

Addison 50!

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

APRIL 13, 2004

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 March 23, 2004 Council Meeting.

#2b – Consideration of approval of a Change Order in an amount not to exceed \$117,795.00 to a previously approved contract with Abstract Construction Company for changes to Addison Circle Park.

Item #R3 – Appointment of a member to the Planning and Zoning Commission.

Administrative Comment:

Commissioner Tom Braun has filed for a place on the ballot for City Councilmember for the 2004 Municipal Election. Mr. Braun was appointed by former Councilmember Barrett. The appointment now belongs to Councilmember Niemann.

Item #R4 – **PUBLIC HEARING** and consideration of an Ordinance approving development plans for a bank with drive-through facilities in an existing Planned Development District, Ordinance No. 460, as amended, located on 1.29 acres at the southeast corner of Belt Line Road and Surveyor Boulevard, on application from SouthTrust Bank, represented by Mr. Bryan M. Burger of Lawrence A. Cates and Associates, LLP.

Attachments:

1. Docket Map
2. Staff Report
3. Plans

The Planning and Zoning Commission Findings:

The Addison Planning and Zoning Commission, meeting in regular session on March 25, 2004, voted to recommend approval of development plans for a bank with drive-through facilities in an existing Planned Development District, subject to the following conditions:

1. All mechanical equipment must be screened from view.
2. The landscaping plan shall be revised to replace the Cedar Elm trees shown on the plan with Live Oak trees.
3. The dumpster enclosure shall be constructed out of the same brick as the building.

Voting Aye: Benjet, Bernstein, Jandura, Knott, Mellow

Voting Nay: None

Absent: None, one seat vacant

Administrative Recommendation:

Administration recommends approval.

Item #R5 – Consideration of approval of a final plat for two lots on 2.8958 acres in a Planned Development District, located at the southeast corner of the intersection of Belt Line Road and Surveyor Boulevard, on application from SouthTrust Bank, represented by Mr. Bryan M. Burger of Lawrence A. Cates and Associates, LLP.

Attachments:

1. Docket Map
2. Staff Report
3. Plans

The Planning and Zoning Commission Findings:

The Addison Planning and Zoning Commission, meeting in regular session on March 25, 2004, voted to recommend approval of the final plat for Belt Line-Surveyor Village, Lots 1A and 2A, Block 1, subject to the following conditions:

1. The plat shall be revised to indicate a joint access easement along the property line that is shared by Lots 1A and 2A.
2. The plat shall also be revised to add a Certificate of Approval, which should contain a line for the date the plat was approved by the City Council and signature lines for the Mayor and City Secretary.

Voting Aye: Benjet, Bernstein, Jandura, Knott, Mellow

Voting Nay: None

Absent: None, one seat vacant

Administrative Recommendation:

Administration recommends approval.

Item #R6 – **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 4939 Belt Line Road, on application from Potbelly Sandwich Works, represented by Mr. Steve Young.

Attachments:

1. Docket Map
2. Staff Report
3. Plans

The Planning and Zoning Commission Findings:

The Addison Planning and Zoning Commission, meeting in regular session on March 25, 2004, voted to recommend approval of 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, subject to the following conditions:

1. 144 square feet of additional space may be allotted to the restaurant for outside tables, but no landscaping shall be removed to accommodate the tables.

Voting Aye: Benjet, Bernstein, Jandura, Knott, Mellow

Voting Nay: None

Absent: None, one seat vacant

Administrative Recommendation:

Administration recommends approval.

Item #R7 – **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 4350 Belt Line Road, on application from Tokyo One Restaurant, represented by Mr. Chaucer Chern.

Attachments:

1. Docket Map
2. Staff Report
3. Plans

The Planning and Zoning Commission Findings:

The Addison Planning and Zoning Commission, meeting in regular session on March 25, 2004, voted to recommend approval of 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, subject to the following conditions:

1. Four Crape Myrtles will be removed when the building is expanded; therefore, four new Crape Myrtles will need to be planted elsewhere on the site to mitigate these removed trees.
2. Some of the existing trees near the building are wrapped with holiday lights. The lights need to be removed immediately, as they are affecting the growth of the trees. The Crape Myrtles that will remain have been severely pruned and need to be allowed to grow back to their natural growth habit. The red oak on the northwest corner of the building will also need the holiday lighting removed.
3. The existing 8" Caliper Red Oak underneath the Tokyo One sign on Belt Line Road has declined to a point that it needs replacing. This tree will need to be mitigated within the Belt Line Road street frontage with two (2) 4-inch Caliper Red Oaks.
4. The detention area on the south side of the property needs to be mowed and routinely maintained. Three (3) Bald Cypress are missing and need replacing in this area. In addition, the southeast corner planting bed needs refurbishing with ground cover and new Wax Myrtle.
5. The applicant will need to submit a revised planting plan showing the location of the new trees.

Voting Aye: Benjet, Bernstein, Jandura, Knott, Mellow
Voting Nay: None
Absent: None, one seat vacant

Administrative Recommendation:

Administration recommends approval.

Item #R8 – Consideration of a Resolution authorizing the City Manager to enter into a contract in an amount not to exceed \$31,000.00 with the Shakespeare Festival of Dallas for *Shakespeare In The Park*, June 4-6, 2004.

Attachments:

1. Council Agenda Item Overview

2. Contract

Administrative Recommendation:

Administration recommends approval.

Item #R9 – Consideration of a Resolution authorizing the City Manager to enter into an agreement with MAXIMUS, Inc. to assist the Town in a strategic review of its finance function.

Attachments:

1. Council Agenda Item Overview
2. Agreement

Administrative Recommendation:

Administration recommends approval.

Item #R10 – Consideration of a Resolution authorizing the City Manager to enter into an agreement with ICMA-RC for administration of the Town's deferred compensation program and issue notice to Nationwide Retirement Solutions for termination of that company's services to the Town.

Attachments:

1. Council Agenda Item Overview
2. Attachments
3. Agreement

Administrative Recommendation:

Administration recommends approval.

EXECUTIVE SESSION

Item #ES1 – Closed (executive) session of the Addison City Council pursuant to Section 551.071, Texas Government Code, to conduct a private consultation with its attorney to seek the advice of its attorney about contemplated litigation related to the Addison Airport.

Item #ES2 - Closed (executive) session of the Addison City Council pursuant to Section 551.074, Texas Government Code, to deliberate the evaluation of the City Manager.

Adjourn Meeting

Posted 5:00 p.m.
April 8, 2004
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

March 23, 2004
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: Debbie Kachel (Police), Ann Milbery (Finance) and Chad Hancock (Information Technology).

Ron Whitehead, City Manager, announced the following upcoming events:

- 4th Annual North Texas Jazz Festival on April 1-4, 2004
- Addison's Eggstravaganza on April 3, 2004
- Bone Star Jam Concert on April 17, 2004
- Arbor Day on April 24, 2004
- Addison Business Association (ABA) Picnic on April 24, 2004
- Addison's Garage Sale on May 1, 2004
- Texas Chamber Orchestra Event on May 1, 2004
- Taste Addison on May 14-16, 2004
- Municipal Election on May 15, 2004
- Addison Employees Ranger Game on May 21, 2004
- Art Fest on May 27-30, 2004
- Shakespeare Festival in the Park on June 3-5, 2004
- Film Festival in the park on June 12, 2004
- Addison Car Show on June 19, 2004
- Ice Tea Contest on June 26, 2004
- Kaboom Town on July 3, 2004
- Jazz in the park every Saturday in the month of July.

Item #R2 – Consent Agenda

Item #2a – Approval of the Minutes for the March 9, 2004 Council Meeting.

Councilmember Niemann made a correction to Item #R4 to reflect the motion made on this item.

Councilmember Niemann moved to duly approve the Minutes of the March 9, 2004 Council Meeting, subject to the correction as noted. Councilmember Silver seconded. The motion carried.

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

Item #R3 – Appointment of a member to the Board of Zoning Adjustment (BZA).

Councilmember Mallory moved to appoint Maggie McQuown, 14600 Brookwood Lane, to the Board of Zoning Adjustment (BZA). Councilmember Silver seconded. The motion carried.

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

Item #R4 – Appointment of a member to the Planning and Zoning Commission.

This time was tabled by Councilmember Niemann until the April 13, 2004 Council Meeting.

Item #R5 – **PUBLIC HEARING** and consideration of an Ordinance amending Article II, “Districts and District Boundaries,” of Appendix A, “Zoning,” of the Code of Ordinances by amending Section 3 to allow required parking for a use to be provided at a location other than that required by the prescribed regulations for the district in which the use is located, if authorization is obtained from the City Council.

Mayor Wheeler opened the meeting as a public hearing. Jonathan Vinson, 901 Main Street, spoke on behalf of this item. There were no other questions or comments. Mayor Wheeler closed the meeting as a public hearing.

Councilmember Niemann moved to duly pass Ordinance No. 004-018 approving an amendment to Article II, “Districts and District Boundaries,” of Appendix A, “Zoning,” of the Code of Ordinances by amending Section 3 to allow required parking for a use to be provided at a location other than that required by the prescribed regulations for the district in which the use is located, if authorization is obtained from the City Council, 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 #R6 – **PUBLIC HEARING** and consideration of an Ordinance authorizing an alternate off-street parking arrangement than is otherwise allowed under the applicable district regulations contained in the Comprehensive Zoning Ordinance, for the location of parking for the existing use of a certain tract of land generally located at 5055-5057 Keller Springs Road within the Town and generally known as Liberty Plaza I; authorizing the City Manager to execute the acceptance of the Declaration of Easement and Agreement on behalf of the Town as a third party beneficiary.

Mayor Wheeler opened the meeting as a public hearing. Jonathan Vinson, 901 Main Street, spoke on behalf of this item. There were no other questions or comments. Mayor Wheeler closed the meeting as a public hearing.

Councilmember Niemann moved to duly pass Ordinance No. 004-019 authorizing an alternate off-street parking arrangement than is otherwise allowed under the applicable district regulations contained in the Comprehensive Zoning Ordinance, for the location of parking for the existing use of a certain tract of land generally located at 5055-5057 Keller Springs Road within the Town and generally known as Liberty Plaza I; authorizing the City Manager to execute the acceptance of the Declaration of Easement and Agreement on behalf of the Town as a third party beneficiary, subject to revisions and final approval by the City Attorney. Councilmember Chow seconded. The motion carried.

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

Item #R7 – Consideration of a Resolution terminating and canceling a contract in the amount of \$75,456.00 with Oriental Building Services, Inc. (OBS) for custodial services for Town facilities.

Councilmember Mallory moved to duly pass Resolution No. R04-017 terminating and canceling a contract in the amount of \$75,456.00 with Oriental Building Services, Inc. (OBS) for custodial services for Town facilities. Councilmember Turner seconded. The motion carried.

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

Item #R8 - Consideration of a Resolution approving an award of bid and authorizing the City Manager to enter into a contract in the amount of \$78,048.00 with James Enterprises, Inc. for custodial services for Town facilities.

Councilmember Turner moved to duly pass Resolution No. R04-018 approving an award of bid and authorizing the City Manager to enter into a contract in the amount of

\$78,048.00 with James Enterprises, Inc. for custodial services for Town facilities. Councilmember Niemann seconded. The motion carried.

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

Item #R9 – Consideration of a Resolution approving the implementation of a new e-mail campaign program in the amount of \$36,000.00 with the David Green Organization.

Councilmember Silver moved to duly pass Resolution No. R04-019 approving the implementation of a new e-mail campaign program in the amount of \$36,000.00 with the David Green Organization. Councilmember Niemann seconded. The motion carried.

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

Item #R10 – Consideration of a Resolution approving a change to the Town's current hiring requirements pertaining to qualifications and pay of Police Officer applicants.

Councilmember Chow moved to duly pass Resolution No. R04-020 approving a change to the Town's current hiring requirements pertaining to qualifications and pay of Police Officer applicants. Councilmember Turner seconded. The motion carried.

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

Item #R11 – Presentation and discussion regarding Memorandum of Understanding between Addison Police Department and Dallas Area Rapid Transit ("DART") Police Department concerning police services for DART related matters.

No action taken.

Item #R12 – Consideration of a Resolution authorizing the City Manager to enter into a contract in an amount not to exceed \$35,800.00 with TRICO Tower Service, Inc. for the enhancement of the existing ground system to towers, generators and entry ports at the Emergency Operation Center (EOC) and the Police and Fire Departments.

Councilmember Chow moved to duly pass Resolution No. R04-021 authorizing the City Manager to enter into a contract in an amount not to exceed \$35,800.00 with TRICO Tower Service, Inc. for the enhancement of the existing ground system to towers, generators and entry ports at the Emergency Operation Center (EOC) and the Police and Fire Departments. Councilmember Turner seconded. The motion carried.

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

Item #R13 – Consideration of a Resolution approving a design proposal and authorizing the City Manager to enter into a contract in an amount not to exceed \$26,175.00 with Talley Associates for landscaping architecture design services for the Parkview in Addison Circle Park.

Councilmember Turner moved to duly pass Resolution No. R04-022 approving a design proposal and authorizing the City Manager to enter into a contract in an amount not to exceed \$26,175.00 with Talley Associates for landscaping architecture design services for the Parkview in Addison Circle Park, subject to the inclusion of a deadline date in the contract. Councilmember Mallory seconded. The motion carried.

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

Item #R14 – Consideration of a Resolution of the Town of Addison, Texas, opposing any school finance or tax system reforms that would negatively affect Town revenues and economic development.

Councilmember Silver moved to duly pass Resolution No. R04-023 opposing any school finance or tax system reforms that would negatively affect Town revenues and economic development. Councilmember Mallory seconded. The motion carried.

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

EXECUTIVE SESSION. At 9:09 p.m., Mayor Wheeler announced that the Council would convene into Executive Session.

Item #ES1 – Discussion of personnel regarding a performance evaluation for the City Manager, pursuant to Section 551.074 of the Texas Government Code.

The Council came out of Executive Session at 11:02 p.m.

Item #R15 – Consideration of a Resolution approving a merit increase and salary adjustment for the City Manager.

Councilmember Mallory moved to duly pass Resolution No. R04-024 approving a 3% merit increase for the City Manager retroactive to January 1, 2004 with an additional \$25,000 bonus to the City Manager, subject to the following condition:

1. The Town of Addison becomes a DART rail city listed on DART's 2030 System Plan by the end of the 2004 calendar year.

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:

Staff is requesting approval of a Resolution approving a change order in an amount not to exceed \$117,795 to a previously approved contract with Abstract Construction Company for changes to Addison Circle Park.

FINANCIAL IMPACT:

| | |
|----------------------------------|-------------|
| Bond funds for Park and Pavilion | \$8,000,000 |
| Funds spent to date on Park | \$5,919,643 |
| Funds spend to date on Pavilion | \$893,836 |
| Proposed change order: | \$117,795 |
| Total spent to date | \$6,931,726 |

BACKGROUND:

This change order is the second round of “fine tuning” on Addison Circle Park. We came to the Council at the December 9, 2003 meeting with our first round of items that we wanted to change, and we are finishing up on those. We have now determined that there are four additional revisions that we would like to have Abstract Construction, the general contractor for the Park, complete while it is still on site.

PRO62 Relocate Kiosk utility boxes. We installed connections in the paving in Festival Way for our ticket kiosks. Our plan was that our main entrance would be off of the Circle, and the Festival Way entrance would be a secondary entrance. We made that assumption based on the fact that we were using trams to shuttle guests from the parking lots to the main entrance. However, for Oktoberfest, we tried eliminating tram service to reduce the expense of holding the event. We were able to hold the event without the trams, which saved us a lot of money, but it caused our Festival Way entrance to become more important. We actually ran 1,000 more people through the Festival Way entrance than we did the Main entrance. In order to be able to queue people up in line for the ticket kiosks, we need to move them further west into Festival Way. We also want to add another utility box so we can install three booths at Festival Way if we need them. The project is listed as relocation, but it is more accurately an addition of three boxes. It is cheaper to keep the two existing boxes at the entrance and add new ones than it is to move them. We will still be able to use the two existing utility boxes at the entrance to Festival Way, and they will still be useful for smaller events such as Shakespeare in the Park.

PRO70 Addition of cleanouts and water hydrant at the Ellipse. During Oktoberfest, we found that we needed a location on the west side of the Main Tent for each participating hotel to wash its pans and dishes. Last year we brought a large livestock-watering tank onto the site and drained it with an above-ground hose to a sanitary sewer location. The three hotels had to bring their pans to the one ware-washing station, and they complained bitterly. We also found that the ground tank and hose were not very workable. We would like to add three direct connections to the sanitary sewer and an additional water hydrant so that each hotel can have its own ware-washing station. We

can also use the ware-washing locations as central washing stations for the booths at Taste Addison and other food-service events.

FPO71 Furnish and install steel edging around Lady Banks Roses. Our original design showed a mulch bed between the steel fence and the sidewalk on the Festival Way side of the site. We have determined that the fence line will be easier to maintain if we eliminate the mulch bed and let the grass grow under the fence all the way to the sidewalk. However, we need to add steel edging boxes around the base of all the roses on the fence line.

PRO67 Roof lighting at the Pavilion. We have thought that the Pavilion hasn't looked quite right at night because the three yellow walls seemed to disappear above the roof line. We asked Cunningham Architects to mock up some soft lights that would provide a light "wash" to the three walls. We viewed the mock-up a couple of weeks ago and feel that the illumination on the three walls provides the "missing piece" for this building. We would like to add two lights to the base of the six faces of the yellow walls, for a total of 12 lights.

RECOMMENDATION:

Staff recommends the Council approve a Resolution approving a change order, in an amount not to exceed \$117,795, to a previously approved contract with Abstract Construction Company for changes to Addison Circle Park. There is a plan attached which illustrates the locations for the clean-outs, the edging, and the kiosk utility boxes.

CHANGE ORDER

OWNER :
 ARCHITECT :
 FIELD :
 CONTRACTOR :
 OTHER :

PROJECT: Addison Arts & Events District
 (name, address) 15440 Addison Rd.
 Addison, TX 75001

CHANGE ORDER NO.: 035
 DATE: March 26, 2004

TO CONTRACTOR: Abstract Construction Company
 (name, address) 11157 Ables Lane
 Dallas, TX 75229

ARCH. PROJECT NO:
 CONTRACT DATE: November 27, 2002
 CONTRACT FOR: General Construction
 CONT. PROJECT NO: G02068E

The Contract is changed as follows:

| | | |
|-------|---|--------|
| PR062 | Relocate Kiosk utility boxes | 65,802 |
| PR070 | Addition of cleanouts and water hydrant at the west site as per SK-65 | 37,832 |
| PR071 | Furnish and install steel edging around Lady Banks Roses. | 851 |
| PR067 | Roof lighting at the Pavillion. | 13,310 |

Not valid until signed by the Owner, Architect and Contractor.

| | | |
|--|----|--------------|
| The original (Contract Sum) (Guaranteed Maximum Price) was | \$ | 5,088,755 |
| Net change by previously authorized Change Orders | \$ | 830,888 |
| The (Contract Sum) (Guaranteed Maximum Price) prior to this Change Order was | \$ | 5,919,643 |
| The (Contract Sum) (Guaranteed Maximum Price) will be (increased) (decreased) (unchanged) by this Change Order in the amount of | \$ | 117,795 |
| The new (Contract Sum) (Guaranteed Maximum Price) including this Change Order will be | \$ | 6,037,438 |
| The Contract Time will be (increased) (decreased) (unchanged) by | | (70) days. |
| The date of Substantial completion as of the date of this Change Order therefore is | | May 04, 2004 |

NOTE: This summary does not reflect changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive.

SASAKI Associates
 ARCHITECT

64 Pleasant Street
 Address

Watertown, MA 02472

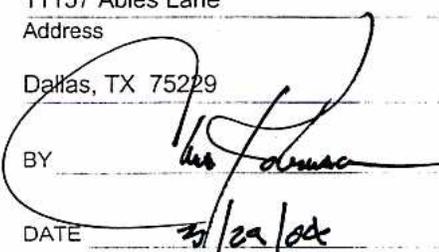
BY _____

DATE _____

Abstract Construction Company
 CONTRACTOR

11157 Ables Lane
 Address

Dallas, TX 75229

BY 

DATE 3/29/04

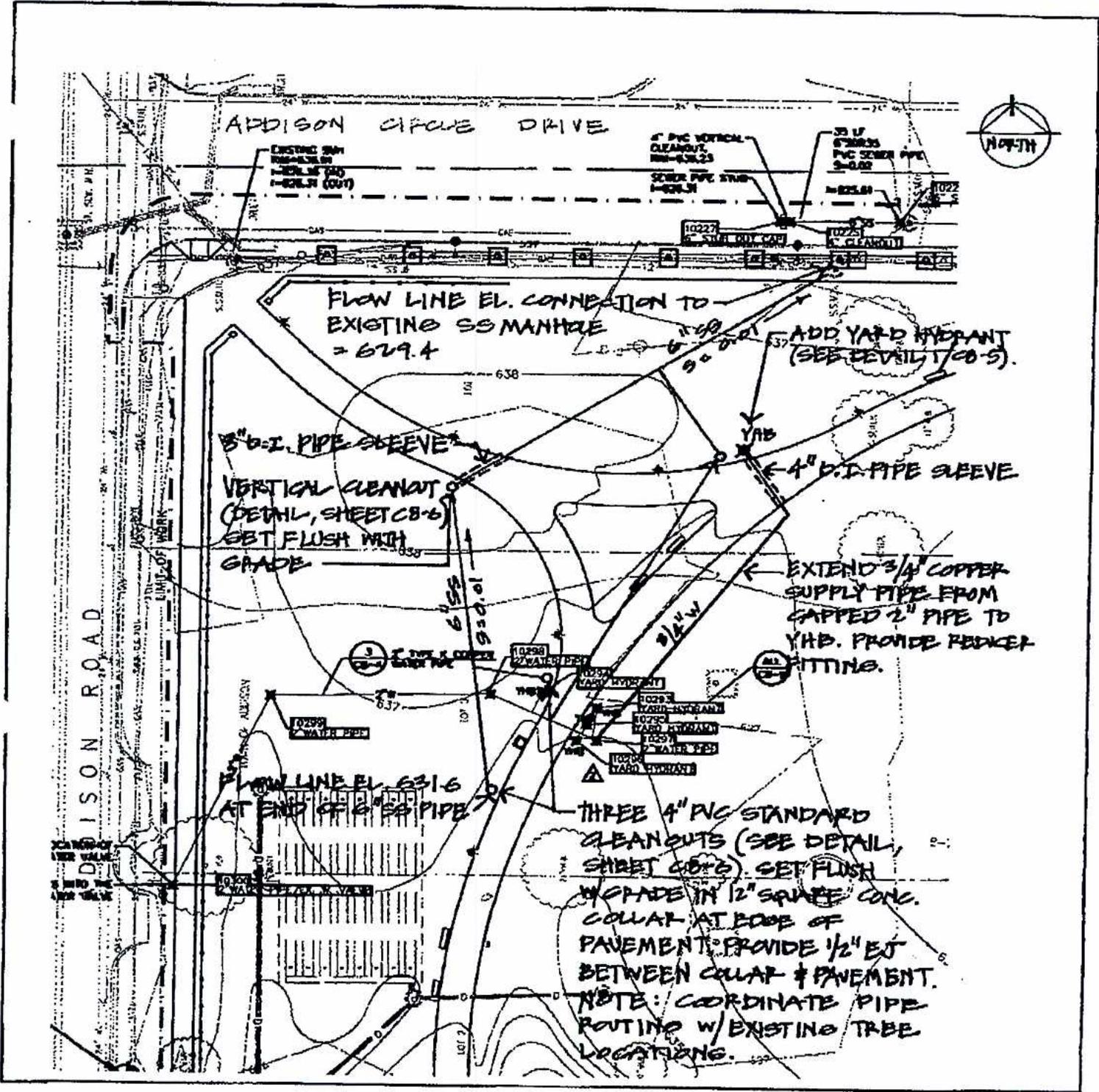
Town of Addison
 OWNER

5300 Bellline Road
 Address

Addison, Tx 75001

BY _____

DATE _____



Project Title
Addison Arts and Events District

Project Number
14516.05

Drawn By
DCC

Drawing Title
WAPPE WASH CLEANOUTS & WATER SUPPLY AT ELLIPSE AREA

Ref. Dwg No. *C4-1*

Scale *1" = 40'*

Date *1/9/04*

Drawing Number



64 Pleasant St. Watertown, MA 02472 617 926 3300

SK-65

**THERE ARE NO
ATTACHMENTS
FOR ITEM #R3**

leaving a space on either side of the building for a possible expansion. The additional parking spaces would allow the bank to expand and still meet the requirement.

The staff always looks carefully at the queuing for drive thru uses. Staff requires at least 100 feet (5 cars) stacking from the transaction point. This site provides 100 feet of queuing for all five drive-thru lanes.

Landscaping. The Parks Department has reviewed the applicant's plan, and it recommends approval of the plan subject to the condition that the Cedar Elm trees shown on the plan be replaced with Live Oak trees so as to be consistent with the existing Live Oak trees on the east and west sides of the Surveyor Boulevard.

Dumpster. The plans do not indicate a material for the dumpster enclosure. The applicant should be aware that the dumpster enclosure must be constructed out of the same brick as the building.

Signs. The applicant has shown signs on the building. The applicant should be aware that all signs must be permitted under the requirements of the Addison Sign ordinance, and cannot be approved through this process.

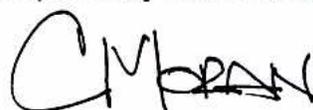
Engineering and Fire Code. The Fire Department and Engineering Department have made comments about the site that will be covered through the Building permitting process. The comments are included at this point to give the applicant "advance warning" of requirements that will be handled through the Building permitting process.

RECOMMENDATION:

The staff feels that this development will be a great use for this prominent corner, and recommends approval subject to the following condition:

- All mechanical equipment must be screened from view.
- The landscaping plan shall be revised to replace the Cedar Elm trees shown on the plan with Live Oak trees.
- The dumpster enclosure shall be constructed out of the same brick as the building.

Respectfully submitted,



Carmen Moran
Director of Development Services

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on March 25, 2004, voted to recommend approval of your request for development plan approval subject to the following conditions:

- All mechanical equipment must be screened from view.
- The landscaping plan shall be revised to replace the Cedar Elm trees shown on the plan with Live Oak trees.
- The dumpster enclosure shall be constructed out of the same brick as the building.

Voting Aye: Benjet, Bernstein, Jandura, Knott, Mellow

Voting Nay: None

Absent: None. One seat is vacant

Memorandum

Date: March 16, 2004
To: Carmen Moran, Director of Development Services
From: Slade Strickland, Director of Parks and Recreation
Subject: **Case 1450-Z/SouthTrust Bank**

The landscape plan submitted by the applicant meets all the requirements of the landscape regulations. We recommend that live oaks be substituted for the cedar elms shown along Surveyor Boulevard to match the existing street trees along the east and west sides of the street.

Carmen Moran

From: Gordon Robbins
Sent: Tuesday, March 09, 2004 9:15 AM
To: Carmen Moran
Subject: Case 1450-Z/South Trust bank

The site plan submittal appears to meet all applicable requirements for emergency access. Existing fire hydrants on Surveyor will serve to supply fire protection water. If necessary, they may be relocated as part of the curb and sidewalk modifications, but they may not be removed.

Thank you.

Gordon C. Robbins
Deputy Fire Chief
Addison TX Fire Dept.
972-450-7220

Carmen Moran

From: Steve Chutchian
Sent: Wednesday, March 10, 2004 3:11 PM
To: Carmen Moran
Subject: P & Z Commissionm Agenda Comments

Attached are comments related to certain items that are scheduled on the March 25, 2004 P & Z Agenda:

Case 1450-Z/South Trust Bank.

Civil design plans have been submitted to staff and are under review. These plans must be approved prior to start of construction at this site.

FINAL PLAT/Belt Line-Surveyor Village, Lots 1A & 2A, Block 1.

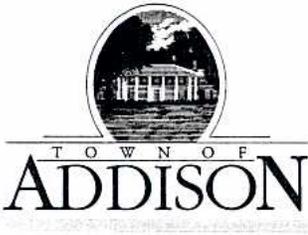
A joint access easement must be shown along the property line that is shared by Lots 1A & 2A.

Should you have any questions, please let me know.

Steven Z. Chutchian, P.E.
Assistant City Engineer



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

March 18, 2004

STAFF REPORT

RE: FINAL PLAT/Belt Line-Surveyor Village Lots 1A & 2A, Block 1

LOCATION: Two lots on 2.8958 acres in a Planned development district, located at the southeast corner of the intersection of Belt Line Road and Surveyor Boulevard

REQUEST: Final plat approval

APPLICANT: SouthTrust Bank, represented by Mr. B Bryan M. Burger of Lawrence A. Cates and Associates, LLP

DISCUSSION:

Background. This tract is located in a Planned Development District, #460. At this time, the applicant would like to subdivide the tract into two lots and sell Lot 1A to SouthTrust Bank for the development of a branch bank with drive-thru facilities. There are no other plans for Lot 2A.

Proposed Plat. The Public Works department has reviewed the proposed final plat, and the following items have been noted:

- The plat shall be revised to indicate a joint access easement along the property line that is shared by Lots 1A & 2A.

The plat should also be revised to add a Certificate of Approval, which should contain a line for the date the plat was approved by the City Council and signature lines for the Mayor and City Secretary.

RECOMMENDATION:

Staff recommends approval subject to the conditions listed above.

Respectfully submitted,

A handwritten signature in black ink that reads "C MORAN". The "C" is a large, stylized loop, and "MORAN" is written in a cursive, slightly slanted font.

Carmen Moran
Director of Development Services

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on March 25, 2004, voted to recommend approval of the final plat for Belt Line-Surveyor Village, Lots 1A & 2A, Block 1, subject to the following conditions:

-The plat shall be revised to indicate a joint access easement along the property line that is shared by Lots 1A & 2A.

-The plat shall also be revised to add a Certificate of Approval, which should contain a line for the date the plat was approved by the City Council and signature lines for the Mayor and City Secretary.

Voting Aye: Benjet, Bernstein, Jandura, Knott, Mellow

Voting Nay: None

Absent: None, one seat vacant

Carmen Moran

From: Steve Chutchian
Sent: Wednesday, March 10, 2004 3:11 PM
To: Carmen Moran
Subject: P & Z Commissionm Agenda Comments

Attached are comments related to certain items that are scheduled on the March 25, 2004 P & Z Agenda:

Case 1450-Z/South Trust Bank.

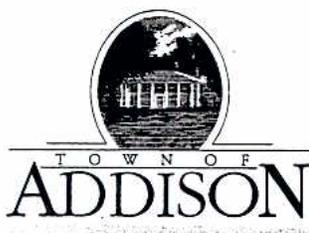
Civil design plans have been submitted to staff and are under review. These plans must be approved prior to start of construction at this site.

FINAL PLAT/Belt Line-Surveyor Village, Lots 1A & 2A, Block 1.

A joint access easement must be shown along the property line that is shared by Lots 1A & 2A.

Should you have any questions, please let me know.

Steven Z. Chutchian, P.E.
Assistant City Engineer



Addison 50!

50 YEARS OF FUN!

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

November 14, 2003

STAFF REPORT

RE: Case 1451-SUP/Potbelly Sandwich Works

LOCATION: 4945 Belt Line Road

REQUEST: Approval of 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

APPLICANT: Potbelly Sandwich Works, represented by Mr. Steve Young

DISCUSSION:

Background. This building is zoned LR (Local Retail) and was formerly occupied by The Container Store. Beltway Commercial Real Estate wants to redevelop the former Container Store building, and is subdividing it into at least four lease spaces. Potbelly Sandwich Shops is planning to put a sandwich shop in the east end of the building. The Council approved a Special Use Permit for the sandwich shop on December 9, 2003 through Ordinance 003-042. The Potbelly staff has plans submitted to the Building Inspection Department, but it has not yet started construction on the space.

Proposed Plan. At this point, Potbelly wants to add a 144-square foot patio area to the front of the building. Potbelly is proposing to eliminate a 144-square foot landscaped area and pave it over to add the tables. The patio area would not be enclosed by a fence or attached to the building in any way.

Parking. The restaurant currently requires 25 spaces. This additional patio will require 2 additional spaces, which the site can provide

Landscaping. The staff has examined the site, and it finds that the site does not have the required 20% landscaping for a local retail development. The staff does not recommend that any landscaping, even 144 square feet (Slade notes the area as 108 square feet. He measured it in the field, and believes it is not as large as the plans indicate), be removed to accommodate these additional tables.

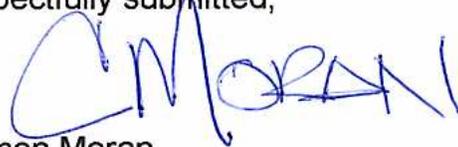
Food Service Code. There has been some discussion between the applicant and the staff over the grease trap requirements. The Environmental Services Official has included an advisory comment on the grease trap to give the applicant an advance warning of the requirements that must be met at the time the building permit is issued.

RECOMMENDATION:

The staff recommends approval of this request for an amendment to add 144 square feet of patio area to the restaurant. However, staff does not recommend that any landscaping be removed to add the tables. The sidewalk in front of, and along the east side of the building, contains space to add tables. Staff recommends the tables be added to those areas. The Building Official can work with the applicant to place the tables in a manner that allows the front of the building to remain accessible for all customers.

Staff recommends approval of the addition of 144 square feet of outdoor dining space, but recommends that it be located on the sidewalks, as opposed to in a landscaped area.

Respectfully submitted,



Carmen Moran
Director of Development Services

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on March 25, 2004, voted to recommend approval of the request on application from Potbelly Sandwich Shops, subject to the following conditions:

-144 square feet of additional space may be allotted to the restaurant for outside tables, but no landscaping shall be removed to accommodate the tables.

Voting Aye: Benjet, Bernstein, Jandura, Knott, Mellow

Voting Nay: None,

Absent: None, one seat vacant.

Memorandum

Date: March 17, 2004
To: Carmen Moran, Director of Development Services
From: Slade Strickland, Director of Parks and Recreation
Subject: **Case 1451-Potbelly Sandwich Works**

The plans submitted by the applicant shows a 118 square foot reduction of landscaping for outdoor seating on a site that is already tight on landscaping as it is. We recommend that the applicant determine a way to provide patio tables on the existing sidewalk next to the building, or remove paving and convert it to irrigated landscaping to make up for the reduction.

Carmen Moran

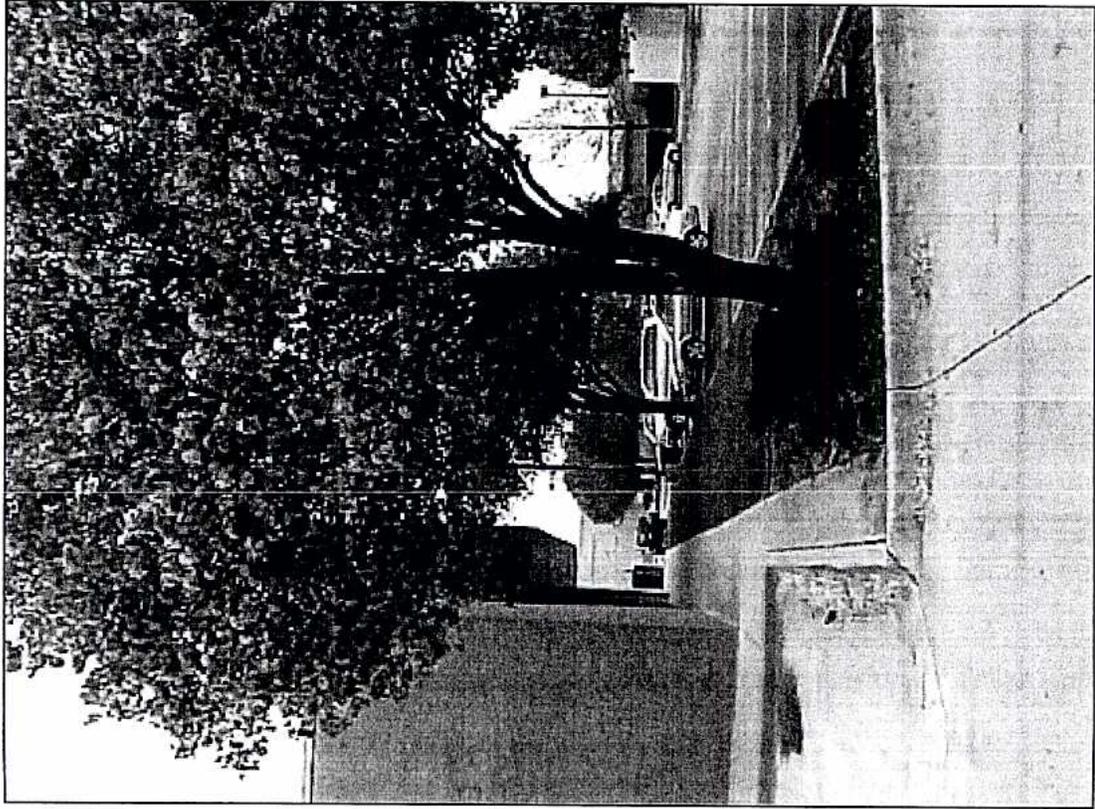
From: Neil Gayden
Sent: Friday, March 05, 2004 1:47 PM
To: Carmen Moran
Subject: Zoning Case 1451 - SUP/Potbelly Sandwich Works

Carmen,

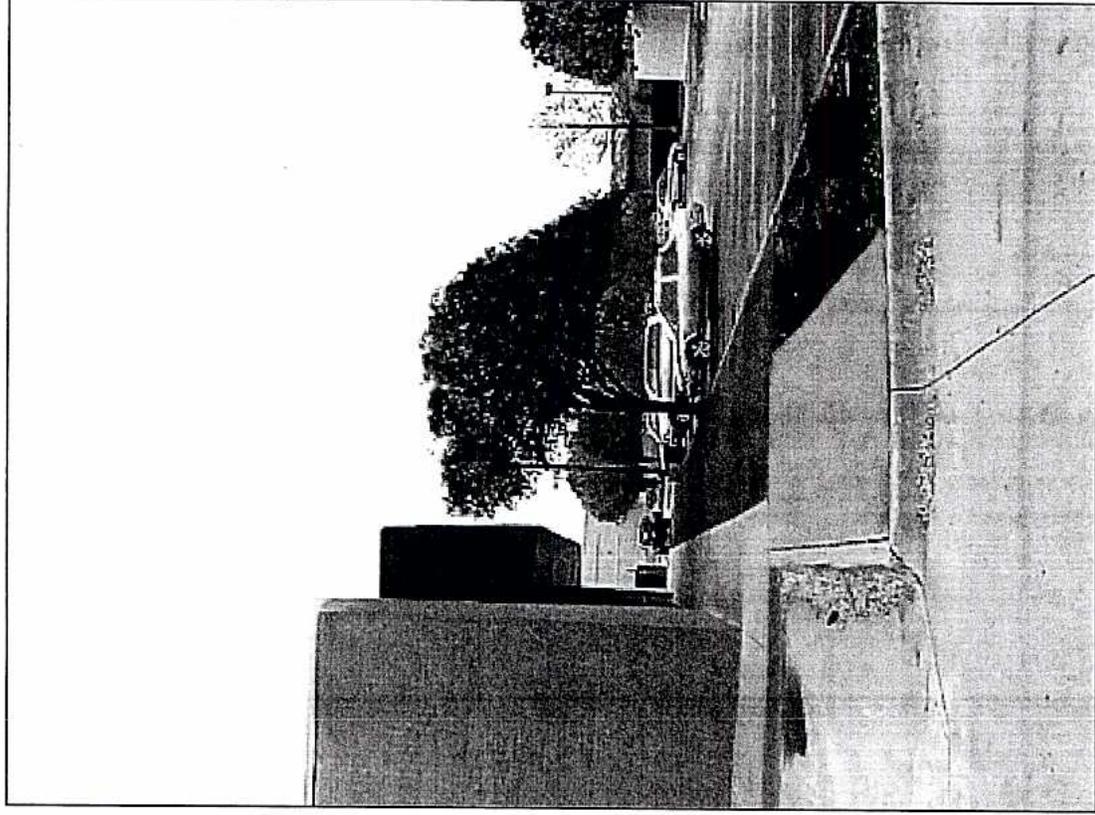
We have reviewed preliminary plans for this restaurant use and discovered inadequacies in the design of sewer/grease trap system for the kitchen. Those plans have been "redlined" and a representative of the applicant has been informed that all kitchen drains must be routed to a grease trap (750 lb. min.) that is located out-of-doors accessible to vacuum truck service.

Neil Gayden, R.S.
Environmental Services Official

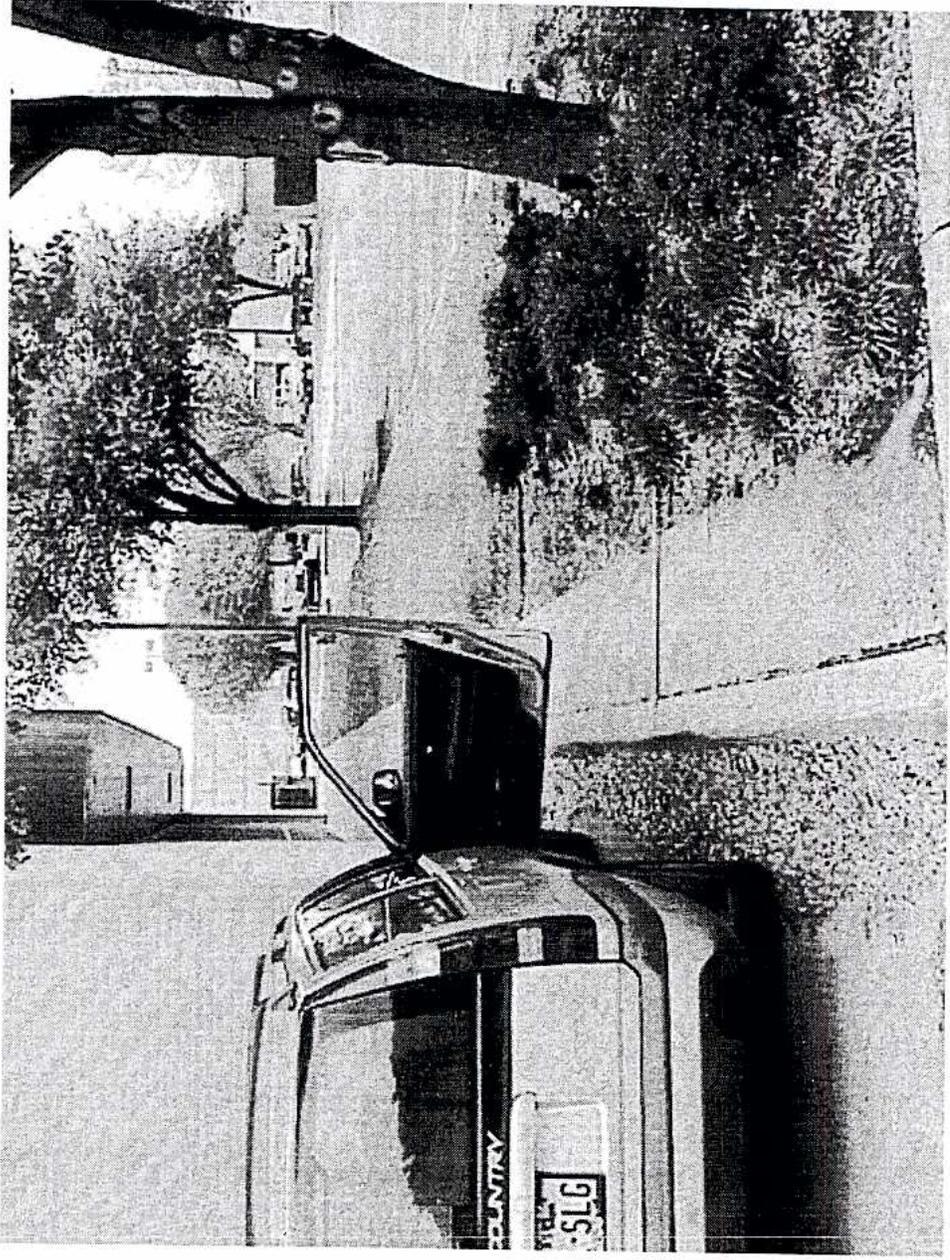
Current Landscaping



Proposed Landscaping



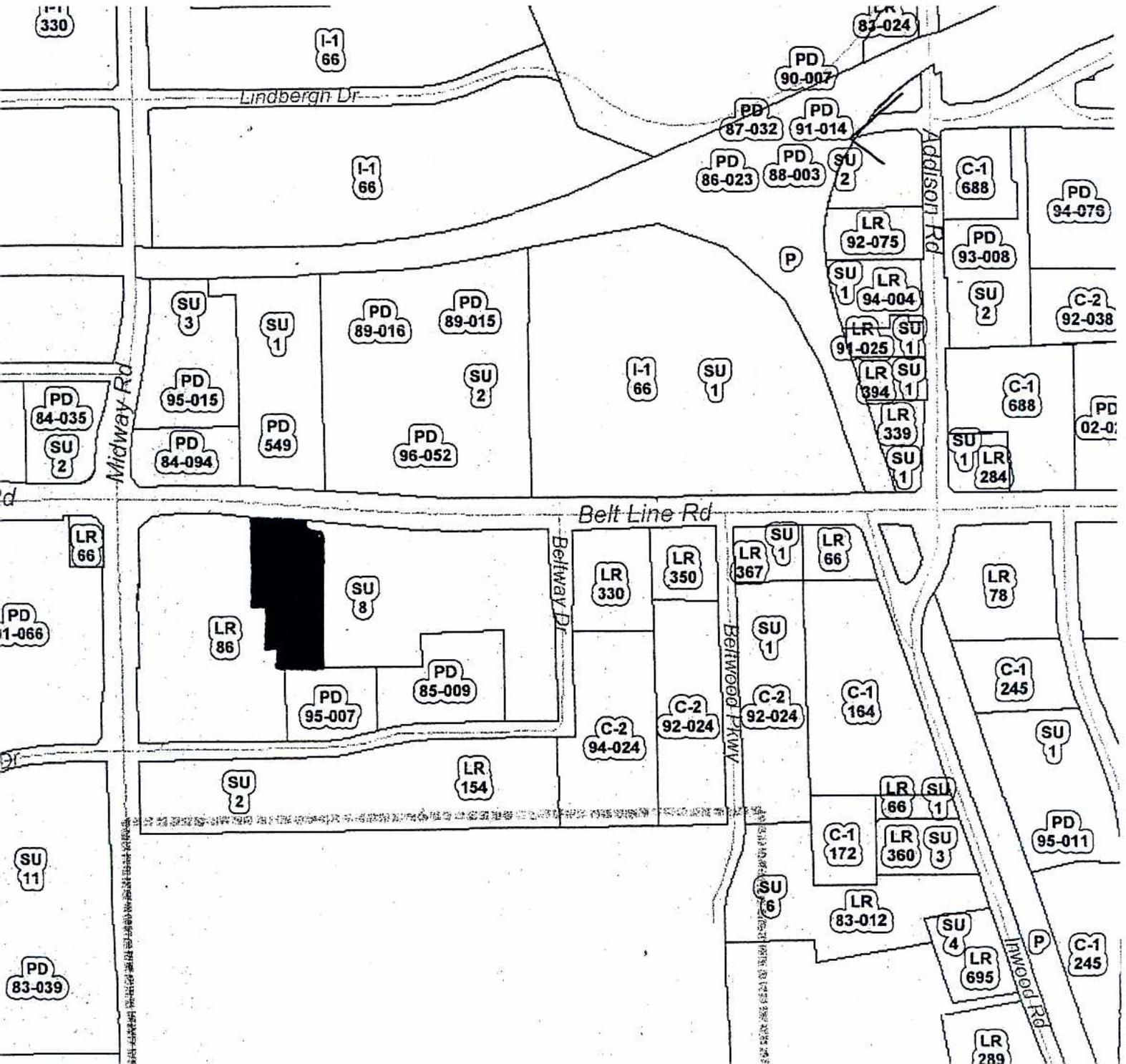
Potbelly Sandwich Works - 1451 SUP

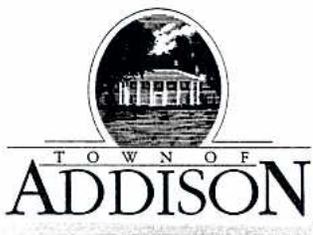


Car doors encroach on seating area.

1452-SUP

Case 1452-SUP/Tokyo One. Requesting approval of 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 4350 Belt Line Road, on application from Tokyo One Restaurant, represented by Mr. Chaucer Chern.





50 YEARS OF FUN!

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

FAX (972) 450-7043

March 18, 2004

STAFF REPORT

RE: Case 1452-SUP/Tokyo One Restaurant

LOCATION: 4350 Belt Line Road

REQUEST: Approval of an amendment to an existing Special Use Permit for a restaurant and an existing SUP for the sale of alcoholic beverages for on-premises consumption only

APPLICANT: Tokyo One Restaurant, represented by Mr. Chaucer Chern

DISCUSSION:

Background. This restaurant was originally the Red Lobster Restaurant, which was granted a Special Use Permit through Ordinance 092-061 on September 22, 1992. The Red Lobster closed and was re-opened as Tokyo One Restaurant approximately three years ago. At this point, Tokyo One Restaurant would like to add a waiting area/lobby bar and expand a private party room.

Proposed Plan. The applicant is planning to enclose an existing front porch to make a 156-square foot lobby bar. The change to the front will entail adding a new Japanese-style arch and new sign. It will also involve remodeling some of the existing landscaping in the front to add a small fish pond with rocks and a small waterfall.

The change to the party room will entail bumping out a wall of an existing party room and putting an additional 648 square feet into the room. This larger room will allow Tokyo One to book larger parties and receptions. The exterior of the party room will be finished to match the existing exterior of the restaurant.

Parking. The new plans indicate the restaurant, with the expanded lobby and new party room will be 9,804 square feet. At a ratio of 1 space per 70 square feet, it requires 140 spaces. At present the restaurant has 144 spaces.

Landscaping. The plans call for 804 square feet of landscaping to be removed. However, the restaurant will still have 26% of the site in landscaping, so it will still meet the requirement for landscaping. However, the Parks Department recommends that the following items be addressed:

1. Four crape myrtles will be removed when the building is expanded; therefore, four new crape myrtles will need to be planted elsewhere on the site to mitigate these removed trees.
2. Some of the existing trees near the building are wrapped with holiday lights. The lights need to be removed immediately, as they are affecting the growth of the trees. The crape myrtles that will remain have been severely pruned and need to be allowed to grow back to their natural growth habit. The red oak on the northwest corner of the building will also need the holiday lighting removed.
3. The existing 8" caliper red oak underneath the Tokyo One pole sign on Belt Line Road has declined to a point that it needs replacing. This tree will need to be mitigated within the Belt Line Road street frontage with two (2) 4-inch caliper red oaks.
4. The detention area on the south side of the property needs to be mowed and routinely maintained. Three (3) bald cypress are missing and need replacing in this area. In addition, the southeast corner planting bed needs refurbishing with ground cover and new wax myrtle.
5. The applicant will need to submit a revised planting plan showing the location of the new trees.

Fire Code. The applicant should also be aware that the sprinkler system in the restaurant will have to be modified to include the new additional areas.

Mechanical Equipment. The applicant should be aware that if any new mechanical equipment is added to the roof of the restaurant, it must be screened from all adjacent properties. The screening mechanism shall be architecturally compatible, and the Building Official shall make the determination of "architecturally compatible".

RECOMMENDATION:

Staff recommends approval of the request for 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, subject to the following conditions:

-Four crape myrtles will be removed when the building is expanded; therefore, four new crape myrtles will need to be planted elsewhere on the site to mitigate these removed trees.

-Some of the existing trees near the building are wrapped with holiday lights. The lights need to be removed immediately, as they are affecting the growth of the trees. The crape myrtles that will remain have been severely pruned and need to be allowed to grow back to their natural growth habit. The red oak on the northwest corner of the building will also need the holiday lighting removed.

-The existing 8" caliper red oak underneath the Tokyo One pole sign on Belt Line Road has declined to a point that it needs replacing. This tree will need to be mitigated within the Belt Line Road street frontage with two (2) 4-inch caliper red oaks.

-The detention area on the south side of the property needs to be mowed and routinely maintained. Three (3) bald cypress are missing and need replacing in this area. In addition, the southeast corner planting bed needs refurbishing with ground cover and new wax myrtle.

-The applicant will need to submit a revised planting plan showing the location of the new trees.

Respectfully submitted,

A handwritten signature in black ink that reads "C. MORAN". The signature is written in a cursive, slightly stylized font.

Carmen Moran
Director of Development Services

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on March 25, 2004, voted to recommend approval of the request on application from Tokyo One Restaurant, subject to the following conditions:

-Four crape myrtles will be removed when the building is expanded; therefore, four new crape myrtles will need to be planted elsewhere on the site to mitigate these removed trees.

-Some of the existing trees near the building are wrapped with holiday lights. The lights need to be removed immediately, as they are affecting the growth of the trees. The crape myrtles that will remain have been severely pruned and need to be allowed to grow back to their natural growth habit. The red oak on the northwest corner of the building will also need the holiday lighting removed.

-The existing 8" caliper red oak underneath the Tokyo One pole sign on Belt Line Road has declined to a point that it needs replacing. This tree will need to be mitigated within the Belt Line Road street frontage with two (2) 4-inch caliper red oaks.

-The detention area on the south side of the property needs to be mowed and routinely maintained. Three (3) bald cypress are missing and need replacing in this area. In addition, the southeast corner planting bed needs refurbishing with ground cover and new wax myrtle.

-The applicant will need to submit a revised planting plan showing the location of the new trees.

Voting Aye: Bernstein, Braun, Jandura, Knott, Mellow

Voting Nay: None

Absent: None, one seat vacant.

Memorandum

Date: March 17, 2004
To: Carmen Moran, Director of Development Services
From: Slade Strickland, Director of Parks and Recreation
Subject: **Case 1452-SUP/Tokyo One**

The following conditions apply to the Tokyo One site landscaping:

1. The applicant plans to reduce the existing landscaping on the southeast corner of the building by 804 square feet. The existing site exceeds the minimum 20 percent landscaping requirement, so with the reduction, the site will remain in compliance with the landscape regulations.
2. Four crape myrtles will be removed when the building is expanded; therefore, four new crape myrtles will need to be planted elsewhere on the site to mitigate these removed trees.
3. Some of the existing trees near the building are wrapped with holiday lights. The lights need to be removed immediately, as they are affecting the growth of the trees. The crape myrtles that will remain have been severely pruned and need to be allowed to grow back to their natural growth habit. The red oak on the northwest corner of the building will also need the holiday lighting removed.
4. The existing 8" caliper red oak underneath the Tokyo One pole sign on Belt Line Road has declined to a point that it needs replacing. This tree will need to be mitigated within the Belt Line Road street frontage with two (2) 4-inch caliper red oaks.
5. The detention area on the south side of the property needs to be mowed and routinely maintained. Three (3) bald cypress are missing and need replacing in this area. In addition, the southeast corner planting bed needs refurbishing with ground cover and new wax myrtle.
6. The applicant will need to submit a revised planting plan showing the location of the new trees.

Carmen Moran

From: Gordon Robbins
Sent: Tuesday, March 09, 2004 9:15 AM
To: Carmen Moran
Subject: Case 1452-SUP / Tokyo One

Submitted site plan appears to meet applicable requirements. However, the sprinkler system in the building will need to be modified to provide proper coverage in the remodeled areas.

Thank you,

Gordon C. Robbins
Deputy Fire Chief
Addison TX Fire Dept.
972-450-7220

Council Agenda Item: #R8

SUMMARY:

Approval of the Town's sponsorship of the Shakespeare Festival of Dallas' production of "Comedy of Errors" in Addison in an amount not to exceed \$31,000 for support services and products (space rental, stage, restrooms, parking services, trash cleanup services, electrical service, City Services, etc.)

FINANCIAL IMPACT:

Budgeted Amount: \$31,000.00

Cost: \$31,000.00

BACKGROUND:

This will be the 4th year Addison has been a sponsor of the Shakespeare Festival of Dallas in Addison. SFD plans to produce the "Comedy of Errors" on June 4-6, 2004 in the Ellipse at Addison Circle Park.

RECOMMENDATION:

Staff recommends approval.

STATE OF TEXAS
COUNTY OF DALLAS

§
§
§

CONTRACT FOR SERVICES

This Contract for Services is made and entered into as of the 14th day of April, 2004 by and between the Town of Addison, Texas (the “City”) and the Shakespeare Festival of Dallas (the “Shakespeare Festival”).

WITNESSETH:

WHEREAS, the Shakespeare Festival is a private, non-profit organization established under the laws of the State of Texas for the purpose of promoting the cultural enrichment of the community through live, professional theatrical productions of superior quality based on the works of William Shakespeare; and

WHEREAS, the Shakespeare Festival’s productions and work attract tourists to and encourages tourism in the City, and the City has an interest in attracting such tourists and promoting tourism to the area in order to receive the economic benefits associated therewith; and

WHEREAS, it is the City’s desire to encourage and promote the arts, including drama and theatre; and

WHEREAS, the City is authorized to expend revenues from its hotel occupancy tax for the encouragement, promotion, improvement, and application of the arts, including drama and theatre, and desires to encourage and promote the arts (including drama and theatre) through the execution of this Contract for Services.

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

I. TERM

The term of this contract and agreement shall be for a period of six months from the 14th day of April, 2004 through the 14th day of September, 2004.

II. SERVICES

- A. The Shakespeare Festival shall provide the following services:
 - (a) The production of a Shakespearean comedy (such as “Comedy of Errors”) (the “Show”) on June 4, 5, and 6, 2004, in the Ellipse at Addison Circle Park.
 - (b) A listing of the City as a presenting sponsor on programs, flyers, posters and signs for the Show.
 - (c) A listing of the City as a presenting sponsor of the Show in all press releases, advertisements, and communications regarding the Show.
 - (d) A listing as a presenting sponsor on all street banners and signs in connection with the Shows.

- (e) The inclusion of the Addison logo on the Shakespeare Festival web site (www.shakespearedallas.org) or any other web site of the Shakespeare Festival. The Shakespeare Festival shall contact the City regarding the details of including the Addison logo on the web site.
 - (f) Provide recognition of the Town of Addison from the stage at the Show.
 - (g) Submit detailed quarterly financial statements and program results to the City within thirty (30) days after the end of the preceding quarter listing the expenditures made by the Shakespeare Festival with the revenues received pursuant to this Contract.
 - (h) Provide the City with payment of 10% of all gross fees collected from food and beverages sales if the participating restaurant or concessionaires are Addison-based or 15% of all gross fees collected from food and beverage sales if the participating restaurants or concessionaires are not Addison-based. Payment shall be made within 30 days after the Event.
- B. The City has agreed herein to make the Additional City Payment (as defined in Paragraph III. below). For the Additional City Payment, the City shall provide the following in connection with the Show:
- (a) Normal and routine police services, fire services, and other normal and routine City services
 - (b) Trash pick-up at the site of the Show
 - (c) Parking services, as determined by the City
 - (d) Preparation of the site of the Show
 - (e) Electricity
 - (f) A booth for the Shakespeare Festival at Taste Addison, at no cost to the Shakespeare Festival
 - (g) Display of one banner (in the City's sole discretion) across Belt Line Road from May 25, 2004 until June 8, 2004 advertising the Show (such banner(s) to be supplied by the Shakespeare Festival)
 - (h) As deemed necessary by the City, fencing, restrooms, dumpsters, stanchions, turnstiles, and two-way radios

III. COMPENSATION

For the operation and provision of the services, projects and programs of the Shakespeare Festival as described herein, the City shall expend an amount not to exceed \$31,000 (thirty-one thousand and No 100 Dollars) for the following items; however, the projected amounts for expenses are subject to change. The cash sponsorship payment may be increased or decreased based on the final amount of the operational expenses.

- (a) City Services (police, fire, streets, parks, special events, environmental services, etc.) - \$4,500
- (b) Distribution of electricity - \$650
- (c) Parking services - \$915
- (d) Trash clean-up - \$360

- (e) Sponsorship commissions - \$795
- (f) Temporary fence - \$950
- (g) Sound and Lights rental - \$9,090
- (h) Tent rental - \$700
- (i) Table rental - \$500
- (j) Dumpster rental - \$300
- (k) Restroom rental - \$300
- (l) Sponsorship payment - \$11,940

The City shall pay the sponsorship fee in two installments as follows: \$5,000.00 (five thousand and No 100 Dollars) within seven days of the execution of this agreement and the remaining amount within thirty-days following the event and after all operational expenses have been confirmed and verified.

IV. INDEMNIFICATION

The Shakespeare Festival agrees to assume and does hereby assume all responsibility and liability for damages sustained by persons or property, whether real or asserted, by or from the performance of services performed and to be performed hereunder by Shakespeare Festival, its officials, officers, employees, agents, or contractors. Shakespeare Festival covenants and agrees to and shall defend, indemnify and hold harmless the City, its officials, officers, agents and employees against, and hold the City, its officials, officers, agents and employees harmless from, any and all liability, losses, lawsuits, actions, causes of action, costs, expenses, or fees (together, "Claims"), including attorney's fees, which may arise out of or are caused by, in whole or in part, the negligence, omission, act or conduct of Shakespeare Festival, its officials, officers, agents, servants, employees, or contractors in the performance of this Contract or any of its activities. Shakespeare Festival agrees to reimburse the City for all sums which the City may pay or may be paid on behalf of the City or which the City may be compelled to pay in settlement of any Claims, including without limitation any claim under the provisions of any workers compensation law or other similar law, or under any plan for employee benefits which the City may have or adopt. The provisions of this paragraph shall survive the termination of this Contract.

V. TERMINATION

This Contract may be canceled and terminated by either party upon giving at least thirty (30) days written notice of such cancellation and termination to the other party hereto. Such notice shall be sent certified mail, return receipt requested, and to the most recent address shown on the records of the party terminating the Contract. The thirty (30) days period shall commence upon deposit of the said notice in the United States mail and shall conclude at midnight of the 30th day thereafter. In the event of such cancellation and termination and if the Shakespeare Festival has failed at the time of such cancellation and termination to provide all of the services set forth herein, the Shakespeare Festival shall refund to the City that portion of funds paid to the Shakespeare Festival under the terms of this Contract in accordance with the following: Prorata funding returned to the City by the Shakespeare Festival shall be determined by dividing the amount paid by the City under this Contract by 155 (the "daily rate"), and then multiplying the daily rate by the number of days which would have remained in the term hereof but for the cancellation or termination. Upon payment or tender of such amount, all of the obligations of the Shakespeare Festival and the City under this Contract shall be discharged and terminated and no action shall lie or accrue for additional benefit, consideration or value for or based upon the services performed under or pursuant to this Contract.

VI. CONFLICT OF INTEREST

- (a) No officer or employee of the City shall have any interest or receive any benefit, direct or indirect, in this Contract or the proceeds thereof. This prohibition is not intended and should not be construed to preclude payment of expenses legitimately incurred by City officials in the conduct of the City's business.
- (b) For purposes of this section, "benefit" means anything reasonably regarded as an economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include contributions or expenditures made and reported in accordance with any law.

VII. ACCOUNTING

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

The funds paid to Shakespeare Festival pursuant to this Contract shall be maintained in a separate account established for that purpose and may not be commingled with any other money. Funds received hereunder from the City may be spent for day-to-day operations, supplies, salaries and other administrative costs provided that such costs are necessary for the promotion and encouragement of the purposes for which the funds may be used as described herein.

Shakespeare Festival shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the twenty-first (21st) day after the close of each quarter, Shakespeare Festival shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by Shakespeare Festival of the funds paid to Shakespeare Festival under this Agreement; and (b) a year-to-date report of the expenditures made by Shakespeare Festival of the funds paid to Shakespeare Festival under this Agreement. On request of the City at any time, Shakespeare Festival shall make its records available for inspection and review by the City or its designated representative. Within ninety (90) days of the end of Shakespeare Festival's fiscal year, Shakespeare Festival shall provide the City with a financial statement signed by the Chairman of Shakespeare Festival's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth Shakespeare Festival's income, expenses, assets and liabilities.

VIII. INDEPENDENT CONTRACTOR

In performing services under this Contract, the relationship between the City and the Shakespeare Festival is that of independent contractor, and the City and the Shakespeare Festival by the execution of this Contract do not change the independent status of the Shakespeare Festival. No term or provision of this Contract or action by the Shakespeare Festival in the performance of this Contract shall be construed as making the Shakespeare Festival the agent, servant or employee of the City.

IX. NON-ASSIGNABILITY

The Shakespeare Festival may not and shall have no authority to assign, transfer, or otherwise convey this Contract or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City.

X. NO PARTNERSHIP OR JOINT VENTURE

Nothing contained in this Contract shall be deemed to constitute that the City and the Shakespeare Festival are partners or joint venturers with each other.

XI. COPYRIGHT

Shakespeare Festival assumes full responsibility for complying with all United States laws and treaty terms pertaining to intellectual property issues and any applicable regulations, including but not limited to the assumption of all responsibilities for paying all royalties which are due for the use of domestic or foreign copyrighted works in Shakespeare Festival's performances, transmissions or broadcasts, and Shakespeare Festival, without limiting any other indemnity given by Shakespeare Festival as set forth herein, agrees to defend, indemnify, and hold harmless the City, its officials, officers, employees, and agents, for any liability, claims or damages (including but not limited to court costs and reasonable attorney's fees) growing out of Shakespeare Festival's infringement or violation of any statute, treaty term or regulation applicable to intellectual property rights, including but not limited to copyrights.

XII. NON-DISCRIMINATION

During the term of this Contract, Shakespeare Festival agrees that it shall not discriminate against any employee or applicant for employment because of race, age, color, sex or religion, ancestry, national origin, place of birth, or handicap.

XIII. LEGAL COMPLIANCE

Shakespeare Festival shall observe and abide by all applicable federal laws, state statutes and the Charter and Ordinances of the City, and all rules and regulations of any lawful regulatory body acting thereunder in connection with the services performed.

XIV. APPLICABLE LAWS

This Contract is made subject to the provisions of the Charter and ordinances of the City, as amended, and all applicable state and federal laws.

XV. VENUE

The validity of this Contract and of any of its terms or provisions, as well as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas. Venue for any action brought on or under this agreement shall lie exclusively in Dallas County, Texas.

XVI. COUNTERPARTS

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

XVII. GOVERNING LAW

This Contract shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

XVIII. NO WAIVER

In the event any term of this Contract is breached by either the City or Shakespeare Festival and thereafter waived by the other party to this Contract, such waiver shall not constitute a waiver of any subsequent breach of this Contract.

XIX. NOTICES

All notices, communications and reports, required or permitted under this Contract shall be personally delivered or mailed to the respective parties using certified mail, return receipt requested, postage prepaid, at the addresses shown below. The City and Shakespeare Festival agree to provide the other with written notification within five (5) days, if the address, provided below, is changed. Mailed notices shall be deemed communicated on the date shown on the return receipt. If no date is shown, the mailed notice shall be deemed communicated on the fifth (5th) day after mailing.

The City's address:

Assistant City Manager
Town of Addison
Post Office Box 9010
Addison, Texas 75001-9010

Shakespeare Festival's address:

3630 Harry Hines Blvd., 4th Floor
Dallas, Texas 75219

XX. LEGAL CONSTRUCTION; SEVERABILITY

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

XXI. AUTHORITY TO EXECUTE CONTRACT

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

XXII. ENTIRE AGREEMENT

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

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

TOWN OF ADDISON, TEXAS

SHAKESPEARE FESTIVAL OF DALLAS

By: _____
Chris Terry, Assistant City Manager

By: _____

Its: _____

ATTEST:

ATTEST:

By: _____
Carmen Moran, City Secretary

By: _____

Council Agenda Item: #R9

SUMMARY:

Council authorization is requested to enter into an agreement with MAXIMUS, Inc. to assist the Town in a strategic review of its finance function.

FINANCIAL IMPACT:

This item was not budgeted in the FY04 budget; however, \$15,000 is available in funds allocated for special projects/training and \$10,000 is available as a result of cost savings resulting in the Town's outsourcing of tax collection with Dallas County. Staff is recommending that the remaining amount of \$17,750 be handled by a mid year budget amendment.

BACKGROUND:

For many years the role of most Finance Departments has been more transactional in nature. The Department's duties have basically been to pay bills, record expenses and revenues, and compile and distribute data. While these functions are certainly important and need to be maintained, there has been a growing awareness that the Finance Departments of the future need to be more strategically focused. In other words the Department needs to be able to provide more accurate and sophisticated financial forecasting; develop a better understanding of the true cost of public programs and services; and develop processes for identifying emerging trends and issues. While the Town's Finance Department has implemented some of these strategic elements, staff believes there is an opportunity to further enhance these strategic functions; particularly given the challenges that local governments will have to address in the future.

The recent outsourcing of the tax collection function to Dallas County has provided the Town an opportunity to assess the current functions of the Finance Department, identify what strategic functions need to be implemented and determine what skill sets will be necessary to implement those strategic functions. Staff has visited with David Eisenlohr of the MAXIMUS group who was involved in implementing a similar project with the North Texas Tollway Authority. The cost of the project is \$41,750 plus direct expense reimbursement not to exceed \$1,000.

RECOMMENDATION:

Staff recommends approval.

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HELPING GOVERNMENT SERVE THE PEOPLE[®]

Mr. Ron Whitehead
City Manager
Town of Addison
5300 Belt Line Road
Dallas, TX 75254-7606

Dear Mr. Whitehead:

Thank you for the opportunity to prepare this engagement letter and for inviting MAXIMUS to assist the Town of Addison in a strategic review of its finance function. This engagement letter outlines our understanding of the purpose of the review, describes our planned approach and establishes our fees for service.

Our Understanding of Your Needs

The Town of Addison ("the Town") is a Texas Home Rule municipality, operating with the Council Manager form of government in which the City Manager serves as the Town's chief administrative officer to carry out the policy directives of an elected City Council. The Town is empowered to deliver a full range of local public services and to raise revenue and expend public funds for any lawful purpose. The Town maintains a Finance Department, headed by a Director who reports to the Deputy City Manager, assigned responsibility for the fiscal management of the Town government. According to its departmental mission statement, the Finance Department "strives to optimally manage the Town's finances through its accounting, collections and purchasing divisions and provide superior service to internal and external customers."

While the Town's Finance Department fully and professionally fulfills the basic requirements to support Town operations, the City Manager would like to develop the department as a strategic asset to the organization with a focus on being a valued business partner to each of the operating departments. There are current issues related to Finance Department operations, such as usefulness of internal reporting and long range forecasting to support executive decision-making, as well as the need to think about the future direction of the finance organization. The City Manager's desire is that this assessment be undertaken with a forward-looking orientation and is not pursuing the project because of any deficiency in the current operations of the finance organization. In summary, the Town is looking for opportunities to improve the service capabilities of the Finance Department in order to make the group a valued business partner to the organization and to put in place a framework for the future development of finance leaders.

The initial step in this process will be to establish a base-line understanding of the functions that are currently being performed by the Finance Department and how that mix of functions compares to that of other leading municipal finance operations in the region. Once compiled, this list of functions will be prioritized and further supplemented by the finance staff and by the department's internal customers. The inventory of activities will be compared and contrasted to the requirements of the internal customers and the vision of the Town's top executive leadership team to identify areas where the Finance Department may have opportunities to play a more strategic role in setting the organization's direction.

As a final step in this first phase of the finance transformation, MAXIMUS will deliver recommendations for improvement that the Town will utilize to identify and prioritize the required next steps to implement meaningful change in the Finance Department.

Project Plan

Task 1 - Meet with Executive team and Finance leadership to confirm scope and objectives

This meeting will be an initial kick off to reconfirm project details, confirm reporting relationships, set timelines and other administrative matters. We will also prepare, present and discuss an initial list of data requirements.

Task 2 - Complete Initial data gathering

The project team will require some basic background data to begin the analysis. Examples of the kinds of data that will be included in the initial request are:

- Financial reports and forecasts
- Budgets
- Financial performance measures
- Existing analytical reports
- Organizational data including staffing levels, organization charts and job descriptions
- Operating procedures documentation
- Financial systems information
- Workload data, i.e. utility customer accounts, transaction volumes, vendor records, etc.

Task 3 - Complete an "As-Is" functional assessment

In this task, the MAXIMUS team will, through interviews with managers and supervisors in the Finance Department, develop an understanding of the current organization, operation and service mix of the department. We will also collect some basic workload data and, through questionnaires administered to all members of the finance staff, collect estimates of levels of effort allocated to the principal functions of the Finance Department. Then, using the "Ten Dimensions of Finance" developed by the Economist Intelligence Unit and published in the CFO Knowledge Series, we will map current activities to this model and assess the current levels of effort in each of the broad areas considered in the framework.

Task 4 - Survey peer jurisdictions

Concurrent with the data gathering and interview process, a survey of similar governmental finance organizations will be conducted to identify the functions performed and services provided by their accounting/finance departments. The results of this survey will be compared to the inventory of work performed by the Town's Finance Department to help identify whether the Finance Department is providing an appropriate breadth and depth of services to management and the organization as a whole.

Task 5 - Complete control environment data analysis

Working with Webb Watch Corporation's Proactive Detection Techniques methodology, we will work with the Town's leadership team, including finance, to select a limited number of automated data analyses to help identify areas of potential integrity risk and/or control environment weaknesses. Proactive Detection Techniques is a program that uses various tools and uniquely designed processes to aggressively identify and evaluate components of an organization's financial and operational data for the exposure to breakdowns of internal controls, conflicts of interest, operational efficiencies and other matters.

Task 6 - Conduct focus groups with Finance Department Staff and Customers

Two separate focus groups will be conducted, first with the Finance Department staff and then with representatives of the customer organizations within the Town government. For each of the Ten Dimensions, focus group participants will be asked to evaluate the relative importance of each to the Town's long-term strategic success and the level of performance or satisfaction with current services provided. The results of the Finance staff focus group and the customer focus group can then be compared and contrasted to identify any gaps, either in fact or in perception, between the expectations of the customers and the personnel delivering the services.

Task 7 - Review and evaluate current financial forecasting, trend analysis and executive management reporting procedures for strategic value

The MAXIMUS team will evaluate the presence, content and emphasis the current Finance Department places on the identification of leading indicators of financial condition, the preparation of forward-looking projections, the monitoring of important external environmental factors that could drive the Town's financial

future, etc. In this task we will also query management and end users as to what kinds of forward looking or strategic data analysis they would find helpful in planning and managing their own operations.

Task 8 - Identify strategic gaps and prioritize improvement opportunities

Based on all of the tasks completed to this point in the project, the MAXIMUS team will then identify any gaps or latent opportunities to move the finance organization into a more strategic, value-added partner in the business of running the Town of Addison government. We will then assess these opportunities in terms of both their impact-and the relative ease of implementation to develop a set of immediate, mid term and long-term priorities.

Task 9 - Document findings, conclusions and recommendations in a draft report presentation

A draft report presentation of our findings, conclusions and recommendations for improvement will be prepared and presented and discussed with appropriate members of the Town's Executive team and Finance Department staff. This document will be presented in a "PowerPoint" type presentation format and will be designed as a discussion document prior to the finalization of recommendations and the preparation of a final report. To the extent that the discussion of this presentation indicates the need for additional analysis, reexamination of conclusion or modification of recommendations, adjustments will be made as appropriate.

Task 10 - Prepare and present a final report and implementation plan

The final task in the project involves the development of a written final report document that fully explains our process, findings and conclusions. In addition, the final report will include an implementation plan and an executive summary. If requested, MAXIMUS staff will be available to make a single presentation of our report to the Council.

Project Scope

The scope of the engagement will be limited to the current operations of the Finance Department, the development of Finance Department customer expectations, establish the vision for the future and identification of improvement opportunities as described above. Those functions that we anticipate addressing include purchasing, accounts payable, billing and collections, general ledger accounting, fixed asset accounting, budget development and administration and financial reporting. The work of MAXIMUS hereunder will be in a manner satisfactory and acceptable to the Town.

Deliverables

- An inventory of current Finance Department functions and activities. This will not detail the actual process flow or controls but may highlight apparent strengths and weaknesses that are observed by the MAXIMUS staff.
- A prioritized list of the expectations of the Finance Department from the customer view.
- A document describing the "vision for the future" as developed through the analysis.
- A gap analysis of the above deliverables to aid the Town in determining and prioritizing the next steps.
- Recommendations for improvement.
- Opportunity implementation plan.

Staffing

Resources proposed for this project will include David Eisenlohr, a MAXIMUS Senior Vice President, who will act as the Project Director for MAXIMUS. Mark Carpenter, Senior Manager, Steve Parker, Manager and other MAXIMUS staff as appropriate, will assist him. Calvin Webb of Webb Watch Corporation will be responsible for the control environment data assessment described in Task 5. MAXIMUS represents that those persons who are assigned to work on this project are qualified to do so, and that it will perform such work and fulfill it in a timely and professional manner.

Client Responsibilities and Assumptions

In order to help minimize the cost to the Town and to help involve the leadership as well as the Finance Department in any future proposed changes to operations, significant involvement of the Town staff is critical. Our current expectation of the Town responsibilities include:

- The Town will designate one person (senior staff level or higher) to assist in data collection and provide insight, to aid in setting up meetings and focus groups and to coordinate other matters as needed.
- Make key managers and personnel available for one-on-one interviews and/or facilitated meeting.
- Provide access to the Town facilities as required to conduct our work.
- Provide an adequate work/meeting area with a phone line while the team is on site.

Timing and Fees

The project will commence upon execution of this letter by both parties and will continue until the delivery of the final report. We estimate that the project will require approximately 8 weeks to complete. The fixed fee, based upon the described scope of work and subject to the termination provisions of this letter agreement, will be \$41,750 plus direct expense reimbursement not to exceed \$1,000. We will provide the Town of Addison with monthly progress billings for professional services and expenses, payable within 30 days of the Town's receipt of such billings. Such monthly progress billings will include a description of the work performed in connection with the billing, true and correct copies of any and all receipts, invoices, and other documents and materials in support of the billing, and any such additional materials as the Town may reasonably request in connection with the billing and/or the compensation paid to MAXIMUS. Work beyond the scope of this engagement letter will be subject to prior approval of both parties and will be billed at the firm's standard hourly billing rates plus direct expenses.

Either party may terminate this letter agreement at any time by giving to the other party at least 10 days written notice of such termination; provided, however, that if the Town elects to terminate this letter agreement and such termination is solely for the reason of a default hereunder by MAXIMUS, the Town will, prior to termination for default, provide adequate written notice to MAXIMUS of such default and afford MAXIMUS the opportunity to cure the default or to submit a specific plan acceptable to the Town to resolve the default within 10 days after receipt of the termination notice. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. MAXIMUS shall cease all work and services being performed under this letter agreement immediately upon receipt of the notice of termination. In the event of such termination, the Town shall pay MAXIMUS in full for all work previously authorized and properly performed prior to the date of termination.

All finished or unfinished data, studies, reports, and other materials and items, in whatever form or format, prepared by or for MAXIMUS under or pursuant to this Agreement are and shall be the sole property of the

Town. Upon the expiration or earlier termination of this letter agreement, MAXIMUS shall promptly deliver all such data, studies, reports, materials and items to the Town, which MAXIMUS has not previously delivered. Notwithstanding anything to the contrary contained herein or in any attachment hereto, any and all intellectual property or other proprietary data owned by MAXIMUS prior to the effective date of this Agreement shall remain the exclusive property of MAXIMUS even if such intellectual property or proprietary information is embedded or otherwise incorporated in the product produced under this Agreement or used in the development of any product or services under this Agreement.

MAXIMUS is and shall be during the entire term of this letter agreement an independent contractor, and nothing in this letter agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, a joint enterprise, or to allow the Town to exercise discretion or control over the professional manner in which MAXIMUS performs the Services which are the subject of this letter agreement; provided always however that the services to be provided by MAXIMUS shall be provided in a manner consistent with all applicable standards, regulations, and laws governing such services.

MAXIMUS shall defend, indemnify, and hold harmless the Town, its officials, officers, employees and agents (together, "Indemnified Persons") from and against, and hold the Indemnified Parties harmless from, liability, actions, causes of action, lawsuits, judgments, claims, damages, penalties, fines, costs or fees, including reasonable attorney's fees and costs of defense, for personal injury, property damage or destruction (including loss of use of property not otherwise physically injured), breach of contract, or other harm for which recovery of damages or any other form of relief is sought, directly caused by any negligent or wrongful act or omission of MAXIMUS, its officers, employees, agents, or representatives under or pursuant to this letter agreement. The provisions of this paragraph shall survive the expiration or termination of this letter agreement.

IN NO EVENT SHALL MAXIMUS, ITS DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOST REVENUE, LOST PROFITS, REPLACEMENT GOODS, LOSS OF TECHNOLOGY RIGHTS OR SERVICES, LOSS OF DATA, OR INTERRUPTION OR LOSS OF USE OF SOFTWARE OR ANY PORTION THEREOF, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION SHALL APPLY TO ALL CLAIMS WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE. MAXIMUS LIABILITY (IF ANY) TO THE TOWN OR ANY THIRD PARTY IS LIMITED TO TWO TIMES (2X) THE AMOUNT PAID TO MAXIMUS FOR THE SERVICES.

At all times in connection with this letter agreement, MAXIMUS, at its own expense, shall purchase, maintain and keep in force such insurance as described and in the minimum amounts set forth below:

- (i) Commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$ 1,000,000 each occurrence, which shall include coverages for bodily injury (including death) and property damage, and particularly for liability arising from premises operations, independent contractors, products/completed operations, personal injury, advertising injury, and contractual liability. If such CGL insurance contains a general aggregate limit, it shall apply separately to the Work under this Agreement.
- (ii) 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.
- (iii) Worker's compensation insurance through an insurance company licensed to do business in Texas or, if qualified by law, through self-insurance.

With reference to the foregoing insurance requirements, MAXIMUS' insurance policies shall comply with the following: (1) the Town of Addison, Texas shall be named as an additional insured with respect to all liability policies; (2) all liability policies shall contain no cross liability exclusions or insured versus insured restrictions; (3) a waiver of subrogation in favor of the Town of Addison, Texas shall be contained in the workers compensation and all liability policies; (4) such insurance shall be maintained in full force and effect and shall not be canceled or limits reduced without thirty (30) days prior written notice having first been furnished to the Town of Addison; (5) all insurance policies, which name the Town of Addison as an additional insured, shall be primary and non-contributory; (6) required limits may be satisfied by any combination of primary and umbrella liability insurances; (7) insurance must be purchased from insurers that are rated B++ or above by A.M. Best Company; (8) 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, shall be delivered to the Town simultaneously with the execution of this Agreement, and shall contain provisions evidencing the following: (i) sets forth all endorsements and insurance coverages according to requirements and instructions contained herein, and (ii) shall specifically set forth the notice-of-cancellation or termination provisions to the Town of Addison.

Inasmuch as this letter agreement is intended to secure the specialized services of MAXIMUS, MAXIMUS has no authority or power to and may not assign, transfer, delegate, subcontract or otherwise convey any interest herein without the prior written consent of the Town, and any such assignment, transfer, delegation, subcontract or other conveyance without the Town's prior written consent shall be considered null and void.

For purposes of this letter agreement, notices and other communications provided for herein shall be in writing, addressed as provided hereinafter to the party to whom the notice or request is given, and shall be either (i) delivered personally, (ii) sent by United States certified mail, postage prepaid, return receipt requested, (iii) placed in the custody of Federal Express Corporation or other nationally recognized carrier to be delivered overnight. Notice shall be deemed given: when received if delivered personally; seventy-two (72) hours after deposit if sent by mail; and twenty-four (24) hours after deposit if sent by Federal Express or other nationally recognized carrier. Addresses for notice are as follows:

To the Town:

Town of Addison, Texas
5300 Belt Line Road
Dallas, Texas 75254
Attn: Ms. Lea Dunn

To MAXIMUS:

MAXIMUS, Inc.
13601 Preston Road, Suite 400W
Dallas, Texas 75240
Attn: David W. Eisenlohr

All reports, information, documents, or other materials given to or prepared by or for MAXIMUS under this letter agreement shall be kept confidential by MAXIMUS, and shall not be made available to any individual or entity without the prior written approval of the Town.

In the event of any action under this letter agreement, venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this letter 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 letter agreement.

If any term, covenant, condition or provision of this letter agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

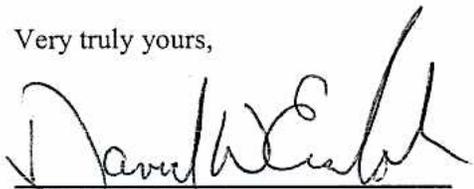
The rights and remedies provided by this letter agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law statute, ordinance, or otherwise. The failure by either party to exercise any right or power given to it by this letter agreement, or to insist upon strict compliance with the terms of this letter agreement, shall not constitute a waiver of the terms and conditions of this letter agreement with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. Any rights and remedies either party may have with respect to the other arising out of this letter agreement shall survive the expiration or termination of this letter agreement.

This letter agreement and all of its terms and provisions are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

This letter agreement supersedes all previous agreements and constitutes the entire understanding of the parties hereto. No changes, amendments or alterations shall be effective unless in writing and signed by both parties. Time is of the essence of this letter agreement, provided however, MAXIMUS shall not be liable for delays in performance to the extent that such delays are caused by the Town, third parties over which MAXIMUS does not have the legal right to control or events of force de majeure. The period of performance shall be extended by the period of delay contemplated herein.

Thank you again for this opportunity to serve the Town of Addison on this important and challenging assignment. I am excited about the project and look forward to working with you and your team again.

Very truly yours,



David W. Eisenlohr
Sr. Vice President
MAXIMUS, Inc.

4/6/2004
Date

Accepted and Approved:

Town of Addison

Date

Colleague or Cop: The Evolution of Finance from Tactical to Strategic Management

What role do you play on your organization's management team?

By: Susan Buse, Director of Finance, North Texas Tollway Authority
David Eisenlohr, Senior Manager, Experio Solutions
Kristine Starr, Senior Manager, Experio Solutions

Ask the typical Mayor, City Manager or Executive Director to describe his or her relationship with the chief financial officer of their organization and you are likely to get answers like "He tells me what I can and can't do," or "She makes sure the books are balanced and the bills are paid." You might even hear, "My CFO keeps me out of financial trouble."

Among municipal finance officers, it is the rare and lucky few whose chief executive would say, "The Finance Director is my right arm. I don't make a significant decision without consulting him."

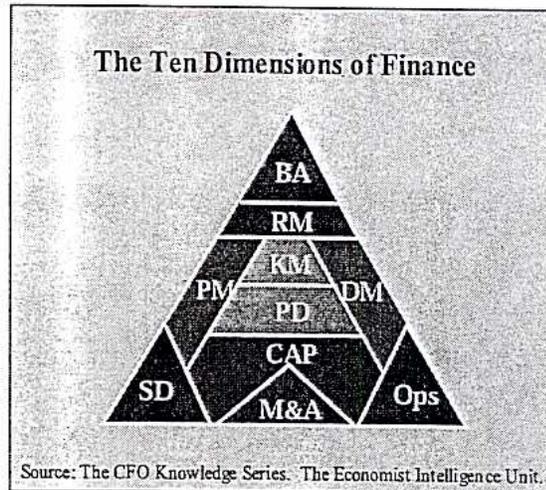
The professional literature today, both in and out of government, is filled with references to the "evolving role of the finance officer" and it seems clear that something new is indeed in the wind. This is the first article of a two part series that seeks to provide a practical example of how some government finance practitioners are going about the business of transforming their organizations. The purpose of this article is to provide a high level review of the recent literature on finance transformation and to identify themes that have application for today's municipal finance professional. In the second article of the series, we will provide a practical case study of the application of these concepts in a real world situation.

The "Ten Dimensions of Finance"

The CFO Knowledge Series, published by the Economist Intelligence Unit (EIU) has identified ten distinct characteristics exhibited by outstanding finance organizations and, by extension, their leaders.

These ten "dimensions of finance" are illustrated in the diagram, and can be visualized as a cohesive whole. (Need more transition, e.g. "We'll use these ten dimensions as a guide to understand the full, or potential, duties of financial executives. Plus, we'll use these ten dimensions as the foundation in accompanying case study.") Definitions of the ten dimensions, along with typical municipal finance functions that fall under each, include:

1. Business analysis (BA) – Business analysis involves the creative use of information from both internal and external resources to give an organization and its leaders a clear cut analysis to support decision making and analyze progress against the company's strategic goals. The provision of timely, insightful analysis to operating unit leaders is a key component of value-added financial management support.



- **Municipal finance examples.** Multi-year financial forecasting, activity based cost reporting, financial trend analysis
- 2. Operations (Ops)** – This dimension encompasses much of the "traditional" role of the finance organization such as the execution and recording of finance and accounting transactions. Strategic finance organizations have high standards for quality, speed and efficiency in their core operating processes.
- **Municipal finance examples.** Accounts payable, accounts receivable, purchasing, budget, payroll, general ledger, reporting
- 3. Strategy development and resource allocation (SD)** - Finance organizations are becoming increasingly involved in the development of the organizational strategies that drive or direct resource allocation. They are able to articulate the financial impact of strategic opportunities and facilitate reallocation of resources to achieve strategic goals.
- **Municipal finance examples.** Strategic planning, capital improvement planning and budget modeling
- 4. Capital structure and management (Cap)** – An important role of the finance organization is the cultivation and maintenance of strong working relationships with participants in the capital markets and to design and build a capital structure that adequately fuels the business, controls the cost of finance and balances risk and cost.

- **Municipal finance examples:** Debt structuring and bond sales, investment management, management of relationships with bond counsel and financial advisors

5. Mergers and acquisitions (M&A) – In a public sector context, mergers and acquisitions can be understood to relate to the organization's ability to support the expansion of existing markets, tap into new ones and diversify outside of traditional lines of business. In addition, it involves building alliances with key business partners.

- **Municipal finance examples:** Public/private partnerships, interlocal agreements, city/county consolidation and cooperation

6. Risk management (RM) – Risk management is considered in the broadest sense as identification and mitigation of any threats to the enterprise's achievement of business objectives. Strategic finance organizations develop strong capabilities to manage the threat that an event or action will adversely affect the company's ability to grow and thrive or that might cause it to miss opportunities. It entails the development of company-wide processes and policies for identifying, understanding, assessing the effect of and mitigating those business risks.

- **Municipal finance examples:** Internal audit, insurance administration

7. Performance management (PM) – This dimension involves the process of translating strategies into a set of operational goals, predictive measures and management processes that are supportive of the company's strategy. Value added finance organizations are involved in the design of performance management programs and in the creative use of data to gain deeper insight into causes and effects driving business results.

- **Municipal finance examples:** Performance budgeting, activity based costing, balanced scorecard

8. Common data models (DM) – The major enabling mechanism for strategic finance is the establishment of a common data model for the organization. This involves ensuring that data necessary to run the organization are consistently defined and used across all parts of the business. Top finance organizations ensure that their investments in accounting, billing, procurement and other financial systems are maximized by creating and promoting common data elements and structures throughout the enterprise.

- **Municipal finance examples:** Common chart of accounts, integrated financial and administrative software

9. People development (PD) – The finance function must be well equipped, highly skilled and innovative in its approach to problem solving and partnering with the business. Successful companies are committed to providing their finance staff with sophisticated analytical skills and broad-based business intelligence. Moreover, they take it upon themselves to disburse financial management capabilities throughout the business.

- **Municipal finance examples:** Employee orientation, technical and professional skills training, employee performance appraisal

10. Knowledge management (KM) – Leading finance organizations help their companies apply information in both an historic and a strategic context – enabling individuals to collectively acquire, share and leverage knowledge to achieve business objectives. Knowledge is shared and, collectively, can be used to provide competitive advantage.

- **Municipal finance examples:** Policies and procedures development and documentation, transaction histories and precedents, i.e., tax abatements, debt offerings, franchise agreements, etc.

These ten dimensions of finance encompass the basic, core functions and activities that typically should be performed by a modern finance organization. How the finance officer allocates resources – in terms of people, time, management focus, etc. – can reveal much about the implicit values and priorities of that finance officer and, perhaps, the expectations of the chief executive and governing body.

Having reviewed and defined the component parts of the finance, it is important for finance executives to think about how to blend these elements into a cohesive whole appropriate for the unique environmental and operational situations their individual organizations face. The current literature suggests that the role expectations for financial officers are in the midst of an important shift. The balance of this article will touch briefly on some of those trends:

- o From Transaction Processor to Business Partner
- o From Tactician to Strategist
- o From Cop to Colleague

From Transaction Processor to Business Partner

The CFO Publishing Corporation, in a 2002 report entitled *CFOs: Driving Finance Transformation for the 21st Century*, reports that "the rising number of accounting scandals is rapidly shifting CFOs' attention as companies rush to respond to the short term crises related to improved forecasting accuracy and external financial reporting transparency."

Based on a survey completed for the publication of that report, CFOs indicated that they are striving to reduce the costs of transaction processing ("Operations" in terms of the 10 dimensions) while improving the effectiveness of more strategic activities and business analysis.

Finance officers who participated in this study consistently said that finance functions should be able to accomplish their so-called "back office" functions at lower costs, allowing them to redeploy resources to higher value activities such as customized analytical support to operating unit leaders and supporting the formulation and execution of enterprise level strategy.

The notion of the finance organization as a "business partner" is an important common thread in the current literature of finance transformation. Rather than simply paying the bills, recording expenses and revenues, compiling and distributing data – the traditional roles of the accounting function – financial executives should furnish operating managers with more. They add rich context through analysis, interpretation and business advice. C. Morgan Kinghorn, Jr., writing in the December 2002 edition of *Government Finance Review*, notes:

As business partners, financial executives spend most of their time applying their expertise to key strategic and operating decisions and virtually none to traditional back-room accounting operations such as account reconciliation, payment processing and historical financial reporting.

The CFO Publishing Corporation concluded that "only a relatively small number of companies possess these characteristics today." They have identified four levels of finance transformation:

- **Leaders** – Organizations where the great bulk of transactions are processed through shared services or outsourced service providers, information technology is fully integrated and web-based, and the finance organization concentrates on providing key operating units with customized analysis.
- **Early Adopters** – These finance organizations have made significant progress towards a fully transformed operating model, with high levels of consolidation of transaction processing activities, implementation of enterprise resource planning software applications and the ability to support management decision making on demand.
- **Followers** – The finance organization may have incrementally modernized business practices and processes but have not made significant transformational change. Finance employees are still primarily transaction focused and both processes and information systems are minimally integrated.

- **Cautious observers** – Few or no changes to the way the finance organization has historically operated.

To remain relevant, municipal finance officials should actively seek out the role of business partner. The governing body, the chief executive and operating unit leaders must be supported and serviced in such a way that the finance organization is an indispensable component of their individual and collective success.

From Tactician to Strategist

More organizations in the public sector are adopting and implementing strategic planning or similar processes to set priorities, allocate resources and support decision making. Strategic planning and priority setting in times of relative abundance is fun, even easy. Setting strategic priorities in times of austerity is neither.

In today's climate of economic stress and resource scarcity, finance officers can be expected to be called upon to lead efforts to downsize, contract and economize. Unfortunately, for many public sector organizations, these efforts are often focused only on the short term – as in "I have to balance the budget this year" - and tend to be strictly tactical in nature – as in "We will defer this capital equipment replacement or eliminate employee compensation adjustments."

Many seasoned finance executives believe that this tactical role is insufficient. They contend that it is important to fully include the finance organization in strategy development in good times as well as bad and, by so doing, avoid or minimize crisis management. To become truly strategic, finance executives need to focus on activities that add value beyond the near term time horizon. This means that strategic finance organizations will allocate significant resources, time and energy to such things as:

- Improving the accuracy and sophistication of long-range financial forecasting processes and tools.
- Institutionalizing activity based costing and other analytical tools to better understand the true costs of public programs and services.
- Implementing comprehensive, balanced performance management tools and processes.
- Enhancing business risk identification and risk management capabilities.
- Advocating for investment in modernization of information technology including the adoption of electronic government and enterprise resource planning.

- o Stimulating the introduction of competitive rigor through such techniques as managed competition, business process outsourcing and intergovernmental cooperation and consolidation.

From Cop to Colleague

As Kinghorn accurately observes, "Most executive level general managers (at least in the private sector) do not regard the chief financial officer of their organizations as a strategic business partner. Instead, they perceive the CFO as an organizational police officer." If this is true in your organization, what can or should you do to change this perception?

Of course, the first step is to examine your own views of the finance officer's role. Are you more comfortable as a cop or as a colleague? Then, ask your chief executive the simple question, "What can the finance organization do better to increase our value to you, the governing board and our constituents?" Then listen carefully to the answer.

Industry experts have observed that finance transformation requires a new set of skills and competencies. According to a 1999 survey by the Institute of Management Accountants, the most named competencies required for leading modern finance organizations include:

- o Communications skills
- o Ability to work on a team
- o Analytical skills
- o Knowledge of accounting
- o Familiarity with business operations

It is no accident that of these top five, four could be said of any top manager and only one relates specifically to the financial content of the job.

The next article of this two-part series will focus on the ways the finance department of one Texas governmental organization – the North Texas Tollway Authority - is seeking to transform itself into a strategic business partner.

Part Two
Next Month



Governmental Accounting Standards Board Issues Standard to Improve Disclosures on Deposit and Investment Risk

Norwalk, CT, March 27, 2003—In an effort to provide the public with better information about the risks that could potentially impact a government's ability to provide services and pay its debts, the Governmental Accounting Standards Board (GASB) has published Statement No. 40, *Deposit and Investment Risk Disclosures*, an amendment of GASB Statement No. 3. The Statement amends GASB Statement No. 3, *Deposits with Financial Institutions, Investments (including Repurchase Agreements), and Reverse Repurchase Agreements* and addresses additional risks to which governments are exposed.

According to GASB Project Manager Randal J. Finden, "All deposits and investments can be exposed to risk. Under the GASB standard, we looked at the most common risks, that is, the risks that have been the cause of depository and investment losses in the past. This Statement requires disclosures to communicate those risks in what we believe is an easily understandable manner."

The new accounting guidance requires that state and local governments communicate key information about deposit and investment risks, frequently one of the largest assets on a government's balance sheet. Under Statement 40, state and local governments are required to disclose information covering four principal areas:

- Investment credit risk disclosures, including credit quality information issued by rating agencies;
- Interest rate disclosures that include investment maturity information, such as weighted average maturities or specification identification of the securities;
- Interest rate sensitivity for investments that are highly sensitive to changes in interest rates (example, inverse floaters, enhanced variable-rate investments and certain asset-backed securities); and
- Foreign exchange exposures that would indicate the foreign investment's denomination.

The provisions of Statement 40 are effective for financial statements for periods beginning after June 15, 2004. Earlier application is encouraged.

Statement 40 (Product Code No. GS40) can be ordered through the GASB's Order Department at 800 748-0659 or via its website at www.gasb.org.

Case Study: North Texas Tollway Authority (NTTA) Transforming the Finance Department

**By: Susan Buse, NTTA Director of Finance
David Eisenlohr, Senior Manager, Experio Solutions
Kristine Starr, Senior Manager, Experio Solutions**

This article is the second part of a two part series on the evolving role of finance in the public sector. In the first part, we reviewed, at a high level, some of the current professional literature on the subject. In this part, we provide a case study of a practical application of the concepts to a real-world government finance organization, the Finance Department of the North Texas Tollway Authority (NTTA).

Business Challenge

NTTA is a political subdivision of the State of Texas and is authorized to acquire, construct, maintain, repair and operate turnpike projects in the North Texas region including Collin, Dallas, Denton and Tarrant counties. Governed by a seven-member Board and managed by an appointed Executive Director, NTTA is responsible for the Dallas North Tollway System, consisting of the Dallas North Tollway, President George Bush Turnpike, Addison Airport Toll Tunnel and Mountain Creek Lake Bridge. NTTA toll projects are not a part of the State highway system and receive no direct tax funding. Tolls are collected to repay debt and to operate and maintain the roadways.

By any measure, NTTA operations have almost tripled over the last four years: lane miles open to traffic, toll revenues, employee base and the implementation of new enterprise technology. Growth and change has engendered new and higher expectations for the finance organization from the Board and executive management. The increasing demand for timely and accurate analysis of complex financial and statistical data, the importance of early recognition of emerging issues and trends and the strong need to anticipate and plan for – rather than react to – changes in the operating environment all converge on the finance organization.

These evolving expectations, coupled with the continuing need to accurately process and report on rapidly growing numbers of financial and accounting transactions, have presented challenges for the Finance Department. The department has recognized an opportunity to adapt procedures to keep up with the changes while maintaining quality, consistency and timeliness. As new technology is deployed across all levels of the organization, procedures impact and interface with each other in new ways, requiring better coordination and communication. At the same time, planning for the next stage of agency growth is accelerating. The Finance Department has a responsibility, and an opportunity, to add expertise and perspectives in developing strategies for the future.

As the leaders of the NTTA, Mr. Jerry Hiebert, Executive Director, and Ms. Katie Nees, Deputy Executive Director, were looking for opportunities to not only improve the efficiency and effectiveness of the finance department but to position it as a strategic component of the agency's future. They posed the following challenge: "Where are we now? Where do we want to be three to five years from now? and How do we get there?" According to Mr. Hiebert, "We recognize that being "good" at what we do is not good enough. We want to become "the best."

Project Approach

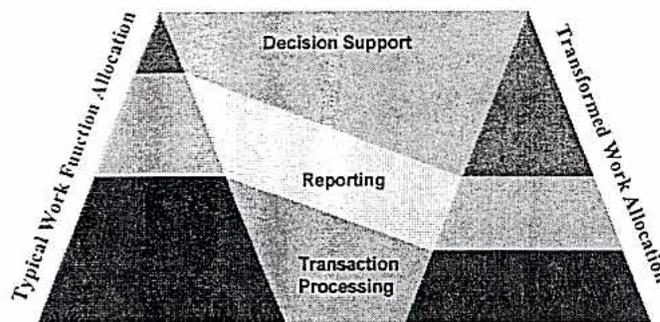
Experio Solutions, a business and IT consulting firm, was engaged by NTTA to design and execute a diagnostic review to help answer the questions posed by the leadership team. Experio's approach included three major tasks: conduct an as-is functional assessment, facilitate focus group sessions with three distinct audience groups, and develop implementation priorities. Each of these steps is outlined in detail below.

Task 1: As-Is Functional Assessment

The initial step in the diagnostic process was to establish the base-line functions currently performed by the NTTA Finance Department. Experio conducted interviews with the finance managers and administered a questionnaire to the entire finance staff to identify the current functions performed by the NTTA Finance Department and to determine how the resources are allocated among the functions. Once compiled and confirmed, this inventory of finance functions was compared and contrasted to a standard framework of successful financial organizations, the Ten Dimensions of Finance, as depicted in the following table.

According to these results, the top area where the NTTA Finance Department currently focuses its resources is in Operations (74%). This is consistent with our review of industry literature which suggests that finance organizations today are more heavily focused on transaction processing versus strategic activities. The trend will be to achieve a better balance between these activities with an increased emphasis on the strategic role that finance can play in an organization. The following graphic illustrates this important shift in the priorities of the transformed finance function.

| MAPPING OF NTA FINANCE FUNCTIONS TO TEN DIMENSIONS OF FINANCE | | | | | |
|---|--------------|-------------|--|-------|------|
| NTA Finance Functions | | | Ten Dimensions of Finance | | |
| NTA Finance Functions | FTEs | % | Ten Dimensions of Finance | FTEs | % |
| Revenue Audit | 2.80 | 19% | Business Analysis | 0.74 | 5% |
| Accounts Payable | 1.90 | 13% | Operations | 11.24 | 74% |
| General Ledger | 1.60 | 11% | Strategy Development & Resource Allocation | 0.72 | 5% |
| Purchasing | 1.63 | 11% | Capital Structure & Management | 0.89 | 6% |
| Administration | 1.05 | 7% | Mergers & Acquisitions | 0.00 | 0% |
| Management | 0.97 | 6% | Risk Management | 0.25 | 2% |
| Reporting | 0.88 | 6% | Performance Management | 0.00 | 0% |
| Special Projects | 0.74 | 5% | Common Data Models | 0.00 | 0% |
| Budget | 0.72 | 5% | People Development | 0.28 | 2% |
| Filing | 0.50 | 4% | Knowledge Management | 0.88 | 6% |
| Investments | 0.41 | 3% | Total | 15.00 | 100% |
| Reconciliation | 0.30 | 2% | | | |
| Debt Issuance | 0.29 | 2% | | | |
| Professional Development | 0.28 | 2% | | | |
| Accounts Receivable | 0.27 | 2% | | | |
| Internal Audit | 0.25 | 2% | | | |
| Cash Management | 0.16 | 1% | | | |
| Fixed Assets | 0.12 | 1% | | | |
| Investor Relations | 0.03 | 0% | | | |
| Total | 15.00 | 100% | | | |

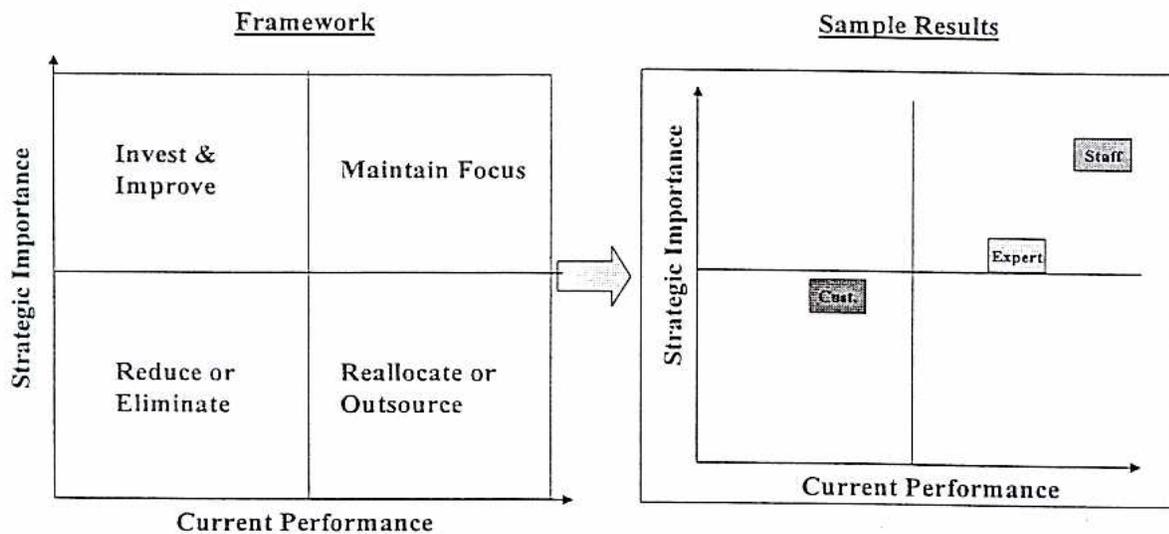


Task 2: Visioning/Gap Analysis

During the Visioning and Gap Analysis phase of the project, the Ten Dimensions of Finance were assessed and prioritized through a series of facilitated sessions with the department's internal customers, the finance staff itself, and a panel of national and local area finance leaders who have experience and expertise in governmental or quasi-governmental finance operations. Utilizing a prioritization and group consensus tool, participants ranked and prioritized the future strategic importance of each dimension of finance and rated the organization's or the industry's current performance in those areas. Results were plotted on a two by two matrix and the participants then discussed the factors that contributed to each area's rating, as well as potential opportunities for improvement in each area.

For each quadrant, participants considered the following questions:

- Reduce or eliminate (low importance/low performance) – Can the resources dedicated to these activities be reduced? Why is this function being performed?
- Reallocate or outsource (low importance/high performance) – Should some of these resources be reallocated to focus on more strategic areas? Could this function be outsourced?
- Invest & Improve (high importance/low performance) – How can the organization improve its performance in this area? Are the proper levels of resources allocated?
- Maintain focus (high importance/high performance) – How will the organization maintain its current focus in this area?



Results of the three focus group sessions were then consolidated and the project team performed a gap analysis to identify areas where the finance department may have opportunities to improve its services and current performance.

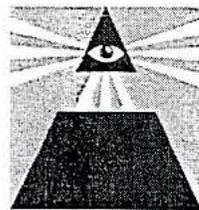
Task 3: Implementation Priorities

As a final step in this first phase of transforming the finance department, the project team prepared a set of specific recommendations that the NTTA may use to identify and prioritize the required next steps to implement meaningful change in the Finance Department.

Outcomes

Based on our research and the discussions with the expert panel, we found that NTTA's finance organization is comparable in many respects to its counterpart departments in other organizations and it is facing issues similar to those of its peers. Industry-wide, finance executives are seeing an increasing demand to shift their focus from transactional or operational activities to more strategic activities, including decision-making and business analysis.

Shifting the Finance Department's focus to more strategic activities does not necessarily require additional finance staff. Instead, Experio recommended that the existing processes, broadening the skill sets performance expectations, leveraging technology considering the possibility of outsourcing some. The Finance Department will be required to balance tasks are done well, while simultaneously assuming strategic activities within the organization.



THE FINANCE DEPARTMENT OF THE FUTURE

As a result of this study, the NTTA Director of plan which includes a re-branding campaign, out- of "quick wins," a concentrated focus on tive role in technology improvements, enhanced emphasis on training the finance staff.

NTTA Finance Department focus on streamlin- of its finance professionals and clearly defining ogy to automate the operational activities, and of the financial operations to outside providers. ance its focus to ensure that the operations ing a greater role in business analysis and other

Another outgrowth of the project was the design and adoption of a new symbol or logo for the finance organization. A multi-purpose lantern has become a symbol of its new goals – to shed light on all aspects of the NTTA's operations, to identify and anticipate red-light emergency situations, to focus a spotlight on critical areas and to provide a beacon into the future.

The **North Texas Tollway Authority ("NTTA")**, a political subdivision of the State of Texas, is authorized to acquire, construct, maintain, repair and operate turnpike projects in the North Texas region. Go to www.ntta.org or call 214-461-2000 for additional information or contact Susan Buse at sbuse@ntta.org. **Experio Solutions**, based in Dallas with delivery capability nationwide, has helped hundreds of clients redesign customer touch points, optimize supply chains, integrate and externalize applications, as well as transform enterprise processes through eBusiness initiatives. Learn more about a solutions partner with breadth and integrity, a 20-year history, and an unparalleled commitment to knowledge transfer at www.experio.com. or contact Clint Brice, Director of Business Development, at (214) 665-3509 or by email cbrice@experio.com.

Council Agenda Item: HR10**SUMMARY:**

Council authorization is requested of the city manager to enter into agreement with ICMA Retirement Corporation (ICMA-RC) for administration of the Town's Section 457 Deferred Compensation Plan and possible future health savings retirement plan.

FINANCIAL IMPACT:

The Town has included \$371,110 in the 2004 budget for its share of contributions into the deferred compensation program. Changing administrators of the program will have no financial impact on the budget. The Town will explore the possibility of implementing a health savings retirement plan with the goal of providing employees with an additional health benefit without increasing costs to the Town. Any decision regarding establishing a health savings retirement plan will be brought to Council for its approval prior to implementation.

BACKGROUND:

The deferred compensation program is one of several retirement benefits that the Town of Addison provides its employees. In the early 1980's the Town took advantage of a program that allowed local governments to "opt out" of social security (program was discontinued just a few years later). In lieu of the social security program, the Town offered a deferred compensation program under Section 457 of the Internal Revenue Code. Under the program, employees may *voluntarily* elect to defer up to 6% of their salary, which the Town will match on a 3:2 ratio. Employees may elect to defer additional income without the Town's match up to a total of \$13,000 per year (ceiling increases to \$15,000 by 2006).

Since the program's inception, the Town had been with a subsidiary of Nationwide Investment Services Corporation. Although the Town had received satisfactory service from Nationwide, staff believed the Town should solicit formal proposals in the expectation of receiving lower administration fees (paid by the employee) and an improved selection of mutual funds for employee investments. The Town received seven responses to its request for proposals. A committee comprised of representatives of the Town's major departments selected three of the proposing companies for interviews. Following a thorough review of the company proposals and oral presentations, the committee ranked the companies applying several criteria. Attachment A reflects the scoring of the committee members who were unanimous in selecting ICMA-RC.

The committee was particularly impressed with ICMA-RC's assortment of mutual funds that offered high yields and low fees. Attachment B contrasts the funds offered by the three finalists. ICMA-RC also will not be charging participants any administrative fee for the deferred compensation program.

Finally, ICMA-RC offered the best product in response to the Town's request for a retirement health savings plan. The Town currently offers employees a FLEXTRA account, through which

they can make pre-tax contributions to fund their annual medical insurance premiums and out-of-pocket medical expenses. Unfortunately IRS tax regulations require any surplus in the accounts at the end of the year revert back to the employer, so employees are faced with a “use it or lose it” situation. A retirement health savings plan would allow for contributions to accumulate over time, so that by the time an employee retired, they could have significant savings with which to pay for medical expenses. The best aspect of this plan is its tax benefits. Not only are the employee contributions and subsequent earnings tax-free, *but also are the withdrawals*, provided they are used for eligible medical expenses. Over the next few months, staff will be researching this plan and make recommendations to Council how it can best be integrated with the Town’s other employee benefits.

RECOMMENDATION:

It is recommended Council authorize the City Manager to enter into agreement with ICMA-RC, pending city attorney’s approval, for administration of the Town’s deferred compensation program, and issue notice to Nationwide Retirement Solutions for termination of that company’s services to the Town.

- Attachment A – Committee Rankings of Administrators
- Attachment B – Schedule of Fund Performance
- ICMA-RC Presentation to Committee
- Draft Administrative Services Agreement

ATTACHMENT A

Instructions

Evaluate each vendor's proposal based on the criteria below. For each criterion, rate the proposal from 1 (very poor) to 10 (excellent). Multiply the rating against the rating factor to arrive at the score for the criterion (e.g. a rating of 7 for administrative capabilities would equal a score of 70). Maximum total score is 1,000.

| CRITERIA | Weighting | ICMA | | AIG | | Nationwide | |
|--|-----------|--|-------|--------|-------|------------|-------|
| | | Rating | Score | Rating | Score | Rating | Score |
| Quality of response to request for proposal Are the materials organized for easy review? Is the information presented in a way that is easily understood? Are complex terms defined for laypersons? Are the materials professional in appearance? | 15 | 10 | 150 | 8 | 120 | 8 | 120 |
| | | 9 | 135 | 9 | 135 | 9 | 135 |
| | | 10 | 150 | 9 | 135 | 9 | 135 |
| | | 10 | 150 | 8 | 120 | 8 | 120 |
| | | 9 | 135 | 8 | 120 | 7 | 105 |
| | | 10 | 150 | 9 | 135 | 7 | 105 |
| | | 8 | 120 | 8 | 120 | 5 | 75 |
| | | 9 | 135 | 9 | 135 | 9 | 135 |
| | | Firm qualifications Has the firm demonstrated significant experience working with public sector employers? Has the firm demonstrated significant experience with clients similar in size to Addison (200-300 employees)? | 10 | 10 | 100 | 8 | 80 |
| 9 | 90 | | | 9 | 90 | 9 | 90 |
| 10 | 100 | | | 10 | 100 | 10 | 100 |
| 10 | 100 | | | 8 | 80 | 10 | 100 |
| 10 | 100 | | | 7 | 70 | 9 | 90 |
| 10 | 100 | | | 9 | 90 | 9 | 90 |
| 10 | 100 | | | 9 | 90 | 6 | 60 |
| 10 | 100 | | | 9 | 90 | 8 | 80 |
| Participant services Does the firm have a web site that is user-friendly and assists employees with their deferment decisions? Does the firm, through its web site or personal visits, have extensive educational programs to inform employees of retirement principles and goals? Does the firm maintain a hotline to answer questions? | 20 | 10 | 200 | 8 | 160 | 8 | 160 |
| | | 10 | 200 | 9 | 180 | 8 | 160 |
| | | 10 | 200 | 10 | 200 | 10 | 200 |
| | | 10 | 200 | 8 | 160 | 8 | 160 |
| | | 9 | 180 | 8 | 160 | 6 | 120 |
| | | 9 | 180 | 8 | 160 | 7 | 140 |
| | | 9 | 180 | 7 | 140 | 7 | 140 |
| | | 9 | 180 | 9 | 180 | 8 | 160 |
| Administrative capabilities Has the firm demonstrated that it has the ability to quickly and effectively transition employees to a new or different plan? Is its hotline available 24/7? Is there a wait time to access customer service through the hotline? Are the participant reports comprehensive and easy to understand? | 10 | 8 | 80 | 8 | 80 | 7 | 70 |
| | | 9 | 90 | 9 | 90 | 8 | 80 |
| | | 10 | 100 | 9 | 90 | 9 | 90 |
| | | 8 | 80 | 8 | 80 | 7 | 70 |
| | | 8 | 80 | 6 | 60 | 5 | 50 |
| | | 10 | 100 | 9 | 90 | 8 | 80 |
| | | 9 | 90 | 6 | 60 | 6 | 60 |
| | | 9 | 90 | 9 | 90 | 10 | 100 |
| Depth, breadth, and quality of fund array Are the funds that are offered of sufficient diversity for employees with different retirement needs? Do the funds perform well against established benchmarks? Is it clear what fees are associated with each fund? | 15 | 10 | 150 | 7 | 105 | 5 | 75 |
| | | 10 | 150 | 8 | 120 | 6 | 90 |
| | | 10 | 150 | 9 | 135 | 4 | 60 |
| | | 10 | 150 | 7 | 105 | 5 | 75 |
| | | 8 | 120 | 8 | 120 | 3 | 45 |
| | | 9 | 135 | 9 | 135 | 8 | 120 |
| | | 10 | 150 | 9 | 135 | 5 | 75 |
| | | 10 | 150 | 8 | 120 | 5 | 75 |

ATTACHMENT A

Instructions

Evaluate each vendor's proposal based on the criteria below. For each criterion, rate the proposal from 1 (very poor) to 10 (excellent). Multiply the rating against the rating factor to arrive at the score for the criterion (e.g. a rating of 7 for administrative capabilities would equal a score of 70). Maximum total score is 1,000.

| CRITERIA | Weighting | ICMA | | AIG | | Nationwide | |
|---|------------|--------|--------------|--------|--------------|------------|--------------|
| | | Rating | Score | Rating | Score | Rating | Score |
| Investment flexibility Do employees have the ability to easily transfer deferrals to different funds without penalty? Can employees easily change the proportion of the deferments? | 15 | 8 | 120 | 8 | 120 | 8 | 120 |
| | | 9 | 135 | 9 | 135 | 8 | 120 |
| | | 10 | 150 | 8 | 120 | 6 | 90 |
| | | 8 | 120 | 8 | 120 | 8 | 120 |
| | | 8 | 120 | 7 | 105 | 5 | 75 |
| | | 10 | 150 | 10 | 150 | 8 | 120 |
| | | 10 | 150 | 8 | 120 | 3 | 45 |
| | | 9 | 135 | 9 | 135 | 9 | 135 |
| Total administrative fee What is the estimated monthly/annual fee based on existing amount and distribution of fund investments? | 15 | 10 | 150 | 7 | 105 | 8 | 120 |
| | | 9 | 135 | 9 | 135 | 7 | 105 |
| | | 10 | 150 | 8 | 120 | 5 | 75 |
| | | 10 | 150 | 7 | 105 | 8 | 120 |
| | | 9 | 135 | 6 | 90 | 4 | 60 |
| | | 10 | 150 | 9 | 135 | 8 | 120 |
| | | 10 | 150 | 5 | 75 | 3 | 45 |
| | | 10 | 150 | 8 | 120 | 6 | 90 |
| TOTAL | 100 | | | | | | |
| TOTAL SCORES FROM COMMITTEE MEMBERS | | | 950 | | 770 | | 765 |
| | | | 935 | | 885 | | 780 |
| | | | 1,000 | | 900 | | 750 |
| | | | 950 | | 770 | | 765 |
| | | | 870 | | 725 | | 545 |
| | | | 965 | | 895 | | 775 |
| | | | 940 | | 740 | | 500 |
| | | 940 | | 870 | | 775 | |
| Total | | | 7,550 | | 6,555 | | 5,655 |
| Average of those submitted | | | 944 | | 819 | | 707 |

ATTACHMENT B

Note: Shaded green indicates the best returns and fees of the competing firms while the grey shading reflects the worst.

| Asset Category | Fund Name / Index | 1-Year | 3-Year | Beta | Expense | Fund Name / Index | 1-Year | 3-Year | Beta | Expense |
|------------------------|----------------------------|--------|--------|------|---------|----------------------------|--------|--------|-------|---------|
| | | Return | Return | | Ratio | | Return | Return | | Ratio |
| | AIG | | | | | ICMA | | | | |
| Large Growth | Amer Funds Grth Fund R3 | 32.32 | -3.45 | n/a | 1.11 | Amer s Grth R4 | 32.83% | -3.14% | - | 0.74 |
| | Am Cent Ultra Inv | 25.83 | -6.18 | 0.99 | 0.99 | Vantagepoint Growth | 28.71% | -6.15% | 0.91 | 0.91 |
| Large Blend | Davis NY Venture A | 32.34 | -0.97 | 0.87 | 0.92 | VT Fidelity Contra® | 27.95% | 0.36% | 0.54 | 0.99 |
| | Oppenheimer Equity A | 26.26 | -2.40 | 0.77 | 0.96 | Vantagepoint Growth & Inc | 30.49% | -1.43% | 0.98 | 0.84 |
| Large Value | Amer Funds Washington R3 | 25.23 | 2.49 | n/a | 1.09 | PIMCO PEA Value Admin | 44.19% | 7.61% | 1.36 | 0.95 |
| | Pimco PEA Value A | 43.99 | 7.52 | 1.12 | 1.10 | Vantagepoint Equity Income | 33.09% | 5.22% | 0.95 | 0.92 |
| Mid-Cap Growth | Franklin Flex Cap Gr A | 40.48 | -6.8 | 1.18 | 1.07 | Fidelity Adv Mid Cap T | 43.75% | 0.47% | 1.11 | 1.26 |
| Mid-Cap Blend | TCW Galileo Val Opport N | 48.35 | 12.71 | 1.27 | 1.23 | Fidelity Adv LevCo Stk A | 91.61% | 26.62% | 2.37 | 1.30 |
| Mid-Cap Value | PIMCO PEA Renaissance A | 58.46 | 11.82 | 1.21 | 1.25 | Hotchkis & Wiley Mid Val I | 55.54% | 17.60% | 1.2 | 1.15 |
| Small Growth | JPMorganSmCapEq Sel | 37.07 | 2.43 | 0.76 | 0.85 | PIMCO CCM Emerg Co Admin | 54.33% | 12.50% | 0.86 | 1.75 |
| Small Blend | TCW Galileo Opportunity N | 50.17 | 10.23 | 0.84 | 1.31 | AmCent Small Co Inv3 | 53.57% | 15.31% | 0.92 | 0.90 |
| Small Value | American Aadv Sm Cp VI Pln | 51.28 | 21.46 | 0.90 | 1.11 | T. Rowe Price® Sm Val Adv4 | 36.24% | 17.60% | 0.79 | 1.06 |
| International Equity | Amer Funds Euro Pac R3 | 32.37 | -0.06 | n/a | 1.31 | Amer s EuroPac R4 | 32.88% | 0.23% | 0.89 | 0.96 |
| | Templeton Foreign A | 30.51 | 3.16 | 0.75 | 1.16 | Amer s CapWrldGI R4 | 38.83% | 7.00% | 0.83% | 0.91 |
| Intermediate-term Bond | PIMCO Total Ret A | 5.07 | 7.90 | 1.06 | 0.90 | PIMCO Total Return Adm | 5.30% | 8.13% | 1.06 | 0.68 |
| Government Bond | Am Cent Govt Bd Inv | 1.95 | 6.47 | 1.01 | 0.51 | AmCent Inf-Adj Bond Inv3 | 7.27% | 9.82% | 0.54 | 0.51 |

ATTACHMENT B

Note: Shaded green indicates the best returns and fees of the competing firms while the grey shading reflects the worst.

| Asset Category | Fund Name / Index | 1-Year Return | 3-Year Return | Beta | Expense Ratio |
|-------------------------------|---|---------------|-----------------------|------|---------------|
| Nationwide | | | | | |
| Large Growth | American Century Ultra Investors | 25.83% | -6.18% | 0.99 | 0.99 |
| | Morgan Stanley Inst. Fund Equity Fund A | 26.41% | -8.02% | 1.07 | 1.15 |
| Large Blend | Dreyfus Appreciation | 20.39% | -3.80% | 0.74 | 0.97 |
| | Gartmore Nationwide | 27.10% | -2.48% | 0.94 | 0.77 |
| Large Value | Van Kampen Growth & Income A | 27.57% | 0.73% | 0.79 | 0.85 |
| | Edgar Lomax Value | 23.17% | 0.47% | 0.86 | 1.23 |
| Mid-Cap Growth | One Group Mid Cap Growth A | 26.53% | -3.56% | 0.99 | 1.24 |
| Mid-Cap Blend | TCW Galileo Value Opportunity N | 48.35% | 12.71% | 1.27 | 1.35 |
| Mid-Cap Value | JP Morgan Mid Cap Value A | 30.07% | Inception 4/1/2001 | N/A | 1.25 |
| Small Growth | Brown Capital Management Small Co Inst | 41.71% | -1.42% | 1.36 | 1.23 |
| Small Blend | Neuberger Berman Genesis Trust | 31.65% | 12.70% | 0.60 | 1.12 |
| Small Value | Franklin Balance Sheet Investment A | 29.58% | 12.77% | 0.57 | 0.92 |
| International Equity | JP Morgan Fleming Intl Equity S | 31.93% | -1.33% | 0.86 | 1.03 |
| | Templeton Foreign | 30.51% | 3.16% | 0.75 | 1.16 |
| Intermediate-term Bond | PIMCO Total Return F | 5.07% | 7.90% | 1.06 | 0.90 |
| Government Bond | MDL Broad Market Fixed Income # | 0.96% | 5.57% | 1.13 | 0.90 |



America's Retirement Partner **ICMA-RC's Unique Purpose**

- Only provider with **exclusive** public sector focus
- \$20 billion administered in public sector assets
- Ranked 2nd nationally in plan assets gained in 2003*
- National leader in retiree health savings plans
 - 29 VantageCare RHS plans implemented in December 2003 alone
- Not-for-profit: **the customer** is our only shareholder
 - National client retention rate: 99.3%
 - Texas client retention rate: 100%**

**Defined Contribution News*, January 2004.

**ICMA-RC has retained 100% of plans with more than \$100,000 in assets over past five years.



Texas's Retirement Partner ***ICMA-RC's Unique Purpose***

- Texas provider since 1984
- Texas retention rate 100%*
- Texas commitment:
 - Over 225 457 plans
 - Over 20,000 participants

Texas 457 Plan Clients

- City of Bedford
- City of San Antonio
- City of Fort Worth
- DFW Airport
- City of Richardson
- Texas MRS

Texas Joint 457/RHS Plan Clients

- City of Arlington
- City of Pearland
- City of Carrollton
- City of University Park
- City of Denton
- Texoma COG

*ICMA-RC has retained 100% of plans with more than \$100,000 in assets over past five years.



Addison's Cost Savings

457 Plan Fees

- 0.00% plan administrative fees
- Fully disclosed fund expense ratios
 - Range from 0.51% to 1.75%
- No surrender or back-end fees
- Morningstar Online Advice Service offered **free of charge**



Addison's Investment Lineup

Custom Investment Lineup for the Town of Addison 457 Plan

457 Plan Core Investment Options

Large Cap Growth

Amer Funds Grth Fund R4
 Vantagepoint Growth

Morningstar Rating¹

★★★★★
 ★★★★★

Large Cap Blend

VT Fidelity Contrafund®
 Vantagepoint Growth & Income

★★★★★
 ★★★★★

Large Cap Value

PIMCO PEA Value Admin
 Vantagepoint Equity Income

★★★★★
 ★★★★★

Mid Cap Growth

Fidelity Adv Mid Cap T

★★★★★

Mid Cap Blend

Fidelity Adv LevCo Stk A

★★★★★

Mid Cap Value

Hotchkis & Wiley Mid Val I

★★★★★

Small Cap Growth

PIMCO CCM Emer Co Adm

★★★★★

Small Cap Blend

AmCent Small Co Inv²

★★★★★

Small Cap Value

T. Rowe Price® Sm Val Adv³

★★★★★

International

Amer Funds EuroPac R4
 Amer Funds CapWrldGI R4

★★★★★
 ★★★★★

¹Morningstar, Inc. is a global investment research firm that is not affiliated with ICMA-RC. Morningstar used as a source for some data. ²American Century is a registered trademark of American Century Services Corporation. ³T. Rowe Price is a registered trademark of T. Rowe Price Group, Inc. – all rights reserved.

*Please consult both the appropriate Funds' Prospectus and *MAKING SOUND INVESTMENT DECISIONS: A Retirement Investment Guide* carefully prior to investing any money. Vantagepoint securities are distributed by ICMA-RC Services, LLC, a broker/dealer affiliate of ICMA-RC, member NASD/SIPC. ICMA-RC Services, LLC, 777 North Capitol Street NE, Washington, DC 20002-4240. 1-800-669-7400. www.icmarc.org.



Addison's Plan and Participant Services ***Award-Winning Technology***

- Foundation: OmniPlus by SunGard
- Award winning **EZLink** plan sponsor web site
 - Instant access
 - Paperless environment
- Award winning **VantageLink** participant web site
 - Account aggregation
 - Morningstar®* investment advice
 - Statements online and on demand
 - Personalized performance



* Morningstar® is an independent provider of investment advice not affiliated with the ICMA Retirement Corporation. Investment advice and analysis tools are offered to participants through the ICMA Retirement Corporation, a federally registered Investment Adviser.



Addison's Plan and Participant Services

Electronic Communications

- Online Learning Center
- Legislative Action Center
- Participant communication
- Account access
- Online plan sponsor messages
- Online enrollment

Plan Summary

| | | |
|------------|--|----------------|
| Plan | TOWN OF VANTAGEPOINT | Summary as of |
| City/State | WASHINGTON, DC | Account Type |
| Phone | 202-962-4633 | Setup Date |
| Address | ICMA RETIREMENT CORPORATION 777 NORTH CAPITOL ST, NE WASHINGTON, DC 20002 | Payment Method |

CONTACT INFORMATION

| Function | Contact |
|---------------|--|
| DISBURSEMENTS | TEST PERSONS |
| PRIMARY | KRIS HEURICH PRIMARY_CONTACT@ICMARC.ORG |
| BILLING | TEST PERSONS testvantagepoint@aol.com |

CONTRIBUTION SUMMARY
Information as of 01/15/2003

| Inception To Date | Year To Date |
|-------------------|--------------|
| Total Balance | \$240,589.57 |

CONTRIBUTIONS

CREATE EMPTY SUBMISSION FILE

Payroll Date: mm/dd/yyyy

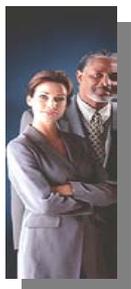
COMPLETED PAYROLL SUBMISSIONS: No completed payroll submissions found.

UNSENT PAYROLL SUBMISSIONS

| Select | Payroll Date | Submission ID | Participants | Total Amount |
|-----------------------|--------------|---------------|--------------|--------------|
| <input type="radio"/> | 01/07/2003 | 100212476 | 2 | \$150.00 |



Addison's Plan and Participant Services ***Targeted Approaches to Employee Education***



5% to 10%
"I know what to do"



30% to 40%
I'll do it with your help"



50% to 65%
"Tell me what to do"

- Internet
- CFP® Seminars
- Online Statements

- Toll-Free Services
- Educational Publications
- Investment Seminars

- Enrollment Seminars
- Individual Consultations
- Investment Advice



Addison's Easy Transition

Goal: Seamless Transition

- Most experienced in transitioning from Nationwide Retirement Solutions
- 12-year average team experience
- One-day blackouts
- Ease Town's administrative burden
- No interruption in benefit payments

***150 of last 151 ICMA-RC
transitions completed in one day!***

DRAFT 4/6/04

ADMINISTRATIVE SERVICES AGREEMENT

Type: 457

Account Number:

ADMINISTRATIVE SERVICES AGREEMENT

This Agreement, made as of the ____ day of _____, 2004 (herein referred to as the "Inception Date"), between The International City Management Association Retirement Corporation ("RC"), a nonprofit corporation organized and existing under the laws of the State of Delaware; and the Town of Addison, Texas ("Employer") a town organized and existing under the laws of the State of Texas with an office at 5300 Belt Line Road, Addison, TX, 75254.

RECITALS

Employer acts as a public plan sponsor for a retirement plan ("Plan") with responsibility to obtain investment alternatives and services for employees participating in that Plan;

VantageTrust (the "Trust") is a common law trust governed by an elected Board of Trustees for the commingled investment of retirement funds held by state and local governmental units for their employees;

RC acts as investment adviser to the Trust; RC has designed, and the Trust offers, a series of separate funds (the "Funds") for the investment of plan assets as referenced in the Trust's principal disclosure document, "Making Sound Investment Decisions: A Retirement Investment Guide." The Funds are available only to public employers and only through the Trust and RC.

In addition to serving as investment adviser to the Trust, RC provides a complete offering of services to public employers for the operation of employee retirement plans including, but not limited to, communications concerning investment alternatives, account maintenance, account record-keeping, investment and tax reporting, form processing, benefit disbursement and asset management.

AGREEMENTS

1. Appointment of RC

Employer hereby designates RC as Administrator of the Plan to perform all non-discretionary functions necessary for the administration of the Plan with respect to assets in the Plan deposited with the Trust. The functions to be performed by RC include:

- (a) allocation in accordance with participant direction of individual accounts to investment Funds offered by the Trust;
- (b) maintenance of individual accounts for participants reflecting amounts deferred, income, gain, or loss credited, and amounts disbursed as benefits;

- (c) provision of periodic reports to the Employer and participants of the status of Plan investments and individual accounts;
- (c) communication to participants of information regarding their rights and elections under the Plan;
- (d) provision of a Certified Financial Planner available on-site for one full week during the first year of the Agreement, and a minimum of two days in each subsequent year, to be used at the discretion of the Employer; and
- (e) disbursement of benefits as agent for the Employer in accordance with terms of the Plan.

2. Adoption of Trust

Employer has adopted the Declaration of Trust of VantageTrust and agrees to the commingled investment of assets of the Plan within the Trust. Employer agrees that operation of the Plan and investment, management and disbursement of amounts deposited in the Trust shall be subject to the Declaration of Trust, as it may be amended from time to time and shall also be subject to terms and conditions set forth in disclosure documents (such as the Retirement Investment Guide or Employer Bulletins) as those terms and conditions may be adjusted from time to time. It is understood that the term "Employer Trust" as it is used in the Declaration of Trust shall mean this Administrative Services Agreement.

3. Exclusivity Agreement

Employer agrees that for the initial or succeeding term of this Agreement specified in Section 10, so long as RC continues to perform in all material respects the services to be performed by it under this Agreement, Employer shall not obtain plan administration and investment advisory services from anyone other than RC. Employer acknowledges that RC has agreed to the compensation to be paid to RC under this Agreement in the expectation that RC will be able to offset costs allocable to performing this Agreement with revenues arising from Employer's exclusive use of RC at the rates provided herein throughout the initial or succeeding term.

4. Employer Duty to Furnish Information

Employer agrees to furnish to RC on a timely basis such information as is necessary for RC to carry out its responsibilities as Administrator of the Plan, including information needed to allocate individual participant accounts to Funds in the Trust, and information as to the employment status of participants, and participant ages, addresses and other identifying information (including tax identification numbers). RC shall be entitled to rely upon the accuracy of any information that is furnished to it by a responsible official of the Employer or any information relating to an individual participant or beneficiary that is furnished by

such participant or beneficiary, and RC shall not be responsible for any error arising from its reliance on such information. RC will provide account information in reports, statements or accountings.

5. Certain Representations, Warranties, and Covenants

RC represents and warrants to Employer that:

- (a) RC is a non-profit corporation with full power and authority to enter into this Agreement and to perform its obligations under this Agreement. The ability of RC to serve as investment adviser to the Trust is dependent upon the continued willingness of the Trust for RC to serve in that capacity.
- (b) RC is an investment adviser registered as such with the Securities and Exchange Commission under the Investment Advisers Act of 1940, as amended. ICMA-RC Services, Inc. (a wholly owned subsidiary of RC) is registered as a broker-dealer with the Securities and Exchange Commission (SEC) and is a member in good standing of the National Association of Securities Dealers, Inc.

RC covenants with employer that:

- (c) RC shall maintain and administer the Plan in compliance with the requirements for eligible deferred compensation plans under Section 457 of the Internal Revenue Code; provided, however, RC shall not be responsible for the eligible status of the Plan in the event that the Employer directs RC to administer the Plan or disburse assets in a manner inconsistent with the requirements of Section 457 or otherwise causes the Plan not to be carried out in accordance with its terms; provided, further, that if the plan document used by the Employer contains terms that differ from the terms of RC's standardized plan document, RC shall not be responsible for the eligible status of the Plan to the extent affected by the differing terms in the Employer's plan document.

Employer represents and warrants to RC that:

- (d) Employer is organized in the form and manner recited in the opening paragraph of this Agreement with full power and authority to enter into and perform its obligations under this Agreement and to act for the Plan and participants in the manner contemplated in this Agreement. Execution, delivery, and performance of this Agreement will not conflict with any law, rule, regulation or contract by which the Employer is bound or to which it is a party.

6. Participation in Certain Proceedings

The Employer hereby authorizes RC to act as agent, to appear on its behalf, and to join the Employer as a necessary party in all legal proceedings involving the garnishment of

benefits or the transfer of benefits pursuant to the divorce or separation of participants in the Employer Plan. Unless Employer notifies RC otherwise, Employer consents to the disbursement by RC of benefits that have been garnished or transferred to a former spouse, spouse or child pursuant to a domestic relations order.

7. Compensation and Payment

- (a) Plan Administration Fee. The amount to be paid for plan administration services under this Agreement shall be 0.00% per annum of the amount of Plan assets invested in the Trust.
- (b) Account Maintenance Fee. There shall be an annual account maintenance fee of \$0.00.
- (c) Compensation for Management Services to the Trust and Advisory and other Services to the Vantagepoint Funds. Employer acknowledges that in addition to amounts payable under this Agreement, RC receives fees from the Trust for investment management services furnished to the Trust. Employer further acknowledges that certain wholly-owned subsidiaries of RC receive compensation for advisory and other services furnished to the Vantagepoint Funds, which serve as the underlying portfolios of a number of Funds offered through the Trust. The fees referred to in this subsection are disclosed in the Retirement Investment Guide. These fees are not assessed against assets invested in the Trust's Mutual Fund Series.
- (e) Mutual Fund Services Fee. There is an annual charge of 0.00% assessed against average daily net Plan assets invested in the Trust's Mutual Fund Series.
- (f) Investment Advice Service. The annual fee for the on-line investment advice service made available by RC through its arrangement with Morningstar is hereby waived throughout the term of this Agreement.
- (g) Payment Procedures. All payments to RC pursuant to this Section 7 shall be paid out of the Plan assets held by the Trust and shall be paid by the Trust. The amount of Plan assets held in the Trust shall be adjusted by the Trust as required to reflect such payments.

8. Custody

Employer understands that amounts invested in the Trust are to be remitted directly to the Trust in accordance with instructions provided to Employer by RC and are not to be remitted to RC. In the event that any check or wire transfer is incorrectly labeled or transferred to RC, RC will return it to Employer with proper instructions.

9. Responsibility

RC shall not be responsible for any acts or omissions of any person other than RC in connection with the administration or operation of the Plan.

10. Term

This Agreement shall be in effect for an initial term beginning on the Inception Date and ending five years after the Inception Date. This Agreement will be renewed automatically for each succeeding year unless written notice of termination is provided by either party to the other no less than 60 days before the end of such Agreement year.

11. Amendments and Adjustments

- (a) This Agreement may not be amended except by written instrument signed by the parties.
- (b) The parties agree that an adjustment to compensation or administrative and operational services under this Agreement may only be implemented by RC through a proposal to the Employer via correspondence or the Employer Bulletin. The Employer will be given at least 60 days to review the proposal before the effective date of the adjustment. Such adjustment shall become effective unless, within the 60 day period before the effective date, the Employer notifies RC in writing that it does not accept such adjustment, in which event the parties will negotiate with respect to the adjustment.
- (c) No failure to exercise and no delay in exercising any right, remedy, power or privilege hereunder shall operate as a waiver of such right, remedy, power or privilege.

12. Notices

All notices required to be delivered under Section 11 of this Agreement shall be delivered personally or by registered or certified mail, postage prepaid, return receipt requested, to (i) RC at: Legal Department, ICMA Retirement Corporation, 777 North Capitol Street, N.E., Suite 600, Washington, D.C, 20002-4240; (ii) Employer at: Randy Moravec, Finance Director, at the office set forth in the first paragraph hereof, or to any other address designated by the party to receive the same by written notice similarly given.

13. Complete Agreement

This Agreement shall constitute the sole agreement between RC and Employer relating to the object of this Agreement and correctly sets forth the complete rights, duties and obligations of each party to the other as of its date. Any prior agreements, promises, negotiations or representations, verbal or otherwise, not expressly set forth in this Agreement are of no force and effect.

14. Governing Law

This agreement shall be governed by and construed in accordance with the laws of the State of Texas, applicable to contracts made in that jurisdiction without reference to its conflicts of laws provisions.

In Witness Whereof, the parties hereto have executed this Agreement as of the Inception Date first above written.

by:
Signature/Date

Name and Title (Please Print)

ICMA RETIREMENT CORPORATION

by: 
Paul Gallagher
Corporate Secretary

**THERE ARE NO
ATTACHMENTS
FOR ITEM #ES1**

**THERE ARE NO
ATTACHMENTS
FOR ITEM #ES2**