



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

January 25, 2005

6:30 P.M.

COUNCIL CHAMBERS

5300 BELT LINE ROAD

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### WORK SESSION

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Item #WS1- Presentation of the Finance Quarterly Report.

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### REGULAR SESSION

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Item #R1 - Consideration of Old Business.

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Item #R2 - Consent Agenda.

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## CONSENT AGENDA

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- #2a - Approval of the Minutes for the January 11, 2005, Council Meeting.
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- #2b - Consideration of authorization for final payment of \$19,185.95 to RKM Utility Services, Inc., for construction of the Talisker Apartments Water Line Improvements Project.
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- #2c - Consideration of an Ordinance calling for a general election to be held on May 7, 2005, for the purpose of electing three Councilmembers and a Mayor.
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Item #R3 - Presentation of the Region 2 & 3 Texas Recreation and Parks Society 2004 Innovations in Park Development Award for the Addison Circle Park project.

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Item #R4 - **PUBLIC HEARING** and second reading of an ordinance granting an electric utility franchise to TXU Electric Delivery Company.

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Item #R5 - Consideration of a Resolution rejecting the current fountain maintenance bids and approval to rebid the service in February 2005.

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Item #R6 - Approval of award of bid and consideration of a Resolution authorizing the City Manager to enter into a contract with Thielsch Engineering, Inc., for the construction of a new Bulk Fuel Storage and Dispensing System (Fuel Farm) at Addison Airport in the lump sum amount of \$3,975,000.00.

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Item #R7 - Consideration of an Ordinance amending Chapter 2, Article VI, Section 2-303 of the Code of Ordinances regarding the disposal of unclaimed or surplus property.

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### **EXECUTIVE SESSION**

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

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Adjourn Meeting

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Posted 5:00 p.m.  
January 21, 2005  
Carmen Moran  
City Secretary

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**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

January 11, 2005  
7:30 p.m. - Council Chambers  
5300 Belt Line Road

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

### Item #R1 – Consideration of Old Business

The following employees and guests were introduced to the Council: Darren Jones (Fire), Beverly Gaume (General Services), Bruce Ellis (Development Services), Jamie Gaines, Cowles and Thompson.

### Item #R2 – Consent Agenda

Items #2a, #2c, #2d, and #2e were considered separately.

Item #2b – Consideration of approval of a Resolution authorizing the City Manager to enter into a contract in the amount of \$35,000 with Teague Nall and Perkins, Inc. for engineering, survey, and Easement prep services. (Approved R05-001)

Councilmember Niemann moved to duly approve the above-listed item. Councilmember Chow seconded. Motion carried.

Item #2a – Approval of the Minutes for the December 14, 2004 Council Meeting (Approved).

Councilmember Chow moved to approve the Minutes of the December 14, 2004 meeting subject to two corrections. Councilmember Niemann seconded. Motion carried.

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

Voting Nay: None

Absent: None

Item #2c – Consideration of a Resolution authorizing the City Manager to enter into an interlocal agreement with Texas Local Government Purchasing Cooperative for the purpose of cooperative purchasing.

Councilmember Niemann moved to duly approve Resolution R05-002 authorizing the City Manager to enter into an interlocal agreement with Texas Local Government Purchasing Cooperative for the purpose of cooperative purchasing. Councilmember Silver seconded. Motion carried.

Item #2d – Consideration of a Resolution authorizing the City Manager to enter into an advertising contract with Krause Advertising to provide marketing consultation, creative ad production services, administrative and account oversight for the Town marketing and special events initiatives.

Councilmember Silver moved to duly pass Resolution R05-003 authorizing the City Manager to enter into an advertising contract with Krause Advertising to provide marketing consultation, creative ad production services, administrative and account oversight for the Town marketing and special events initiatives. Councilmember Turner seconded. Motion carried.

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

Item #2e – Consideration of a Resolution authorizing the City Manager to enter into an Interlocal Agreement in an amount not to exceed \$20,000 with the City of Farmers Branch for the construction of an Emergency Water System Interconnection, subject to the final review and approval of the City Manager and City Attorney.

Councilmember Niemann moved to duly pass Resolution R05-004 authorizing the City Manager to enter into an Interlocal Agreement in an amount not to exceed \$20,000 with the City of Farmers Branch for the construction of an Emergency Water System Interconnection, subject to the final review and approval of the City Manager and City Attorney. Councilmember Turner seconded. Motion carried.

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

Item #R3 – Presentation of the Government Finance Officers Association (GFOA) “Certificate of Achievement for Excellence in Financial Reporting” to the Town of Addison for its Comprehensive Annual Financial Report (CAFR).

Mayor Wheeler made the presentation of the award to Finance Director Randy Moravec.

Item #R4 – **PUBLIC HEARING** and consideration of an ordinance approving concept plan for four tracts, and a preliminary development plan for one tract of land located in the UC, Urban Center district, on 9.919 acres at the northwest corner of Quorum Drive and Goodman Avenue, on application from Fairfield Residential, LLC, represented by Mr. Paul Johnston.

Mayor Wheeler opened the meeting as a Public Hearing. There were no questions or comments. Mayor Wheeler closed the meeting as a Public Hearing.

Councilmember Turner moved to duly pass Ordinance 005-001 amending the concept plan for four tracts of land located in the UC Urban Center district, on 9.919 acres at the northwest corner of Quorum Drive and Goodman Avenue, as follows:

- Expand the size of the park (O-7 on the plan) from 1.43 acres to 1.57 acres.
- Move the R-1 Residential Street at the north property line down to the northern edge of the Park boundary.

Councilmember Braun seconded. The motion carried.

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

Councilmember Niemann moved to approve preliminary development plans for one tract of land located in the UC, Urban Center, district, located at the northwest corner of Quorum Drive and Goodman Avenue, approving the following waivers:

*Waiver 1 – Maximum Lot Coverage 85% for Multifamily Use and Maximum Lot Coverage 65A% for Townhouse/Condominium*

*Waiver 4 – Patios may not be constructed within the required setback zones. This limitation, however, does not apply to sidewalk cafes.*

*Waiver 5 (a) – At least 90 percent of the exterior cladding of all exterior walls fronting or visible from public streets (including above grade parking structures) shall be brick construction.*

and subject to the following conditions:

- The applicant will be required to follow the UC district standards, with the exception of the tree fencing shown on the tree pit plans.
- The proposed street north of the development shows a 23-foot wide drive lane. This width must be a minimum of 24 feet.
- Fire hydrant locations are not shown on the plan. Current codes call for a hydrant every 300 feet along the length of streets or fire lanes. Placing a hydrant on each of the four corners surrounding the property will satisfy this requirement.
- Information on the submittal seems to indicate this building will meet the criteria of a high-rise building. As such, it will be subject to the provisions of Section 403 of the Building Code.
- The plans should address how Tract I and the remaining tracts will be provided sanitary sewer service.

-The proposed improvements to the median area within Quorum Drive are not shown correctly.

-A grading and drainage plan will be necessary for Tract I and the overall addition.

-The development plan does not address on-site storm water detention requirements by ordinance.

-Landscaping, irrigation and other streetscape development along the west side of Quorum Drive are not adequately shown on the plan and responsibility for performing the improvements must be finalized.

-Water and storm drainage facilities within Artist Way and the west end of Goodman Avenue are drawn as proposed improvements. However, these improvements are beyond the limits of Tract I. The effected sections of roadway appear to have sufficient need for street reconstruction, in accordance with the development plan layout. Some proposed utilities may be relocated onto the proposed park property to reduce the impact on the existing street pavement.

-Existing drainage swale along the west end of the addition must be placed underground and be tied into the proposed storm drainage facilities on Artist Way.

-Engineer must provide written proof that plans and specifications have been submitted and approved by the Texas Department of Licensing and Regulations for compliance with the Americans with Disabilities Act. (ADA).

-All construction shall comply with the 2000 IBC, IPC, IMC, IECC, IFC. and 2002 NEC.

-The building shall be sprinklered throughout, including the parking garage.

-The provisions of Section 403, High-Rise Buildings, of the 2000 IBC shall apply if the building has an occupied floor located more than 75 feet above the lowest level of fire department vehicle access.

Councilmember Chow seconded. Motion carried.

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

Voting Nay: None

Absent: None

Item #R5 – Consideration of an Ordinance approving a meritorious exception to Chapter 62, Signs, Section 62-162, Premises Signs, for Charter Furniture, located at 15101 Midway Road, on application from Charter Furniture.

Councilmember Niemann moved to duly pass Ordinance No. 005-003 approving a meritorious exception to Chapter 62, Signs, Section 62-162, Premises Signs, for Charter Furniture, located at 15101 Midway Road, on application from Charter Furniture. Councilmember Braun seconded. Motion carried.

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

Voting Nay: None

Absent: None

Item #R6 – **PUBLIC HEARING** and first reading of an ordinance granting an electric utility franchise to TXU Electric Delivery Company.

Councilmember Niemann recuses and steps out of meeting.

Mayor Wheeler opened the meeting as a public hearing. There were no questions or comments. Mayor Wheeler closed the meeting as a public hearing. Mayor read ordinance caption. No Action Taken.

Councilmember Niemann returns to meeting.

Item #R7 – Consideration of a resolution of the Town of Addison, Texas authorizing intervention before the Railroad Commission of Texas in Gas Utilities Docket (GUD) No. 9630; authorizing participation with other cities served by Atmos Energy Corporation, formerly known as TXU Gas Company, in administrative and court proceedings involving a gas cost prudence review related to a filing made in September of 2004 as required by the final order in GUD No. 8664; designating a representative of the city to serve on a steering committee; requiring reimbursement of reasonable legal and consultant expenses.

Councilmember Chow moved to duly pass Resolution No. R05-005 authorizing intervention before the Railroad Commission of Texas in Gas Utilities Docket (GUD) No. 9630; authorizing participation with other cities served by Atmos Energy Corporation, formerly known as TXU Gas Company, in administrative and court proceedings involving a gas cost prudence review related to a filing made in September of 2004 as required by the final order in GUD No. 8664; designating a representative of the city to serve on a steering committee; requiring reimbursement of reasonable legal and consultant expenses. Councilmember Niemann seconded. The motion carried.

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

Voting Nay: None

Absent: None

Item #R8 – Consideration of a Resolution of the Town of Addison, Texas suspending the proposal by Atmos Energy Corp. to implement interim Gas Reliability Infrastructure Program (GRIP) rate adjustments for gas utility investment in 2003; authorizing participation with other cities served by Atmos Energy Corp., Mid-Tex Division, in a review and inquiry into the basis and reasonableness of the proposed rate adjustments; authorizing intervention in administrative and court proceedings involving the proposed GRIP rate adjustments; designating a representative of the Town to serve on a steering committee; requiring reimbursement of reasonable legal and consultant expenses.

Councilmember Silver moved to duly pass Resolution No. R05-006 suspending the proposal by Atmos Energy Corp. to implement interim Gas Reliability Infrastructure

Program (GRIP) rate adjustments for gas utility investment in 2003; authorizing participation with other cities served by Atmos Energy Corp., Mid-Tex Division, in a review and inquiry into the basis and reasonableness of the proposed rate adjustments; authorizing intervention in administrative and court proceedings involving the proposed GRIP rate adjustments; designating a representative of the Town to serve on a steering committee; requiring reimbursement of reasonable legal and consultant expenses. Councilmember Turner seconded.

After some discussion, Councilmember Turner moved to amend Councilmember Turner's motion so as to define all acronyms and provide that the final resolution be subject to approval of City Attorney. Councilmember Chow seconded the amendment to the motion. Motion for the amendment carried.

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

Motion for the original motion, as amended, carried.

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

Item #R9 – Consideration of approval and a Resolution authorizing the City Manager to award three additional five-year lease extension options with Brinker Texas, L.P. on property located at 4500 Belt Line Road within the Town.

Councilmember Niemann moved to duly pass Resolution R05-007 authorizing the City Manager to award three additional five-year lease extension options with Brinker Texas, L.P. on property located at 4500 Belt Line Road within the Town. Councilmember Turner seconded. The motion carried.

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

Item #R10 – Consideration of a Resolution authorizing the City Manager to negotiate and enter into a contract with Allyn & Company to provide public affairs and media relations consultation for the Town.

Councilmember Niemann moved to duly pass Resolution R05-008 authorizing the City Manager to negotiate and enter into a contract with Allyn & Company to provide public affairs and media relations consultation for the Town. Councilmember Chow 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:**

This item is for final payment, in the amount of \$19,185.95, and acceptance of improvements performed by RKM Utility Services, Inc., for construction of the Talisker Apartments Water Line Improvements Project.

**FINANCIAL IMPACT:**

Budgeted Amount: This project is funded from the FY 2003-04 Water and Sewer Fund, in the amount of \$385,000.

Final Construction Cost: \$383,719.00

**BACKGROUND:**

This project was established by the Public Works Department from a need to replace the existing 8" water main system within the Talisker Apartment complex and surrounding area. The water system at this location was composed of cast iron pipe in a deteriorated condition primarily due to age and it also experienced difficulty in providing sufficient pressure for fire protection. A contract was awarded to RKM Utility Services, Inc. for construction of this project. The original contract price for these improvements was \$400,105.00. In addition, there were quantity increases and decreases in numerous line items that resulted in a total net decrease of \$16,386.00 from the original contract amount. The final construction cost of these improvements was \$383,719.00. In addition, this project included an incentive/disincentive provision, whereby, the contractor would be awarded \$500 per day for early completion of the project, and be subject to a disincentive amount of \$500 per day for exceeding the established contract time. The Contractor was subject to a disincentive amount of \$4,000 for completing the project 8 calendar days beyond the time set forth in the contract. However, the apartment complex was subject to substantial inconvenience during the construction process. As a show of appreciation by the Town for their patience and cooperation, the Contractor repainted a considerable amount of existing fire lanes throughout the apartment complex in lieu of deducting the \$4,000 disincentive amount from the final payment. Staff considers this to be an equitable trade. The contractor has submitted his Affidavit of Bills Paid, Consent of Surety Company to Final Payment, and One year Maintenance Bond.

**RECOMMENDATION:**

Staff recommends that Council authorize final payment of \$19,185.95 to RKM Utility Services, Inc. and accept construction of the Talisker Apartments Water Line Improvements Project.

**Council Agenda Item: #2c**

**SUMMARY:**

Staff requests the Council pass an ordinance calling an annual municipal election for May 7, 2005. This year Addison will be electing three Councilmembers and a Mayor. The proposed ordinance calling the election is attached.

**FINANCIAL IMPACT:**

Budgeted Amount: \$5,000.00  
Cost: typically \$3,500.00

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

Within budget

**BACKGROUND:**

Candidates for the office of Mayor or Councilmember may begin filing for a place on the ballot on February 7, 2005 and have until March 7, 2005 to file. I will be attending a meeting with the Dallas County Elections Department on February 1, 2005, and hope to have the proposed contract with Dallas County for the conduct of the Election on the February 22, 2005 agenda.

**RECOMMENDATION:**

Staff recommends the Council approve the attached ordinance calling a Municipal Election for May 7, 2005.

**ORDINANCE NO. 005- 000**

AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS CALLING A GENERAL ELECTION TO BE HELD ON MAY 7, 2005, FOR THE PURPOSE OF ELECTING A MAYOR AND THREE (3) COUNCIL MEMBERS FOR TWO (2) YEAR TERMS EACH; DESIGNATING TWO POLLING PLACES WITHIN THE CITY; ESTABLISHING OTHER PROCEDURES FOR THE CONDUCT OF THE ELECTION; ESTABLISHING A DATE FOR CANVASSING RETURNS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 41.001 of the Texas Election Code, as amended (the "Code"), specifies that the first Saturday in May shall be a uniform election date and that a general election of a city may be held on such day; and

WHEREAS, the City Council of the Town of Addison, Texas (the "City") has determined that the City shall conduct its general municipal election, in conjunction with Dallas County, on the first Saturday in May, 2003 and

WHEREAS, Section 8.04 of the City Charter provides that in each odd-numbered year a Mayor and three (3) Council members shall be elected; and

WHEREAS, the City Council desires to and hereby calls a general election for the purpose of electing a Mayor and three (3) persons to the office of Council member for two (2) year terms each.

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

Section 1. Incorporation of Preamble. All of the above premises are true and correct and are incorporated into the body of this Ordinance as if copied herein in its entirety.

Section 2. Election Date; Purpose of Election; Officers and Terms of Office. That a general election shall be held in and throughout the City on Saturday, May 7, 2005, for the purpose of electing the following officers:

Mayor for two (2) year term  
Three (3) Council members for two (2) year terms each.

Section 3. Eligibility for Candidacy. In accordance with the City's Charter, no person shall be eligible for the office of Council member unless that person is a qualified voter of the City, shall have resided in the City for at least one year prior to the election, and shall never have been convicted of a felony offense involving moral turpitude.

Section 4. Application for a Place on the Ballot. In accordance with Section 143.007 of the Texas Election Code (the "Code"), any eligible and qualified person may have that person's name printed upon the official ballot as a candidate for the offices

hereinbefore set forth by filing the person's sworn application with the City Secretary not earlier than February 5, 2005 and not later than 5:00 p.m. on March 7, 2006. Each such application shall be on a form as prescribed by Section 141.031 of the Code. The order in which the names of the candidates are to be printed on the ballot shall be determined by a drawing of the City Secretary as provided by Section 52.094 of the Code. Notice of the time and place for such drawing shall be given in accordance with the Code.

Section 5. Runoff Election. If two or more candidates for a particular office tie for the number of votes required to be elected, there shall be a runoff election held on June 18, 2005. The runoff election shall be held in accordance with the Code.

Section 6. Election Precinct; Polling Place; Election Hours. The corporate limits of the City shall constitute three (3) election precincts for the election. The polling places for the general election shall be the Addison Fire Department building, 4798 Airport Parkway, Addison, Texas, and the Addison Fire Station II, 3950 Beltway Drive, Addison, Texas. In accordance with and pursuant to the requirements of the Code, said polling place shall be open from 7:00 a.m. to 7:00 p.m. on the date of the election.

Section 7. Appointment of a Presiding Election Judge and Alternate Presiding Election Judge; Qualifications to Serve as Election Judge; Confirmation of Appointments; Notice of Appointments. The election shall be held as a joint election with Dallas County, and the County shall be responsible for appointing all election judges and clerks, and shall be responsible for their compensation.

Section 10. Method of Voting. The City Secretary is hereby authorized to contract with Dallas County for the conduct of the joint election, and Dallas County shall be responsible for an optical scanning voting system. Dallas County shall be responsible for the preparation of the official ballots for the election, and they shall conform to the requirements of the Code, and in so doing shall permit the voter to vote for Mayor and three (3) Council members for two (2) year terms each. No elector shall vote for more than four (4) candidates for terms of two (2) years each.

Section 11. Governing Law; Qualified Voters. The election shall be held in accordance with the Constitution of the State of Texas and the Code, and all resident, qualified electors of the City shall be eligible to vote at the election. In addition, the election materials enumerated in the Code shall be printed in both English and Spanish for use at the polling place and for early voting for the election.

Section 12. Publication and Posting of Notice. Notice of the election shall be given by posting a notice of election in both English and Spanish at Town Hall, 5300 Belt Line Road, Addison, Texas on the bulletin board or other location used for posting notices of the meetings of the City Council not less than twenty-one (21) days prior to the date upon which the election is to be held, and by publication of said notice at least once in a newspaper published in the City or if none, then in a newspaper of general circulation within the City, the date of said publication to be not less than ten (10) days nor more than thirty (30) days prior to the date set for the election.

In addition thereto, a copy of the notice shall also be filed with the City Secretary at least twenty-one (21) days before the election. Upon publication of the election notice, the

City Secretary shall secure a publisher's affidavit, which complies with the requirements of the Election Code.

Section 13. Early Voting. Early voting by personal appearance shall be conducted in accordance with Section 271.006 of the Texas Election Code. Bruce R. Sherbet, Dallas County Elections Administrator, is hereby appointed the Deputy Early Voting Clerk. Early voting by personal appearance will be conducted beginning Wednesday, April 20, 2005, and continue through Tuesday, May 3, 2005. Any qualified voter for the Joint Election may also vote early by personal appearance at the main early voting location:

DALLAS COUNTY RECORDS BUILDING  
Office of the Elections Department, Eighth Floor  
2377 N. Stemmons Freeway, Dallas, TX 75207

Or at any of the following branch locations:

Addison Fire Station  
4798 Airport Parkway  
Addison, TX 75001

Barbara Bush Middle  
515 Cowboys Parkway  
Irving, TX 75063

Carrollton City hall  
1945 Jackson Road  
Carrollton, TX 75006

Cedar Hill ISD  
Administration Building  
270 S. Hwy. 67  
Cedar Hill, TX 75104

Coppell Town Center  
255 Parkway Blvd.  
Coppell, TX 75019

DeSoto Town Center Library  
211 E. Pleasant Run Road  
DeSoto, TX 75115

Dunford Recreation Center  
1015 Green Canyon  
Mesquite, TX 75150

Frankford Town Homes  
18110 Marsh Lane  
Dallas, TX 75287

Garland ISD  
Harris Hill Administration Bldg.  
720 Stadium Drive

Beckley-Saner Recreation Center  
114 W. Hobson Avenue  
Dallas, TX 75224

Carrollton Farmers Branch ISD  
1445 N. Perry  
Carrollton, TX 75011

Cockrell Hill City Hall  
4125 Clarendon Drive  
Dallas, TX 75211

Dallas City Hall  
1500 Marilla  
Dallas, TX 75201

Duncanville Fire Station  
1500 S. Main  
Duncanville, TX 75116

Farmers Branch City Hall  
13000 William Dodson Pkwy.  
Farmers Branch, TX 75234

Fretz Park Recreation Center  
6950 Belt Line Road  
Dallas, TX 75240

Grand Prairie Development  
206 W. Church  
Grand Prairie, TX 75050

Garland, TX 75040

Garner Elementary  
145 Polo Road  
Grand Prairie, TX 75052

Harry Stone Recreation Center  
2403 Milmar Drive  
Dallas, TX 75228

Hutchins City Hall  
321 N. Main Street  
Hutchins, TX 75141

Irving City Hall  
825 W. Irving Blvd.  
Irving, TX 75060

Lake Highlands Jr. High  
10301 Kingsley Road  
Dallas, TX 75238

Martin Luther King Core Bldg.  
2922 MLK Blvd.  
Dallas, TX 75215

Mattie Nash-Myrtle Davis  
Recreation Center and Park  
3710 N. Hampton  
Dallas, TX 75212

North Dallas Government Center  
10056 Marsh Lane  
Dallas, TX 75229

Pleasant Oak Rec. Center  
8701 Greenmound  
Dallas, TX 75227

Renner-Frankford Library  
6400 Frankford  
Dallas, TX 75252

Reverchon Recreation Center  
3505 Maple Avenue  
Dallas, TX 75219

Richardson ISD  
Administration Building  
4000 S. Greenville Avenue  
Richardson, TX 75081

Grauwylar Park Recreation Center  
7780 Harry Hines  
Dallas, TX 75235

Highland Baptist Church  
8202 Boedeker  
Dallas, TX 75225

Irving Arts Center  
3333 N. MacArthur Blvd.  
Irving, TX 75061

Lancaster Rec. Center  
1700 Veterans Memorial Pkwy  
Lancaster, TX 75134

Martin Weiss Rec. Center  
1111 Martindell  
Dallas, TX 75211

Mt. Creek Library  
6102 Mt. Creek Boulevard  
Dallas, TX 75249

Oak Cliff Sub-Courthouse  
410 S. Beckley  
Dallas, TX 75249

Records Building  
509 Main Street  
Dallas, TX 75202

Richardson Civic Center  
411 W. Arapaho  
Richardson, TX 75080

Rowlett City Hall Annex  
4002 Main Street  
Rowlett, TX 75088

Sachse City Hall  
5560 Hwy. 78  
Sachse, TX 75048

Samuel-Grand Recreation Center  
6200 East Grand Avenue  
Dallas, TX 75223

Sandy Jacobs Government Center  
1029 W. Rosemeade  
Carrollton, TX 75007

Seagoville City Hall  
702 N. Hwy 175  
Seagoville, TX 75159

Sunnyvale Fire Station #2  
402 Tower Place  
Sunnyvale, TX 75182

Tommie M. Allen Recreation Center  
7071 Bonnie View  
Dallas, TX 75241

Unity Church of Dallas  
6625 Forest Lane  
Dallas, TX 75230

Veterans Adm. Med. Cntr.  
4500 S. Lancaster  
Dallas, TX 75216

West Dallas Multipurpose  
2828 Fishtrap  
Dallas, TX 75212

Wilmer Community Center  
101 Davidson Plaza  
Wilmer, TX 75172

Wilmer-Hutchins ISD  
Administration Building  
3820 E. Illinois Avenue  
Dallas, TX 75216

All requests for early voting ballots by mail that are received by participating authorities will be transported by runner on the day of receipt to the Dallas County Elections Department, 8<sup>th</sup> Floor, Health and Human Service Building, 2377 N. Stemmons Frwy, Dallas, Texas 75207 for processing. Persons voting by mail will send their voted ballots to the Dallas County Elections Department.

All early voting ballots will be prepared for counting by an Early Voting Ballot Board appointed in accordance with Section 87.001 of the Texas Election Code. Addison hereby waives its right to appoint a member to the Board, and will have Dallas County appoint a member for the Town. The participating authorities agree to appoint other deputy early voting judges/clerks.

A signature verification committee will be appointed in accordance with Section 87.027 of the Texas Election Code. A list of the members of the signature verification committee will be furnished to each participating authority.

Section 14. Delivery of Returns; Preservation of Election Records. A general custodian of the voted ballots and all records of the joint Election as authorized by Section 271.010 of the Texas Election Code shall be appointed.

Access to the election records will be available to each participating authority as well as to the public in accordance with the Texas Public Information Act, Chapter 552, Government Code, at the Elections Department, 2377 N. Stemmons Freeway, Dallas, Texas, at any time during normal business hours. The Election Administrator shall ensure that the records are maintained in an orderly manner, so that records are clearly identifiable and retrievable per records storage container.

Records of the election will be retained and disposed of in accordance with Addison's records retention schedules, and in accordance with the provisions of Title 6, Subtitle C, Chapters 201 through 205 Texas Local Government Code, including the minimum retention requirements established by the Texas State Library and Archives Commission. If records of the election are involved in any pending election contest, investigation, litigation, or Texas Public Information Act, the Election Administrator shall maintain the records until final resolution or until final judgement, whichever is applicable. It is the responsibility of any participating authority to bring to the attention of the Elections Administrator any notice of any pending election contest, investigation, litigation, or Texas Public Information Act request, which may be filed with a participating authority. Upon request to maintain records beyond eligibility for preservation according with Section 66.058 of the Texas Election Code, the Elections Administrator shall supply a written cost estimate for storage to requesting participant.

On the first business day that follows the date that the records of the election are eligible for destruction, the Election Administrator will notify in writing each participating authority of the planned destruction of any records of the election. Within fifteen days of receipt of the Election Administrator's notice of intent to destroy the records, each participating authority will provide the Election Administrator with written authorization to proceed with destruction or written instructions to withhold destruction.

Section 15. Canvassing of Returns. In accordance with the Code, the City Council of the City shall convene on May 17, 2005, at 7:30 o'clock p.m. to canvass the returns of the election.

Section 16. Necessary Actions. The Mayor, City Manager and the City Secretary of the City, in consultation with the City Attorney, are hereby authorized and directed to take any and all actions necessary to comply with the provisions of the Code in carrying out and conducting the election, whether or not expressly authorized herein.

Section 17. Effective Date. This Ordinance shall be in full force and effect from and after its passage.

DULY PASSED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS,  
this the 25th day of January 2005.

\_\_\_\_\_  
MAYOR

ATTEST:

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CITY SECRETARY

OFFICE OF THE CITY SECRETARY

ORDINANCE NO. 005-000

**Council Agenda Item: #R3**

**SUMMARY:**

Presentation of the Region 2 & 3 Texas Recreation and Parks Society 2004 Innovations in Park Development Award for the Addison Circle Park project.

**FINANCIAL IMPACT:**

Budgeted Amount: N/A

Cost: N/A

**BACKGROUND:**

The Texas Recreation and Parks Society (TRAPS) Region 2 and 3 Awards Committee selected Addison Circle Park for Innovations in Park Development Award. The purpose of this award is to recognize each year a park development project that is developed and completed by departmental staff, and to encourage innovations and acknowledge new ideas in park development by departmental staff.

Entries were accepted for any park design within our region in the State of Texas and the park must be completed and in use. The region 2 and 3 competition included the following cities: Allen, Balch Springs, Carrollton, Cedar Hill, Sachse, Commerce, Coppell, Corsicana, Dallas, DeSoto, Duncanville, Ennis, Farmers Branch, Frisco, Garland, Grand Prairie, Greenville, Highland Park, Irving, Lancaster, Longview, Lufkin, McKinney, Mesquite, Murphy, Nacogdoches, Paris, Plano, Red Oak, Richardson, Richland Hills, Rockwall, Rowlett, Sunnyvale, Terrell, Texarkana, Tyler, Waxahachie and Wylie.

The Town Council appointed a committee of 20 citizens who, with Town staff and consultants Sasaki and Associates, worked together to come up with the results of 10 landscaped acres that contain flexible space with multiple venues that are beautiful and useable on a daily bases, but easily transformed into a site for income producing or Town sponsored special events. The Town invested just over \$7 million in creating Addison Circle Park.

**Council Agenda Item: #R4**

**SUMMARY:**

Council is requested to have a first reading of an ordinance granting a franchise to TXU Electric Delivery Company and conduct a public hearing concerning the new franchise agreement.

**FINANCIAL IMPACT:**

There is no direct impact associated with conducting the public hearing. Once approved, the new franchise agreement will provide the same revenue from TXU as the Town has been receiving in the past. For the fiscal year ended 9/30/04, the Town had received \$1,568,012 for TXU's use of public right-of-ways for the distribution of electric power.

**BACKGROUND:**

The franchise TXU had with the Town expired the end of July 2004. Although the Town had been working with TXU for the past year to negotiate a new agreement, the company's extensive corporate reorganization and restructuring delayed finalization of negotiations until this time. Due to his extensive expertise in public utility law, the Town had Clarence West develop the new franchise agreement with TXU. Mr. West had developed the Town's comprehensive right-of-way ordinance governing the actions of companies utilizing the Town's public right-of-ways to conduct business. Attached is a memo from Mr. West summarizing the major aspects of the new franchise agreement.

The Town's city charter includes a fairly rigorous process for approving franchises. There must be two readings of the ordinance with associated public hearings prior to adoption of the ordinance. Once the ordinance is adopted, it must be published once a week for four consecutive weeks. Thirty days following adoption, the new franchise takes effect.

**RECOMMENDATION:**

At this time no Council action is necessary, although staff will be recommending approval of the proposed franchise agreement.

**CLARENCE A. WEST**

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**MEMORANDUM**

**TO:** Randy Moravec, Town of Addison

**FROM:** Clarence A. West, Esq.

**RE:** **Proposed TXU Electric Franchise**

**DATE:** December 29, 2004

**Background**

By adopting Ord. No. 1 in 1953, the Town of Addison entered into a fifty (50) year electric franchise with Texas Power and Light Company, the predecessor to Texas Utilities (“TXU”) in 1953. (“1953 Electric Franchise”). The 1953 Electric Franchise was amended twice, in 1993, by Ordinance No. 093-041, increasing the franchise fee from 2% to 4% of gross revenue, and again in 2002 to conform the franchise fee to the settlement in *Denton v. TXU Electric Company, et al*, concerning the gross revenue franchise fee base and calculation of payments (see explanation below). A new electric franchise has been negotiated and is recommended for adoption.

Below are comments on the key provisions in the proposed new franchise.

**Proposed New TXU Electric Franchise**

**Term** – The term of this franchise was intended to be approximately ten years from date the last franchise terminated, and therefore is scheduled to expire on July 31, 2014. (Section 3)

**Police Power Reservation of Rights** – The franchise ensures that the City retains all of its police power rights to promulgate ordinances which regulate the rights-of-ways and the construction of facilities in its rights-of-ways through its police powers. (Section 8.1)

**Franchise Fees** – Franchise fees are to be paid consistent with the *Denton v. TXU Electric Company, et al* litigation. The franchise fee has two components, the Municipal Franchise Charge, which is the statutory per kWh charge<sup>1</sup>, plus 4% on the gross revenues from

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<sup>1</sup> Utility Code Sec. 33.008 (b), kWh charges paid to the City since January 1, 2002 and which is based on the 4% gross revenue franchise fee paid the city in 1998.

“discretionary” income TXU receives from installations, such as (a) charges to connect, disconnect, or reconnect power; (b) charges for automated meter readings; (c) other service charges; and (d) payments for non-standard construction of facilities. With each payment of franchise fees, the franchise expressly requires that a report be given with each payment, detailing the calculations upon which the franchise fee payment is based. The franchise fee provision also provides that in the event another city is paid more in franchise fees, then this franchise would be revised accordingly. (Section 5)

The franchise provides for the right of the City to have access to the records of TXU to conduct an audit. (Section 6)

**Relocation of Utility Facilities** – This franchise provides that in the event that the City requires the relocation of electric utility facilities for changes in the rights-of-ways for construction for city projects, the electric utility will move its facilities; the cost to relocate those facilities are to be reimbursed by the Town, except to the extent that applicable state or federal law provides that the electric utility is to pay for that cost. The City had requested that TXU agree to relocate its facilities at its cost for any city public works project, but they would only agree to relocate at their cost if it was a street “widening and straightening” project. As a “compromise” we adopted the language in the franchise which reserves the City’s right to have TXU relocate at TXU’s cost as allowed by state law now or in the future. It is the City’s legal position that TXU is to relocate its facilities at its cost in a broader array of city projects than just a street widening or straightening project in accordance with case law. (Section 8.3)

**Indemnity and Insurance** – This franchise allows TXU Electric to be self-insured. However, if they self-insure, they are required to provide the same type of defense representation and coverage as an insurance carrier. Detailed language was included in this franchise as TXU’s responsibility to indemnify and defend the City for liability claims. (Section 9)

**Termination and Compliance Enforcement Provisions** – The franchise expressly provides that in the event there is noncompliance with the franchise after notice is given, with an opportunity to cure, the City may terminate the franchise. (Section 12)

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE GRANTING THE RIGHT, PRIVILEGE AND FRANCHISE TO TXU ELECTRIC DELIVERY COMPANY, AN ELECTRIC TRANSMISSION AND DISTRIBUTION UTILITY, AND ITS SUCCESSORS AND ASSIGNS, TO USE THE PUBLIC RIGHTS-OF-WAY OF THE TOWN OF ADDISON, TEXAS FOR THE TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER SUBJECT TO THE CONDITIONS, RESTRICTIONS, AND LIMITATIONS OF THIS ORDINANCE; PRESCRIBING THE CONDITIONS, RESTRICTIONS AND LIMITATIONS UNDER WHICH SUCH FRANCHISE SHALL BE EXERCISED; PROVIDING COMPENSATION FOR SUCH USE; PROVIDING THE TERM OF FRANCHISE; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR THE METHOD OF ACCEPTANCE; AND PROVIDING AN EFFECTIVE DATE.**

**BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF ADDISON, TEXAS:**

**SECTION 1. GRANT OF FRANCHISE.**

That the Town of Addison, Texas (the "City"), a home rule municipality pursuant to the Texas Constitution, the laws of the State of Texas, and its Home Rule Charter (the "City Charter"), subject to the terms and conditions of this Ordinance (the "Ordinance"), does hereby grant to TXU Electric Delivery Company, an electric transmission and distribution utility and a Texas corporation (the "Electric Delivery Utility"), its successors and permitted assigns, but not its affiliates or subsidiaries, except as provided for herein, the non-exclusive right, privilege and franchise to use the Public Rights-of-Way (hereinafter defined) of the City as provided herein for the purpose of locating, installing, using, maintaining, repairing, constructing, operating, and replacing Facilities for the transmission and distribution of electric power to the City, the inhabitants thereof and persons, firms and corporations beyond the corporate limits thereof. This Franchise does not grant to the Electric Delivery Utility the right, privilege or authority to engage in any other business within the City other than the transmission and distribution of electric power in the City.

The right of the Electric Delivery Utility to use the Public Rights-of-Way as set forth above is not an exclusive right, and the City has and reserves the right in its sole discretion to make or grant a similar or dissimilar use of the Public Rights-of-Way to any other person, firm, corporation, or other business entity of whatever kind.

**SECTION 2. DEFINITIONS.**

2.1 "Franchise" shall mean this Ordinance and all rights and obligations established herein.

2.2 "Municipal Franchise Charge" shall mean the fee authorized by Section 33.008(b) of the Public Utility Regulatory Act, Title 2, Texas Utilities Code ("PURA"), currently the product of a factor of .002544 cents/kWh multiplied by each kilowatt hour of electricity delivered to each retail customer within the City of Addison's municipal boundaries, or any amended fee calculation for which the Texas Legislature or Public Utility Commission may require.

2.3 "Public Rights-of-Way" shall mean the public streets, public alleys, public highways and other public property, of and owned or controlled by the City and beneath the surface thereof as they may now or hereafter may exist and as defined herein but not including bridges or other City improvements or infrastructure in, on or over the Public Rights-of-Way.

2.4 "Facilities" shall mean electric power lines, with all necessary or desirable appurtenances (including underground conduits, poles, towers, wires, transmission lines and other structures, and telephone and communication lines for its own use), for the purpose of supplying electricity to the City, the inhabitants thereof, and persons, firms and corporations beyond the corporate limits thereof.

**SECTION 3. EFFECTIVE DATE; TERM OF FRANCHISE.**

Upon the filing with the City by the Electric Delivery Utility of the acceptance required under Section 4, this Franchise shall be in full force and effect thirty (30) days from and after the date of the final passage and approval of this Ordinance by the City in accordance with the City's Home Rule Charter until July 31, 2014.

**SECTION 4. ACCEPTANCE OF FRANCHISE.**

4.1 When this Franchise becomes effective, all previous ordinances of the City granting a franchise for the transmission and distribution of electric power purposes that were held by the Electric Delivery Utility (or its predecessor in interest) shall be automatically repealed, and shall be of no further force and effect; provided, however, that any City claim,

action or complaint that arose under or pursuant to any such previous ordinance shall continue to be governed by the provisions of that ordinance and such previous ordinance shall continue in full force and effect for such purposes. The Electric Delivery Utility shall, within thirty (30) days from the final passage of this Franchise by the City, file its written acceptance of this Franchise with the Office of the City Secretary.

4.2. This Franchise shall be rendered null and void if written acceptance of this Franchise is not filed by the Electric Delivery Utility within such thirty (30) day period.

#### **SECTION 5. FRANCHISE FEE.**

5.1 In consideration of the grant of said right, privilege and franchise by the City and as full payment for the right, privilege and franchise of using and occupying the Public Rights-of-Way, and in lieu of any and all occupation taxes, assessments, municipal charges, fees, franchise taxes, license, permit and inspection fees or charges, bonds, street or alley rentals, certain regulatory expenses, subject to sections 5.5 and 5.6 herein, as may be otherwise due and owing under Section 33.023 of PURA, as amended, or any similar or successor law, and all other taxes, charges, levies, fees and rentals of whatsoever kind and character which the City may impose or hereafter be authorized or empowered to levy and collect, excepting only the usual general or special ad valorem taxes which the City is authorized to levy and impose upon real and personal property, sales and use taxes, and special assessments for public improvements, the Electric Delivery Utility agrees to and shall pay to the City a franchise fee consisting of the following:

(a) the Municipal Franchise Charge. The first payment hereunder shall be due and payable on August 1, 2005, based on each kilowatt hour of electricity delivered by the Electric Delivery Utility during the preceding twelve-month period ended June 30, 2005, to each retail customer whose consuming facility's point of delivery is located within the City's municipal boundaries. This initial payment and the payments provided on or before August 1 of each year throughout the life of this Franchise are for the rights and privileges granted hereunder for the twelve month period succeeding the payment date (August 1 – July 31). Thereafter, on or before August 1 of each year throughout the life

of this Franchise, the Electric Delivery Utility shall pay to the City the Municipal Franchise Charge as required or authorized by Section 33.008(b) of PURA, as currently enacted and as amended during the term of this Franchise, based on the preceding twelve-month period ending June 30. The final Municipal Franchise Charge payment under this Franchise is due on or before August 1, 2013 and covers the privilege period of August 1, 2013 – July 31, 2014; and

(b) a sum equal to four percent (4%) of gross revenues received by the Electric Delivery Utility from services identified in the Electric Delivery Utility's "Tariff for Retail Delivery Service", Section 6.1.2, "Discretionary Service Charges," items DD 1 through DD24, that are for the account or benefit of an end-use retail electric consumer (the "Discretionary Service Charges Fee") within the municipal boundaries of the City.

(1) The Discretionary Service Charges Fee shall be calculated on an annual calendar year basis, i.e., from January 1 through and including December 31 of each calendar year.

(2) The Discretionary Service Charges Fee shall be paid at least once annually on or before April 30 each calendar year based on the total Discretionary Service Charges received during the preceding calendar year. The initial Discretionary Service Charge Fee amount due under this Franchise shall be paid on or before April 30, 2005 and will be based on the calendar year January 1 through December 31, 2004. The final two Discretionary Service Charge Fee amounts due under this Franchise shall be paid as follows: On or before April 30, 2014 the last full twelve month payment will be due and will be based on the calendar year January 1 through December 31, 2013, with a final Discretionary Service Charge Fee payment for the last six months under this Franchise to be paid on October 15, 2014 for the period January 1, 2014 to July 31, 2014. The obligation to make the final Discretionary Service Charge Fee payment shall survive the expiration of this Franchise.

5.2 The Electric Delivery Utility shall provide the City a statement which shall accompany each payment to the City to evidence a correct payment to the City. Electric Delivery Utility hereby stipulates that its reports may be treated by the City exactly as if they were filed

under oath. Late or delinquent payment by the Electric Delivery Utility shall accrue interest. Interest shall be calculated in accordance with the interest rate for customer deposits established by the PUC in accordance with Texas Utilities Code Section 183.003 for the time period involved.

5.3 Electric Delivery Utility Discretionary Service Charges Fee Recovery Tariff

(a) Electric Delivery Utility may file a tariff amendment(s) to provide for the recovery of the Discretionary Services Charges Fee.

(b) City agrees (i) to the extent the City acts as regulatory authority, to adopt and approve that portion of any tariff which provides for 100% recovery of the Discretionary Services Charges Fee; (ii) in the event the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of the Discretionary Services Charges Fee is an issue, the City will take an affirmative position supporting the 100% recovery of such Fee by Electric Delivery Utility and; (iii) in the event of an appeal of any such regulatory proceeding in which the City has intervened, the City will take an affirmative position in any such appeals in support of the 100% recovery of such Fee by Electric Delivery Utility.

(c) City agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such Discretionary Service Charges Fees by Electric Delivery Utility.

5.4 This Section applies only if, after the effective date of this Franchise Agreement, Electric Delivery Utility enters into a new municipal franchise agreement or renews, modifies or amends an existing municipal franchise agreement with another municipality that provides for a different method of calculation of franchise fees for use of the public rights-of-way than the calculation under 33.008(b) of PURA, which, if applied to the City, would result in a greater amount of franchise fees owed the City than under this Franchise Agreement.

(a) City shall have the option to:

(1) Have Electric Delivery Utility select, within 30 days of the City's request, any or all portions of the franchise agreement with the other municipality or

comparable provisions that, at Electric Delivery Utility 's sole discretion, must be considered in conjunction with the different method of the calculation of franchise fees included in that other franchise agreement; and

(2) Modify this franchise to include both the different method of calculation of franchise fee found in the franchise agreement with the other municipality and all of the other provisions identified by Electric Delivery Utility pursuant to Section 5.4(a). In no event shall City be able to modify the franchise to include the different method of calculation of franchise fee found in the franchise agreement with the other municipality without this franchise also being modified to include all of the other provisions identified by Electric Delivery Utility pursuant to Section 5.4(a)(1).

(b) City may not exercise the option provided in Section 5.4(a) if any of the provisions that would be included in this franchise are, in Electric Delivery Utility's sole opinion, inconsistent with or in any manner contrary to any then-current rule, regulation, ordinance, law, Code, or Charter of City.

(c) In the event of a regulatory disallowance of the increase in franchise fees paid pursuant to City's exercise of its option under this Section, then at any time after the regulatory authority's entry of an order disallowing recovery of the additional franchise fee expense in rates, Electric Delivery Utility shall have the right to cancel the modification of the franchise made pursuant to this Section, and terms of the franchise shall immediately revert to those in place prior to City's exercise of its option under this Section.

(d) Notwithstanding any other provision of this franchise, should the City exercise the option provided in Section 5.4(a), and then adopt any rule, regulation, ordinance, law, Code, or Charter of City that, in Electric Delivery Utility's sole opinion, is inconsistent with or in any manner contrary to the provisions included in this franchise pursuant to Section 5.4(a), then Electric Delivery Utility shall have the right to cancel all of the modifications to this franchise made pursuant to this Section and, effective as of the date of the City's adoption of the inconsistent provision, the terms of the franchise shall revert to those in place prior to City's exercise of its option under this Section.

(e) The provisions of this Section apply only to the amount of the franchise fee to be paid and do not apply to other franchise fee payment provisions, such as the timing of such payments. The provisions of this Section do not apply to differences in the franchise fee factor that result from the application of the methodology set out in Section 33.008(b) of PURA or any successor methodology.

5.5 Notwithstanding anything to the contrary in Section 5.1 hereof, if during the term of this Franchise the Electric Delivery Utility files general rate cases and the City incurs cumulative expenses in connection with all general rate cases filed during the period beginning June 1, 1993, and ending August 24, 2008 which would otherwise have been reimbursable by Electric Delivery Utility under Section 33.023 of PURA, as amended, or similar or successor law, in excess of Four Million and No/100 Dollars (\$4,000,000.00), then in such event, the Electric Delivery Utility shall reimburse all of the expenses incurred by the City in connection with all general rate cases filed during the period beginning June 1, 1993, and ending August 24, 2008, in excess of said \$4,000,000.00. The term "general rate case" as used in this Ordinance means a rate case initiated by the Electric Delivery Utility in which it seeks to increase its rates charged to a substantial number of its customer classes in the City and elsewhere in its system and in which the Electric Delivery Utility's overall revenues are determined in setting such rates. The City agrees to exercise reasonable best efforts, considering the facts and circumstances, to keep its expenses on average to under One Million and No/100 Dollars (\$1,000,000.00) per general rate case.

5.6 Notwithstanding the above section 5.1, City reserves its rights and does not waive any claim that Ordinance No. 093-041 requires reimbursement of general rate case expenses incurred by the City after August 24, 2008, and ending with the term of this Franchise, that would have been otherwise reimbursable by Electric Delivery Utility under Section 33.023 of PURA, as amended, or similar or successor law.

## **SECTION 6. AUDIT OF ELECTRIC DELIVERY UTILITY'S RECORDS AND REPORTS.**

6.1 Books of Account. The Electric Delivery Utility shall keep complete and accurate books of accounts and records of its business and operations under and in connection

with this Franchise. To the extent practicable, all such books of accounts and records shall be made available at the Electric Delivery Utility's principal office in Dallas, Texas.

6.2 Access by City. The City Manager or the City Manager's designee shall, upon thirty (30) days prior written notice to the Electric Delivery Utility, have the right to access and to inspect the books of accounts and records of the Electric Delivery Utility for the period then subject to audit under Section 33.008(e) of the Public Utility Regulatory Act to ascertain the correctness of any payments and reports to the City, as provided for in Section 33.008(e) of the Public Utility Regulatory Act, and as to the Electric Delivery Utility's compliance with this Franchise, and Electric Delivery Utility shall fully cooperate in making available its accounts and records and otherwise assisting in these activities.

6.3 Audits. The City Manager may cause to be conducted no more than once annually, an audit to verify the accuracy of the method used to compute the Electric Delivery Utility's Franchise Fee payments to the City and to verify that all utility accounts within the City are properly included in the computation of the Franchise Fee. Said audit shall be limited to the time period subject to audit under PURA Section 33.008(e). If either party discovers that the Electric Delivery Utility has failed to pay the entire or correct amount of compensation due, the correct amount shall be determined and the City shall be paid by the Electric Delivery Utility within thirty (30) calendar days of such determination. Any overpayment to the City through error or otherwise will, at the option of the City, either be refunded within thirty (30) days of determination OR be offset against the next payment due from Electric Delivery Utility. Such payments shall include interest as provided for in Section 5.2.

## **SECTION 7. ANNEXATION.**

This Franchise shall extend to and include any and all territory that is annexed by or otherwise added to the corporate limits of the City during the term of this Franchise. Upon receipt of written notification by the City of newly annexed areas, or other areas added to the City limits, the Electric Delivery Utility shall promptly initiate a process to reclassify affected customers into the City limits in a timely manner. The annexed areas or other areas added to the City limits will be included in future franchise payments in accordance with the effective date of the annexation.

Upon request from the City, the Electric Delivery Utility will provide documentation to verify that affected customers were appropriately reclassified and included for purposes of calculating franchise payments.

**SECTION 8. CONSTRUCTION IN THE PUBLIC RIGHTS-OF-WAY.**

8.1 In connection with any activity of, by, on behalf of, or for the benefit of the Electric Delivery Utility on or within the Public Rights-of-Way under this Franchise, the Electric Delivery Utility shall comply with the City Charter and all lawful ordinances, rules, codes, laws, standards, policies, and regulations of the City (including, without limitation, the right-of-way construction, permitting, and relocation provisions of the Code of Ordinances) as now existing or as the same may be adopted, supplemented, amended or revised (together, "City Standards"). To the extent any City Standards conflict with this Franchise, the requirements of this Franchise shall govern. The Electric Delivery Utility shall also comply with any and all applicable laws, standards, policies, regulations, and rules, whether federal or state. This Franchise shall in no way affect or impair the rights, obligations or remedies of the parties under the Texas Public Utility Regulatory Act, or other State or Federal Law. Nothing herein shall be deemed a waiver, release or relinquishment of either party's right to contest, appeal, or file suit with respect to any action or decision of the other party, including, without limitation, ordinances adopted by the City, that it believes is contrary to any federal, state or local law or regulation. To the extent practicable City shall provide Electric Delivery Utility with reasonable notice and opportunity to review and comment upon any new or revised City Standards that impact Electric Delivery Utility's use of the Public Rights-of-Way.

8.2 Electric Delivery Utility shall locate, install, use, maintain, repair, construct, operate, and replace its Facilities to minimize interference with traffic (motor vehicle, pedestrian, or otherwise) and shall perform work in a timely and expeditious manner, and shall promptly clean up and restore to the approximate condition at the time disturbed, all Public Rights-of-Way that it may disturb to the satisfaction of the City consistent with applicable City Standards. With respect to Electric Delivery Utility Facilities not located in public streets, alleys or highways, to the extent the Electric Delivery Utility is authorized to locate such Facilities in Public Rights-of-Way other than public streets, alleys, or highways, the location of Electric Delivery Utility's

Facilities shall be subject to approval by the City Manager prior to construction or installation; provided however, said approval shall not be unreasonably withheld. When Electric Delivery Utility makes, or causes to be made, excavations, or places, or causes to be placed, obstructions in any Public Rights-of-Way, Electric Delivery Utility shall place, erect, and maintain barriers and lights to identify the location of such excavations or obstructions, all in accordance with the most recent edition of the Uniform Manual on Traffic Control Devices and applicable City Standards. In determining the location of Electric Delivery Utility's Facilities within the City, the Electric Delivery Utility shall not interfere with then existing above-ground or underground structures, equipment and facilities of the City, other utility franchisees (which have received a franchise from the City to use the Public Rights-of-Way), and other persons (whether a natural person or business entity of any kind) who have received the City's consent to place and locate equipment and facilities within the Public Rights-of-Way (such other utility franchisees and other persons being "Public Right-of-Way Users"). The City will seek, after the effective date of this Franchise, to include in its agreements with other utilities and users of the Public Rights-of-way provisions requiring that such users shall not interfere with the Electric Delivery Utility Facilities. The Company recognizes that it is the responsibility of other utility franchisees and Public Rights-of- Way Users to ensure that their activities do not interfere or damage the Electric Delivery Utility facilities and will pursue any damage claims directly with the responsible Public Rights-of-Way Users. The Electric Delivery Utility shall be responsible to repair at its sole cost all damage caused by Electric Delivery Utility activities pursuant to this Franchise. If any such damage poses a threat to the health, safety or welfare of the public or residents, Electric Delivery Utility, upon receipt of notice, shall take prompt actions to mitigate the health, safety or welfare concerns and shall promptly initiate repairs. If the City requests the Electric Delivery Utility to initiate repairs and the Electric Delivery Utility fails to initiate and timely complete repairs within a reasonable time after the City's request, after notice to the Electric Delivery Utility of the City's intent, the City may repair or cause repairs to be made at the Electric Delivery Utility's expense, and Electric Delivery Utility shall promptly pay to the City the actual cost incurred by the City in making or causing such repairs. The Electric Delivery Utility shall require its contractors working in the Public Rights-of-Way to hold all necessary contracting licenses and permits required by the City, or otherwise required by any law, rule, or regulation, for such business. Except as otherwise provided for herein, in determining the location of the facilities of

the City, the City shall minimize interference with then existing Facilities of the Electric Delivery Utility. In the event of a conflict between the location of the proposed Facilities of the Electric Delivery Utility and the location of the existing facilities of the City or other Public Right-of-Way Users within Public Rights-of-Way that cannot otherwise be resolved, the City or an authorized agent of the City shall use its reasonable efforts and attempt to resolve the conflict and determine the location of the respective facilities, provided that if the City determines in such instance that proposed Facilities of the Electric Delivery Utility must be relocated from that proposed by the Electric Delivery Utility, the City will designate a reasonable alternate location within the Public Rights-of-Way for Electric Delivery Utility. Except in an emergency, the Electric Delivery Utility shall be required to obtain street cutting, street excavation or other special permits related to excavations in Public Rights-of-Way in connection with the Electric Delivery Utility's operations in Public Rights-of-Way in accordance with City Standards. Under no circumstances, however, shall the Electric Delivery Utility be required to pay for such permitting or be required to post bonds.

8.3 The City reserves the right for any reason whatsoever to use, change the grade of, construct, install, repair, alter, maintain, relocate, modify, open, close, reduce, or widen (collectively "change") any Public Right-of-Way, within the present or future limits of the City. At the City's request, the Electric Delivery Utility shall relocate or remove its Facilities in order to accommodate such change of any Public Right-of-Way. If the Electric Delivery Utility is required by the City to remove or relocate its Facilities, Electric Delivery Utility shall be entitled to reimbursement from the City of the cost and expense of such removal or relocation except to the extent PURA Section 37.101(c) or other state or federal law requires or permits the City to require, the relocation to be done at Electric Delivery Utility's expense.

8.4 If the City abandons any Public Right-of-Way in which the Electric Delivery Utility has Facilities, such abandonment shall be conditioned on the Electric Delivery Utility's right to maintain its use of the former Public Right-of-Way and on the obligation of the party to whom the Public Right-of-Way is abandoned to reimburse Electric Delivery Utility for all removal or relocation expenses if Electric Delivery Utility agrees to the removal or relocation of its facilities following abandonment of the Public Right-of-Way. If the party to whom the Public Right-of-Way is abandoned requests Electric Delivery Utility to remove or relocate its facilities and Electric Delivery Utility agrees to such removal or relocation, such removal or relocation

shall be done within a reasonable time at the expense of the party requesting the removal or relocation. If relocation cannot practically be made to another Public Right-of-Way, the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.

8.5 The Electric Delivery Utility shall install, construct, repair, maintain and replace its Facilities in a good and workmanlike manner.

8.6 City Inspection. The City retains the right to make visual, non-invasive inspections of the Electric Delivery Utility's Facilities.

8.7 Temporary Removal of Wires. The Electric Delivery Utility on the request of any person shall remove or raise or lower its wires within the City temporarily to permit the moving of houses or other bulky structures. The total expense of such temporary removal, raising or lowering of wires shall be paid by the benefited party or parties, and Electric Delivery Utility may require such full payment in advance. Electric Delivery Utility shall be given not less than thirty (30) days advance notice to arrange for such temporary wire changes. The clearance of wires above ground or rails within the City and also underground work shall conform to the basic standards of the National Electrical Safety Code.

## **SECTION 9. INDEMNITY AND INSURANCE.**

**9.1 (A) IN CONSIDERATION OF THE GRANTING OF THIS FRANCHISE, ELECTRIC DELIVERY UTILITY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, 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 ELECTRIC DELIVERY UTILITY'S PERFORMANCE OF THIS FRANCHISE, 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.**

**(B) WITH RESPECT TO THE ELECTRIC DELIVERY UTILITY'S INDEMNITY OBLIGATION SET FORTH IN SUBSECTION (A), ELECTRIC DELIVERY UTILITY 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) WITH RESPECT TO THE ELECTRIC DELIVERY UTILITY'S INDEMNITY OBLIGATION SET FORTH IN SUBSECTION (A), IF AN INDEMNITEE SUFFERS DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS FRANCHISE THAT ARE CAUSED BY THE CONCURRENT NEGLIGENCE, GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES RESULT IN EXPOSURE TO STRICT LIABILITY, OF BOTH THE ELECTRIC DELIVERY UTILITY AND THE INDEMNITEE, THE ELECTRIC DELIVERY UTILITY'S INDEMNITY OBLIGATION SET FORTH IN SUBSECTION (A) WILL BE LIMITED TO A FRACTION OF THE TOTAL DAMAGES EQUIVALENT TO THE ELECTRIC DELIVERY UTILITY'S OWN PERCENTAGE OF RESPONSIBILITY.**

**(D) WITH RESPECT TO THE ELECTRIC DELIVERY UTILITY'S DUTY TO DEFEND SET FORTH HEREIN IN SUBSECTION (A), THE ELECTRIC DELIVERY UTILITY SHALL HAVE THE RIGHT TO SELECT DEFENSE COUNSEL, SUBJECT TO CITY'S APPROVAL, WHICH WILL NOT BE UNREASONABLY WITHHELD. ELECTRIC DELIVERY UTILITY SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF RECEIPT OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS FRANCHISE AGREEMENT. IF ELECTRIC DELIVERY UTILITY FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND ELECTRIC DELIVERY UTILITY SHALL BE LIABLE FOR ALL REASONABLE AND NECESSARY DEFENSE COSTS INCURRED BY CITY, EXCEPT AS LIMITED IN SUBSECTIONS (B) AND (C) OF THIS SECTION.**

9.2 Electric Delivery Utility may self-insure to the extent permitted by applicable law under any plan of self-insurance, maintained in accordance with sound accounting practices, against risks and obligations undertaken pursuant to this franchise and shall not be required to maintain insurance; provided that Electric Delivery Utility furnishes the City satisfactory evidence of the existence of an insurance reserve adequate for the risks covered by such plan of self-insurance. Electric Delivery Utility shall provide the City with evidence of the form and basis for insurance coverage or self insurance, as applicable, within thirty (30) days of the effective date of this franchise ordinance. Provided however that the Electric Delivery Utility's self-insurance shall provide to the City, its officers, employees and agents, with the same defense as would be provided by an insurance carrier and with substantially the same coverage as required by other users of the Public Right-of-Way in the City as set forth in Chapter 70 of the Code of Ordinances, currently or as it may be amended (or any successor ordinance or

regulation). Should Electric Delivery Utility elect to change the form or basis of insurance during the term of this franchise, Electric Delivery Utility shall notify the City. Electric Delivery Utility shall provide documentation necessary for review by the City of the changed circumstances of Electric Delivery Utility.

#### **SECTION 10. TRANSFERS AND ASSIGNMENT.**

Prior to assignment, transfer, pledge or other conveyance of its rights, duties and obligations under this franchise, except to an affiliated entity, Electric Delivery Utility shall obtain prior written consent of the governing body of the City, which consent will not be unreasonably withheld or delayed. For purposes hereof, an “affiliated entity” means Electric Delivery Utility’s corporate parent owning more than 50% of the voting shares of Electric Delivery Utility, a subsidiary of Electric Delivery Utility’s corporate parent (provided the corporate parent owns more than 50% of the voting shares of the subsidiary), a partnership or joint venture in which Electric Delivery Utility owns a controlling interest of more than 50%, or a subsidiary entity of Electric Delivery Utility in which Electric Delivery Utility owns a controlling interest of more than 50%. Electric Delivery Utility shall provide notice of any assignment, transfer, pledge or conveyance to an affiliated entity at the same time it provides written notice to the Public Utility Commission. Any assignment, transfer, pledge or other conveyance, whether to an affiliated entity or otherwise, shall require the assignee or transferee to perform all of the terms and conditions of this franchise.

#### **SECTION 12. FORFEITURE AND TERMINATION.**

12.1 The City shall notify the Electric Delivery Utility, in writing, of an alleged failure of the Electric Delivery Utility to comply with a material provision of this Franchise, which notice shall specify the alleged failure with reasonable particularity. The Electric Delivery Utility shall, upon its receipt of such notice, either:

- (a) diligently cure such failure, but in any event within not more than thirty (30) days after such receipt; or
- (b) if such failure cannot with due diligence be cured within the said thirty (30) day period, then cure such failure within an additional reasonable period of time so long as

the Electric Delivery Utility has submitted to the City in writing its plan (including, without limitation, the time period) to cure such failure and has commenced curative action within the said thirty (30) day period, and thereafter is diligently attempting to cure the failure; or

(c) if the Electric Delivery Utility reasonably believes that the failure specified in the notice from the City is not a failure of a material provision of this Franchise, submit to the City within ten (10) days after its receipt of the notice the Electric Delivery Utility's written response specifying facts and presenting arguments in refutation or defense of such alleged failure (the "Electric Delivery Utility's Defense").

12.2 In the event that the Electric Delivery Utility does not comply with subparagraphs (a), (b), or (c) above, or if the Electric Delivery Utility does comply with subparagraph (c) above but the City, after its review of the Electric Delivery Utility's Defense, nevertheless believes that the Electric Delivery Utility has failed to comply with a material provision of this Franchise, the City may declare this an Uncured Event of Default, which shall entitle City to exercise the remedies provided for in Section 12.3. Notice of such declaration shall be given to the Electric Delivery Utility prior to the City's exercise of any such remedies.

12.3 Not sooner than seven (7) days following the City's declaration of an Uncured Event of Default and the giving of notice of such declaration to the Electric Delivery Utility, the City shall be entitled to exercise any and/or all of the following remedies:

- (a) The commencement of an action against Electric Delivery Utility at law for monetary damages.
- (b) The commencement of an action in equity seeking injunctive relief or the specific performance of any of the provisions, that as a matter of equity, are specifically enforceable.
- (c) The commencement of any other action which may be available to the City.
- (d) The termination of this Franchise in accordance with the provisions of Section 12.4.

12.4 In accordance with the provisions of Section 12.3(d), this Franchise Agreement may be terminated upon at least thirty business day's prior written notice to Electric Delivery Utility. City shall notify Electric Delivery Utility in writing at least fifteen (15) business days in advance of the City Council meeting at which the question of forfeiture or termination shall be considered, and Electric Delivery Utility shall have the right to appear before the City Council in person or by counsel and raise any objections or defenses Electric Delivery Utility may have that are relevant to the proposed forfeiture or termination. The final decision of the City Council may be appealed to any court or regulatory authority having jurisdiction within thirty days following the effective date of such final decision. Upon timely appeal by Electric Delivery Utility of the City Council's decision terminating the Franchise, the effective date of such termination shall be either when such appeal is withdrawn or a court or administrative order upholding the termination becomes final and unappealable. Until the termination becomes effective the provisions of this Franchise shall remain in effect for all purposes. The City recognizes Electric Delivery Utility's right and obligation to provide service in accordance with the Certificate of Convenience and Necessity authorized by the Public Utility Commission in accordance with the Texas Utilities Code.

**SECTION 13. NONEXCLUSIVE FRANCHISE.**

Nothing contained in this Franchise shall ever be construed as conferring upon the Electric Delivery Utility any exclusive rights or privileges of any nature whatsoever.

**SECTION 14. ENTIRE AGREEMENT.**

This Franchise contains all of the agreements of the parties with respect to the subject matter covered in this Franchise, and no prior or contemporaneous agreements or understandings pertaining to any such matters shall be effective for any purpose, with the exception of the Compromise Settlement Release agreement signed by the City on October 24, 2002.

**SECTION 15. SEVERABILITY.**

If any section, subsection, sentence, clause, phrase, or portion of this Franchise is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

**SECTION 16. NON-WAIVER; RIGHTS CUMULATIVE; SURVIVING RIGHTS, REMEDIES, AND OBLIGATIONS.**

Failure of the City to declare, or any delay by the City in taking any action in connection with, any breach or default of this Franchise by the Electric Delivery Utility immediately upon the occurrence thereof shall not constitute or be construed to be a waiver by the City of such breach or default, but the City shall have the right to declare any such breach or default at any time. Failure of the City to declare one breach or default of the Electric Delivery Utility does not act as a waiver of the City's rights to declare another breach or default. By entering into this ordinance, City does not waive any claim which the City may have under the Prior Electric Franchise, except to the extent any such claims were settled in that certain Compromise Settlement Release agreement signed by the City on October 24, 2002. Except as otherwise provided for herein, the rights and remedies provided by this Franchise are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law statute, ordinance, or otherwise.

**SECTION 17. GOVERNING LAW.**

This Ordinance shall be governed by and construed in accordance with the laws of the State of Texas and the City Charter; 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 interpretation, validity and enforcement of this Ordinance.

**SECTION 18. NOTICES.**

Any notice required to be given from one party to the other party under this Franchise shall be in writing and shall be deemed to have been given and received if (i) delivered in person

to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America, proper postage prepaid, and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

<u>To the City:</u>  Town of Addison, Texas 5300 Belt Line Road Dallas, Texas 75254 Attn: City Manager	<u>To Electric Delivery Utility:</u>  TXU Electric Delivery Company <u>500 N. Akard Street, Suite 13-062</u> <u>Dallas, TX 75201</u> Attn: Manager Municipal Regulatory Affairs
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**SECTION 19. PARAGRAPH HEADINGS; CONSTRUCTION.**

The paragraph headings contained in this Franchise are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the preparation of this Ordinance and this Ordinance shall not be construed either more or less strongly against or for either party.

**SECTION 20. THIRD PARTIES.**

This Franchise and each of its provisions are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

First reading of this Ordinance by the City Council of the Town of Addison, Texas occurred on the \_\_\_\_ day of \_\_\_\_\_, 2004.

Second reading of this Ordinance by the City Council of the Town of Addison, Texas occurred on the \_\_\_\_ day of \_\_\_\_\_, 2004.

**DULY PASSED AND APPROVED** by the City Council of the City of Addison, Texas on the \_\_\_\_ day of \_\_\_\_\_, 2004.

**APPROVED:**

\_\_\_\_\_  
**MAYOR**

**APPROVED AS TO FORM:**

**CORRECTLY ENROLLED:**

\_\_\_\_\_  
**CITY ATTORNEY**

\_\_\_\_\_  
**CITY SECRETARY**

**Council Agenda Item: #R5**

**SUMMARY:**

Staff recommends that the Council reject the current fountain maintenance bids and rebid the service in February 2005.

**FINANCIAL IMPACT:**

Budgeted Amount: **Total Budget - \$75,000**

Cost: **N/A**

**BACKGROUND:**

The scope of work under this annual contract consists of weekly cleaning of fountains to maintain proper water chemistry and maintenance of pumping/filtering systems to keep display fountains and waterfalls functioning smoothly. The fountains maintained under this contract are as follows:

**Addison Circle Park** – Interactive Fountain and Display Fountain;

**Quorum Park** – Two Display Fountains;

**Bosque Park** – One Display Fountain;

**Winnwood Park/Gazebo** – One Waterfall and One Display Fountain;

**Town Hall and Finance Building** – One Waterfall and One Display Fountain;

**Midway Meadows** – One Display Fountain;

**Les Lacs Lake** – Two Waterfalls and One Display Fountain.

The attached memo from Shanna Sims summarizes the background on this bid. Staff completed an analysis on providing this service by hiring an in-house employee. Based on the estimated cost to do this, we continue to believe the Town is better off contracting the work.

The revised insurance requirements should provide an opportunity to get more competitive bids within the budget range.

**RECOMMENDATION:**

Staff recommends rejecting the bids and rebidding the service.

# Memo

To: Slade Strickland, Director of Parks and Recreation  
From: Shanna Sims, Budget and Procurement Manager  
Copy: Randy Moravec, Finance Director  
Bryan Langley, Assistant Finance Director  
Date: January 13, 2005  
Re: Bid 05-05 Fountain Maintenance

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I wanted to provide some additional information regarding Bid 05-05 Fountain Maintenance and staff's recommendation to reject this current bid and rebid this service in February.

The City Council awarded a bid for fountain maintenance on September 14, 2004 to DCC, Inc. Unfortunately, DCC, Inc. could not honor the contract due to insurance issues. The City Council rescinded this bid award at the November 9, 2004 City Council meeting.

Staff released a bid for fountain maintenance in November 2004. Parks and Finance staff both made significant efforts to contact potential bidders and encourage them to submit bids. Unfortunately, two bidders decided not to submit bids at the last minute and there were only two bids submitted. The low bidder, Palm Springs Pool Services, submitted a bid that did not have Workers Compensation insurance as specified in the bid document. The other bid was much greater than low bid, thus staff is recommending rejecting both bids.

On January 5, 2005, Finance staff met with the Town of Addison's insurance consultant, Bob Lazarus with RWL & Associates. Mr. Lazarus reviewed our current insurance requirements and recommended that for non-construction projects, Workers Compensation insurance not be required. Vendors for non-construction projects will continue to be required to carry commercial general liability and commercial liability insurance. Finance staff will begin incorporating these revised insurance requirements into bid documents for non-construction projects beginning in mid-January.

Parks staff has indicated a desire to release a bid for fountain maintenance in late January with the revised insurance requirements. I feel that we will have a better chance at receiving more quality bids with this revised bid document due to not having to require vendors to carry Workers Compensation insurance. In addition, Parks and Finance staff are willing to proactively contact and inform possible bidders of these revised insurance requirements.

I hope this information is helpful. If I can provide any additional information to you concerning this bid, please let me know.

**Fountain Maintenance  
Bid NO 05-05**

**DUE: December 20, 2004**

**2:00 PM**

<b>BIDDER</b>	<b>SIGNED</b>	<b>Bid Bond</b>	<b>Bid Amount</b>	<b>Labor for Misc.Repairs</b>	<b>Labor for Add.Site Visits</b>	<b>% for Parts - Repairs</b>
Palm Springs Pool Services	Y	Y	\$59,989.00	\$55.00/hour	\$35.00/hour	40%
Old Faithful Fountains Inc.	Y	Y	\$159,973.00	\$70.00/hour	\$60.00/hour	25%

*Shanna N. Sims*

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Shanna N. Sims, Budget and Procurement Manager

*Corey Gayden*

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Witness

**Council Agenda Item: #R6**

**SUMMARY:**

This item is for the award of a bid to Thielsch Engineering, Inc. for the construction of a new Fuel Farm at Addison Airport.

**FINANCIAL IMPACT:**

Council authorized a \$4.4 million bond issue in October 2004 that was to be allocated as \$2.4 million for the new Fuel Farm, and \$2.0 million for drainage improvements. Award of this bid will use the great majority of the \$4.4 million bond issue funds for the new fuel farm and the cleanup of the old fuel farm.

**BACKGROUND:**

In January 2004, the Town contracted with Washington Group International for the design of a new Fuel Farm. The preliminary construction cost estimate at that time (without the benefit of any plans or specs) was \$1.27 million.

In February 2004, another estimate was made that included fire rated tanks and a roof canopy, for an estimated construction cost of \$1.6 million. At that time, the cost of removal of the tanks at the old farm, soil remediation and closure of the site was estimated to be an additional \$306,500.

In July 2004, the construction cost estimate for the fuel farm was raised to \$1.932 million with the increase attributed to a 2-hour fire rated structure for the roof canopy, and the increased cost of steel for the fuel storage tanks. The estimate included a 10% contingency. Plans were about 40% complete. There was no change in the old fuel farm site closure cost estimate. At this point, construction and cleanup costs totaled \$2.238 million.

On September 1, 2004, a "95% Construction Estimate" was received for \$1.939 million that did not include any contingency. On September 30, 2004, we received an update of the "95% Construction Estimate" for an amount of \$2.69 million. This estimate included a contingency of \$350,900. At this point we were concerned with our budget, but figured that if the bids came in close to the Engineer's estimate without the contingency, and if we did not build the canopy (Engineer's estimate of \$355,500), we could receive a bid of about \$1.984 million and be within budget.

A plus B bids were received for the new Fuel Farm on November 30, 2004. A copy of the bid tabulation is attached. The A or AA part of the bid is the amount of money the contractor has bid to build the project. (We asked for a base bid [A] and an alternate bid [AA]). The B or BA part of the bid is the number of days the contractor thinks it will take him to build the project, multiplied by the time value of a day, which we set at \$3,000 per day. The low bidder bid 210 calendar days to build the project alternate that we

recommend. The total (AA+BA) of \$4,515,000 that you see on the bid tab is not the cost of the project. The Total (AA+BA) column is the column we use only for the basis of award under the A+B bidding system. The contract to be awarded will be for \$3,885,000.

The bid included a “base bid” which was the fuel farm without a fabric canopy roof, and an “alternate bid” which was the fuel farm with a fabric canopy roof. Thielsch Engineering was the low bidder with a \$3.685 million base bid and a \$3.885 million alternate bid. Since these bids were significantly higher than the Engineer’s estimate, staff became concerned. The question to be answered was, was the bid too high or the Engineer’s estimate too low?

Staff requested that Washington Group International (WGI) revisit their construction cost estimate to try to determine the true cost of construction of the new Fuel Farm. WGI performed an independent estimate (performed by the company’s estimating group rather than the project manager) and estimated the construction cost, with fabric canopy, to be \$4.097 million. On this basis, Thielsch Engineering’s bid is 5.18% below the revised Engineer’s estimate, and earlier Engineer estimates were just too low.

Staff believes the alternate bid should be awarded that includes the fabric canopy roof. The roof will cost an additional \$200,000 but will provide the following benefits:

1. The roof will protect the tanks, meters, valves and electronic equipment from the sun and weather.
2. The roof will keep rainwater out of the tank containment area. This will minimize the operation of the valves to drain the containment areas into the oil water separator.
3. Aesthetically, the fuel farm will be much more pleasing to the eye. Drawings that show the look are attached.

WGI has checked the qualifications, experience and reputation of Thielsch Engineering, and based upon their review, recommends award.

Since this is an A+B bid there is the possibility and probability that the contractor will earn a bonus if he finishes sooner than the amount of days he has bid. Staff believes the maximum amount of bonus probable would be finishing 30 days earlier than bid, for a maximum bonus amount of \$90,000.

**RECOMMENDATION:**

Staff recommends that Council authorize the City Manager to enter into a contract with Thielsch Engineering for the construction of a new Bulk Fuel Storage and Dispensing System (Fuel Farm) in the lump sum amount of \$3,885,000.00, their alternate bid, which includes a fabric canopy roof. Staff further recommends Council authorize a total budget of \$3,975,000.00 for this project that includes \$90,000 for a possible incentive bonus.

Bulk Fuel Storage & Dispensing System Addison Airport  
 BID NO 05-02

Bid Opening: November 30, 2004  
 2:00 PM

Bidder	Signed	Bid Bond	Addendum 1	Addendum 2	Addendum 3	Lump Sum Base Bid (A)	Calendar Days X \$3000 (B)	Total (A+B)	Lump Sum w/Alternative (AA)	Calendar Days w/Alternative X \$3000 (BA)	Total (AA+BA)
Thielsch Engineering	Y	Y	Y	Y	Y	\$3,685,000.00	\$588,000.00	\$4,273,000.00	\$3,885,000.00	\$630,000.00	\$4,515,000.00
Talon/Kinley Joint Venture	Y	Y	Y	Y	Y	\$4,226,000.00	\$840,000.00	\$5,066,000.00	\$4,822,000.00	\$960,000.00	\$5,782,000.00
AUI Contractors, L.P.	Y	Y	Y	Y	Y	\$5,501,832.00	\$900,000.00	\$6,401,832.00	\$6,008,883.00	\$990,000.00	\$6,998,883.00

*Minok Suh*

Minok Suh, Purchasing Coordinator

*Corey Gayden*

Corey Gayden, Witness





**Council Agenda Item: #R7**

**SUMMARY:**

Staff requests approval of an ordinance amending Chapter 2, Article VI, Section 2 – 303 of the Code of Ordinances regarding the disposal of unclaimed or surplus property.

**FINANCIAL IMPACT:**

Approval of this ordinance should save staff time in preparing items for auction that are obsolete and that have little or no auction value.

**BACKGROUND:**

Chapter 2, Article VI, of the Code of Ordinances establishes the procedures for disposal of unclaimed or surplus property. The Town of Addison currently holds an on-line auction twice a year with the assistance of Rene Bates Auctioneer. The most recent auction was held in November 2004 with 31 items. Proceeds from this auction were approximately \$100,000. Rene Bates Auctioneer charges a commission of 5% on all auction sales.

The current ordinance states that all unclaimed, surplus, obsolete, worn out and useless property shall be sold by public auction. Currently, there are items that are no longer needed by the town (i.e. broken folding chair) and will not receive any significant bid if included as an item in an on-line auction. In addition, staff time is needed to relocate these items, prepare these items for auction and coordinate with winning bidders after the auction is completed. In the case of the broken folding chair, the expense of auctioning this item would exceed the revenue generated by auctioning this item.

Staff is recommending that the director of finance have the ability to dispose of surplus property if: 1.) the item is not considered to be in good working order and 2) has a replacement value of less than \$100.

Other changes in the proposed ordinance include:

- Changing the authority for the disposal of unclaimed or surplus property from the director of purchasing to the director of finance
- Requiring that records of items auctioned or disposed of be maintained per the Town of Addison's record retention schedule
- Changing the language of the ordinance to be gender neutral.
- Clarifying section f of the ordinance regarding real estate property

**RECOMMENDATION:**

Staff recommends approval of the attached ordinance.

TOWN OF ADDISON, TEXAS

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING CHAPTER 2 (ADMINISTRATION), ARTICLE VI (DISPOSAL OF UNCLAIMED OR SURPLUS PROPERTY) BY AMENDING SECTION 2-303 (METHOD OF SALE); PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, in accordance with State law the City Council of the Town of Addison, Texas (the “City”) has heretofore adopted a policy regarding the disposal of unclaimed or surplus property, and

**WHEREAS**, the said policy is set for in Chapter 2, Article VI, Section 2-303; and

**WHEREAS**, the City Council has reviewed this policy and desire to amend it as set forth herein:

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

**Section 1. Incorporation of Premises.** The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

**Section 2. Amendment.** Chapter 2 (Administration) of the Code of Ordinance of the Town of Addison, Texas is hereby amended in the following particular, and all other chapters, articles, section, subsections, paragraphs and words are not amended but are ratified and confirmed.

- a. The director of finance purchasing shall sell unclaimed property and surplus, ~~obsolete and worn out or useless~~ property by public auction or by accepting sealed bids, to the highest bidders. The property may be auctioned; each piece individually or in assembled lots, whichever the director of finance purchasing determines will bring the best prices obtainable, except for motor vehicles, which must be sold individually. If in the opinion of the director of finance purchasing the highest bid on a particular item is not sufficient, he/she may refuse the bid and hold the item for sale at another time. The director of finance may dispose of surplus property if the property in question is not considered in good working order and has a replacement value of less than \$100.00. Records will be kept regarding the items that are both auctioned and disposed of on an annual basis. These records will be maintained as stipulated in the Town’s record retention schedule.

- b. If the director of finance purchasing finds that it would be in the best interest of the town to sell the property in auction conducted by another city, it shall be permissible for other municipalities to sell unclaimed or surplus property of which the town has an ownership claim or interest but which is under the temporary care, authority, custody or control of such municipality, provided the proceeds from such sale are remitted to the town.
- c. If the director of finance purchasing receives a group of ten or more identical items for sale, he/she may, at his/her discretion, sell a minimum of three of these items at public auction. The director of finance purchasing may then advertise in the official newspaper of the town and sell the remaining items at a price not less than the average price obtained for auction item.
- d. When the sale is to be by acceptance of sealed bids, the bids must remain in the office of the city secretary for public inspection at least 48 hours after the bids are opened.
- e. The director of finance purchasing shall accept cash or personal or business checks if proper identification is shown, for the sale of item by any method of sale. The director of finance purchasing may accept a bank credit card, which the Town honors pursuant to contractual arrangements with a bank.
- f. If the highest bid for real estate property is \$10,000.00 or less, the property may be sold to the highest bidder by the director of finance purchasing subject to the approval of the city manager. If the highest bid for real estate property is more than \$10,000.00, the sale to the highest bidder must be confirmed by the city council.

**Section 3. Savings.** This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those Ordinances are in direct conflict with the provisions of this Ordinance.

**Section 4. Severability.** The sections, paragraphs, sentences, phrases, clauses and words of this Ordinance are severable, and if any section, paragraph, sentence, phrase, clause or word in this Ordinance or application thereof to any person or circumstance is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portion of this Ordinance, and the City Council hereby declares that it would have passed such remaining portion of this Ordinance despite such invalidity, which remaining portion shall remain in full force and effect.

**Section 5. Effective Date.** This Ordinance shall become effective from and after its date of passage and publication as provided by law.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this  
\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
R. Scott Wheeler, Mayor

ATTEST:

By: \_\_\_\_\_  
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Ken Dippel, City Attorney

THERE ARE NO  
ATTACHMENTS  
FOR ITEM #ES-1