is not authorized to commence work on the Project within 90__ days from the date of the attached quote, Caswell shall be entitled to adjust its quoted prices to account for increased costs to Caswell as a result of said delay.
8. All drawings, specifications and other design documents stamped "Proprietary Information" as prepared by Caswell are the property of Caswell. Caswell shall retain all common law, statutory and other rights, including all copyrights, related to said design documents. The Town shall not use the design documents on other projects without the specific written consent of Caswell.
9. Caswell shall operate as an independent contractor and not as an agent of the Town during performance of this Agreement, and nothing herein shall be construed to create a partnership, joint venture, or agency relationship between the parties hereto. No personnel of Caswell or of any subcontractor shall be deemed under any circumstances to be an agent or employee of the Town, nor do such personnel have authority to bind the Town by any representation, promise, contract or agreement. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Each party hereto represents that it is acting on its own behalf and is not acting as an agent for or on behalf of any third party.
10. Caswell shall defend, indemnify and hold harmless the Town of Addison, Texas, its officials, officers, employees, and agents (together, "Indemnified Persons") from and against any and all losses, liability, lawsuits, damages, claims, demands, costs, fees and expenses (including, without limitation, reasonable attorneys' fees), whether based in contract or tort, arising from, out of, or in connection with (i) any negligent or wrongful act or omission of Caswell or its subcontractors, or the officers, directors, employees, agents, representatives, invitees, successors, and assigns of any of them under or in connection with this Agreement, (ii) any assertion under worker's compensation or similar laws made by persons furnished by Caswell. The provisions of this paragraph shall survive the termination or expiration of this Agreement.
11. In the event of any suit or action under this Agreement, venue for all causes of action shall be instituted and maintained in Dallas County, Texas. Caswell and the Town 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.
12. Caswell at its own expense, shall purchase, maintain and keep in force such insurance as described and in the minimum amounts set forth below:
 - A. 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, without limitation, products/completed operations (\$1,000,000 products/ completed operations aggregate). Coverage for products/completed operations must be maintained for at least one (1) year after the work has been completed. Coverage must be amended to provide for an each-project aggregate limit of insurance.



B. Workers Compensation insurance 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.

C. Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage.

With reference to the foregoing insurance requirements, Caswell shall specifically endorse applicable insurance policies as follows:

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

B. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.

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

D. 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.

E. All insurance policies, which name The Town of Addison as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.

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

G. Caswell may maintain reasonable and customary deductibles, subject to approval by the Town of Addison.

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 and shall contain provisions representing and warranting the following:

A. Sets forth all endorsements and insurance coverages according to requirements and instructions contained herein.

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

C. Upon request, Caswell shall furnish the Town of Addison with certified copies of all insurance policies.



MARSH

CERTIFICATE OF INSURANCE

CERTIFICATE NUMBER
 LOS-000374038-08

PRODUCER
 Marsh Risk & Insurance Serv
 777 South Figueroa Street
 Los Angeles, CA 90017-5822
 Attn: Carolyn Rojas 213-346-5258

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER OTHER THAN THOSE PROVIDED IN THE POLICY. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES DESCRIBED HEREIN.

COMPANIES AFFORDING COVERAGE

COMPANY
 A GERLING AMERICA INSURANCE CO

INSURED
 Meggitt-USA, Inc. and its subsidiary
 Caswell International Corp.
 Attn: Howie Chatfield
 2540 Second Street NE
 Minneapolis, MN 55418-3412

COMPANY
 B Travelers Indemnity Company of IL

COMPANY
 C Travelers Indemnity Company of CT

COMPANY
 D Texas Mutual Insurance Co.

COVERAGES
 THIS IS TO CERTIFY THAT POLICIES OF INSURANCE DESCRIBED HEREIN HAVE BEEN ISSUED TO THE INSURED NAMED HEREIN FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THE CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, CONDITIONS AND EXCLUSIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO CTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS		
A	GENERAL LIABILITY	U7200118	04/14/03	12/31/03	GENERAL AGGREGATE	\$ 2,000,000	
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				PRODUCTS - COMP/OP AGG	\$ 2,000,000	
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				PERSONAL & ADV INJURY	\$ 1,000,000	
	<input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT				EACH OCCURRENCE	\$ 1,000,000	
	<input checked="" type="checkbox"/> Contractual				FIRE DAMAGE (Any one fire)	\$ 100,000	
					MED EXP (Any one person)	\$ 5,000	
B C	AUTOMOBILE LIABILITY	TJCAP419J6145TIL02 AOS TECAP419J6157TCT02 TX	04/14/03 04/14/03	12/31/03 12/31/03	COMBINED SINGLE LIMIT	\$ 1,000,000	
	<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$	
	<input checked="" type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$	
	<input checked="" type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE	\$	
	<input checked="" type="checkbox"/> HIRED AUTOS						
	<input checked="" type="checkbox"/> NON-OWNED AUTOS						
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$	
	<input type="checkbox"/> ANY AUTO				OTHER THAN AUTO ONLY:	\$	
					EACH ACCIDENT	\$	
					AGGREGATE	\$	
E	EXCESS LIABILITY	6299354D	12/31/02	12/31/03	EACH OCCURRENCE	\$ 2,000,000	
	<input checked="" type="checkbox"/> UMBRELLA FORM				AGGREGATE	\$ 2,000,000	
	<input type="checkbox"/> OTHER THAN UMBRELLA FORM					\$	
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	SBP0001105139	04/23/03	04/23/04	<input checked="" type="checkbox"/> WC STATU- TORY LIMITS	OTHER	
	THE PROPRIETOR/ PARTNERS/EXECUTIVE OFFICERS ARE:				<input type="checkbox"/> INCL	EL EACH ACCIDENT	\$ 500,000
					<input type="checkbox"/> EXCL	EL DISEASE-POLICY LIMIT	\$ 500,000
	OTHER					EL DISEASE-EACH EMPLOYEE	\$ 500,000

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS
 Re: Job #21973 - Bismarck Police Department.

CERTIFICATE HOLDER
 Professional Contractors, Inc.
 1131 Airport Road
 Bismarck, ND 58504

CANCELLATION
 SHOULD ANY OF THE POLICIES DESCRIBED HEREIN BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE INSURER AFFORDING COVERAGE WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED HEREIN, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER AFFORDING COVERAGE, ITS AGENTS OR REPRESENTATIVES, OR THE ISSUER OF THIS CERTIFICATE.
 MARSH USA INC.
 By: Wendell L. Barner *Wendell L. Barner*
 11/3/03 VALID AS OF: 08/27/03

Client#: 12783

COPY

CASIN

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
8/27/03

PRODUCER
J. A. PRICE AGENCY, INC.
6640 Shady Oak Road
Suite 500
Eden Prairie, MN 55344

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

NAIC #

INSURED
Caswell International Corporation, Inc.
2540 Second Street NE
Minneapolis, MN 55418

INSURER A: United Fire & Casualty

INSURER B:

INSURER C:

INSURER D:

INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	60064281	04/01/03	04/01/04	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE \$ RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER	60064281	04/01/03	04/01/04	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$500,000 E.L. DISEASE - EA EMPLOYEE \$500,000 E.L. DISEASE - POLICY LIMIT \$500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Job: Bismarck Police Department, Job No. 21973

CERTIFICATE HOLDER

Professional Contractors, Inc.
1131 Airport Road
Bismarck, ND 58504

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE



Council Agenda Item: #R8

SUMMARY:

Mr. Ron Melton, Executive Vice President and CFO of the Dallas Convention & Visitors Bureau is requesting a \$10,000 donation from the Town of Addison to keep the TX/OU game in Dallas (see attachments). Mr. Melton will be at the October 28 meeting to discuss this item in further detail.

FINANCIAL IMPACT:

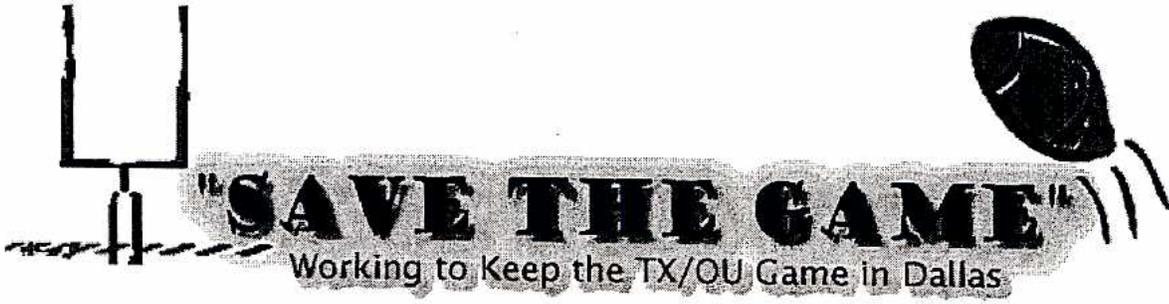
This item was not budgeted in the FY04 budget. If Council were to approve this request, the funding would be provided by the Hotel fund.

BACKGROUND:

See attached letters.

RECOMMENDATION:

Staff is recommending approval and will be prepared to discuss in detail at the October 28 meeting.



"SAVE THE GAME"
Executive Committee

October 22, 2003

Bailey, Co-Chair
Executive Director
Association of Greater Dallas

Lea Dunn, Deputy City Manager
Town of Addison
5300 Addison Road
Addison, Texas 75001-9010

Melton, Co-Chair
Executive Vice President & CFO
Dallas Convention & Visitors Bureau

Dear Ms, Dunn:

Y Evers
Executive Director
Dallas Restaurant Association

The TX/OU Game has occurred at the Cotton Bowl during the State Fair since 1929. The State Fair of Texas is in the 7th year of a 10 year contract with the University of Texas and Oklahoma University for the TX/OU Game to take place at the Cotton Bowl stadium during the State Fair of Texas. This year the contract calls for an additional payment to be made to the schools by November 11 to assist the universities with travel expenses and operating costs. Should the payments not occur by that date the universities have the option of canceling the agreement and moving the game from Dallas. Should agreements not be met, the schools have until December 31, 2003 to provide notification they will alter the contract, and/or move the game from Dallas.

Finkelman
City Council
of Dallas

The "Save the Game" Texas/OU Executive Committee was formed to lead the business and civic communities in this effort. The charge of the committee is seeking the financial donations—from those who benefit—to keep the game in Dallas. Along with the "Save the Game" effort, the City of Dallas, and the State Fair of Texas are also working to meet their end of the contractual obligations.

Garcia
General Manager
Wynn's Mark Hotel

This effort is important to the community and city—not just the game—in many ways. As you know there is tremendous history, community and school service related to this game. And it is estimated that the Texas-OU Game brings millions of dollars to the Dallas Metroplex—one study estimated that the Texas-OU Game has a \$150 million economic impact. We are now in the process of fundraising to meet the universities' deadline. This committee will also assist the City and State Fair in forming a long-term strategy to keep the game in the Cotton Bowl and in Dallas—with the contract that benefits all. Our success towards securing the schools commitments to stay in Dallas may have a strong impact on our ability to attract and retain future high-profile sporting events into the Dallas Metroplex.

Halstead
President
Dallas Citizens Council

Let's keep the Texas-OU Game in the Cotton Bowl, and the positive economic, community service, and historic impact in the Dallas Metroplex. We are asking today for your assistance in this effort. **Your contribution of \$10,000.00 can help us "Save the Game".**

Jenkins
President & Managing Director
Dallas Summer Musicals

Best regards,

Kirk
Officio
Director, Corporate
Wynne Sewell, LLP

Ron Melton, Co Chair
Executive Vice President & CFO
Dallas Convention & Visitors Bureau

Sandi Bailey, Co Chair
Executive Director
Hotel Association of Greater Dallas

Kline
Chairman of the Board
Dallas Convention & Visitors Bureau

LaBarba
President
American Food Service

McKoy
President
State Fair of Texas

Miller
President
City of Dallas

Schenkel
General Manager
Food Company

Weaver
General Manager
Hotel



"Save the Game"

City of Dallas, Hospitality and Tourism Industries and Other Groups Working to Keep the TX/OU Game in Dallas

- The University of Texas and Oklahoma University approached the State Fair of Texas last year for financial and in-kind assistance to assure the TX/OU game remained in Dallas. Raising season ticket sales at both universities along with increasing costs to hold the game in Dallas were the two primary factors behind the universities making the requests. In response, the State Fair negotiated and signed an agreement essentially along the lines requested by the universities. It is a ten-year contract.
- The contract addendum is worth approximately \$350,000 and will be paid to the universities and the State Fair of Texas. The City of Dallas, the State Fair of Texas and the Greater Dallas hospitality industry will all assist in the funding. In addition, the universities requested \$100,000 worth of improvements in the Cotton Bowl Stadium which, while not part of the agreement, will be met by the State Fair.
- The agreement calls for payments to be made to the schools by a date in November each year. Should the payments not occur by that date the universities have the option of canceling the agreement and moving the game from Dallas. In 2003, payments agreed to under the agreement must be paid or given to the universities by November 11. Should the payments not occur by date, the schools have until December 31st of this year to provide notification they want to cancel the contract.
- To assure the Texas-OU game stays in Dallas, Mr. Ron Melton, Executive Vice President and Chief Financial Officer of the Dallas Convention & Visitors Bureau, and Ms. Sandi Bailey, Executive Director of the Hotel Association of Greater Dallas met with Errol McCoy of the State Fair and have established a "Save the Game" TX/OU Committee.
- Late last month, Mr. Melton and Ms. Bailey met with Dallas Mayor Laura Miller along with Mr. McCoy to discuss the possibility of funding assistance from the City of Dallas.
- "Save the Game" TX/OU Committee members are now engaging in a fundraising effort to raise a portion of the funds to keep the TX/OU Game at the Cotton Bowl.
- The TX/OU Game has been at the Cotton Bowl since 1929. According to a University of North Texas study, the TX/OU Game has a \$150 Million economic impact on the City of Dallas and surrounding areas.