

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

NOVEMBER 23, 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 November 9, 2004 Council Meeting.

#2b – Consideration of a Resolution authorizing the City Manager to enter into a contract for services in the amount of \$9,000.00 with the Metrocrest Chamber of Commerce for fiscal year 2004-2005, subject to final review and approval of the City Attorney.

#2c – Consideration of a Resolution authorizing the City Manager to enter into a contract for services in the amount of \$5,000.00 with Special Care and Career Services for fiscal year 2004-2005, subject to final review and approval of the City Attorney.

#2d – Consideration of a Resolution authorizing the City Manager to enter into a contract for services in the amount of \$15,000.00 with Senior Adult Services for fiscal year 2004-2005, subject to final review and approval of the City Attorney.

#2e – Consideration of a Resolution authorizing the City Manager to enter into a contract for services in the amount of \$15,000.00 with Metrocrest Social Services for fiscal year 2004-2005, subject to final review and approval of the City Attorney.

#2f – Consideration of a Resolution authorizing the City Manager to enter into a contract for services in the amount of \$40,000.00 with Communities in Schools Dallas, Inc. for fiscal year 2004-2005, subject to final review and approval of the City Attorney.

#2g – Consideration of a Resolution authorizing the City Manager to enter into a contract for services in the amount of \$5,000.00 with The Family Place for fiscal year 2004-2005, subject to final review and approval of the City Attorney.

#2h – Consideration of a Resolution authorizing the City Manager to enter into a contract for services in the amount of \$6,600.00 with Dance Council for fiscal year 2004-2005, subject to final review and approval of the City Attorney.

#2i – Consideration of a Resolution authorizing the City Manager to enter into a contract for services for \$230,000.00 plus up to \$150,000.00 matching funds with WaterTower Theatre for the fiscal year 2004-2005, subject to final review and approval of the City Attorney.

#2j – Consideration of a Resolution authorizing the City Manager to enter into an "Agreement for the Use of the Addison Theatre Centre" between the Town and the WaterTower Theatre from October 1, 2004 through September 30, 2005, subject to final review and approval of the City Attorney.

#2k – Consideration of a Resolution authorizing the City Manager to execute an Interlocal Agreement between the Town of Addison and the City of Carrollton for the use of jail facilities.

#2l – Consideration of a Resolution authorizing the City Manager to enter into contracts with Blue Cross/Blue Shield for medical insurance, Delta Dental for dental insurance, Hartford Life Insurance Company for life, accidental death and dismemberment insurance and UnumProvident for long term disability insurance for the year 2005.

#2m – Consideration of approval of a 9-1-1 billing agreement with UTEX Communications Corp., which have a Service Provider Certificate of Operating Authority (SPCOA) from the Texas Public Utilities Commission.

#2n – Consideration of approval of a 9-1-1 billing agreement with Habla Comunicaciones, Inc., which have a Service Provider Certificate of Operating Authority (SPCOA) from the Texas Public Utilities Commission.

Item #R3 – **PUBLIC HEARING** and consideration of an Ordinance amending a Special Use Permit for a public building to be used by the federal government, located at 4900 Airport Parkway, on application from the United States Postal Service, represented by Mr. Dennis Delisse of MPI Architects.

Attachments:

1. Docket Map
2. Staff Report
3. Letter from Kent Hope
4. Letter from J. J. Horan
5. Memorandum from Angela Washington
6. Memorandum from Carmen Moran
7. Letter from J. J. Horan
8. Letter from Kent Hope
9. Letter from J. J. Horan
10. Memorandum from Carmen Moran
11. Letter from Ron Whitehead
12. Plans

The Planning and Zoning Commission Findings:

The Addison Planning and Zoning Commission, meeting in regular session on August 26, 2004, voted to recommend approval to amend a Special Use Permit for a public building to be used by the federal government, subject to the following conditions:

1. All of the planting beds and turf shall be renovated and replanted according to the original landscaping plan, or an alternative planting plan needs to be submitted for review and approval.
2. Final civil drawings shall be approved prior to issuance of a building permit.
3. The existing fence that runs north and south on the east property line shall be replaced with a new wooden (site barring) fence.

Voting Aye: Chafin, Doepfner, Jandura, Knott, Mellow
Voting Nay: None
Absent: Benjet, Bernstein

Administrative Recommendation:

Administration recommends approval.

Item #R4 – Consideration of an Ordinance approving a meritorious exception to Chapter 62, Signs, Section 62-163, Area, for Studio Salon & Fashion, located at 4900 Belt Line Road, Suite 250, on application from Studio Salon & Fashion.

Attachments:

1. Staff Report
2. Memorandum from Lynn Chandler
3. Application
4. Plans

Administrative Recommendation:

Administration recommends denial.

Item #R5 – Consideration of an Ordinance authorizing the issuance of the Town of Addison, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2004 (Addison Airport); levying a tax, and providing for the security for and payment of said certificates; accepting the best bid therefor and awarding the sale thereof; approving the official statement; enacting other provisions relating to the subject; and declaring an effective date.

Attachments:

1. Council Agenda Item Overview
2. Certificates of Obligation
3. Ordinance

Administrative Recommendation:

Administration recommends approval.

Item #R6 – Consideration of approval and a Resolution authorizing the City Manager to award incentive compensation to Washington Staubach Addison Airport Venture for 2004 in connection with Addison Airport management and operation.

Attachments:

1. Council Agenda Item Overview
2. Memorandum from Mark Acevedo
3. 2004 Annual Report – Addison Airport
4. Memorandum from Lisa Pyles

5. Memorandum from Randy Moravec
6. Third Amendment to the Operating Agreement
7. Exhibit

Administrative Recommendation:

Administration recommends approval.

Item #R7 – Consideration of a Resolution authorizing the City Manager to enter into an agreement in the amount of \$30,000.00 plus expenses with Southwest Speakers Bureau, Inc., dba Shiroma/Southwest to provide public relations and media publicity to promote the Town of Addison events.

Attachments:

1. Council Agenda Item Overview
2. Agreement

Administrative Recommendation:

Administration recommends approval.

Item #R8 – Presentation of the Finance Department Quarterly Report for the Quarter and Year ending September 30, 2004.

Attachment:

1. Quarterly Report
-

Adjourn Meeting

Posted 12:01 p.m.
November 19, 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

November 9, 2004
7:30 p.m. - Council Chambers
5300 Belt Line Road

Present: Councilmembers Braun, Chow, Hirsch, Niemann, Silver, Turner
Absent: Mayor Wheeler

Item #R1 – Consideration of Old Business

The following employees were introduced to the Council: Lynn Chandler (Development Services), Steve Rooney (Police) and Corey Carpenter (Fire).

Item #R2 – Consent Agenda

Item #2a was considered separately.

Item #2b – Consideration of a Resolution authorizing the City Manager to enter into a contract in the amount of \$5,751 with the Dallas County Health Department for annual health services. (Approved) (R04-095)

Item #2c – Consideration of a Resolution authorizing the City Manager to enter into a contract with Trinity River Authority (TRA) for wastewater testing services. (Approved) (R04-096)

Item #2d – Consideration of a Resolution approving sponsorship in the amount of \$50,000.00 with the Cavanaugh Flight Museum to assist in the Museum’s marketing efforts. (Approved) (R04-097)

Councilmember Silver moved to duly approve the above listed items. Councilmember Turner seconded. The motion carried.

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

Item #2a – Approval of the Minutes for the October 12, 2004 Council Meeting.

Councilmember Niemann moved to approve the October 12, 2004 with a correction to reflect the Executive Session item to indicate “Festival Way”. Councilmember Silver seconded. The motion carried.

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

Item #R3 – **PUBLIC HEARING** and consideration of an Ordinance approving a change of zoning from Commercial-1 (C-1) to Planned Development (PD) with all Commercial-1 uses allowed, hotel/motel as an allowed use, and the sale of alcoholic beverages for on-premises consumption only as an allowed use, approval of development plans, and approval of a Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, Wingate Inn, on application from Hospitality Management Corporation, located at 4960 Arapaho Road, represented by Mr. John O'Connor.

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

Councilmember Silver moved to duly pass Ordinance No. 004-048 approving a change of zoning from Commercial-1 (C-1) to Planned Development (PD) with all Commercial-1 uses allowed, hotel/motel as an allowed use, and the sale of alcoholic beverages for on-premises consumption only as an allowed use, approval of development plans, and approval of a Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, Wingate Inn, on application from Hospitality Management Corporation, located at 4960 Arapaho Road, subject to the following condition:

1. The term “bar”, “tavern”, or any equivalent terms, or graphic depiction, associated with alcoholic beverages shall not be used in exterior signs.

Councilmember Turner seconded. The motion carried.

Voting Aye: Braun, Chow, Hirsch, Niemann, Silver, Turner

Voting Nay: None

Absent: Wheeler

Item #R4 – **PUBLIC HEARING** and consideration of an Ordinance approving an amendment to an existing Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 14833 Midway Road, Suite 110, on application from Kelly Catering, represented by Ms. Kelly Paullus.

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

Councilmember Niemann moved to duly pass Ordinance No. 004-049 Resolution No. R04-098 approving an amendment to an existing Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 14833 Midway Road, Suite 110, on application from Kelly Catering, subject to the following conditions:

1. Any dead or missing plant material on the site shall be replaced and the irrigation system for the site shall be inspected, and repaired if necessary, prior to the issuance of a Certificate of Occupancy for this restaurant.
2. The applicant shall not use any terms, including the terms “bar”, “tavern”, or graphic depictions that denote alcoholic beverages in exterior signs.

Councilmember Turner seconded. The motion carried.

Voting Aye: Braun, Chow, Hirsch, Niemann, Silver, Turner

Voting Nay: None

Absent: Wheeler

Item #R5 – **PUBLIC HEARING** and consideration of an Ordinance approving an amendment to an existing Special Use Permit for a restaurant and an amendment to an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 3885 Belt Line Road (formerly Racks), on application from Mr. Eddy Metten.

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

Councilmember Turner moved to duly pass Ordinance No. 004-050 approving an amendment to an existing Special Use Permit for a restaurant and an amendment to an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 3885 Belt Line Road (formerly Racks), subject to the following conditions:

1. The landscaping and irrigation systems on the site shall be pruned, renovated, and repaired (if necessary) prior to the issuance of a Certificate of Occupancy for this proposed use.
2. The applicant shall not use any terms, including the term “club”, or graphic depictions that denote alcoholic beverages in exterior signs.

Councilmember Silver seconded. The motion carried.

Voting Aye: Braun, Chow, Hirsch, Niemann, Silver, Turner

Voting Nay: None

Absent: Wheeler

Item #R6 – **PUBLIC HEARING** and consideration of an Ordinance approving a Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 5290 Belt Line Road, Suite 110, on application from Chipotle Mexican Grill.

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

Councilmember Turner moved to duly pass Ordinance No. 004-051 approving a Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 5290 Belt Line Road, Suite 110, subject to the following conditions:

1. Any dead or missing plant material on the site shall be replaced and the irrigation system for the site shall be inspected, and repaired if necessary, prior to the issuance of a Certificate of Occupancy for this restaurant.
2. The applicant shall not use any terms, including the terms "bar", "tavern", or graphic depictions that denote alcoholic beverages in exterior signs.

Councilmember Braun seconded. The motion carried.

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

Item #R7 – **PUBLIC HEARING** and consideration of an Ordinance approving development plans in an existing Planned Development (PD) district, located on the northeast corner of Marsh Lane and Belt Line Road, on application from Century Bank, represented by Mr. Joel Miller of TAC Development.

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

Councilmember Silver moved to duly pass Ordinance No. 004-052 approving development plans in an existing Planned Development (PD) district, located on the northeast corner of Marsh Lane and Belt Line Road, on application from Century Bank, subject to the following conditions:

1. All mechanical equipment must be screened from view.
2. The applicant must provide a 2-foot dedication for a free right turn lane on the site. The dedication can be performed by either a replat or separate instrument.

Councilmember Turner seconded. The motion carried.

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

Item #R8 – **PUBLIC HEARING** on the proposed issuance by the City of one or more series of Combination Tax and Revenue Certificates of Obligations, Series 2004 (the “Certificates”) for airport improvements in the amount of \$4.4 million.

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

No action was taken.

Item #R9 – Consideration of an Ordinance approving a meritorious exception to Chapter 62, Signs, Section 62-163, Area, for Wachovia Bank, located at 5080 Spectrum Drive, on application from Accent Graphics, Inc.

Councilmember Niemann moved to duly pass Ordinance No. 004-053 approving a meritorious exception to Chapter 62, Signs, Section 62-163, Area, for Wachovia Bank, located at 5080 Spectrum Drive, subject to no conditions. Councilmember Braun seconded. The motion carried.

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

Item #R10 – Consideration of a Resolution authorizing the City Manager to enter into an advertising contract in the amount \$128,482.00 with the Dallas Morning News to purchase twenty-six (26) insertions in the Friday Guide.

Councilmember Niemann moved to duly pass Resolution No. R04-102 authorizing the City Manager to enter into an advertising contract in the amount \$128,482.00 with the Dallas Morning News to purchase twenty-six (26) insertions in the Friday Guide. Councilmember Turner seconded. The motion carried.

Mayor Wheeler entered the Council Chambers.

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

Item #R11 – Consideration of a Resolution authorizing the execution of an Interlocal Agreement with government entities utilizing the DemandStar online purchasing system.

Councilmember Turner moved to duly pass Resolution No. R04-103 authorizing the execution of an Interlocal Agreement with government entities utilizing the DemandStar online purchasing system. Councilmember Silver seconded. The motion carried.

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

Item #R12 – Consideration of a Resolution authorizing the City Manager to enter into a contract in the amount of \$94,175.00 with Houston-Galveston Area Council for the purchase of five (5) vehicles.

Councilmember Turner moved to duly pass Resolution No. R04-104 authorizing the City Manager to enter into a contract in the amount of \$94,175.00 with Houston-Galveston Area Council for the purchase of five (5) vehicles. Councilmember Chow seconded. The motion carried.

Voting Aye: Wheeler, Braun, Chow, Hirsch, Niemann, Silver, Turner

Voting Nay: None

Absent: None

Item #R13 – Consideration of a Resolution authorizing the City Manager to enter into a contract in the amount of \$52,000.00 with ZOLL Data System for the purchase of an Electronic Patient Data System, subject to final review and approval of the City Attorney.

Councilmember Chow moved to duly pass Resolution No. R04-105 authorizing the City Manager to enter into a contract in the amount of \$52,000.00 with ZOLL Data System for the purchase of an Electronic Patient Data System, subject to the inclusion and clarification of travel expenses/payments with final review and approval of the City Attorney. Councilmember Turner seconded. The motion carried.

Voting Aye: Wheeler, Braun, Chow, Hirsch, 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:

To consider approval of the contracts for services between the Town of Addison and the non-profits agencies funded from the General Fund and Hotel Fund budgets. The agencies and the amounts were approved by the City Council and included in the adopted FY 2004/05 budget.

FINANCIAL IMPACT:

All contracts are fully funded within the General Fund and Hotel Fund budgets.

	<u>General Fund</u>	<u>Hotel Fund</u>
Budgeted Amount:	<u>\$89,000.00</u>	<u>\$416,000.00</u>
Cost:	<u>\$89,000.00</u>	<u>\$386,600.00</u>

BACKGROUND:

During the FY 2004/05 budget process, the City Council reviewed the following non-profit agencies and funding amounts for FY 2004/05. Attached are the contracts for the non-profits and minor changes have made to ensure consistency within the contracts and to reflect changes to performances and their dates as applicable.

General Fund:	Amount	Hotel Fund	Amount
Communities in Schools –Dallas	\$40,000.00	WaterTower Theatre	\$230,000.00
Senior Adult Services	\$15,000.00	WaterTower Theatre – Matching	\$150,000.00
Metrocrest Social Service Center	\$15,000.00	Dance Council	\$6,600.00
Metrocrest Chamber of Commerce	\$9,000.00		
The Family Place	\$5,000.00		
Special Care and Career Services	\$5,000.00		
TOTAL	\$89,000.00	TOTAL	\$386,600.00

RECOMMENDATION:

It is recommended that the City Council approve the resolutions authorizing the City Manager to enter into contracts with the non-profits for the amounts listed above. These contracts shall be subject to final review and approval by the City Attorney to allow the flexibility to negotiate any minor changes as needed.

III. COMPENSATION

A. For the design, development and implementation of the programs enumerated in Section II above, the City shall pay to the Chamber the sum of Nine Thousand and No/100 Dollars (\$9,000.00).

B. The City shall make a payment in the amount of Four Thousand Five Hundred and No/100 Dollars (\$4,500.00) upon the receipt of a statement in January, 2005, and in the amount of Four Thousand Five Hundred and No/100 Dollars (\$4,500.00) upon the receipt of a statement in July, 2005, provided the Chamber is not then in default of this Contract. The Chamber shall provide its monthly financial statements to the City Manager. Such reports shall include statements of revenues and expenses. The City Manager shall also receive a copy of the Annual Business Plan and Annual Report of program activity. No payment shall be made during any period in which this provision is not complied with. Within 90 days following the termination of the Chamber's fiscal year, a financial statement for the Chamber prepared by a Certified Public Accountant of all activities funded by this Contract shall be provided to the City Manager. Such statement shall provide sufficient information as to support the accuracy of the monthly financial statements.

IV. RESPONSIBILITY; INDEMNIFICATION

(A) The Chamber agrees to assume and does hereby assume all responsibility and liability for damages or injuries sustained by persons or property, whether real or asserted, by or from the performance of services performed and to be performed hereunder by the Chamber, its officials, officers, employees, agents, servants, invitees, contractors, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

(B) In consideration of the granting of this CONTRACT, the Chamber agrees to defend, indemnify and hold harmless the town of Addison, Texas, its, officers, agents and employees (each an "Indemnitee") from and against any and all suits, actions, judgments, liabilities, penalties, fines, expenses, fees and costs (including reasonable attorney's fees and other costs of defense), and damages (together, "Damages") arising out of or in connection with the Chamber's performance of this Agreement, including Damages caused by the Indemnitee's own negligence, OR GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES EXPOSE AN INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY, except as specifically limited herein.

(C) With respect to the Chamber's indemnity obligation set forth in subsection (B) OF THIS SECTION, the Chamber shall have no duty to indemnify an Indemnitee for any Damages caused by the sole negligence of the Indemnitee, OR SOLE GROSS NEGLIGENCE OF THE INDEMNITEE, OR SOLE CONDUCT OF THE INDEMNITEE THAT MAY OR DOES EXPOSE THE INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY.

(c) If an Indemnitee suffers Damages arising out of or in connection with the performance of this Agreement that are caused by the concurrent negligence, GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES RESULT IN EXPOSURE TO STRICT LIABILITY, of both the Chamber and the Indemnitee, the Chamber's indemnity obligation set forth in subsection (B) OF THIS SECTION will be limited to a fraction of the total Damages equivalent to the Chamber's own percentage of responsibility.

(d) With respect to the Chamber's duty to defend set forth herein in subsection (B) OF THIS SECTION, the Chamber shall have the duty, at its sole cost and expense, through counsel of its choice, to litigate, defend, settle or otherwise attempt to resolve any claim, lawsuit, cause of action, or judgment arising out of or in connection with this Agreement; provided however, that the Town shall have the right to approve the selection of counsel by the Chamber and to reject the Chamber's selection of counsel and to select counsel of the Town's own choosing, in which instance, the Chamber shall be obligated to pay reasonable attorney fees and the expenses associated thereto. The Town agrees that it will not unreasonably withhold approval of counsel selected by the Chamber, and further, the Town agrees to act reasonably in the selection of counsel of its own choosing.

(e) In the event that the Chamber fails or refuses to provide a defense to any claim, lawsuit, judgment, or cause of action arising out of or in connection with this Agreement, the Town shall have the right to undertake the defense, compromise, or settlement of any such claim, lawsuit, judgment, or cause of action, through counsel of its own choice, on behalf of and for the account of, and at the risk of the Chamber, and the Chamber shall be obligated to pay the reasonable and necessary costs, expenses and attorneys' fees incurred by the Town in connection with handling the prosecution or defense and any appeal(s) related to such claim, lawsuit, judgment, or cause of action.

(F) THE INDEMNITY, HOLD HARMLESS, AND DEFENSE OBLIGATIONS OF THE CHAMBER SET FORTH HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS CONTRACT

V. TERMINATION

This Contract may be canceled and terminated by either party at any time and for any reason 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) day 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 Chamber has failed at the time of such cancellation and termination to provide all of the services set forth herein, Chamber shall refund to the City that portion of funds paid to Chamber under the terms of this Contract in accordance with the following: Prorata funding returned to the City by Chamber shall be determined by dividing the amount paid by the City under this Contract by 365 (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 Chamber and the City under this Contract shall be discharged and terminated (except as otherwise provided herein) 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. No officer or employee of Chamber shall have any financial interest, direct or indirect, in this Contract or the proceeds thereof.

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

The funds paid to Chamber 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.

Chamber 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 thirtieth (30th) day after the close of each quarter (beginning with the quarter ending December 31, 2004, with the last quarter ending September 30, 2005), Chamber shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by Chamber of the funds paid to Chamber under this Contract; and (b) a year-to-date report of the expenditures made by Chamber of the funds paid to Dance Council under this Contract (and if this Contract is terminated prior to its expiration, Chamber shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, Chamber shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of Chamber's fiscal year, Chamber shall provide the City with a financial statement signed by the Chairman of Chamber's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth Chamber's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

VIII. INDEPENDENT CONTRACTOR

In performing services under this Contract, the relationship between the City and Chamber is that of independent contractor, and the City and Chamber by the execution of this Contract do not change the independent status of Chamber. No term or provision of this Contract or action by Chamber in the performance of this Contract is intended nor shall be construed as making Chamber the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship.

IX. NON-ASSIGNABILITY

Chamber may not and shall have no authority to assign, transfer, or otherwise convey by any means whatsoever this Contract or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City, and any attempted assignment, transfer, or other conveyance of this Contract without such approval shall be null and void and be cause for immediate termination of this Contract by the City.

X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

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

XI. NON-DISCRIMINATION

During the term of this Contract, Chamber 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.

XII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS

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

XIII. VENUE; GOVERNING LAW

In the event of any action under this Contract, 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 Contract; 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 Contract.

XIV. 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.

XV. NO WAIVER; RIGHTS CUMULATIVE

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

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

XVI. 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 Chamber agree to provide the other with written notification within five (5) days, if the address for notices, provided below, is changed. Notices by personal delivery shall be deemed delivered upon the date delivered; mailed notices shall be deemed communicated on the date shown on the return receipt. If no date is shown, the mailed notice shall be deemed communicated on the third (3rd) day after depositing the same in the United States mail.

The City's address:

Mario Canizares
Assistant to the City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

Chamber's address:

Ed Brady
Executive Director
Metrocrest Chamber of Commerce
1204 Metrocrest Drive
Carrollton, Texas 75006

XVII. SEVERABILITY

The terms of this Contract are severable, and if any section, paragraph, clause, 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 section, paragraph, clause or portion had not been in the Contract initially.

XVIII. 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.

XIX. ENTIRE AGREEMENT

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

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

TOWN OF ADDISON, TEXAS

**METROCREST CHAMBER OF
COMMERCE**

By: _____
Ron Whitehead, City Manager

By: _____
Ed Brady, Executive Director

ATTEST:

ATTEST:

By: _____
Carmen Moran, City Secretary

By: _____

Council Agenda Item: #2c

SUMMARY:

To consider approval of the contracts for services between the Town of Addison and the non-profits agencies funded from the General Fund and Hotel Fund budgets. The agencies and the amounts were approved by the City Council and included in the adopted FY 2004/05 budget.

FINANCIAL IMPACT:

All contracts are fully funded within the General Fund and Hotel Fund budgets.

	<u>General Fund</u>	<u>Hotel Fund</u>
Budgeted Amount:	<u>\$89,000.00</u>	<u>\$416,000.00</u>
Cost:	<u>\$89,000.00</u>	<u>\$386,600.00</u>

BACKGROUND:

During the FY 2004/05 budget process, the City Council reviewed the following non-profit agencies and funding amounts for FY 2004/05. Attached are the contracts for the non-profits and minor changes have made to ensure consistency within the contracts and to reflect changes to performances and their dates as applicable.

General Fund:	Amount	Hotel Fund	Amount
Communities in Schools –Dallas	\$40,000.00	WaterTower Theatre	\$230,000.00
Senior Adult Services	\$15,000.00	WaterTower Theatre – Matching	\$150,000.00
Metrocrest Social Service Center	\$15,000.00	Dance Council	\$6,600.00
Metrocrest Chamber of Commerce	\$9,000.00		
The Family Place	\$5,000.00		
Special Care and Career Services	\$5,000.00		
TOTAL	\$89,000.00	TOTAL	\$386,600.00

RECOMMENDATION:

It is recommended that the City Council approve the resolutions authorizing the City Manager to enter into contracts with the non-profits for the amounts listed above. These contracts shall be subject to final review and approval by the City Attorney to allow the flexibility to negotiate any minor changes as needed.

STATE OF TEXAS

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CONTRACT FOR SERVICES

COUNTY OF DALLAS

This Contract for Services (“Contract”) made and entered into as of the 1st day of October 2004 by and between the Town of Addison, Texas (the “City”) and Special Care and Career Services (“Provider”).

WITNESSETH:

WHEREAS, Provider is a private, non-profit organization established under the laws of the State of Texas for the purpose of providing services to children and adults with disabilities since 1963; and

WHEREAS, Provider provides and will continue to provide “early childhood intervention” to citizens of the City and of the region surrounding the City through speech, physical, developmental and other specialized behavioral therapies; and,

WHEREAS, Provider provides and will continue to provide “supported employment services” to citizens of the City and of the region surrounding the City through occupational training for adults with mental retardation, job matching assistance and job performance support for these individuals; and

WHEREAS, Provider will provide these services in a manner consistent with the Town of Addison's non-profit agency reporting requirements by submitting quarterly client service reports, regular organizational financial reports, and updates on City clients served by the agency as well as identifying a staff person with Provider to be designated as a liaison to the City through which all reporting and communication shall flow; and

WHEREAS, the success or failure of Provider’s purposes and objectives has a direct impact on the health, comfort, and welfare of the citizens of the City; and

WHEREAS, the City has full power of local self government, has authority to contract with other persons, has authority to adopt regulations that are for the good government, peace, and order of the City, has authority to enforce laws reasonably necessary to protect the public health, and the services provided by Provider hereunder are in the public interest and are for, constitute and serve a public purpose in promoting the health and welfare of the citizens of the City.

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

I. TERM

The term of this contract and agreement shall be for a period of one year from the 1st day of October, 2004 through the 30th day of September, 2005, except as otherwise provided for herein.

II. SERVICES

Provider covenants and agrees that it shall:

- (a) Provide "early childhood intervention" to citizens of the City and of the region surrounding the City through speech, physical, developmental and other specialized behavioral therapies; and
- (b) Provide "supported employment services" to citizens of the City and of the region surrounding the City through occupational training for adults with mental retardation, job matching assistance and job performance support for these individuals; and
- (c) Provide such services in a manner consistent with the Town of Addison's non-profit agency reporting requirements by submitting quarterly client service reports, regular organizational financial reports, and updates on City clients served by the agency as well as identifying a staff person with Provider to be designated as a liaison to the City through which all reporting and communication shall flow; and
- (d) Submit detailed quarterly financial statements and program results to the City within thirty (30) days after the end of the preceding quarter explaining all expenditures.

III. COMPENSATION

For the operation and provision of the services, projects and programs of Provider as described herein, the City shall pay Provider the sum of Five Thousand and No/100 Dollars (\$5,000.00). Such sum shall be paid on or before January 9, 2005, provided Provider is not then in default of this Contract.

IV. RESPONSIBILITY; INDEMNIFICATION

(A) Special Care and Career Services agrees to assume and does hereby assume all responsibility and liability for damages or injuries sustained by persons or property, whether real or asserted, by or from the performance of services performed and to be performed hereunder by Special Care and Career Services, its officials, officers, employees, agents, servants, invitees, contractors, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

(B) In consideration of the granting of this CONTRACT, Special Care and Career Services agrees to defend, indemnify and hold harmless the town of Addison, Texas, its, officers, agents and employees (each an "Indemnitee") from and against any and all suits, actions, judgments, liabilities, penalties, fines, expenses, fees and costs (including reasonable attorney's fees and other costs of defense), and damages (together, "Damages") arising out of or in connection with Special Care and Career Services performance of this Agreement, including Damages caused by the Indemnitee's own negligence, OR GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES EXPOSE AN INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY, except as specifically limited herein.

(C) With respect to Special Care and Career Services' indemnity obligation set forth in subsection (B) OF THIS SECTION, Special Care and Career Services shall have no duty to indemnify an Indemnitee for any Damages caused by the sole negligence of the Indemnitee, OR SOLE GROSS NEGLIGENCE OF THE INDEMNITEE, OR SOLE CONDUCT OF THE INDEMNITEE THAT MAY OR DOES EXPOSE THE INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY.

(c) If an Indemnitee suffers Damages arising out of or in connection with the performance of this Agreement that are caused by the concurrent negligence, GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES RESULT IN EXPOSURE TO STRICT LIABILITY, of both Special Care and Career Services and the Indemnitee, Special Care and Career Services indemnity obligation set forth in subsection (B) OF THIS SECTION will be limited to a fraction of the total Damages equivalent to Special Care and Career Services own percentage of responsibility.

(d) With respect to Special Care and Career Services' duty to defend set forth herein in subsection (B) OF THIS SECTION, Special Care and Career Services shall have the duty, at its sole cost and expense, through counsel of its choice, to litigate, defend, settle or otherwise attempt to resolve any claim, lawsuit, cause of action, or judgment arising out of or in connection with this Agreement; provided however, that the Town shall have the right to approve the selection of counsel by Special Care and Career Services and to reject Special Care and Career Services' selection of counsel and to select counsel of the Town's own choosing, in which instance, Special Care and Career Services shall be obligated to pay reasonable attorney fees and the expenses associated thereto. The Town agrees that it will not unreasonably withhold approval of counsel selected by Special Care and Career Services, and further, the Town agrees to act reasonably in the selection of counsel of its own choosing.

(e) In the event that Special Care and Career Services fails or refuses to provide a defense to any claim, lawsuit, judgment, or cause of action arising out of or in connection with this Agreement, the Town shall have the right to undertake the defense, compromise, or settlement of any such claim, lawsuit, judgment, or cause of action, through counsel of its own choice, on behalf of and for the account of, and at the risk of Special Care and Career Services, and Special Care and Career Services shall be obligated to pay the reasonable and necessary costs, expenses and attorneys' fees incurred by the Town in connection with handling the prosecution or defense and any appeal(s) related to such claim, lawsuit, judgment, or cause of action.

(F) THE INDEMNITY, HOLD HARMLESS, AND DEFENSE OBLIGATIONS OF SPECIAL CARE AND CAREER SERVICES SET FORTH HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS CONTRACT

V. TERMINATION

This Contract may be canceled and terminated by either party at any time and for any reason 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) day 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

Provider has failed at the time of such cancellation and termination to provide all of the services set forth herein, Provider shall refund to the City that portion of funds paid to Provider under the terms of this Contract in accordance with the following: Prorata funding returned to the City by Provider shall be determined by dividing the amount paid by the City under this Contract by 365 (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 Provider and the City under this Contract shall be discharged and terminated (except as otherwise provided herein) 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. No officer or employee of Provider shall have any financial interest, direct or indirect, in this Contract or the proceeds thereof.

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

The funds paid to Provider 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.

Provider 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 thirtieth (30th) day after the close of each quarter (beginning with the quarter ending December 31, 2004, with the last quarter ending September 30, 2005), Provider shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by Provider of the funds paid to Provider under this Contract; and (b) a year-to-date report of the expenditures made by Provider of the funds paid to Dance Council under this Contract (and if this Contract is terminated prior to its expiration, Provider shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of

this Contract shall survive the expiration of this Contract). On request of the City at any time, Provider shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of Provider's fiscal year, Provider shall provide the City with a financial statement signed by the Chairman of Provider's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth Provider's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

VIII. INDEPENDENT CONTRACTOR

In performing services under this Contract, the relationship between the City and Provider is that of independent contractor, and the City and Provider by the execution of this Contract do not change the independent status of Provider. No term or provision of this Contract or action by Provider in the performance of this Contract is intended nor shall be construed as making Provider the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship.

IX. NON-ASSIGNABILITY

Provider may not and shall have no authority to assign, transfer, or otherwise convey by any means whatsoever this Contract or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City, and any attempted assignment, transfer, or other conveyance of this Contract without such approval shall be null and void and be cause for immediate termination of this Contract by the City.

X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

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

XI. NON-DISCRIMINATION

During the term of this Contract, Provider 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.

XII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS

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

XIII. VENUE; GOVERNING LAW

In the event of any action under this Contract, 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 Contract; 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 Contract.

XIV. 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.

XV. NO WAIVER; RIGHTS CUMULATIVE

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

XVI. 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 Provider agree to provide the other with written notification within five (5) days, if the address for notices, provided below, is changed. Notices by personal delivery shall be deemed delivered upon the date delivered; mailed notices shall be deemed communicated on the date shown on the return receipt. If no date is shown, the mailed notice shall be deemed communicated on the third (3rd) day after depositing the same in the United States mail.

The City's address:

Mario Canizares
Assistant to the City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

Provider' address:

Claudia Byrnes
Executive Director
Special Care & Career Services
4350 Sigma, Suite 100
Farmers Branch, Texas 75244

XVII. SEVERABILITY

The terms of this Contract are severable, and if any section, paragraph, clause, 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 section, paragraph, clause or portion had not been in the Contract initially.

XVIII. 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.

XIX. ENTIRE AGREEMENT

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

IN WITNESS THEREOF, the parties hereto have caused this Contract 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

SPECIAL CARE AND CAREER SERVICES

By: _____
Ron Whitehead, City Manager

By: _____
Claudia Byrnes, Executive Director

ATTEST:

ATTEST:

By: _____
Carmen Moran, City Secretary

By: _____

(printed name)

Its: _____

Council Agenda Item: #2d

SUMMARY:

To consider approval of the contracts for services between the Town of Addison and the non-profits agencies funded from the General Fund and Hotel Fund budgets. The agencies and the amounts were approved by the City Council and included in the adopted FY 2004/05 budget.

FINANCIAL IMPACT:

All contracts are fully funded within the General Fund and Hotel Fund budgets.

	<u>General Fund</u>	<u>Hotel Fund</u>
Budgeted Amount:	<u>\$89,000.00</u>	<u>\$416,000.00</u>
Cost:	<u>\$89,000.00</u>	<u>\$386,600.00</u>

BACKGROUND:

During the FY 2004/05 budget process, the City Council reviewed the following non-profit agencies and funding amounts for FY 2004/05. Attached are the contracts for the non-profits and minor changes have made to ensure consistency within the contracts and to reflect changes to performances and their dates as applicable.

General Fund:	Amount	Hotel Fund	Amount
Communities in Schools –Dallas	\$40,000.00	WaterTower Theatre	\$230,000.00
Senior Adult Services	\$15,000.00	WaterTower Theatre – Matching	\$150,000.00
Metrocrest Social Service Center	\$15,000.00	Dance Council	\$6,600.00
Metrocrest Chamber of Commerce	\$9,000.00		
The Family Place	\$5,000.00		
Special Care and Career Services	\$5,000.00		
TOTAL	\$89,000.00	TOTAL	\$386,600.00

RECOMMENDATION:

It is recommended that the City Council approve the resolutions authorizing the City Manager to enter into contracts with the non-profits for the amounts listed above. These contracts shall be subject to final review and approval by the City Attorney to allow the flexibility to negotiate any minor changes as needed.

STATE OF TEXAS

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CONTRACT FOR SERVICES

COUNTY OF DALLAS

This Contract for Services is made and entered into as of the 1st day of October 2004 by and between the Town of Addison, Texas (the "City") and Senior Adult Services of Addison, Carrollton, Coppell, and Farmers Branch ("Senior Adult Services").

WITNESSETH:

WHEREAS, Senior Adult Services is a private, non-profit organization established under the laws of the State of Texas for the purpose of providing information, programs, and referral services to the senior citizens within Addison, Carrollton, Coppell and Farmers Branch; and

WHEREAS, the success or failure of Senior Adult Services purposes and objectives has a direct impact on the health, comfort, and welfare of the senior citizens of the Town; and

WHEREAS, the City has full power of local self government, has authority to contract with other persons, has authority to adopt regulations that are for the good government, peace, and order of the City, has authority to enforce laws reasonably necessary to protect the public health, and the services provided by Senior Adult Services hereunder are in the public interest and are for, constitute and serve a public purpose in promoting the health and welfare of the citizens of the City.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the Town of Addison, Texas and Senior Adult Services of Addison, Carrollton, Coppell, and Farmers Branch do hereby covenant and agree as follows:

I. TERM

The term of this contract and agreement shall be for a period of one year from October 1, 2004 through September 30, 2005, except as otherwise provided for herein.

II. SERVICES

Senior Adult Services covenants and agrees that it shall:

- (a) Design, develop, and implement referral services, projects, or programs beneficial to the senior citizens living in the City of which include
 - (1) Transportation Assistance
 - (2) Home Repair Assistance
 - (3) Informational and Referral Services
 - (4) Home Delivered Meals
 - (5) Provide Case Management Services
 - (6) Care Givers Support

(b) Submit detailed quarterly financial statements and program results to the City within thirty (30) days after the end of the preceding quarter explaining all expenditures.

III. COMPENSATION

For the operation and provision of the services, projects and programs of Senior Adult Services as described herein, the City shall pay Senior Adult Services the sum of Fifteen Thousand and No/100 Dollars (\$15,000.00). Such sum shall be paid on or before January 9, 2005, provided Senior Adult Services is not then in default of this Contract.

IV. INDEMNIFICATION

(A) Senior Adult Services agrees to assume and does hereby assume all responsibility and liability for damages or injuries sustained by persons or property, whether real or asserted, by or from the performance of services performed and to be performed hereunder by Senior Adult Services, its officials, officers, employees, agents, servants, invitees, contractors, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

(B) In consideration of the granting of this CONTRACT, Senior Adult Services agrees to defend, indemnify and hold harmless the town of Addison, Texas, its, officers, agents and employees (each an "Indemnitee") from and against any and all suits, actions, judgments, liabilities, penalties, fines, expenses, fees and costs (including reasonable attorney's fees and other costs of defense), and damages (together, "Damages") arising out of or in connection with Senior Adult Services performance of this Agreement, including Damages caused by the Indemnitee's own negligence, OR GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES EXPOSE AN INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY, except as specifically limited herein.

(C) With respect to Senior Adult Services' indemnity obligation set forth in subsection (B) OF THIS SECTION, Senior Adult Services shall have no duty to indemnify an Indemnitee for any Damages caused by the sole negligence of the Indemnitee, OR SOLE GROSS NEGLIGENCE OF THE INDEMNITEE, OR SOLE CONDUCT OF THE INDEMNITEE THAT MAY OR DOES EXPOSE THE INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY.

(c) If an Indemnitee suffers Damages arising out of or in connection with the performance of this Agreement that are caused by the concurrent negligence, GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES RESULT IN EXPOSURE TO STRICT LIABILITY, of both Senior Adult Services and the Indemnitee, Senior Adult Services indemnity obligation set forth in subsection (B) OF THIS SECTION will be limited to a fraction of the total Damages equivalent to Senior Adult Services own percentage of responsibility.

(d) With respect to Senior Adult Services' duty to defend set forth herein in subsection (B) OF THIS SECTION, Senior Adult Services shall have the duty, at its sole cost and expense, through counsel of its choice, to litigate, defend, settle or otherwise attempt to resolve any claim, lawsuit, cause of action, or judgment arising out of or in connection with this Agreement; provided however, that the Town shall have the right to approve the selection of counsel by Senior Adult

Services and to reject the Senior Adult Services' selection of counsel and to select counsel of the Town's own choosing, in which instance, Senior Adult Services shall be obligated to pay reasonable attorney fees and the expenses associated thereto. The Town agrees that it will not unreasonably withhold approval of counsel selected by Senior Adult Services, and further, the Town agrees to act reasonably in the selection of counsel of its own choosing.

(e) In the event that Senior Adult Services fails or refuses to provide a defense to any claim, lawsuit, judgment, or cause of action arising out of or in connection with this Agreement, the Town shall have the right to undertake the defense, compromise, or settlement of any such claim, lawsuit, judgment, or cause of action, through counsel of its own choice, on behalf of and for the account of, and at the risk of Senior Adult Services, and Senior Adult Services shall be obligated to pay the reasonable and necessary costs, expenses and attorneys' fees incurred by the Town in connection with handling the prosecution or defense and any appeal(s) related to such claim, lawsuit, judgment, or cause of action.

(F) THE INDEMNITY, HOLD HARMLESS, AND DEFENSE OBLIGATIONS OF SENIOR ADULT SERVICES SET FORTH HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS CONTRACT

V. TERMINATION

This Contract may be canceled and terminated by either party at any time and for any reason 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) day 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 Senior Adult Services has failed at the time of such cancellation and termination to provide all of the services set forth herein, Senior Adult Services shall refund to the City that portion of funds paid to Senior Adult Services under the terms of this Contract in accordance with the following: Prorata funding returned to the City by Senior Adult Services shall be determined by dividing the amount paid by the City under this Contract by 365 (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 Senior Adult Services and the City under this Contract shall be discharged and terminated (except as otherwise provided herein) 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. No officer or employee of Senior Adult Services shall have any financial interest, direct or indirect, in this Contract or the proceeds thereof.

(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, Senior Adult Services shall submit for the City’s review a budget showing the use of the City’s funds provided pursuant to this Contract, and Senior Adult Services shall make such periodic reports to the City, as provided for herein, listing the expenditures made by Senior Adult Services from the funds provided by the City. The approval of Senior Adult Services’ annual budget creates a fiduciary duty in Senior Adult Services with respect to the funds provided by the City under this Contract.

The funds paid to Senior Adult Services 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.

Senior Adult Services 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 thirtieth (30th) day after the close of each quarter (beginning with the quarter ending December 31, 2004, with the last quarter ending September 30, 2005), Senior Adult Services shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by Senior Adult Services of the funds paid to Senior Adult Services under this Contract; and (b) a year-to-date report of the expenditures made by Senior Adult Services of the funds paid to Senior Adult Services under this Contract (and if this Contract is terminated prior to its expiration, Senior Adult Services shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, Senior Adult Services shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of Senior Adult Services’ fiscal year, Senior Adult Services shall provide the City with a financial statement signed by the Chairman of Senior Adult Services’ Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth Senior Adult Services’ income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

VIII. INDEPENDENT CONTRACTOR

In performing services under this Contract, the relationship between the City and Senior Adult Services is that of independent contractor, and the City and Senior Adult Services by the execution of this Contract do not change the independent status of Senior Adult Services. No term or provision of this Contract or action by Senior Adult Services in the performance of this Contract is intended nor shall be construed as making Senior Adult Services the agent, servant or employee

of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship.

IX. NON-ASSIGNABILITY

Senior Adult Services may not and shall have no authority to assign, transfer, or otherwise convey by any means whatsoever this Contract or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City, and any attempted assignment, transfer, or other conveyance of this Contract without such approval shall be null and void and be cause for immediate termination of this Contract by the City.

X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

Nothing contained in this Contract shall be deemed to constitute that the City and Senior Adult Services are partners or joint venturers with each other, or shall be construed or be deemed to establish that their relationship constitutes, or that this Contract creates, a joint enterprise.

XI. NON-DISCRIMINATION

During the term of this Contract, Senior Adult Services 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.

XII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS

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

XIII. VENUE; GOVERNING LAW

In the event of any action under this Contract, 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 Contract; 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 Contract.

XIV. 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.

XV. NO WAIVER; RIGHTS CUMULATIVE

The failure by either party to exercise any right or power, or option given to it by this Contract, or to insist upon strict compliance with the terms of this Contract, shall not constitute a

waiver of the terms and conditions of this Contract with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. The rights or remedies under this Contract are cumulative to any other rights or remedies, which may be granted by law.

XVI. 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 Senior Adult Services agree to provide the other with written notification within five (5) days, if the address for notices, provided below, is changed. Notices by personal delivery shall be deemed delivered upon the date delivered; mailed notices shall be deemed communicated on the date shown on the return receipt. If no date is shown, the mailed notice shall be deemed communicated on the third (3rd) day after depositing the same in the United States mail.

The Town's address:

Mario Canizares
Assistant to the City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

Senior Adult Services' address:

Mary Joiner
Executive Director
Senior Adult Services
1111 Belt Line Rd., # 110
Carrollton, Texas 75006

XVII. SEVERABILITY

The terms of this Contract are severable, and if any section, paragraph, clause, 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 section, paragraph, clause or portion had not been in the Contract initially.

XVIII. 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.

XIX. ENTIRE CONTRACT

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

IN WITNESS THEREOF, the parties hereto have caused this Contract 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

**SENIOR ADULT SERVICES
OF ADDISON, CARROLLTON COPPELL
AND FARMERS BRANCH**

By: _____
Ron Whitehead, City Manager

By: _____
Mary Joiner, Executive Director

ATTEST:

ATTEST:

By: _____
Carmen Moran, City Secretary

By: _____

(printed name)

Its: _____

Council Agenda Item: #2e

SUMMARY:

To consider approval of the contracts for services between the Town of Addison and the non-profits agencies funded from the General Fund and Hotel Fund budgets. The agencies and the amounts were approved by the City Council and included in the adopted FY 2004/05 budget.

FINANCIAL IMPACT:

All contracts are fully funded within the General Fund and Hotel Fund budgets.

	<u>General Fund</u>	<u>Hotel Fund</u>
Budgeted Amount:	<u>\$89,000.00</u>	<u>\$416,000.00</u>
Cost:	<u>\$89,000.00</u>	<u>\$386,600.00</u>

BACKGROUND:

During the FY 2004/05 budget process, the City Council reviewed the following non-profit agencies and funding amounts for FY 2004/05. Attached are the contracts for the non-profits and minor changes have made to ensure consistency within the contracts and to reflect changes to performances and their dates as applicable.

General Fund:	Amount	Hotel Fund	Amount
Communities in Schools –Dallas	\$40,000.00	WaterTower Theatre	\$230,000.00
Senior Adult Services	\$15,000.00	WaterTower Theatre – Matching	\$150,000.00
Metrocrest Social Service Center	\$15,000.00	Dance Council	\$6,600.00
Metrocrest Chamber of Commerce	\$9,000.00		
The Family Place	\$5,000.00		
Special Care and Career Services	\$5,000.00		
TOTAL	\$89,000.00	TOTAL	\$386,600.00

RECOMMENDATION:

It is recommended that the City Council approve the resolutions authorizing the City Manager to enter into contracts with the non-profits for the amounts listed above. These contracts shall be subject to final review and approval by the City Attorney to allow the flexibility to negotiate any minor changes as needed.

STATE OF TEXAS

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CONTRACT FOR SERVICES

COUNTY OF DALLAS

This Contract for Services is made and entered into as of the 1st day of October 2004 by and between the Town of Addison, Texas (the "City") and Metrocrest Social Service Center ("Metrocrest").

WITNESSETH:

WHEREAS, Metrocrest is a private, non-profit organization established under the laws of the State of Texas for the purpose of providing information, referral and short term emergency assistance to the citizens within the City; and

WHEREAS, the success or failure of Metrocrest's purposes and objectives has a direct impact on the health, comfort, and welfare of the citizens of the City; and

WHEREAS, the City has full power of local self government, has authority to contract with other persons, has authority to adopt regulations that are for the good government, peace, and order of the City, has authority to enforce laws reasonably necessary to protect the public health, and the services provided by Metrocrest hereunder are in the public interest and are for, constitute and serve a public purpose in promoting the health and welfare of the citizens of the City.

NOW, THEREFORE, in consideration of all mutual covenants and agreements hereinafter set forth, the parties do hereby covenant and agree as follows:

I. TERM

The term of this contract and agreement shall be for a period of one year from the 1st day of October, 2004 through the 30th day of September, 2005, except as otherwise provided for herein.

II. SERVICES

Metrocrest covenants and agrees that it shall:

(a) Provide direct material assistance and short term emergency assistance to residents and citizens of the City of which includes:

- 1) Rent
- 2) Utilities
- 3) Food
- 4) Clothing
- 5) Prescription Drugs
- 6) Transportation Services
- 7) Other

(b) Provide information and referral on health and social service issues to residents and citizens of the City of which includes:

- 1) Employment Assistance
 - 2) Health and Social Services Referrals
 - 3) Support Group Information
- (c) Provide indirect assistance to residents and citizens for the City of which includes:
- (1) Collaboration with others in the community for awareness of need and maximum utilization of resources
 - (2) Community education about issues, needs, and resources
 - (3) Inquiry into the causes of identified problems
 - (4) Participation in the development of plans and strategies to address the causes
 - (5) Provisions of volunteer opportunities for community-wide involvement in the programs of the Metrocrest Social Service Center.
- (d) Submit detailed quarterly financial statements and program results to the City within thirty (30) days after the end of the preceding quarter explaining all expenditures.

III. COMPENSATION

For the operation and provision of the services, projects and programs of Metrocrest as described herein, the City shall pay Metrocrest the sum of Fifteen Thousand and No/100 Dollars (\$15,000.00). Such sum shall be paid on or before January 9, 2005, provided Metrocrest is not then in default of this Contract.

IV. INDEMNIFICATION

(A) Metrocrest agrees to assume and does hereby assume all responsibility and liability for damages or injuries sustained by persons or property, whether real or asserted, by or from the performance of services performed and to be performed hereunder by Metrocrest, its officials, officers, employees, agents, servants, invitees, contractors, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

(B) In consideration of the granting of this CONTRACT, Metrocrest agrees to defend, indemnify and hold harmless the town of Addison, Texas, its, officers, agents and employees (each an "Indemnatee") from and against any and all suits, actions, judgments, liabilities, penalties, fines, expenses, fees and costs (including reasonable attorney's fees and other costs of defense), and damages (together, "Damages") arising out of or in connection with Metrocrest's performance of this Agreement, including Damages caused by the Indemnatee's own negligence, OR GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES EXPOSE AN INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY, except as specifically limited herein.

(C) With respect to Metrocrest's indemnity obligation set forth in subsection (B) OF THIS SECTION, Metrocrest shall have no duty to indemnify an Indemnatee for any Damages caused by the sole negligence of the Indemnatee, OR SOLE GROSS NEGLIGENCE OF THE INDEMNITEE, OR SOLE CONDUCT OF THE INDEMNITEE THAT MAY OR DOES EXPOSE THE INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY.

(c) If an Indemnitee suffers Damages arising out of or in connection with the performance of this Agreement that are caused by the concurrent negligence, GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES RESULT IN EXPOSURE TO STRICT LIABILITY, of both Metrocrest and the Indemnitee, Metrocrest's indemnity obligation set forth in subsection (B) OF THIS SECTION will be limited to a fraction of the total Damages equivalent to Metrocrest's own percentage of responsibility.

(d) With respect to Metrocrest's duty to defend set forth herein in subsection (B) OF THIS SECTION, Metrocrest shall have the duty, at its sole cost and expense, through counsel of its choice, to litigate, defend, settle or otherwise attempt to resolve any claim, lawsuit, cause of action, or judgment arising out of or in connection with this Agreement; provided however, that the Town shall have the right to approve the selection of counsel by Metrocrest and to reject the Metrocrest's selection of counsel and to select counsel of the Town's own choosing, in which instance, Metrocrest shall be obligated to pay reasonable attorney fees and the expenses associated thereto. The Town agrees that it will not unreasonably withhold approval of counsel selected by Metrocrest, and further, the Town agrees to act reasonably in the selection of counsel of its own choosing.

(e) In the event that Metrocrest fails or refuses to provide a defense to any claim, lawsuit, judgment, or cause of action arising out of or in connection with this Agreement, the Town shall have the right to undertake the defense, compromise, or settlement of any such claim, lawsuit, judgment, or cause of action, through counsel of its own choice, on behalf of and for the account of, and at the risk of Metrocrest, and Metrocrest shall be obligated to pay the reasonable and necessary costs, expenses and attorneys' fees incurred by the Town in connection with handling the prosecution or defense and any appeal(s) related to such claim, lawsuit, judgment, or cause of action.

(F) THE INDEMNITY, HOLD HARMLESS, AND DEFENSE OBLIGATIONS OF METROCREST SET FORTH HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS CONTRACT

V. TERMINATION

This Contract may be canceled and terminated by either party at any time and for any reason 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) day 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 Metrocrest has failed at the time of such cancellation and termination to provide all of the services set forth herein, Metrocrest shall refund to the City that portion of funds paid to Metrocrest under the terms of this Contract in accordance with the following: Prorata funding returned to the City by Metrocrest shall be determined by dividing the amount paid by the City under this Contract by 365 (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 Metrocrest and the City under this Contract shall be discharged and terminated (except as otherwise provided herein) 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. No officer or employee of Metrocrest shall have any financial interest, direct or indirect, in this Contract or the proceeds thereof.

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

The funds paid to Metrocrest 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.

Metrocrest 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 thirtieth (30th) day after the close of each quarter (beginning with the quarter ending December 31, 2004, with the last quarter ending September 30, 2005), Metrocrest shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by Metrocrest of the funds paid to Metrocrest under this Contract; and (b) a year-to-date report of the expenditures made by Metrocrest of the funds paid to Dance Council under this Contract (and if this Contract is terminated prior to its expiration, Metrocrest shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, Metrocrest shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of Metrocrest's fiscal year, Metrocrest shall provide the City with a financial statement signed by the Chairman of Metrocrest's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth Metrocrest's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

VIII. INDEPENDENT CONTRACTOR

In performing services under this Contract, the relationship between the City and Metrocrest is that of independent contractor, and the City and Metrocrest by the execution of this Contract do not change the independent status of Metrocrest. No term or provision of this Contract or action by Metrocrest in the performance of this Contract is intended nor shall be construed as making Metrocrest the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship.

IX. NON-ASSIGNABILITY

Metrocrest may not and shall have no authority to assign, transfer, or otherwise convey by any means whatsoever this Contract or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City, and any attempted assignment, transfer, or other conveyance of this Contract without such approval shall be null and void and be cause for immediate termination of this Contract by the City.

X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

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

XI. NON-DISCRIMINATION

During the term of this Contract, Metrocrest 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.

XII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS

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

XIII. VENUE; GOVERNING LAW

In the event of any action under this Contract, 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 Contract; 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 Contract.

XIV. 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.

XV. NO WAIVER; RIGHTS CUMULATIVE

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

XVI. 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 Metrocrest agree to provide the other with written notification within five (5) days, if the address for notices, provided below, is changed. Notices by personal delivery shall be deemed delivered upon the date delivered; mailed notices shall be deemed communicated on the date shown on the return receipt. If no date is shown, the mailed notice shall be deemed communicated on the third (3rd) day after depositing the same in the United States mail.

The City's address:

Mario Canizares
Assistant to the City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

Metrocrest's address:

Bunny Summerlin
Executive Director
Metrocrest Social Services
110 Belt Line Rd., #100
Carrollton, Texas 75006

XVII. SEVERABILITY

The terms of this Contract are severable, and if any section, paragraph, clause, 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 section, paragraph, clause or portion had not been in the Contract initially.

XVIII. 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.

XIX. ENTIRE AGREEMENT

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

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

TOWN OF ADDISON, TEXAS

**METROCREST SOCIAL SERVICE
CENTER**

By: _____
Ron Whitehead, City Manager

By: _____
Bunny Summerlin, Executive Director

ATTEST:

ATTEST:

By: _____
Carmen Moran, City Secretary

By: _____

(printed name)

Its: _____

Council Agenda Item: #2f

SUMMARY:

To consider approval of the contracts for services between the Town of Addison and the non-profits agencies funded from the General Fund and Hotel Fund budgets. The agencies and the amounts were approved by the City Council and included in the adopted FY 2004/05 budget.

FINANCIAL IMPACT:

All contracts are fully funded within the General Fund and Hotel Fund budgets.

	<u>General Fund</u>	<u>Hotel Fund</u>
Budgeted Amount:	<u>\$89,000.00</u>	<u>\$416,000.00</u>
Cost:	<u>\$89,000.00</u>	<u>\$386,600.00</u>

BACKGROUND:

During the FY 2004/05 budget process, the City Council reviewed the following non-profit agencies and funding amounts for FY 2004/05. Attached are the contracts for the non-profits and minor changes have made to ensure consistency within the contracts and to reflect changes to performances and their dates as applicable.

General Fund:	Amount	Hotel Fund	Amount
Communities in Schools –Dallas	\$40,000.00	WaterTower Theatre	\$230,000.00
Senior Adult Services	\$15,000.00	WaterTower Theatre – Matching	\$150,000.00
Metrocrest Social Service Center	\$15,000.00	Dance Council	\$6,600.00
Metrocrest Chamber of Commerce	\$9,000.00		
The Family Place	\$5,000.00		
Special Care and Career Services	\$5,000.00		
TOTAL	\$89,000.00	TOTAL	\$386,600.00

RECOMMENDATION:

It is recommended that the City Council approve the resolutions authorizing the City Manager to enter into contracts with the non-profits for the amounts listed above. These contracts shall be subject to final review and approval by the City Attorney to allow the flexibility to negotiate any minor changes as needed.

STATE OF TEXAS

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CONTRACT FOR SERVICES

COUNTY OF DALLAS

This Contract for Services is made and entered into as of the 1st day of October 2004 by and between the Town of Addison, Texas (the “City”), and Communities In Schools Dallas Region, Inc. (“Communities In Schools”).

WITNESSETH:

WHEREAS, Communities In Schools is a private, non-profit organization established under the laws of the State of Texas for the purpose of providing academic support and social services for children at risk of dropping out of school in the Dallas region; and

WHEREAS, the success or failure of the purposes and objectives of Communities In Schools has a direct impact on the health and welfare of the citizens of the City; and

WHEREAS, the City has full power of local self government, has authority to contract with other persons, has authority to adopt regulations that are for the good government, peace, and order of the City, has authority to enforce laws reasonably necessary to protect the public health, and the services provided by Communities In Schools hereunder are in the public interest and are for, constitute and serve a public purpose in promoting the health and welfare of the citizens of the City.

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

I. TERM

The term of this Contract shall be for a period of one year from the 1st day of October 2004 through the 30th day of September 2005, except as otherwise provided for herein.

II. SERVICES

Communities In Schools covenants and agrees that it shall:

(a) establish and continue an on-going campus program at Janie Stark Elementary School in the Carrollton-Farmers Branch I.S.D. aimed at providing students with supportive guidance, academic enhancement opportunities, individual and scholastic enrichment activities, health and human service agency referrals, and parental involvement programs;

(b) Assign two (2) professional staff to the Janie Stark Elementary School campus with bi-lingual language skills to guide in student development;

(c) conduct off-campus “home visits” with interested parents to acquaint them with enhanced student and parenting skills;

(d) coordinate with Addison apartment managers to hold neighborhood meetings to acquaint parents with Communities In Schools and its opportunities;

(e) bring the mobile service component of Communities In Schools to the Janie Stark Elementary School students;

(f) Provide effective follow-up reporting to the City through quarterly financial and service reports to indicate the numbers served;

(g) Provide an annual audit of financial condition to the City; and

(h) Submit detailed quarterly financial statements and program results to the City within thirty (30) days after the end of the preceding quarter explaining all expenditures.

III. COMPENSATION

For the operation and provision of the services, projects and programs of Communities In Schools as described herein, the City shall pay Communities In Schools the sum of Forty Thousand and No/100 Dollars (\$40,000.00). Such sum shall be paid on or before January 9, 2005, provided Communities In Schools is not then in default of this Contract.

IV. RESPONSIBILITY; INDEMNIFICATION

(A) Communities In Schools agrees to assume and does hereby assume all responsibility and liability for damages or injuries sustained by persons or property, whether real or asserted, by or from the performance of services performed and to be performed hereunder by Communities In Schools, its officials, officers, employees, agents, servants, invitees, contractors, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

(B) In consideration of the granting of this CONTRACT, Communities In Schools agrees to defend, indemnify and hold harmless the town of Addison, Texas, its, officers, agents and employees (each an "Indemnatee") from and against any and all suits, actions, judgments, liabilities, penalties, fines, expenses, fees and costs (including reasonable attorney's fees and other costs of defense), and damages (together, "Damages") arising out of or in connection with Communities In Schools performance of this Agreement, including Damages caused by the Indemnatee's own negligence, OR GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES EXPOSE AN INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY, except as specifically limited herein.

(C) With respect to Communities In Schools indemnity obligation set forth in subsection (B) OF THIS SECTION, Communities In Schools shall have no duty to indemnify an Indemnatee for any Damages caused by the sole negligence of the Indemnatee, OR SOLE GROSS NEGLIGENCE OF THE INDEMNITEE, OR SOLE CONDUCT OF THE INDEMNITEE THAT MAY OR DOES EXPOSE THE INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY.

(c) If an Indemnatee suffers Damages arising out of or in connection with the performance of this Agreement that are caused by the concurrent negligence, GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES RESULT IN EXPOSURE TO STRICT LIABILITY, of

both Communities In Schools and the Indemnitee, Communities In Schools indemnity obligation set forth in subsection (B) OF THIS SECTION will be limited to a fraction of the total Damages equivalent to Communities In Schools own percentage of responsibility.

(d) With respect to Communities In Schools' duty to defend set forth herein in subsection (B) OF THIS SECTION, Communities In Schools shall have the duty, at its sole cost and expense, through counsel of its choice, to litigate, defend, settle or otherwise attempt to resolve any claim, lawsuit, cause of action, or judgment arising out of or in connection with this Agreement; provided however, that the Town shall have the right to approve the selection of counsel by Communities In Schools and to reject the Communities In Schools' selection of counsel and to select counsel of the Town's own choosing, in which instance, Communities In Schools shall be obligated to pay reasonable attorney fees and the expenses associated thereto. The Town agrees that it will not unreasonably withhold approval of counsel selected by Communities In Schools, and further, the Town agrees to act reasonably in the selection of counsel of its own choosing.

(e) In the event that Communities In Schools fails or refuses to provide a defense to any claim, lawsuit, judgment, or cause of action arising out of or in connection with this Agreement, the Town shall have the right to undertake the defense, compromise, or settlement of any such claim, lawsuit, judgment, or cause of action, through counsel of its own choice, on behalf of and for the account of, and at the risk of Communities In Schools, and Communities In Schools shall be obligated to pay the reasonable and necessary costs, expenses and attorneys' fees incurred by the Town in connection with handling the prosecution or defense and any appeal(s) related to such claim, lawsuit, judgment, or cause of action.

(F) THE INDEMNITY, HOLD HARMLESS, AND DEFENSE OBLIGATIONS OF COMMUNITIES IN SCHOOLS SET FORTH HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS CONTRACT

V. TERMINATION

This Contract may be canceled and terminated by either party at any time and for any reason 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) day 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 Communities In Schools has failed at the time of such cancellation and termination to provide all of the services set forth herein, Communities In Schools shall refund to the City that portion of funds paid to Communities In Schools under the terms of this Contract in accordance with the following: Prorata funding returned to the City by Communities In Schools shall be determined by dividing the amount paid by the City under this Contract by 365 (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 Communities In Schools and the City under this Contract shall be discharged and terminated (except as otherwise provided herein) 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. No officer or employee of Communities In Schools shall have any financial interest, direct or indirect, in this Contract or the proceeds thereof.

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

The funds paid to Communities in School 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.

Communities In Schools 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 thirtieth (30th) day after the close of each quarter (beginning with the quarter ending December 31, 2004, with the last quarter ending September 30, 2005), Communities In Schools shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by Communities In Schools of the funds paid to Communities In Schools under this Contract; and (b) a year-to-date report of the expenditures made by Communities In Schools of the funds paid to Dance Council under this Contract (and if this Contract is terminated prior to its expiration, Communities In Schools shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, Communities In Schools shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of Communities In Schools' fiscal year, Communities In Schools shall provide the City with a financial statement signed by the Chairman of Communities In Schools' Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth Communities In Schools' income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

VIII. INDEPENDENT CONTRACTOR

In performing services under this Contract, the relationship between the City and Communities In Schools is that of independent contractor, and the City and Communities In Schools by the execution of this Contract do not change the independent status of Communities In Schools. No term or provision of this Contract or action by Communities In Schools in the performance of this Contract is intended nor shall be construed as making Communities In Schools the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship.

IX. NON-ASSIGNABILITY

Communities In Schools may not and shall have no authority to assign, transfer, or otherwise convey by any means whatsoever this Contract or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City, and any attempted assignment, transfer, or other conveyance of this Contract without such approval shall be null and void and be cause for immediate termination of this Contract by the City.

X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

Nothing contained in this Contract shall be deemed to constitute that the City and Communities In Schools are partners or joint venturers with each other, or shall be construed or be deemed to establish that their relationship constitutes, or that this Contract creates, a joint enterprise.

XI. NON-DISCRIMINATION

During the term of this Contract, Communities In Schools 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.

XII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS

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

XIII. VENUE; GOVERNING LAW

In the event of any action under this Contract, 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 Contract; 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 Contract.

XIV. 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.

XV. NO WAIVER; RIGHTS CUMULATIVE

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

XVI. 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 Communities In Schools Dallas Region, Inc. agree to provide the other with written notification within five (5) days, if the address for notices, provided below, is changed. Notices by personal delivery shall be deemed delivered upon the date delivered; mailed notices shall be deemed communicated on the date shown on the return receipt. If no date is shown, the mailed notice shall be deemed communicated on the third (3rd) day after depositing the same in the United States mail.

The City's address:

Mario Canizares
Assistant to the City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

Communities In Schools Dallas Region,
Inc. address:

Sandra Chavarria
President & CEO
8700 Stemmons Frwy, Suite 125
Dallas, TX 75247

XVII. SEVERABILITY

The terms of this Contract are severable, and if any section, paragraph, clause, 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 section, paragraph, clause or portion had not been in the Contract initially.

XVIII. 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.

XIX. ENTIRE CONTRACT

This Contract represents the entire and integrated contract and agreement between the City and Communities In Schools Dallas Region, Inc. and supersedes all prior negotiations,

representations and/or agreements, either written or oral. This Contract may be amended only by written instrument signed by both the City and Communities In Schools Dallas Region, Inc.

IN WITNESS THEREOF, the parties hereto have caused this Contract 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

**COMMUNITIES IN SCHOOLS
DALLAS REGION, INC.**

By: _____
Ron Whitehead, City Manager

By: _____
Sandra Chavarria, President

ATTEST:

ATTEST:

By: _____
Carmen Moran, City Secretary

By: _____

(printed name)
Its: _____

Council Agenda Item: #2g

SUMMARY:

To consider approval of the contracts for services between the Town of Addison and the non-profits agencies funded from the General Fund and Hotel Fund budgets. The agencies and the amounts were approved by the City Council and included in the adopted FY 2004/05 budget.

FINANCIAL IMPACT:

All contracts are fully funded within the General Fund and Hotel Fund budgets.

	<u>General Fund</u>	<u>Hotel Fund</u>
Budgeted Amount:	<u>\$89,000.00</u>	<u>\$416,000.00</u>
Cost:	<u>\$89,000.00</u>	<u>\$386,600.00</u>

BACKGROUND:

During the FY 2004/05 budget process, the City Council reviewed the following non-profit agencies and funding amounts for FY 2004/05. Attached are the contracts for the non-profits and minor changes have made to ensure consistency within the contracts and to reflect changes to performances and their dates as applicable.

General Fund:	Amount	Hotel Fund	Amount
Communities in Schools –Dallas	\$40,000.00	WaterTower Theatre	\$230,000.00
Senior Adult Services	\$15,000.00	WaterTower Theatre – Matching	\$150,000.00
Metrocrest Social Service Center	\$15,000.00	Dance Council	\$6,600.00
Metrocrest Chamber of Commerce	\$9,000.00		
The Family Place	\$5,000.00		
Special Care and Career Services	\$5,000.00		
TOTAL	\$89,000.00	TOTAL	\$386,600.00

RECOMMENDATION:

It is recommended that the City Council approve the resolutions authorizing the City Manager to enter into contracts with the non-profits for the amounts listed above. These contracts shall be subject to final review and approval by the City Attorney to allow the flexibility to negotiate any minor changes as needed.

STATE OF TEXAS

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CONTRACT FOR SERVICES

COUNTY OF DALLAS

This Contract for Services is made and entered into as of the 1st day of October 2004 by and between the Town of Addison, Texas (the “City”), and The Family Place, Inc. (“The Family Place”).

WITNESSETH:

WHEREAS, The Family Place is a private, non-profit organization established under the laws of the State of Texas for the purpose of providing counseling, outreach, referrals, education and protection services to victims of domestic violence; and

WHEREAS, the success or failure of The Family Place purposes and objectives has a direct impact on the health and welfare of the citizens of the City; and

WHEREAS, the City has full power of local self government, has authority to contract with other persons, has authority to adopt regulations that are for the good government, peace, and order of the City, has authority to enforce laws reasonably necessary to protect the public health, and the services provided by The Family Place hereunder are in the public interest and are for, constitute and serve a public purpose in promoting the health and welfare of the citizens of the City.

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

I. TERM

The term of this contract and agreement shall be for a period of one year from the 1st day of October, 2004 through the 30th day of September, 2005, except as otherwise provided for herein.

II. SERVICES

The Family Place covenants and agrees that it shall:

(a) Establish a satellite facility in the Metrocrest area for the purpose of conducting counseling, outreach, referrals, public education, and protection services to victims of domestic violence through a variety of program services in the Addison, Carrollton, and Farmers Branch area;

(b) Coordinate with other area social outreach agencies such as Metrocrest Social Services to provide the functions described in paragraph (a) above. Such coordination shall include volunteer training for those volunteers (who desire and agree to be so trained) conducting referral functions for the Metrocrest Social Services and any other groups employing volunteers for referral functions;

(c) Distribute to various media, brochures and public service announcements (“PSA”) to inform residents in the area of the services offered by The Family Place. Such an informational campaign shall include the following:

- radio public service announcements submitted to air in English and Spanish
- local and regional newspaper PSAs describing the Family Place services
- distribution of informational pamphlets to various community, civic, and social service organizations within the Metrocrest
- speaking engagements at various community, civic, and social service organizations to also include, when arranged by the City, an annual presentation to the Addison apartment managers forum as an avenue to disseminate public information within the apartment communities;

(d) Include an Addison representative on the Family Place Metrocrest Advisory Board to enhance communication and coordination of the agencies efforts in Addison and the Metrocrest;

(e) Seek the assistance of volunteers in conducting all annual fundraising events to raise awareness of the Family Place and its services. Such special events shall be rotated through Addison, Carrollton, and Farmers Branch to serve as host sites;

(f) Present a mid-year report to the Addison City Council on the progress and status of services provided at the new Metrocrest satellite facility, and continue quarterly status reporting to the City in a mutually agreed upon form;

(g) Provide a copy of The Family Place’s annual audit of financial condition to the City; and

(h) Submit detailed quarterly financial statements and program results to the City within thirty (30) days after the end of the preceding quarter explaining all expenditures.

III. COMPENSATION

For the operation and provision of the services, projects and programs of The Family Place as described herein, the City shall pay The Family Place the sum of Five Thousand and No/100 Dollars (\$5,000.00). Such sum shall be paid on or before January 9, 2005, provided The Family Place is not then in default of this Contract.

IV. RESPONSIBILITY; INDEMNIFICATION

(A) The Family Place agrees to assume and does hereby assume all responsibility and liability for damages or injuries sustained by persons or property, whether real or asserted, by or from the performance of services performed and to be performed hereunder by the Family Place, its officials, officers, employees, agents, servants, invitees, contractors, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

(B) In consideration of the granting of this CONTRACT, the Family Place agrees to defend, indemnify and hold harmless the town of Addison, Texas, its, officers, agents and employees (each an "Indemnitee") from and against any and all suits, actions, judgments, liabilities, penalties, fines, expenses, fees and costs (including reasonable attorney's fees and other costs of defense), and damages (together, "Damages") arising out of or in connection with the Family Place's performance of this Agreement, including Damages caused by the Indemnitee's own negligence, OR GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES EXPOSE AN INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY, except as specifically limited herein.

(C) With respect to the Family Place's indemnity obligation set forth in subsection (B) OF THIS SECTION, the Family Place shall have no duty to indemnify an Indemnitee for any Damages caused by the sole negligence of the Indemnitee, OR SOLE GROSS NEGLIGENCE OF THE INDEMNITEE, OR SOLE CONDUCT OF THE INDEMNITEE THAT MAY OR DOES EXPOSE THE INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY.

(c) If an Indemnitee suffers Damages arising out of or in connection with the performance of this Agreement that are caused by the concurrent negligence, GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES RESULT IN EXPOSURE TO STRICT LIABILITY, of both the Family Place and the Indemnitee, the Family Place's indemnity obligation set forth in subsection (B) OF THIS SECTION will be limited to a fraction of the total Damages equivalent to the Family Place's own percentage of responsibility.

(d) With respect to the Family Place's duty to defend set forth herein in subsection (B) OF THIS SECTION, the Family Place shall have the duty, at its sole cost and expense, through counsel of its choice, to litigate, defend, settle or otherwise attempt to resolve any claim, lawsuit, cause of action, or judgment arising out of or in connection with this Agreement; provided however, that the Town shall have the right to approve the selection of counsel by the Family Place and to reject the Family Place's selection of counsel and to select counsel of the Town's own choosing, in which instance, the Family Place shall be obligated to pay reasonable attorney fees and the expenses associated thereto. The Town agrees that it will not unreasonably withhold approval of counsel selected by the Family Place, and further, the Town agrees to act reasonably in the selection of counsel of its own choosing.

(e) In the event that the Family Place fails or refuses to provide a defense to any claim, lawsuit, judgment, or cause of action arising out of or in connection with this Agreement, the Town shall have the right to undertake the defense, compromise, or settlement of any such claim, lawsuit, judgment, or cause of action, through counsel of its own choice, on behalf of and for the account of, and at the risk of the Family Place, and the Family Place shall be obligated to pay the reasonable and necessary costs, expenses and attorneys' fees incurred by the Town in connection with handling the prosecution or defense and any appeal(s) related to such claim, lawsuit, judgment, or cause of action.

(F) THE INDEMNITY, HOLD HARMLESS, AND DEFENSE OBLIGATIONS OF THE FAMILY PLACE SET FORTH HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS CONTRACT

V. TERMINATION

This Contract may be canceled and terminated by either party at any time and for any reason 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) day 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 Family Place has failed at the time of such cancellation and termination to provide all of the services set forth herein, The Family Place shall refund to the City that portion of funds paid to The Family Place under the terms of this Contract in accordance with the following: Prorata funding returned to the City by The Family Place shall be determined by dividing the amount paid by the City under this Contract by 365 (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 Family Place and the City under this Contract shall be discharged and terminated (except as otherwise provided herein) 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. No officer or employee of The Family Place shall have any financial interest, direct or indirect, in this Contract or the proceeds thereof.

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

VII. ACCOUNTING

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

The funds paid to The Family Place 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.

The Family Place 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 thirtieth (30th) day after the close of each quarter (beginning with the quarter ending December 31, 2004, with the last quarter ending September 30, 2005), The Family Place

shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by The Family Place of the funds paid to The Family Place under this Contract; and (b) a year-to-date report of the expenditures made by The Family Place of the funds paid to Dance Council under this Contract (and if this Contract is terminated prior to its expiration, The Family Place shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, The Family Place shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of The Family Place's fiscal year, The Family Place shall provide the City with a financial statement signed by the Chairman of The Family Place's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth The Family Place's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

VIII. INDEPENDENT CONTRACTOR

In performing services under this Contract, the relationship between the City and The Family Place is that of independent contractor, and the City and The Family Place by the execution of this Contract do not change the independent status of The Family Place. No term or provision of this Contract or action by The Family Place in the performance of this Contract is intended nor shall be construed as making The Family Place the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship.

IX. NON-ASSIGNABILITY

The Family Place may not and shall have no authority to assign, transfer, or otherwise convey by any means whatsoever this Contract or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City, and any attempted assignment, transfer, or other conveyance of this Contract without such approval shall be null and void and be cause for immediate termination of this Contract by the City.

X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPIRS

Nothing contained in this Contract shall be deemed to constitute that the City and The Family Place are partners or joint venturers with each other, or shall be construed or be deemed to establish that their relationship constitutes, or that this Contract creates, a joint enterprise.

XI. NON-DISCRIMINATION

During the term of this Contract, The Family Place 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.

XII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS

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

XIII. VENUE; GOVERNING LAW

In the event of any action under this Contract, 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 Contract; 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 Contract.

XIV. 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.

XV. NO WAIVER; RIGHTS CUMULATIVE

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

XVI. 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 The Family Place agree to provide the other with written notification within five (5) days, if the address for notices, provided below, is changed. Notices by personal delivery shall be deemed delivered upon the date delivered; mailed notices shall be deemed communicated on the date shown on the return receipt. If no date is shown, the mailed notice shall be deemed communicated on the third (3rd) day after depositing the same in the United States mail.

The City's address:

The Family Place's address:

Mario Canizares
Assistant to the City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

Page Flink
Executive Director
The Family Place
P.O. Box 7999
Dallas, Texas 75209

XVII. SEVERABILITY

The terms of this Contract are severable, and if any section, paragraph, clause, 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 section, paragraph, clause or portion had not been in the Contract initially.

XVIII. 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.

XIX. ENTIRE CONTRACT

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

IN WITNESS THEREOF, the parties hereto have caused this Contract 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

THE FAMILY PLACE, INC.

By: _____
Ron Whitehead, City Manager

By: _____
Page Flink, Executive Director

ATTEST:

ATTEST:

By: _____
Carmen Moran, City Secretary

By: _____
Its: _____

Council Agenda Item: #2h

SUMMARY:

To consider approval of the contracts for services between the Town of Addison and the non-profits agencies funded from the General Fund and Hotel Fund budgets. The agencies and the amounts were approved by the City Council and included in the adopted FY 2004/05 budget.

FINANCIAL IMPACT:

All contracts are fully funded within the General Fund and Hotel Fund budgets.

	<u>General Fund</u>	<u>Hotel Fund</u>
Budgeted Amount:	<u>\$89,000.00</u>	<u>\$416,000.00</u>
Cost:	<u>\$89,000.00</u>	<u>\$386,600.00</u>

BACKGROUND:

During the FY 2004/05 budget process, the City Council reviewed the following non-profit agencies and funding amounts for FY 2004/05. Attached are the contracts for the non-profits and minor changes have made to ensure consistency within the contracts and to reflect changes to performances and their dates as applicable.

General Fund:	Amount	Hotel Fund	Amount
Communities in Schools –Dallas	\$40,000.00	WaterTower Theatre	\$230,000.00
Senior Adult Services	\$15,000.00	WaterTower Theatre – Matching	\$150,000.00
Metrocrest Social Service Center	\$15,000.00	Dance Council	\$6,600.00
Metrocrest Chamber of Commerce	\$9,000.00		
The Family Place	\$5,000.00		
Special Care and Career Services	\$5,000.00		
TOTAL	\$89,000.00	TOTAL	\$386,600.00

RECOMMENDATION:

It is recommended that the City Council approve the resolutions authorizing the City Manager to enter into contracts with the non-profits for the amounts listed above. These contracts shall be subject to final review and approval by the City Attorney to allow the flexibility to negotiate any minor changes as needed.

STATE OF TEXAS

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CONTRACT FOR SERVICES

COUNTY OF DALLAS

This Contract for Services is made and entered into as of the 1st day of October, 2004 by and between the Town of Addison, Texas (the “City”) and the Dance Council (the “Dance Council”).

WITNESSETH:

WHEREAS, the Dance Council is a private, non-profit organization established under the laws of the State of Texas for the purpose of promoting and supporting dance in North Texas, including the Town of Addison, and providing artistic, educational, and cultural opportunities to people of all ages, races and abilities; and

WHEREAS, the Dance Council’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 dance; 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, without limitation, dance, and desires to encourage and promote the arts (including dance) 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 Dance Council do hereby contract, covenant and agree as follows:

I. TERM

The term of this contract and agreement shall be for a period of one year from the 1st day of October, 2004 through the 30th day of September, 2005, except as otherwise provided for herein.

II. SERVICES

The Dance Council shall provide the following services to the City:

- (a) Provide a program entitled “Taste Dance: Addison Style”. This program shall be a four part series of lecture/demonstrations on dance to be presented at the Water Tower Theatre for two consecutive weekends in late June, on dates and at times to be decided. Dance themes addressed in the lecture/demonstrations shall include the following or items like the following:

TASTE DANCE: MIDDLE EASTERN DANCE

Led by Isis, Artistic Director Isis and the Star Dancers, Colleyville. Emphasis is on the style and history of Middle Eastern dance.

TASTE DANCE: FIERY FAMENCO

Led by Artistic Director and Founder Daniel de Cordoba of *Daniel de Cordoba Bailes Espanoles*.

TASTE DANCE: IRRISISTIBLE IRISH

Hibernia School of Irish Dance led by Erin Maureen Reid, TCRG (certified step dance and ceili dance instructor by the Commission of Irish Dance in Dublin Ireland).

TASTE DANCE: SWINGIN' SWING

An interactive event led by the Dallas Swing Dance Society.

(b) The inclusion of the "Taste Dance: Addison Style" program on a series of postcards and the "Taste Dance: Addison Style" brochure. The Dance Council shall contact the City regarding the details of those postcards.

(c) The inclusion of the Addison logo on the Dance Council web site (www.thedancecouncil.org) or any other web site of the Dance Council. The Dance Council shall contact the City regarding the details of including the Addison logo on the web site.

(d) Provide a banner sign of the City at each Dance Council event which takes place in the City (with a banner sign to be provided by the City).

(e) Provide recognition from the stage at all Dance Council events (including Dance for the Planet, National Tap Dance Celebration, The Dallas Morning News Dance Festival, The Legacy Awards, and Taste Dance: Addison Style).

(f) 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 Dance Council with the revenues received pursuant to this Contract.

III. COMPENSATION

For the operation and provision of the services, projects and programs of the Dance Council as described herein, the City shall pay the Dance Council the sum of Six Thousand Six Hundred and No/100 Dollars (\$6,600.00). Such sum shall be paid on or before April 9, 2005, provided Dance Council is not then in default of this Contract.

IV. INDEMNIFICATION

(A) Dance Council agrees to assume and does hereby assume all responsibility and liability for damages or injuries sustained by persons or property, whether real or asserted, by or from the performance of services performed and to be performed hereunder by Dance Council, its officials, officers, employees, agents, servants, invitees, contractors, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

(B) In consideration of the granting of this CONTRACT, Dance Council agrees to defend, indemnify and hold harmless the town of Addison, Texas, its, officers, agents and employees (each an "Indemnatee") from and against any and all suits, actions, judgments, liabilities, penalties, fines, expenses, fees and costs (including reasonable attorney's fees and other costs of defense), and damages (together, "Damages") arising out of or in connection with Dance Council's performance of this Agreement, including Damages caused by the Indemnatee's own negligence, OR GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES EXPOSE AN INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY, except as specifically limited herein.

(C) With respect to Dance Council's indemnity obligation set forth in subsection (B) OF THIS SECTION, Dance Council shall have no duty to indemnify an Indemnatee for any Damages caused by the sole negligence of the Indemnatee, OR SOLE GROSS NEGLIGENCE OF THE INDEMNITEE, OR SOLE CONDUCT OF THE INDEMNITEE THAT MAY OR DOES EXPOSE THE INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY.

(c) If an Indemnatee suffers Damages arising out of or in connection with the performance of this Agreement that are caused by the concurrent negligence, GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES RESULT IN EXPOSURE TO STRICT LIABILITY, of both Dance Council and the Indemnatee, Dance Council's indemnity obligation set forth in subsection (B) OF THIS SECTION will be limited to a fraction of the total Damages equivalent to Dance Council's own percentage of responsibility.

(d) With respect to Dance Council's duty to defend set forth herein in subsection (B) OF THIS SECTION, Dance Council shall have the duty, at its sole cost and expense, through counsel of its choice, to litigate, defend, settle or otherwise attempt to resolve any claim, lawsuit, cause of action, or judgment arising out of or in connection with this Agreement; provided however, that the Town shall have the right to approve the selection of counsel by Dance Council and to reject the Dance Council's selection of counsel and to select counsel of the Town's own choosing, in which instance, Dance Council shall be obligated to pay reasonable attorney fees and the expenses associated thereto. The Town agrees that it will not unreasonably withhold approval of counsel selected by Dance Council, and further, the Town agrees to act reasonably in the selection of counsel of its own choosing.

(e) In the event that Dance Council fails or refuses to provide a defense to any claim, lawsuit, judgment, or cause of action arising out of or in connection with this Agreement, the Town shall have the right to undertake the defense, compromise, or settlement of any such claim, lawsuit, judgment, or cause of action, through counsel of its own choice, on behalf of and for the account of, and at the risk of Dance Council, and Dance Council shall be obligated to pay the reasonable and necessary costs, expenses and attorneys' fees incurred by the Town in connection with handling the prosecution or defense and any appeal(s) related to such claim, lawsuit, judgment, or cause of action.

(F) THE INDEMNITY, HOLD HARMLESS, AND DEFENSE OBLIGATIONS OF DANCE COUNCIL SET FORTH HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS CONTRACT

V. TERMINATION

This Contract may be canceled and terminated by either party at any time and for any reason 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) day 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 Dance Council has failed at the time of such cancellation and termination to provide all of the services set forth herein, Dance Council shall refund to the City that portion of funds paid to Dance Council under the terms of this Contract in accordance with the following: Prorata funding returned to the City by Dance Council shall be determined by dividing the amount paid by the City under this Contract by 365 (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 Dance Council and the City under this Contract shall be discharged and terminated (except as otherwise provided herein) 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, Dance Council shall submit for the City's review a budget showing the use of the City's funds provided pursuant to this Contract, and Dance Council shall make such periodic reports to the City, as provided for herein, listing the expenditures made by Dance Council from the funds provided by the City. The approval of Dance Council's annual budget creates a fiduciary duty in Dance Council with respect to the funds provided by the City under this Contract.

The funds paid to Dance Council 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.

Dance Council 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 thirtieth (30th) day after the close of each quarter (beginning with the quarter ending December 31, 2004, with the last quarter ending September 30, 2005), Dance Council shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by Dance Council of the funds paid to Dance Council under this Contract; and (b) a year-to-date report of the expenditures made by Dance Council of the funds paid to Dance Council under this Contract (and if this Contract is terminated prior to its expiration, Dance Council shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, Dance Council shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of Dance Council's fiscal year, Dance Council shall provide the City with a financial statement signed by the Chairman of Dance Council's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth Dance Council's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

VIII. INDEPENDENT CONTRACTOR

In performing services under this Contract, the relationship between the City and Dance Council is that of independent contractor, and the City and Dance Council by the execution of this Contract do not change the independent status of Dance Council. No term or provision of this Contract or action by Dance Council in the performance of this Contract is intended nor shall be construed as making Dance Council the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship.

IX. NON-ASSIGNABILITY

Dance Council may not and shall have no authority to assign, transfer, or otherwise convey by any means whatsoever this Contract or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City, and any attempted assignment, transfer, or other conveyance of this Contract without such approval shall be null and void and be cause for immediate termination of this Contract by the City.

X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

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

XI. COPYRIGHT

Dance Council 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 Dance Council's performances, transmissions or broadcasts, and Dance Council, without limiting any other indemnity given by Dance Council 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 Dance Council'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, Dance Council 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; CONTRACT SUBJECT TO LAWS

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

XIV. VENUE; GOVERNING LAW

In the event of any action under this Contract, 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 Contract; 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 Contract.

XV. 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.

XVI. NO WAIVER; RIGHTS CUMULATIVE

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

XVII. NOTICES

All notices, communications and reports, required or permitted under this 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 Dance Council agree to provide the other with written notification within five (5) days, if the address for notices, provided below, is changed. Notices by personal delivery shall be deemed delivered upon the date delivered; mailed notices shall be deemed communicated on the date shown on the return receipt. If no date is shown,

the mailed notice shall be deemed communicated on the third (3rd) day after depositing the same in the United States mail.

The City's address:

Mario Canizares
Assistant to the City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

Dance Council's address:

Kay Armstrong
Executive Director
3530 Harry Hines Blvd.
Dallas, Texas 75219

XVIII. SEVERABILITY

The terms of this Contract are severable, and if any section, paragraph, clause, 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 section, paragraph, clause or portion had not been in the Contract initially.

XIX. 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.

XX. ENTIRE AGREEMENT

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

IN WITNESS THEREOF, the parties hereto have caused this Contract 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

DANCE COUNCIL

By: _____
Ron Whitehead, City Manager

By: _____
Chairman of the Board

ATTEST:

ATTEST:

By: _____
Carmen Moran, City Secretary

By: _____

Council Agenda Item: #2i

SUMMARY:

To consider approval of the contracts for services between the Town of Addison and the non-profits agencies funded from the General Fund and Hotel Fund budgets. The agencies and the amounts were approved by the City Council and included in the adopted FY 2004/05 budget.

FINANCIAL IMPACT:

All contracts are fully funded within the General Fund and Hotel Fund budgets.

	<u>General Fund</u>	<u>Hotel Fund</u>
Budgeted Amount:	<u>\$89,000.00</u>	<u>\$416,000.00</u>
Cost:	<u>\$89,000.00</u>	<u>\$386,600.00</u>

BACKGROUND:

During the FY 2004/05 budget process, the City Council reviewed the following non-profit agencies and funding amounts for FY 2004/05. Attached are the contracts for the non-profits and minor changes have made to ensure consistency within the contracts and to reflect changes to performances and their dates as applicable.

General Fund:	Amount	Hotel Fund	Amount
Communities in Schools –Dallas	\$40,000.00	WaterTower Theatre	\$230,000.00
Senior Adult Services	\$15,000.00	WaterTower Theatre – Matching	\$150,000.00
Metrocrest Social Service Center	\$15,000.00	Dance Council	\$6,600.00
Metrocrest Chamber of Commerce	\$9,000.00		
The Family Place	\$5,000.00		
Special Care and Career Services	\$5,000.00		
TOTAL	\$89,000.00	TOTAL	\$386,600.00

RECOMMENDATION:

It is recommended that the City Council approve the resolutions authorizing the City Manager to enter into contracts with the non-profits for the amounts listed above. These contracts shall be subject to final review and approval by the City Attorney to allow the flexibility to negotiate any minor changes as needed.

STATE OF TEXAS

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CONTRACT FOR SERVICES

COUNTY OF DALLAS

This Contract is made and entered into as of the 1st day of October 2004 by and between the Town of Addison, Texas (the "Town") and the WaterTower Theatre Incorporated ("WTT"), a Texas non-profit corporation with its principal place of business in Addison, Dallas County, Texas.

WHEREAS, WTT is a Texas non-profit corporation which exists for the purpose of the development and advancement of theatre and drama in the Town as well as to promote theatrical activities through numerous productions throughout the year; and

WHEREAS, WTT's productions and work attract tourists to and encourages tourism in the Town, and the Town 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 Town's desire to encourage and promote the arts, including, without limitation, theatre; and

WHEREAS, the Town is authorized to expend revenues from its hotel occupancy tax for the encouragement, promotion, improvement, and application of the arts, including, without limitation, theatre, and desires to encourage and promote the arts (including theatre) through the execution of this Contract for Services.

NOW THEREFORE, 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 and WaterTower Theatre Incorporated do hereby contract, covenant and agree as follows:

I. TERM

The term of this contract and agreement shall be for a period of one year from the 1st day of October, 2004 through the 30th day of September, 2005, except as otherwise provided for herein.

II. SERVICES

WTT shall provide the following services:

(a) Presentation of a minimum of five (5) main stage productions, two (2) holiday productions, and The Out of the Loop Festival.

(b) Recognition of the Town in all playbills printed in connection with the productions.

(c) Work with all hotels located in the Town to generate awareness regarding the theatre.

(d) Submit detailed quarterly financial statements and program results to the Town within thirty (30) days after the end of the preceding quarter listing the expenditures made by WTT with the revenues received pursuant to this Contract.

III. COMPENSATION

The Town agrees to pay WTT as base consideration the sum of Two Hundred Thirty Thousand and No/100 Dollars (\$230,000.00) "Base Consideration" from its revenue derived from the Town's hotel occupancy tax, provided that the minimum number of shows are actually presented and performed as set forth in this Contract. Payment of the Base Consideration to WTT will be made by the Town on or before December 5, 2004. In addition to the Base Consideration as provided above, the Town agrees to pay to WTT "Matching Funds" in an amount up to One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00). A description of what constitutes Matching Funds and the process for the payment of such Funds is set forth in Exhibit A attached hereto and incorporated herein.

In the event the Town terminates this Contract as provided for in Section V, the Town shall not be liable to WTT for the payment of any portion of the unpaid funds. The Town also reserves the right to pursue all legal remedies against WTT for funds previously paid to WTT in the event WTT defaults on any term of this Contract.

IV. INDEMNIFICATION

(A) WTT agrees to assume and does hereby assume all responsibility and liability for damages or injuries sustained by persons or property, whether real or asserted, by or from the performance of services performed and to be performed hereunder by its officials, officers, employees, agents, servants, invitees, contractors, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

(B) In consideration of the granting of this CONTRACT, WTT agrees to defend, indemnify and hold harmless the town of Addison, Texas, its, officers, agents and employees (each an "Indemnitee") from and against any and all suits, actions, judgments, liabilities, penalties, fines, expenses, fees and costs (including reasonable attorney's fees and other costs of defense), and damages (together, "Damages") arising out of or in connection with WTT's performance of this Agreement, including Damages caused by the Indemnitee's own negligence, OR GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES EXPOSE AN INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY, except as specifically limited herein.

(C) With respect to WTT's indemnity obligation set forth in subsection (B) OF THIS SECTION, WTT shall have no duty to indemnify an Indemnitee for any Damages caused by the sole negligence of the Indemnitee, OR SOLE GROSS NEGLIGENCE OF THE INDEMNITEE, OR SOLE CONDUCT OF THE INDEMNITEE THAT MAY OR DOES EXPOSE THE INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY.

(c) If an Indemnitee suffers Damages arising out of or in connection with the performance of this Agreement that are caused by the concurrent negligence, GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES RESULT IN EXPOSURE TO STRICT LIABILITY, of both WTT and the Indemnitee, WTT's indemnity obligation set forth in subsection (B) OF THIS SECTION will be limited to a fraction of the total Damages equivalent to WTT's own percentage of responsibility.

(d) With respect to WTT's duty to defend set forth herein in subsection (B) OF THIS SECTION, WTT shall have the duty, at its sole cost and expense, through counsel of its choice, to litigate, defend, settle or otherwise attempt to resolve any claim, lawsuit, cause of action, or judgment arising out of or in connection with this Agreement; provided however, that the Town shall have the right to approve the selection of counsel by WTT and to reject the WTT's selection of counsel and to select counsel of the Town's own choosing, in which instance, WTT shall be obligated to pay reasonable attorney fees and the expenses associated thereto. The Town agrees that it will not unreasonably withhold approval of counsel selected by WTT, and further, the Town agrees to act reasonably in the selection of counsel of its own choosing.

(e) In the event that WTT fails or refuses to provide a defense to any claim, lawsuit, judgment, or cause of action arising out of or in connection with this Agreement, the Town shall have the right to undertake the defense, compromise, or settlement of any such claim, lawsuit, judgment, or cause of action, through counsel of its own choice, on behalf of and for the account of, and at the risk of WTT, and WTT shall be obligated to pay the reasonable and necessary costs, expenses and attorneys' fees incurred by the Town in connection with handling the prosecution or defense and any appeal(s) related to such claim, lawsuit, judgment, or cause of action.

(F) THE INDEMNITY, HOLD HARMLESS, AND DEFENSE OBLIGATIONS OF WTT SET FORTH HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS CONTRACT

V. TERMINATION

(a) The Town may terminate this Contract at any time if;

(1) WTT defaults on any provision of this Contract and fails to correct such default after thirty (30) days written notice of default from the Town; or

(2) WTT fails to make any payment required under the Agreement For The Use of The Addison Theatre Centre within thirty (30) days after written notification of delinquency of payment by the Town; or

(3) The Town gives WTT at least sixty (60) days prior written notice; or

(4) WTT has offered, conferred, or agreed to confer any benefit upon a Town employee or official that the Town employee or official is prohibited by law from accepting; or

(5) If WTT should violate the provision in Section XII, Non-Discrimination and fails to correct the violations within thirty (30) days of written notice of the violation by the Town.

VI. CONFLICT OF INTEREST

(a) No officer or employee of the Town 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 Town officials in the conduct of WTT'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, WTT shall submit for the Town's review a budget showing the use of the Town's funds provided pursuant to this Contract, and WTT shall make such periodic reports to the Town, as provided for herein, listing the expenditures made by WTT from the funds provided by the Town. The approval of WTT's annual budget creates a fiduciary duty in WTT with respect to the funds provided by the Town under this Contract.

The funds paid to WTT 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 Town 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.

WTT 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 thirtieth (30th) day after the close of each quarter (beginning with the quarter ending December 31, 2004, with the last quarter ending September 30, 2005), WTT shall provide the Town the following: (a) a detailed financial report for the previous quarter listing the expenditures made by WTT of the funds paid to WTT under this Contract; and (b) a year-to-date report of the expenditures made by WTT of the funds paid to WTT under this Contract (and if this Contract is terminated prior to its expiration, WTT shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the Town at any time, WTT shall make its records available for inspection and review by the Town or its designated representative(s). Within ninety (90) days of the end of WTT's fiscal year, WTT shall provide the Town with a financial statement signed by the Chairman of WTT's Board of Directors (or other person acceptable to the Town) and audited by an independent Certified Public Accountant, setting forth WTT's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

VIII. INDEPENDENT CONTRACTOR

In performing services under this Contract, the relationship between the Town and WTT is that of independent contractor, and the Town and WTT by the execution of this Contract do not change the independent status of WTT. No term or provision of this Contract or action by WTT in the performance of this Contract is intended nor shall be construed as making WTT the agent, servant or employee of the Town, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship.

IX. NON-ASSIGNABILITY

WTT may not and shall have no authority to assign, transfer, or otherwise convey by any means whatsoever this Contract or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the Town, and any attempted assignment, transfer, or other conveyance of this Contract without such approval shall be null and void and be cause for immediate termination of this Contract by the Town.

X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

Nothing contained in this Contract shall be deemed to constitute that the Town and WTT are partners or joint venturers with each other, or shall be construed or be deemed to establish that their relationship constitutes, or that this Contract creates, a joint enterprise.

XI. COPYRIGHT

WTT 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 WTT's performances, transmissions or broadcasts, and WTT, without limiting any other indemnity given by WTT as set forth herein, agrees to defend, indemnify, and hold harmless the Town, 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 WTT'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, WTT 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; CONTRACT SUBJECT TO LAWS

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

XIV. VENUE; GOVERNING LAW

In the event of any action under this Contract, 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 Contract; 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 Contract.

XV. 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.

XVI. NO WAIVER; RIGHTS CUMULATIVE

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

XVII. NOTICES

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

The Town's address:

Mario Canizares
Assistant to the City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

WTT's address:

Terry Martin
Director
WaterTower Theatre Incorporated
15650 Addison Road
Addison, Texas 75001

XVIII. SEVERABILITY

The terms of this Contract are severable, and if any section, paragraph, clause, 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 section, paragraph, clause or portion had not been in the Contract initially.

XIX. 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.

XX. ENTIRE AGREEMENT

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

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

TOWN OF ADDISON, TEXAS

**WATERTOWER THEATRE
INCORPORATED**

By: _____
Ron Whitehead, City Manager

By: _____
Terry Martin, Director

ATTEST:

ATTEST:

By: _____
Carmen Moran, City Secretary

By: _____
Its _____

EXHIBIT "A"
TO
2004-2005 CONTRACT FOR SERVICES
BETWEEN THE TOWN OF ADDISON
AND WATERTOWER THEATRE INCORPORATED

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

For each One Dollar of Theatre Funds (as defined herein) actually received by WTT, the Town shall pay to WTT an equal amount ("Matching Funds") up to but not exceeding One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00). In order to receive Matching Funds, WTT shall provide to the Town such proof of its receipt of Theatre Funds as the Town shall reasonably require. WTT shall make application on or before the 15th day of each month for distribution of Matching Funds (beginning January 16, 2005) and the Town shall pay such Matching Funds provided the Town has received adequate proof, in the Town's sole opinion, of the actual receipt of Theatre Funds by WTT as set forth in each application.

For purposes of this Agreement, the term "Theatre Funds" shall mean and include: (i) cash funds actually received by WTT during the term hereof from any gifts, grants, donations, or other cash contributions from any person or business entity (whether for-profit or non-profit), and (ii) that amount of funds determined by multiplying (a) the number of 2004-2005 WTT season tickets sold by WTT on or before November 15, 2004, times (b) the average cost of a single season ticket, times (c) 25%. For purposes of this Agreement, the average cost of a single season ticket shall be \$100.00.

Council Agenda Item: #2j

SUMMARY:

To consider approval of a facilities utilization agreement between the Town of Addison and the Water Tower Theatre for the use of the Addison Theatre Centre.

FINANCIAL IMPACT:

Revenue Budgeted Amount: \$75,000.00

Cost: \$ N/A

BACKGROUND:

The Water Tower Theatre utilizes the Addison Theatre Centre for all of its performances. The agreement specifies the Water Tower Theatre's facility rental charges, defines the areas for office and production space, and the facility's schedule of uses. The revenues received by the Town from rental and other miscellaneous charges are budgeted in the Hotel Fund.

RECOMMENDATION:

It is recommended that the City Council approve the facilities utilization agreement between the Town of Addison and the Water Tower Theatre for the use of the Addison Theatre Centre for FY 2004/05. This agreement shall be subject to final review and approval by the City Attorney.

**AGREEMENT FOR THE USE OF THE
ADDISON THEATRE CENTRE**

THIS AGREEMENT is between the Town of Addison, a municipal corporation, of Dallas County, Texas (“TOWN”) and the WaterTower Theatre, Inc. (“WTT”), a Texas nonprofit corporation with its principal place of business at Addison Theatre Centre, Addison, Dallas County, Texas.

WHEREAS, the TOWN has as one of its purposes the establishment, maintenance, promotion, and operation of cultural facilities for the benefit of the public; and

WHEREAS, the TOWN has constructed a theatre (Theatre Centre) in the furtherance of such purposes; and

WHEREAS, the Theatre Centre is located upon real estate as shown in Exhibit A which is attached and made a part of this Agreement; and

WHEREAS, the TOWN and WTT intend that the Theatre Centre will provide office space together with access to rehearsal and performance space, as well as serve as an outstanding performance facility that will attract other prominent performing groups and individuals to Addison; and

WHEREAS, the TOWN and WTT desire to enter into an agreement whereby WTT would be a user of the Theatre Centre with scheduling rights as defined in this document;

NOW, THEREFORE, the TOWN and WTT agree as follows:

SECTION 1

PURPOSE; THEATRE CENTRE DEFINED

(a) The purpose of this Agreement is to state the terms and conditions under which WTT will use and occupy the described portions of the Theatre Centre and to describe the responsibilities of the TOWN in the operation and management of the Theatre Centre.

(b) As used in this Agreement “Theatre Centre” means the structure shown in Exhibit A. The areas indicated in Exhibit A shaded in blue denote the areas that are accessible to the lessee of the main theatre space. “Administrative Offices” shall mean those certain offices located in the Theatre Centre designated by the Manager of the TOWN (the "City Manager") for use by WTT, solely for their administrative activities, and set out on the plans, as attached Exhibit A denoted in red.

(c) WTT, its employees, agents, patrons, and invitees shall have a nonexclusive license to use the common areas designated on Exhibit A attached hereto but such license shall at all times be subject to the exclusive control and management by the TOWN. WTT hereby agrees to be bound by and to comply with such reasonable rules and regulations as the TOWN may establish with respect to the use of such common areas. The TOWN agrees to inform WTT

in writing of such rules and regulations, and of any changes to such that might occur. The term “common areas” shall include but not be limited to parking area, walkways, green areas and landscaped areas. The TOWN understands that WTT may, from time to time, wish to utilize the “common areas” as a part of or for performances. WTT agrees to inform the TOWN as prescribed in Section 4(c) of this agreement of the intent to use such common areas for theatrical performances or for other events. The TOWN and WTT agree to cooperate with the other in the event that the “common areas” are used for theatrical performances or events related to the conference center or any other event sponsored by the TOWN.

SECTION 2

LEASE OF THEATRE CENTRE

The TOWN, upon the terms and conditions contained herein, agrees to allow WTT use of, in accordance with the use and occupancy provisions of this Agreement, those facilities and areas within the Theatre Centre that are needed from time to time for its various activities including but not limited to performances, rehearsals, auditions, meetings, administration, ticket and merchandise sales, library, dressing, storage, and such other activities as approved by the Conference and Theatre Centre Manager (hereafter “Manager”), in writing, and as further set forth on the Theatre and Conference Center’s Master Booking Calendar. WTT shall furnish, in writing no later than June 1 of each year, schedules setting out all dates, times and spaces needed. The TOWN agrees to provide written confirmation of WTT’s use of spaces, on the dates and times requested, if such spaces are available when requested.

SECTION 3

TERM AND TERMINATION

(a) The term of this Agreement is for a period beginning on the first day of October 2004, and continuing until September 30, 2005, unless earlier cancelled, as provided herein.

(b) The TOWN may cancel this Agreement at any time if:

(i) WTT fails to make any payment required under this Agreement within 10 days after written notification of delinquency of payment by the TOWN; or

(ii) WTT violates any other provision of this Agreement and fails to begin correction of the violation within 25 days of written notification of the violation from the TOWN and fails to accomplish correction within a reasonable period thereafter; or

(iii) The TOWN shall give WTT sixty (60) days written notice; or

(iv) WTT fails to comply with any term of the 2004-2005 Contract for Services between the Town of Addison and Water Tower Theatre Company within thirty (30) days after written notice of such failure to comply from the TOWN.

(c) WTT may cancel this Agreement by giving the City Manager written notice sixty (60) days or more in advance of the cancellation date.

(d) This Agreement may be renewed and extended for a term of twelve (12) months beginning October 1, 2005, and ending September 30, 2006, and for like twelve (12) month periods thereafter upon the express written consent of the TOWN and WTT, given within ninety (90) days prior to October 1st each succeeding year.

SECTION 4

USE AND OCCUPANCY BY WTT

(a) *Office Areas.* During the term of this agreement, WTT has the use of the defined office space, as set out in Section 1(b) above and attached.

(b) *Schedule of Uses.* Attached hereto as Exhibit C are the proposed dates, times, and spaces requested by WTT in connection with shows or events to be produced by WTT during the term of this Agreement. The Manager shall review such dates, times, and spaces and confirm the same, in writing, to WTT. WTT is hereby advised that spaces in the Theatre Centre are available on a “first come” basis and are confirmed by notice in writing from the Manager and receipt by the TOWN of the payment for the required fees.

(c) *Box Office.* Box Office will be open and manned continuously during the following dates and times:

(i) During WTT Production/Presentation of Show Weeks:

Monday	Closed
Tuesday – Saturday	12:00 P.M. – 6:00 P.M.

Performance Days	One hour prior to each performance through the intermission of that performance
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(ii) During WTT Non-Production/Presentation of Show Weeks:

Saturday/Sunday/Monday	Closed
Tuesday – Friday	12:00 P.M.-6:00 P.M.

When WTT is producing or presenting an event, WTT must provide members of its staff to oversee the event from start to finish. A WTT representative must be on the premises throughout the duration of the event. Without in any way limiting any provision of this Agreement, in the event an emergency or urgent situation arises at or about the Theatre Centre while WTT is producing or presenting an event, WTT shall take such steps as are prudent and necessary to immediately respond to the emergency, including, without limitation, causing patrons at the Theatre Centre to vacate the premises and contacting the emergency services of the Town of Addison.

No performances may take place in the facilities during Town Sponsored special events. Limited use of the facilities MAY be granted at the Managers discretion for rehearsals, builds and technical work. If permission is granted, a maximum of 15 parking passes will be issued to

WTT allowing access to the Addison Airport parking area or other designated parking area at the TOWN's discretion.

During TOWN sponsored special events all dressing rooms will be available for use by the TOWN unless prior written authorization has been granted by the Manager.

Cancellation of scheduled spaces will be treated as follows: Cancellation more than forty-five (45) days before scheduled date, no penalty. Cancellation less than forty-five (45) days prior to the scheduled date, responsible for full rental payment.

It is expected that WTT will produce events, and, with the Town's express consent, present events.

Typically, "presenting" a show refers to an outside group bringing in a show or production to which WTT attaches its name. There is little risk involved but the return is often much lower and the presenter has little control over the product.

"Producing" a show implies that a theatre company takes the steps to create the show from the ground up. There is a larger amount of risk but the return and control of the product is much larger. [See Stephen Langley's *Theatre Management and Production in America* for general information.]

Presenting is subject to approval by the Town of Addison. A copy of the proposed contract will be sent to the Manager prior to being forwarded to the potential presenter.

(d) *Food and Beverage.* Food and beverages are prohibited within the main performance space at the Theatre Centre.

(e) *Use of Dressing Rooms.* When the main theatre space is rented, during a non-special event time, dressing rooms 1-4 will be included as part of that rental. If the rehearsal hall is rented to another group, dressing rooms 5 and 6 will be made available to the group in the rehearsal hall. If the rehearsal hall is not being rented by another group or not needed by the renting group dressing rooms 1-6 may be used by the renter of the main space.

SECTION 5

USE AND OCCUPANCY BY THE TOWN

(a) *Scheduling Other Events.* Other than the dates and times when WTT has scheduled an event in accordance with Section 4, the TOWN has the unrestricted right to schedule other events in the Theatre Centre and utilize the scenery in place on such dates and times. The TOWN and WTT agree to cooperate and assist the other in scheduling events in the Theatre Centre for dates not scheduled by WTT. However, such efforts by WTT are subject to the express terms of Section 20 of this Agreement, and WTT recognizes that only the TOWN has authority to book events. Any damage to the set resulting from an event booked into the Addison Theatre Centre ("ATC") main space by the TOWN will be repaired at the TOWN's expense.

(b) *Concessions.*

(i) WTT may sell concessions only during WTT performances and must comply with all Town of Addison Environmental Health Regulations. Alcoholic beverages may only be dispensed in compliance the TABC rules and regulations. WTT shall have the right to use concession areas in connection with and at the time of WTT's scheduled performances. WTT shall have no rights with respect to use of the concession areas or equipment, or other food and beverage service items belonging to or under the control of the TOWN at any other time. WTT will have access to the concession area for food and beverage storage and sale only on performance dates.

(ii) The TOWN shall not be liable to WTT, its employees, agent's patrons, or invitees for damages or otherwise for the quality, failure, unavailability, or disruption of any food or beverage or service thereof.

(c) *Control of the Theatre Centre.* The TOWN retains the right to control the management of the Theatre Centre through its representatives, and to enforce all necessary rules for its management and operation, and the TOWN, through its police officers, fire fighters, and other designated representatives, reserves the right at any time to enter any portion of the Theatre Centre. For non-emergency purposes, the TOWN shall attempt to provide reasonable notice to WTT.

(d) *Shows Not Produced by WTT.* At the TOWN's request, WTT shall provide certain box office services for shows not produced by WTT (for purposes of this subsection (d) of this Section 5, "Third Party Shows"), as follows:

(i) WTT shall sell tickets for Third Party Shows that take place within the ACTC venue. WTT shall be compensated by the TOWN for such sales as follows:

(1) Tickets Sold at the Box Office (in person or by telephone):

Computer Set-Up	\$75.00 for each Third Party Show
Ticket Sales Handling Fee (prior to the Third Party Show)	\$ 1.00 per Order (regardless of the number of tickets in an Order)

A reasonable credit card handling fee equal to three percent (3%) shall be charged for those tickets purchased with a credit card.

(2) Tickets Sold at the Box Office During Third Party Show:

First Performance	\$100.00 for the performance
Additional Performance	\$ 75.00 for each additional performance

(ii) In connection with each Third Party Show:

(1) Blank ticket stock will be provided to WTT by the TOWN;

- (2) Third Party Show information shall be provided to WTT at least two (2) weeks prior to the first performance (to allow for set-up and ticket sales);
- (3) Ticket sales by WTT shall begin at least one (1) week prior to the first performance;
- (4) WTT personnel will carry out industry standard box office responsibilities;
- (5) The TOWN shall provide an employee or designated contract person to be present during a Third Party Show and to secure the Theatre Centre at the conclusion of a Third Party Show;
- (6) The organizer of the Third Party Show will be responsible for (x) house manager/ushers, (y) concessions/concessionaires, and (z) cleaning following a Show;
- (7) The TOWN shall seek to have the producer of the Third Party Show indemnify the Town and WTT for liability in connection with the Third Party Show.

SECTION 6

RENTAL

(a) WTT shall pay to the TOWN rent for its use of the office areas and other areas as reserved by WTT, according to the schedule of fees set forth in Exhibit B, attached hereto and made a part hereof. Payments for rent shall be made in twelve (12) equal installments, with each installment being due and payable on or before the 15th day of each month as payment for the immediately preceding month. The first such installment of rent is due and payable on or before November 15, 2003, and the last such installment is due and payable on or before October 15, 2004 (and the obligation of WTT to make the last installment shall survive the expiration of this Agreement). The rent paid by WTT may be adjusted from time to time to reflect a cancellation or addition of a show or event by WTT. The TOWN further reserves the right to adjust the rates of the fees set out on Exhibit B from time to time in accordance with changes in the costs associated with operating the facility. The TOWN shall invoice WTT for all dates, times and spaces reserved by WTT, including the fees for use of Office Spaces, as defined in Section 4(a).

(b) WTT will not be required to pay the fee for a date, or time, or space cancelled if the space is cancelled more than forty-five (45) days prior to the scheduled date or time.

(c) Cancellation less than forty-five (45) days prior to the scheduled date or time will require full payment for committed space.

(d) WTT agrees to pay the TOWN a monthly fee for telephone service. This fee will be charged for standard monthly service and long distance charges. In addition, any changes to the phone system requested by WTT will be charged back to WTT at the prevailing rate.

(e) WTT will pay monthly to the TOWN a fee for the copy machine in accordance with the following:

Monthly rental charge for copy machine:	\$191.67
Per page monthly copy fees:	
For the first 6,000 copies:	\$ 0.01/copy
For copies 6,001-12,000:	\$ 0.015/copy
For each copy over 12,000:	\$ 0.02/copy

All such copier charges and fees are subject to changes based on the TOWN's agreement with the copier rental company.

SECTION 7

USE OF EQUIPMENT

The TOWN recognizes that there may be third party users of the Theatre Centre for the purposes of staging a theatrical performance and that they may request the use of TOWN-owned equipment. Any lease or other agreement with a third party user allowed to operate TOWN-owned equipment shall expressly provide that any damages to or loss of the equipment from a third party user shall be the responsibility of that third party, and deposits will be required in the discretion of the TOWN. Any damages to or loss of TOWN-owned equipment in the Theatre Centre during the conduct of WTT's performances, WTT Education Department programming or day-to-day use by WTT shall be the responsibility of WTT.

If WTT desires to use and operate TOWN-owned equipment including but not limited to lighting and sound systems, then WTT shall obtain approval on a per-show basis from the TOWN for the use by WTT's technicians. Use of automated lighting fixtures, Obsession II control console, and wireless microphones must have prior written approval by ACTC Manager. The cost of repair for any damage to the equipment from use of the equipment by WTT or replacement of any lost equipment shall be the sole responsibility of WTT and shall be subject to offset against any funding or grant obligations of the TOWN to WTT. The TOWN shall not be responsible for consequential damages resulting from inability to use the equipment. WTT agrees that each person employed by WTT to provide services in the Theatre Centre will be required to conduct himself/herself in a professional manner, and WTT will cooperate with the TOWN to assure professional conduct is maintained at all times.

All details of the production/event must be provided in writing to the Manager at least one month prior to the first day of occupancy of the space. No equipment owned by the TOWN may be contracted or committed by WTT without the manager's approval. No services provided by Town employees may be contracted or committed by WTT without the Manager's written approval. In the event WTT is working in conjunction with an outside company as co-presenter or producer, a written list of equipment needed must be submitted to the Manager one month prior to WTT signing a contract with the outside company.

SECTION 8

TOWN OF ADDISON TECHNICAL COORDINATOR

The TOWN employs an individual in the role of Technical Coordinator whose duties include protecting and maintaining the TOWN's investment in equipment and facilities at the

Theatre Centre. In addition, the Technical Coordinator shall provide services relating to the technical nature of the facility and the presentation. Details of the services provided by the Technical Coordinator are available, in writing, from the Manager, upon request.

SECTION 9

UTILITIES

The TOWN shall provide for all water, air conditioning, heat, and electricity incurred in the Theatre Centre. WTT shall reimburse the Town for all costs associated with its telephone service. The TOWN shall not be liable to WTT in damages or otherwise for the quality, quantity, failure, availability, or disruption of water, air conditioning, heat, electricity, and other utilities furnished by the TOWN.

SECTION 10

MAINTENANCE SERVICES

(a) The TOWN shall provide:

(i) Routine janitorial service and maintain the interior of the Theatre Centre in a clean condition, by providing routine janitorial service one time per day as needed. WTT must leave the spaces in a reasonable condition following all productions/events, which includes but is not limited to: placing all lobby, green room and dressing room trash in garbage cans and walking the main space for playbills and trash left by patrons after every performance. The same definition of routine janitorial service applies to educational camps. Any services above routine will be billed to WTT at the prevailing rate.

(ii) Maintenance of the heating, ventilation and cooling system in the Theatre Centre.

(iii) Maintenance of the Theatre Centre grounds and structure in reasonably good condition and in compliance with applicable laws.

(b) The TOWN shall not be liable for repairs to any portion of the Theatre Centre until it receives written notice pursuant to the operating policies and procedures in Section 6(a), of the necessity for such repairs and, provided further, that such repairs are not necessitated by any act or omission of WTT, or any of WTT's agents, employees, contractors, invitees or patrons.

(c) WTT shall not cause or permit any waste, damage, or injury to the Theatre Centre. WTT shall, at its sole cost and expense, repair any damage or injury caused to the Theatre Centre by WTT, its employee's agents, invitees or patrons.

(d) WTT shall store its property and the personal property of the TOWN in a neat and orderly manner, and its operations in the Theatre Centre shall be carried out in accordance with the highest professional standards.

(e) WTT shall not store or maintain flammable or hazardous materials in the Theatre Centre in violation of the Fire Code or other applicable laws and codes.

(f) In the event the obligations of WTT set out in Sections (d) and (e), above, are not carried out in a timely manner, then the Town has the right, but not the obligation, to satisfy such requirements at the cost of WTT.

SECTION 11

OWNERSHIP OF PROPERTY

(a) The Theatre Centre and all improvements to the Theatre Centre are the property of the TOWN. All personal property owned by the TOWN and placed in the Theatre Centre remains the property of the TOWN.

(b) All personal property owned by WTT and placed in the Theatre Centre remains the property of WTT.

(c) All personal property owned by a sublease, contractor or concessionaire of the TOWN and placed in the Theatre Centre remains the property of the sublessee, contractor or concessionaire, respectively, unless otherwise provided in the sublease, concession contract, or contractor's contract.

(d) On or before July 1 of each year, during the existence or continuation of this agreement, WTT shall furnish to the TOWN a listing of all of the personal property of WTT located in the Theatre Centre.

(e) WTT shall not allow or permit any of the personal property of the TOWN to be loaned for use or operation by any third parties.

SECTION 12

ACKNOWLEDGEMENTS IN PRINTED MATERIALS

WTT agrees to prominently acknowledge the TOWN for its support of WTT in all appropriate printed materials. All public references to WTT will be characterized as "WTT at the Addison Theatre Centre" or some derivative of that indicating the WTT is at the ATC.

SECTION 13

INSURANCE

(a) WTT shall procure, pay for, and maintain the following insurance written by companies licensed in the State of Texas or meeting the surplus lines requirements of Texas law and acceptable to the City Manager. The insurance shall be evidenced by delivery of executed certificates of insurance and certified copies of the policies to the Manager. The insurance requirements shall remain in effect throughout the term of this Agreement. The City Manager reserves the right to modify the kinds of coverage and deductibles required and increase minimum limits of liability of the coverage whenever, in his discretion, it becomes necessary.

(i) *Workers' Compensation* as required by law; *Employers Liability Insurance* of not less than \$100,000 for each accident.

(ii) *Comprehensive General Liability Insurance*, including Personal Injury Liability, Independent Contractor's Liability, Premises Operation Liability, and Contractual Liability, covering, but not limited to, the liability assumed under the indemnification provisions of this Agreement, with limits of liability for bodily injury, death, and property damage of not less than \$1,000,000. Coverage must be on an "occurrence" basis, and the policy must include Broad Form Property Damage Coverage, with Fire and Extended Coverage Liability of not less than \$1,000,000 per occurrence.

(iii) *Comprehensive Automobile and Truck Liability Insurance* covering owned, hired and non-owned vehicles, with minimum limits of \$1,000,000, each occurrence, for bodily injury, death, and property damage, such insurance to include coverage for loading and unloading hazards.

(iv) \$2,000,000 combined single limits bodily injury and property damage liability insurance, including death, as an excess of all the primary coverages required above.

(b) Each liability insurance policy must include the following conditions by endorsement to the policy:

(i) The TOWN must be named as an additional insured.

(ii) Each policy must require that 60 days before the cancellation, nonrenewal, or any material change in coverage, a notice thereof shall be given to the TOWN by certified mail to: City Manager, Town of Addison, Box 9010, Addison, TX 75001-9010.

(iii) Companies issuing the insurance policies shall have no recourse against the TOWN for payment of any premiums, assessments, or any deductibles, all of which are at the sole risk of WTT.

(iv) The Term "Town" or "Town of Addison" includes all Authorities, Boards, Bureaus, Commissions, Divisions, Departments, and offices of the TOWN and the individual members, employees and agents of the TOWN including the TOWN's Manager, while acting in their official capacities on behalf of the TOWN.

(v) The policy clause "Other Insurance" shall not apply to the TOWN where the TOWN is an additional named insured on the policy.

(c) Each party hereto hereby waives each and every claim which arises or may arise in its favor and against the other party hereto during the term of this lease or any extension or renewal thereof for any and all injuries (including death) and loss of, or damage to, any of its property which claim, loss or damage is covered by valid and collectible fire and extended coverage insurance policies, liability insurance policies, workers' compensation policies, and any other insurance policies which may be in place from time to time, to the extent that such claim, loss or damage is recovered under said insurance policies. Said waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this

Agreement with respect to any loss, damage or injury (including death) to persons or to property. Inasmuch as the above mutual waivers will preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person), each party hereto hereby agrees immediately to give each insurance company which has issued to its policies of fire and extended coverage insurance, liability insurance, workers' compensation insurance, or such other insurance, written notice of the terms of said mutual waivers, and to have said insurance policies properly endorsed, if necessary to prevent the invalidation of said insurance coverages by reason of said waivers.

(d) WTT shall use best efforts for security precautions necessary for the protection of its property. The TOWN shall be liable for any damage to or loss of WTT property used or stored on, in, or about the Theatre Centre, arising solely from negligence of the TOWN or its agents. However, the TOWN shall not be responsible for any damage or loss which shall not arise solely from the negligence of the TOWN or its agents.

(e) Insurance required under this section must be furnished annually for the duration of this Agreement. Executed certificates of insurance must also be delivered annually.

(f) To the extent reasonably obtainable, the TOWN will secure fire and extended coverage insurance on the Theatre Centre with coverages and limits to be determined by the TOWN to insure the Theatre Centre with coverages and limits to be determined by the TOWN. In the event all or any portion of the Theatre Centre is damaged or destroyed by fire or other casualty, the TOWN shall, at its cost and expense, limited to a maximum expenditure of the amount of insurance proceeds, if any, available to the TOWN by reason of such fire or other casualty, restore, repair, replace and rebuild the Theatre Centre as nearly as possible to its value, condition and character immediately prior to such damage or destruction. Coverage provided in this subsection shall be for the benefit of the TOWN and shall not protect WTT for loss or damage of property owned by WTT.

SECTION 14

ABATEMENT OF NUISANCES

WTT shall promptly comply with all governmental orders and directives for the correction, prevention, and abatement of nuisances caused by WTT, its officers, agents, or employees, or invitees in or upon or connected with the Theatre Centre, and shall pay for the costs of compliance. The TOWN and WTT agree to cooperate with each other in the abatement of nuisances caused by noise associated with events scheduled in either the Conference or Theatre Centre. WTT hereby recognizes that the Town produces Special Events on scheduled dates through the year, which scheduled Special Events shall take priority over any other use.

SECTION 15

ALTERATIONS, ADDITIONS, AND IMPROVEMENTS

(a) To the extent reasonably necessary or desirable for WTT to use and occupy the Theatre Centre, upon prior written approval of the Manager, WTT may erect or install within the performance space any temporary alterations, additions, or equipment needed for a production

which do not alter the structural integrity or basic configuration of the performance space. WTT must comply with all applicable governmental laws, statutes, ordinances, codes, and regulations regarding structures.

(b) All installations, alterations, additions and improvements made in, on, or to the Theatre Centre by WTT or the TOWN shall be deemed to be property of the TOWN and unless the TOWN directs otherwise, shall remain upon and be surrendered with the Theatre Centre as a part thereof in good order, condition and repair, ordinary wear and tear excepted, upon WTT's vacating or abandonment of the Theatre Centre. If the TOWN directs, WTT shall remove all or any portion of the improvements and WTT's property, on or immediately prior to the termination of WTT's right to possession. The Town may choose to reconfigure the theatre space at any time not reserved by WTT. The Town will return the seating to the previous configuration if requested by WTT.

SECTION 16

INDEMNIFICATION

(A) WTT agrees to assume and does hereby assume all responsibility and liability for damages or injuries sustained by persons or property, whether real or asserted, by or from the performance of services performed and to be performed hereunder by WTT, its officials, officers, employees, agents, servants, invitees, contractors, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

(B) In consideration of the granting of this CONTRACT, WTT agrees to defend, indemnify and hold harmless the town of Addison, Texas, its, officers, agents and employees (each an "Indemnitee") from and against any and all suits, actions, judgments, liabilities, penalties, fines, expenses, fees and costs (including reasonable attorney's fees and other costs of defense), and damages (together, "Damages") arising out of or in connection with WTT's performance of this Agreement, including Damages caused by the Indemnitee's own negligence, OR GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES EXPOSE AN INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY, except as specifically limited herein.

(C) With respect to WTT's indemnity obligation set forth in subsection (B) OF THIS SECTION, WTT shall have no duty to indemnify an Indemnitee for any Damages caused by the sole negligence of the Indemnitee, OR SOLE GROSS NEGLIGENCE OF THE INDEMNITEE, OR SOLE CONDUCT OF THE INDEMNITEE THAT MAY OR DOES EXPOSE THE INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY.

(c) If an Indemnitee suffers Damages arising out of or in connection with the performance of this Agreement that are caused by the concurrent negligence, GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES RESULT IN EXPOSURE TO STRICT LIABILITY, of both WTT and the Indemnitee, WTT's indemnity obligation set forth in subsection (B) OF THIS SECTION will be limited to a fraction of the total Damages equivalent to WTT's own percentage of responsibility.

(d) With respect to WTT's duty to defend set forth herein in subsection (B) OF THIS SECTION, WTT shall have the duty, at its sole cost and expense, through counsel of its choice,

to litigate, defend, settle or otherwise attempt to resolve any claim, lawsuit, cause of action, or judgment arising out of or in connection with this Agreement; provided however, that the Town shall have the right to approve the selection of counsel by WTT and to reject the WTT's selection of counsel and to select counsel of the Town's own choosing, in which instance, WTT shall be obligated to pay reasonable attorney fees and the expenses associated thereto. The Town agrees that it will not unreasonably withhold approval of counsel selected by WTT, and further, the Town agrees to act reasonably in the selection of counsel of its own choosing.

(e) In the event that WTT fails or refuses to provide a defense to any claim, lawsuit, judgment, or cause of action arising out of or in connection with this Agreement, the Town shall have the right to undertake the defense, compromise, or settlement of any such claim, lawsuit, judgment, or cause of action, through counsel of its own choice, on behalf of and for the account of, and at the risk of WTT, and WTT shall be obligated to pay the reasonable and necessary costs, expenses and attorneys' fees incurred by the Town in connection with handling the prosecution or defense and any appeal(s) related to such claim, lawsuit, judgment, or cause of action.

(F) THE INDEMNITY, HOLD HARMLESS, AND DEFENSE OBLIGATIONS OF WTT SET FORTH HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS CONTRACT

SECTION 17

BONDS

Unless waived in writing by the City Manager, WTT agrees to cause its contractors to provide, before commencing any work or construction in its designated areas, a performance bond and labor and material payment bond for any improvements the construction of which could result in a third party filing or seeking to file a lien against the Theatre Centre, which is undertaken by WTT during the term of this Agreement in a sum equal to the full amount of the construction contract award, with the TOWN and WTT named as joint obligees.

SECTION 18

NON-DISCRIMINATION

During the term of this agreement, WTT 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. Should WTT violate the provisions of this section, or fail to comply with the requirements of the Americans with Disabilities Act, the TOWN may terminate this Agreement if WTT fails to correct the violations within 60 days of written notice of the violation by the TOWN.

SECTION 19

AUDITS

WTT shall have its financial statements audited on an annual basis by an independent auditing firm of certified public accountants and shall submit a copy of the auditor's report for the preceding fiscal year with its proposed annual operating budget to the City Manager. The

TOWN reserves the right to require a special audit of WTT's books and records at any time either by the City Manager or by an outside independent auditor if such action is determined necessary by the Town Council. The TOWN shall pay all expense of the independent auditor related to the special audit. WTT shall make available to the TOWN or its agents all necessary books, records and other documents necessary to perform such audit.

SECTION 20

ASSIGNMENT

WTT shall not assign this Agreement, in whole or in part, without the prior written consent of the TOWN, which consent is in the sole and unrestricted discretion of the TOWN. Assignment of this Agreement shall not relieve WTT of its obligations under this Agreement. Approval of the TOWN to one assignment shall not constitute approval to any other or further assignment of this Agreement. WTT shall not sublease or sublet or permit the Theatre Centre, or any part thereof to be used by others.

SECTION 21

NOTICES

Any notice, payment, statement, or demand required or permitted to be given by either party to the other may be effected by personal delivery, actual receipt via regular mail, postage prepaid, return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section.

If intended for the TOWN, to:

Mario Canizares
Assistant to the City Manager
Town of Addison
P.O. Box 9010
Addison, TX 75001-9010

If intended for WTT, to:

Terry Martin
Producing Artistic Director
WaterTower Theatre, Inc.
15650 Addison Road
Addison, TX 75001

SECTION 22

APPROVALS

(a) Whenever in this Agreement the approval of the TOWN is required for any purpose, WTT shall file the appropriate documents with the Addison Conference and Theatre Centre ("ACTC") Manager with notice of action proposed to be taken, and the ACTC Manager agrees to notify WTT of the TOWN's approval or disapproval within 60 days of the filing thereof.

(b) Approval shall be by the City Council of the TOWN where required by the Charter of the Town. The City Manager may delegate approval authority to the facilities

manager or his authorized representatives where permitted by the Charter of the Town or ordinances, and notify WTT of such delegation.

SECTION 23

SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the TOWN and WTT and their respective successors and permitted assigns.

SECTION 24

APPLICABLE LAWS

This Agreement is made subject to the charter and ordinances of the TOWN, as amended, and all applicable laws and regulations of the State of Texas and the United States.

SECTION 25

INTELLECTUAL PROPERTY AND COPYRIGHT INDEMNIFICATION

WTT 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 WTT's performances, transmissions or broadcasts, and WTT agrees to defend, indemnify, and hold harmless the TOWN, its officers, employees, and agents, for any claims or damages (including but not limited to court costs and reasonable attorney's fees) growing out of WTT's infringement or violation of any statute, treaty term or regulation applicable to intellectual property rights, including but not limited to copyrights.

SECTION 26

NO PARTNERSHIP OR JOINT VENTURE

Nothing contained in this agreement shall be deemed to constitute the TOWN and WTT partners or joint venturers with each other.

SECTION 27

NO WAIVER

No waiver by the TOWN of any default or breach of any term, covenant, or condition of this Agreement by WTT shall be treated as a waiver of any subsequent default or breach of the same or any other term, covenant, or condition of this Agreement.

SECTION 28

FORCE MAJEURE

If the Theatre Centre or any portion of it shall be destroyed or damaged by fire or any other calamity so as to prevent the use of the premises for the purposes and during the periods specified in this Agreement, or the use of the Theatre Centre by WTT is prevented by act of God, strike or lockout against the TOWN, WTT or any third party, material or labor restrictions by any governmental authority, civil riot, flood or other cause beyond the control of the TOWN, then, depending on the extent of damage to the Theatre Centre, the TOWN shall notify WTT as soon as reasonably practical, that the parties shall be excused from performance of the Agreement for such period of time as is reasonably necessary to remedy the effects of the occurrence and, at the option of the TOWN, this Agreement shall terminate and the TOWN shall not be liable for any claim by WTT for damage or loss by reason of termination. If the performance of this agreement for the reasons identified above is prohibited for a period of 180 days or longer, then WTT shall have the right to terminate.

SECTION 29

VENUE

The obligations of the parties under this Agreement are performable in Dallas County, Texas, and if legal action is necessary to enforce them, exclusive venue shall lie in Dallas County, Texas.

SECTION 30

LEGAL CONSTRUCTION

In the case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable, it shall not affect any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

SECTION 31

SIGNAGE

WTT shall not place or permit to be placed on the exterior of the Theatre Centre, or the door, window or roof thereof, or on any display window space, or within five feet behind the storefront of the Theatre Centre, if visible from the common area, any sign, plaque, decoration, lettering, advertising matter or descriptive material without the TOWN's prior written approval. WTT may submit a written request for approval to project images and text onto the water tower. All signs, decorations, lettering, advertising matter or other items used by WTT and approved by the TOWN as aforesaid shall conform with the standards of design, motif, and decor from time to time established by the TOWN for the Theatre Centre. WTT shall furnish to the Manager of the Conference and Theatre Centre a written proposal describing any signage to be placed in the Theatre Centre. The Manager agrees to respond within fourteen (14) days in writing to the proposal.

SECTION 32

USE OF THE ROOF

WTT shall not attach to or construct on or penetrate the roof of the Theatre Centre without the prior written consent of the City Manager.

EXECUTED _____, but effective as of October 1, 2004 as approved by the parties hereto.

TOWN OF ADDISON, TEXAS

WATERTOWER THEATRE, INC.

By: _____
Ron Whitehead, City Manager

By: _____
Terry Martin, Producing Artistic Director

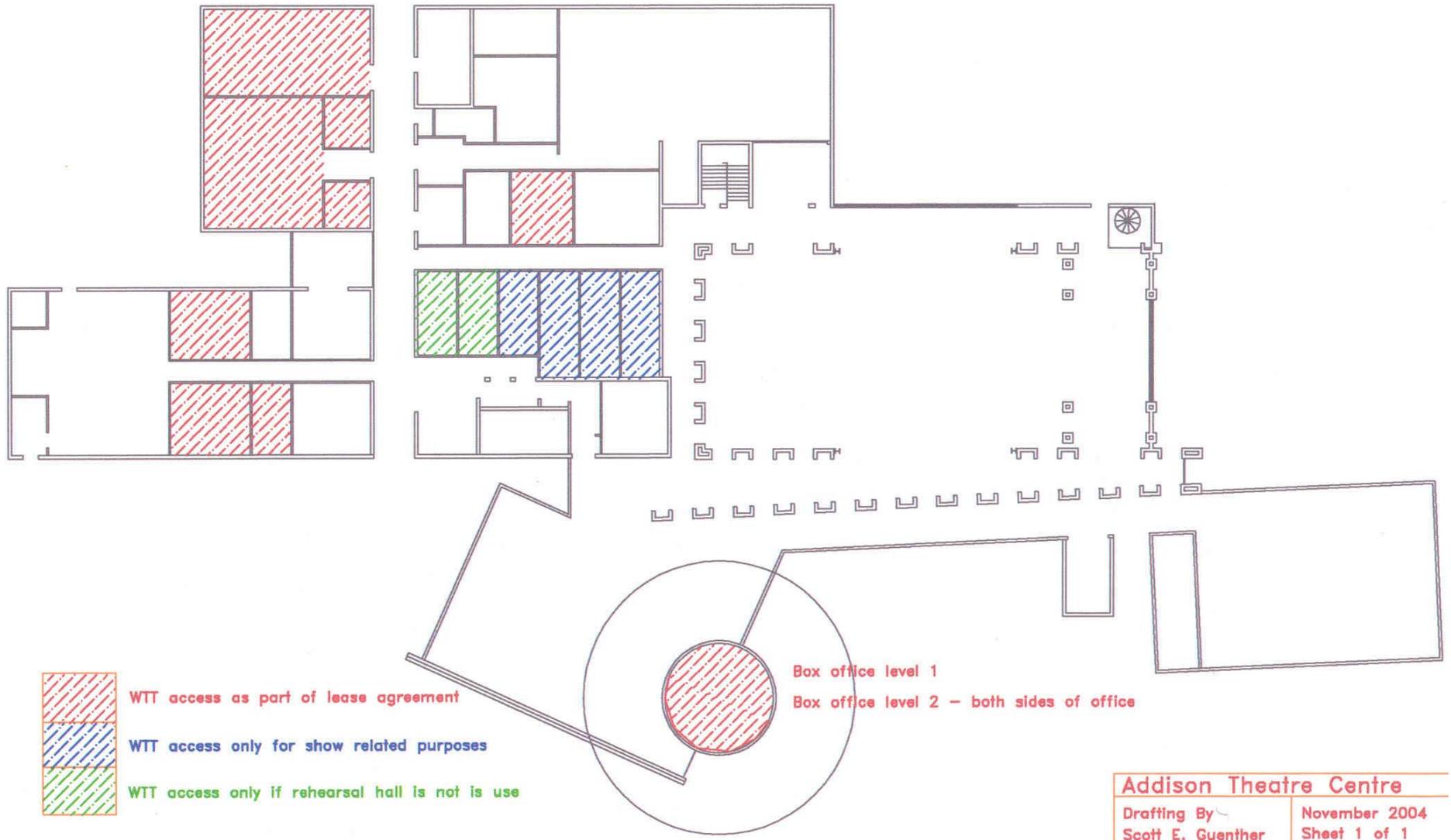
ATTEST:

ATTEST:

By: _____
Carmen Moran, Town Secretary

By: _____
Its:

EXHIBIT A ADDISON THEATRE CENTRE



Council Agenda Item: #2k

SUMMARY:

Consideration of a Resolution authorizing the execution of an Interlocal Agreement between the Town of Addison and the City of Carrollton for the use of jail facilities.

FINANCIAL IMPACT:

Budgeted Amount: NA

Cost: None

BACKGROUND:

As Council is aware, the Addison Police Department municipal jail is currently undergoing a renovation project that is scheduled to be complete in late December 2004. A part of the renovation project, specifically the replacement of mechanical parts for all the jail doors, will require us to temporarily close our jail facility for approximately two weeks in December. In response to the closing, we have requested the temporary use of Carrollton's jail facilities for housing Addison municipal prisoners.

An Interlocal Agreement has been drafted and approved by City Attorney's representing both Addison and Carrollton and the agreement is attached for Council review.

RECOMMENDATION:

Staff recommends approval.

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

**INTERLOCAL AGREEMENT BETWEEN THE TOWN OF ADDISON
AND THE CITY OF CARROLLTON FOR THE USE OF JAIL FACILITIES**

WHEREAS, the Town of Addison, Texas, a Texas municipal corporation (hereinafter called “Addison”), has among its purposes the ownership, maintenance, and operation of a jail (the “Addison Jail”); and

WHEREAS, the City of Carrollton, Texas, a Texas municipal corporation (hereinafter called “Carrollton”), has among its purposes the ownership, maintenance, and operation of a jail (the “Carrollton Jail”); and

WHEREAS, Addison and Carrollton recognize that, at times, it may be necessary for Carrollton to temporarily house Carrollton municipal prisoners within the Addison Jail; and

WHEREAS, Addison and Carrollton recognize that, at times, it may be necessary for Addison to temporarily house Addison municipal prisoners within the Carrollton Jail; and

WHEREAS, the Addison Police Department agrees to provide space in the Addison Jail, if available, to the Carrollton Police Department when the Carrollton Jail cannot be used; and

WHEREAS, the Carrollton Police Department agrees to provide space in the Carrollton Jail, if available, to the Addison Police Department when the Addison Jail cannot be used; and

WHEREAS, Chapter 791, the Interlocal Cooperation Act (the “Act”), of the Texas Government Code provides authorization for a local government to contract with one or more other local governments to perform governmental functions and services under the terms of the Act; and

WHEREAS, police protection and detention services are governmental functions and services pursuant to § 791.003 of the Act; and

WHEREAS, Addison and Carrollton find that it is in the public interest to enter into this agreement;

NOW, THEREFORE, this Interlocal Agreement (“Agreement”) is hereby made and entered into by Addison and Carrollton for the mutual consideration stated herein:

W I T N E S S E T H:

I.

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

II.

In regards to this Agreement and the use of the other municipality’s jail, the following applies: prisoners of the Addison Police Department will be defined as any prisoner who cannot

be incarcerated in the Addison Jail due to unusual circumstances regarding the jail facility itself or the operation of the jail facility. Likewise, prisoners of the Carrollton Police Department will be defined as any prisoner who cannot be incarcerated in the Carrollton Jail due to unusual circumstances regarding the jail facility itself or the operation of the jail facility.

III.

Unusual circumstances that might lead either municipality's police department to request temporary use of the other municipality's jail may include but are not limited to the following: (1) construction or remodeling, (2) fire, (3) utility problems, (4) structural issues, (5) other operational issues as determined and agreed on by the Chiefs of Police of both agencies.

IV.

Jail staff from the requesting department shall be assigned to the jail facility of the host department to handle the prisoners from their respective department. Realizing that differences in procedures exist, the procedures of the host department shall control.

V.

The requesting department shall supply food for its prisoners or shall pay the cost of each meal the host department provides to the requesting department's prisoners based on the actual cost of the meal.

VI.

The requesting department shall pay for any medical costs associated with that department's prisoners. Likewise, the requesting department shall pay for any facility damage costs resulting from the housing of that department's prisoners.

VII.

If the host department incurs personnel costs specifically for the requesting department's prisoners, those costs shall be reimbursed by the requesting department.

VIII.

Payments for the performance of governmental functions or services provided pursuant to this agreement must be made from current revenues available to the paying party. Payments shall be made to the following addresses:

To Addison:

Town of Addison
Finance Department
5350 Belt Line Road
Dallas, Texas 75240-7682

To Carrollton:

City of Carrollton
Attention: Accounts Payable
P.O. Box 110535
Carrollton, Texas 75011-0535

IX.

The requesting department shall collect all fines/bonds for its prisoners. If the money is collected at the location of the requesting department, the requesting department shall notify the host department immediately that the prisoner is eligible for release. Notification shall first be made by telephone and immediately followed by notification via teletype or facsimile.

X.

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

XI.

This Agreement may not be assigned or transferred by any party without the prior written consent of the other party.

XII.

This Agreement has been duly executed and delivered by all parties and constitutes a legal, valid and binding obligation of the parties, their successors and permitted assigns. Each person executing this Agreement on behalf of the entity represented warrants that the person has full right and authority to enter into this Agreement.

XIII.

This Agreement may not be amended except by a written instrument specifically referring to this Agreement and signed by the parties hereto.

XIV.

Notwithstanding any other provision of this Agreement, this Agreement shall be expressly subject to the governmental immunity of Addison and Carrollton, Title 5 of Texas Civil Practice and Remedies Code, and all applicable federal and state law. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas. Exclusive venue for any legal action regarding this Agreement filed by either Addison or Carrollton shall be in Dallas County, Texas.

XV.

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

XVI.

In the event that one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein, and such provision shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

XVII.

This Agreement embodies the complete agreement of the parties, superseding all oral or written previous and contemporary agreements between the parties relating to matters in this Agreement and, except as otherwise provided herein, cannot be modified without written supplemental agreement of the parties to be attached to and made a part of this Agreement.

XVIII.

This Agreement becomes effective upon the date of its execution, which execution date is deemed to be the date the last of the parties signs this Agreement.

XIX.

The initial term of this Agreement shall commence on the effective date hereof and continue for a period of one year. This Agreement shall automatically renew annually for successive one-year terms unless terminated as provided herein.

XX.

This Agreement may be terminated by either party upon written notice given by either municipality's Chief of Police or City Manager not less than five (5) days before the termination date as stipulated in the notice.

XXI.

Any notice provided for in this Agreement to be given by either party to the other must be in writing and shall be deemed given when personally delivered, or three (3) business days after being deposited in the United States Mail, postage prepaid, certified, return receipt requested, or registered addressed as follows:

To Addison:

Town of Addison
Don Franklin
Chief of Police
P.O. Box 9010
Addison, Texas 75001

To Carrollton:

City of Carrollton
David James
Chief of Police
2025 East Jackson Road
Carrollton, Texas 75006

Either party may change its address for notice by giving the other party notice thereof in accordance with this Agreement.

Executed as of the _____ day of _____, 2004, hereafter deemed to be the Effective Date of this Agreement.

TOWN OF ADDISON
RON WHITEHEAD
City Manager

CITY OF CARROLLTON
LEONARD MARTIN
City Manager

By: _____

By: _____

APPROVED AS TO FORM:
KEN DIPPEL, City Attorney

APPROVED AS TO FORM:
CLAYTON HUTCHINS, City Attorney

City Attorney

By: _____
City Attorney

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Before Me, the undersigned notary public in and for said county and state, on this _____ day of _____, 2004, personally appeared RON WHITEHEAD known to me to be the identical person who executed the within and foregoing document, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or entity upon behalf of which he acted, executed the instrument, for the uses and purposes therein set forth.

Notary Public, State of Texas
Print Name: _____

My Commission Expires:

[SEAL]

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Before Me, the undersigned notary public in and for said county and state, on this _____ day of _____, 2004, personally appeared CLAYTON HUTCHINS, known to me to be the identical person who executed the within and foregoing document, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or entity upon behalf of which he acted, executed the instrument, for the uses and purposes therein set forth.

Notary Public, State of Texas
Print Name: _____

My Commission Expires:

[SEAL]

Council Agenda Item: #21

SUMMARY:

This item is for the award of contracts for employee medical, dental, life, accidental death and dismemberment, and long term disability insurance for the year beginning January 1, 2005 and ending December 31, 2005.

FINANCIAL IMPACT:

Budgeted Amount: \$ 1,931,280.00
Cost: \$ 1,889,775.84

BACKGROUND:

The Town provides employee medical insurance through Blue Cross/Blue Shield of Texas, with two plan options, HMO and PPO. Our current enrollment is 180 employees in the HMO plan and 70 in the PPO plan. Blue Cross/Blue Shield has offered the same benefit plans for the 2005 calendar year with a 10% increase in rates. Our projected costs for the year, using current enrollment figures, will be \$1,629,930.96.

Delta Dental Insurance Company, the current carrier of the Town's dental plan, has presented an increase of 3% to continue with the same benefits in 2005. The annual costs projected from current enrollment will be \$150,012.60.

The Town contracts with Hartford Life Insurance Company for employee life and accidental death and dismemberment insurance. Hartford has agreed to continue their current contract with no increase in premium. The estimated costs for 2005 are \$69,307.20.

UnumProvident currently provides the Town's long term disability insurance, and they also have agreed to continue their contract with no increase in premium. Estimated costs for 2005 are \$40,525.08.

RECOMMENDATION:

Staff recommends that Council authorize the City Manager to enter into contracts with Blue Cross/Blue Shield of Texas in the amount of \$1,629,930.96 for employee medical insurance, with Delta Dental Insurance Company in the amount of \$150,012.60 for employee dental insurance, with Hartford Life Insurance Company for employee life, accidental death and dismemberment insurance in the amount of \$69,307.20 and with UnumProvident for long term disability insurance in the amount of \$40,525.08. All contracts are for a one year period, beginning January 1, 2005 and ending December 31, 2005.

Council Agenda Item: #2m

SUMMARY:

Council approval is requested of a 9-1-1 billing agreement with the following communication carrier which has received a Service Provider Certificate of Operating Authority (SPCOA) from the Texas Public Utilities Commission:

UTEX Communications Corp.

FINANCIAL IMPACT:

No financial impact to the Town will be realized, as this carrier is currently submitting access fees to the Town. 9-1-1 fees are generating approximately \$580,000 each year. The revenue is collected by the telephone companies from their customers. The fee of the base rate approximates 62 cents on a monthly single-family residential bill. Theoretically, any revenue generated from this billing agreement will simply replace the fees the Town would have received from Southwestern Bell.

BACKGROUND:

Section 82.202 of the Town's code of ordinances requires that all 9-1-1 carriers establish an agreement with us. Many carriers are operating without a formal agreement, and we are attempting to document each carrier. The carrier listed above has submitted signed 9-1-1 billing agreements developed by the Town attorney (one copy attached for information). With the addition of the above company, Addison will have approximately 40 current 9-1-1 contracts.

RECOMMENDATION:

It is recommended council authorize the city manager to enter into a 9-1-1 agreement with the provider listed above.

RCM:rm
Attachment

STATE OF TEXAS §
 § 9-1-1 EMERGENCY SERVICE AGREEMENT
 COUNTY OF DALLAS §

This 9-1-1 Emergency Service Agreement (“Agreement”) establishes the rates, terms, and conditions for 9-1-1 emergency service interconnection by UTEX Communications Corp. (“Company”) with the Town of Addison, Texas (“City”) (collectively “Parties”).

WHEREAS, the Texas Legislature and the United States Congress have authorized the provision of telecommunications service in the local marketplace by service suppliers other than the holders of certificates of convenience and necessity (“CCN”); and

WHEREAS, a CCN holder is the incumbent local exchange company that holds a certificate of convenience and necessity granted by the Public Utility Commission of Texas (“PUC”) on September 1, 1995, for each service area(s) within the territory of the City; and

WHEREAS, Company is a holder of either a certificate of operating authority or a service Company certificate of operating authority that has received certificate number 60368 from the PUC and, therefore, a service supplier and a service provider of local telecommunications service (“service supplier”) pursuant to Chapter 771 or Chapter 772 of the Texas Health and Safety Code, §§ 771.001 *et seq.*, 772.001 *et seq.*, or other applicable law pertaining to home rule cities (including the ordinances, rules and regulations of the City) (collectively “the Applicable Laws”), as amended, that must provide 9-1-1 emergency service to that portion of the Company’s service area located within the territory of the City; and

WHEREAS, the City is Texas home rule city and a political subdivision of the State of Texas.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants set forth herein and other good and valuable consideration, the Town of Addison, Texas and UTEX Communications Corp. do covenant, contract and agree as follows:

1. **Compliance with Laws.** Company must comply with all provisions of the Applicable Laws and any requirements implementing or interpreting the Applicable Laws promulgated by the City pursuant to the authority vested in the City.

2. **Emergency Service Plan.** Company shall submit for the City’s approval a plan for the Company’s provision of 9-1-1 emergency service within the territory covered by the City. The plan is provided as Attachment No. 1. The plan shall consist of an explanation with sufficient specificity for the City to determine Company’s compliance with the requirements of this Agreement. Company may submit the plan, or any part of the plan, that it considers trade secret, confidential, and/or proprietary or that would give another service supplier a competitive advantage, under seal and subject to a confidentiality agreement in accordance with law. The City shall keep the plan or any part of the plan

confidential to the extent permitted by law. Upon receiving a request for Company's plan or any part of Company's plan that Company submitted under seal and subject to a confidentiality agreement, the City shall request an Attorney General Open Records Decision pursuant to the Texas Public Information Act, Ch. 552, Tex. Gov. Code, as amended, and shall notify Company concurrently with its request for the Attorney General Open Records Decision. The City shall not release any information that is subject to a confidentiality agreement executed between the Parties until the Attorney General issues an Attorney General Open Records Decision resolving the request for Company's plan or any part of the plan. The City is not required to request an open records decision ruling regarding information for which there has been an open records ruling that such identical information is public information.

3. **Interconnection.** Company's interconnection arrangements for 9-1-1 emergency service shall meet the minimum standards in:

- a. PUC Substantive Rule 26.272, as amended or superseded;
- b. the Applicable Laws addressing, including, or interpreting standards or features for 9-1-1 emergency service applicable to Company;
- c. and any requirements promulgated in the future by the City pursuant to the authority vested in the City by the Applicable Laws and the applicable provisions of this Agreement.

Where possible, Company may exceed the above standards.

4. Company shall provide to the City an equal or, where possible, a greater level of service and functionality from the Company switch to the tandem, also known as the 9-1-1 selective router, as is currently provided by Southwestern Bell, the incumbent local exchange company.

The City may amend its 9-1-1 emergency service requirements from time to time. Unless a shorter time period is necessary to protect the public safety, the City shall permit Company one hundred eighty (180) days to comply with the City's amendments. Where a shorter time period is necessary to protect the public safety, the City shall permit Company the greatest length of time possible, without jeopardizing the public safety, and where possible the Parties shall negotiate the shorter time period.

5. **Service Establishment.** Company proposes to commence local service in its authorized service area on November 4, 2004 ("Service Establishment Date"). Before cutover on the Service Establishment Date, both Company and the City will test the Company's 9-1-1 emergency service as set forth in Attachment No. 2. The testing requirements and procedures shall be mutually agreed upon by the Company and the City. Final approval as to the adequacy of installation of 9-1-1 emergency service shall rest with the City. The City shall not withhold written final approval upon Company's satisfactory provision of the 9-1-1 emergency service required by this Agreement. Satisfactory provision shall be the working provision of the 9-1-1 emergency service

required by the Agreement and provided by Company to interconnection with the incumbent local exchange company CCN holder but not including the incumbent local exchange company CCN holder's 9-1-1 emergency service. The City shall provide Company with final approval in writing within three (3) working days of testing.

6. **Changes to Facilities.** Unless a shorter time period is necessary to protect the public safety, Company shall notify the City of any changes or expansion in its facilities, service area(s), or other changes affecting the routing or completion of all calls which are affected by or which affect the provision of 9-1-1 emergency service, no later than forty-five (45) days in advance of such change or expansion. Such notice shall include a reference to this section of this Agreement, specifying the responsibility of the City to respond within twenty (20) days. The City shall notify Company, no later than twenty (20) days following receipt of Company's notice, if the City has concerns with Company's proposed changes or expansion and shall provide specificity regarding such concerns. Changes to the plan shall be deemed approved on the proposed implementation date if the City does not comply with this twenty (20) day response requirement. If the City notifies Company that the proposed changes or expansion raise concerns, the City shall work in good faith with Company to resolve such concerns as soon as possible; in no event shall the City notify Company of its decision later than five (5) days before the proposed implementation date. Any proposed changes in the plan shall not affect approval for Company's current plan to which the City had granted prior approval. Company shall provide to the City within twenty (20) days the revisions to the plan, in the form of a modified Attachment No. 1, upon the City's approval of the changes or expansion. Where a shorter time period is necessary to protect the public safety, the City shall permit Company the greatest length of time possible, without jeopardizing the public safety, and where possible the Parties shall negotiate a shorter time period.

7. **Use of Tandem.** Unless negotiated and agreed to by the Parties in advance, Company shall use the tandem, also known as the 9-1-1 selective router, designated and approved by the City and shall not directly trunk to any Public Safety Answering Point ("PSAP"), as reflected on Attachment No. 1, illustrating Company's tandem arrangements. Unless Company uses a tandem negotiated and agreed to by the Parties in advance, the tandem designated and approved by the City shall provide 9-1-1 emergency service required by the City pursuant to this agreement.

8. **Billing, Collection, Remittance of Fees.** Company shall bill, collect, and remit the appropriate 9-1-1 emergency service fee to the City, as provided in the Applicable Laws and reflected in Attachment No. 3.

The initial payment due, whether quarterly or monthly, is due no later than the 30th day after the last day of the calendar quarter or month, whichever is applicable, in which the fees were collected. Remittances shall be made by direct deposit to the City's bank or by check, the procedure to be designated by mutual agreement of the Parties. A report shall be sent by U.S. mail by Company or Company's designated agent, to City Finance Director, Town of Addison, P. O. Box 9010, Addison, Texas 75001-9010. That report, to

be made quarterly, shall state the number of subscriber lines, designating the number of both residential and business lines, for which fees have been collected and are being transmitted. At all times Company shall be responsible for the accuracy of the report. From time to time, the governing body of the City may change the 9-1-1 emergency service fee. Such changes shall be communicated to Company for changes in Company's collection and remittance of 9-1-1 emergency service fee, according to the provisions of the Applicable Laws. The City shall notify Company of any change Company must make in Company's collection and remittance of 9-1-1 emergency service fee with sufficient advance time, but not to exceed 91 days before the date the change takes effect, to permit Company's billing system to comply timely with the change. Furthermore, Company may retain an administrative fee equal to one percent (1%) of the fees Company collects. If agreed to by the City, Company may deduct the Network Service Charges from the fees collected in this section before making remittance to the City.

9. **Network Service Charges.** All Company Network Service Charges billed to the City for 9-1-1 emergency service by Company shall comply with all applicable federal and state laws and rules, including PUC Substantive Rule 23.97. The Company's Schedule of Network Service Charges to be billed the City shall be provided with this Agreement as **Attachment No. 4.** Subject to the Parties' negotiation and agreement, Company may revise Company's Schedule of Network Service Charges from time to time in order to recover the reasonable costs that Company incurs for 9-1-1 emergency service. Unless the Parties agree to a different remittance schedule, the City shall remit the Network Service Charges monthly or quarterly in accordance with the remittance schedule in paragraph 8. The City shall make payment as directed by applicable law.

10. **Interim Number Portability.** Company and the City agree that it is in the public interest for interim number portability to be as seamless and transparent as possible to persons seeking emergency assistance by calling the number 9-1-1 and to PSAP personnel answering those 9-1-1 emergency service calls. Company shall cooperate and coordinate with the City to the fullest extent possible regarding the implementation and effect of interim number portability on the 9-1-1 emergency service and shall assist the City with educating PSAP personnel. The Parties agree that the City shall bear the cost of any PSAP modifications and Company shall bear its costs of implementing the above-described interim number portability solution.

11. **9-1-1 Database Activities.** Company shall coordinate and cooperate to the fullest extent possible with the City regarding all 9-1-1 database activities necessary to provide accurate, efficient, seamless, and transparent 9-1-1 emergency service. Company agrees to comply with current National Emergency Number Association standards and any current City requirement addressing 9-1-1 database activities or future requirements promulgated pursuant to the terms of this Agreement.

12. **Cooperation.** The Parties also agree to work in good faith with each other to resolve any disagreements and negotiations prior to the City or Company taking any formal action. Formal action shall consist of the following, in the order stated: first, alternative dispute resolution by a mutually agreed third-party; second, an administrative proceeding,

including arbitration, if authorized by statute; and third, a judicial proceeding.

13. **Notice.** All notices required by or relating to this Agreement shall be deemed to have been made upon receipt and confirmation via facsimile mail and by deposit of the original facsimile mail in the U.S. mail. All notices required by or relating to this Agreement shall be addressed to the respective Parties as follows:

To City: Finance Director
Town of Addison
P. O. Box 9010
Addison, Texas 75001-9010
Telecopy: 972-450-7065

To Company: UTEX Communications Corporation
Attn: Rich Lewis, CFO
1250 S. Capital of Texas Highway, Bldg. 2, Suite 235
Austin, TX 78746
Telephone: (713) 231-2313
Telecopy: (713) 647-6066

14. **Disaster Recovery Plan.** Company's Disaster Recovery Plan, as required by PUC Substantive Rule 23.97, is found on Attachment No. 5. The plan shall consist of an explanation with sufficient specificity for the City to determine Company's compliance with the requirements of this Agreement but shall not require the Company to reveal any information that the Company considers trade secret, confidential, and/or proprietary or that would give another service supplier a competitive advantage. Company's plan shall be a stand-alone plan that addresses solely Company's 9-1-1 disaster recovery procedures. City shall not withhold approval of Company's plan because City asserts that Company's plan does not include the disaster recovery plan of the incumbent local exchange company CCN holder. Company may submit the plan, or any part of the plan, that it considers trade secret, confidential, and/or proprietary or that would give another service supplier a competitive advantage, under seal. The City shall keep the plan, or any part of the plan, confidential to the extent permitted by law. Upon receiving a request for Company's plan or any part of Company's plan that Company submitted under seal, the City shall request an opinion from the Texas Attorney General as to whether or not the information requested should be released pursuant to the Texas Public Information Act, Ch. 552, Tex. Gov. Code, and shall notify Company concurrently with its request for the Attorney General decision. The City shall not release any such information that is submitted under seal until the Attorney General issues a decision resolving the request. The City is not required to request an open records decision ruling regarding information for which there has been an open records ruling that such identical information is public information.

15. **Indemnification.** Company agrees that it shall indemnify the City, its officials, officers, employees and agents against, and hold the City, its officials, officers, employees and agents harmless from, any and all liability, actions, causes of action, lawsuits, damages, judgments, costs, expenses or fees (including attorneys fees) for any

injury to or the death of any person or damage to or destruction of any property that results from, arises out of, or may be occasioned by any act of gross negligence, recklessness, or intentional misconduct by Company, its officers, employees and agents, in the performance of or in connection with this Agreement. The standard of "gross negligence, recklessness, or intentional misconduct" is established by State law, and the Parties agree that, if the State law is amended, the said standard shall be amended to reflect the then current State law. Company's indemnification hereunder shall apply without regard to whether acts, errors, omission or neglect of the City would otherwise have made them jointly or derivatively negligent or liable for such damage or injury, excepting only that Company shall not be obligated to so protect, defend, indemnify and hold harmless if such damage or injury is due to the sole negligence of the City. The terms of this paragraph 15 shall survive the termination of this Agreement.

16. **Insurance.** Company covenants and agrees that it will, at all times during the term of this Agreement and at its sole expense, maintain and carry commercial package liability insurance covering 9-1-1 service and including commercial general liability coverage, premises/operations, independent contractors, product/completed operations, personal injury, data processing errors and omissions (i.e. not excluded), and contractual liability covering, but not limited to, the indemnification provisions of this Agreement, in the amount of not less than \$1,000,000 for injury to or destruction of property or personal injury or death.

All such insurance shall: (i) be issued by a carrier which has a financial rating of A:VII or better as currently assigned in *BEST'S KEY RATING GUIDE* and is licensed to do business in the State of Texas, and (ii) name the City as an additional insured and contain a waiver of subrogation endorsement in favor of the City. A certificate evidencing such insurance, together with the declaration page of such policies, along with the endorsement naming the City as an additional insured, shall be delivered to the City upon the execution of this Agreement. At the City's request, Company shall make a copy of each of such policies available for the City's review. Each such policy shall provide that, at least 30 days prior to the cancellation, non-renewal or material modification of the same, the City shall receive written notice of such cancellation, non-renewal or modification. The City reserves the right to review the insurance requirements contained herein and to adjust coverages and limits when deemed necessary and prudent by the City.

17. **Default PSAP.** In a Company service area covered by a single NXX and multiple PSAPs, the City shall designate one of the PSAPs as the default PSAP that will be used by Company as the default route in the occurrence of a failure condition or emergency calls to Operator Services. The City shall require that such designated PSAP be assigned a 10-digit number and that the 10-digit number be provided to the Company for use in the occurrence of a failure condition or emergency calls to Operator Services. NXX is the three-digit switch entity indicator which is defined by the "D," "E," and "F" digits of a 10-digit telephone number within the North American Numbering Plan. The designated default information is contained in Attachment No. 6.

18. **Assignment.** Neither the City nor Company shall have the right or power to assign, transfer or otherwise convey this Agreement, in whole or in part, without the prior written consent of the non-assigning party; provided, however, that an assignment to an Affiliate of Company shall not require the consent of the City (provided that such Affiliate assumes all of the rights, duties, and obligations of Company hereunder), except that Company shall give notice of such an assignment to the City at least ten (10) days prior to such assignment or transfer. For purposes of this Agreement, *Affiliate* means (i) all persons, corporations or other entities, if any, controlled by Company, and (ii) all persons, corporations or other entities, if any, which control Company. As used in this definition of *Affiliate*, *control* means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities or partnership interests, by contract, or otherwise.

19. **Default.**

A. *Conditions of default.* The failure of Company to cooperate with the development and maintenance of the 9-1-1 database(s), or the non-payment of any charges due hereunder constitutes a condition of default under this Agreement.

B. *Notice of default.* Upon the determination by the City that a condition of default exists, the City shall notify Company in writing of the type and nature of the condition.

C. *Cure.* Company shall have ten (10) working days from the receipt of the notice of default (or such other length of time as the City may specify in the notice) to notify the City of Company's exact plan to cure the default. The plan proposed by Company must include the length of time required for the cure. If Company's proposed cure is approved by the City, Company shall begin to implement the plan immediately. If Company's proposed cure is not approved by the City, Company shall have five working days to modify the plan according to the concerns specified by the City.

D. *Remedies.* Should Company not act promptly to devise a plan acceptable to the City to cure the default or be unable to cure the default within the time specified, the City shall have the right to pursue any and all legal remedies, including, without limitation, the right to terminate this Agreement.

20. **Contact and Escalation List.** The Company and City will exchange and periodically update, at least yearly, a contact and escalation list. The contact and escalation list are found in Attachments No. 7a and 7b.

21. **Standards on Company.** The City shall not impose, or fail to impose, on Company any requirement, service, feature, standard, or rate that is not required of the incumbent local exchange company CCN holder.

22. **Applicable Law.** The validity of this Agreement 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. This Agreement shall be performable and all compensation payable in Dallas County, Texas. Venue under this Agreement lies in Dallas County, Texas.

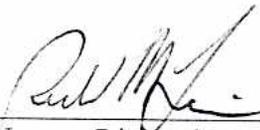
23. **Entire Agreement; Authorized Parties.** This Agreement, together with all attachments, sets forth the entire understanding of the Parties. No representation, promise, or statement of intention has been made by either Party which is not embodied herein. The undersigned officers and/or agents of the Parties are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

24. **Non-Exclusive Contract.** Company understands and agrees that City may, at its option, without obligation to Company, contract for services with any other entity or entities for the collection of delinquent or other accounts. Collections effectuated by such other entities will in no manner entitle Company to any commission or other compensation in connection therewith.

TOWN OF ADDISON, TEXAS

UTEX COMMUNICATIONS CORP.

By: _____
Ron Whitehead, City Manager

By:  _____
Typed Name: Richard M. Lewis

Its: CFO

ATTEST:

~~ATTEST:~~
By:  _____
Scott McCollough

By: _____
Carmen Moran, City Secretary

Council Agenda Item: #2n

SUMMARY:

Council approval is requested of a 9-1-1 billing agreement with the following communication carrier which has received a Service Provider Certificate of Operating Authority (SPCOA) from the Texas Public Utilities Commission:

Habla Comunicaciones, Inc.

FINANCIAL IMPACT:

No financial impact to the Town will be realized, as this carrier is currently submitting access fees to the Town. 9-1-1 fees are generating approximately \$580,000 each year. The revenue is collected by the telephone companies from their customers. The fee of the base rate approximates 62 cents on a monthly single-family residential bill. Theoretically, any revenue generated from this billing agreement will simply replace the fees the Town would have received from Southwestern Bell.

BACKGROUND:

Section 82.202 of the Town's code of ordinances requires that all 9-1-1 carriers establish an agreement with us. Many carriers are operating without a formal agreement, and we are attempting to document each carrier. The carrier listed above has submitted signed 9-1-1 billing agreements developed by the Town attorney (one copy attached for information). With the addition of the above company, Addison will have approximately 40 current 9-1-1 contracts.

RECOMMENDATION:

It is recommended council authorize the city manager to enter into a 9-1-1 agreement with the provider listed above.

RCM:rm
Attachment

9-1-1 EMERGENCY SERVICE AGREEMENT

This 9-1-1 Emergency Service Agreement ("Agreement") establishes the rates, terms, and conditions for 9-1-1 emergency service interconnection by Habla Comunicaciones, Inc ("Company") with the Town of Addison 9-1-1 Emergency Network ("9-1-1 Entity") (collectively "Parties").

WHEREAS, the Texas Legislature and the United States Congress have authorized the provision of telecommunications service in the local marketplace by service suppliers other than the holders of certificates of convenience and necessity ("CCN"); and,

WHEREAS a CCN holder is the incumbent local exchange company that holds a certificate of convenience and necessity granted by the Public Utility Commission of Texas ("PUC") on September 1, 1995, for each service area(s) within the territory of the 9-1-1 Entity; and,

WHEREAS, Company is a holder of a service provider certificate of operating authority that has received certificate number 60526 from the PUC and, therefore, a service supplier and a service provider of local telecommunications service ("service supplier") pursuant to Chapter 771 or Chapter 772 of the Texas Health and Safety Code, §§ 771.001 *et seq.*, 772.001 *et seq.*, or other applicable law pertaining to home rule cities (collectively "the Applicable Laws"), as amended, that must provide 9-1-1 emergency service to that portion of the Company's service area located within the territory of the 9-1-1 Entity; and,

WHEREAS, the 9-1-1 Entity is a political subdivision of the State of Texas established pursuant to the Applicable Laws and must interconnect service suppliers into the 9-1-1 emergency service area served by the 9-1-1 Entity; and,

WHEREAS, this 9-1-1 emergency service interconnection must protect, maintain, and further the high quality, standards-based 9-1-1 emergency service and not inappropriately and unreasonably increase the costs of 9-1-1 emergency service to the 9-1-1 Entity;

NOW, THEREFORE, in consideration of the listed mutual promises and benefits, the Parties agree as follows:

1. Company must comply with all provisions of the Applicable Laws and any requirements implementing or interpreting the Applicable Laws promulgated by the 9-1-1 Entity pursuant to the authority vested in the 9-1-1 Entity.
2. Company shall bill, collect, and remit the appropriate 9-1-1 emergency service

fee to the Town of Addison as provided in the Applicable Laws and reflected in Attachment No. 1.

Company shall remit the appropriate fees and/or, if applicable, surcharge per the rules and schedules established by the Comptroller of Public Accounts, and Texas Health and Safety Code Sections 771.071, 771.073, and 771.077. At all times Company shall be responsible for the accuracy of the report. From time to time, the Commission on State Emergency Communications ("CSEC") may change the 9-1-1 emergency service fee. Such changes shall be communicated to Company for changes in Company's collection and remittance of 9-1-1 emergency service fee, according to the provisions of the Applicable Laws. CSEC or the Comptroller shall notify Company of any change Company must make in Company's collection and remittance of 9-1-1 emergency service fee with sufficient advance time, but not to exceed 91 days before the date the change takes effect, to permit Company's billing system to comply timely with the change. Furthermore, also pursuant to the Applicable Laws, Company may retain an administrative fee equal to one percent (1%) of the fees Company collects.

3. This service agreement shall be in full force and effect so long as Company's status is strictly that of a reseller and the Company does not use any facilities. Company shall inform the 9-1-1 Entity of any changes or expansion of its service, or in the use of facilities, in its calling area or service territory 60 days in advance of such change or expansion.

4. Any notice required or permitted to be given by the 9-1-1 Entity to Company under this agreement shall be mailed to Company certified or registered U. S. Mail, postage prepaid, return receipt requested to the following address:

(Name and Address of Company)

Habla Comunicaciones
920 W. Jefferson
Dallas TX 75208

Attention: Regulatory Department

Any notice required or permitted to be given by the Company to 9-1-1 Entity under this agreement shall be mailed by certified or registered U. S. Mail, postage prepaid, return receipt requested or delivered to the following address:

Town of Addison Finance Dept.
P. O. Box 9010
Addison, TX 75001-9010
Attention: Elaine DiFiglia, Collections Manager

5. The Company and the 9-1-1 Entity will provide and periodically update a contact list. The contact list is found in Attachment No. 2.

6. The 9-1-1 Entity shall not impose on Company any requirement, service, feature, standard, or rate that is not required of the incumbent local exchange company CCN holder.

7. This Agreement, together with all attachments, sets forth the entire understanding of the Parties. No representation, promise, or statement of intention has been made by either Party that is not embodied herein.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the last date signed below.

Town of Addison, Texas

Company

_____

(Printed Name)

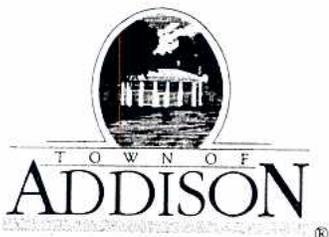
Randall Brooks
(Printed Name)

(Title)

Vice-President
(Title)

Date: _____

Date: 8-10-04



50 YEARS OF FUN!

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

August 19, 2004

STAFF REPORT

RE: Case 1472-SUP/U.S. Postal Service, Addison Addition

LOCATION: 4900 Airport Parkway

REQUEST: Amendment to an existing Special Use Permit public building to be used by the Federal government

APPLICANT: U.S. Postal Service, represented by Mr. Dennis Delisse of MPI Architects

DISCUSSION:

Background. Under the provisions of Article XII, SPECIAL USES, of the Addison zoning ordinance, a special use permit is required for:

- (1) Any public building to be erected or used by the City, County, State, or Federal Government in any district.

The Council approved the Special Use Permit for the Post Office on July 23, 1996 through Ordinance 096-027. When the original post office was approved, it was not expected that Addison would run mail delivery out of it. However, as soon as the post office was completed, the post office changed to one that would have mail carriers. At that point, the Postmaster requested to add temporary trailers out behind the post office to accommodate a workroom for the mail carriers. The temporary trailers have been in place on the site since 1996. At this time, the Postal Service would like to expand the building to add on a permanent workroom for mail carriers, locker rooms for carriers, and some storage space. The expansion would take place within the existing fenced yard that is already in place at the post office. The addition to the post office will not add any more space for customers or any more post office boxes.

Proposed Plan. The new post office addition will add 7,249 square feet, which will bring the total square footage of the Post Office to 20,137 square feet. The addition is brick

with concrete trim and will be finished to match the building. The bulk of the improvements will take place behind the fence that separates the public areas of the Post Office property from the "Employee Only" areas of the property. The improvements will add 25 additional parking spaces to the site. The parts of the Post Office property that are visible and accessible by the public will not change.

Landscaping. The staff has reviewed the landscape plan and notes that it needs to show calculations on the percentage of landscaping to be removed versus what will remain. In addition, the existing landscaping has not been routinely maintained. All of the planting beds and turf need to be renovated and replanted according to the original landscaping plan, or an alternative planting plan needs to be submitted for review and approval.

Engineering. The applicant has submitted engineering plans, which are currently being reviewed. The final civil drawings must be approved prior to issuance of a building permit.

RECOMMENDATION:

Staff recommends approval of the amendment to the existing Special Use Permit for the Addison Post Office, subject to the following conditions:

- All of the planting beds and turf shall be renovated and replanted according to the original landscaping plan, or an alternative planting plan needs to be submitted for review and approval.

- Final civil drawings shall be approved prior to issuance of a building permit.

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 August 26, 2004, voted to recommend approval of the above-cited request subject to the following conditions:

- All of the planting beds and turf shall be renovated and replanted according to the original landscaping plan, or an alternative planting plan needs to be submitted for review and approval.
- Final civil drawings shall be approved prior to issuance of a building permit.
- the existing fence that runs north and south on the east property line shall be replaced with a new wooden (site barring) fence.

Voting Aye: Chafin, Doepfner, Jandura, Knott, Mellow,
Voting Nay: None,
Absent: Benjet, Bernstein

Memorandum

Date: August 19, 2004
To: Carmen Moran, Director of Development Services
From: Slade Strickland, Director of Parks and Recreation
Subject: **Case 1472-SUP/United States Postal Service**

The landscape plan needs to show calculations on the percentage of landscaping to be removed versus what will remain. It appears that the expanded parking and road base additions will put the site below the 20 percent landscape requirement.

All of the existing landscaping has not been routinely maintained. All of the planting beds and turf need to be renovated and replanted according to the original landscaping plan, or an alternative planting plan need be submitted for review and approval if the applicant plans to change from the original plan.

Memorandum

Date: August 19, 2004
To: Carmen Moran, Director of Development Services
From: Slade Strickland, Director of Parks and Recreation
Subject: **Case 1472-SUP/United States Postal Service**

The landscape plan needs to show calculations on the percentage of landscaping to be removed versus what will remain. It appears that the expanded parking and road base additions will put the site below the 20 percent landscape requirement.

All of the existing landscaping has not been routinely maintained. All of the planting beds and turf need to be renovated and replanted according to the original landscaping plan.

Carmen Moran

From: Steve Chutchian
Sent: Monday, August 16, 2004 2:49 PM
To: Carmen Moran
Subject: Planning & Zoning Commission Agenda

The following comments are submitted for items listed on the August 26, 2004 Planning & Zoning Commission Agenda:

Case 1468-SUP/Patton's Corner

No Comments

Case 1469-SUP/Chat's Coffee House

No Comments

Case 1470-SUP/Grand Buffet Chinese Restaurant

No Comments

Case 1471-Z/Raymond Construction

Engineering plans and specifications must be developed for the site and approved by the Town of Addison, including the following:

- Grading & drainage plan
A drainage channel existing across the southern portion of the site. Stormwater from the property adjacent and to the east, as well as on-site drainage, must be accommodated in this channel or by construction of underground conduit.
- Existing and proposed utilities, including water, sewer, fiber optic, and franchise utilities.
- All drainage and utilities easements required on-site.
- Paving details
Proposed driveway and median improvements must be located, dimensioned, and detailed on the civil drawings.
- Erosion control plan
- Traffic control plan
- Landscaping and irrigation plan (to be approved by Parks Dept.)

Case 1472-SUP/United States Postal Service

Engineering plans were previously submitted for review and comments on this site. At this time, revised civil drawings have not been re-submitted or approved by the Town of Addison. Final civil drawings must be approved prior to issuance of a permit for construction.

Steve Chutchian, P.E.
Assistant City Engineer

HWK, Inc.

Asset Management Services
US Mail: Post Office Box 427, Addison, TX 75001
Delivery: 15842 Addison Road, Addison, TX 75001
Telephone: 972/239-1324
Fax: 972/239-0026
E-mail: box222@family.net

September 1, 2004

Carmen Moran
Director of Development Services
Town of Addison
P. O. Box 9010
Addison, TX 75001-9010

972-450-7018 dd
972-450-7043 fx

Re: Case No. 1472-SUP/U.S. Postal Service, Addison Addition at 4900 Airport Parkway

Dear Ms. Moran:

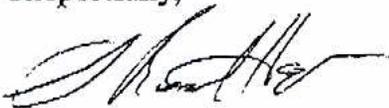
Reference my visit to your office before the August 26, 2004, Planning and Zoning Commission hearing concerning my protest regarding the referenced case. I represent the property on the west side of the post office. The Town of Addison is not asking the post office for the five (5) feet of right-of-way necessary to take Airport Parkway from 55 feet wide to 60 feet as per the thoroughfare plan.

If the Town does not ask the post office for the right-of-way, then the thoroughfare plan should be amended and the Town should not ask for it when the remaining undeveloped properties on the south side of Airport Parkway come in for development.

It does not make sense to ask for the right-of-way from the rest of us on the south side of Airport Parkway and not be uniform.

If the potential to widen Airport Parkway, as it probably will need to be, is to be preserved, then this right-of-way will be needed.

Respectfully,



S. Kent Hope



South & Western "The Specialty Company"

J.J. HORAN

President

jj-horan@southandwestern.com

September 3, 2004

SENT VIA FAX

Ms. Carmen Moran
Director of Development Services
Town of Addison
P.O. Box 9010
Addison, Texas 75001-9015

Fax #: 972-450-7043, 1 page

Re: Case No. 1472-SUP / U.S. Postal Service, Addison Addition at 4900 Airport Parkway

Dear Ms. Moran:

I represent two properties which are owned by SWGA Ventures, LTD located on the east side and adjacent to the U.S. Post Office. Please accept this letter as my formal protest to the above referenced case. After meeting with you during my visit to your office on August 25th, I have become aware that the Town of Addison is not asking the post office for the five (5) feet of right-of-way necessary to take Airport Parkway from 55 feet wide to 60 feet as per the thoroughfare plan.

If the Town does not ask the post office for the right-of-way, then the thoroughfare plan should be amended and the Town should not request such right-of-way from other landowners when the remaining undeveloped properties on the south side of Airport Parkway prepare for development.

The town's consideration to applying a consistent approach to all property on the south side of Airport Parkway is appreciated.

Sincerely,

J.J. Horan

COWLES & THOMPSON**MEMORANDUM**

TO: Carmen Moran
Director of Development Services

FROM: Angela K. Washington

RE: Agenda Item #R7 – 4900 Airport Parkway

DATE: September 9, 2004

You have received two complaint letters concerning the zoning application filed by the United States Postal Service proposing to amend the specific use permit governing property located at 4900 Airport Parkway. The letters complain that the Town is not requesting a dedication of five feet of right-of-way from the property owner to increase the width of Airport Parkway from 55 feet to 60 feet in accordance with the Town's current Thoroughfare Plan.

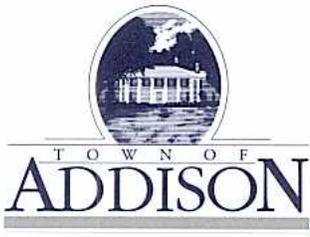
Right-of-way dedications are addressed when property is platted, not in the context of a zoning case. Should the property owner file an application to replat the property, requesting a dedication based on the Town's current Thoroughfare Plan would be appropriate at that time. The issue before the council in connection with the zoning case is whether the requested changes to the zoning are appropriate at the subject location from a land use perspective.

If you have any questions, please give me a call.

c: Kenneth C. Dippel
John M. Hill



50 YEARS OF FUN!



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

MEMORANDUM

September 10, 2004

TO: Ron Whitehead, City Manager
FROM: Carmen Moran, Director of Development Services
SUBJECT: 3/4th vote requirement on Agenda Item #R9

Appendix A of the Code of Ordinances, which contains the Addison Zoning Ordinance, Article XXIX, Changes and Amendments, Section 4, Paragraph (a) states:

If a written protest against such proposed amendment, supplement or change has been filed with the city secretary, duly signed by the owners of 20 percent or more either of the area of the lots or land included in such proposed change, or of the lots or land immediately adjoining the same extending 200 feet therefrom, such amendment shall not become effective except by the favorable vote of three-fourths of all the governing body.

Agenda Item #R9 is a request from the US Postal Service for an amendment to its existing Special Use Permit for a public building used by the federal government. The staff received two protest letters on the item from Mr. Kent Hope (Attachment R9-4), the property owner to the west of the site, and Mr. J.J. Horan (Attachment R9-5), the property owner on the east side of the site. Mr. Hope and Mr. Horan own 31 percent of the land "immediately adjoining the same extending 200 feet therefrom." Therefore, a 3/4th vote (six out of seven members) is required to approve the request for an amendment to the existing Special Use Permit.



South & Western "The Specialty Company"

J.J. HORAN
President
jj-horan@southandwestern.com

September 17, 2004

SENT VIA FAX

Mr. Dennis J. DeLisse, A.I.A., C.S.I.
Principal / MPI Architects
5100 Belt Line, Suite 838
Dallas, Texas 75254

Fax #: 972-788-0082, 7 pages

Re: Case No. 1472-SUP / U.S. Postal Service, Addison Addition at 4900 Airport Parkway

Dear Mr. DeLisse:

Thank you for your time Tuesday evening at the Addison City Council Meeting. As discussed between you, Kent Hope and myself, we will meet next week in an effort to resolve several issues of mutual interest. I am aware that Mr. Hope has contacted you with several meeting dates that work for both of us.

In addition to the 5 foot right-of-way as outlined in my letter dated September 1st, 2004 (copy attached), below is a brief overview of additional issues for discussion:

Retaining Wall Encroachment

The post office retaining wall on the East Side of Lot 1 Block "A" United States Postal Service is encroaching on the adjacent South & Western property. In addition, the wall is poorly constructed with small landscape timbers and is starting to lean further into the South & Western property. The wall will collapse in several years. We are requesting that the wall be removed from the South & Western property and re-built with material that will last well into the future.

No Easement for Storm Sewer

The post office storm sewer that runs along the north side of the South & Western property bordering Airport Parkway does not have an easement.

Screening Wall

Appropriate screening per exhibit "B" of attached warranty deed.

Mr. Dennis DeLisse
September 17, 2004
Page 2

Landscape Irrigation

The landscaping (grass) on the east side of the wall (as described above) was cut off from the irrigation system when the fence was constructed. Consequently, the Bermuda grass burns out in the summer. Simply extending the irrigation under the wall and adding several additional sprinkler heads will resolve this problem.

Should you have any questions or need additional information prior to our meeting please feel free to contact me.

Sincerely,



J.J. Horan

JJH/hc
Enclosures

cc: Mr. Ron Whitehead, Addison City Manager



RECEIVED SEP 24 2004

HWK, Inc.

Asset Management Services
US Mail: Post Office Box 427, Addison, TX 75001
Delivery: 15842 Addison Road, Addison, TX 75001
Telephone: 972/239-1324
Fax: 972/239-0026
E-mail: box222@family.net

September 24, 2004

Carmen Moran
Director of Development Services
Town of Addison
P. O. Box 9010
Addison, TX 75001-9010

972-450-7018 dd
972-450-7043 fx

Re: Case No. 1472-SUP/U.S. Postal Service, Addison Addition at 4900 Airport Parkway

Dear Ms. Moran:

Reference Item #R4 on the council's agenda for September 28, 2004. While I want the proposed expansion of the post office to occur, the USPS and I are not yet in agreement on certain issues. Mr. Horan and I met with Dwayne Bradford, a USPS representative, yesterday. We have not reached an agreement yet regarding Airport Parkway right-of-way.

A new issue has come to my attention. When I sold the property to the post office, the contract of sale and the restrictions in the deed both require the USPS to erect a brick screening wall (and not a chain link fence as currently proposed).

Progress has been made as we now have someone to talk to, the USPS is now aware of our issues, and we are still talking. I would appreciate it if the council would continue to table this item as both parties work to resolve these issues.

Respectfully,



S. Kent Hope

cc J. J. Horan by fax to 972-855-2990



South & Western "The Specialty Company"

RECEIVED SEP 28 2004

J.J. HORAN
President
jj-horan@southandwestern.com

September 27, 2004

SENT VIA FAX

Carmen Moran
Director of Development Services
Town of Addison
P.O. Box 9010
Addison, Texas 75001-9015

Fax #: 972-450-7043, 13 pages

Re: Case No. 1472-SUP / U.S. Postal Service, Addison Addition at 4900 Airport Parkway
September 28th Council Agenda Item #R4

Dear Mrs. Moran:

As outlined in my September 17th letter to Mr. Dennis DeLisse with MPI Architects (copy attached), South & Western has significant concerns related to the proposed expansion of the United States Post Office. Although not opposed to the overall expansion, it is our desire to find amicable solutions to all issues with the USPS. On September 23rd, Dwayne Bradford with USPS, Dennis DeLisse, Kent Hope and myself met to discuss the following:

▪ ***Retaining Wall Encroachment***

The post office retaining wall on the East Side of Lot 1 Block "A" United States Postal Service is encroaching on the adjacent South & Western property. In addition, the wall is poorly constructed with small landscape timbers and is starting to lean further into the South & Western property. The wall will collapse in several years. We are requesting that the wall be removed from the South & Western property and re-built with material that will last well into the future.

▪ ***No Easement for Storm Sewer***

The post office storm sewer that runs along the north side of the South & Western property bordering Airport Parkway does not have an easement.

▪ ***Screening Wall***

Appropriate screening per exhibit "B" of attached warranty deed. **In addition, the requirement to erect a brick screening wall (in lieu of the chain link fence currently on the plan) is also contained in the contract of sale when purchased by USPS (copy attached).**

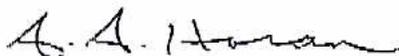
Carmen Moran
September 27, 2004
Page 2

▪ *Airport Parkway Right-of-way*

As outlined in my letter of September 3rd, 2004.

Please be advised that we have not reached an agreement on the above issues with the USPS. Mr. Bradford has agreed to look into these issues so we are certainly further along into finding a resolution than we were two weeks ago. However, it would be very beneficial to both Mr. Hope and myself if the council would continue to table this item as we work to resolve these issues. Your assistance is greatly appreciated.

Sincerely,



J.J. Horan

JJH/hc
Enclosures



WARRANTY DEED

STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
 COUNTY OF DALLAS §

That GROVER H. HOPE and wife, MARY L. HOPE, Grantors,
 with address of P.O. Box 427, Addison, Texas, 75001-0427, in
 consideration of the sum of [REDACTED]

[REDACTED]

[REDACTED] cash in hand paid by THE UNITED STATES
 POSTAL SERVICE, Grantee, with mailing address of Office of
 Field Legal Services, United States Postal Service, P. O.
 Box 667160, Dallas, Texas 75266-7160, the receipt of which
 payment is hereby acknowledged, grant, sell and convey unto
 the United States Postal Service the following described
 real estate, together with all the improvements thereon,
 situated in Dallas County, Texas, to-wit:

A tract of land situated in the George W. Fisher Survey,
 Abstract No. 482, City of Addison, Dallas County, Texas,
 and being more particularly described by metes and
 bounds in Exhibit "A" attached and incorporated herein
 by reference.

This conveyance is subject to items listed in
 Exhibit "B" attached and incorporated herein by reference.

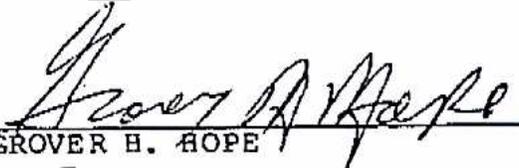
TO HAVE AND TO HOLD the above described premises,
 together with all and singular the rights, appurtenances and
 hereditaments thereunto and anywise belonging unto the said
 Grantee, its successors and assigns, forever, together with
 all the right, title and interest of the Grantors in and to

any streams, alleys, roads, streets, strips, gores, railroad rights-of-way and other rights-of-way abutting or adjoining said property.

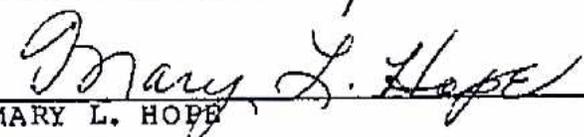
Grantors hereby bind themselves, their heirs and assigns, to warrant and forever defend all and singular the above described property unto the Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

The County Clerk is instructed to mail this recorded Deed to Grantee at P.O. Box 667160, Dallas, Texas 75266-7160.

EXECUTED on this 20 day of October, 1987.



GROVER H. HOPE



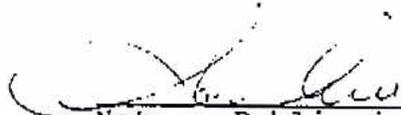
MARY L. HOPE

STATE OF TEXAS §
COUNTY OF DALLAS §

ACKNOWLEDGMENT

5th This instrument was acknowledged before me on this day of October, 1987 by GROVER L. HOPE.

My commission expires:
December 31 1989



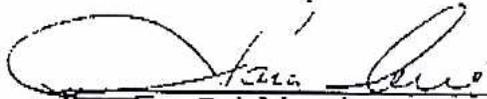
Notary Public in and for
the State of Texas

STATE OF TEXAS §
COUNTY OF DALLAS §

ACKNOWLEDGMENT

5th This instrument was acknowledged before me on this day of October, 1987 by MARY L. HOPE.

My commission expires:
December 31 1989



Notary Public in and for
The State of Texas

EXHIBIT "A"

BEING a tract of land situated in the GEORGE W. FISHER SURVEY, ABSTRACT NO. 482, in the City of Addison, Dallas County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a point for corner in the South line of Airport Parkway (25.0 feet from centerline), same also being South 89 degrees 37 minutes 15 seconds East, 390.67 feet from the intersection of the East line of Addison Road with said South line of Airport Parkway;

THENCE South 89 degrees 37 minutes 15 seconds East along said South line of Airport Parkway for a distance of 385.00 feet to an iron rod in concrete for corner;

THENCE South 00 degrees 22 minutes 45 seconds West for a distance of 358.59 feet to an iron rod in concrete for corner;

THENCE North 89 degrees 33 minutes 46 seconds West generally along a wire fence for a distance of 385.00 feet to an iron rod concrete for corner;

THENCE NORTH 00 degrees 22 minutes 45 seconds East for a distance fo 358.20 feet to the PLACE OF BEGINNING.

CONTAINING 137,982.27 square feet or 3.1676 acres of land.

EXHIBIT "B"

This conveyance is subject to items as follows:

1. The Grantee covenants that the Main Post Office Building to be built on this site shall have the following characteristics:
 - a. Building walls and screening walls shall be made of matching brick.
 - b. Loading dock and employees' parking areas shall be screened by brick walls from the street and adjoining properties.
 - c. All attempts will be made to design a building that is compatible to an office district.
2. Recorded easements and rights-of-way which have not been abandoned.

U.S. POSTAL SERVICE
Offer to Sell Real Property

ORIGINAL

The Undersigned, hereinafter called the Vendor, in consideration of one dollar to me in-hand paid, receipt of which is hereby acknowledged, and in consideration of the mutual covenants and agreements herein set forth, hereby makes the irrevocable offer to sell and convey to the United States Postal Service and its assigns, the fee simple title to the following described land, with the buildings and improvements thereon, and all rights, hereditaments, easements and appurtenances thereunto belonging, located in the City of Addison County of Dallas, State of Texas bounded and described as follows:

"See Exhibit A"

subject to the following rights outstanding in third parties:

All recorded easements and right-of-ways.

Excepting and reserving to the Vendor the following rights and interests:

None

The terms and conditions of this offer are as follows:

1. The Vendor agrees that this offer may be accepted by the United States Postal Service through any duly authorized representative, by delivering, mailing or telegraphing a notice of acceptance to the Vendor at the address stated below, at any time within not later than 9/23/87 () calendar days from the date hereof, whereupon this offer and the acceptance thereof become a binding contract.

2. The Postal Service agrees to pay to the Vendor for said land the sum of [REDACTED] (\$ [REDACTED]), payable upon approval by the Postal Service of the Vendor's title and execution and delivery by the Vendor of a good and sufficient general warranty deed conveying said land with the hereditaments and appurtenances thereunto belonging to the United States Postal Service and its assigns, in fee simple, free and clear from all liens and encumbrances, except those specifically excepted or reserved above, together with all right, title, and interest of the Vendor in and to any streams, alleys, roads, streets, ways, strips, gores, or railroad rights-of-way abutting or adjoining said land.

3. It is agreed that the Postal Service will defray the expenses incident to the preparation and recordation of the deed to the Postal Service and the procurement of the necessary title evidence.

4. The vendor agrees that all taxes, assessments, and encumbrances which are a valid lien against the land as of the time of conveyance to the Postal Service shall be satisfied of record by the Vendor at or before the transfer of title and, the Vendor will, at the request of the Postal Service and without prior payment or tender of the purchase price, execute and deliver the general warranty deed to the Postal Service and obtain and record such other curative evidence of title as may be required by the Postal Service. If the Vendor fails to satisfy any such liens or fails to secure such curative evidence as required the Postal Service may pay said liens and cure such defects and deduct any cost incurred from the purchase price of the land. Taxes for the current year are to be pro-rated as of the date of closing.

5. The Vendor agrees that loss or damage to the property by fire or acts of God shall be at the risk of the Vendor until the title to the land and deed to the Postal Service have been accepted by the Postal Service through its duly authorized representative or until the right of occupancy and use of the land, as hereinbelow provided for, has been exercised by the Postal Service; and, in the event that such loss or damage occurs, the Postal Service may, without liability, refuse to accept conveyance of the title or it may elect to accept conveyance or title to such property, in which case there shall be an equitable adjustment of the purchase price.

6. The agents, employees or representatives of the Postal Service shall have the right, during the period of the offer, subject to the use made of the premises by the Vendor to enter upon the said premises for the sole purpose of inspecting the same and making test borings, plans and topographical surveys in connection with the Postal Service's contemplated use of the premises. The Postal Service, at its expense shall promptly restore the property of the Vendor to its original condition in accordance with good engineering practices.

7. Possession of the property shall be delivered to the purchaser on the day the sale is consummated unless a different possession date is herein specified.

8. The Vendor agrees not to rent, lease or otherwise increase tenancy on any portion of the property subsequent to execution of this Offer to Sell Real Property.

9. It is agreed that the spouse, if any, of the Vendor, by signing below, agrees to join in any deed to the Postal Service and to execute any instrument deemed necessary to convey to the Postal Service any separate or community estate or interest in the subject property and to relinquish and release any dower, curtesy, homestead, or other rights or interests of such spouse therein.

10. The Vendor represents and it is a condition of acceptance of this offer that no member of or delegate to Congress, or resident commissioner, shall be admitted to or share any part of this agreement, or to any benefits that may arise therefrom; but this provision shall not be construed to extend to any agreement if made with a corporation for its general benefit.

11. The Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Vendor for the purpose of securing business. For breach or violation of this warranty the Postal Service shall have the right to annul this contract without liability or in its discretion to deduct from the price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee. (Licensed real estate agents or brokers having listings on property in accordance with general business practice, and who have not obtained such licenses for the sole purpose of effecting this contract, may be considered as bona fide employees or agencies within the exception contained in this clause.)

12. The terms and conditions aforesaid are to apply to and bind the heirs, executors, administrators, successors, and assigns of the Vendor.

13. All terms and conditions with respect to this offer are expressly contained herein and the Vendor agrees that no representative or agent of the Postal Service has made any representation or promise with respect to this offer not expressly contained herein.

14. Legal title is held as follows: (Show whether joint tenants, tenants in common, tenants by the entirety, etc.)

Grover H. Hope

15. The following paragraphs were added or deleted before execution:

Paragraphs 16-25 are attached hereto and made a part thereof.

Signed, Sealed, and Delivered this 17 Day of Sept., 19 87

Witnesses**

[Signature]
[Signature]

Vendor(s)*

[Signature] (Seal)
(Vendor)
Grover H. Hope
[Signature] (Seal)
(Spouse of Vendor)
Mary L. Hope

(Vendor) (Seal)

(Spouse of Vendor) (Seal)

Notice of acceptance of this offer is to be sent to:

Grover H. Hope, P. O. Box 427
(Name, street number, city, state, and ZIP+4)
Addison, TX 75001-0427 214/239-1324
(Telephone No.)

Acceptance of Offer to Sell Real Property

Date: **SEP 22 1987**

The offer of the Vendor contained herein is hereby accepted for and on behalf of the United States Postal Service.

Witness:** [Signature]

[Signature]
(Name)
Manager, Real Estate Branch
Dallas Facilities Service Office
(Title)
PO Box 667180
Dallas, TX 75266-7180
(Address)

*Identify each signature as to Vendor or spouse. If property is located in a state providing dower rights the offer must be signed by the spouse. If unmarried, owner's legal marital status must be indicated. If property is in an estate or owned by a corporation, evidence of authority of the signatories must accompany the offer. This offer must be acknowledged as required by state statutes.

**This space will be used for witnesses to signatures if required by State law.

16. Vendor hereby certifies that to the best of his/her knowledge the subject property has never been used as a toxic waste dump and that no hazardous waste or material is presently on the site.

17. On behalf of the United States Postal Service, Vendor shall be responsible for initiating and proceeding with the platting process through approval by the planning and zoning commission. Between the planning and zoning hearing and the City Council hearing this transaction shall be closed into escrow. After closing into escrow, United States Postal Service shall be responsible for completing the platting process within a reasonable period after closing into escrow by obtaining City Council plat approval. If after using due diligence and determination, the United States Postal Service is unable to obtain City Council approval, then Vendor and United States Postal Service shall extend this offer to the next City Council meeting.

18. Closing into escrow shall be within 15 calendar days from date of acceptance of this offer by U. S. Postal Service, date title is clear, or planning and zoning plat approval and, whichever is later.

19. The United States Postal Service agrees to pay and bear the expense of the following:

1. Boundary and Topographical Survey
2. Title Insurance
3. Deed Preparation and Recording
4. Escrow Fees
5. Purchasers pro-rata share of Ad Valorem Real Estate Taxes for 1987.

20. The United States Postal Service understands that S. Kent Hope may act in the dual capacity of Broker and Principal in the sale of the property for valuable consideration herein stated in paragraph 2.

21. Broker agrees to hold Postal Service harmless from any claims for Brokerage Fees associated with this sale.

22. At the time of the execution of this offer, the Vendor's broker, S. Kent Hope, has advised and hereby advises United States Postal Service by this writing that United States Postal Service should have the abstract covering the real estate which is the subject of this Offer examined by an attorney of the United States Postal Service's own selection or that United States Postal Service should be furnished with or obtain a policy of title insurance.

23. If the United States Postal Service should require that Vendor execute and deliver the general warranty deed without prior payment (pursuant to paragraph 4), then prior to said execution and delivery, United States Postal Service shall deposit the entire agreed upon purchase price with the title company with instructions to release the funds to Vendor upon recordation of the Deed and plat approval by the Addison City Council. Escrowed funds shall be placed in an interest bearing account for the benefit of the Vendor. If the transaction contemplated herein cannot be funded out of escrow under the terms herein stated, then United States Postal Service shall deed the property back to Vendor and United States Postal Service shall receive the escrowed purchase price plus any interest.

24. United States Postal Service agrees that Vendor shall be released from any obligation what so ever in the event written notice of rejection is provided by the Postal Service to the Vendor.

25. It is agreed that the proposed Addison, Texas, Main Post Office Building shall have the following characteristics if this offer is accepted;

- A. Building walls and screening walls shall be matching brick.
- B. Loading dock and employee parking areas shall be screened by brick walls from the street and adjoining properties.
- C. All attempts will be made to design a building that is compatible to an office district.

EXHIBIT "A"

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CONTAINING 137,982.27 square feet or 3.1676 acres of land.



50 YEARS OF FUN!



Post Office Box 9010

Addison, Texas 75001-9010

5300 Belt Line Road

(972) 450-7000

FAX (972) 450-7043

MEMORANDUM

October 12, 2004

TO: Ron Whitehead, City Manager
FROM: Carmen Moran, Director of Development Services
SUBJECT: Case 1472-SUP/US Postal Service

As you know, the Post Office is planning to expand its facility on Airport Parkway. Since all public buildings in Addison require a Special Use Permit, the Post Office filed a zoning case to amend its existing SUP.

The case came to Council on September 14th, and at that hearing, the property owners on either side of the Post Office spoke in opposition to the request during the public hearing. The item was tabled, and was put back on the agenda for September 28, 2004. The property owners and the Post Office had not resolved their issues by that meeting, so the item was put back on the agenda for October 12, 2004.

The case has two sets of issues. One set is the conditions that the city has proposed for the development of the addition to the Post Office. Those conditions are:

- All of the planting beds and turf shall be renovated and replanted according to the original landscaping plan, or an alternative planting plan needs to be submitted for review and approval.
- Final civil drawings shall be approved prior to issuance of a building permit.
- the existing fence that runs north and south on the east property line shall be replaced with a new wooden (sight barring) fence.

The Post Office has neither agreed nor disagreed with the conditions. It has indicated it will try to improve the landscaping and build a sight-barring fence if the budget allows.

The second set of issues were brought up by the property owners and seem to be civil issues between the property owners and the Post Office. Those issues are:

-Retaining Wall Encroachment. Mr. Horan claims the Post Office encroaches onto his property. He also maintains that the wall is poorly constructed. He is requesting that it be moved from his property and rebuilt with material that will last. The Post Office maintains that the retaining wall is on its property. I don't believe this issue has been resolved between the two parties.

-No Easement for Storm Sewer. The Post Office has a storm sewer line on Mr. Horan's property that is not in an easement. Since this is on private property, it is a civil issue between Mr. Horan and the Post Office.

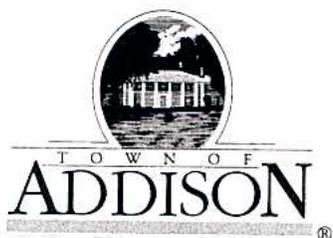
-Screening Wall. There seems to be a requirement in the contract for sale of the property that a brick screening wall be built around the site in lieu of the chain-link fence currently on the plan. Again, this seems to be a civil agreement among Mr. Horan, Mr. Hope, and the Post Office.

Airport Parkway Right-of-Way dedication. Mr. Hope and Mr. Horan both believe that the Post Office should be required to dedicate 5 feet of right-of-way at this time for Airport Parkway. The Post Office was platted prior to the Thoroughfare Plan amendment that required the dedication. The staff does not have an immediate plan to widen Airport Parkway, but the Post Office has indicated that it will give right-of-way in the future if it is required. Since the site has already been platted, the staff did not propose this as a condition.

The Post Office and the property owners have met one time, and they did not resolve the above-listed issues at that meeting. While the Post Office says it will cooperate with local regulations, it will sometimes claim Federal Government immunity from any local regulation, including requirements for zoning and permits. The Post Office representative has not said the Post Office will claim immunity in this instance, but he has stated that he does not intend to meet with the property owners any further.

The logo for Addison's 50th anniversary, featuring the word "Addison" in a cursive font followed by "50!" in a large, stylized font.

50 YEARS OF FUN!



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

FAX (972) 450-7043

November 3, 2004

Mr. Larry Andrews, Manager of Real Estate
United States Postal Service
7800 N. Stemmons Freeway, Suite 400
Dallas, TX 75247-7217

RE: right-of-way dedication at Addison Post Office at 4900 Airport Parkway,
Addison, TX 75001

Dear Mr. Andrews:

We have been meeting with Mr. D'Wayne Bradford from your office on a proposed expansion of the Addison Post Office. During the review of the plans for the expansion, it came to our attention that the Town's Thoroughfare Plan calls for a 60-foot wide right-of-way for Airport Parkway. The current right-of-way contains 30 feet north of the centerline of the street, and 25 feet south of the centerline. The plan requires that all property owners on the south side of the centerline who come in to plat property, dedicate five feet of right-of-way. However, the requirements were adopted after the Post Office platted the site in 1987. Therefore, the Post Office did not dedicate right-of-way when it was platted.

The Post Office was constructed with a five-foot sidewalk against Airport Parkway, and at present, that sidewalk is on the Post Office property. The Town does not have any plans to expand Airport Parkway, but it would like to get all sidewalks in the public right-of-way. Therefore, the Town requests that the Post Office dedicate five feet of right-of-way to the Town so that the existing sidewalk can be in the public right-of-way. The Town would accept a sidewalk and utility easement, rather than a dedication, if that is preferable to the Postal Service. The property can be dedicated, or the easement granted, through a separate instrument.

Letter to Mr. Larry Andrews
November 3, 2004

Page 2

We are very pleased with the service the Post Office staff provides to our residents and business citizens. We look forward to working with you to resolve this issue.

Sincerely,

A handwritten signature in black ink that reads "Ron Whitehead". The signature is written in a cursive style with a large, stylized "R" and "W".

Ron Whitehead
City Manager

UNITED STATES POSTAL SERVICE



MAIN POST OFFICE
4900 AIRPORT PARKWAY
ADDISON, TEXAS 75001

BUILDING EXPANSION

CONTOUR SURVEY
THIS SURVEY WAS CONDUCTED BY THE ARCHITECTS AND ENGINEERS IN ACCORDANCE WITH THE REQUIREMENTS OF THE ARCHITECTS AND ENGINEERS BOARD OF TEXAS, CHAPTER 1001, SUBCHAPTER 1001.001, AND THE ARCHITECTS AND ENGINEERS BOARD OF TEXAS, CHAPTER 1001, SUBCHAPTER 1001.002.

GRAD FOR WALK SURVEY
THIS SURVEY WAS CONDUCTED BY THE ARCHITECTS AND ENGINEERS IN ACCORDANCE WITH THE REQUIREMENTS OF THE ARCHITECTS AND ENGINEERS BOARD OF TEXAS, CHAPTER 1001, SUBCHAPTER 1001.001, AND THE ARCHITECTS AND ENGINEERS BOARD OF TEXAS, CHAPTER 1001, SUBCHAPTER 1001.002.

SECTION SURVEY
THIS SURVEY WAS CONDUCTED BY THE ARCHITECTS AND ENGINEERS IN ACCORDANCE WITH THE REQUIREMENTS OF THE ARCHITECTS AND ENGINEERS BOARD OF TEXAS, CHAPTER 1001, SUBCHAPTER 1001.001, AND THE ARCHITECTS AND ENGINEERS BOARD OF TEXAS, CHAPTER 1001, SUBCHAPTER 1001.002.

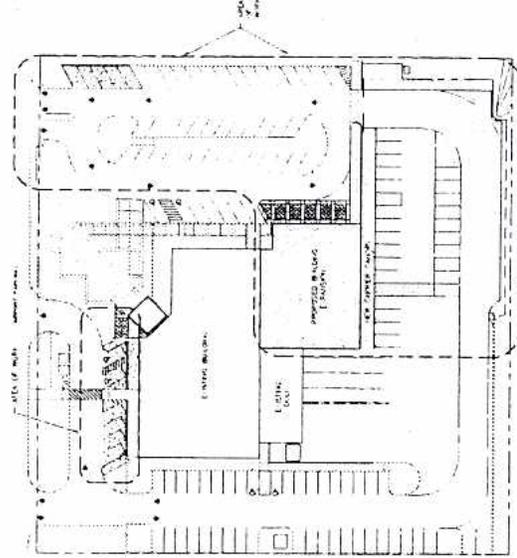
STRUCTURAL STUDIO
10000 W. LAKELAND BLVD., SUITE 1000
DALLAS, TEXAS 75244
TEL: 972-242-1111
WWW.STRUCTURALSTUDIO.COM

MECHANICAL/ELECTRICAL ENGINEERS
10000 W. LAKELAND BLVD., SUITE 1000
DALLAS, TEXAS 75244
TEL: 972-242-1111
WWW.MECHANICAL/ELECTRICAL.COM

ARCHITECTS
Architecture & Planning & Interior Design
10000 W. LAKELAND BLVD., SUITE 1000
DALLAS, TEXAS 75244
TEL: 972-242-1111
WWW.ARPID.COM



1 VICINITY MAP
SEE SHEET 5/17/04



2 KEY PLAN
SEE SHEET 5/17/04

Index of Drawings:

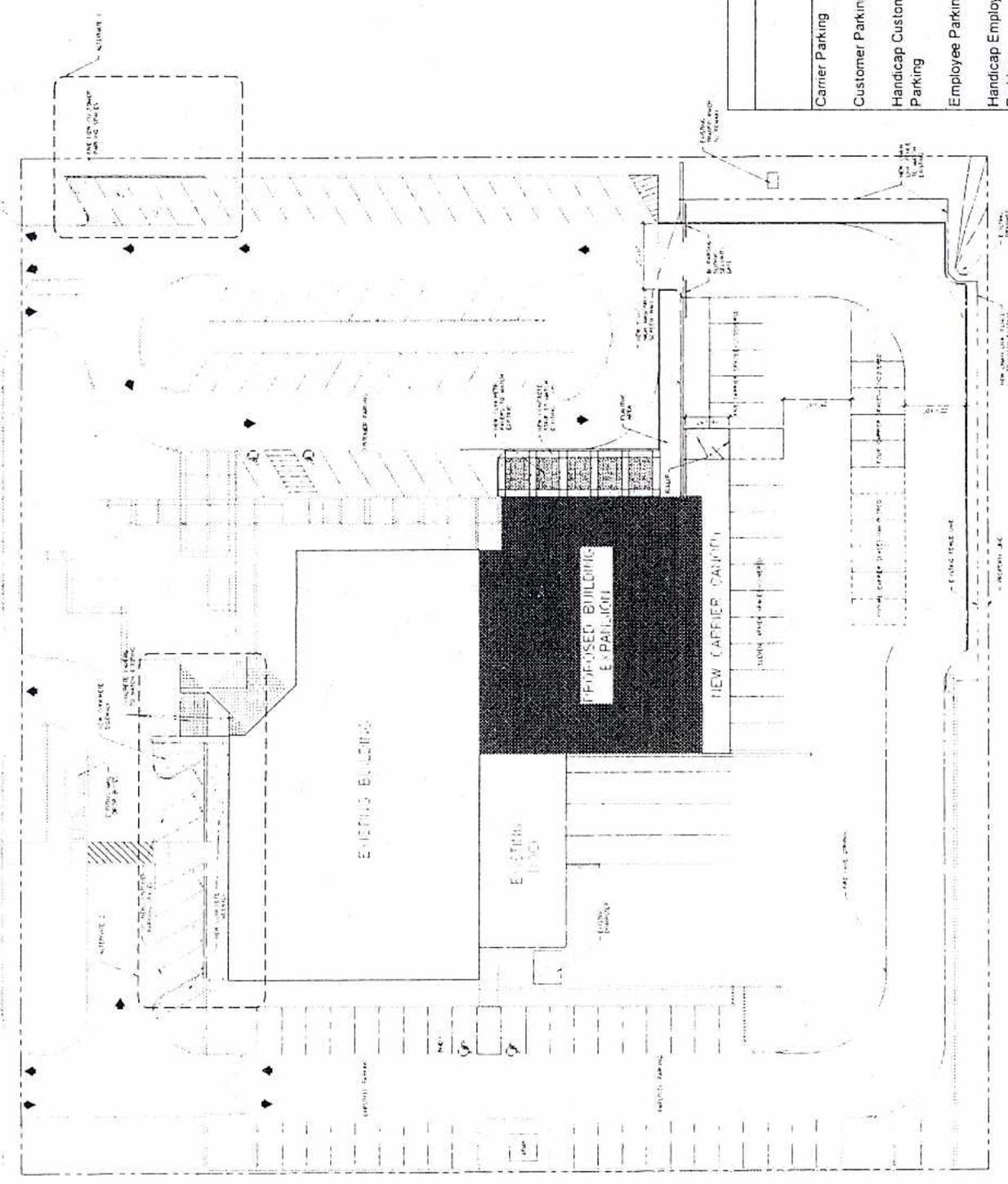
- GENERAL: 011 COVER SHEET/INDEX OF DRAWINGS
- LANDSCAPE: LPI LANDSCAPE PLAN
- ARCHITECTURAL: 4511 PROPOSED ARCHITECTURAL SITE PLAN
4512 EXTERIOR ELEVATIONS

SET No. ARCHITECT'S PROJECT No. 402045

5/17/04

P & Z SUBMITTAL SET

AIRPORT Fwy. WA



SITE TABULATIONS

	EXISTING	PROPOSED ALT. 1	ALT. 2	TOTAL WITH ALT. S
Carrier Parking	18	20		
Customer Parking	51	45	5	6
Handicap Customer Parking	2	2		
Employee Parking	47	40		
Handicap Employee Parking	2	2		
Future Carrier Parking			6	

1 PROPOSED SITE PLAN

10% DESIGN REVIEW DOCUMENTS



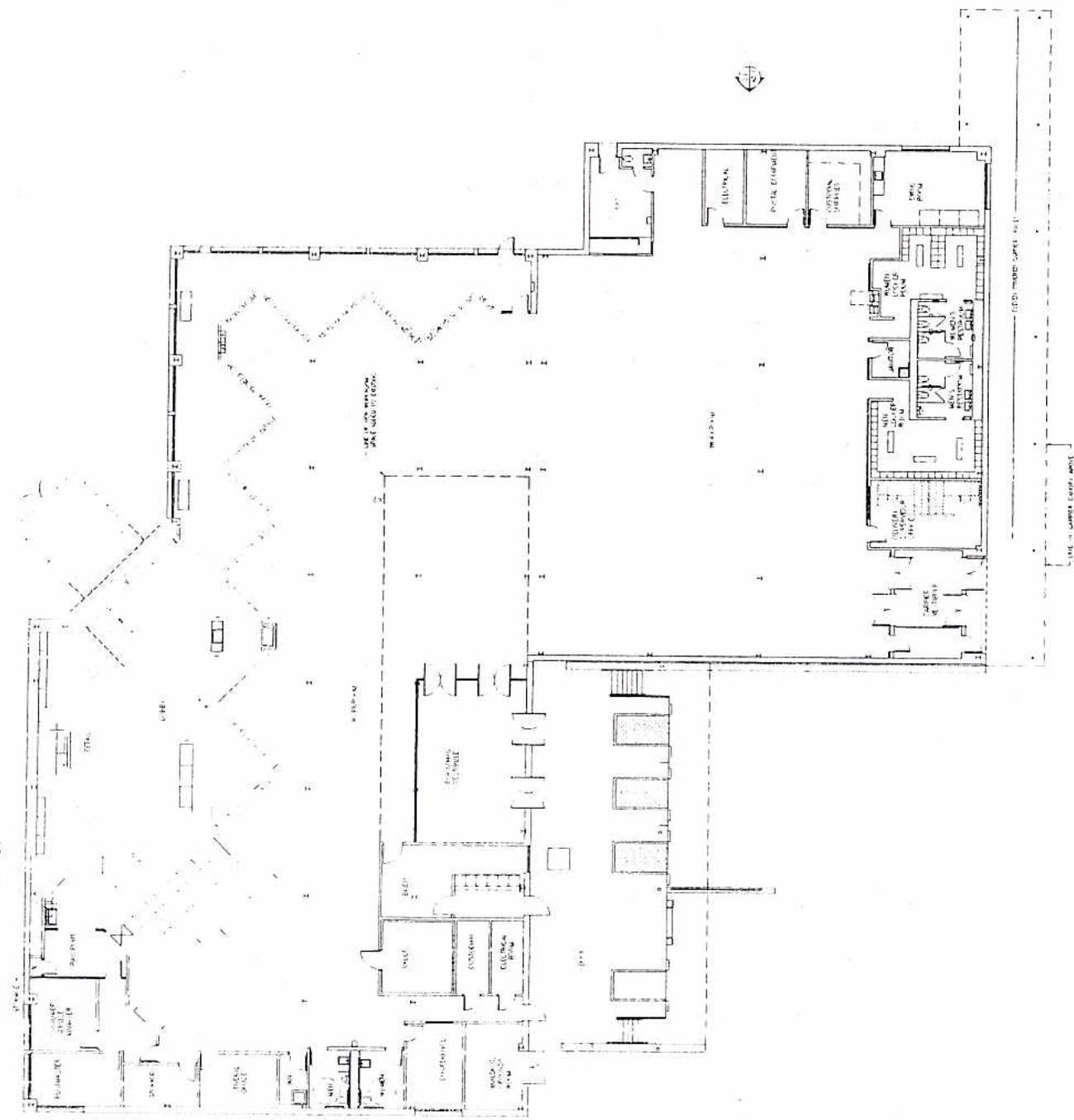
MAIN POST OFFICE
4000 ARCADE PARKWAY
ADDISON, TEXAS 75001

Architecture & Planning & Interior Design
5100 West Lake of Lakes Blvd. Suite 1000, Dallas, Texas 75241



ADDISON IMPO - BUILDING EXPANSION
AREA TABULATIONS

Program	Program Space	Existing Space	New Space Provided
RETAIL LOBBY	5900 SF	4258 SF	4258 SF
ADMINISTRATION AREA			
Postmaster	160 SF	164 SF	164 SF
General Conference Room	210 SF	216 SF	161 SF
Customer Service Manager	120 SF	172 SF	172 SF
General Office	80 SF	141 SF	141 SF
Delivery Supervisor	215 SF	254 SF	254 SF
Utility Toilet	55 SF	-	40 SF
Janitor closet	30 SF	40 SF	40 SF
Electric closet	40 SF	83 SF	83 SF
MECHANICAL STORAGE	85 SF	-	-
Storage	70 SF	-	-
MAINTENANCE & BUILDING SERVICE			
Concierge	153 SF	153 SF	113 SF
Janitor closet	50 SF	48 SF	48 SF
Concierge	81 SF	83 SF	83 SF
Custodial Supplies	159 SF	159 SF	159 SF
Building & Grounds Room	192 SF	189 SF	169 SF
EMPLOYEE FACILITIES			
Men's Restroom	50 SF	80 SF	80 SF
Women's Restroom	50 SF	81 SF	81 SF
Swing Room	220 SF	187 SF	276 SF
Locker Room Male	145 SF	-	273 SF
Locker Room Female	200 SF	-	289 SF
Restroom Female	130 SF	-	108 SF
Restroom Male	130 SF	-	108 SF
Janitor	130 SF	-	50 SF
STORAGE			
Complete Envelope Storage	108 SF	108 SF	108 SF
Complete Storage	100 SF	141 SF	0 SF
Mail	176 SF	176 SF	176 SF
MISCELLANEOUS SUPPORT			
Carrier Vestibule	150 SF	-	246 SF
Workroom Staging/Del Cont	100 SF	-	68 SF
Electrical Room	100 SF	-	68 SF
Passport Office	216 SF	-	132 SF
CO Entry	250 SF	-	210 SF
Postal Equipment	250 SF	-	151 SF
BUSINESS MAILING ENTRY UNIT			
BMUE entry office	280 SF	357 SF	357 SF
WORKROOM	5149 SF	1801 SF	551 SF
Storage	4753 SF	4753 SF	10684 SF
Workroom	18704 SF	12888 SF	20137 SF



**MERITORIOUS EXCEPTION TO THE ADDISON SIGN ORDINANCE
STAFF REPORT**

ME 2004-10

Date: October 18, 2004
 Location of Request: 4900 Suite 250 Belt Line Road
 Business: Studio Salon & Fashion

Ordinance Requirement

Sec. 62-163. Area.
 Total effective area of attached signs shall not exceed the following schedules:
 (1) On an attached sign located at a height of up to 36 ft, the effective area is limited to 1 sq ft of sign area for each linear foot of building frontage not to exceed 100 sq ft
 (2) An attached sign located at or exceeding a height of 36 ft shall be permitted an increase in maximum effective area. Such increases shall not exceed 4 sq ft in effective area for each additional 1 ft of height above 36 ft measured from the base of the sign to the building grade.
 (3) Attached signs may be located on each façade; however, the sum of the effective area of all attached signs shall not exceed twice the allowable effective area as specified in subsections (1) and (2) of this section.
 (4) Building with 4 or more stories in height may have not more than 2 attached signs per façade provided that:
 a. Each sign is designated for a separate tenant.
 b. One sign must be located on or near the uppermost story of the building while the 2nd sign is to be located on the 1st or ground level floor.
 c. Signs may be no closer than 30 ft apart.
 d. The combined effective sq footage of both signs may not exceed twice the allowed effective sq footage as specified in subsections (1) and (2) of this section.
 (5) Maximum letter/logo height of attached signs shall not exceed twice the allowable effective area as specified in subsections (1) and (2) of this section. Maximum letter/logo height of attached signs shall be determined by the following schedule:

Sign Height (feet)	Maximum Letter/Logo Height (inches)	
	Letter/Logo Height (inches)	Maximum Letter/Logo Height (inches)
0 - 36	16	16
37 - 48	36	36
49 - 100	48	48
101 - 150	60	60
151 and up	7	7

a. Letter heights in excess of 72 inches must be approved by the city council.
 b. Not more than 50% of the letters in each individual sign height category may be 25% taller than the specified maximum letter/logo height.
 (6) Copy on awnings is allowed in accordance with the above regulations for area and letter height. For back-lit awnings, the area of the sign shall be based on the area of the awning that is back-lit or illuminated.

STAFF RECOMMENDATION: The sign will be located approximately 89' from Belt Line Road. Staff recommends denial.

STAFF:

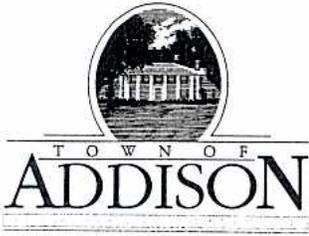
Lynn Chaydler
 Lynn Chaydler, Building Official

Request

The applicant is requesting:
 A sign on the north façade with letters 30" and 21" in height and an area of approximately 56 Sq. Ft.

Variance

The ordinance allows 1 Sq. Ft. of signage for each Ft. of building length up to 100 Sq. Ft. and a maximum letter height of 20" for 50% of the letters with the remaining letters to be 16" or less in height.



BUILDING INSPECTION DEPARTMENT
 (972) 450-2880 FAX (972) 450-2837

Addison 50!

50 YEARS OF FUN!
 16801 Westgrove
 Post Office Box 9010 Addison, Texas 75001-9010

To: Carmen Moran, Director Development Services

From: *LC*
 Lynn Chandler, Building Official

Date: November 16, 2004

Subject: Exceptions to the Sign Ordinance for Attached Signs

The following list consists of several exceptions to the sign ordinance that are similar to the request from The Studio Salon & Fashion:

1. Addison Town Center Shopping Center located in the 3700 to 3800 block of Belt Line Road was granted an exception for letter heights up to 6' and more than one side per façade. October 1994
2. Village on the Parkway located at 5100 Belt line Road was granted an exception for letter Heights up to 30", more than one sign per façade and blade signs. June 1996
3. Addison Circle was granted an exception for more than two signs on a building four or More stories in height, signs above the roof and blade signs. March 1997
4. Centennial Liquor Store located at 15055 Inwood Road was granted an exception to place more than one sign on the east façade. March 1999
5. Hallmark located at 14312 Marsh Lane was granted an exception for letter heights of 36" and 26" due to the thin stroke of the letters and being located 250' from Marsh Lane. June 2000
6. Abbotsford Court located at 14775 Midway Road was granted an exception for letter heights of 29" and 24 " due to the thin stroke of the letters and being located 300' from Midway road. June 2001
7. Dunhill Property Management was granted an exception to place four murals, 81 Sq. Ft. each, on the south façade and five murals, 75 Sq. Ft. each, on the west façade of Suite 840 at 5100 Belt Line Road. These murals were considered signage but were approved because they were not deemed to be a blight or offensive. October 2001
8. Gilbert's Delicatessen Restaurant located at 4930 Belt Line Road Suite 100 was granted an exception for letter heights of 24", 22" and 20" due to a set back of 278' from Belt Line Road. March 2001

9. Hilton Garden Inn located at 4090 Belt Line Road was granted an exception for letter heights of 22" due to a set back of 355' from Belt Line Road. June 2002.
10. Isotag located at 4355 Excel Parkway Suite 100 was granted an exception for an attached sign with a logo height of 31.5 " and letter heights of 25" due to to a setback of 120' from Excel Parkway. July 2002.
11. BJ's Restaurant located at 4901 Belt Line Road was granted an exception for attached signs with letter heights of 39", 28", and murals with figures 8' and 9' in height. The signs were 110', 163', 135' and 143' respectively from Belt Line Road. December 2002.
12. Chip's Old Fashioned Hamburgers located at 4950 Belt line Suite 190 was granted an exception for an attached sign with letter heights of 30" due to a set back of 250' from Belt Line Road. April 2003.
13. Sigel's Liquor located at 15003 Inwood Road was granted an exception for an attached sign with letter heights of 24" due to a setback of 93' to 100' from Inwood Road. June 2003.
14. Two Rows Restaurant located at 17225 Dallas Pkwy was granted an exception for attached signage with letter heights of 30" due to setbacks of 110' from Dallas Pkwy and 147' from Addison Rd. July and September 2003.
15. Vartec Telcom/ Excel located at 16675 Addison Rd. and 4550 Excel Pkwy was granted an exception for attached signs with logo heights of 48" at 16775 Addison Rd. due to setbacks of 160' Excel Pkwy and 145' from Addison Rd. and logo heights of 36" at 4550 Excel Pkwy due to a setbacks of 95' and 105' from Excel Pkwy.
16. Pot Belly Sandwich Works located at 4945 Belt Line Rd was granted an exception for attached signs with letters 30" in height due to a setback of 95' from Belt line Rd. They were not, however, allowed any area increases. Nov 2003.
17. Mama Fu's Noodle House located at 3711 Belt Line Rd was granted an exception for attached signs with letters 30" in height due to a setback of 115' from Belt Line Rd. Jan 2004.
18. Addison Walk located at 5000 Belt Line Rd was granted an exception for attached signs with letters 36", 30" and 24" in height due to setbacks of 100' to 179' from Belt line Rd. Jan 2004.
19. Authentix was granted an exception for an attached sign with letters 28', 25" and 21.5" in height due to a setback of 120' from Excel Parkway. Feb 2004.
20. Champps Restaurant was granted an exception for attached signs with letters 35", 28", 32.5" and 26" in height due to setbacks of 168' and 133' from Belt Line Rd. Mar 2004.
21. Pot Belly Sandwich Sandwich Works located at 4945 Belt line Rd was granted an exception for attached signs with letters 30" in height due o a setback of 95' from Belt Line Rd. May 2004.

22. Wachovia Bank located at 5080 Spectrum Dr was granted an exception for attached signs with a logo 30" in height and more than 50% of the letters exceeding 16" in height due to the area of the facades they were located on. November, 2004.

Addison!

BUILDING INSPECTION DEPARTMENT 16801 Westgrove Dr Addison Texas 75001 972/450-2881 fax: 972/450-2837

Application for Meritorious Exception to the Town of Addison Sign Ordinance

Application Date: _____

Filing Fee: \$200.00

Applicant: THE STUDIO SALON & FASHION

Address: 4900 BELLINE Suite#: 250

ADDISON TX Phone#: 469-939-0181
City State Zip

Fax#: _____

Status of Applicant: Owner _____ Tenant Agent _____

Location where exception is requested:

SIGN IN FRONT OF THE BUILDING

Reasons for Meritorious Exception:

IT IS EASIER TO SEE FROM THE STREET AND IT STANDS OUT IF THE SIGN IS BIGGER, BECAUSE WE ARE ON THE SECOND FLOOR AND PATRONS WOULD HAVE TO LOOK UP TO NOTICE IT.

YOU MUST SUBMIT THE FOLLOWING:

12 COPIES OF THE PROPOSED SIGN SHOWING:

- | | |
|-----------------------------------|---|
| 1. Lot Lines | 5. Proposed Signs |
| 2. Names of Adjacent Streets | 6. Sketch of Sign with Scale and Dimensions Indicated |
| 3. Location of Existing Buildings | (8.5 x 11 PLEASE) |
| 4. Existing Signs | |

Date Fees Paid _____ Check # _____ Receipt # _____

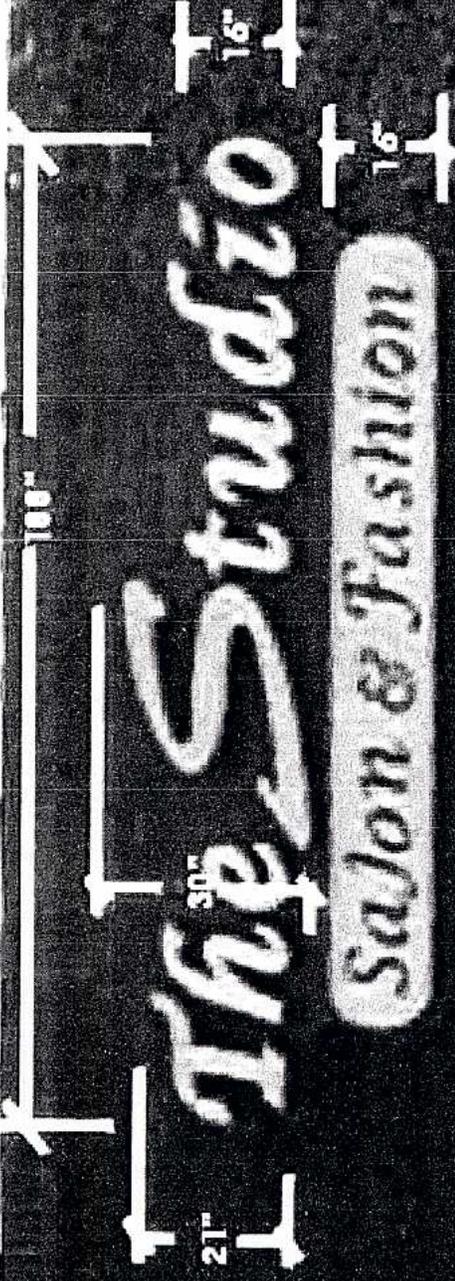


20"
110"
9.5"
11.25"



The Studio

Salon & Fashion



Council Agenda Item: #R5

SUMMARY:

Council approval is requested of an ordinance authorizing issuance of \$4.4 million in certificates of obligation and approval of the official statement.

FINANCIAL IMPACT:

The certificates will have a maturity of 15 years and based on a 4.75% annual interest rate, the annual debt service payment would be \$416,770. Although the Town pledges its full faith and credit behind the CO's (i.e. levy a property tax rate if needed), the certificates will be paid from the Airport fund. The 2005 Airport fund budget and long-term plan include funds for this purpose. Due to the vagaries of state law concerning certificates of obligation, the Town is also making a token pledge of surplus utility revenues.

BACKGROUND:

The Airport fund long-term plan anticipates using fund balances to pay for capital projects that are eligible for matching federal and state grants. Two projects that are needed by the airport but are unlikely to receive matching grants are construction of a new fuel farm and drainage improvements. The fuel farm project budget is \$2 million while \$2.4 million has been allocated for the drainage project.

RECOMMENDATION:

It is recommended Council adopt the ordinance.

PRELIMINARY OFFICIAL STATEMENT

Dated November 11, 2004

Ratings:
Moody's: "Applied For"
S&P: "Applied For"
("Other Information - Ratings" herein)

NEW ISSUE - Book-Entry-Only

In the opinion of Bond Counsel, interest on the Certificates will be excludable from gross income for federal income tax purposes under existing law, except as explained under "Tax Matters" in this Official Statement, and will be an item of tax preference for purposes of determining the alternative minimum tax imposed on individuals, corporations, trusts or estates. For further information, see "Tax Matters" and "Tax Accounting Treatment of Discount Certificates" in this Official Statement.

THE CERTIFICATES WILL NOT BE DESIGNATED AS "QUALIFIED TAX-EXEMPT OBLIGATIONS" FOR FINANCIAL INSTITUTIONS

\$4,400,000
TOWN OF ADDISON, TEXAS
(Dallas County)
COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATIONS, SERIES 2004

Dated Date: November 15, 2004

Due: February 15, as shown below

PAYMENT TERMS. . . Interest on the \$4,400,000 Town of Addison, Texas, Combination Tax and Revenue Certificates of Obligations, Series 2004 (the "Certificates") will accrue from November 15, 2004, (the "Dated Date") and will be payable August 15 and February 15 of each year commencing August 15, 2005, and will be calculated on the basis of a 360-day year consisting of twelve 30-day months. The definitive Certificates will be initially registered and delivered only to Cede & Co., the nominee of The Depository Trust Company ("DTC") pursuant to the Book-Entry-Only System described herein. Beneficial ownership of the Certificates may be acquired in denominations of \$5,000 or integral multiples thereof. No physical delivery of the Certificates will be made to the owners thereof. Principal of, premium, if any, and interest on the Certificates will be payable by the Paying Agent/Registrar to Cede & Co., which will make distribution of the amounts so paid to the participating members of DTC for subsequent payment to the beneficial owners of the Certificates. See "The Certificates - Book-Entry-Only System" herein. The initial Paying Agent/Registrar is JPMorgan Chase Bank, Dallas, Texas (see "The Certificates - Paying Agent/Registrar").

AUTHORITY FOR ISSUANCE. . . The Certificates are issued pursuant to the Constitution and general laws of the State of Texas, (the "State") particularly Subchapter C of Chapter 271, Texas Local Government Code (the Certificate of Obligation Act of 1971), as amended, and an ordinance adopted by the City Council and constitute direct obligations of the Town of Addison, Texas (the "Town"), payable from a combination of (i) the levy and collection of a direct and continuing ad valorem tax, within the limits prescribed by law, on all taxable property within the Town, and (ii) a limited pledge (not to exceed \$1,000) of surplus net revenues of the Town's Waterworks and Sewer System, as provided in the ordinance authorizing the Certificates (the "Ordinance") (see "The Certificates - Authority for Issuance").

PURPOSE. . . Proceeds from the sale of the Certificates will be used for the purpose of paying contractual obligations to be incurred for the purpose of constructing improvements to and expanding the Addison Airport, including, to wit: (i) constructing improvements to runways, taxiways, lighting, drainage systems and facilities; (ii) constructing, designing and engineering a fuel farm (collectively with (i), the "Project"), (iii) payment of professional services of attorneys, financial advisors and other professionals in connection with the Project and the issuance of the Certificates.

MATURITY SCHEDULE

CUSIP(1) Prefix: 006644

Table with 10 columns: Amount, Maturity, Rate, Yield, CUSIP Suffix (1), Amount, Maturity, Rate, Yield, CUSIP Suffix (1). Rows show maturity amounts from \$215,000 in 2006 to \$290,000 in 2013, and corresponding amounts from \$300,000 in 2014 to \$390,000 in 2020.

(Accrued Interest from November 15, 2004 to be added)

(1) CUSIP is a registered trademark of the American Bankers Association. CUSIP data herein is provided by Standard and Poor's CUSIP Service Bureau, a division of the McGraw-Hill Companies, Inc. This data is not intended to create a database and does not serve in any way as a substitute for the CUSIP Services.

OPTIONAL REDEMPTION. . . The Town reserves the right, at its option, to redeem Certificates having stated maturities on and after February 15, 2015, in whole or in part in principal amounts of \$5,000 or any integral multiple thereof, on February 15, 2014, or any date thereafter, at the par value thereof plus accrued interest to the date of redemption (see "The Certificates - Optional Redemption").

LEGALITY. . . The Certificates are offered for delivery when, as and if issued and received by the Initial Purchaser and subject to the approving opinion of the Attorney General of Texas and the opinion of Vinson & Elkins L.L.P., Bond Counsel, Dallas, Texas (see Appendix C, "Form of Bond Counsel's Opinion").

DELIVERY. . . It is expected that the Certificates will be available for delivery through The Depository Trust Company on December 29, 2004.

SEALED BIDS DUE TUESDAY, NOVEMBER 23, 2004, AT 11:00 AM, CST

This Preliminary Official Statement and the information contained herein are subject to completion or amendment. These securities may not be sold nor may offers to buy be accepted prior to the time the Preliminary Official Statement is delivered in final form. Under no circumstances shall the Preliminary Official Statement constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such jurisdiction.

ORDINANCE

relating to

\$4,400,000
TOWN OF ADDISON, TEXAS
COMBINATION TAX AND REVENUE
CERTIFICATES OF OBLIGATION
SERIES 2004

Adopted: November 23, 2004

Dated: November 15, 2004

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EXHIBIT A - Description of Annual Disclosure of Financial Information

AN ORDINANCE AUTHORIZING THE ISSUANCE OF \$4,400,000 TOWN OF ADDISON, TEXAS, COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2004; LEVYING A TAX, AND PROVIDING FOR THE SECURITY FOR AND PAYMENT OF SAID CERTIFICATES; ACCEPTING THE BEST BID THEREFOR AND AWARDING THE SALE THEREOF; APPROVING THE OFFICIAL STATEMENT; ENACTING OTHER PROVISIONS RELATING TO THE SUBJECT; AND DECLARING AN EFFECTIVE DATE

WHEREAS, under the provisions of the Texas Local Government Code, Chapter 271, Subchapter C, as amended, the Town of Addison, Texas (the "Town"), is authorized to issue certificates of obligation for the purposes specified in this Ordinance and for the payment of all or a portion of the contractual obligations for professional services, including that of engineers, attorneys, and financial advisors in connection therewith, and to sell the same for cash as herein provided; and

WHEREAS, the Town is authorized to provide that such obligations will be payable from and secured by the levy of a direct and continuing ad valorem tax against all taxable property within the Town, in combination with a part of certain revenues of the Town's waterworks and sewer system (the "System") remaining after payment of any obligations of the Town payable in whole or in part from a lien on or pledge of such revenues that would be superior to the obligations to be authorized herein; and

WHEREAS, the City Council has found and determined that it is necessary and in the best interests of the Town and its citizens that it issue such certificates of obligation authorized by this Ordinance; and

WHEREAS, pursuant to a resolution heretofore passed by this governing body, notice of intention (the "Notice of Intention") to issue certificates of obligation of the Town payable as provided in this Ordinance was published in a newspaper of general circulation in the Town in accordance with the requirements of law; and

WHEREAS, the Notice of Intention stated that the City Council intended to pass an ordinance authorizing the issuance of the Certificates at the regularly scheduled November 23, 2004 council meeting; and

WHEREAS, no petition of any kind has been filed with the City Secretary, any member of the City Council or any other official of the Town, protesting the issuance of such certificates of obligation; and

WHEREAS, this City Council is now authorized and empowered to proceed with the issuance of said certificates of obligation and to sell the same for cash; and

WHEREAS, the meeting at which this Ordinance is considered is open to the public as required by law, and public notice of the time, place, and purpose of said meeting was given as required by Chapter 551, Texas Government Code, as amended; therefore,

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

ARTICLE I

DEFINITIONS AND OTHER PRELIMINARY MATTERS

Section 1.01. Definitions.

Unless otherwise expressly provided or unless the context clearly requires otherwise in this Ordinance, the following terms shall have the meanings specified below:

“Business Day” means a day that is not a Saturday, Sunday, legal holiday or other day on which banking institutions in the city where the Designated Payment/Transfer Office is located are required or authorized by law or executive order to close.

“Certificate” means any of the Certificates.

“Certificate Date” means the date designated as the initial date of the Certificates by Section 3.02(a) of this Ordinance.

“Certificates” means the certificates of obligation authorized to be issued by Section 3.01 of this Ordinance and designated as “Town of Addison, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2004,” in the aggregate principal amount of \$4,400,000.

“Closing Date” means the date of the initial delivery of and payment for the Certificates.

“Code” means the Internal Revenue Code of 1986, as amended, including applicable regulations, published rulings, and court decisions.

“Designated Payment/Transfer Office” means (i) with respect to the initial Paying Agent/Registrar named herein, its office in Dallas, Texas, or at such other location designated by the Paying Agent/Registrar and (ii) with respect to any successor Paying Agent/Registrar, the office of such successor designated and located as may be agreed upon by the Town and such successor.

“DTC” means The Depository Trust Company of New York, New York, or any successor securities depository.

“DTC Participant” means brokers and dealers, banks, trust companies, clearing corporations and certain other organizations on whose behalf DTC was created to hold securities to facilitate the clearance and settlement of securities transactions among DTC Participants.

“Event of Default” means any event of default as defined in Section 10.01 of this Ordinance.

“Fiscal Year” means such fiscal year as shall from time to time be set by the City Council.

“Hotel Occupancy Tax” means the tax authorized by Texas Tax Code Section 351.002, which permits the Town to impose a tax of up to seven percent (7%) of the daily cost of a hotel or motel room or similar accommodation upon certain persons paying for such accommodation. The Town currently imposes a Hotel Occupancy Tax at a rate of seven percent (7%). The Available Hotel Occupancy Tax Revenues are pledged to the payment of the Certificates.

“Initial Certificate” means the initial certificate authorized by Section 3.04(d) of this Ordinance.

“Interest and Sinking Fund” means the interest and sinking fund established by Section 2.02 of this Ordinance.

“Interest Payment Date” means the date or dates upon which interest on the Certificates is scheduled to be paid until their respective dates of maturity or prior redemption, such dates being February 15 and August 15 of each year commencing February 15, 2004.

“MSRB” means the Municipal Securities Rulemaking Board.

“Net Revenues” means the gross revenues of the System less the expenses of operation and maintenance as said expenses are defined by Chapter 1502, Texas Government Code, as amended.

“NRMSIR” means each person whom the SEC or its staff has determined to be a nationally recognized municipal securities information repository within the meaning of the Rule from time to time.

“Ordinance” means this Ordinance.

“Original Issue Date” means the initial date from which interest on the Certificates accrues and which is designated in Section 3.02.

“Owner” means the person who is the registered owner of a Certificate or Certificates, as shown in the Register.

“Paying Agent/Registrar” means initially JPMorgan Chase Bank, N.A., Dallas, Texas, or any successor thereto as provided in this Ordinance.

“Prior Lien Bonds” means any and all bonds or other obligations of the Town presently outstanding or that may be hereafter issued, payable from and secured by a first lien on and pledge of the Net Revenues or by a lien on and pledge of the Net Revenues subordinate to a first lien and pledge of such Net Revenues but superior to the lien and pledge of the Surplus Revenues made for the Certificates.

“Record Date” means the last Business Day of the month next preceding an Interest Payment Date.

“Register” means the Register specified in Section 3.06(a) of this Ordinance.

“Representations Letter” means the Blanket Letter of Representations between the Town and DTC.

“Rule” means SEC Rule 15c2-12, as amended from time to time.

“SEC” means the United States Securities and Exchange Commission.

“SID” means any person designated by the State of Texas or an authorized department, officer or agency thereof, as and determined by the SEC or its staff to be a state information depository within the meaning of the Rule from time to time.

“Special Payment Date” means the Special Payment Date prescribed by Section 3.03(b).

“Special Record Date” means the Special Record Date prescribed by Section 3.03(b).

“Surplus Revenues” means the revenues of the System remaining after payment of all operation and maintenance expenses thereof, and all debt service, reserve, and other requirements in connection with the Town’s Prior Lien Bonds; provided, however, that the amount of such Surplus Revenues pledged to the payment of the Certificates shall be limited to \$1,000.

“System” as used in this Ordinance means the Town’s waterworks and sewer system, including all present and future additions, extensions, replacements, and improvements thereto.

“Town” means the Town of Addison, Texas.

“Unclaimed Payments” means money deposited with the Paying Agent/Registrar for the payment of principal of, redemption premium, if any, or interest on the Certificates as the same come due and payable or money set aside for the payment of Certificates duly called for redemption prior to maturity.

Section 1.02. Findings.

The declarations, determinations, and findings declared, made, and found in the preamble to this Ordinance are hereby adopted, restated, and made a part of the operative provisions hereof.

Section 1.03. Table of Contents, Titles, and Headings.

The table of contents, titles, and headings of the Articles and Sections of this Ordinance have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Ordinance or any provision hereof or in ascertaining intent, if any question of intent should arise.

Section 1.04. Interpretation.

(a) Unless the context requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa.

(b) This Ordinance and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein.

ARTICLE II

SECURITY FOR THE CERTIFICATES; INTEREST AND SINKING FUND

Section 2.01. Payment of the Certificates.

(a) Pursuant to the authority granted by the Texas Constitution and laws of the State of Texas, there shall be levied and there is hereby levied for the current year and for each succeeding year thereafter while any of the Certificates or any interest thereon is outstanding and unpaid, an ad valorem tax on each one hundred dollars valuation of taxable property within the Town, at a rate sufficient, within the limit prescribed by law, to pay the debt service requirements of the Certificates, being (i) the interest on the Certificates, and (ii) a sinking fund for their redemption at maturity or a sinking fund of two percent per annum (whichever amount is the greater), when due and payable, full allowance being made for delinquencies and costs of collection.

(b) The ad valorem tax thus levied shall be assessed and collected each year against all property appearing on the tax rolls of the Town most recently approved in accordance with law, and the money thus collected shall be deposited as collected to the Interest and Sinking Fund.

(c) Said ad valorem tax, the collections therefrom, and all amounts on deposit in or required hereby to be deposited to the Interest and Sinking Fund are hereby pledged and committed irrevocably to the payment of the principal of and interest on the Certificates when and as due and payable in accordance with their terms and this Ordinance.

(d) The amount of taxes to be provided annually for the payment of principal of and interest on the Certificates shall be determined and accomplished in the following manner:

(i) The Town's annual budget shall reflect (i) the amount of debt service requirements to become due on the Certificates in the next succeeding Fiscal Year of the Town and (ii) the amount on deposit in the Interest and Sinking Fund, as of the date such budget is prepared (after giving effect to any payments required to be made during the remainder of the then current Fiscal Year), and (iii) the amount of Surplus Revenues estimated and budgeted to be available for the payment of such debt service requirements on the Certificates during the next succeeding Fiscal Year.

(ii) The amount required to be provided in the succeeding Fiscal Year of the Town from ad valorem taxes shall be the amount, if any, the debt service requirements to be paid on the Certificates in the next succeeding Fiscal Year of the Town exceeds the amount shown to be on deposit in the Interest and Sinking Fund (after giving effect to any payments required to be made during the remainder of the then current Fiscal Year) at the time the annual budget is prepared, and (ii) the Surplus Revenues shown to be budgeted and available for payment of said debt service requirements.

(iii) Following the final approval of the annual budget of the Town, the governing body of the Town shall, by ordinance, levy an ad valorem tax at a rate sufficient to produce taxes in the amount determined in paragraph (ii) above, to be utilized for purposes of paying the principal of and interest on the Certificates in the next succeeding Fiscal Year of the Town.

(e) The Town hereby covenants and agrees that the Surplus Revenues are hereby irrevocably pledged equally and ratably to the payment of the principal of, redemption premium, if any, and interest on the Certificates, as the same become due.

(f) If the liens and provisions of this Ordinance shall be released in a manner permitted by Article XI hereof, then the collection of such ad valorem tax may be suspended or appropriately reduced, as the facts may permit, and further deposits to the Interest and Sinking Fund may be suspended or appropriately reduced, as the facts may permit. In determining the aggregate principal amount of outstanding Certificates, there shall be subtracted the amount of any Certificates that have been duly called for redemption and for which money has been deposited with the Paying Agent/Registrar for such redemption.

Section 2.02. Interest and Sinking Fund.

(a) The Town hereby establishes a special fund or account to be designated the “Town of Addison, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2004, Interest and Sinking Fund” (the “Interest and Sinking Fund”) said fund to be maintained at an official depository bank of the Town separate and apart from all other funds and accounts of the Town.

(b) Money on deposit in or required by this Ordinance to be deposited to the Interest and Sinking Fund shall be used solely for the purpose of paying the interest on and principal of the Certificates when and as due and payable in accordance with their terms and this Ordinance.

ARTICLE III

AUTHORIZATION; GENERAL TERMS AND PROVISIONS
REGARDING THE CERTIFICATES

Section 3.01. Authorization.

The Town’s certificates of obligation to be designated “Town of Addison, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2004” (the “Certificates”), are

hereby authorized to be issued and delivered in accordance with the Constitution and laws of the State of Texas, specifically Subchapter C, Chapter 271, Texas Local Government Code, as amended, and Chapter 351, Texas Tax Code, as amended. The Certificates shall be issued in the aggregate principal amount of \$4,400,000 for the purpose of paying contractual obligations to be incurred for the purpose of constructing improvements to and expanding the Addison Airport, including to wit: (i) constructing improvements to runways, taxiways, lighting, drainage systems and facilities, (ii) constructing, designing and engineering a fuel farm (collectively with (i), the “Project”) and (ii) to pay professional services of attorneys, financial advisors and other professionals in connection with the Project and the issuance of the Certificates.

Section 3.02. Date, Denomination, Maturities, and Interest.

(a) The Certificates shall be dated November 15, 2004. The Certificates shall be in fully registered form, without coupons, in the denomination of \$5,000 or any integral multiple thereof and shall be numbered separately from one upward, except the Initial Certificate, which shall be numbered T-1.

(b) The Certificates shall mature on February 15 in the years and in the principal amounts set forth in the following schedule:

<u>Years</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Years</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
2006	\$215,000		2014	\$300,000	
2007	225,000		2015	315,000	
2008	235,000		2016	325,000	
2009	245,000		2017	340,000	
2010	255,000		2018	355,000	
2011	265,000		2019	370,000	
2012	275,000		2020	390,000	
2013	290,000				

(c) Interest shall accrue and be paid on each Certificate respectively until its maturity from the later of the Certificate Date or the most recent interest payment date to which interest has been paid or provided for at the rates per annum for each maturity specified in the schedule contained in subsection (b) above. Such interest shall be payable on February 15 and August 15 of each year commencing August 15, 2005, and shall be computed on the basis of a 360-day year of twelve 30-day months.

Section 3.03. Medium, Method, and Place of Payment.

(a) The principal of and interest on the Certificates shall be paid in lawful money of the United States of America.

(b) Interest on the Certificates shall be payable to the Owners as shown in the Register at the close of business on the Record Date; provided, however, in the event of nonpayment of interest on a scheduled Interest Payment Date and for 30 days thereafter, a new record date for such interest payment (a “Special Record Date”) shall be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received

from the Town. Notice of the Special Record Date and of the scheduled payment date of the past due interest (the "Special Payment Date," which shall be 15 days after the Special Record Date) shall be sent at least five Business Days prior to the Special Record Date by United States mail, first class, postage prepaid, to the address of each Owner of a Certificate appearing on the Register at the close of business on the last Business Day next preceding the date of mailing of such notice.

(c) Interest shall be paid by check, dated as of and mailed on the Interest Payment Date, and sent by the Paying Agent/Registrar to each Owner, first class United States mail, postage prepaid, to the address of each Owner as it appears in the Register, or by such other customary banking arrangement acceptable to the Paying Agent/Registrar and the Owner; provided, however, that the Owner shall bear all risk and expense of such alternative banking arrangement. At the option of an Owner of at least \$1,000,000 principal amount of the Certificates, interest may be paid by wire transfer to the bank account of such Owner on file with the Paying Agent/Registrar.

(d) The principal of each Certificate shall be paid to the Owner thereof on the maturity date upon presentation and surrender of such Certificate at the Designated Payment/Transfer Office of the Paying Agent/Registrar.

(e) If the date for the payment of the principal of or interest on the Certificates shall be a Saturday, Sunday, legal holiday, or day on which banking institutions in the city where the Designated Payment/Transfer Office is located are required or authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday, or day on which banking institutions are required or authorized to close, and payment on such date shall have the same force and effect as if made on the original date payment was due and no additional interest shall be due by reason of nonpayment on the date on which such payment is otherwise stated to be due and payable.

(f) Unclaimed Payments shall be segregated in a special escrow account and held in trust, uninvested by the Paying Agent/Registrar, for the account of the Owners of the Certificates to which the Unclaimed Payments pertain. Subject to Title 6 of the Texas Property Code, Unclaimed Payments remaining unclaimed by the Owners entitled thereto for three years after the applicable payment or redemption date shall be applied to the next payment or payments on the Certificates thereafter coming due and, to the extent any such money remains after the retirement of all outstanding Certificates, shall be paid to the Town to be used for any lawful purpose. Thereafter, neither the Town, the Paying Agent/Registrar, nor any other person shall be liable or responsible to any Owners of such Certificates for any further payment of such unclaimed moneys or on account of any such Certificates, subject to Title 6 of the Texas Property Code.

Section 3.04. Execution and Registration of Certificates.

(a) The Certificates shall be executed on behalf of the Town by the Mayor and the City Secretary, by their manual or facsimile signatures, and the official seal of the Town shall be impressed or placed in facsimile thereon. Such facsimile signatures on the Certificates shall have the same effect as if each of the Certificates had been signed manually and in person by

each of said officers, and such facsimile seal on the Certificates shall have the same effect as if the official seal of the Town had been manually impressed upon each of the Certificates.

(b) In the event that any officer of the Town whose manual or facsimile signature appears on the Certificates ceases to be such officer before the authentication of such Certificates or before the delivery thereof, such manual or facsimile signature nevertheless shall be valid and sufficient for all purposes as if such officer had remained in such office.

(c) Except as provided below, no Certificate shall be valid or obligatory for any purpose or be entitled to any security or benefit of this Ordinance unless and until there appears thereon the Certificate of Paying Agent/Registrar substantially in the form provided herein, duly authenticated by manual execution by an officer or duly authorized signatory of the Paying Agent/Registrar. It shall not be required that the same officer or authorized signatory of the Paying Agent/Registrar sign the Certificate of Paying Agent/Registrar on all of the Certificates. In lieu of the executed Certificate of Paying Agent/Registrar described above, the Initial Certificate delivered at the Closing Date shall have attached thereto the Comptroller's Registration Certificate substantially in the form provided herein, manually executed by the Comptroller of Public Accounts of the State of Texas, or by his duly authorized agent, which Certificate shall be evidence that the Certificate has been duly approved by the Attorney General of the State of Texas, that it is a valid and binding obligation of the Town, and that it has been registered by the Comptroller of Public Accounts of the State of Texas.

(d) On the Closing Date, one initial Certificate (the "Initial Certificate") representing the entire principal amount of all Certificates, payable in stated installments to the initial purchaser, or its designee, executed by the Mayor and City Secretary of the Town, approved by the Attorney General, and registered and manually signed by the Comptroller of Public Accounts, will be delivered to the initial purchaser or its designee. Upon payment for the Initial Certificate, the Paying Agent/Registrar shall cancel the Initial Certificate and deliver to DTC on behalf of the Purchaser one registered definitive Certificate for each year of maturity of the Certificates in the aggregate principal amount of all Certificates for such maturity, registered in the name of Cede & Co., as nominee of DTC.

Section 3.05. Ownership.

(a) The Town, the Paying Agent/Registrar, and any other person may treat the person in whose name any Certificate is registered as the absolute owner of such Certificate for the purpose of making and receiving payment as herein provided (except interest shall be paid to the person in whose name such Certificate is registered on the Record Date or Special Record Date, as applicable), and for all other purposes, whether or not such Certificate is overdue, and neither the Town nor the Paying Agent/Registrar shall be bound by any notice or knowledge to the contrary.

(b) All payments made to the Owner of a Certificate shall be valid and effectual and shall discharge the liability of the Town and the Paying Agent/Registrar upon such Certificate to the extent of the sums paid.

Section 3.06. Registration, Transfer, and Exchange.

(a) So long as any Certificates remain outstanding, the Town shall cause the Paying Agent/Registrar to keep at the Designated Payment/Transfer Office a register (the "Register") in which, subject to such reasonable regulations as it may prescribe, the Paying Agent/Registrar shall provide for the registration and transfer of Certificates in accordance with this Ordinance.

(b) The ownership of a Certificate may be transferred only upon the presentation and surrender of the Certificate at the Designated Payment/Transfer Office of the Paying Agent/Registrar with such endorsement or other evidence of transfer as is acceptable to the Paying Agent/Registrar. No transfer of any Certificate shall be effective until entered in the Register.

(c) The Certificates shall be exchangeable upon the presentation and surrender thereof at the Designated Payment/Transfer Office of the Paying Agent/Registrar for a Certificate or Certificates of the same maturity and interest rate and in a denomination or denominations of any integral multiple of \$5,000, and in an aggregate principal amount equal to the unpaid principal amount of the Certificates presented for exchange. The Paying Agent/Registrar is hereby authorized to authenticate and deliver Certificates exchanged for other Certificates in accordance with this Section.

(d) Each exchange Certificate delivered by the Paying Agent/Registrar in accordance with this Section shall constitute an original contractual obligation of the Town and shall be entitled to the benefits and security of this Ordinance to the same extent as the Certificate or Certificates in lieu of which such exchange Certificate is delivered.

(e) No service charge shall be made to the Owner for the initial registration, subsequent transfer, or exchange for a different denomination of any of the Certificates. The Paying Agent/Registrar, however, may require the Owner to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection with the registration, transfer, or exchange of a Certificate.

(f) Neither the Town nor the Paying Agent/Registrar shall be required to issue, transfer or exchange any Certificate called for redemption, in whole or in part, within 45 calendar days prior to the date fixed for redemption; provided, however, such limitation shall not be applicable to an exchange by the Owner of the uncalled principal balance of a Certificate.

Section 3.07. Cancellation.

All Certificates paid in accordance with this Ordinance, and all Certificates in lieu of which exchange Certificates or replacement Certificates are authenticated and delivered in accordance with this Ordinance, shall be canceled and proper records made regarding such payment, redemption, exchange, or replacement. The Paying Agent/Registrar shall then return such canceled Certificates to the Town or may in accordance with law dispose of such cancelled Certificates.

Section 3.08. Temporary Certificates.

(a) Following the delivery and registration of the Initial Certificate and pending the preparation of definitive Certificates, the proper officers of the Town may execute and, upon the Town's request, the Paying Agent/Registrar shall authenticate and deliver, one or more temporary Certificates that are printed, lithographed, typewritten, mimeographed, or otherwise produced, in any denomination, substantially of the tenor of the definitive Certificates in lieu of which they are delivered, without coupons, and with such appropriate insertions, omissions, substitutions, and other variations as the officers of the Town executing such temporary Certificates may determine, as evidenced by their signing of such temporary Certificates.

(b) Until exchanged for Certificates in definitive form, such Certificates in temporary form shall be entitled to the benefit and security of this Ordinance.

(c) The Town, without unreasonable delay, shall prepare, execute and deliver to the Paying Agent/Registrar the Certificates in definitive form; thereupon, upon the presentation and surrender of the Certificate or Certificates in temporary form to the Paying Agent/Registrar, the Paying Agent/Registrar shall cancel the Certificates in temporary form and shall authenticate and deliver in exchange therefor a Certificate or Certificates of the same maturity and series, in definitive form, in the authorized denomination, and in the same aggregate principal amount, as the Certificate or Certificates in temporary form surrendered. Such exchange shall be made without the making of any charge therefor to any Owner.

Section 3.09. Replacement Certificates.

(a) Upon the presentation and surrender to the Paying Agent/Registrar of a mutilated Certificate, the Paying Agent/Registrar shall authenticate and deliver in exchange therefor a replacement Certificate of like tenor and principal amount, bearing a number not contemporaneously outstanding. The Town or the Paying Agent/Registrar may require the Owner of such Certificate to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection therewith and any other expenses connected therewith.

(b) In the event that any Certificate is lost, apparently destroyed or wrongfully taken, the Paying Agent/ Registrar, pursuant to the applicable laws of the State of Texas and in the absence of notice or knowledge that such Certificate has been acquired by a bona fide purchaser, shall authenticate and deliver a replacement Certificate of like tenor and principal amount, bearing a number not contemporaneously outstanding, provided that the Owner first complies with the following requirements:

(i) furnishes to the Paying Agent/Registrar satisfactory evidence of his or her ownership of and the circumstances of the loss, destruction, or theft of such Certificate;

(ii) furnishes such security or indemnity as may be required by the Paying Agent/Registrar to save it and the Town harmless;

(iii) pays all expenses and charges in connection therewith, including, but not limited to, printing costs, legal fees, fees of the Paying Agent/Registrar, and any tax or other governmental charge that is authorized to be imposed; and

(iv) satisfies any other reasonable requirements imposed by the Town and the Paying Agent/Registrar.

(c) If, after the delivery of such replacement Certificate, a bona fide purchaser of the original Certificate in lieu of which such replacement Certificate was issued presents for payment such original Certificate, the Town and the Paying Agent/Registrar shall be entitled to recover such replacement Certificate from the person to whom it was delivered or any person taking therefrom, except a bona fide purchaser, and shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost, or expense incurred by the Town or the Paying Agent/Registrar in connection therewith.

(d) In the event that any such mutilated, lost, apparently destroyed, or wrongfully taken Certificate has become or is about to become due and payable, the Paying Agent/Registrar, in its discretion, instead of issuing a replacement Certificate, may pay such Certificate when it becomes due and payable.

(e) Each replacement Certificate delivered in accordance with this Section shall constitute an original additional contractual obligation of the Town and shall be entitled to the benefits and security of this Ordinance to the same extent as the Certificate or Certificates in lieu of which such replacement Certificate is delivered.

Section 3.10. Book-Entry-Only System.

(a) Notwithstanding any other provision hereof, upon initial issuance of the Certificates, the Certificates shall be registered in the name of Cede & Co., as nominee of DTC. The definitive Certificates shall be initially issued in the form of a single separate certificate for each of the maturities thereof.

(b) With respect to Certificates registered in the name of Cede & Co., as nominee of DTC, the Town and the Paying Agent/Registrar shall have no responsibility or obligation to any DTC Participant or to any person on behalf of whom such a DTC Participant holds an interest in the Certificates. Without limiting the immediately preceding sentence, the Town and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Certificates, (ii) the delivery to any DTC Participant or any other person, other than an Owner, as shown on the Register, of any notice with respect to the Certificates, including any notice of redemption, or (iii) the payment to any DTC Participant or any other person, other than an Owner, as shown in the Register of any amount with respect to principal of, premium, if any, or interest on the Certificates. Notwithstanding any other provision of this Ordinance to the contrary, the Town and the Paying Agent/Registrar shall be entitled to treat and consider the person in whose name each Certificate is registered in the Register as the absolute owner of such Certificate for the purpose of payment of principal of, premium, if any, and interest on Certificates, for the purpose of giving notices of redemption and other matters with respect to

such Certificate, for the purpose of registering transfer with respect to such Certificate, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of, premium, if any, and interest on the Certificates only to or upon the order of the respective Owners as shown in the Register, as provided in this Ordinance, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the Town's obligations with respect to payment of, premium, if any, and interest on the Certificates to the extent of the sum or sums so paid. No person other than an Owner, as shown in the Register, shall receive a certificate evidencing the obligation of the Town to make payments of amounts due pursuant to this Ordinance. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., the word "Cede & Co." in this Ordinance shall refer to such new nominee of DTC.

(c) The Representations Letter previously executed and delivered by the Town, and applicable to the Town's obligations delivered in book-entry-only form to DTC as securities depository, is hereby ratified and approved for the Certificates.

Section 3.11. Successor Securities Depository; Transfer Outside Book-Entry-Only System.

In the event that the Town or the Paying Agent/Registrar determines that DTC is incapable of discharging its responsibilities described herein and in the Representations Letter of the Town to DTC, and that it is in the best interest of the Town and the beneficial owners of the Certificates that they be able to obtain certificated Certificates, or in the event DTC discontinues the services described herein, the Town shall (i) appoint a successor securities depository, qualified to act as such under Section 17(a) of the Securities and Exchange Act of 1934, as amended, notify DTC and DTC Participants of the appointment of such successor securities depository and transfer one or more separate Certificates to such successor securities depository; or (ii) notify DTC and DTC Participants of the availability through DTC of certificated Certificates and cause the Paying Agent/Registrar to transfer one or more separate registered Certificates to DTC Participants having Certificates credited to their DTC accounts. In such event, the Certificates shall no longer be restricted to being registered in the Register in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names Owners transferring or exchanging Certificates shall designate, in accordance with the provisions of this Ordinance.

Section 3.12. Payments to Cede & Co.

Notwithstanding any other provision of this Ordinance to the contrary, so long as the Certificates are registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, premium, if any, and interest on such Certificates, and all notices with respect to such Certificates shall be made and given, respectively, in the manner provided in the Representations Letter of the Town to DTC.

ARTICLE IV

REDEMPTION OF CERTIFICATES BEFORE MATURITY

Section 4.01. Limitation on Redemption.

The Certificates shall be subject to redemption before scheduled maturity only as provided in this Article IV.

Section 4.02. Optional Redemption.

(a) The Town reserves the option to redeem Certificates maturing on and after February 15, 2015 in whole or any part, before their respective scheduled maturity dates, on February 15, 2014 or on any date thereafter, such redemption date or dates to be fixed by the Town, at a price equal to the principal amount of the Certificates called for redemption plus accrued interest to the date fixed for redemption.

(b) If less than all of the Certificates are to be redeemed pursuant to an optional redemption, the Town shall determine the maturity or maturities and the amounts thereof to be redeemed and shall direct the Paying Agent/Registrar to call by lot the Certificates, or portions thereof, within such maturity or maturities and in such principal amounts for redemption.

(c) The Town, at least 45 days before the redemption date, unless a shorter period shall be satisfactory to the Paying Agent/Registrar, shall notify the Paying Agent/Registrar of such redemption date and of the principal amount of Certificates to be redeemed.

Section 4.03. Partial Redemption.

(a) A portion of a single Certificate of a denomination greater than \$5,000 may be redeemed, but only in a principal amount equal to \$5,000 or any integral multiple thereof. If such a Certificate is to be partially redeemed, the Paying Agent/Registrar shall treat each \$5,000 portion of the Certificate as though it were a single Certificate for purposes of selection for redemption.

(b) Upon surrender of any Certificate for redemption in part, the Paying Agent/Registrar, in accordance with Section 3.06 of this Ordinance, shall authenticate and deliver an exchange Certificate or Certificates in an aggregate principal amount equal to the unredeemed portion of the Certificate so surrendered, such exchange being without charge.

(c) The Paying Agent/Registrar shall promptly notify the Town in writing of the principal amount to be redeemed of any Certificate as to which only a portion thereof is to be redeemed.

Section 4.04. Notice of Redemption to Owners.

(a) The Paying Agent/Registrar shall give notice of any redemption of Certificates by sending notice by first class United States mail, postage prepaid, not less than 30 days before the date fixed for redemption, to the Owner of each Certificate (or part thereof) to be redeemed, at

the address shown on the Register at the close of business on the Business Day next preceding the date of mailing such notice.

(b) The notice shall state the redemption date, the redemption price, the place at which the Certificates are to be surrendered for payment, and, if less than all the Certificates outstanding are to be redeemed, an identification of the Certificates or portions thereof to be redeemed.

(c) Any notice given as provided in this Section shall be conclusively presumed to have been duly given, whether or not the Owner receives such notice.

Section 4.05. Payment Upon Redemption.

(a) Before or on each redemption date, the Town shall deposit with the Paying Agent/Registrar money sufficient to pay all amounts due on the redemption date and the Paying Agent/Registrar shall make provision for the payment of the Certificates to be redeemed on such date by setting aside and holding in trust such amounts as are received by the Paying Agent/Registrar from the Town and shall use such funds solely for the purpose of paying the principal of, redemption premium, if any, and accrued interest on the Certificates being redeemed.

(b) Upon presentation and surrender of any Certificate called for redemption at the Designated Payment/Transfer Office on or after the date fixed for redemption, the Paying Agent/Registrar shall pay the principal of, redemption premium, if any, and accrued interest on such Certificate to the date of redemption from the money set aside for such purpose.

Section 4.06. Effect of Redemption.

(a) Notice of redemption having been given as provided in Section 4.04 of this Ordinance, the Certificates or portions thereof called for redemption shall become due and payable on the date fixed for redemption and, unless the Town defaults in its obligation to make provision for the payment of the principal thereof, redemption premium, if any, or accrued interest thereon, such Certificates or portions thereof shall cease to bear interest from and after the date fixed for redemption, whether or not such Certificates are presented and surrendered for payment on such date.

(b) If the Town shall fail to make provision for payment of all sums due on a redemption date, then any Certificate or portion thereof called for redemption shall continue to bear interest at the rate stated on the Certificate until due provision is made for the payment of same by the Town.

Section 4.07. Lapse of Payment.

Money set aside for the redemption of Certificates and remaining unclaimed by the Owners of such Certificates shall be subject to the provisions of Section 3.03(f) hereof.

ARTICLE V

PAYING AGENT/REGISTRAR

Section 5.01. Appointment of Initial Paying Agent/Registrar.

JPMorgan Chase Bank, N.A., Dallas, Texas, is hereby appointed as the initial Paying Agent/Registrar for the Certificates.

Section 5.02. Qualifications.

Each Paying Agent/Registrar shall be a commercial bank, a trust company organized under the laws of the State of Texas, or other entity duly qualified and legally authorized to serve as and perform the duties and services of paying agent and registrar for the Certificates.

Section 5.03. Maintaining Paying Agent/Registrar.

(a) At all times while any of the Certificates are outstanding, the Town will maintain a Paying Agent/Registrar that is qualified under Section 5.02 of this Ordinance. The Mayor is hereby authorized and directed to execute an agreement with the Paying Agent/Registrar specifying the duties and responsibilities of the Town and the Paying Agent/Registrar. The signature of the Mayor shall be attested by the City Secretary of the Town.

(b) If the Paying Agent/Registrar resigns or otherwise ceases to serve as such, the Town will promptly appoint a replacement.

Section 5.04. Termination.

The Town, upon not less than sixty (60) days notice, reserves the right to terminate the appointment of any Paying Agent/Registrar by delivering to the entity whose appointment is to be terminated written notice of such termination.

Section 5.05. Notice of Change to Owners.

Promptly upon each change in the entity serving as Paying Agent/Registrar, the Town will cause notice of the change to be sent to each Owner by first class United States mail, postage prepaid, at the address thereof in the Register, stating the effective date of the change and the name and mailing address of the replacement Paying Agent/Registrar.

Section 5.06. Agreement to Perform Duties and Functions.

By accepting the appointment as Paying Agent/Registrar and executing the Paying Agent/Registrar Agreement, the Paying Agent/Registrar is deemed to have agreed to the

provisions of this Ordinance and that it will perform the duties and functions of Paying Agent/Registrar prescribed thereby.

Section 5.07. Delivery of Records to Successor.

If a Paying Agent/Registrar is replaced, such Paying Agent/Registrar, promptly upon the appointment of the successor, will deliver the Register (or a copy thereof) and all other pertinent books and records relating to the Certificates to the successor Paying Agent/Registrar.

ARTICLE VI

FORM OF THE CERTIFICATES

Section 6.01. Form Generally.

(a) The Certificates, including the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Certificate of the Paying Agent/Registrar, and the Assignment form to appear on each of the Certificates, (i) shall be substantially in the form set forth in this Article, with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance, and (ii) may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including any reproduction of an opinion of counsel) thereon as, consistently herewith, may be determined by the Town or by the officers executing such Certificates, as evidenced by their execution thereof.

(b) Any portion of the text of any Certificates may be set forth on the reverse side thereof, with an appropriate reference thereto on the face of the Certificates.

(c) The definitive Certificates, if any, shall be typewritten, photocopied, printed, lithographed, or engraved, and may be produced by any combination of these methods or produced in any other similar manner, all as determined by the officers executing such Certificates, as evidenced by their execution thereof.

(d) The Initial Certificate submitted to the Attorney General of the State of Texas may be typewritten and photocopied or otherwise reproduced.

Section 6.02. Form of the Certificates.

The form of the Certificates, including the form of the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the form of Certificate of the Paying Agent/Registrar and the form of Assignment appearing on the Certificates, shall be substantially as follows:

(a) Form of Certificate.

REGISTERED

REGISTERED

No. _____

\$ _____

United States of America
State of Texas
County of Dallas
TOWN OF ADDISON, TEXAS
COMBINATION TAX AND REVENUE
CERTIFICATE OF OBLIGATION
SERIES 2004

INTEREST RATE: MATURITY DATE: ORIGINAL DATE: CUSIP NUMBER:
_____ % February 15, ____ November 15, 2004 _____

The Town of Addison (the "Town"), in the County of Dallas, State of Texas, for value received, hereby promises to pay to

_____ or registered assigns, on the Maturity Date specified above, the sum of

_____ DOLLARS

unless this Bond shall have been sooner called for redemption and the payment of the principal hereof shall have been provided for, and to pay interest on such principal amount from the later of Certificate Date specified above or the most recent interest payment date to which interest has been paid or provided for until payment of such principal amount has been provided for, at the per annum rate of interest specified above, computed on the basis of a 360-day year of twelve 30-day months, such interest to be paid semiannually on February 15 and August 15 of each year, commencing August 15, 2005.

The principal of this Certificate shall be payable without exchange or collection charges in lawful money of the United States of America upon presentation and surrender of this Certificate at the designated office in Dallas, Texas, of JPMorgan Chase Bank, N.A., as Paying Agent/Registrar (the "Designated Payment/Transfer Office"), or, with respect to a successor paying agent/registrar, at the Designated Payment/Transfer Office of such successor. Interest on this Certificate is payable by check dated as of the interest payment date, and will be mailed by the Paying Agent/Registrar to the registered owner at the address shown on the registration books kept by the Paying Agent/Registrar or by such other customary banking arrangement acceptable to the Paying Agent/Registrar and the registered owner; provided, however, such registered owner shall bear all risk and expenses of such customary banking arrangement. At the option of an Owner of at least \$1,000,000 principal amount of the Certificates, interest may be paid by wire transfer to the bank account of such Owner on file with the Paying Agent/Registrar. For the purpose of the payment of interest on this Certificate, the registered owner shall be the person in whose name this Certificate is registered at the close of business on the "Record Date,"

which shall be the last business day of the month next preceding such interest payment date; provided, however, that in the event of nonpayment of interest on a scheduled payment date and for 30 days thereafter, a new record date for such interest payment (a "Special Record Date") shall be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the Town. Notice of the Special Record Date and of the scheduled payment date of the past due interest (the "Special Payment Date," which date shall be 15 days after the Special Record Date) shall be sent at least five business days prior to the Special Record Date by United States mail, first class, postage prepaid, to the address of each Owner of a Certificate appearing on the books of the Paying Agent/Registrar at the close of business on the last business day next preceding the date of mailing of such notice.

If the date for the payment of the principal of or interest on this Certificate shall be a Saturday, Sunday, legal holiday, or day on which banking institutions in the city where the Designated Payment/Transfer Office is located are required or authorized by law or executive order to close, the date for such payment shall be the next succeeding day that is not a Saturday, Sunday, legal holiday, or day on which banking institutions are required or authorized to close, and payment on such date shall have the same force and effect as if made on the original date payment was due and no additional interest shall be due by reason of nonpayment on the date on which such payment is otherwise stated to be due and payable.

This Certificate is one of a series of fully registered certificates specified in the title hereof issued in the aggregate principal amount of \$4,400,000 (herein referred to as the "Certificates"), issued pursuant to a certain ordinance of the Town (the "Ordinance") for the purpose of paying contractual obligations to be incurred for authorized public improvements (the "Project") and to pay the contractual obligations for professional services of attorneys, financial advisors and other professionals in connection with the Project and the issuance of the Certificates.

The Certificates and the interest thereon are payable from the levy of a direct and continuing ad valorem tax within the limits prescribed by law, against all taxable property in the Town and from a pledge of certain Surplus Revenues (not to exceed \$1,000) of the Town's waterworks and sewer system, all as described and provided for in the Ordinance.

The Town has reserved the option to redeem the Certificates maturing on or after February 15, 2015, in whole or in part, before their respective scheduled maturity dates, on February 15, 2014, or on any date thereafter, at a price equal to the principal amount of the Certificates so called for redemption plus accrued interest to the date fixed for redemption. If less than all of the Certificates are to be redeemed, the Town shall determine the maturity or maturities and the amounts thereof to be redeemed and shall direct the Paying Agent/Registrar to call by lot or other customary method that results in a random selection the Certificates, or portions thereof, within such maturity and in such principal amounts, for redemption.

Notice of such redemption or redemptions shall be given by first class mail, postage prepaid, not less than 30 days before the date fixed for redemption, to the registered owner of each of the Certificates to be redeemed in whole or in part. Notice having been so given, the Certificates or portions thereof designated for redemption shall become due and payable on the redemption date specified in such notice; from and after such date, notwithstanding that any of

the Certificates or portions thereof so called for redemption shall not have been surrendered for payment, interest on such Certificates or portions thereof shall cease to accrue.

As provided in the Ordinance, and subject to certain limitations therein set forth, this Certificate is transferable upon surrender of this Certificate for transfer at the Designated Payment/Transfer Office with such endorsement or other evidence of transfer as is acceptable to the Paying Agent/Registrar; thereupon, one or more new fully registered Certificates of the same stated maturity, of authorized denominations, bearing the same rate of interest, and for the same aggregate principal amount will be issued to the designated transferee or transferees.

Neither the Town nor the Paying Agent/Registrar shall be required to issue, transfer or exchange any Certificate called for redemption where such redemption is scheduled to occur within 45 calendar days of the date fixed for redemption; provided, however, such limitation shall not be applicable to an exchange by the registered owner of the uncalled principal balance of a Certificate.

The Town, the Paying Agent/Registrar, and any other person may treat the person in whose name this Certificate is registered as the owner hereof for the purpose of receiving payment as herein provided (except interest shall be paid to the person in whose name this Certificate is registered on the Record Date, or the Special Record Date, as applicable) and for all other purposes, whether or not this Certificate be overdue, and neither the Town nor the Paying Agent/Registrar shall be affected by notice to the contrary.

IT IS HEREBY CERTIFIED AND RECITED that the issuance of this Certificate and the series of which it is a part is duly authorized by law; that all acts, conditions, and things to be done precedent to and in the issuance of the Certificates have been properly done and performed and have happened in regular and due time, form, and manner as required by law; that ad valorem taxes upon all taxable property in the Town have been levied for and pledged to the payment of the debt service requirements of the Certificates within the limit prescribed by law; that, in addition to said taxes, further provisions have been made for the payment of the debt service requirements of the Certificates from a pledge of a limited amount of the Surplus Revenues, as described in the Ordinance, derived by the Town from the operation of the waterworks and sewer system, that when so collected, such taxes and Surplus Revenues shall be appropriated to such purposes; and that the total indebtedness of the Town, including the Certificates, does not exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the Town has caused this Certificate to be executed by the manual or facsimile signature of the Mayor of the Town and countersigned by the manual or facsimile signature of the City Secretary, and the official seal of the Town has been duly impressed or placed in facsimile on this Certificate.

Mayor, Town of Addison, Texas

City Secretary,
Town of Addison, Texas

[SEAL]

(b) Form of Comptroller's Registration Certificate. The following Comptroller's Registration Certificate may be deleted from the definitive Certificates if such certificate on the Initial Certificate is fully executed.

OFFICE OF THE COMPTROLLER §
OF PUBLIC ACCOUNTS § REGISTER NO. _____
OF THE STATE OF TEXAS §

I hereby certify that there is on file and of record in my office a certificate of the Attorney General of the State of Texas to the effect that this Certificate has been examined by him as required by law, that he finds that it has been issued in conformity with the Constitution and laws of the State of Texas, and that it is a valid and binding obligation of the Town of Addison, Texas; and that this Certificate has this day been registered by me.

Witness my hand and seal of office at Austin, Texas, _____.

Comptroller of Public Accounts
of the State of Texas

(c) Form of Certificate of Paying Agent/Registrar. The following Certificate of Paying Agent/Registrar may be deleted from each Initial Certificate if the Comptroller's Registration Certificate appears thereon.

CERTIFICATE OF PAYING AGENT/REGISTRAR

The records of the Paying Agent/Registrar show that the Initial Certificates of this series of Certificates was approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas, and that this is one of the Certificates referred to in the within-mentioned Ordinance.

JPMORGAN CHASE BANK, N.A.,
as Paying Agent/Registrar

Dated: _____

By: _____
Authorized Signatory

(d) Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers unto (print or typewrite name, address and Zip Code of transferee): _____

(Social Security or other identifying number: _____) the within Certificate and all rights hereunder and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Certificate on the books kept for registration hereof, with full power of substitution in the premises.

Dated: _____

Signature Guaranteed By:

Authorized Signatory

NOTICE: The Signature on this Assignment must correspond with the name of the registered owner as it appears on the face of the within Certificate in every particular and must be guaranteed in a manner acceptable to the Paying Agent/Registrar.

(e) The initial Certificate shall be in the form set forth in subsections (a) through (d) of this Section, except for the following alterations:

(i) immediately under the name of the Certificate, the headings “INTEREST RATE,” and “MATURITY DATE” shall both be completed with the words “As Shown Below” and the words “CUSIP NO.” shall be deleted;

(ii) in the first paragraph of the Certificate, the words “on the Maturity Date specified above, the sum of _____ DOLLARS” shall be deleted and the following will be inserted: “on the fifteenth day of February in the years, in the principal installments and bearing interest at the per annum rates set forth in the following schedule:

<u>Year</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
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(Information to be inserted from schedule in Section 3.02 of this hereof); and

(iii) the Initial Certificate shall be numbered T-1.

Section 6.03. CUSIP Registration.

The Town may secure identification numbers through the CUSIP Service Bureau Division of Standard & Poor’s Corporation, New York, New York, and may authorize the printing of such numbers on the face of the Certificates. It is expressly provided, however, that the presence or absence of CUSIP numbers on the Certificates shall be of no significance or effect in regard to the legality thereof and neither the Town nor the attorneys approving said Certificates as to legality are to be held responsible for CUSIP numbers incorrectly printed on the Certificates.

Section 6.04. Legal Opinion.

The approving legal opinion of Vinson & Elkins L.L.P., Bond Counsel, may be attached to or printed on the reverse side of each Certificate over the certification of the City Secretary of the Town, which may be executed in facsimile.

Section 6.05. Statement Insurance.

A statement relating to a municipal bond insurance policy, if any, to be issued for the Certificates, may be printed on each Certificate.

ARTICLE VII

SALE AND DELIVERY OF CERTIFICATES; DEPOSIT OF PROCEEDS; FLOW OF FUNDS

Section 7.01. Sale of Certificates; Official Statement.

(a) The Certificates, having been duly advertised for public sale and bids having been received pursuant thereto, are hereby sold to _____ (the "Purchaser") for a price equal to the principal amount thereof plus a premium of \$_____, plus interest accrued thereon to the Closing Date being the bid submitted which produced the lowest true interest rate to the Town. The Certificates shall be initially registered in the name of the Purchaser or its designee.

(b) The form and substance of the Preliminary Official Statement, dated November 11, 2004 and any addenda, supplement or amendment thereto, and the final Official Statement (the "Official Statement") presented to and considered at this meeting, are hereby in all respects approved and adopted and hereby deemed final as of its date within the meaning and for the purposes of paragraph (b)(1) of Rule 15c2-12 under the Securities Exchange Act of 1934, as amended. The Mayor and City Secretary of the Town are hereby authorized and directed to execute the same and deliver appropriate numbers of executed copies thereof to the Purchaser. The Official Statement as thus approved, executed and delivered, with such appropriate variations as shall be approved by the Mayor of the Town and the Purchaser, may be used by the Purchaser in the public offering and sale thereof. The City Secretary is hereby authorized and directed to include and maintain a copy of the Official Statement and any addenda, supplement or amendment thereto thus approved among the permanent records of this meeting. The use and distribution of the Preliminary Official Statement, and the preliminary public offering of the Certificates by the Purchaser is hereby ratified, approved and confirmed.

(c) All officers of the Town are authorized to execute such documents, certificates and receipts, and to make such elections with respect to the tax-exempt status of Certificates, as they may deem appropriate in order to consummate the delivery of the Certificates in accordance with the provisions and terms of the Notice of Sale and Bidding Instructions and this Ordinance.

(d) The obligation of the purchaser identified in subsection (a) of this Section to accept delivery of the Certificates is subject to such purchaser being furnished with the final, approving opinion of Vinson & Elkins L.L.P., bond counsel for the Town, which opinion shall be dated and delivered the Closing Date.

Section 7.02. Control and Delivery of Certificates.

(a) The Mayor of the Town is hereby authorized to have control of the Initial Certificate and all necessary records and proceedings pertaining thereto pending investigation, examination, and approval of the Attorney General of the State of Texas, registration by the Comptroller of Public Accounts of the State of Texas and registration with, and initial exchange or transfer by, the Paying Agent/Registrar.

(b) After registration by the Comptroller of Public Accounts, delivery of the Certificates shall be made to the initial purchasers thereof under and subject to the general

supervision and direction of the Mayor, against receipt by the Town of all amounts due to the Town under the terms of sale.

Section 7.03. Deposit of Proceeds.

(a) First: All amounts received on the Closing Date as accrued interest on the Certificates from the Certificate Date to the Closing Date, together with the premium of \$_____, shall be deposited to the Interest and Sinking Fund.

(b) Second: The remaining balance received on the Closing Date shall be deposited to a special account of the Town, such moneys to be dedicated and used solely for the purposes for which the Certificates are being issued as herein provided.

ARTICLE VIII

INVESTMENTS

Section 8.01. Investments.

(a) Money in the Interest and Sinking Fund created by this Ordinance, at the option of the Town, may be invested in such securities or obligations as permitted under applicable law.

(b) Any securities or obligations in which such money is so invested shall be kept and held in trust for the benefit of the Owners and shall be sold and the proceeds of sale shall be timely applied to the making of all payments required to be made from the fund from which the investment was made.

Section 8.02. Investment Income.

(a) Interest and income derived from investment of the Interest and Sinking Fund be credited to such fund.

(b) Interest and income derived from investment of the funds to be deposited pursuant to Section 7.03(b) hereof shall be credited to the account where deposited until the acquisition or construction of said projects is completed and thereafter, to the extent such interest and income are present, such interest and income shall be deposited to the Interest and Sinking Fund.

ARTICLE IX

PARTICULAR REPRESENTATIONS AND COVENANTS

Section 9.01. Payment of the Certificates.

On or before each Interest Payment Date for the Certificates and while any of the Certificates are outstanding and unpaid, there shall be made available to the Paying Agent/Registrar, out of the Interest and Sinking Fund, money sufficient to pay such interest on and principal of, redemption premium, if any, and interest on the Certificates as will accrue or

mature on the applicable Interest Payment Date, maturity date and, if applicable, on a date of prior redemption.

Section 9.02. Other Representations and Covenants.

(a) The Town will faithfully perform, at all times, any and all covenants, undertakings, stipulations, and provisions contained in this Ordinance and in each Certificate; the Town will promptly pay or cause to be paid the principal of, redemption premium, if any, and interest on each Certificate on the dates and at the places and manner prescribed in such Certificate; and the Town will, at the times and in the manner prescribed by this Ordinance, deposit or cause to be deposited the amounts of money specified by this Ordinance.

(b) The Town is duly authorized under the laws of the State of Texas to issue the Certificates; all action on its part for the creation and issuance of the Certificates has been duly and effectively taken; and the Certificates in the hands of the Owners thereof are and will be valid and enforceable obligations of the Town in accordance with their terms.

Section 9.03. Provisions Concerning Federal Income Tax Exclusion.

The Town intends that the interest on the Certificates shall be excludable from gross income for federal income taxation pursuant to sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended (the "Code") and the applicable regulations promulgated thereunder (the "Regulations"). The Town covenants and agrees not to take any action, or knowingly omit to take any action within its control, that if taken or omitted, respectively, would cause the interest on the Certificates to be includable in gross income, as defined in section 61 of the Code of the holders thereof for purposes of federal income taxation. In particular, the Town covenants and agrees to comply with each requirement of Sections 9.03 through 9.10, inclusive; provided, however, that the Town shall not be required to comply with any particular requirement of this Sections 9.03 through 9.10 of the holders thereof for purposes of federal income taxation, if the Town has received an opinion of nationally recognized bond counsel ("Counsel's Opinion") that such noncompliance will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Certificates or if the Town has received a Counsel's Opinion to the effect that compliance with some other requirement set forth in this Sections 9.03 through 9.10, inclusive, will satisfy the applicable requirements of the Code and the Regulations, in which case compliance with such other requirement specified in such Counsel's Opinion shall constitute compliance with the corresponding requirement specified in Sections 9.03 through 9.10, inclusive.

Section 9.04. No Private Use or Payment and No Private Loan Financing.

The Town shall certify, through an authorized officer, employee or agent, that, based upon all facts and estimates known or reasonably expected to be in existence on the date the Certificates are delivered, that the proceeds of the Certificates will not be used in a manner that would cause the Certificates to be "private activity bonds" within the meaning of section 141 of the Code and the Regulations. The Town covenants and agrees that it will make such use of the proceeds of the Certificates, including interest or other investment income derived from Certificate proceeds, regulate the use of property financed, directly or indirectly, with such

proceeds, and take such other and further action as may be required so that the Certificates will not be “private activity bonds” within the meaning of section 141 of the Code and the Regulations.

Section 9.05. No Federal Guaranty.

The Town covenants and agrees not to take any action, or knowingly omit to take any action, and has not knowingly omitted and will not knowingly omit to take any action within its control, that, if taken or omitted, respectively, would cause the Certificates to be “federally guaranteed” within the meaning of section 149(b) of the Code and the Regulations, except as permitted by section 149(b)(3) of the Code and the Regulations.

Section 9.06. Certificates are not Hedge Certificates.

The Town covenants and agrees that it has not taken and will not take any action, and has not knowingly omitted and will not knowingly omit to take any action within its control, that, if taken or omitted, respectively, would cause the Certificates to be “hedge bonds” within the meaning of section 149(g) of the Code and the Regulations.

Section 9.07. No-Arbitrage Covenant.

The Town shall certify, through an authorized officer, employee or agent, that, based upon all facts and estimates known or reasonably expected to be in existence on the date the Certificates are delivered, the Town will reasonably expect that the proceeds of the Certificates will not be used in a manner that would cause the Certificates to be “arbitrage bonds” within the meaning of section 148(a) of the Code and the Regulations. Moreover, the Town covenants and agrees that it will make such use of the proceeds of the Certificates, including interest or other investment income derived from Certificate proceeds, regulate investments of proceeds of the Certificates, and take such other and further action as may be required so that the Certificates will not be “arbitrage bonds” within the meaning of section 148(a) of the Code and the Regulations.

Section 9.08. Arbitrage Rebate.

If the Town does not qualify for an exception to the requirements of Section 148(f) of the Code, the Town will take all necessary steps to comply with the requirement that certain amounts earned by the Town on the investment of the “gross proceeds” of the Certificates (within the meaning of section 148(f)(6)(B) of the Code), be rebated to the federal government. Specifically, the Town will (i) maintain records regarding the investment of the gross proceeds of the Certificates as may be required to calculate the amount earned on the investment of the gross proceeds of the Certificates separately from records of amounts on deposit in the funds and accounts of the Town allocable to other issues of the Town or moneys which do not represent gross proceeds of any issues of the Town, (ii) calculate at such times as are required by the Regulations the amount earned from the investment of the gross proceeds of the Certificates which is required to be rebated to the federal government, and (iii) pay, not less often than every fifth anniversary date of the delivery of the Certificates or on such other dates as may be permitted under the Regulations, all amounts required to be rebated to the federal government. Further, the Town will not indirectly pay any amount otherwise payable to the federal

government pursuant to the foregoing requirements to any person other than the federal government by entering into any investment arrangement with respect to the gross proceeds of the Certificates that might result in a reduction in the amount required to be paid to the federal government because such arrangement results in a smaller profit or a larger loss than would have resulted if the arrangement had been at arm's length and had the yield on the issue not been relevant to either party.

Section 9.09. Information Reporting.

The Town covenants and agrees to file or cause to be filed with the Secretary of the Treasury, not later than the 15th day of the second calendar month after the close of the calendar quarter in which the Certificates are issued, an information statement concerning the Certificates, all under and in accordance with section 149(e) of the Code and the Regulations.

Section 9.10. Continuing Obligation.

Notwithstanding any other provision of this Ordinance, the Town's obligations under the covenants and provisions of Sections 9.03 through 9.09, inclusive, shall survive the defeasance and discharge of the Certificates.

ARTICLE X

DEFAULT AND REMEDIES

Section 10.01. Events of Default.

Each of the following occurrences or events for the purpose of this Ordinance is hereby declared to be an Event of Default:

- (i) the failure to make payment of the principal of, redemption premium, if any, or interest on any of the Certificates when the same becomes due and payable; or
- (ii) default in the performance or observance of any other covenant, agreement, or obligation of the Town, which default materially and adversely affects the rights of the Owners, including but not limited to their prospect or ability to be repaid in accordance with this Ordinance, and the continuation thereof for a period of sixty (60) days after notice of such default is given by any Owner to the Town.

Section 10.02. Remedies for Default.

(a) Upon the happening of any Event of Default, then any Owner or an authorized representative thereof, including but not limited to a trustee or trustees therefor, may proceed against the Town for the purpose of protecting and enforcing the rights of the Owners under this Ordinance by mandamus or other suit, action or special proceeding in equity or at law in any court of competent jurisdiction for any relief permitted by law, including the specific performance of any covenant or agreement contained herein, or thereby to enjoin any act or thing

that may be unlawful or in violation of any right of the Owners hereunder or any combination of such remedies.

(b) It is provided that all such proceedings shall be instituted and maintained for the equal benefit of all Owners of Certificates then outstanding.

Section 10.03. Remedies Not Exclusive.

(a) No remedy herein conferred or reserved is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the Certificates or now or hereafter existing at law or in equity; provided, however, that notwithstanding any other provision of this Ordinance, the right to accelerate the debt evidenced by the Certificates shall not be available as a remedy under this Ordinance.

(b) The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy.

ARTICLE XI

DISCHARGE

Section 11.01. Discharge.

The Certificates may be defeased, discharged or refunded in any manner permitted by applicable law.

ARTICLE XII

CONTINUING DISCLOSURE UNDERTAKING

Section 12.01. Annual Reports.

(a) The Town shall provide annually to each NRMSIR and to any SID, within six (6) months after the end of each fiscal year, financial information and operating data with respect to the Town of the general type included in the final Official Statement, being the information described in Exhibit A hereto. Any financial statements so to be provided shall be (i) prepared in accordance with the accounting principles described in Exhibit A hereto, and (ii) audited, if the Town commissions an audit of such statements and the audit is completed within the period during which they must be provided. If the audit of such financial statements is not complete within such period, then the Town shall provide notice that audited financial statements are not available and shall provide unaudited financial statements for the applicable fiscal year to each NRMSIR and any SID. The Town shall provide audited financial statements for the applicable fiscal year to each NRMSIR and to any SID when and if audited financial statements become available.

(b) If the Town changes its fiscal year, it will notify each NRMSIR and any SID of the change (and of the date of the new fiscal year end) prior to the next date by which the Town

otherwise would be required to provide financial information and operating data pursuant to this Section.

(c) The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document (including an official statement or other offering document, if it is available from the MSRB) that theretofore has been provided to each NRMSIR and any SID or filed with the SEC.

Section 12.02. Material Event Notices.

(a) The Town shall notify any SID and either each NRMSIR or the MSRB, in a timely manner, of any of the following events with respect to the Certificates, if such event is material within the meaning of the federal securities laws:

- (i) principal and interest payment delinquencies;
- (ii) nonpayment related defaults;
- (iii) unscheduled draws on debt service reserves reflecting financial difficulties;
- (iv) unscheduled draws on credit enhancements reflecting financial difficulties;
- (v) substitution of credit or liquidity providers, or their failure to perform;
- (vi) adverse tax opinions or events affecting the tax exempt status of the Certificates;
- (vii) modifications to rights of Owners;
- (viii) redemption calls;
- (ix) defeasances;
- (x) release, substitution, or sale of property securing repayment of the Certificates; and
- (xi) rating changes.

(b) The Town shall notify any SID and either each NRMSIR or the MSRB, in a timely manner, of any failure by the Town to provide financial information or operating data in accordance with Section 12.01 of this Ordinance by the time required by such Section.

Section 12.03. Limitations, Disclaimers and Amendments.

(a) The Town shall be obligated to observe and perform the covenants specified in this Article for so long as, but only for so long as, the Town remains an “obligated person” with respect to the Certificates within the meaning of the Rule, except that the Town in any event will give notice of any redemption calls and any defeasances that cause the Town to be no longer an “obligated person.”

(b) The provisions of this Article are for the sole benefit of the Owners and beneficial owners of the Certificates, and nothing in this Article, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The Town undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Article and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the Town’s financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Article or otherwise, except as expressly provided herein. The Town does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Certificates at any future date.

UNDER NO CIRCUMSTANCES SHALL THE TOWN BE LIABLE TO THE OWNER OR BENEFICIAL OWNER OF ANY CERTIFICATE OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE TOWN, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS ARTICLE, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

(c) No default by the Town in observing or performing its obligations under this Article shall constitute a breach of or default under the Ordinance for purposes of any other provisions of this Ordinance.

(d) Nothing in this Article is intended or shall act to disclaim, waive, or otherwise limit the duties of the Town under federal and state securities laws.

(e) The provisions of this Article may be amended by the Town from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the Town, but only if (i) the provisions of this Article, as so amended, would have permitted an underwriter to purchase or sell Certificates in the primary offering of the Certificates in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (ii) either (A) the Owners of a majority in aggregate principal amount (or any greater amount required by any other provisions of this Ordinance that authorizes such an amendment) of the Outstanding Certificates consent to such amendment or (B) an entity or individual person that is unaffiliated with the Town (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Owners and beneficial owners of the Certificates. If the Town so amends the

provisions of this Article, it shall include with any amended financial information or operating data next provided in accordance with Section 12.01 an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in type of financial information or operating data so provide.

ARTICLE XIII

EFFECTIVENESS

Section 13.01. Effectiveness.

This Ordinance shall take effect immediately from and after its passage.

APPROVED AND ADOPTED this November 23, 2004.

Mayor, Town of Addison, Texas

ATTEST:

City Secretary, Town of Addison, Texas

APPROVED AS TO FORM:

By: _____
City Attorney, Town of Addison, Texas

EXHIBIT A

DESCRIPTION OF ANNUAL DISCLOSURE OF FINANCIAL INFORMATION

The following information is referred to in Article XII of this Ordinance.

Annual Financial Statements and Operating Data

The financial information and operating data with respect to the Town to be provided annually in accordance with such Section are as specified (and included in the Appendix or other headings of the Official Statement referred to) below:

1. The portions of the financial statements of the Town appended to the Official Statement as Appendix B, but for the most recently concluded fiscal year.
2. Statistical and financial data set forth in Tables 1 through 6, and 8 through 15.

Accounting Principles

The accounting principles referred to in such Section are the accounting principles described in the notes to the financial statements referred to in Paragraph 1 above.

Council Agenda Item: #R6

SUMMARY:

Consideration and approval of the City Managers recommended incentive compensation reward to Washington Staubach Addison Airport Venture for 2004 in the amount of \$185,380.00.

FINANCIAL IMPACT:

Cost: \$185,380.00

Funds are available in the Airport Fund.

BACKGROUND:

In accordance with the Third Amendment and Exhibit 3 of the Operating Agreement between the Town of Addison and Washington Staubach Addison Airport Venture, WSAAV has the ability to earn incentive compensation each year of the agreement for performance that exceeds the Town's expectations. There are two components of the incentive compensation; financial incentive and management incentive. The finance incentive portion includes certain financial performance based incentives, including an incentive based on the annual growth in Gross Revenue and an incentive based on revenue from through the fence operations.

The management incentive is based upon certain non-financial performance incentives, and may be awarded to the Operator based upon the City's assessment of the Operator's performance and achievements during the applicable contract year. To aide the City in its assessment of the Operator's performance and achievements, the Operator submitted to the City an annual management report which is intended to be limited in scope but sufficient enough to summarize the Operator's accomplishments and performance over the applicable contract year.

RECOMMENDATION:

Staff met on several occasions to consider our evaluation and is in concurrence with the following recommendation of \$120,380.00 finance incentive and \$65,000.00 management incentive for a total \$185,380.00 for WSAAV incentive compensation for calendar year 2004.

Attachments:

- Mark Acevedo – Recommendation Memorandum
- 2004 Annual Report – Addison Airport
- Lisa Pyles – WSAAV Financial Incentive Memorandum
- Randy Moravec – Distribution of Airport Revenues Memorandum
- Third Amendment to the Operating Agreement
- “Exhibit 3” from Operating Agreement

INTEROFFICE MEMO

DATE: 11/11/04
TO: RON WHITEHEAD, CITY MANAGER
CC: CHRIS TERRY, ASSISTANT CITY MANAGER
RANDY MORAVEC, FINANCE DIRECTOR
FROM: MARK ACEVEDO, DIRECTOR OF GENERAL SERVICES
RE: WASHINGTON STAUBACH INCENTIVE COMPENSATION
RECOMMENDATION

BACKGROUND:

In accordance with the Operating Agreement between the Town of Addison and Washington Staubach Addison Airport Venture, WSAAV has the ability to earn incentive compensation each year of the agreement for performance that exceeds the Town's expectations. The Operator will be rewarded with incentive compensation commensurate with financial performance of the Airport based on the annual increase in Airport Gross Revenue. Financial Performance is divided into two sub-categories: a) Gross Revenue Increase and b) Other Financial Incentives. As airport revenue increases, the percentage for incentive amounts increase as well. Likewise, any decrease in revenue will result in a lesser percentage for incentive. Per the Exhibit 3 of the Operating agreement, if gross revenue is 3.5% or greater than the previous year, the Operator will earn a financial incentive. Gross revenue was 10% greater in 2004 therefore; the Operator earns a financial incentive of \$120,380. For the management incentive, staff met on several occasions to consider our evaluation and is in concurrence with recommending \$65,000 for the management portion of the incentive program for a total of **\$185,380**. In 2003 WSAAV did not earn the financial incentive. They were awarded \$176,612 for the management incentive.

In making this recommendation, staff utilized a new methodology as identified in "Exhibit 3" of the operating agreement. The revised methodology of incentive compensation as outlined in the Third Amendment to the Operating Agreement is comprised of two components; the finance incentive and the management incentive. The Finance Incentive portion includes certain financial performance based measures, including an incentive based on the annual growth in Gross Revenue and an incentive based on revenue from through the fence operations. The Management Incentive portion is based upon certain non-financial performance incentives, and may be awarded to the Operator based upon the City's assessment of the Operator's performance and achievements during the applicable contract year. To aide the City in its assessment of the Operator's performance and achievements, the Operator submitted to the City an annual management report which is intended to be limited in scope but sufficient enough to summarize the Operator's accomplishments and performance over the applicable contract year. Staff also met with WSAAV to share our assessment of their performance and discuss operational activities for the operating team to focus their attention on in the coming year.

Staff's philosophical approach to this performance incentive process was two-fold. One, we attempted to recognize work or accomplishments that went beyond expectations. Merely performing at expected levels does not merit a bonus; rather, the accomplishment should exceed the normal expected performance both in task and in quality. In fact, "Exhibit 3" of the operating contract states:

"While the City expects a high level of performance from the Operator, the provision of increasingly challenging levels of performance with commensurate financial rewards is intended to stimulate the Operator to higher levels of excellence for the Airport and the City."

Second, this process should identify for the operating team those areas of concern that need additional attention in the coming year. Identifying areas for improvement is an important means to providing adequate feedback for future performance and rewarding exceptional future performance.

The recommended monetary amounts are identified with each category in this memorandum.

RECOMMENDATIONS:

Financial Incentive **Earned Amount \$120,380**

The amount for this category is commensurate with the financial performance of the Airport based on the increase in airport gross revenue from year to year. When the annual Gross Revenue for the then applicable Contract Year exceeds the Prior Year Gross Revenue by 3.5% or more, the Operator will be rewarded with a percentage of such excess. The benchmark for 2004 is the amount received in 2003, or \$3,761,868. The amount received in 2004 is \$4,138,056; a 10% increase or \$376,188 more than the benchmark. Therefore WSAAV earns a financial incentive bonus for 2004 totaling \$120,380.

Management Incentive **Recommended Amount \$65,000**

The recommended amount for this category relates to the Operators performance in the areas outlined below from the Annual Report and staff's own assessment. These are areas which staff has determined to have been accomplished with a higher degree of quality and at a level that exceeds the routine daily expectations of managing an airport facility.

- **Communications and Tenant Relations** – The Operator has been very successful in building strong tenant relationships. This has been accomplished primarily through good communication and accessibility with the tenants. In addition, the Operator has successfully hosted tenant luncheons twice a year where the tenants have an opportunity to visit with other tenants and ask airport management questions about what is going on at the airport. This is an unusual practice at most general aviation airports. Additionally, during maintenance projects specifically the Westside T-hangar pavement reconstruction and the hangar roof repairs, no complaints were received, instead, tenants expressed their appreciation for the Operator's assistance and for being kept informed throughout the project.
- **T-Hangar Door Replacements** – Due to the airport maintenance manager's creative thinking and design, many T-hangar doors were replaced in 2004 and continue to be replaced at a 72% cost savings. The new replacement doors were designed and fabricated in-house and are lighter, easier to slide and have maintenance-free wheels. The tenants that have

received these new doors are thrilled and as a result the process will continue as other tenants are requesting these doors as replacements.

- **Noise Abatement** – The Operator continues to host the noise committee meetings. This has continued to be a proactive measure that has resulted in a 45.8% decrease in the number of complaints received. There were 390 noise complaints in 2004 compared to 719 complaints in 2003.
- **Advertising** – In addition to a new advertising campaign that the Operator initiated this year, a campaign was also developed which targeted the Charter Services on the field that includes a website of all the Charter companies their company information and links to their sites. This campaign will continue on an ongoing basis featuring different businesses and services that are offered on the field. As a tool to showcase the airport at conferences and provide technical information about the airport, the Operator developed two different brochures to provide this information. Each professional brochure is informative, attractive and compliments the Town of Addison and Addison Airport.
- **Special Events** – The Operator invited and hosted the National Business Aviation Association’s (NBAA) Safety and Security Briefing at the Addison Conference Centre last November. Forty-five flight departments from five states attended the event. In May, the airport hosted a ceremonial water display honoring a resident fractional company’s first retiring captain. The event had approximately 150 people in attendance and was covered by three local news channels and the *Dallas Morning News*. The Town will look to the Operator to identify even more events of this nature in 2005 as these events compliment the efforts of the Town’s Visitor Services Department’s mission to increase hotel revenue.
- **Property Management** – During the construction phase of the Frito-Lay corporate hangar facility, re-alignment of Airport Parkway and the Apron Project, airport management was instrumental in ensuring that all three projects went smoothly. Their excellent coordination and communication between the Town, tenants, and three contractors kept aircraft and tenant operations moving.

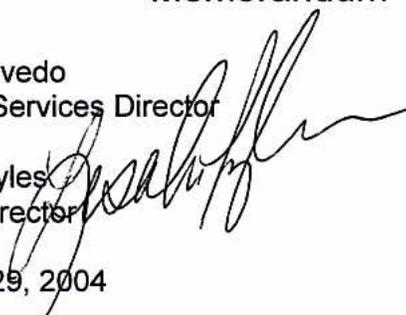
Although staff is very pleased with the daily operations, and the level of customer service that is provided with respect to property management, staff is concerned that a “Strategic Development Plan” for Addison Airport has yet to be completed and submitted to the Town. It is staff’s desire that the management team utilizes all resources available to them and develops a “Strategic Development Plan” for Addison Airport in the coming year. This strategic real estate plan needs to include a comprehensive analysis of the type, location, revenue opportunity, business model and other relevant real estate issues important to realizing this new development vision for Addison Airport. One of the major reasons the Town selected the Washington Staubach Joint Venture to manage Addison Airport was the perceived depth of expertise in real estate planning. We expect to see stronger results in this particular area in 2005 to enable the Operator to qualify for the management incentive portion as part of the 2005 incentive review process.

- Attachments: 2004 Annual Report – Addison Airport
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Memorandum

TO: Mark Acevedo
General Services Director

FROM: Lisa A. Pyles 
Airport Director

DATE: October 29, 2004

SUBJECT: Fiscal Year 2004 Annual Report

I am pleased to submit the Addison Airport Fiscal Year 2004 Annual Report.

I hope that you will agree that the report captures the essence of the dedication the airport management has to the mission of Addison Airport:

To provide the best, self-sustaining, general aviation airport facilities and services while returning a significant economic benefit to the citizens of Addison and being a good neighbor to the surrounding community.

On behalf of the entire airport management staff, I would like to thank you for the opportunity to represent the Town of Addison at Addison Airport. It is truly an honor and a pleasure to serve you as our client and partner for the past year. We look forward to many years ahead.

Overview

To Our Client and Partner, the Town of Addison:

Fiscal Year 2003/2004 has been a year of great accomplishment at Addison Airport. As we look back, there is much to be proud of in all areas of management: operations, maintenance, marketing, and real estate management.

Trends:

As we are all aware, the aviation industry has changed greatly in the last few years. The terrorist attacks and the subsequent rise in fuel prices have had a devastating effect on all aspects of the industry. There is some indication, however, that a recovery is underway. The Department of Transportation's (DOT) Transportation Services Index (TSI), an index created to measure the movement of freight and passenger traffic, reached the highest level in the 14-year period covered by the index with a 0.4% rise in July 2004. The Passenger TSI rose 0.8% to reach an all-time high, exceeding the pre-September 2001 level by the largest margin to date. In 2003, domestic enplanements on large commercial and regional/commuter air carriers increased from 574.5 million in 2002 and are currently up to 643.3 million, the same as 1998 levels. U.S. commercial air carriers reported an operating loss of \$5.3 billion in 2003, down from a loss of \$10.5 billion in 2002. Operations (take-offs and landings) were down 3.3% in 2003, the lowest level since 1996.

Closer to home, Addison Airport's operations levels reflect the downward trend as well. In fiscal year 2001, we recorded 160,151 total landings and takeoffs. In fiscal year 2004, that figure is down to 136,695, a 14.6% decrease over the three years. It is hard to say when and if operations will return to the pre-2001 levels, but the FAA forecasts that the general aviation fleet will increase from 211,200 aircraft in 2003 to 246,400 in 2015, growing 1.3% per year. This may or may not translate into increased operations since those are affected by many factors. The FAA does, however, forecast that general aviation hours flown are expected to increase from 26.7 million in 2003 to 32.7 million in 2015, an average annual growth rate of 1.7%.

Fuel deliveries at Addison Airport increased over the same three-year period. In 2001 there were 947,006 gallons of fuel delivered to the FBOs and 1,030,377 gallons in 2004. (A dip in 2003 was reversed in 2004.) With operations declining and fuel deliveries increasing, one can assume that the operation mix at Addison Airport is in transition, with more jets and larger aircraft and fewer smaller aircraft using the field. It is important to remember that airports are healthiest when there is a mix of users on the field, thereby providing a hedge against downturns in one segment or another. Therefore, it is prudent for us to make every effort to maintain a balanced fleet mix.

Challenges:

Addison Airport is a premier airport that enjoys the reputation of having a most desirous location. Nevertheless, there are many challenges ahead that will need to be addressed. One such challenge is that the airport is almost fully developed. This is good in the sense that there is a stable and predictable source of income today, but this revenue stream will barely keep pace with the ever-increasing cost of operations. Obviously, the airport cannot afford to continually raise rental rates just to offset escalating operating costs. Only so much can be achieved by service and costs reductions. One of the best ways to narrow the gap between revenue and cost is to continue to market the airport to attract more itinerant traffic (traffic that does not originate at the airport and returns to its origin.) Currently, Addison Airport is ranked amongst the highest general aviation (GA) airports for itinerant traffic in the state of Texas. It is critical for us to maintain, if not increase, our dominance and market share in this segment of aviation traffic. Another way to narrow the gap is by increasing land use efficiency through careful redevelopment and expansion.

Another issue that has received a great deal of coverage in the last few years is aviation security. In response to the attacks of September 11, 2001, first the FAA and now the Transportation Security Administration (TSA) have implemented a number of measures to increase security at commercial-service airports. Over the last year or so, the discussion has turned to security at general aviation airports. In May 2004, the TSA issued a report entitled "Security Guidelines for General Aviation Airports" which outlines a methodology to be used in assessing the risk at GA airports and suggests what airport users can do to improve security. The report not only provides suggestions for airport managers, but also pilots, aviation business owners, and local law enforcement. The TSA is quick to point out that GA airports have not been subject to federal rules regarding airport security in the past and it does not regard GA airports as a threat in and of themselves. The report does state that as other security holes are plugged, it is reasonable to conclude that GA airports may make an attractive target. Through the efforts of the American Association of Airport Executives, TSA recognizes that one-size security will not fit the entire spectrum of GA airports. They agree that we must focus on managing the risks associated with GA facilities while recognizing the unique characteristics that define each facility.

Fiscal Year 2003/2004 in Review:

The following 2004 Annual Report outlines the commitment of the airport management team towards the airport's Mission Statement:

To provide the best, self-sustaining, general aviation airport facilities and services while returning a significant economic benefit to the citizens of Addison, and being a good neighbor to the surrounding community.

In order to accomplish these goals, we are focusing on several objectives:

- Ensuring full compliance with all applicable federal regulations
- Upgrading airport facilities and infrastructure
- Scheduling special events to benefit the airport and the surrounding community
- Advertising the advantages of using and locating on Addison Airport
- Continuing to manage facilities in a superior manner
- Exploring potential opportunities for development and redevelopment of the airport

Operations

Minimum Standards and Rules and Regulations:

The Federal Aviation Administration strongly suggests that all airports adopt Minimum Standards and Rules and Regulations for the airport. The Minimum Standards set forth general guidelines airport management should require of businesses that wish to operate at the airport. The Minimum Standards help ensure a level playing field among the users at the airport. For example, all Fixed Base Operators are required to maintain the same standards of service and operations so one does not have an unfair advantage over the other.

The Rules and Regulations delineate how tenants operate on the airport. These rules apply not only to businesses on the field, but also to T-hangar and patio hangar tenants. The Rules and Regulations cover such activities as motor vehicle operations, aircraft operations, and environmental requirements.

With the help of a committee consisting of tenants and airport management, the Addison Airport Minimum Standards and Rules and Regulations documents were written and distributed to all airport tenants and to prospective tenants. These documents became effective in March 1, 2004.

Vehicle Access Ordinance:

As a result of requests made by several members of the Minimum Standards Committee, a committee was formed to discuss vehicle operation on the airfield. The committee was comprised of several airport tenants and a representative from the police department. Interest in forming this committee peaked after tenants reported that vehicles were seen driving on the airport during evening hours or on weekends in a manner inconsistent with safe operating procedures. For the police department to be able to enforce vehicle operation procedures, the rules must be incorporated into an ordinance adopted by the Town Council. A draft of this ordinance has been given to the

Town staff for their comment and ultimately to the Council for their consideration and approval.

Ground Vehicle Training:

FAA Advisory Circular No.150/5210-20 *Ground Vehicle Operations on Airports* provides guidance to airport operators in developing training programs for safe ground vehicle operations and pedestrian control on the airside of the airport. Since Addison Airport does not hold a Federal Aviation Regulation, Part 139 certificate, there is no obligation for those who drive on the airport to be trained under this Advisory Circular. In the interest of safe operations we believe that it is important to limit vehicular access on the airport to those who have been properly trained. During the fiscal year, 186 airport tenant employees have been trained to drive safely and properly on the airfield. We schedule classes at least two times a month in order to accommodate new tenant employees. We believe this effort increases the safety on the airport not only for the aircraft operators, but for the vehicle operators as well.

TxDOT Apron Improvements:

In January, work began on the improvement to the terminal apron area. The project was funded through a grant from TxDOT Aviation. The project also included the improvement of the taxiways around patio hangars on Taxiways Sierra and Tango. The project was



completed in June. Concurrently, the construction of a new corporate hangar and the realignment of Airport Parkway were underway, all within the same construction site.

The work involved the coordination of three contractors

and three funding sources. Because of the cooperation of all parties, the project was successfully completed within the timeframe imposed by the new corporate hangar tenant.

Federal Aviation Control Tower Construction:

In February, work began on the construction of a new air traffic control tower funded through a 100% grant from the FAA. The construction period is expected to take one year and should be complete in December 2004. After the construction is complete, installation and certification of equipment is expected to take an additional six to eight months. We anticipate the tower will be fully operational by the fall 2005.



Perimeter Controlled Access:

There are 122 controlled access gates on the airport. Thirty-eight are pedestrian gates and 84 are vehicular gates. Although the Transportation Security Administration has no authority over general aviation airports, they have published security guidelines for GA airports suggesting several ways to improve security at these airports. We have used these guidelines when meeting with tenants to emphasize the importance of keeping these access points secured at all times. The tenants are very receptive to this program and have expressed their commitment to continue to monitor each of these access points.

Pavement Management Plan:

The most effective means of preserving airport runways, taxiways, and apron pavement areas is to implement a comprehensive maintenance program. The plan should be updated annually and should feature a schedule of inspections and a list of required equipment and products. The airport's pavement management plan

was implemented in July. The plan provides information on recognizing problems associated with pavement distress such as cracking, disintegration, distortion, and loss of skid resistance on concrete surfaces. Various distresses are described for asphalt surfaces, as well. The plan also provides information as to the inspection procedure, the probable cause for various problems, and ways to repair the damage. The plan divides the airport into 16 sections for inspection purposes, which are performed on a quarterly schedule. A log is kept of each inspection and repairs are made accordingly. This process helps keep track of needed repairs and identifies problem areas before a catastrophic failure occurs.

Fuel Farm Construction:

Design of the fuel farm began in February and will be complete in October. Several meetings were held during the year with the current fuelers to gather their insights into what they need from an operational standpoint in order to operate more efficiently. In the beginning of this process, the fuelers believed that the current fuel farm was adequate and did not need to be replaced. As we moved through the process we provided information to them that clearly showed that the old farm was out-of-date and we were literally one fuel spill away from being shut down for non-compliance.

The design contractor of the fuel farm will assist the Town staff and airport management staff in selecting a construction contractor for the project. Construction is expected to occur by mid-2005.

The new farm will consist of 15 individual bulk fuel storage tanks, a central off-load and metered dispensing system for each fueler that will be consolidated onto an environmentally protected site, including tanks and operating equipment with architectural considerations. The site will include an oil/water separator and a secondary containment dike area large enough to accommodate a potential fuel spill.

When the new fuel farm is complete, new lease agreements and fueling permits will be negotiated and executed, pending Council approval, with the current fuelers. Once the new farm is open and operational, the old fuel farm site will be cleared for future development. This project will give the airport fuelers a state-of-the-art fuel farm that is fully compliant with all environmental and fire code regulations. It will improve efficiencies and decrease the amount of money each fueler must now spend on the upkeep of their portion of the old farm.

Storm Water Pollution Prevention Plan:

Addison Airport operates under a Multi-Sector General Permit and the Storm Water Pollution Prevention Plan (SW3P) has been prepared per the specific requirements included in the Permit. Airport management pursued a relationship with an outside consultant to write the SW3P and monitor the airport's and tenants' compliance with the regulation. The objectives of the SW3P are to identify actual and potential sources of pollution and select and implement best management practices (BMPs) to reduce the amount of pollutants carried in storm water runoff. BMPs include: schedule of activities, prohibition of practices, maintenance procedures, and other practices that prevent or reduce pollution in storm water discharges. Quarterly inspections and an annual comprehensive inspection are performed to check for compliance with the Texas Commission for Environmental Quality.

Airport Emergency Plan:

The purpose of an Airport Emergency Plan is to provide a framework, upon which the various emergency response capabilities are identified, organized, and occasionally exercised. An effective Airport Emergency Plan provides for the initial alarm, emergency identification, and response selection in terms and format that can be readily understood by the least experienced or least knowledgeable person upon whom the first emergency responsibilities may fall. The Airport

Emergency Plan was created with the coordination and input from the Town of Addison staff, Addison Fire Department, Addison Police Department, and representatives of the FAA traffic control tower. The plan was finalized in June. Although an emergency plan is not required for a non-certificated airport such as Addison Airport, we believe this plan enhances the emergency preparedness of the airport thereby benefiting the tenants, users, airport management, and the Town.



USDA Regulated Garbage:

To prevent the introduction or dissemination of exotic plant pests and animal disease agents into the United States, the U.S. Department of Agriculture has established guidelines, regulations, and policies that mitigate risks associated with international flights into the United States. The U.S. Customs and Border Protection Service is responsible for inspecting each international flight to ensure that international garbage is disposed of properly. The airport is ultimately responsible for ensuring that the procedures are followed. In the past, the Customs agent at the airport would dispose of the garbage by taking it to DFW International Airport. Last year DFW Airport decided that they would no longer accept international garbage from other airports. Therefore, we have made arrangements for the disposal of the garbage that comes into the airport by contracting with a company to pick up the garbage and dispose of it according to USDA regulations.

Maintenance

Safety Issues:

In April, all airport operations and maintenance personnel attended mandatory safety training to comply with current federal safety requirements. Attendees were trained in certain manufacturers' operating procedures for heavy equipment and hand tools, given updated information about the federal regulations relating to the construction industry, and made aware that each employee is vulnerable to injury and possible death should they not properly follow the appropriate standards and procedures. Such mandatory training enhances safety at the airport, minimizes avoidable injuries, increases productivity, and enriches employee morale.

Westside T-Hangar Pavement Reconstruction Project:

In the summer of 2003, the pavement at the westside T-hangar area failed in several places requiring the placement of eight steel plates to cover the failures. Since there was insufficient base material under the existing pavement, the entire taxiway area, a total of 65,160 square feet, needed to be rebuilt.



The contractor removed the old asphalt, rebuilt the base, and laid three inches of asphalt over the entire project area. Construction began in early November and was complete in late December.

To facilitate the construction, 18 aircraft were relocated to temporary hangars elsewhere on the airport that had been reserved for this purpose. Airport management made every effort to communicate throughout the project with the tenants involved to keep them apprised of the progress. Letters were first sent to notify the tenants of the magnitude of the project and the need to relocate

their aircraft. Shortly afterward, a second letter was sent giving them their temporary locations. Telephone calls were made to each tenant to make certain they received the notices and that they would be available to move their aircraft when needed. A similar process was followed at the end of the project to coordinate the movement of aircraft back to their original locations. Although this process required that several letters and follow-up telephone calls be



made, it ensured that the tenants were kept informed of the process at each milestone and that the project would stay on schedule to completion. We did not receive any complaints from the tenants during the process and, in fact, several expressed their appreciation for our efforts to keep them informed.

Managed Hangar Roof Repairs and Turbine Installation:

In July, we coordinated between the contractor and tenants during the roof replacement and turbine installation for 37 T-hangars we manage for a third party. We corresponded with the tenants via letter, telephone, and e-mail. We obtained temporary access to hangars by providing temporary locks and met with the roofers as needed so work could begin. Again, several tenants expressed their appreciation for keeping them informed throughout the process.

Patio Hangar Pavement Overlay:

In August, the pavement under the patio hangars along Taxiways Sierra and Tango was resurfaced in two phases. Much of the apron area had deteriorated to the extent that loose aggregate and gravel caused concerns of aircraft damage. Rutting and ponding also had developed. If not corrected, this condition could result in a loss of directional control of the aircraft.

The aircraft had to be relocated into temporary facilities while the improvements were made. Phase I affected 16 hangar

tenants and one ground lease sub-tenant who could not access his hangar during construction.



Phase II affected 15 tenants in addition to two adjacent T-hangar tenants who were unable to use their hangars due to clearance obstructions as a result of the project.

Even though the logistics of this project were complicated and required a great deal of coordination and communication with each tenant, we received no complaints and several tenants said they appreciated the amount of communication and information they received.

Pavement Repair Adjacent to Airport Parkway:

We repaired approximately 1,000 square feet of pavement on a leasehold that was adjacent to the Airport Parkway realignment project. Additionally, approximately 12,000 square feet of pavement was seal-coated in conjunction with this project by airport maintenance staff. The total cost of this work was approximately \$1,250 in materials. We estimate that the airport saved \$1,050 by not hiring outside contractors.

Pavement Seal Coating:

Over the year, we have seal-coated approximately 160,000 square feet of pavement throughout the airport. If this work had been contracted out, it



would have cost approximately \$22,400 in materials and labor whereas it cost just over \$4,300 by utilizing airport maintenance staff.

Pavement Replacements:

The entrance ramp from Taxiway Alpha to the Million Air facility was replaced in April. This repair became necessary when the right main gear of a Falcon 50 jet fell through the ramp. An investigation determined that the failure was due to a void under the pavement caused by a shift in the underground drainage pipes. The influx



of water from the pipes caused the sub-terrain to erode away resulting in a void beneath the pavement. The Falcon jet, whose weight was estimated

to be 38,800 pounds, was entering the ramp when the incident occurred. There were nine people on board. Fortunately, there were no injuries and the damage to the aircraft was minor.

A similar incident was avoided at the Cavanaugh ramp entrance in June when it was noticed that the dirt around the drainage pipe had washed away here as well. It appeared from visual inspection that the pipe had shifted under the

pavement, causing storm water to wash away the base. Cameras were used inside the pipe to confirm this. Once we had

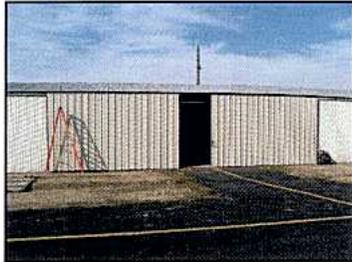


confirmation, the pavement was removed, the pipe and the pavement were replaced.

T-hangar Doors:

One continuing area of concern is the condition of the T-hangar doors, particularly those on the southeast end of the field. Tenants have reported that the doors come off the track and are difficult, if not impossible, to open and close. In February we received a proposal to repair each unit door at an estimated cost of \$2,190 per door.

Instead of proceeding with this proposal, the airport maintenance manager decided to build new doors for each of the hangars.



He designed a

replacement door that could be built by airport maintenance staff. The total cost to rebuild each hangar door is \$606. The total per-door savings to the airport by building the replacement doors in-house is \$1,584 per door. The new tubular doors are lighter and easier to slide with new maintenance-free wheels, and tubular pull handles. Each door includes new corrugated panels that greatly improve the look of the hangars. We have had many requests from tenants to include their hangars in the replacement plan. Because of the demand, we will continue this program in the new fiscal year. We believe that creative thinking such as this helps improve the airport while being fiscally responsible, thus leaving more funds for other necessary repairs and improvement projects.

Jet Hangar Roof Repairs:

We received a fifty percent grant under the TxDOT Routine Airfield Maintenance Program to repair the roofs on several jet hangars. The roofs were sealed and skylights replaced, stopping the leaks that had been reported by the tenants.

Drainage Improvements:

During the year, we cleaned out several drainage structures to improve their function, particularly on the south side of the field. A drainage study is planned for next year that will provide a master plan to address many of the drainage problems on the field. Certificates



of Obligation will be sold to fund the infrastructure improvements that are recommended by the plan.

Runway Improvements:

The runway centerline stripe and numbers were repainted in August 2004. At the same time, routine rubber removal was performed.

Miscellaneous Gate Improvements/Replacements:

The main emergency entrance gate at Airport Parkway was removed and then relocated in conjunction with the

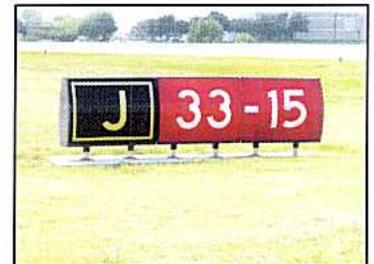


realignment of the road. Several deteriorated in-pavement loop systems were replaced and sealed so that gravel and debris could not cause further damage. This

improvement decreased the number of after-hours maintenance calls. All work was done by airport maintenance staff.

Runway Guidance Sign Replacement:

Fourteen faded and broken sign panels on airfield guidance signs were replaced in April. Nine other sign panels were replaced throughout the year.



Marketing and Special Events

In order to maximize and communicate the value the airport brings to the community and businesses on the field, we have undertaken several marketing initiatives throughout the year. In addition to the “traditional” methods of advertising such as print advertisements, we have been working on a number of other less traditional ways to market the airport. Although it is often difficult to quantify the direct benefit, we believe these efforts have a greater impact on making Addison Airport known than just print advertisement. This past year, the airport marketing efforts fell under five categories: community and tenant relations, advertising, publications, special events, and community involvement.

Community and Tenant Relations:

Tenant Appreciation Luncheons:

Twice a year a luncheon is held at a tenant’s facility on the airport. The entire airport tenant base is invited to attend, lunch is provided, and small tokens of our appreciation are given to the attendees. Typically there is no agenda other than to give the tenants an opportunity to come together, visit with each other, and ask the airport management questions about what is



going on at the airport. We estimate that approximately 140 guests attend each of these functions. Through feedback received from those who

attend, the tenants appreciate the opportunity to meet or get reacquainted with other businesses on the field and to learn more about what is planned for the airport. The luncheons also provide the host business an opportunity to showcase their location and to share a little about what services they provide.

Weekly E-Mail Updates:

One of the many services we provide our tenants is weekly e-mail updates that announce upcoming events on the airport and in the aviation community in general. These announcements include runway and taxiway maintenance work, (especially those that require closure) staff changes, new rules promulgated by the FAA or other agencies, new businesses on the field, and any other information we believe would be beneficial to the tenants. We have found this is especially beneficial in helping our tenants plan flights during times the runway or a taxiway is scheduled to be closed for routine maintenance. The updates are sent to our direct tenants who are listed on our tenant rolls and to subtenants who may not otherwise receive the information.

Noise Abatement Program:

Merriam Webster defines noise as “any sound that is undesired or interferes with one’s hearing of something.” It is interesting to note that the etymology of the word “noise” is from the Latin word “nausea.” It is often the case that people locate near airports because of the convenience and then are distressed by the noise associated with the airport. The airport management recognizes this reality and, although it is sometimes tempting to say, “the airport was here first,” it is imperative for the continued health of the airport and the community that the airport be as good a neighbor as possible. Because of this, we have continued the noise committee meetings throughout this year. At these meetings, the committee discusses complaints, reviews the tracking data, and discusses whether there are any new strategies that can be implemented. These measures have succeeded in reducing the number of complaints we have received over the years. In 2003, 719 noise complaints were received. In 2004, the number of complaints decreased to 390, a 45.8% decrease.

A philosophy we have consistently maintained concerning aircraft noise is to be honest with citizens and tell them that there is only so much that can be done to reduce the noise levels generated from the airport. The reality is airports are noisy and they are not likely ever to be quiet. One citizen, in fact, who had been a consistent caller, wrote a letter stating that she recognized that those pilots who are going to comply are doing so and those who are not complying probably never will. She thanked us for our efforts and stated that they had, for the most part, been successful. We will continue to host the noise committee meetings and monitor the progress of the compliance.

We are also monitoring the progress of the departure procedures being implemented by the FAA at Love Field and Dallas Fort Worth International Airport so that the noise procedures at Addison can be incorporated into those departure procedures. Once this is done, jets that have filed flight plans are required to follow the procedure, thereby lessening the number of flights over the residential areas.

We randomly send T-shirts to flight departments that have had no noise complaints during the month. In November we received a letter from one of these flight departments, stating "Thank you for the useful and thoughtful Addison Airport T-shirt. I have been using Addison Airport for a number of years and thank you and your associates for making the airport a pleasant experience. If possible, please extend my personal thanks to the people in the control tower. Again, thank you for the T-shirt. It was a nice surprise and I will do my best to deserve it."

Annual Addison Business Association Luncheon:

The airport hosts the Addison Business Association's (ABA) May meeting each year. This year's meeting was held at the Cavanaugh Flight Museum. The airport director gave an overview of events at the airport and a preview of future plans. According to the ABA Board, the meeting is always one of the best attended meetings

during the year. This year there were approximately 150 people in attendance.

Advertising:

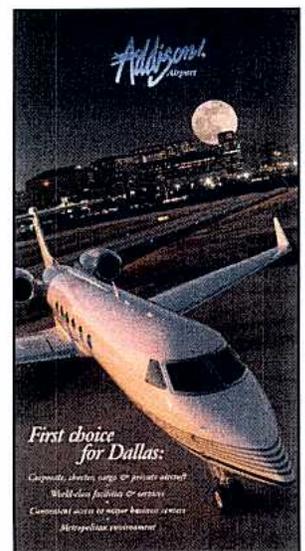
A new advertising campaign was initiated this year in several publications including *Dallas Business Journal*, *Business and Commercial Aviation*, *Inside Collin County*, *Dallas/Fort Worth Aviation and Business Journal*, and *Aviation Overhaul and Maintenance*. Some of the ads target users who might be unaware of the charter providers that are located on Addison Airport. We also established a website that lists the names of the charter providers as well as links to their websites.

The other ads were developed featuring maintenance and flight training services available on the airport. These ad campaigns have been coordinated with the businesses that provide these services on the field. Their input was important in letting us know who their target audience is and what information the ads should contain. This effort also demonstrates to the businesses our commitment to their continued success at Addison Airport.

Airport Brochures:

In order to showcase the airport at conferences, we undertook the task of developing a new airport brochure.

It was decided that two brochures were needed to fulfill two different purposes. One brochure targets aviation businesses that might be interested in using the airport or locating here. This brochure contains technical information about the airport such as the length of the runway, the tower frequencies, the traffic pattern, and necessary telephone numbers. We will



use this brochure at various aviation conferences such as the National Business Aircraft Association, the

Schedulers and Dispatchers Convention, and the American Bonanza Society Convention.

The other brochure will be distributed to area chambers of commerce and other non-aviation audiences who would like to learn about the airport, but don't need the more technical information. This brochure gives the distances from the airport to various business centers, future development plans, and helpful telephone numbers.

Both brochures were developed with the help of a professional photographer in order to ensure that we obtained the highest quality possible to match the normal practice of the Town of Addison. Those who have seen the brochures have commented that they are innovative, attractive, and professional.

Quarterly Newsletter:

In an effort to keep our tenants informed as to what is going on at the airport, we publish four newsletters each year. These are sent to the tenants and other individuals in the community so as many people as possible will know what is going on at the airport so that they might appreciate the value the airport brings to the area. The newsletters cover such diverse topics as upcoming events on the airport and in the Town of Addison, articles highlighting various members of the staff, as well as events happening on other airports that might be of interest to our readers.

Addison Airport Directory:

The new airport business directory was published in September. The directory is organized by business type and includes the name of the business, the business' telephone number, address, and types of service provided. Each listed business gave permission for this information to be published in the directory. The directories were then distributed to each tenant on the field as well as to other interested parties.

News Publications:

Addison Business: Addison Airport was featured in the third edition of this publication. The article highlighted the economic impact the airport has to the local economy. The airport adds over 1300 jobs to the community and the overall economic impact is \$611 million on an annual basis. The advantages of private air travel were also emphasized along with timesavings and the increased flexibility that business aviation adds to a company's bottom line.

Dallas Fort Worth Aviation and Business Journal: The December edition of the *Dallas Fort Worth Aviation and Business Journal* ran an article that focused on Addison as a busy urban airport and how it has become a significant source of pride and economic stability for the Town of Addison.

Special Events:

National Business Aviation Association's Safety and Security Briefing:

At the invitation of airport management, the National Business Aviation Association (NBAA) held its Safety and Security Briefing at the Addison Conference Center in November. The NBAA staff presented aviation security updates and the flight department representatives had an opportunity to network and share industry ideas. Forty-five flight departments from five states attended the event.

Air Traffic Control Tower Groundbreaking:

The groundbreaking for the new air traffic control tower was held on January 28, 2004. Representatives of both Senator Kay Bailey Hutchison and Congressman Pete Sessions attended the event, along with many tenants and special guests.



Ruth Leverenz, FAA Regional Administrator, thanked the Town and airport for their assistance in getting the tower funded

and construction underway. The relationship that we share with the regional FAA office and the tower personnel helps airport management successfully operate the airport for the benefit of our tenants and users.

Addison 101:

In March, the airport hosted Addison 101, a course designed to introduce Town employees to various Town departments. Forty-nine employees attended the half-day session at the airport. We met at the fire department for a quick history of the airport and then toured the airport and an FBO facility. The attendees were surprised at the amount of activity at the airport and learned a great deal about the many types of businesses on the field. It was a great opportunity to introduce the airport management as the Town's representative at the airport and to express our belief that those who use the airport should see the same customer service on the field that they have come to expect from Town of Addison employees.

Retirement Celebration:

In May, the airport hosted a ceremonial water display honoring resident fractional company's first retiring



captain. The Addison Fire Department assisted at the event by forming a spectacular water arch under which the plane taxied to the ramp. Approximately 150 people attended the event, which was covered by three local news channels and the *Dallas Morning News*.

Kaboom Town!:

On July 3rd the Airport assisted the Town with the Kaboom Town! fireworks celebration. The airport was closed from 9:00 pm to 12:00 am. During that time, our maintenance crews made various repairs to the runway safety area. This event is always well received by the

tenants, many of whom use the opportunity to entertain employees, customers, and families at their facilities.

Community Involvement:

Boards and Commissions:

Addison Airport is well represented within Addison and the surrounding communities on many boards and commissions. Addison Airport staff members are active in the National Business Aviation Association, the American Association of Airport Executives, and the South Central Chapter for which the airport director currently serves as vice-president. The deputy director serves on the Texas Airport Managers' Association board and on the board of Angel Flight. We are also members of the Addison Midday Rotary, the Metrocrest Chamber, the North Dallas Chamber, and the Addison Business Association.

Angel Flight and Challenge Air Charities:

The airport management worked closely with the Angel Flight and Challenge Air organizations throughout the year to support their missions and provide assistance to these worthy organizations. Angel Flight provides medical transportation to critically ill patients. Airport management has assisted Angel Flight by serving on a variety of committees, notifying airport tenants about opportunities to fly missions, and Angel Flight events. Addison Airport is proud that our deputy director serves on the Angel Flight Board of Governors. Airport management also provided support to Challenge Air by serving on various committees, participating in "fly day" events, and hosting the annual gala. Challenge Air offers motivational experiences to physically challenged children and youth through aviation.

Real Estate and Property Management

The airport management is responsible for the ongoing management and administration of the airport's real estate portfolio. The value and benefit of an effective real estate management program cannot be understated. As a fully developed airport, Addison Airport's real estate holdings and landside operations exceed every other source of revenue by a margin of nearly four-to-one. In FY 2004, seventy-three percent of all revenue originated from real estate related activities. Of all rental income, nearly sixty percent is derived from long-term agreements such as ground leases and access agreements characterized by terms ranging from 10 to 40 years in duration. Although these long-term agreements are attractive for their steady cash flow, their rates are generally tied to indices that barely keep pace with market conditions and the escalating costs of operations over the term of the agreements.

Re-Development Areas:

An important initiative to ensure that revenues keep pace with operating costs was the redevelopment of the south tie-down apron and administration building site. In recent years, this area had become functionally and economically obsolete with occupancy levels well below fifty percent utilization. The reasons for this under-utilization vary from unfavorable proximity to support services, poor facility conditions, and the lack of amenities. The capital resources needed to modernize and sustain the existing facilities could not be justified. By redirecting the path of Airport Parkway, the adjacent developable land area was increased by one-third. The site can now accommodate another high-end corporate hangar in addition to the one that was completed in May. This change has the potential to generate four times the revenue than the prior land use. Through an assessment of existing development on the airport, airport management is identifying other areas that might be available for re-development in the future. This, of course, must be coordinated with the current leaseholder as the lease term nears expiration.

New Development Project Management

In late 2003, the airport management assisted the Town in the successful negotiation that resulted in a major corporation building their new corporate hangar near Airport Parkway. The \$3 million project was completed in May. During construction, the airport management was responsible for ensuring adequate coordination between the Town, tenant, and general contractor to ensure the project went smoothly. Additionally, communication with the adjacent tenants was provided to minimize business disruption and inconvenience to them. Administrative oversight included the reviewing of all architectural details and air space clearances, monitoring the economic grant funding process, and processing all documentation between the Town and tenant.

Hangar Lease Administration:

Addison Airport remains in high demand for the storage of general aviation aircraft, with T-hangar, patio hangar and tie-down combined occupancy levels being reported at ninety-three percent. Although occupancy levels fell to eighty-seven percent earlier in the year, this was largely attributed to normal year-end turnover plus airport management reserving a number of hangars off-market to facilitate displaced aircraft during the various ramp construction projects as previously described.

During these projects, the airport management worked diligently to coordinate the "shuffling" of aircraft with each of the tenants in an effort to minimize their inconvenience. At times, the logistics proved to be quite challenging but with persistence and the tenants' patience, everyone was accommodated and the improvements successfully completed.

Airport management worked with the Town and the Town's attorneys to revise and streamline the T-hangar and patio hangar rental agreements into term-based agreements that are no longer tied to the calendar year. The new agreements, which were introduced in January,

also provide for an automatic month-to-month renewal upon expiration of the primary term. These and other minor modifications to the lease form are expected to improve tenant relations and provide for greater efficiencies.

Aviation insurance remains a challenge. The aviation insurance industry's deregulated status and lack of promulgated forms tend to cause confusion among all involved in the process. Nevertheless, we continue to work closely with the tenants and insurance companies and have managed to sustain nearly ninety percent compliance with respect to aircraft liability and the additional insured requirements for all airport tenants.

Ground Lease Administration:

There are currently 54 ground-leased properties at Addison Airport occupying nearly 3.5 million square feet of airport land. Many of these properties have been improved over the years with assorted conventional hangars and office facilities. Although the airport was founded in the mid-1950s, it was not until the early to mid-1980s that the airport experienced its most significant growth. Consequently, ninety percent of these ground leases have less than one-half of the original term remaining, prompting leaseholders to consider the future of their leased investments. Over the past year, airport management has been preparing an asset management plan for each of these properties as part of the real estate strategic plan development process. The asset management plan summarizes each property's status, lease terms, valuation considerations, tenant history, legal and environmental concerns, and long-term strategic considerations. These asset management plans are informative tools used during the decision-making process at both the asset and portfolio level.

Business Cases:

From time to time ground lease tenants require the Town's consent for certain actions including the assignment of their lease, building expansion, lease extension, sub-letting of their premises, or financing

proposed improvements on their property by creating a leasehold mortgage. In these circumstances, airport management works closely with all parties involved to make certain they understand the process and are complying with the Town's procedures and goals for the airport.

Business cases brought to the Council for their consideration during the fiscal year include:

- The sale and assignment of a facility on Claire Chennault.
- Request for consent to \$400,000 in leasehold improvements and the creation of a leasehold mortgage in consideration for an eight-year lease extension to a corporate hangar facility.
- The assignment of a major corporate hangar to facilitate the tenant's corporate reorganization.
- Request for consent to sublet a tenant's premises to accommodate a new fixed-base operator.

In addition to these successfully completed business cases, we continue to work on other pending business matters including:

- Two assignments
- Two lease extensions (subject to the completion of improvements to the premises)
- A proposed new hangar development
- Two consents to the creation of leasehold mortgages
- An application for an Off-airport Access Permit

Litigation & Collections

In conjunction with the Town's staff, airport management has aggressively worked on certain collection matters over the past fiscal year. As a result, we have successfully resolved nearly \$300,000 in arrearages, disputed rents and fees. The only receivables outstanding in excess of 120 days at fiscal year-end are disputed access fees in the sum of approximately \$70,000, which we continue to assist in collection efforts. Aside from the disputed fees above, airport management's practice to closely monitor and aggressively pursue delinquent rents and fees has

resulted in a stabilized receivable balance of less than one percent of gross revenue.

Off-Airport Access:

As required by the Ordinance No. 001-043, each year the airport director must determine the annual Access Rate. The Access Rate is the product of a formula that includes the average fair market value for all land immediately adjacent to the airport as determined by the Dallas County Appraisal District (DCAD). Airport management currently tracks 67 such properties of which fifty percent are registered access users of the airport. Updated land values are obtained for each parcel from DCAD certified tax values. Change of ownership, land area, and improvements are also monitored.

Property Records Due Diligence:

In an ongoing effort to improve the quality and integrity of the airport's property records, we have embarked on an initiative of reviewing lease surveys, public filings, and tax records affecting airport property. In 2003, the Town had procured an updated boundary survey for the airport. Airport management is now in the process of reviewing all ground lease surveys that are inside this boundary for their accuracy and whether they have been reconciled to the airport survey using current surveying standards. Updated lease surveys are being ordered as needed or when there is a lease assignment. Upon completion, the Town will have a comprehensive land survey of the airport and all of its lease boundaries, easements, and rights-of-way.

We are also reviewing Dallas County Appraisal District's data on leased property at the airport. Typically, the ground leaseholder is responsible for the payment of property taxes assessed against their real property improvements. We review DCAD's data to determine if the district properly identifies the property. Since the inception of this project earlier this year we have found several leased properties not on the tax roll estimated to be valued at \$5-\$6 million. Accordingly, we have provided DCAD with the necessary documentation so they may correct any errors.

We are also performing title searches on an as-needed basis to identify liens, easements, and other encroachments that may affect the property and to determine if a lease or a lease memorandum has been publicly recorded giving proper public notice of the lease.

Summary

We hope that you agree that Fiscal Year 2003/2004 has been a great year at Addison Airport. Through such initiatives as the Airport Emergency Plan, the Storm Water Pollution Prevention Plan, the Minimum Standards, Rules and Regulations, and ground vehicle training, the airport is compliant with all applicable federal regulations.

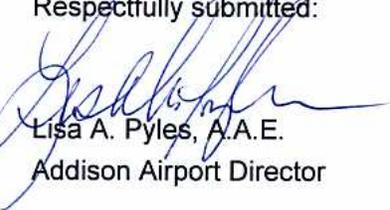
Projects such as the drainage structure clean out, gate replacements, pavement improvements, hangar repairs, and guidance sign replacements have improved safety at the airport and enhanced existing infrastructure and facilities to extend the life of these improvements.

The advertising efforts we have undertaken help entice those looking to relocate their businesses or those needing aviation storage space to investigate the advantages of locating on the Addison Airport. The special events held throughout the year demonstrate our commitment not only to the airport but also to the community as a whole by including the public in various airport events so that they may better understand and appreciate the value the airport brings to the community.

Real estate activities such as preparing the airport for redevelopment, lease administration improvements, and due diligence regarding leasehold improvements, collections, and project management have helped ensure that the value of the real estate portfolio remains as high as possible.

Addison Airport is a premier airport and it is the airport management's honor and pleasure to be the Town of Addison's operator for the past year. On behalf of the entire airport management team, we thank you for this opportunity and we look forward to even greater progress next year and for many years to come.

Respectfully submitted:



Lisa A. Pyles, A.A.E.

Addison Airport Director



16051 Addison Road, Suite 220 • Addison, Texas 75001 • 972-392-4850 • 972-788-9334 Fax

MEMORANDUM

To: Mark Acevedo

From: Lisa, A. Pyles, A. A. E. 

CC: WSAAV Board of Directors

Re: **WSAAV Financial Incentive Compensation Award**

We are please to submit to the Town of Addison WSAAV's calculation of its financial incentive award for fiscal year 2004.

Based upon the attached calculation and supporting exhibits, WSAAV has earned a financial incentive award of \$120,380 in accordance with Section 6.C of the Operating Agreement, as amended.

You will find the increase in collected revenue recognized this year is largely attributed to the successful resolution of several prolonged collection disputes (collections) in which the Airport Management was closely involved. We worked intensely with legal counsel to strategize and negotiate the very best possible outcome for the Town and the Airport. These efforts resulted in the deposits of nearly \$300,000 in favor of the airport.

Although the financial incentive is intended to encourage and reward the creative and aggressive marketing and promotion of Addison Airport, the numbers do not always accurately "reflect" Airport Management's effectiveness in promoting the airport as much as good stewardship. Had the airport not undergone several major renovations, we believe actual collected revenue could have been \$100,000 higher than what is reported. Instead, T-hangars and patio hangars were kept off-market to provide temporary facilities for tenants displaced by much needed reconstruction. As we alluded to in our Annual Report, we worked hard to accommodate each of the displaced tenants to minimize their

inconvenience and in hopes of retaining their business. We are confident these efforts will pay the airport dividends in the future.

We greatly appreciate all your support and guidance through out the year. We look forward to an even more prosperous and successful year for 2005. Should you have any questions or require additional information, please let me know.

**Calculation of WSAAV 2004
Financial Incentive Compensation**
(In accordance with the 3rd Amendment to the Operating Agreement)

Section 6.C of the Agreement for the Operation and Management of Addison Airport, as amended, (“Operating Agreement”) outlines the parameters of incentive compensation, as a supplement to the Management fee, to be paid the Airport Operator for achieving desired financial, operational and management objectives.

A finance incentive is to encourage the creative and aggressive marketing and promotion of Addison Airport. The Operator will be rewarded with incentive compensation commensurate with financial performance of the Airport based on the increase in Airport Gross Revenue. Financial Performance is divided into two sub-categories: a) Gross Revenue Increase and b) Other Financial Incentives.

A – Gross Revenue Increase

When the annual Gross Revenue for the Contract Year exceeds the actual Prior Year Gross Revenue by 3.5% or more, Operator will be rewarded with an increasingly higher percentage of the revenue increase as given in Table 1 below.

Table 1
Finance Incentive Bonus – Gross Revenue Increase

Growth Percentage from Prior Year	Finance Incentive Bonus %
< 0	0%
> 0% and <=3.5%	0%
>3.5% and <=5%	20%
> 5.0% and <=6.5%	24%
> 6.5% and <=8%	28%
> 8%	32%

The Yearly Calculation of Fees for **Fiscal Year Ending 2003** (attached hereto as Exhibit “B”) shows revenue collected for the period a total of \$3,761,868. The Yearly Calculation of Fees for **Fiscal Year Ending 2004** (attached hereto as Exhibit “A”) shows revenue collected for the period a total of \$4,138,056. The percentage of Gross Revenue Growth for Fiscal Year 2004 is 10%. Based upon the above table the financial award for Growth Revenue Increase is \$120,380 (\$376,188 X 32%) as shown in Table 2 below.

Table 2
Calculation of Gross Revenue Increase Incentive

	Prior Yr. 2003	2004
Adjusted Airport Revenues	3,761,868	4,138,056
% Increase Over Prior Year		10.00%
Change In Revenue From Prior Year		376,188
Eligible Bonus Percent age		32.0%
Financial Growth Incentive Bonus		\$120,380

B – Other Financial Incentives

Through the Fence Operations – The Operator shall receive a Finance Incentive for either the improvement in revenues associated with securing City approved Through-the-Fence agreements with existing Through-the-Fence users or securing new Through-the-Fence agreements with businesses wanting access to the Airport (“TTF Incentive”). The amount of the TTF Incentive shall be equal to 25% of the first year Annual Permit Fee revenue improvement relating to existing Through-the-Fence agreements with businesses and 25% of the first year Annual Permit Fee set forth in each new Addison Airport Access Permit Agreement (“Access Agreement”). This TTF Incentive award shall be deemed earned, due and payable in a lump sum to Operator immediately upon the City’s acceptance of the Annual Permit Fee related to the increase or new Access Agreement.

Table 3:
Through-the-Fence Incentive Award Calculation

No. of New TTF Agreements	0
1 st Year Annual Fee Total	\$0.00
No. of Existing Agreements Improved	0
Annual Fee Improvement Value	\$0.00
Total TTF Fee Enhancement Value	\$0.00
Percent multiplier	.25%
2004 TTF Incentive Award	\$0.00

Exhibit A

Addison Airport YEARLY Calculation of Fees 9/30/2004 YTD

Gross Billed Revenues:

Ground Lease	\$	1,599,682
T Hangar		518,717
Jet Hangar		457,636
Patio Hangar		92,304
Tie Down		64,183
Access Fees		125,855
Fuel Farm		70,978
Fuel Flowage Fees		1,030,378
Customs Fees		41,980
Miscellaneous		12,437

Total Billed Revenues: 4,014,150

Adjustment for Collected:

1300	SEPT 30 2003 Balance	258,040
1300	SEPT 30 2004 Balance	<u>186,683</u>
	Net Change:	<u>71,357</u>

Gross Billed Managed Hangar Revenues: 180,170

Adjustment for Collected:

1300	SEPT 30 2003 Balance	(10,820)
1300	SEPT 30 2004 Balance	<u>(5,815)</u>
	Net Change:	<u>(5,005)</u>
	Subtotal:	<u>175,165</u>
	30% Retainage:	<u>52,550</u>

Total Collected Revenues:	<u>4,138,056</u>	791,460	3,346,596
		18%	21.5144% <small>EFFECTIVE RATE</small>
Less W/S Management Fee	862,463	142,463	720,000
Less Operations & Maintenance Expenses:	1,439,511		
Net Addison Airport Revenues:			<u><u>\$ 1,836,082</u></u>

Security Deposits to be Forwarded:

Adjustment for Collected:

2020	Sept 30 2003 Balance	(168,106)
2020	Sept 30 2004 Balance	<u>(165,792)</u>
	Net Change:	<u>(2,314)</u>

Total Collected for Security Deposits: \$ (2,314)

Total YTD Due to Town of Addison:	\$ 1,833,769
Total Previously Paid to Town of Addison:	\$(1,758,933)
Total Due to Town of Addison:	<u><u>\$ 74,836</u></u>

Exhibit B

Addison Airport YEARLY Calculation of Fees 9/30/2003 YTD

Gross Billed Revenues:

Ground Lease	\$	1,479,341
T Hangar		775,025
Jet Hangar		188,889
Patio Hangar		106,396
Tie Down		68,048
Access Fees		111,112
Fuel Farm		100,099
Fuel Flowage Fees		1,040,324
Customs Fees		16,126
Miscellaneous		77,790

Total Billed Revenues: 3,963,150

Adjustment for Collected:

1300	SEP 30 2002 Balance	3,314
1300	SEP 30 2003 Balance	258,040
	Net Change:	<u>(254,726)</u>

Gross Billed Managed Hangar Revenues: 179,949

Adjustment for Collected:

1300	SEP 30 2002 Balance	(12,621)
1300	SEP 30 2003 Balance	(10,820)
	Net Change:	<u>(1,801)</u>
	Subtotal:	<u>178,148</u>
	30% Retainage:	<u>53,444</u>

Total Collected Revenues: 3,761,868

415,272	3,346,596	
18%	21.51% EFFECTIVE RATE	

Less W/S Management Fee 794,749

Less Operations & Maintenance Expenses: 1,002,737

Net Addison Airport Revenues: \$ 1,964,382

Security Deposits to be Forwarded:

Adjustment for Collected:

2020	SEP 30 2002 Balance	(168,106)
2020	SEP 30 2003 Balance	(167,521)
	Net Change:	<u>(585)</u>

Total Collected for Security Deposits: \$ (585)

Total YTD Due to Town of Addison: \$ 1,963,797

Total Previously Paid to Town of Addison: \$(1,796,027)

Total Due to Town of Addison: \$ 167,770

Addison Airport
Combined
Budget Variance Report
For the Month Ended September 30, 2004

	<u>ACTUAL</u>	<u>BUDGET</u>	<u>VARIANCE</u>	<u>YTD ACTUAL</u>	<u>YTD BUDGET</u>	<u>YTD VARIANCE</u>
REVENUES						
<u>Rental Income</u>						
4010	137,895	133,384	4,511	1,599,682	1,578,427	21,255
4110	45,462	48,439	(2,977)	518,717	581,267	(62,550)
4112	37,260	42,805	(5,545)	457,636	496,452	(38,816)
4114	8,504	8,690	(386)	92,304	106,681	(14,377)
4115	5,400	3,653	1,747	64,183	43,833	20,350
4210	14,880	14,575	306	180,170	174,898	5,272
4215	0	0	0	125,855	130,000	(4,145)
4220	8,335	8,344	(11)	70,978	100,138	(29,160)
6210	(7,406)	(10,639)	3,234	(120,964)	(127,676)	6,712
	<u>250,330</u>	<u>249,451</u>	<u>879</u>	<u>2,988,561</u>	<u>3,084,020</u>	<u>(95,459)</u>
<u>Other Income</u>						
4230	95,713	91,667	4,046	1,030,378	1,100,000	(69,622)
4240	358	2,500	(2,141)	41,980	30,000	11,980
4250	390	0	390	4,095	0	4,095
4300	465	300	165	8,342	3,600	4,742
	<u>96,926</u>	<u>94,467</u>	<u>2,460</u>	<u>1,084,795</u>	<u>1,133,600</u>	<u>(48,805)</u>
Total Revenues	<u>347,256</u>	<u>343,918</u>	<u>3,339</u>	<u>4,073,356</u>	<u>4,217,620</u>	<u>(144,264)</u>
OPERATING EXPENSES						
<u>Structures, Facilities & Grounds</u>						
5010	5,400	1,042	(4,358)	10,830	20,000	9,170
5020	6,688	1,458	(5,230)	22,528	32,500	9,972
5040	3,161	1,458	(1,702)	8,197	17,500	9,303
5045	(1)	0	0	0	0	0
5050	1	0	0	0	0	0
5060	833	1,667	833	58,902	64,000	5,098
5070	72,728	3,333	(69,395)	388,866	531,000	142,134
5080	6,349	10,000	3,652	51,928	138,000	86,072
5085	0	0	0	0	0	0
5090	0	5,417	5,416	55,605	65,000	9,395
	<u>95,159</u>	<u>24,375</u>	<u>(70,784)</u>	<u>596,856</u>	<u>868,000</u>	<u>271,144</u>
<u>Equipment Maintenance & Materials</u>						
5200	4,132	500	(3,632)	18,571	6,000	(12,571)
5210	0	0	0	0	0	0
5220	2,958	167	(2,791)	3,608	7,000	3,392
5230	0	83	84	19	1,000	981
5240	18	167	148	884	2,000	1,116
5245	255	250	(5)	640	3,000	2,360
5250	100	500	400	3,853	6,000	2,147
5260	0	0	0	0	0	0
5290	0	0	0	0	0	0
5295	0	0	0	0	0	0
	<u>7,463</u>	<u>1,667</u>	<u>(5,796)</u>	<u>27,575</u>	<u>25,000</u>	<u>(2,575)</u>
<u>Personnel Services</u>						
5300	40,262	37,583	(2,679)	419,236	451,000	31,764
5310	14,355	10,167	(4,188)	157,806	122,000	(35,806)
	<u>54,617</u>	<u>47,750</u>	<u>(6,867)</u>	<u>577,042</u>	<u>573,000</u>	<u>(4,042)</u>
<u>Contract Services</u>						
5400	619	1,870	1,251	14,475	22,440	7,965
5410	0	0	0	0	0	0
5420	0	0	0	0	0	0
5430	0	0	0	0	0	0
	<u>619</u>	<u>1,870</u>	<u>1,251</u>	<u>14,475</u>	<u>22,440</u>	<u>7,965</u>

Addison Airport
Combined
Budget Variance Report
For the Month Ended September 30, 2004

	<u>ACTUAL</u>	<u>BUDGET</u>	<u>VARIANCE</u>	<u>YTD ACTUAL</u>	<u>YTD BUDGET</u>	<u>YTD VARIANCE</u>	
<u>Utilities</u>							
5510	Electricity	3,229	3,000	(229)	39,549	36,000	(3,549)
5520	Gas	36	30	(6)	1,308	4,230	2,922
5530	Water & Sewer	635	320	(315)	4,786	3,840	(946)
	Total Utilities	3,900	3,350	(550)	45,643	44,070	(1,573)
<u>General & Administration</u>							
6240	Customs Expense	2,981	2,917	(65)	43,645	35,000	(8,645)
7010	Office Supplies & Printing	548	1,000	452	8,133	12,000	3,867
7015	Admin Rentals & Leases	374	685	312	5,273	5,220	(53)
7020	Telephone	1,819	2,500	681	23,104	30,000	6,896
7040	Professional Fees	0	0	0	26,179	41,000	14,821
7050	Dues, Subscriptions & Publications	0	0	0	5,459	3,283	(2,176)
7060	Entertainment & Meals	2,599	1,650	(949)	7,586	7,200	(386)
7070	Travel	2,102	1,100	(1,002)	10,139	15,270	5,131
7075	Auto/Mileage	0	0	0	0	0	0
7100	General & Miscellaneous	1,169	1,200	31	11,407	5,500	(5,907)
7110	Postage & Shipping	156	275	119	2,075	3,600	1,525
7120	Printing	8	166	158	1,238	2,000	762
7130	Information Tech	228	560	332	6,379	6,720	341
7140	Meetings & Presentations	0	0	0	0	0	0
7145	Marketing & Promotional	2,699	0	(2,698)	27,303	30,000	2,697
7150	AAAE SSC CONFERENCE @ AD	6,836	0	(6,837)	0	0	0
	Total General & Administration	21,519	12,053	(9,466)	177,920	196,793	18,873
	Total Operating Expenses	183,277	91,065	(92,212)	1,439,511	1,729,303	289,792
8010	Management Fee Expense	56,759	41,244	(15,515)	802,463	809,050	(53,413)
	Total Operating Income (Loss)	107,220	211,609	(104,388)	1,771,382	1,679,267	92,115

Addison Airport
 YEARLY Calculation of Fees
9/30/2004 YTD

TOTAL COLLECTED YTD 4,138,056

ANNL BASE 2001	3,346,596	21.51440%	\$	720,000
ADDITIONAL REVENUES COLLECTED	<u>791,460</u>	18.00000%	\$	142,463
TOTAL FEE FY 2004:	4,138,056		\$	<u>862,463</u>
TOTAL FEES PAID THRU 08/31/04:			\$	<u>805,704</u>
TOTAL DUE THROUGH 9/30/2004:			\$	<u><u>56,759</u></u>



Finance Department

MEMO

To: Mark Acevedo, Director of General Services
From: Randy Moravec, Finance Director
Re: 2004 Incentive Compensation – Financial Performance
Date: November 17, 2004

In response to your request, I have reviewed the income generated by the airport while under the management of Addison Airport Venture, for determining whether the Venture is eligible to receive incentive compensation in accordance with Exhibit 3 of the operating agreement. Income for the year ended September 30, 2004 is detailed below.

Table with 2 columns: Category and Amount. Categories include Ground Lease, T Hangar, Jet Hangar, Patio Hangar, Tie Down, TTF Access Fees, Managed Hangar (net), Fuel Farm Lease, Fuel Flowage Fee, Customs Fees, Miscellaneous Income, and Total. Total amount is \$4,138,057.

The benchmark for 2004 is the amount received in 2003, or \$3,761,868. The amount received in 2004 is \$376,188 more than the benchmark and therefore the Venture earned a financial incentive bonus for 2004.

Please contact me should you have any questions concerning this matter or wish to discuss further.

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

**THIRD AMENDMENT TO AGREEMENT
FOR THE OPERATION AND MANAGEMENT OF ADDISON AIRPORT**

THIS THIRD AMENDMENT to Agreement for the Operation and Management of Addison Airport (“Third Amendment”) between the Town of Addison, Texas (“City”) and Washington Staubach Addison Airport Venture (“Operator”) is made and entered into this the _____ day of _____, 2004.

Recitals:

1. The City is the owner of Addison Airport (the “Airport”). On or about August 8, 2000 the City and Operator, together with the entities which formed the Operator as a joint venture, Raytheon Infrastructure, Inc. (a wholly owned subsidiary of Washington Group International, Inc.) and Staubach Airport Management, Inc. (a subsidiary of The Staubach Company), entered into an agreement for the operation and management of the Airport entitled “Agreement for the Operation and Management of Addison Airport,” which was amended by that (a) First Amendment to Agreement for the Operation and Management of Addison Airport made and entered into on September 27, 2000, and by that (b) Second Amendment to Agreement for the Operation and Management of Addison Airport made and entered into on February __, 2002 (the said Agreement for the Operation and Management of Addison Airport, as amended, being referred to herein as the “Airport Management Agreement” or “Agreement”). The Airport Management Agreement has an effective or commencement date of January 1, 2001 (“Commencement Date”).

2. The Airport Management Agreement provides in Section 4.B.2(c) thereof that the Operator shall at all times provide security for the Airport in cooperation with the City’s Police and Fire Departments. The City acting through its Police and Fire Departments has provided public safety for the Airport at all times since the Commencement Date of the Agreement and acknowledges that the City has not looked to the Operator to provide the same at the Airport since the Commencement Date.

3. The Airport Management Agreement provides in Section 6.C. thereof that the Operator has the ability to earn incentive compensation as described therein and in Exhibit 3 to the Agreement.

4. The City and the Operator desire to amend the Airport Management Agreement to reflect accurately the operations of the City and Operator in regards to the above referenced items and to clarify and amend other provisions of the Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and obligations set forth herein, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the Town of Addison, Texas and Washington Staubach Addison Airport Venture do hereby agree as follows:

Section 1. Incorporation of Premises. The above and foregoing premises are true and correct and are incorporated herein and made a part of this Third Amendment for all purposes.

Section 2. Amendments. The Airport Management Agreement is amended as follows:

A. Section 4.B.2(b) is amended so that the last sentence of such Section shall hereafter read in its entirety as follows:

“The City shall perform background checks or require background checks to be performed on personnel hired to the positions of the Airport Director and Assistant Airport Director, and the Operator shall have the right to review such background checks. Operator shall perform background checks or require background checks to be performed on all personnel assigned to the Airport by the Operator, and the City shall have the right to review such background checks.”

B. Section 4.B.2(c) is amended so that it shall hereafter read in its entirety as follows:

“(c) Public Safety. The City shall provide Airport public safety at all times, and shall utilize the City’s Police Department and Fire Department in providing such public safety. The City’s public safety personnel shall patrol the Airport at times as determined by the City. Any unauthorized use of structures, equipment, or property, or unauthorized entry upon Airport premises, or unlawful activity at the Airport, shall be promptly reported by the Operator to the City police or such other authority designated in writing by the City. The City will notify the Operator of any specific public safety issues or concerns of which the City has actual knowledge which may be necessary for the performance of its duties as Operator.”

C. Section 4.E.2. is amended so that it shall hereafter read in its entirety as follows:

“2. Capital Improvement Plan. In connection with the City budget process each year during the term of this Agreement, Operator shall submit in writing to the City proposed amendments to the 10-year Capital Improvement Plan, a component of the Airport Master Plan. The proposed amendments shall be consistent with the continuing development of the Airport in accordance with federal and state funding.”

D. Section 4.E.3. is amended so that it shall hereafter read in its entirety as follows:

- “3. Operating Budget. In connection with the City budget process each year during the term of this Agreement, Operator shall submit in writing to the City, for the City’s review and consideration of approval, an Operating Budget (“Operating Budget”) for the Airport for the Fiscal Year following the date of the submission. The Operating Budget shall include, but not be limited to: (i) projected costs necessary for the upkeep of the Airport, to maintain safety standards and to keep the airport in compliance with applicable federal, state, and local laws and regulations for the Fiscal Year following submission; (ii) a schedule of proposed fees; and (iii) an estimate of Airport revenues for the Fiscal Year following submission.

Operator shall also provide to the City, upon request: (i) a schedule of all leases, concessions, contracts and agreements to be negotiated or renegotiated; (ii) recommendations, if any, for non-capital improvements of Airport facilities and acquisition of equipment; (iii) a three (3) year projection of anticipated revenues and expenses; and (iv) a schedule of proposed staffing levels of full, part-time, and seasonal employees. Appropriate modification of the Airport Operating Budget shall be made as required to conform to the Approved Operating Budget (as defined in Section 4.G.2.) as adopted or amended. Operator shall manage and operate the Airport in accordance with the Operating Budget approved by the City.”

- E.** Section 4.E.4. is amended so that it shall hereafter read in its entirety as follows:

- “4. Lease Plan. Operator shall, in connection with the City budget process each year during the term of this Agreement, provide to the City for its review and consideration of approval an Airport lease renewal and extension plan for the Fiscal Year following the date of the submission.”

- F.** Section 4.E.5. is amended so that it shall hereafter read in its entirety as follows:

- “5. Marketing Plan. Operator shall, in connection with the City budget process each year during the term of this Agreement, provide to the City for its review and consideration of approval an Airport marketing plan (“Marketing Plan”) for the Fiscal Year following the date of the submission. Operator shall market and promote the Airport in accordance with the Marketing Plan approved by the City.”

- G.** Section 4.E.6. is amended so that it shall hereafter read in its entirety as follows:

- “6. Airport Emergency Plan. Operator shall, in connection with the City budget process each year during the term of this Agreement, recommend to the City for its review and consideration of approval, amendments to the City’s Emergency Preparedness Plan, if any (the “City’s Emergency Preparedness Plan”). Additionally, Operator shall prepare and implement its own emergency plan for the Airport which shall be submitted to the City for its review and consideration

at the time the Operating Budget is submitted each year (the 'Operator's Emergency Plan').”

H. Section 4.E.8. is amended so that it shall hereafter read in its entirety as follows:

“8. Property Development and Management Plan. Operator shall, together with the City, coordinate the development and preparation (and updating, as may be deemed necessary by the City) of a comprehensive plan which addresses the future development and redevelopment of the Airport, taking proper consideration for the vicinity surrounding the Airport (including, without limitation, commercial development along Addison Road, City facilities and property adjacent to the Airport, the Addison Circle area, and the area adjacent to and west of the Airport), for a period of 10 years (the “Property Development and Management Plan”). The Property Development and Management Plan shall be consistent with the Airport Master Plan and FAA and TxDOT rules and regulations, and shall be submitted to the City in connection with its budget process each year during the term of this Agreement, for its review and consideration of approval.”

I. The Agreement is hereby amended such that all references in the Agreement to the delivery of budgets and/or plans by the Operator in connection with the City budget process shall be deemed to be due following the written notification of the budget delivery deadline by the City each Contract Year.

J. Section 4.G.1(b) is amended so that it shall hereafter read in its entirety as follows:

“(b) *Contract Years.* In connection with the City budget process each year during the term of this Agreement, Operator shall submit to the City a proposed operating budget for the operation, repair, maintenance, and development of the Airport for the Fiscal Year following the date of the submittal. The said budgets shall be submitted in conformance with the City Charter and any applicable rules, regulations, policies, or practices of the City. In the proposed operating budget, Operator shall show all Operating Costs (including, without limitation, all such costs which, in Operators’ judgment, are (i) mandated as a result of safety considerations, and (2) are mandated by applicable federal certifications, standards and grant agreement requirements), and may, but shall not be required, to show Real Estate Costs, Marketing Costs, or General Administrative Costs.”

K. Section 4.K.1.b. is amended so that it shall hereafter read in its entirety as follows:

“(b) Leasing Activity. A leasing activity report including the following:

- (i) Leasing activity (including new leases, lease renewals, lease extensions, new prospects, vacated tenants, and lease expirations);
- (ii) Tenant retention;

(iii) Information regarding the use of the Airport by aviation trade groups; and
(iv) Such other information as the City (by and through the City Manager) may reasonably request.”

L. Section 4.K.1.c. is amended so that it shall hereafter read in its entirety as follows:

“(c) Rent Roll. A report showing with respect to each lease or through-the-fence agreement the name of each tenant or user, as the case may be, the space occupied, the rent (or other fee) payable, the date rent (or other fee) is paid through, the commencement date, the term, the termination date, the amount of security deposit held, and any other information reasonably requested by the City (including a statement identifying changes from previous rent roll if requested by the City and not appearing in the activity report). Commencing August, 2004, the rent roll report shall not be required to be submitted monthly by the Operator, but shall be delivered within ten (10) days following the City’s request for same.”

M. Section 4.P.3. is amended so that it shall hereafter read in its entirety as follows:

3. Emergency Preparedness. Operator shall have available personnel to respond to emergencies, such as fires, aircraft incidents, or disasters. Operator shall implement the Operator’s Emergency Plan and the City’s Emergency Preparedness Plan as may be prudent and necessary and respond to all emergencies at the Airport in a manner consistent with such Plans.

N. Section 5.C.4. is amended to add the following to the end of such section:

“Notwithstanding the foregoing, commencing August 1, 2004, the City shall have no obligation to purchase or replace computer equipment for use by the Operator.”

O. Section 6.B.1. is amended so that it shall hereafter read in its entirety as follows:

“1. In addition to the payment for Operating Costs, Operator shall retain a management fee (“Management Fee”) in an amount equal to 21.5144% of the first \$3,346,596 of Gross Revenue each Contract Year plus 18% of all Gross Revenue in excess of \$3,346,596 each Contract Year, which Fee is intended to compensate Operator for, among other things, Real Estate Costs, Marketing Costs, and General Administrative Costs incurred by Operator in the management, operation, and development of the Airport. The total Management Fee represents several components which aggregate to the full percentage fee level which include: 1) “Base Management Fee” equaling 10% of Gross Revenue; Real Estate Costs equaling 2% of Gross Revenue; Marketing Costs equaling 2% of Gross Revenue; and General Administrative Costs equaling 4% of Gross Revenue. In the event the City has not made sufficient funds available

to allow Operator to retain the Management Fee, the City shall pay same to the Operator no later than the 15th day of the applicable month.

The parties acknowledge and agree that, with respect to the Management Fee, the rate of 18% of all Gross Revenue was established based on the assumption that annual Gross Revenues would be a minimum of \$4,000,000.00 for the Fiscal Year commencing October 1, 2000 and ending September 30, 2001. However, if annual Gross Revenues did not equal or exceed \$4,000,000.00, it was determined that the percentage of Gross Revenues received by the Operator as the Management Fee would be adjusted, such that the percentage applied to such actual Gross Revenue would be the percentage resulting from dividing \$720,000.00 by such actual Gross Revenue. The parties agree that this adjusted percentage is 21.544% of the first \$3,346,596 of Gross Revenue, as set forth above."

Example:

Fiscal Year	Gross Revenue	Management Fee
2002	\$4,002,268	$(3,346,596 \times .215144) + (655,672 \times .18) = 720,000.05 + 118,020.96 = 838,021.01$
2003	\$3,761,868	$(3,346,596 \times .215144) + (415,272 \times .18) = 720,000.05 + 74,748.96 = 794,749.01$

In addition, if a delay in performance is caused by reasons described in Section 15. Force Majeure, and such delay causes the anticipated Gross Revenues collected in the applicable fiscal year to be less than \$2,000,000.00, the Management Fee shall be suspended and deferred until such time that such anticipated Gross Revenues equal or exceed \$2,000,000.00.

- P. Section 6.C. is amended so that it shall hereafter read in its entirety as follows:
 - “C. Incentive Compensation. It is contemplated by the City and Operator that the Operator will be awarded incentive compensation ("Incentive Compensation") each year during the Term of this Agreement. The amount of potential Incentive Compensation that may be earned shall be established following the end of each Contract Year. Incentive Compensation has two components, the finance incentive ("Finance Incentive") and the management incentive ("Management Incentive") portion. The Finance Incentive portion includes certain financial performance based incentives, including an incentive based on the annual growth in Gross Revenue and an incentive based on revenue from through the fence operations; the Finance Incentive portion of the Incentive Compensation is more specifically set forth in Exhibit 3 attached hereto and fully incorporated herein. The Management Incentive portion of Incentive Compensation is based upon certain non-financial performance incentives, and may be awarded to

Operator based upon the City's assessment of the Operator's performance and achievements during the applicable Contract Year. To aide the City in its assessment of the Operator's performance and achievements, Operator shall submit to the City on or before October 31 of each year, an annual management report (the "Annual Management Report") which is intended to be limited in scope but sufficient enough to summarize the Operator's accomplishments and performance over the applicable Contract Year. The City shall timely evaluate the Annual Management Report and determine, based on its review of the Operator's performance, the appropriate Management Incentive to be awarded to the Operator for such Contract Year. The amount of the Management Incentive determined by the City to be payable shall be paid to Operator within ten (10) days following such determination, but in no event later than December 15 of such year."

- Q.** Section 14 is amended to change the notice address previously reflected as Raytheon Infrastructure, Inc. as follows:

"Washington Group International, Inc.
510 Carnegie Center
Princeton, NJ 08540
Attn: President
Telecopy: 609-720-2050"

- R.** Exhibit 3 to the Agreement shall be amended to read in its entirety as attached hereto and Attachment 1 and Attachment 2 to the Second Amendment to the Agreement are hereby deleted.

Section 3. No Other Amendment. Except as set forth in Section 2 above, nothing in this Third Amendment is intended to nor shall be construed to modify, alter, or change the Airport Management Agreement, and all other terms, conditions and obligations of the Airport Management Agreement shall remain unchanged and in full force and effect.

Section 4. No Benefit to Third Parties. The provisions of this Third Amendment are solely for the benefit of the City and Operator and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

Section 5. Authority to Execute; Effective Date; Counterparts. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Third Amendment 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. This Third Amendment shall be effective as of the date first set forth above. This Third Amendment may be executed concurrently in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile signature by a party hereto shall be treated as an original signature for purposes of this Third Amendment.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement as of the date first set forth above.

TOWN OF ADDISON, TEXAS

By: _____
Ron Whitehead, City Manager

ATTEST:

By: _____
Carmen Moran, City Secretary

**WASHINGTON STAUBACH ADDISON
AIRPORT VENTURE**

By: **WASHINGTON GROUP
INTERNATIONAL, INC.**

By: _____
Kurt Goddard, Vice President

By: **STAUBACH AIRPORT
MANAGEMENT, INC.**

By: _____
Larry B. Kimbler, President

EXHIBIT 3 – INCENTIVE COMPENSATION AIRPORT OPERATING AGREEMENT

I. OVERVIEW:

Section 6.C. of the Agreement for the Operation and Management of Addison Airport (“Operating Agreement”) outlines the parameters of incentive compensation, as a supplement to the Management Fee, to be paid the Airport Operator for achieving desired financial, operational and management objectives. This Exhibit 3 establishes guidelines for implementing and administering the Finance Incentive portion of Incentive Compensation.

While the City expects a high level of performance from the Operator, the provision of increasingly challenging levels of performance with commensurate financial rewards is intended to stimulate the Operator to higher levels of excellence for the Airport and the City.

II. DEFINITIONS (for Financial Performance Incentive Compensation Issues)

Base Management Fee – The Base Management Fee is an amount equal to 10% of the actual Gross Revenue received in a contract year.

Gross Revenue – Gross Revenue is as defined in Section 2 of the Operating Agreement.

Prior Year Gross Revenue – The Prior Year Gross Revenue shall mean the amount of Gross Revenue for the Fiscal Year immediately preceding the then applicable Contract Year under the Operating Agreement.

Illustration / Example Tables Used in Exhibit 3 – The illustrative tables used in this Exhibit 3 are intended to serve as examples only. The initial and projected financial calculations are illustrative of the manner in which the Finance Incentive provision is to be applied, but are not intended to be indicative of the actual amount of Finance Incentive for any specific year. Amounts shown are hypothetical projections.

III. FINANCE INCENTIVE

The purpose of the Finance Incentive is to encourage the creative and aggressive marketing, operation, and promotion of Addison Airport. The Operator will be rewarded with incentive compensation commensurate with financial performance of the Airport based on the annual increase in Airport Gross Revenue. Financial Performance is divided into two sub-categories: A) Gross Revenue Increase and B) Other Financial Incentives.

A. Gross Revenue Increase

When the annual Gross Revenue for the then applicable Contract Year (the "Current Year Gross Revenue") exceeds the Prior Year Gross Revenue by 3.5% or more, Operator will be rewarded with a percentage of such excess in accordance with Table 1, below. Table 2, below, illustrates an example of the calculation of the Management Fee (as defined in Section 6.B.1. of the Operating Agreement) and the Gross Revenue Increase portion of the Finance Incentive over a five-year period. In actuality, the incentive may be lower or higher than illustrated in Table 2. This table merely serves as an illustration of the calculation of the Gross Revenue Increase portion of the Finance Incentive and how it will be determined.

Table 1
Finance Incentive Bonus –
Gross Revenue Increase

Growth Percentage between Current Year Gross Revenue and Prior Year Gross Revenue	Finance Incentive Bonus (% of the difference (excess) between Current Year Gross Revenue and Prior Year Gross Revenue)
< 0	0%
> 0% and <=3.5%	0%
>3.5% and <=5%	20%
> 5.0% and <=6.5%	24%
> 6.5% and <=8%	28%
> 8%	32%

Table 2
Management Fee & Finance Incentive
Gross Revenue Increase Calculation

Example Showing Growth Over Five Years

	2002	2003	2004	2005	2006
Adjusted Airport Revenues	4,002,268	3,761,868	4,007,000	4,159,266	4,379,707
% Increase Over Prior Year	NA	0.0%	6.52%	3.80%	5.03%
Change In Revenue From Prior Year	NA	-0-	245,132	152,266	220,441
Eligible Bonus Percentage	NA	0.0%	28.0%	20.0%	24.0%
Mgmt. Fee- @ 21.5144% of the first \$3,346,596 of Gross	720,000	720,000	720,000	720,000	720,000

Revenue					
Mgmt. Fee- @ 18.0000% of Gross Revenue in excess of \$3,346,596	118,021	74,749	118,872	146,280	185,960
Total Management Fee	838,021	794,749	838,872	866,280	905,960
Finance Gross Revenue Increase Incentive Bonus	-0-	-0-	68,637	30,453	52,906
Total – Mgmt. Fee + Finance Gross Revenue Increase Incentive Bonus	838,021	794,749	907,509	896,733	958,866

Note: All years are based in the City’s Fiscal year – October 1 to September 30

B – Other Financial Incentives

This category is reserved for other Finance Incentives relating to goals or objectives, which may arise as a result of new or revised City priorities and whereby the Operator shall be eligible for certain one-time incentives that benefit either the City or the Airport on a recurring basis. Each goal or objective is to be clearly stated and the means by which the particular Finance Incentive is to be determined. An example of the award calculation should be given where possible.

Through the Fence Operations – The Operator shall receive a Finance Incentive for either the improvement in revenues associated with securing City approved Through-the-Fence agreements with existing Through-the-Fence users or securing new Through-the-Fence agreements with businesses wanting access to the Airport (“TTF Incentive”). The amount of the TTF Incentive shall be equal to 25% of the first year Annual Permit Fee revenue improvement relating to existing Through-the-Fence agreements with businesses and 25% of the first year Annual Permit Fee set forth in each new Addison Airport Access Permit Agreement (“Access Agreement”). This TTF Incentive award shall be deemed earned, due and payable in a lump sum to Operator immediately upon the City’s acceptance of the Annual Permit Fee related to the increase or new Access Agreement. For purposes of this Exhibit 3, new Access Agreements shall include Access Agreements entered into, assigned, transferred or otherwise conveyed to a user and consented to by the City. Table 3 below illustrates an example of the calculation of the TTF Incentive and is for illustrative purposes only.

**Table 3
Incentive Compensation
Financial - Other Revenue**

		2002	2003	2004	2005	2006
Through the Fence						
No. of New Access Agreement		2	1	1	0	3
1 st Yr. Annual Permit Fee Total		\$5,000	\$3,500	\$1,300	\$0	\$7,400
Incentive - 25%		\$1,250	\$875	\$325	\$0	\$1,850

Council Agenda Item: #R7

SUMMARY:

Staff is requesting approval to enter into an agreement with Shiroma Southwest to provide public relations and media publicity programs to promote certain special events within the Town of Addison.

FINANCIAL IMPACT:

Budgeted Amount: \$30,000.00

Cost: \$30,000.00 plus expenses

BACKGROUND:

For the last several years, the Town has utilized the services of Shiroma Southwest to promote the Town's three major events as well as the smaller events and third party events sponsored by the Town. With the success of the Arts and Events District, the number of events has continued to grow. In addition staff is proposing this year that Shiroma Southwest provide the public relations for the North Texas Jazz Festival. Council may recall that for the past several years Levenson and Company have provided these services. Staff is very pleased with the results that Shiroma consistently provides and feels that the marketing of Addison is definitely enhanced as result of their services. Funds have been budgeted to cover the marketing costs.

RECOMMENDATION:

Staff recommends approval.

SHIROMA SOUTHWEST

17311 N. Dallas Parkway, Suite 232, Dallas, Texas 75248

Phone (972) 732-6100 Fax (972) 732-0386

November 16, 2004

LETTER OF AGREEMENT BETWEEN THE TOWN OF ADDISON AND SOUTHWEST SPEAKERS BUREAU, INC., D.B.A. SHIROMA/SOUTHWEST, FOR EVENT PUBLIC RELATIONS AND PUBLICITY

This Letter confirms the agreement between the Town of Addison (the client) and Southwest Speakers Bureau, Inc., d.b.a., Shiroma/Southwest (the agency):

SERVICES:

Shiroma Southwest will develop and execute public relations and media publicity programs to promote the Town of Addison's events.

EVENTS AND FEES ARE AS FOLLOWS:

Lone Star Drive-in Halloween, Oct 23, Oct 30	750
Bookworm Bash, Oct 20; Nov 5-7	1000
Out of the Loop Festival, Mar 3-13	1500
Jazz Festival, April 1-3	5000
Taste Addison, May 13-15	8000
Artfest, May 28-30	1250
Lone Star Drive-in June 11,18,25; July 3	1000
Kaboom Town, July 3 (Sunday)	2000
July Jazz, July 9,16,23,30	1000
Symphonic Saturdays, Aug 6,13, 20, 27	750
Oktoberfest, Sept 15-18	7500
Miscellaneous consultation	250

\$30,000

EXPENSE REIMBURSEMENT:

Expenses will be billed monthly. Agency will provide the client with a budget of anticipated charges. Client agrees to provide any necessary collateral pieces, if possible, to reduce the need for additional expenses. Agency will be reimbursed for all expenses pertaining to the programs, which may include copies, long distance phone, faxes, postage, printing, messenger services, overnight deliveries, press kit materials and assembly, photo reproduction, print and electronic clipping services, etc. All outside purchases are made only under the authorization of the client and insomuch, the client agrees to accept full responsibility for all obligations and holds the agency harmless from all liability and payment of such charges as ordered under the client's authorization.

All amounts are due in Dallas, Dallas County, Texas. Balances that are more than sixty (60) days past due are subject to a finance charge of 1.33% per month (16% annually) or the current amount allowable by law.

This agreement is effective immediately upon signing and shall remain in effect through October 31, 2005.

FOR TOWN OF ADDISON

**FOR SOUTHWEST SPEAKERS BUREAU, INC.
D.B.A. SHIROMA/SOUTHWEST**

BY: _____

BY: _____

ITS: _____

ITS: _____

DATE: _____

DATE: _____

Finance Department's
Quarterly Review

For the Period and Year Ended September 30, 2004

*Town of Addison
November 2004*

Quarter Ended 9/30/04

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MEMO

To: Ron Whitehead, City Manager

From: Randy Moravec, Finance Director

**Re: Fourth Quarter and Year End
FY 2004 Financial Report**

Date: November 16, 2004

CASH AND INVESTMENT REPORT

- Cash for all funds as of September 30, 2004 totaled \$ 46.7 million, an increase of \$6 million from the previous quarter and \$2.1 million from the beginning of the fiscal year.
- The net increase for the quarter is due to the receipt of \$10.7 million of bond proceeds into the 2004 capital project fund. The G.O. debt service fund made its major annual principal and interest payments, which reduced that fund's balance by \$3 million. The General, Hotel, and Utility funds experienced declines in cash balances that totaled \$1.6 million.
- Investment yields and average weighted maturities:
 - Pooled funds – 1.89% and 238 days.
 - Texpool benchmark – 1.54%
- Over the past quarter, the yield curve flattened with short-term rates increasing in relationship to long-term rates, which is the reason the Town's average weighted maturity was shortened by 118 days. We will continue placing emphasis on investments with shorter maturities until the yield curve becomes steeper with attractive long-term rates.

GENERAL FUND

- Revenue for the year totaled \$21.8 million, which is \$318k more than budget and 6% more than received last year.
- Although sales tax revenue came off its peak of 6.1% over the previous year, it still was able to end the year up 3.7%.
- For 2004, expenditures totaled \$22.5 million, compared to budget of \$23 million. All but four departments were within their budgeted allocations. The only significant variance occurred with the Recreation department, which was \$42k, or 3.8% more than budget. Contributing to the variance was overtime expenditures, and utilities associated with the outdoor pool and expanded club facilities.
- Fund balance had been budgeted to decline \$1.6 million but the combination of higher revenues and lower expenditures contributed to limit the decline to only \$0.7 million.

HOTEL FUND

- Revenues for the year totaled \$4.9 million, just \$82k less than budget.
- Hotel occupancy taxes posted gains of 8% for the quarter, bringing the total for the year 5% greater than received for all of fiscal year 2003. As has been the case all year, the full service hotels have been slowest to recover. Their 4% quarterly gain brought them to where they were last fiscal year. The extended stay hotels posted the greatest gains for the year.
- Total expenditures were 2% less than budget, although special events exceeded budget by \$96k, or 5.3%. Personnel costs associated with the Oktoberfest and Taste Addison events caused much of the disparity. Even with the higher expenditures, the difference between special event costs and the income generated by those events was \$941k, which compares favorably to the 2003 difference of \$1,002k.

AIRPORT FUND

- Although operating revenues were about 3% less than budget, the airport did generate \$153k more than received the previous year.
- Operating expenses totaled \$3.3 million, which was 6.5% less than budget. Legal expenses of \$215k exceeded the amended budget of \$140k.
- Net income (excluding depreciation) came in at \$807k compared to the \$708k budgeted.
- Working capital, or fund balance, was reduced only \$206k instead of the \$1.3 million budgeted due to the postponement of building the new fuel farm to the 2005 budget year.

UTILITY FUND

- For the year, operating revenues came in at \$7.4 million, which is 9.8% more than generated last year but 4.4% less than budget. The budget variance is due to another abnormally wet, cool summer that depressed water consumption. Water consumption for 2004 totaled only 1.8 billion gallons, which is 14.5% less than the peak volume sold during the 2000 fiscal year.
- Operating expenses totaled \$5.5 million, which is only \$122k more than experienced last year.
- Because of the low volume of water sold, net income was \$1.1 million compared to the \$1.4 million budgeted. Delay in building the Tallisker water line mitigated the decline in working capital; the decline was only \$321k instead of the \$538 budgeted.

TOWN OF ADDISON
EXECUTIVE SUMMARY OF MAJOR OPERATING FUNDS FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2004
 UNAUDITED ACTUAL AMOUNTS COMPARED TO THE 2004 AMENDED BUDGET AND PREVIOUS YEAR ACTUAL FOR SAME PERIOD
All Amounts Expressed in Thousands of Dollars

	General Fund			Hotel Fund			Airport Fund			Utility Fund			Total Major Operating Funds*		
	Budget	Actual	PY Actual	Budget	Actual	PY Actual	Budget	Actual	PY Actual	Budget	Actual	PY Actual	Budget	Actual	PY Actual
RESOURCES															
Ad Valorem Tax	\$ 6,292	\$ 6,183	\$ 5,791	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 6,292	\$ 6,183	\$ 5,791
Non-Property Tax	10,002	10,196	9,696	3,393	3,441	3,287	-	-	-	-	-	-	13,395	13,637	12,983
Franchise Fees	2,568	2,675	2,450	-	-	-	-	-	-	-	-	-	2,568	2,675	2,450
Service/Permitting/License Fees	1,532	1,630	1,545	1,029	982	861	1,130	1,072	1,056	7,765	7,425	6,763	11,456	11,110	10,225
Rental, Interest and Other Income	1,068	1,096	1,065	550	467	484	3,152	3,077	3,009	114	47	107	4,884	4,686	4,665
Transfers and Other Sources	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Resources	21,462	21,780	20,547	4,972	4,890	4,632	4,282	4,149	4,065	7,878	7,472	6,870	38,594	38,291	36,114
APPLICATION OF RESOURCES															
Personal Services	15,375	15,174	13,922	1,253	1,272	1,240	245	238	249	982	995	901	17,853	17,679	16,312
Supplies and Materials	839	849	782	154	151	181	11	25	7	79	86	78	1,083	1,110	1,048
Maintenance	1,777	1,579	1,883	338	269	231	1,808	1,544	1,047	278	262	230	4,201	3,653	3,391
Contractual Services	3,249	3,165	2,906	3,088	3,054	3,248	1,511	1,535	1,488	4,289	4,159	4,171	12,136	11,912	11,813
Capital Equipment Amortization	1,298	1,298	1,279	24	24	24	-	-	-	11	29	29	1,334	1,352	1,332
Capital Equipment/Projects	485	392	229	28	-	27	2,032	1,014	713	812	297	945	3,357	1,703	1,914
Transfers and Other Uses**	-	-	-	750	750	740	-	-	-	1,966	1,966	1,967	2,716	2,716	2,707
Total Application of Resources	23,023	22,455	21,001	5,635	5,520	5,691	5,606	4,355	3,504	8,416	7,793	8,321	42,680	40,125	38,517
Net Change in Fund Balances	\$ (1,561)	\$ (676)	(454)	\$ (663)	\$ (630)	\$ (1,059)	\$ (1,324)	\$ (206)	\$ 561	\$ (538)	\$ (321)	(1,451)	\$ (4,085)	\$ (1,834)	(2,403)

Notes:

* Totals may not exactly match due to rounding.

** Transfers and other uses includes interfund transfers and and retirement of debt in the Airport and Utility funds.

All amounts subject to audit adjustments.

TOWN OF ADDISON

GENERAL FUND

FY 2004 QUARTERLY STATEMENT OF REVENUES COMPARED TO BUDGET

With Comparative Information from Prior Fiscal Year

Category	2003-04 FY				2002-03 FY	
	Amended Budget	4th Quarter	Year-to-Date	YTD as % of Budget	Year-to-Date	YTD as % of Budget
Advalorem taxes:						
Current taxes	\$ 6,276,440	\$ 22,698	\$ 6,184,500	98.5%	\$ 5,740,843	98.1%
Delinquent taxes	5,210	3,937	(31,066)	-596.3%	21,902	463.0%
Penalty & interest	10,410	8,365	29,797	286.2%	27,792	294.1%
Non-property taxes:						
Sales tax	9,270,000	2,276,327	9,303,529	100.4%	8,971,759	101.7%
Alcoholic beverage tax	732,090	510,860	892,560	121.9%	724,520	103.5%
Franchise / right-of-way use fees:						
Electric franchise	1,503,800	1,558,779	1,568,013	104.3%	1,462,463	100.2%
Gas franchise	139,030	-	236,970	170.4%	132,409	100.3%
Telecommunication access fees	821,940	341,170	759,247	92.4%	753,501	94.2%
Cable franchise	96,910	52,994	103,662	107.0%	95,771	87.1%
Street rental fees	6,000	4,310	6,810	113.5%	6,000	120.0%
Licenses and permits:						
Business licenses and permits	142,390	55,337	138,167	97.0%	145,459	106.5%
Building and construction permits	227,410	90,575	316,922	139.4%	241,365	114.7%
Intergovernmental revenue	55,600	55,527	55,527	99.9%	-	0.0%
Service fees:						
General government	710	122	584	82.3%	707	78.6%
Public safety	755,710	229,945	754,354	99.8%	746,410	96.2%
Urban development	2,150	1,280	4,285	199.3%	4,188	380.7%
Streets and sanitation	184,890	58,202	191,143	103.4%	193,434	103.5%
Recreation	64,890	11,166	70,937	109.3%	68,133	103.2%
Interfund	153,550	38,386	153,550	100.0%	145,596	100.0%
Court fines	720,650	197,152	741,833	102.9%	686,311	89.1%
Interest earnings	144,500	34,087	119,416	82.6%	120,846	53.7%
Rental income	130,000	47,370	144,870	111.4%	141,902	101.4%
Other	17,500	17,399	33,981	194.2%	116,300	969.2%
Total Revenues	\$ 21,461,780	\$ 5,615,988	\$21,779,591	101.5%	\$ 20,547,611	99.9%

NOTES:

- 1) N/A - Not Applicable
- 2) Year-end amounts subject to audit adjustments.

TOWN OF ADDISON

GENERAL FUND

FY 2004 QUARTERLY STATEMENT OF EXPENDITURES COMPARED TO BUDGET

With Comparative Information from Prior Fiscal Year

Category	2003-04 FY				2002-03 FY	
	Amended Budget	4th Quarter	Year-to-Date	YTD as % of Budget	Year-to-Date	YTD as % of Budget
General Government:						
City manager	\$ 1,142,230	\$ 289,372	\$ 1,150,099	100.7%	\$ 1,005,730	92.1%
Finance	954,090	268,102	937,774	98.3%	907,175	99.9%
Building and fleet services	732,550	251,359	740,488	101.1%	558,059	97.4%
Municipal court	391,480	102,200	369,933	94.5%	358,861	93.7%
Human resources	305,860	73,046	305,806	100.0%	296,331	100.0%
Information technology	966,560	229,402	871,412	90.2%	890,838	95.6%
Combined services	901,000	158,492	790,091	87.7%	654,533	94.0%
Council projects	249,440	49,093	239,602	96.1%	241,350	97.0%
Public safety:						
Police	6,928,390	1,853,313	6,720,561	97.0%	6,189,915	91.6%
Fire	5,077,800	1,432,416	5,106,078	100.6%	4,794,133	95.4%
Development services	538,490	146,769	519,328	96.4%	485,809	94.2%
Streets	1,519,650	496,519	1,421,942	93.6%	1,504,350	99.4%
Parks and Recreation:						
Parks	2,205,040	755,597	2,129,412	96.6%	1,801,320	88.3%
Recreation	1,110,590	361,478	1,152,892	103.8%	1,313,062	93.9%
Total Expenditures	\$ 23,023,170	\$ 6,467,158	\$ 22,455,419	97.5%	\$ 21,001,466	93.9%

NOTES:

- 1) N/A - Not Applicable
- 2) Year-end amounts subject to audit adjustments.

TOWN OF ADDISON

HOTEL FUND

FY 2004 QUARTERLY STATEMENT OF REVENUES AND EXPENDITURES COMPARED TO BUDGET

With Comparative Information from Prior Fiscal Year

Category	2003-04 FY				2002-03 FY	
	Amended Budget	4th Quarter	Year-to-Date	YTD as % of Budget	Year-to-Date	YTD as % of Budget
Revenues:						
Hotel/Motel occupancy taxes	\$ 3,393,000	\$ 873,761	\$ 3,440,961	101.4%	\$ 3,287,389	99.6%
Proceeds from special events	1,029,000	446,124	982,298	95.5%	860,813	112.5%
Conference centre rental	371,000	80,538	313,860	84.6%	349,189	99.8%
Theatre centre rental	74,200	20,366	74,194	100.0%	53,469	89.1%
Interest and miscellaneous	104,900	19,140	78,666	75.0%	81,393	83.3%
Total Revenues	4,972,100	1,439,929	4,889,979	98.3%	4,632,253	101.3%
Expenditures and other uses:						
Visitor services	758,410	144,155	635,038	83.7%	823,874	78.8%
Marketing	945,480	300,152	936,068	99.0%	1,024,116	79.6%
Special events	1,827,190	846,973	1,923,135	105.3%	1,862,435	108.6%
Conference centre	839,410	231,067	767,983	91.5%	721,459	91.9%
Performing arts	514,400	69,206	508,116	98.8%	518,968	93.1%
Capital projects	-	-	-	0.0%	-	0.0%
Other financing uses:						
Transfer to debt service fund	750,000	-	750,000	100.0%	740,000	100.0%
Total Expenditures and Other	\$ 5,634,890	\$ 1,591,554	\$ 5,520,339	98.0%	\$ 5,690,852	92.8%

NOTES:

- 1) N/A - Not Applicable
- 2) Year-end amounts subject to audit adjustments.
- 3) Amounts spent by special project:

Public Relations	\$ 606,600	\$ 206,127	\$ 624,164	102.9%	\$ 878,957	80.1%
Oktoberfest	476,640	555,668	562,851	118.1%	560,592	107.7%
Kaboom Town	185,430	153,222	182,439	98.4%	181,226	104.8%
Calendar	40,000	-	38,795	97.0%	42,459	103.6%
Hotel Support Program	200,000	25,154	175,900	88.0%	230,239	76.7%
Taste Addison	497,780	31,059	516,241	103.7%	493,836	107.9%
Jazz Festival	260,000	16,215	232,106	89.3%	213,946	77.4%
Weekend to Wipe Out Cancer	13,000	17,073	17,073	131.3%	-	0.0%
TOTAL	\$ 2,279,450	\$ 1,004,518	\$ 2,349,569	103.1%	\$ 2,601,255	89.4%

TOWN OF ADDISON
STREET CAPITAL PROJECT FUND
 FY 2004 QUARTERLY STATEMENT OF REVENUES AND EXPENDITURES COMPARED TO BUDGET
With Comparative Information from Prior Fiscal Year

Category	2003-04 FY				2002-03 FY	
	Amended Budget	4th Quarter	Year-to-Date	YTD as % of Budget	Year-to-Date	YTD as % of Budget
Revenues:						
DART Grants	\$ 2,267,150	\$ 3,969,081	\$ 4,007,781	176.8%	\$ 220,288	15.1%
Interest income and other	100,000	30,291	103,374	103.4%	130,532	65.3%
Total Revenues	2,367,150	3,999,372	4,111,155	173.7%	350,820	21.1%
Expenditures:						
Personal services	100,000	13,278	56,738	56.7%	201,220	100.6%
Arbitrage rebate	-	4,360	4,360	N/A	135,364	N/A
Design and engineering	45,700	13,404	74,612	N/A	60,294	N/A
Construction and equipment	2,981,600	131,355	552,580	18.5%	1,505,653	32.5%
Other uses: transfer to Parks Capital fund	706,770	706,770	706,770	100.0%	-	0.0%
Total Expenditures	\$ 3,834,070	\$ 869,167	\$ 1,395,060	36.4%	\$ 1,902,531	39.4%

NOTES:

- 1) N/A - Not Applicable
- 2) Year-end amounts subject to audit adjustments.

TOWN OF ADDISON
PARK CAPITAL PROJECT FUND
 FY 2004 QUARTERLY STATEMENT OF REVENUES AND EXPENDITURES COMPARED TO BUDGET
With Comparative Information from Prior Fiscal Year

Category	2003-04 FY				2002-03 FY	
	Amended Budget	4th Quarter	Year-to-Date	YTD as % of Budget	Year-to-Date	YTD as % of Budget
Revenues and other sources:						
Interest earnings and other	\$ -	\$ -	\$ -	0.0%	\$ -	0.0%
Other sources: transfer from 2002 CP Fund	706,770	706,770	706,770	100.0%	-	0.0%
Total Revenues	706,770	706,770	706,770	100.0%	\$ -	0.0%
Expenditures:						
Personal services	4,000	-	-	0.0%	-	0.0%
Design and engineering	36,000	5,995	5,995	16.7%	-	0.0%
Construction and equipment	-	-	-	0.0%	-	0.0%
Total Expenditures	\$ 40,000	\$ 5,995	\$ 5,995	15.0%	\$ -	0.0%

NOTES:

- 1) N/A - Not Applicable

TOWN OF ADDISON
2000 CAPITAL PROJECT FUND
 FY 2004 QUARTERLY STATEMENT OF REVENUES AND EXPENDITURES COMPARED TO BUDGET
With Comparative Information from Prior Fiscal Year

Category	2003-04 FY				2002-03 FY	
	Amended Budget	4th Quarter	Year-to-Date	YTD as % of Budget	Year-to-Date	YTD as % of Budget
Revenues and other sources:						
Interest earnings and other	\$ 6,000	\$ 1,181	\$ 5,345	89.1%	\$ 33,792	33.8%
Other sources: transfer from 2002 CP Fund	-	-	-	0.0%	1,673,496	N/A
Total Revenues	6,000	1,181	5,345	89.1%	\$ 1,707,288	1707.3%
Expenditures:						
Personal services	-	4,560	18,471	N/A	-	0.0%
Design and engineering	35,120	6,219	67,324	191.7%	289,178	37.7%
Construction and equipment	85,760	12,868	23,664	27.6%	2,427,387	98.3%
Total Expenditures	\$ 120,880	\$ 19,087	\$ 90,988	75.3%	\$ 2,716,565	83.9%

NOTES:

- 1) N/A - Not Applicable
- 2) Year-end amounts subject to audit adjustments.

TOWN OF ADDISON
2002 CAPITAL PROJECT FUND
 FY 2004 QUARTERLY STATEMENT OF REVENUES AND EXPENDITURES COMPARED TO BUDGET
With Comparative Information from Prior Fiscal Year

Category	2003-04 FY				2002-03 FY	
	Amended Budget	4th Quarter	Year-to-Date	YTD as % of Budget	Year-to-Date	YTD as % of Budget
Revenues:						
Bond proceeds	\$ -	\$ -	\$ -	0.0%	\$ 15,095,000	100.0%
Interest earnings and other	150,000	32,687	131,405	87.6%	186,901	46.7%
Total Revenues	150,000	32,687	131,405	87.6%	\$ 15,281,901	98.6%
Expenditures and other uses:						
Personal services	150,000	40,143	118,475	79.0%	26,670	87.4%
Design and engineering	500,000	62,770	912,705	182.5%	676,438	338.2%
Construction and equipment	6,241,290	3,128,195	5,347,680	85.7%	3,853,413	54.9%
Other uses: transfer to 2000 CP fund	-	-	-	0.0%	1,673,496	N/A
Total Expenditures	\$ 6,891,290	\$ 3,231,108	\$ 6,378,860	92.6%	\$ 6,230,017	84.1%

NOTES:

- 1) N/A - Not Applicable
- 2) Year-end amounts subject to audit adjustments.

TOWN OF ADDISON
2004 CAPITAL PROJECT FUND
 FY 2004 QUARTERLY STATEMENT OF REVENUES AND EXPENDITURES COMPARED TO BUDGET
With Comparative Information from Prior Fiscal Year

Category	2003-04 FY				2002-03 FY	
	Amended Budget	4th Quarter	Year-to-Date	YTD as % of Budget	Year-to-Date	YTD as % of Budget
Revenues:						
Bond proceeds	\$ 10,695,000	\$ 10,695,000	\$ 10,695,000	100.0%	\$ -	0.0%
Interest earnings and other	-	8,642	8,642	N/A	-	0.0%
Total Revenues	<u>10,695,000</u>	<u>10,703,642</u>	<u>10,703,642</u>	100.1%	<u>\$ -</u>	0.0%
Expenditures and other uses:						
Personal services	-	-	-	0.0%	-	0.0%
Bond sale costs	30,000	-	85,000	283.3%	-	0.0%
Design and engineering	-	86,893	86,893	0.0%	-	0.0%
Construction and equipment	-	-	-	0.0%	-	0.0%
Total Expenditures	<u>\$ 30,000</u>	<u>\$ 86,893</u>	<u>\$ 171,893</u>	573.0%	<u>\$ -</u>	0.0%

NOTES:

- 1) N/A - Not Applicable
- 2) Year-end amounts subject to audit adjustments.

TOWN OF ADDISON

AIRPORT FUND

FY 2004 QUARTERLY STATEMENT OF REVENUES, EXPENDITURES AND CHANGES TO WORKING CAPITAL COMPARED TO BUDGET

With Comparative Information from Prior Fiscal Year

Category	2003-04 FY				2002-03 FY	
	Amended Budget	4th Quarter	Year-to-Date	YTD as % of Budget	Year-to-Date	YTD as % of Budget
Operating revenues:						
Operating grants	\$ 30,000	\$ 52,243	\$ 60,118	200.4%	\$ 25,263	72.2%
Fuel flowage fees	1,100,000	349,085	1,030,378	93.7%	1,040,323	95.3%
Rental	3,087,000	962,682	2,981,906	96.6%	2,879,569	94.0%
User fees	30,000	13,061	41,979	139.9%	16,126	34.1%
Total operating revenues	<u>4,247,000</u>	<u>1,377,071</u>	<u>4,114,381</u>	96.9%	<u>3,961,281</u>	93.5%
Operating expenses:						
Town - Personal services	244,720	70,891	238,270	97.4%	248,869	99.3%
Town - Supplies	10,500	18,643	24,759	235.8%	6,835	63.9%
Town - Maintenance	18,810	8,181	25,304	134.5%	44,668	394.6%
Town - Contractual services	447,540	161,998	495,037	110.6%	414,297	102.6%
Grant - Maintenance	60,000	72,273	79,093	131.8%	-	0.0%
Operator operation & maintenance	1,729,020	522,083	1,439,524	83.3%	1,002,740	70.5%
Operator service contract	1,063,000	315,175	1,039,646	97.8%	1,073,468	104.8%
Total operating expenses	<u>3,573,590</u>	<u>1,169,245</u>	<u>3,341,633</u>	93.5%	<u>2,790,877</u>	86.8%
Net operating income	<u>673,410</u>	<u>207,826</u>	<u>772,748</u>	114.8%	<u>1,170,404</u>	114.2%
Non-Operating revenues (expenses):						
Interest earnings and other	35,000	21,033	34,565	98.8%	103,739	130.0%
Interest on debt, fiscal fees & other	-	-	-	0.0%	-	0.0%
Total non-operating revenues (expenses)	<u>35,000</u>	<u>21,033</u>	<u>34,565</u>	98.8%	<u>103,739</u>	-187.9%
Net income (loss) (excluding depreciation)	<u>\$ 708,410</u>	<u>\$ 228,859</u>	<u>\$ 807,313</u>	114.0%	<u>\$ 1,274,143</u>	131.5%
CHANGES IN WORKING CAPITAL						
Net income (excluding depreciation)	<u>\$ 708,410</u>	<u>\$ 228,859</u>	<u>\$ 807,313</u>	114.0%	<u>1,274,143</u>	86.1%
Sources (uses) of working capital:						
Retirement of long-term debt	-	-	-	0.0%	-	0.0%
Net additions to fixed assets with grants	(218,000)	-	(88,794)	40.7%	(160,949)	40.5%
Other net additions to fixed assets	<u>(1,814,000)</u>	<u>(130,525)</u>	<u>(924,994)</u>	51.0%	<u>(551,620)</u>	0.0%
Net sources (uses) of working capital	<u>(2,032,000)</u>	<u>(130,525)</u>	<u>(1,013,788)</u>	49.9%	<u>(712,569)</u>	68.4%
Net increase (decrease) in working capital	(1,323,590)	98,334	(206,475)	15.6%	561,574	134.4%
Beginning fund balance	<u>1,780,310</u>	<u>1,475,501</u>	<u>1,780,310</u>	100.0%	<u>1,221,354</u>	114.2%
Ending fund balance	<u>\$ 456,720</u>	<u>\$ 1,573,835</u>	<u>\$ 1,573,835</u>	344.6%	<u>\$ 1,782,928</u>	178.7%

NOTES:

- 1) N/A - Not Applicable
- 2) Year-end amounts subject to audit adjustments.

TOWN OF ADDISON

UTILITY FUND

FY 2004 QUARTERLY STATEMENT OF REVENUES, EXPENDITURES AND CHANGES TO WORKING CAPITAL COMPARED TO BUDGET

With Comparative Information from Prior Fiscal Year

Category	2003-04 FY				2002-03 FY	
	Amended Budget	4th Quarter	Year-to-Date	YTD as % of Budget	Year-to-Date	YTD as % of Budget
Operating revenues:						
Water sales	\$ 3,660,800	\$ 1,231,309	\$ 3,410,056	93.2%	\$ 3,153,606	93.9%
Sewer charges	4,038,000	1,227,654	3,951,808	97.9%	3,555,968	96.6%
Tap fees	1,000	1,600	8,800	880.0%	1,150	115.0%
Penalties	65,000	11,012	54,392	83.7%	51,795	79.7%
Total operating revenues	7,764,800	2,471,575	7,425,056	95.6%	6,762,519	95.2%
Operating expenses:						
Water purchases	2,195,800	779,620	2,122,023	96.6%	2,128,504	96.0%
Wastewater treatment	1,619,700	458,212	1,666,771	102.9%	1,678,811	101.0%
Utility operations	1,823,250	508,616	1,742,007	95.5%	1,601,461	91.1%
Total operating expenses	5,638,750	1,746,448	5,530,801	98.1%	5,408,776	96.0%
Net operating income	2,126,050	725,127	1,894,255	89.1%	1,353,743	92.1%
Non-Operating revenues (expenses):						
Interest income and other	113,500	1,159	46,940	41.4%	106,955	35.7%
Interest on bonded debt and fiscal charges	(869,010)	(217,252)	(869,010)	100.0%	(962,210)	94.7%
Total non-operating revenues (expenses)	(755,510)	(216,093)	(822,070)	108.8%	(855,255)	1.2%
Net income (excluding depreciation)	\$ 1,370,540	\$ 509,034	\$ 1,072,185	78.2%	\$ 498,488	66.1%
CHANGES IN WORKING CAPITAL						
Net income (loss)	1,370,540	509,034	1,072,185	78.2%	498,488	14.2%
Sources (uses) of working capital:						
Retirement of long-term debt	(1,096,630)	(274,158)	(1,096,630)	100.0%	(1,004,540)	106.9%
Net additions to fixed assets	(811,600)	(254,827)	(296,947)	36.6%	(945,195)	91.8%
Net sources (uses) of working capital	(1,908,230)	(528,985)	(1,393,577)	73.0%	(1,949,735)	99.0%
Net increase (decrease) in working capital	(537,690)	(19,951)	(321,392)	59.8%	(1,451,247)	95.1%
Beginning fund balance	3,736,150	3,434,711	3,736,152	100.0%	5,099,644	92.9%
Ending fund balance	\$ 3,198,460	\$ 3,414,760	\$ 3,414,760	106.8%	\$ 3,648,397	85.3%

NOTES:

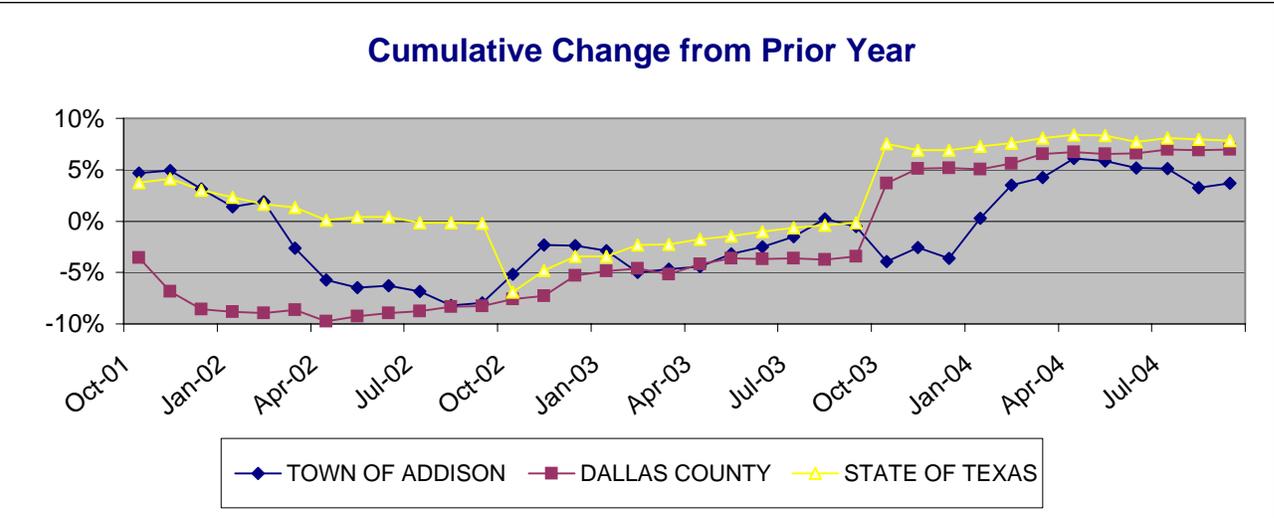
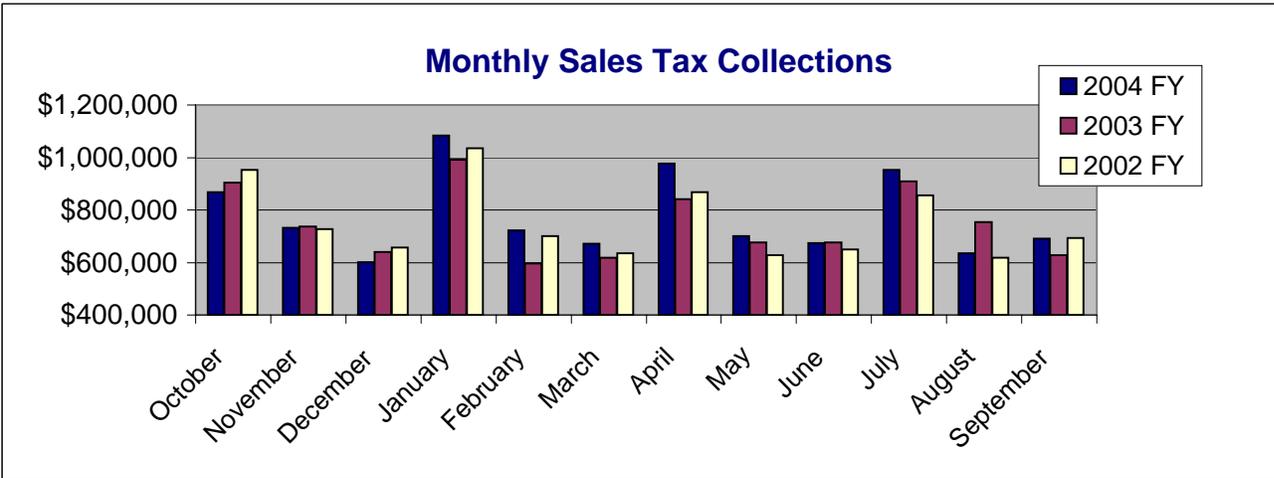
- 1) N/A - Not Applicable
- 2) Year-end amounts subject to audit adjustments.

TOWN OF ADDISON

Schedule of Sales Tax Collections and Related Analyses

For the fiscal year ended September 30, 2004

	TOWN OF ADDISON				DALLAS COUNTY		STATE OF TEXAS	
	2002-03 Collections		% Change from Prior Year		% Change from Prior Year		% Change from Prior Year	
	Monthly	Cumulative	Monthly	Cumulative	Monthly	Cumulative	Monthly	Cumulative
October	\$ 867,769	\$ 867,769	-3.9%	-3.9%	3.7%	3.7%	7.5%	7.5%
November	\$ 731,624	\$ 1,599,393	-0.9%	-2.6%	7.1%	5.1%	6.2%	6.9%
December	\$ 600,176	\$ 2,199,568	-6.3%	-3.6%	5.4%	5.2%	6.9%	6.9%
January	\$ 1,083,528	\$ 3,283,096	9.3%	0.3%	4.8%	5.1%	8.0%	7.3%
February	\$ 722,746	\$ 4,005,843	21.3%	3.5%	8.6%	5.6%	9.3%	7.6%
March	\$ 671,790	\$ 4,677,632	8.7%	4.2%	12.7%	6.5%	11.2%	8.1%
April	\$ 975,982	\$ 5,653,614	16.0%	6.1%	7.7%	6.7%	9.9%	8.4%
May	\$ 700,757	\$ 6,354,371	3.7%	5.8%	4.9%	6.5%	7.7%	8.3%
June	\$ 672,831	\$ 7,027,202	-0.7%	5.2%	7.2%	6.6%	2.7%	7.7%
July	\$ 951,710	\$ 7,978,911	4.8%	5.1%	9.6%	6.9%	10.8%	8.1%
August	\$ 634,011	\$ 8,612,923	-15.8%	3.2%	6.7%	6.9%	6.5%	7.9%
September	\$ 690,606	\$ 9,303,529	9.9%	3.7%	7.2%	6.9%	6.9%	7.9%
Budget 03-04:		\$ 9,270,000						



TOWN OF ADDISON HOTEL OCCUPANCY TAX COLLECTION
Hotels By Service Type for the Quarter and Year Ended September 30, 2004
With Comparisons to Prior Year

	Rooms		4th Quarter FY 04		04 to 03	Fiscal Year 2004		04 to 03	
	Number	Percentage	Amount	Percentage	% Diff.	Amount	Percentage	% Diff.	
Full Service									
Marriott Quorum	548	14%	\$ 221,327	25%	6%	\$ 745,898	22%	-2%	
Hotel Inter-Continental Dallas	529	13%	132,060	15%	-8%	625,015	18%	1%	
Crowne Plaza North Dallas	429	11%	78,108	9%	24%	350,141	10%	4%	
	<u>1,506</u>	<u>38%</u>	<u>431,496</u>	<u>49%</u>	<u>4%</u>	<u>1,721,054</u>	<u>50%</u>	<u>0%</u>	
Extended Stay									
Suites of America	344	9%	4,344	0%	-31%	18,293	1%	-39%	
Best Western Addison/Galleria	70	2%	5,703	1%	463%	15,235	0%	N/A	
Residence Inn by Marriott	150	4%	41,603	5%	15%	144,787	4%	17%	
Summerfield Suites	132	3%	21,994	3%	-43%	129,261	4%	19%	
Homewood Suites by Hilton	128	3%	38,299	4%	21%	136,351	4%	10%	
Springhill Suites	159	4%	35,617	4%	53%	131,439	4%	10%	
	<u>983</u>	<u>24%</u>	<u>147,560</u>	<u>17%</u>	<u>8%</u>	<u>575,366</u>	<u>17%</u>	<u>22%</u>	
Business Moderate									
Courtyard by Marriott Quorum	176	4%	50,063	6%	-1%	209,083	6%	-5%	
LaQuinta Inn and Suites	152	4%	30,722	4%	13%	116,579	3%	17%	
Courtyard by Marriott Midway	147	4%	33,240	4%	-1%	120,874	4%	-5%	
Country Inn and Suites	102	3%	21,597	2%	5%	89,946	3%	3%	
Hilton Garden Inn	96	2%	35,190	4%	12%	135,435	4%	2%	
Wingate Inn	101	3%	17,443	2%	18%	70,911	2%	-2%	
Comfort Inn	86	2%	12,245	1%	53%	46,407	1%	28%	
	<u>860</u>	<u>21%</u>	<u>200,499</u>	<u>23%</u>	<u>13%</u>	<u>789,236</u>	<u>23%</u>	<u>3%</u>	
Economy									
Motel 6	168	4%	17,701	2%	3%	67,599	2%	-3%	
Hampton Inn	160	4%	30,096	3%	7%	114,685	3%	0%	
Holiday Inn Express	118	3%	19,138	2%	-8%	78,734	2%	-4%	
Addison Comfort Suites	78	2%	16,090	2%	46%	64,465	2%	3%	
Super 8 Motel	78	2%	8,418	1%	431%	21,171	1%	148%	
Days Inn Addison	63	2%	2,761	0%	-9%	8,652	0%	13%	
	<u>665</u>	<u>17%</u>	<u>94,205</u>	<u>11%</u>	<u>15%</u>	<u>355,306</u>	<u>10%</u>	<u>5%</u>	
TOTAL	<u>4,014</u>	<u>100%</u>	<u>\$ 873,761</u>	<u>100%</u>	<u>8%</u>	<u>\$ 3,440,961</u>	<u>100%</u>	<u>5%</u>	

NOTES:

TOWN OF ADDISON
INTERIM STATEMENT OF CASH RECEIPTS AND DISBURSEMENTS
For the Quarter Ended September 30, 2004

Fund	Balance 6/30/2004	Quarter Receipts	Quarter Disbursements	Balance 9/30/2004
General Fund	\$ 7,408,361	\$ 5,784,751	\$ 6,640,497	\$ 6,552,615
Special Revenue Funds:				
Hotel	4,568,567	2,122,302	2,407,619	4,283,250
Police Forfeiture	51,223	420	13,430	38,213
Municipal Court	287,145	165,057	284,117	168,085
Arbor	65,239	7,811	435	72,615
Debt Service Funds:				
G. O. Bonds	4,617,573	184,329	3,186,039	1,615,863
Hotel Revenue Bonds	845,175	54,783	134,334	765,624
Capital Projects Funds:				
Streets	6,594,106	3,106,026	1,838,967	7,861,165
Parks	-	1,415,769	714,994	700,775
2000 G. O. Bonds	261,665	128,765	151,038	239,392
2002 G.O. Bonds	6,078,736	2,560,865	4,224,946	4,414,655
Arts & Events District	695,857	5,658	192,574	508,941
2004 G.O. Bonds	-	10,660,775	129,127	10,531,648
Enterprise Fund:				
Utility Fund	4,933,430	3,653,128	4,120,359	4,466,199
Airport	1,246,322	1,313,833	1,078,199	1,481,956
Internal Service Funds:				
Capital Replacement	1,803,747	207,408	178,939	1,832,216
Information Services	1,244,009	159,220	219,621	1,183,608
TOTAL - ALL FUNDS	\$ 40,701,155	\$ 31,530,898	\$ 25,515,235	\$ 46,716,818

Note: Cash inflows and outflows represent revenues, expenditures, and investment transactions.

INVESTMENTS BY MATURITY AND TYPE			
For the Quarter Ended September 30, 2004			
Type	% of Portfolio	Yield to Maturity	Amount
Pools	39.32%	1.54%	\$ 19,067,569
Agencies	54.52%	2.06%	26,435,040
Treasuries	6.16%	2.58%	2,984,790
Total Investments	100.00%		48,487,399
Accrued Interest Earnings			207,519
Demand Deposits			(1,978,100)
TOTAL			\$ 46,716,818

COLLATERAL SUMMARY

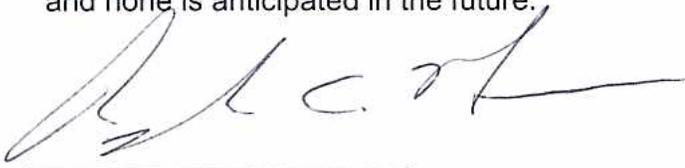
The first and most important objective for public funds investments is safety of assets. Therefore, all non-government security investments and bank accounts in excess of FDIC coverage must be secured by collateral. The bank balances and investments are monitored on a regular basis for appropriate coverage by marking the collateral to market. Collateral levels are adjusted to secure the varying levels of receipts throughout the fiscal year.

Town of Addison Collateral Analysis Demand Deposit Cash September 30, 2004								
<u>Pledging Institution</u>	<u>Safekeeping Location</u>	<u>Account Title</u>	<u>Pledged Security Description</u>	<u>Security Par Value</u>	<u>Market Value</u>	<u>FDIC Insurance</u>	<u>Ending Bank Balance</u>	<u>Difference Over(Under)</u>
Frost Bank	Federal Reserve	Operating	GNMA due: 20-Feb-28	\$ 364,914	\$ 388,942			
			GNMA due: 20-Feb-20	\$ 762,214	\$ 812,402			
				<u>\$ 1,127,128</u>	<u>\$ 1,201,344</u>	<u>\$ 100,000</u>	<u>948,510</u>	<u>\$ 352,834</u>

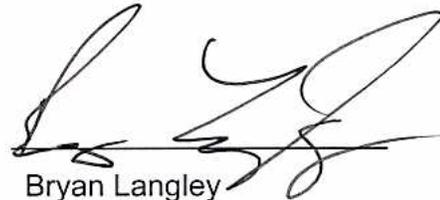
**Quarterly Investment Report
Pooled Investment Funds
Quarter ending September 30, 2004**

This quarterly Investment report has been prepared in compliance with Section 2256.023 "Internal Management Reports", of the Public Funds Investment Act, and in accordance with reporting requirements contained in the Town of Addison Investment Policy as approved by City Council on September 28, 2004.

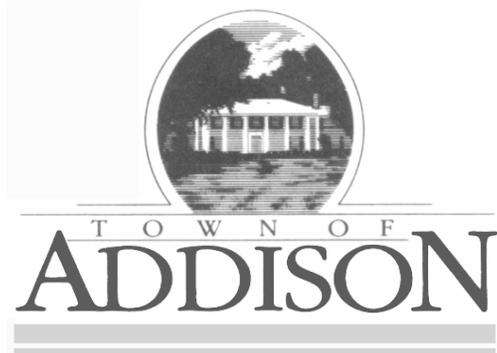
Activity in the Town's portfolio during this quarter is in compliance with the investment strategy as specified in the Town's Investment Policy. All investments are high-quality securities with no perceived default risk. Securities reflect active and efficient secondary markets in the event of an unanticipated cash requirement. Operating funds require the greatest short-term liquidity. Investment pools have been utilized to provide short-term fund requirements. Investment maturities have been staggered throughout the budget cycle to provide cash flow based on anticipated operating needs of the Town. Diversifying the appropriate maturity structure has reduced market cycle risk. There has been no loss of principal during this quarter of activity, and none is anticipated in the future.



Randolph C. Moravec
Director of Finance



Bryan Langley
Asst. Director of Finance



Investment Portfolio Summary

For the Quarter Ended

September 30, 2004

Prepared by



FIRST SOUTHWEST ASSET MANAGEMENT, INC.

Third Quarter of Calendar Year 2004 Review

The very same economic indicators that had prompted a huge backup in yields in the second quarter helped shift bond market psychology back around in the third. Non-farm payrolls, which had increased by almost 900k during March through May, grew by a woeful 312k from June through September. Core consumer inflation, rising at a 3.3% annualized rate during the three-month period beginning in March, dropped back to a 1.0% annualized rate in the most recent three-month period. The manufacturing sector retained much of its newly found strength during the quarter, making up for a lesser contribution from the consumer sector. New and existing home sales both reached record monthly levels before settling back a notch. Four monster hurricanes tore through Florida, setting the stage for a temporary boom in construction jobs in the fourth quarter. Fannie Mae was the latest company to top the corporate bad-guy list, but quickly agreed to clean up its act, stemming negative market reaction. Second quarter GDP, suffering through a “soft patch”, was revised downward, and then upward, before settling in at a not-so-bad 3.3% annualized growth rate. Oil prices topped the \$50 per barrel mark, setting a dubious record and dampening future economic growth.

The Fed, noting the labor downturn and the moderating inflation still voted unanimously to raise the overnight target by 25 basis points twice during the quarter and threatened continued unwinding of its accommodative stance at a measured pace. Fixed income yields generally moved downward even as the Fed was boosting the overnight lending rate higher. In less than 90 days, the Fed had tightened the overnight rate by 75 basis points. Oddly, during that same period, the two-year T-note yield dropped by 20 and the 10-year fell by 58

Key Economic Indicators:

- On July 1st, the national purchasing manager’s report began the new quarter in an uneventful manner as the overall ISM manufacturing index slipped from 62.8 to 61.1 in June. Although the direction was negative, the level was still strong and exceeded the average forecast of 61.0. It was the eighth consecutive month that the index topped the lofty 60 mark.
- The following day, another of the three big indicators stumbled as June payrolls, expected to rise by 250k, increased by only 112k. In addition, downward revisions to the prior two months reduced company payrolls by another 35k while the unemployment rate held steady at 5.6%.
- Two weeks later on July 14th, June retail sales plummeted by 1.1% due mostly to a 4.3% decline in auto sales. When auto sales were excluded core sales still dropped by 0.2%. Analysts, fully aware of slipping vehicle sales, had expected the large decline in overall sales but had forecast a 0.2% core *increase*.
- The June consumer price index completed a tempering of expectations as core CPI rose by a benign 0.1%, *the smallest core increase since December*. Midway through the year, core prices were increasing at a 1.5% annualized rate. It was beginning to look like the rapid rise in prices had been transitory.
- On August 2nd, the ISM overall manufacturing index for July rose from 61 to 62, exactly hitting the median Bloomberg forecast. The employment index dropped from 59.7 to 57.3, while the prices paid index dropped from 81 to 77. Both signaled future moderation in Fed-sensitive indicators. Two days later, the employment index of the July ISM *non-manufacturing* survey slipped from 57.4 to 50.
- On August 6th, the July employment report stunned analysts with an abysmal 32k job gain, well short of the optimistic 240k median forecast. Downward revisions only made the picture bleaker as May and June gains were revised lower by 60k and 34k respectively. The market’s reaction was huge as bond prices rocketed upward driving yields to 14-week lows. Within half an hour of release, the 10-year T-note had rallied almost two full points, *the largest single day gain in nine years*, pushing its yield to 4.19%. The two year T-note yield plunged from 2.64% to 2.35% during the same period.
- July overall CPI fell by 0.1%. Core consumer inflation, which excludes food and energy prices, rose by a mild 0.1%. On a year-over-year basis, the core rate was increasing at a 1.8% pace.

- On the first day of September the ISM factory index slipped below 60 for the first time in 10 months. The 59.0 August reading represented a three point drop from the prior month and fell a point shy of forecasts.
- The following day brought the release of yet another poor (but not quite as bad as some suspected) labor market report. August payrolls increased by 144k, ducking under the pared-down median forecast for a 150k increase. Unemployment managed to fall to 5.4%, primarily due to a 152k reduction in the number of people actively seeking employment. Bond yields closed the day sharply higher with the two- and 10-year T-notes reaching 2.53% and 4.29% respectively.
- On September 15th, August retail sales fell by 0.3%, due mainly to lackluster vehicle sales, but were in line with analyst's forecasts.
- The next day, core CPI rose by 0.1% for the third month in a row, virtually wiping away any lingering concerns of rising inflation. Over the prior three months, core consumer inflation had increased at an annualized rate of 1.0%, a huge deceleration from the preceding three-month period when core inflation rose at an unnerving 3.3% annualized rate. The lack of price pressure was applauded by the longer end of the curve as investors amazingly drove the 10-year Treasury yield below 4%.

Fed Monetary Policy:

- The Federal Reserve's policy setting Federal Open Market Committee met twice during the quarter. At the first meeting on August 10th, the FOMC voted unanimously to raise the funds rate by 25 bps to 1.50%, and retained so called "measured pace" language. The FOMC did acknowledge recent price pressures but said they were likely the result of transitory factors. They also said the economy appeared "poised to resume a stronger pace of expansion going forward."
- The FOMC met again on September 21, and as expected again raised the target fed funds rate by 25bps to 1.75%. The FOMC reiterated their now standard "measured pace" statement and also indicated that output growth had regained some traction and that inflation and inflation expectations had eased in recent months. The Fed continues on its path of slow and steady rate increases and has telegraphed each move well in advance.

Market movement:

- Treasuries moved within a fairly wide range during the quarter but were marked with large swings as data went from very strong to somewhat weaker to somewhere in between. The six-month Treasury-bill yield, which opened the quarter at 1.65% rose 34bps to close at 1.99%. The one-year Treasury note yield rose 13bps, climbing from 2.07% to 2.20%. The two-year Treasury note yield actually fell by seven bps as softer economic data tempered expectations for future Fed rate hikes.
- Stock markets had a tough quarter with all the major indices falling. There has been much for the markets to contend with including the ever-present war on terror, rising interest rates, sky-rocketing oil prices, election uncertainty, brutal hurricanes and slowing profit growth. The DOW fell 355 points, a decrease of 3.4%. The NASDAQ was off 151 points or 7.4%. The S&P 500 Index dropped 26 points for a 2.3% loss.
- The TexPool average rate during the third quarter was 1.40%, up 37 basis points from the second quarter's 1.03%. This rate will continue to rise along with the overnight fed funds rate.

U.S. Treasury Yields:

		Fed Funds	3 mo. Bill	6 mo. Bill	1 yr. Note	2 yr. Note	3 yr. Note
Last	6/30/04	1.25%	1.27%	1.65%	2.07%	2.68%	3.08%
High			1.73%	1.99%	2.19%	2.88%	3.17%
Low			1.22%	1.61%	1.83%	2.39%	2.72%
End	9/30/04	1.75%	1.71%	1.99%	2.20%	2.61%	2.86%

Portfolio Activity since March 31st:

- One bond for \$3 million par matured during the third quarter. In addition, market movements created some trading opportunities which we took advantage of by selling treasury notes from the portfolio in order to realize gains and reinvest at higher yields. A total of \$6 million par of the US T-Notes maturing in April 2006 were sold during August in two transactions. The sales resulted in realized gains of about \$6,000.
- There were three purchases made during the quarter. In August the proceeds from the first US T-Note sale were reinvested into a FNMA 3.20% note maturing in October 2006. This bond is callable every quarter and was purchased at par. The yield to maturity and to call is 3.20%, well above the 2.33% yield on the T-Notes which were sold.
- In September we made two discount note purchases. The first a FNMA maturing in July 2005 for \$3 million par yielding 2.17%. The second was a FHLMC maturing in June 2005 for \$3 million par yielding 2.115%. Both of these purchases were made to increase yields over available pool rates, yet remain short in hopes if reinvesting into higher yields at maturity.

Outlook for the Fourth Quarter 2004:

The US economy is expected to pick up in the third and fourth quarters, but the most recent forecasts are less robust than predicted earlier in the year. As a result, the anticipated aggressiveness and magnitude of Fed rate tightening is much less. A majority of economists believe that the FOMC will raise the fed funds rate by another 25 basis points to 2% at the November 10th meeting. From here, it becomes a little less clear. The Fed is largely expected to pause at the December 14th meeting before resuming its measured pace of tightening monetary policy by quarter point increments in both February and March. Primary dealer fed funds forecasts for the end of next year range from a high of 4.75% to a low of 2%. However, if the past two quarters have taught us anything, it's that the bond market is capable of abrupt shifts in direction when economic data misses the mark. If sagging payrolls gain traction in the months ahead, regardless of whether the job growth is discounted due to temporary storm-related construction, yields could well move higher as expectations for more aggressive tightening are recognized by investors.

Projected Strategy for the Fourth Quarter 2004:

Bond markets continue to be somewhat volatile as fluctuating economic data forces investors to continually reassess their expectations for the future direction of inflation and interest rates. As we saw in the third quarter, this type of market can present both opportunities and challenges. Investment strategy must adapt to conditions as they evolve. In general, markets have already priced in the expectations for gradual Fed rate hikes, causing the short-end of the yield curve to become steep. This provides the opportunity to significantly enhance yields versus overnight alternatives. However, as in the last two quarters, any purchases must be balanced against the expectations for rising interest rates. Recently we have focused on shorter maturities as yields have not accurately reflected the projected path of interest rates. Callable securities provide some yield advantage versus non-callable securities and we will continue to look for opportunities here as well. Diversification, a shorter average maturity, and a well laddered portfolio structure should serve us well in this rising rate environment.

Town of Addison
Investment Portfolio Summary
For the Quarter Ended September 30, 2004

	Pooled Funds			
	Par Value	Market Value	Book Value	Ratio
Investments at June 30, 2004	\$40,433,189	\$40,309,909	\$40,457,233	99.64%
Investment Purchases	\$17,189,159			
Investment Maturities	(\$3,054,780)			
Investment Sales	(6,000,000.00)			
Investments at September 30, 2004	\$48,567,568	\$48,423,119	\$48,487,399	99.87%

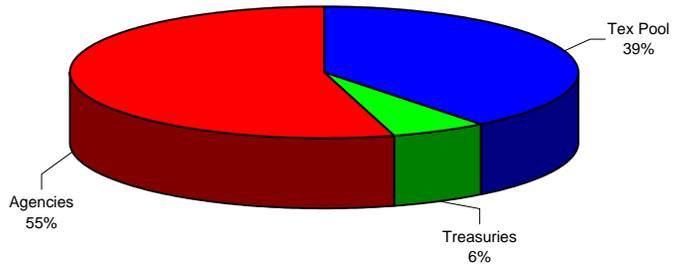
**Town of Addison
Investments by Maturity and Type
September 30, 2004**

Investments	Maturity	% of Portfolio	Yield to Maturity	Amount
	0-30 Days	39.32%	1.54%	\$19,067,569
	Over 31 Days	60.68%	2.11%	\$29,419,830
	Total Portfolio	<u>100.00%</u>	<u>1.89%</u>	<u>\$48,487,399</u>

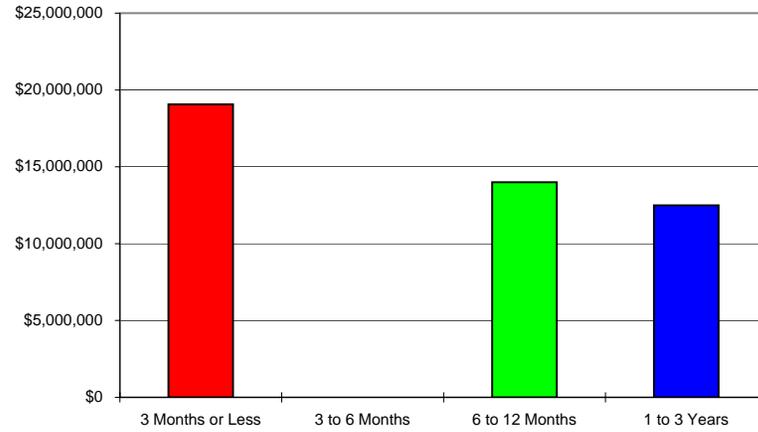
Investments	Type	% of Portfolio	Yield to Maturity	Amount
	Treasuries	6.16%	2.58%	\$2,984,790
	Pools	39.32%	1.54%	\$19,067,569
	Commercial Paper	0.00%	0.00%	\$0
	Agencies	54.52%	2.06%	\$26,435,040
	Total Portfolio	<u>100.00%</u>	<u>1.89%</u>	<u>\$48,487,399</u>

**Town of Addison
Pooled Funds
September 30, 2004**

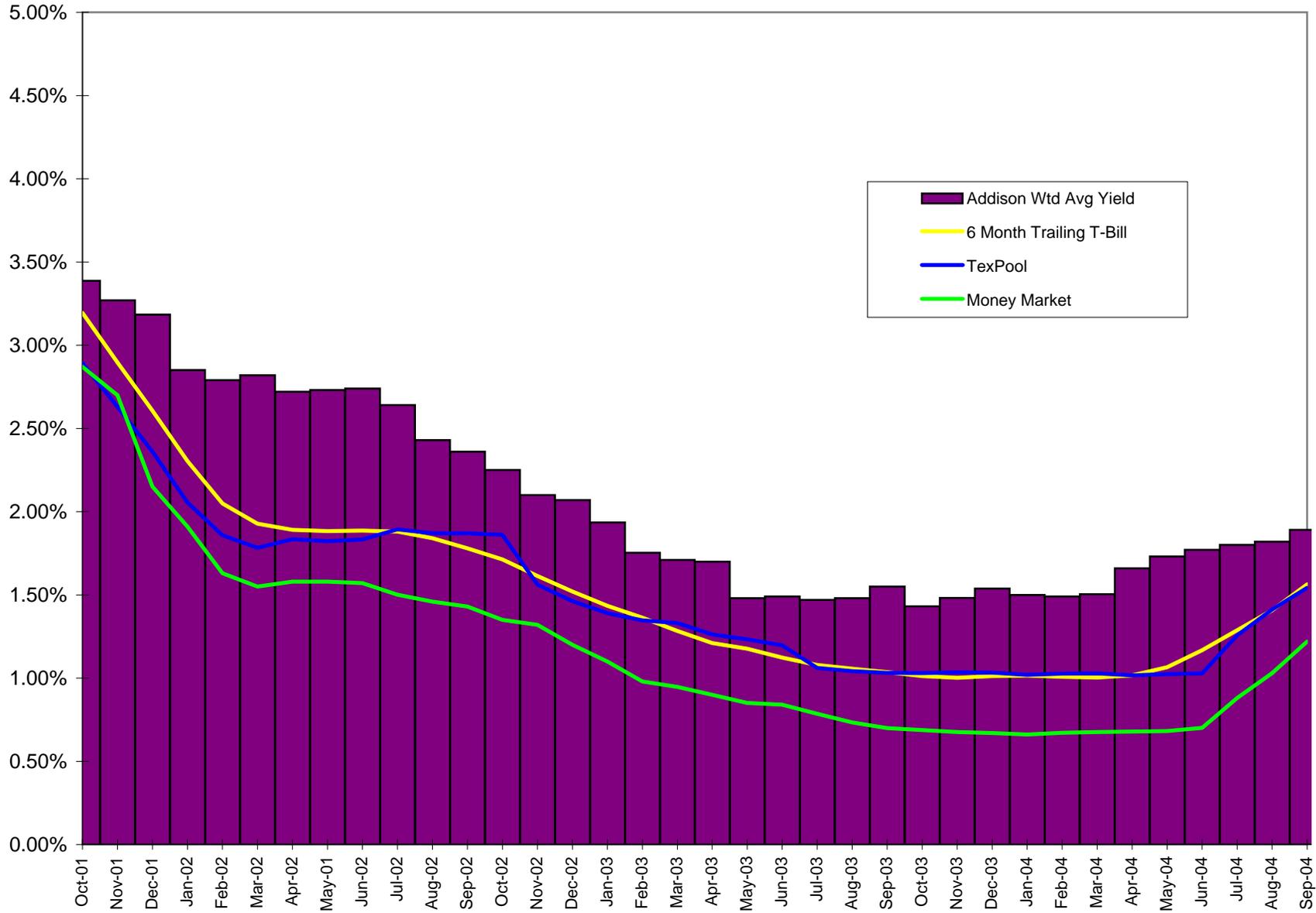
Holdings by Security Type
Weighted Average Maturity - 238 Days



Maturity Schedule



Town of Addison - Pooled Funds Yield Analysis



**TOWN OF ADDISON
PERFORMANCE SUMMARY
FOR THE PERIOD ENDING SEPTEMBER 30, 2004**

	% of Portfolio	Weighted Avg. Yield to Maturity	Weighted Avg. Days to Maturity
Tex Pool	39.32%	1.54%	1
Commercial Paper			
Agencies	54.52%	2.06%	372
Treasuries	6.16%	2.58%	577
Total Portfolio	100.00%	1.89%	238
Total Fixed Income Non Money Market (includes CP, Agencies, Treasuries)	60.68%	2.11%	393

YIELD BENCHMARKS

	12 Month Trailing	6 Month Trailing	Current Month
Fed Funds	1.10%	1.21%	1.60%
Overnight Repo	1.07%	1.18%	1.56%
Texpool Average	1.12%	1.22%	1.54%
3 Month T-Bill	1.11%	1.29%	1.67%
6 Month T-Bill	1.28%	1.56%	1.90%
1 Year CMT *	1.60%	1.93%	2.12%
2 Year T-Note	2.11%	2.48%	2.50%
5 Year T-Note	3.35%	3.60%	3.35%

*The 1 Year T-Bill is no longer issued, replaced with 1 Year Constant Maturity Treasury (CMT).

Unless otherwise noted, all instruments are held to maturity.

**TOWN OF ADDISON
AIMR PERFORMANCE SUMMARY
FOR THE PERIOD ENDING SEPTEMBER 30, 2004**

AIMR PERFORMANCE (Unaudited)

	<u>Monthly</u>	<u>Annualized</u>
September 2003	0.28%	1.88%
October 2003	-0.02%	1.71%
November 2003	0.10%	1.66%
December 2003	0.25%	1.69%
January 2004	0.13%	1.71%
February 2004	0.17%	1.76%
March 2004	0.10%	1.71%
April 2004	-0.03%	1.53%
May 2004	-0.04%	1.28%
June 2004	0.03%	1.17%
July 2004	0.24%	1.26%
August 2004	0.63%	1.85%
September 2004	0.06%	1.63%

Cumulative Performance

	<u>Total Portfolio Addison - Operating Fund</u>	<u>Vanguard Money Market Reserves - US Treasury Fund</u>	<u>Salomon Smith Barney 1-3 yr. Tres Index</u>
Last 3 Months	0.93%	0.27%	1.03%
Last 6 Months	0.89%	0.44%	-0.01%
Last 12 Months	1.63%	0.78%	1.13%

The Salomon 1-3 year government index is composed of treasuries and agencies with maturities between 1 and 3 years.

NOTE 1: AIMR calculations consider market value fluctuations as well as interest earned in determining performance

NOTE 2: Fixed income performance includes commercial paper, discount securities and repurchase agreements as well as US Treasury items.

Town of Addison
DETAIL OF SECURITY HOLDINGS
As of September 30, 2004

Security Description	Security CUSIP	Coupon	Settlement Date	Maturity Date	Next Call Date	Par Value	Purchase Price	Purchase Cost	Book Value	Market Price	Accrued Interest	Market Value	Days to Mat	Yield to Mat	Yield to Call
Pooled Funds															
FEDERAL HOME LN MTG CORP	3134a4rv8	1.875	6/30/2003	1/15/2005		3,000,000	100.846	3,025,380.00	3,004,742.27	100.000	11,875.00	3,000,000.00	107	1.32	
FEDERAL HOME LN BKS	3133mwxe6	1.625	4/14/2004	4/15/2005		3,000,000	100.189	3,005,670.00	3,003,036.26	99.719	22,479.17	2,991,562.50	197	1.43	
FEDERAL HOME LN BKS	3133mns69	4.125	11/4/2003	5/13/2005		2,000,000	103.376	2,067,516.00	2,027,334.74	101.156	31,166.67	2,023,125.00	225	1.87	
FEDL HOME LN MTG CORP DN	313397hk0	0.000	9/13/2004	6/27/2005		3,000,000	98.358	2,950,731.67	2,953,821.67	98.360	-	2,950,800.02	270	2.12	
FEDL NATL MTG ASSN DISC NT	313589j8	0.000	9/13/2004	7/22/2005		3,000,000	98.171	2,945,140.00	2,948,305.00	98.200	-	2,945,999.91	295	2.17	
FEDERAL HOME LN MTG CORP	3134a4tx2	1.500	7/31/2003	8/15/2005		3,000,000	99.242	2,977,260.00	2,990,298.47	9.312	5,750.00	2,979,375.00	319	1.88	
FEDERAL HOME LN BKS	3133x2by0	2.125	4/14/2004	11/15/2005		3,000,000	100.354	3,010,620.00	3,007,501.32	99.656	24,083.33	2,989,687.50	411	1.90	
UNITED STATES TREAS NTS	912828cf5	2.250	5/11/2004	4/30/2006		3,000,000	99.367	2,981,015.63	2,984,790.29	99.719	28,247.28	2,991,562.50	577	2.58	
FEDERAL HOME LN BKS	3133x07j2	2.570	8/18/2003	8/18/2006	11/18/2004	3,000,000	100.000	3,000,000.00	3,000,000.00	99.531	9,209.17	2,985,937.50	687	2.57	2.57
FEDERAL HOME LN BKS	3133x3u84	2.800	2/25/2004	8/25/2006	11/25/2004	1,500,000	100.000	1,500,000.00	1,500,000.00	99.875	4,200.00	1,498,125.00	694	2.80	2.80
FEDERAL NATL MTG ASSN MTN	3136f52r1	3.200	8/9/2004	10/26/2006	10/26/2004	2,000,000	100.000	2,000,000.00	2,000,000.00	99.969	11,555.56	1,999,375.00	756	3.20	3.20
TEXPOOL	texpool	1.540				19,067,569		19,067,569.12	19,067,569.12			19,067,569.12			1.54
						<u>48,567,569</u>		<u>48,530,902.42</u>	<u>48,487,399.14</u>		<u>148,566.18</u>	<u>48,423,119.05</u>			<u>1.89</u>
TOTAL PORTFOLIO						<u>48,567,569</u>		<u>48,530,902.42</u>	<u>48,487,399.14</u>		<u>148,566.18</u>	<u>48,423,119.05</u>			<u>1.89</u>

Town of Addison
YIELD SUMMARY
September 30, 2004

Security Description	Security CUSIP	Settlement Date	Maturity Date	Par Value	Market Value	Percent of Assets	Days to Maturity	Weighted Average Maturity	Yield to Maturity
Government Securities									
UNITED STATES TREAS NTS	912828cf5	05-11-04	04-30-06	3,000,000	2,991,562.50	6.18	577	36	2.58
Agency Securities									
FEDERAL HOME LN MTG CORP	3134a4rv8	06-30-03	01-15-05	3,000,000	3,000,000.00	6.20	107	7	1.32
FEDERAL HOME LN BKS	3133mwxe6	04-14-04	04-15-05	3,000,000	2,991,562.50	6.18	197	12	1.43
FEDERAL HOME LN BKS	3133mns69	11-04-03	05-13-05	2,000,000	2,023,125.00	4.18	225	9	1.87
FEDL HOME LN MTG CORP DISC NT	313397hk0	09-13-04	06-27-05	3,000,000	2,950,800.02	6.09	270	16	2.12
FEDERAL NATL MTG ASSN DISC NT	313589j18	09-13-04	07-22-05	3,000,000	2,945,999.91	6.08	295	18	2.17
FEDERAL HOME LN MTG CORP	3134a4tx2	07-31-03	08-15-05	3,000,000	2,979,375.00	6.15	319	20	1.88
FEDERAL HOME LN BKS	3133x2by0	04-14-04	11-15-05	3,000,000	2,989,687.50	6.17	411	25	1.90
FEDERAL HOME LN BKS	3133x07j2	08-18-03	08-18-06	3,000,000	2,985,937.50	6.17	687	42	2.57
FEDERAL HOME LN BKS	3133x3u84	02-25-04	08-25-06	1,500,000	1,498,125.00	3.09	694	21	2.80
FEDERAL NATL MTG ASSN MTN	3136f52r1	08-09-04	10-26-06	2,000,000	1,999,375.00	4.13	756	31	3.20
				26,500,000	26,363,987.42	54.45		203	2.05
Money Markets & Pools									
TEXPOOL	texpool				19,067,569.12	39.38			1.54
TOTAL PORTFOLIO				29,500,000	48,423,119.04	100.00		238	1.89