

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

SEPTEMBER 13, 2005

7:30 P.M.

COUNCIL CHAMBERS

5300 BELT LINE ROAD

REGULAR SESSION

Item #R1 - Consideration of Old Business.

Item #R2 - Consent Agenda.

CONSENT AGENDA

- #2a - Approval of the Minutes for the August 23, 2005 Council Meeting.
-
- #2b - Approval of final payment to Jim Bowman Construction in the amount of \$7,900 for completion of the Stone Cottage parking lot.
-
- #2c - Approval of final payment to Abstract Construction in the amount of \$25,000 for completion of construction of Addison Circle Park.
-
- #2d - Consideration and approval of a Resolution to award bid to Craig Olden, Inc., in the amount of \$37,800 for the Lake Forest Drive Culvert Repair project.
-
- #2e - Consideration and approval to authorize the City Manager to enter into a contract with Gary Daigle CLU, RHU, in an amount not to exceed \$10,000 for consulting services relating to the Town's employee medical and dental insurance plans for 2006.
-

Item #R3 -

PUBLIC HEARING regarding, and consideration of approval of, an Ordinance approving an amendment to an existing Special Use Permit for a restaurant, and an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption, located at 4980 Belt Line Road, Suite 150, on application from Jimmy John's Sandwiches, represented by Mr. Brent Herbeck.

Attachments:

1. Docket Map
2. Staff Report
3. Plans

Administrative Recommendation:

Administration recommends approval subject to no conditions.

Voting Aye: Bernstein, Chafin, Daseke, Doepfner, Jandura,
Meier, Wood.

Voting Nay: None

Absent: None

Item #R4 -

PUBLIC HEARING regarding, and consideration of approval of, an Ordinance approving a Special Use Permit for a Convenience Store in a Commercial-1 District, located at 15080 Beltwood Parkway East, #102, on application from Ms. Claudia R. Merisio.

Attachments:

1. Docket Map
2. Staff Report
3. Plans

Administrative Recommendation:

Administration recommends approval subject to no conditions.

Voting Aye: Bernstein, Chafin, Daseke, Doepfner, Jandura,
Meier, Wood.

Voting Nay: None

Absent: None

Item #R5 - Consideration and approval of an Ordinance granting meritorious exception to Sec. 62-183, Number of Signs, Sec. 62-185, Specifications, and Sec. 62-286, Interchangeable Copy for Two Rows Restaurant located at 17225 Dallas Parkway.

Attachments:

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

Administrative Recommendation:

Administration recommends denial.

Item #R6 - Consideration and approval of an Ordinance granting meritorious exception to Sec. 62-162, Premises sign and Sec. 62-163, Area of the sign ordinance for Wachovia Bank located at 5080 Spectrum Drive.

Attachments:

5. Staff Report
6. Application
7. Memorandum from Lynn Chandler
8. Plans

Administrative Recommendation:

Administration recommends denial.

Item #R7 - Presentation of 2006 Addison calendar concepts.

Item #R8 - Consideration and approval of a Resolution authorizing the City Manager to enter into an agreement for production of the 2006 Addison calendar in an amount not to exceed \$80,000.

Attachment:

1. Council Agenda Item Overview

Administrative Recommendation:

Administration recommends approval.

Item #R9 - Presentation by the Addison Arbor Foundation Citizens Advisory Committee to update the Council on Committee projects.

Attachment:

1. Council Agenda Item Overview
-

Item #R10 - Presentation by the Addison Arbor Foundation Board of Directors regarding amendments to the Addison Arbor Foundation Bylaws establishing Citizen Advisory Committee member term limits, and establishing policy and procedures for appointing new Citizen Advisory Committee members.

Attachments:

1. Council Agenda Item Overview
 2. Articles of Incorporation and Bylaws
-

Item #R11 - Consideration and approval of a Resolution adopting the implementation of the National Incident Management System (NIMS).

Attachments:

1. Council Agenda Item Overview
2. Resolution

Administrative Recommendation:

Administration recommends approval.

Item #R12 - Consideration and approval of a supplemental agreement to the Engineering Services Agreement with HNTB Corporation, in the amount not to exceed \$123,980 for additional design and inspection services on the Arapaho Road project, from Surveyor Boulevard to Addison Road.

Attachment:

1. Council Agenda Item Overview

Administrative Recommendation:

Administration recommends approval.

Item #R13 - Consideration and approval of Change Order No. 4 in the amount of \$99,560.54 for the construction of Arapaho Road, Phase III, from Surveyor Blvd. to Addison Road.

Attachment:

1. Council Agenda Item Overview
2. Change Order No. 4

Administrative Recommendation:

Administration recommends approval.

Item #R14 - Discussion and consideration of a request from Turbine Aircraft Services, Inc. tenant pursuant to a ground lease of certain property located at 4550 Jimmy Doolittle Dr. at Addison Airport, for the Town of Addison, as landlord, to approve an estoppel letter from F&M Bank and Trust Company in connection with a loan from the Bank to be secured by the tenant's leasehold estate.

Attachments:

1. Council Agenda Item Overview
2. Leasehold Mortgage Recommendation

Administrative Recommendation:

Administration recommends approval.

Item #R15 - Presentation and discussion of trends in the sales tax collections for the Town of Addison.

Item #R16 - **PUBLIC HEARING** regarding the proposed Town of Addison's Annual Budget for the fiscal year beginning October 1, 2005 and ending September 30, 2006.

Attachments:

1. Council Agenda Item Overview
2. Modified Budget

Item #R17 - **PUBLIC HEARING** regarding the establishment of a tax rate of \$.4760 per \$100 appraised value on property within the Town of Addison for the 2005-06 annual budget.

Item #R18 - Presentation of water and sewer rates associated with the 2005-06 annual budget.

Item #R19 - Consideration and approval of an Ordinance adopting the Town of Addison's investment policy for FY 2005-06.

Attachments:

1. Council Agenda Item Overview
2. Recommended Policy Changes
3. Investment Policy
4. Ordinance

Administrative Recommendation:

Administration recommends approval.

Item #R20 - Consideration and approval of a Resolution adopting an investment strategy for FY 2005-06.

Attachments:

1. Council Agenda Item Overview
2. Investment Strategy
3. Resolution

Administrative Recommendation:

Administration recommends approval.

Item #R21 - Consideration of a contract renewal with First Southwest Asset Management for investment advisory services.

Attachments:

1. Council Agenda Item Overview
2. Renewal Agreement
3. Advisory Services Contract

Administrative Recommendation:

Administration recommends approval.

EXECUTIVE SESSION

Item #ES1 – Closed (executive) session of the City Council pursuant to Section 551.071, Texas Government Code, to conduct a private consultation with its attorney to seek the advice of its attorney about pending litigation, to wit: *Transcontinental Realty Investors, Inc., et al, v. The City of Addison, Texas*, Case No. 03-03457, 160th Judicial District Court, Dallas County, Texas, and on a matter in which the duty of the attorney to the City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 552, Tex. Gov. Code.

Adjourn Meeting

Posted 5:00 p.m.
September 8, 2005
Carmen Moran
City Secretary

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

OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL

August 23, 2005
6:00 p.m. - Council Chambers
5300 Belt Line Road

Present: Mayor Chow, Councilmembers Braun, Hirsch, Kraft, Mallory, Mellow,
Niemann

Absent: None

Item #WS1 – Discussion and presentation on Sister City/Economic Alliance.

No action was taken.

Item #R1 - Consideration of Old Business.

The following employees were introduced to the Council: Corey Gayden (Police),
Rick Johnson (Fire).

Item #R2 - Consent Agenda.

Item #2a was considered separately.

#2b – Approval of a change order in the amount of \$25,000 with Abstract
Construction for construction of Addison Circle Park in order to deduct that
amount from retainage to be paid to Abstract Construction. (Approved)

#2c – Consideration and approval of a Resolution approving the August 2005
edition of the Purchasing Manual. (Approved Resolution No. R05-071).

Councilman Niemann moved to duly approve the above listed items.
Councilmember Braun seconded. Motion carried.

Voting Aye: Mayor Chow, Braun, Hirsch, Kraft, Mallory, Mellow, Niemann
Voting Nay: None
Absent: None

#2a – Approval of the Minutes for the August 8, 2005, August 9, 2005 and
August 13, 2005 Council Meetings.

Councilmember Niemann moved to duly approve the Minutes for the August 8,
2005, August 9, 2005 and August 13, 2005 Council Meetings subject to one
correction. Councilmember Mallory seconded. Motion carried.

Voting Aye: Mayor Chow, Braun, Hirsch, Kraft, Mallory, Mellow, Niemann
Voting Nay: None
Absent: None

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

Councilmember Tom Braun nominated Mr. Don Daseke as a member of the Planning and Zoning Commission.

Councilmember Mallory moved to duly appoint Don Daseke of 5656 Celestial Road to the Planning and Zoning Commission. Councilmember Mellow seconded. Motion carried.

Voting Aye: Mayor Chow, Braun, Hirsch, Kraft, Mallory, Mellow, Niemann
Voting Nay: None
Absent: None

Item #R4 – Appointment of an Addison resident for participation in the Leadership Metrocrest program.

Councilmember Braun moved to duly appoint Todd Meier to participate in the Leadership Metrocrest program. Councilmember Niemann seconded. Motion carried.

Voting Aye: Mayor Chow, Braun, Hirsch, Kraft, Mallory, Mellow, Niemann
Voting Nay: None
Absent: None

Item #R5 – **PUBLIC HEARING** Consideration and approval of an Ordinance approving an amendment to an existing Special Use Permit for a restaurant, an amendment to an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, and an amendment to an existing Special Use Permit for a brewpub, located at 3820 Belt Line Road, on application from Humperdink's, represented by Ms. Von Scamardo.

Mayor Chow continued the public hearing from August 9, 2005. There were no questions or comments. Mayor Chow closed the meeting as a public hearing.

Councilmember Kraft moved to duly approve Ordinance No. 005-036 approving an amendment to an existing Special Use Permit for a restaurant, an amendment to an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, and an amendment to an existing Special Use Permit for a brewpub, located at 3820 Belt Line Road, on application from Humperdink's subject to the following conditions:

- Seven of the disfigured canopied Bradford Pear trees are to be replaced along the south side of the site with 3-inch caliper container grown Cedar Elms to match the existing Cedar Elms in the Target Center parking lot.
- All missing shrubs shall be replaced where gaps exist in the hedgerow along Belt Line.
- Nine additional crape myrtle trees shall be added on the Belt Line frontage to match the quantity shown on the plan submitted by the applicant.
- All dead or missing shrubs on the entire property shall be replaced.
- A rain sensor and freeze sensor will need to be installed and wired to the irrigation controller if they do not already exist.

Councilmember Mallory seconded. Motion carried.

Voting Aye: Mayor Chow, Braun, Hirsch, Kraft, Mallory, Mellow, Niemann

Voting Nay: None

Absent: None

Item #R6 – Consideration and approval of a Resolution agreeing to participate as a member of the Metrocrest Radio Consortium (Addison, Carrollton, and Farmers Branch), in the North Central Texas Council of Governments, Regional Interoperability Project Phase II, Assessment for the Metrocrest Area Agencies plan to improve public safety communications interoperability within Dallas County.

Councilmember Mallory moved to duly approve a Resolution No. R05-072 agreeing to participate as a member of the Metrocrest Radio Consortium (Addison, Carrollton, and Farmers Branch), in the North Central Texas Council of Governments, Regional Interoperability Project Phase II, Assessment for the Metrocrest Area Agencies plan to improve public safety communications interoperability within Dallas County. Councilmember Mellow seconded. Motion carried.

Voting Aye: Mayor Chow, Braun, Hirsch, Kraft, Mallory, Mellow, Niemann

Voting Nay: None

Absent: None

Item #R7 – Consideration and approval of a Resolution to authorize the payment of funds to the City of Carrollton as the management agency for the Metrocrest Radio consortium through a Letter of Agreement between the Town and the City of Carrollton.

Councilmember Mallory moved to duly approve Resolution No. R05-073 to authorize the payment of funds to the City of Carrollton as the management agency for the Metrocrest Radio consortium through a Letter of Agreement between the Town and the City of Carrollton. Councilmember Mellow seconded. Motion carried.

Voting Aye: Mayor Chow, Braun, Hirsch, Kraft, Mallory, Mellow, Niemann
Voting Nay: None
Absent: None

Item #R8 – Discussion of the City Manager’s proposed FY 2005-06 Airport Fund budget recommendation.

No action taken.

Item #R9 – Discussion of the City Manager’s proposed FY 2005-06 budgets for the City Manager’s office, Combined Services, Council Projects, and Marketing departments.

No Action taken.

Item #R10 – **PUBLIC HEARING** to consider establishing a tax rate of \$.4760 per \$100 assessed value on property within the Town of Addison for the 2005-06 Annual Budget.

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

No action was taken.

Item #R11 – Presentation of the Finance Department Quarterly Review for the period ending June 30, 2005.

No action taken.

Item #R12 – Consideration and approval of an Ordinance amending the Town of Addison annual budget for the fiscal year ending September 30, 2005.

Councilmember Kraft moved to duly approve Ordinance No. 005-037 amending the Town of Addison annual budget for the fiscal year ending September 30, 2005, subject amending Section 3 to state:

-this ordinance shall take effect and be enforced from and after its adoption.

Councilmember Niemann seconded. Motion carried.

Voting Aye: Mayor Chow, Braun, Hirsch, Kraft, Mallory, Mellow, Niemann

Voting Nay: None

Absent: None

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

Mayor

Attest:

City Secretary

Council Agenda Item: #2b**SUMMARY:**

Staff recommends that the Council approve final payment totaling \$7,900 to Jim Bowman Construction for completion of the Stone Cottage parking lot.

FINANCIAL IMPACT:

Original Contract Amount: \$153,675.00

Final Contract Amount: \$157,315.00

This project was funded from surplus bond funds remaining from the Addison Circle Park project. There was one change order, which increased the final contact amount by \$3,640. The change order involved additional concrete work necessary to reinforce the storm inlet connection from the parking lot to the street.

BACKGROUND:

The project scope included: construction of the parking lot with 26 parking spaces and 2 handicap spaces; drainage system with storm inlets; sanitary sewer connections for special event restrooms; lighting with electric receptacles; removable bollards; irrigation and landscaping.

RECOMMENDATION:

Jim Bowman Construction did a good job, and staff is pleased with the final product. Staff recommends approval.

Council Agenda Item: #2c**SUMMARY:**

Staff recommends the Council approve a final payment in the amount of \$25,000, to Abstract Construction Company for the construction to Addison Circle Park.

BACKGROUND:

We are ready to close out our contract with Abstract Construction. As the Council may recall, this has been a lengthy construction process. We finished the major work on the park in September of 2003, but we have changed the scope of the project several times by having Abstract do additional work in the Park. In addition, we have been working through several clean-up items with Abstract that included the partial reconstruction of Festival Way and final punch list work on the Park. As noted in Jim Duffy's memo, that work has been completed and accepted by the Town.

Final payment on this contract will close out the Town's relationship with Abstract Construction. However, there is one item outstanding on the Park. Sasaki Associates, Inc, the designers of the Park, will be paying for some modifications to the basin at the bottom of the inter-active fountains. The Town will contract with Dee Brown, Inc., which did the original stonework, for the fountain modifications. Sasaki will reimburse the Town for all costs connected with the job. The staff is working now on an agreement with Sasaki and a scope of work for the modifications. The work will not begin until after the fountains have been closed down for the winter.

RECOMMENDATION:

Staff recommends the Council approve a final payment in the amount of \$25,000 to Abstract Construction, Inc. for the construction of Addison Circle Park.

JAMES F. DUFFY

September 6, 2005

HAND DELIVERED

Ms. Carmen Moran
Town of Addison
P.O. Box 9010
Addison, TX 75001-9010

Re: Addison Arts & Events District
Final Payment

Dear Ms. Moran:

Here is the final application for payment from Abstract Construction for work done on the Addison Arts & Events District, now named Addison Circle Park. I have reviewed and approved it for payment. Also included is Consent of Surety from Abstract's surety company approving final payment of the contract.

The amount of \$25,000 represents the amount due after the \$25,000 reduction in retainage to reimburse the Town for some of its expenses, per our settlement agreement related to the problems with Festival Way.

The work on Festival Way was completed last week. It included re-pouring all inlets and other areas of the street to correct drainage and cracking problems. It also included routing and sealing some remaining cracks in the original street concrete. That work was observed by Dave Wilde of Addison Public Works Department and I during construction and after completion and found to be acceptable.

In addition, the final punch list work has been completed and accepted and I have received record documents required by the contract. I will transmit those documents to the Town separately.

Please let me know if you have any questions.

Regards,

Jim Duffy

Council Agenda Item: #2d**SUMMARY:**

This item is to award a bid to Craig Olden, Inc. for repairs to the concrete apron and drainage channel on the east side of the Lake Forest Drive bridge.

FINANCIAL IMPACT:

Budgeted Amount: \$40,000

Cost: \$37,800

This project is funded for 2005 in the Street Department Operations Budget.

BACKGROUND:

Public Works has been monitoring the condition of the concrete apron and drainage channel on the east side of the Lake Forest Drive Bridge, just south and east of the Addison Finance building. The concrete apron had cracked in two and was slipping away from the bridge. Additionally, considerable erosion has occurred to the drainage channel under the concrete apron and the gabion walls on both banks of the channel.

This project will remove the concrete apron, repair the erosion, concrete cap the erosion repair, and fortify and cap the existing gabions. Accessing the creek from the bridge deck is the only way to make repairs, as the land above the creek banks, on both sides, is private property.

Bids were opened August 9, 2005 for the Lake Forest Drive Culvert Repair project. Two companies submitted bids, J&J Hardscape, Inc. (\$34,500) and Craig Olden, Inc. (\$37,800). The low bidder could not provide references for a similarly difficult to access project. Staff has had poor past experience with the low bidder, J&J Hardscape, Inc. on a recent parks project. Staff therefore recommends the second low bidder, Craig Olden, Inc. be awarded the contract to construct the repairs. Craig Olden, Inc. previously constructed the gabions circling the pond behind the Finance Building.

RECOMMENDATION:

Staff recommends awarding this contract in the amount of \$37,800 for the Lake Forest Drive Culvert Repair to the second low bidder, Craig Olden, Inc.

Lake Forest Drive Culvert Repair
Bid NO 05-33

DUE: Tuesday, August 9, 2005
2:30 PM

BIDDER	SIGNED	Base Bid
J&J Hardscape, Inc.	X	\$34,500.00
Craig Olden, Inc.	X	\$37,800.00

Katie H. Roller

Katie H. Roller, Management Analyst

Shanna N. Sims

Witness

Council Agenda Item: #2e**SUMMARY:**

This item is for the continuation of a contract with Gary R. Daigle CLU, RHU, in an amount not to exceed \$10,000 for consulting services related to the employee benefit plan for medical and dental insurance.

FINANCIAL IMPACT:

Budgeted Amount: \$2,500 in the Human Resources budget, with additional funds available in the Combined Services budget.

Cost: Not to exceed \$10,000

BACKGROUND:

Beginning August 2003 Gary Daigle has acted as consultant for the Town's group medical and dental employee benefit plan. An hourly rate of \$200 is requested for consulting services to assist with developing and implementing the 2006 plans, to include an analysis of the current medical and dental programs, facilitation of employee focus groups, recommendations for future actions and assistance with the open enrollment process. In addition, Mr. Daigle will examine trends in health insurance benefits and assist the Town with monitoring changes in federal regulations.

RECOMMENDATION:

Staff recommends that Council authorize the City Manger to enter into a contract with Gary Daigle for an amount not to exceed \$10,000, for consulting services relating to the Town's employee medical and dental insurance plans for 2006.

**PRODUCERS EXCHANGE**

Benefit Services, Inc.

Employee Benefit Administration and Consulting

August 8, 2005

Ms. Judy Stafford
Human Relations Director
Town of Addison
Belt Line Rd.
Addison, TX. 75001

Re: Consulting Agreement/Employee Benefits 2005-2006

Judy,

Upon your approval, this letter will serve as an extension of our agreement to act as consultant for the Town of Addison's group medical and dental employee benefit plan. An hourly fee of \$200.00 will be charged for such consulting services. I have estimated that the renewal process to take between 20 and 50 hours. This project will include an analysis of the current benefit programs, recommendations for future actions and assistance during the open enrollment process.

As part of the plan analysis, data will be gathered about the plan's acceptance by employees, comparison of your benefit plan to other municipalities' plans and those of other area employers. This analysis will be limited to the medical and dental benefits of your plan unless otherwise directed. Some of the overall objectives of this analysis would:

1. Determine the Town's philosophy toward an employee benefit program.
2. Determine if the Town is in a competitive situation for attracting quality employees through its employee benefit program.
3. Determine the Town's concern for the employees' overall health.
4. Help understand the health needs and expectations of employees for the group plans.
5. Review claims histories and utilization trends of the current year to help understand the use of the plans.
6. Determine which benefits are used the most and by what age groups.
7. Determine the number of employees who use the plan and the overall effects it has on the plan.
8. Review the Dental.
9. Review and research the use of alternate plans such as HRA's and HAS's.
10. Participate in "open enrollment" meetings with the current benefit providers.
11. Review data for HIPAA compliance.

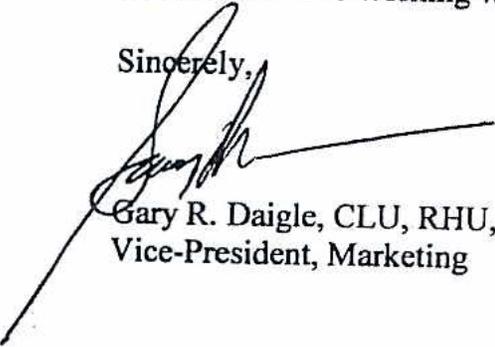
Judy, as you know the role of the employee benefits manager has increased in responsibility and expectations. The job of the manager and staff require not only the management of normal day to day activities for each employee but also require monitoring trends in health insurance benefits as well as keeping up with the rapid changes in federal regulations. As the Town's consultant ongoing data management and observations about the plan can help manage the Town's cost while maintaining the highest quality of employee benefits.

The review of these benefits will be guided by the three primary objectives of:

- Maintain or improve the design of all plans
- Ensure competitive plan costs
- Improve customer service to Town employees

I look forward to working with you and your staff.

Sincerely,



Gary R. Daigle, CLU, RHU,
Vice-President, Marketing

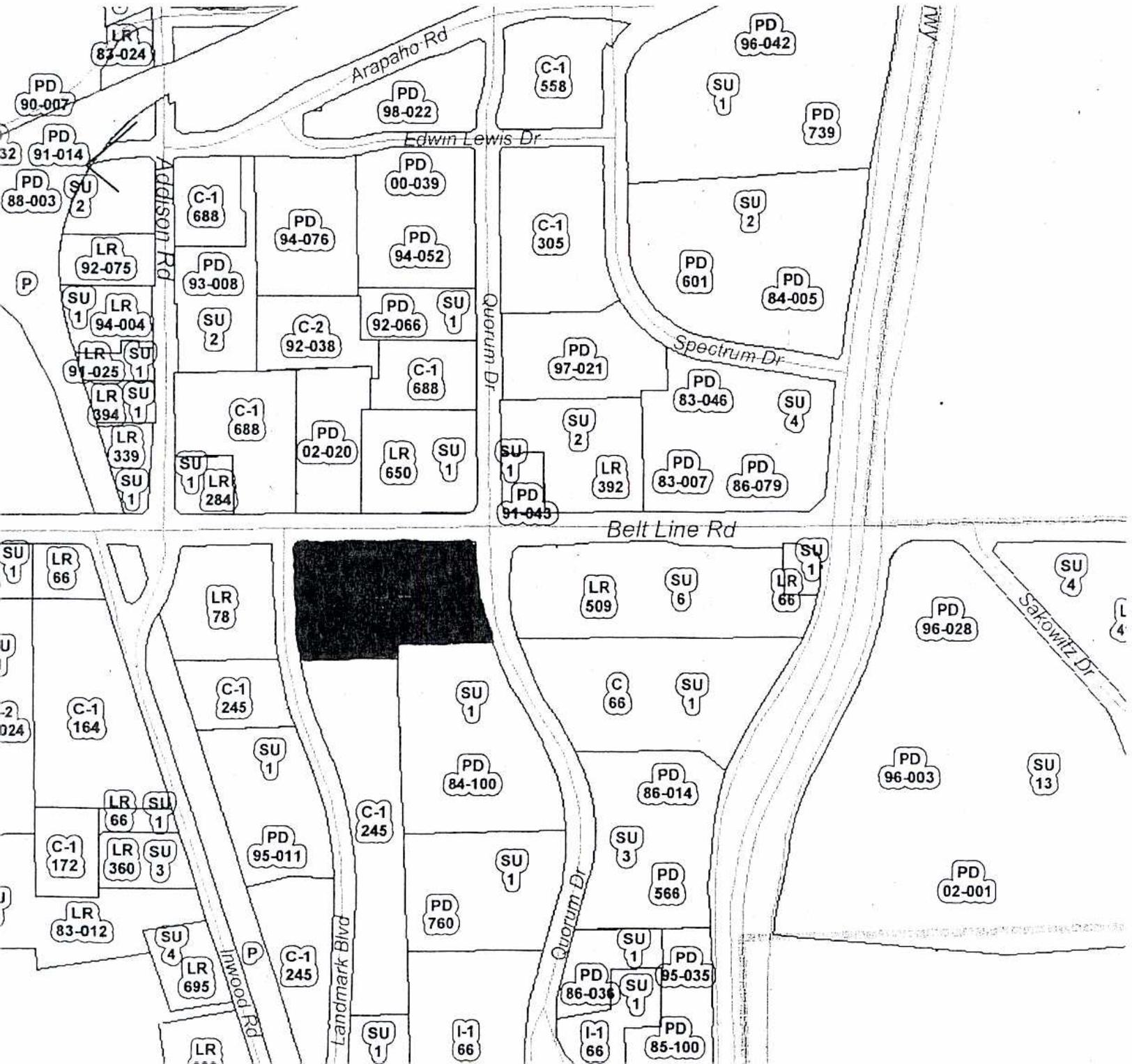
Accepted

By: _____

Date: _____

1504-SUP

Case 1504-SUP/Jimmy John's. Requesting approval of an amendment to an existing Special Use Permit for a restaurant, and an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption, located at 4980 Belt Line Road, Suite 150, on application from Jimmy John's Sandwiches, represented by Mr. Brent Herbeck.





Addison 50!

50 YEARS OF FUN!

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

FAX (972) 450-7043

August 18, 2005

STAFF REPORT

RE: Case 1504-SUP/Jimmy John's

LOCATION: 4980 Belt Line Road, Suite 150

REQUEST: Approval of a Special Use Permit for a restaurant, and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption

APPLICANT: Jimmy John's, represented by Mr. Brent Herbeck

DISCUSSION:

Background. This lease space is located in the Plaza at the Quorum II Shopping Center. It was originally a GAP Clothing Store. The GAP closed the store in 2002 and the lease space has been vacant since. In 2004, the shopping center owners divided the GAP lease space into two separate spaces. Asian Fusion now occupies 9,030 square feet of the former GAP space. A Chat's Coffee House was approved to occupy the remaining 2,820 square feet. However, Chat's did not go through with the lease. At this point, the owner wants to subdivide this remaining space. Jimmy John's, a sandwich shop, will take 1,725 square feet. There is talk that a Jamba Juice, which will also require a Special Use Permit, will take the remaining 1,095 square feet.

Proposed Plan. The floor plan shows a 1,725 square foot sandwich shop. The shop will be open for lunch and dinner. The applicant does not intend to serve alcohol at this point. However, time after time, owners applicants have opened up without beer sales, and then come back to the city to request an SUP for alcohol. They must then go through the process again. The staff has determined that since the SUP for alcohol has already been approved, it should be continued so that the applicant may make use of it at a later date if he chooses.

Façade. The applicant will add an entrance door into the existing store glass on the space. There will be no other changes to the façade.

Parking. In December of 2000, the owners of the shopping center obtained a change of zoning from a LR – Local Retail district to a PD – Planned Development district in order

to provide for a 1/160 parking ratio for restaurant uses (1/100 for restaurants with designated valet parking). The purpose of the rezoning was to allow for additional restaurants to be developed in the center. The property owner has provided a tabulation of all uses in the center and their required parking. The staff has verified the square footages for the lease spaces, however, it does not agree with the tabulation. Since Go Fish has designated valet parking, it has to be figured at a 1/100 rate. Therefore, while there are sufficient spaces for this request and Jamba Juice (or another operator in the same space), there are no extra parking spaces in the center. The owner should be aware that there are no additional spaces in the center that can be converted to restaurant use.

Landscaping. The landscaping was put in place when the center was constructed, and is generally well maintained. Slade Strickland does not have any landscaping conditions for this request.

Food Service Code. This restaurant will require a grease trap, and the applicant should be advised that the restaurant will be subject to all regulations contained in the Addison Food Service Ordinance.

Building Code. Lynn Chandler, the Building Official, required the owner of this building to put a fire sprinkler system in before adding any restaurants. The systems has been installed.

Signage. The applicant has not shown signs on the plans. He should be advised that all signs for the restaurant must comply with the requirements of the Addison Sign Ordinance. In addition, the Town has a policy against the use of any term or graphic depiction that relates to alcoholic beverages in any exterior signs. The staff realizes that this is a coffee bar as opposed to a bar that serves alcohol.

RECOMMENDATION:

Staff recommends approval of the amendment to an existing Special Use Permit for a restaurant, and an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, subject to no conditions.

Respectfully submitted,



Carmen Moran
Director of Development Services

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on August 25, 2005, voted to recommend approval of your request subject to no conditions.

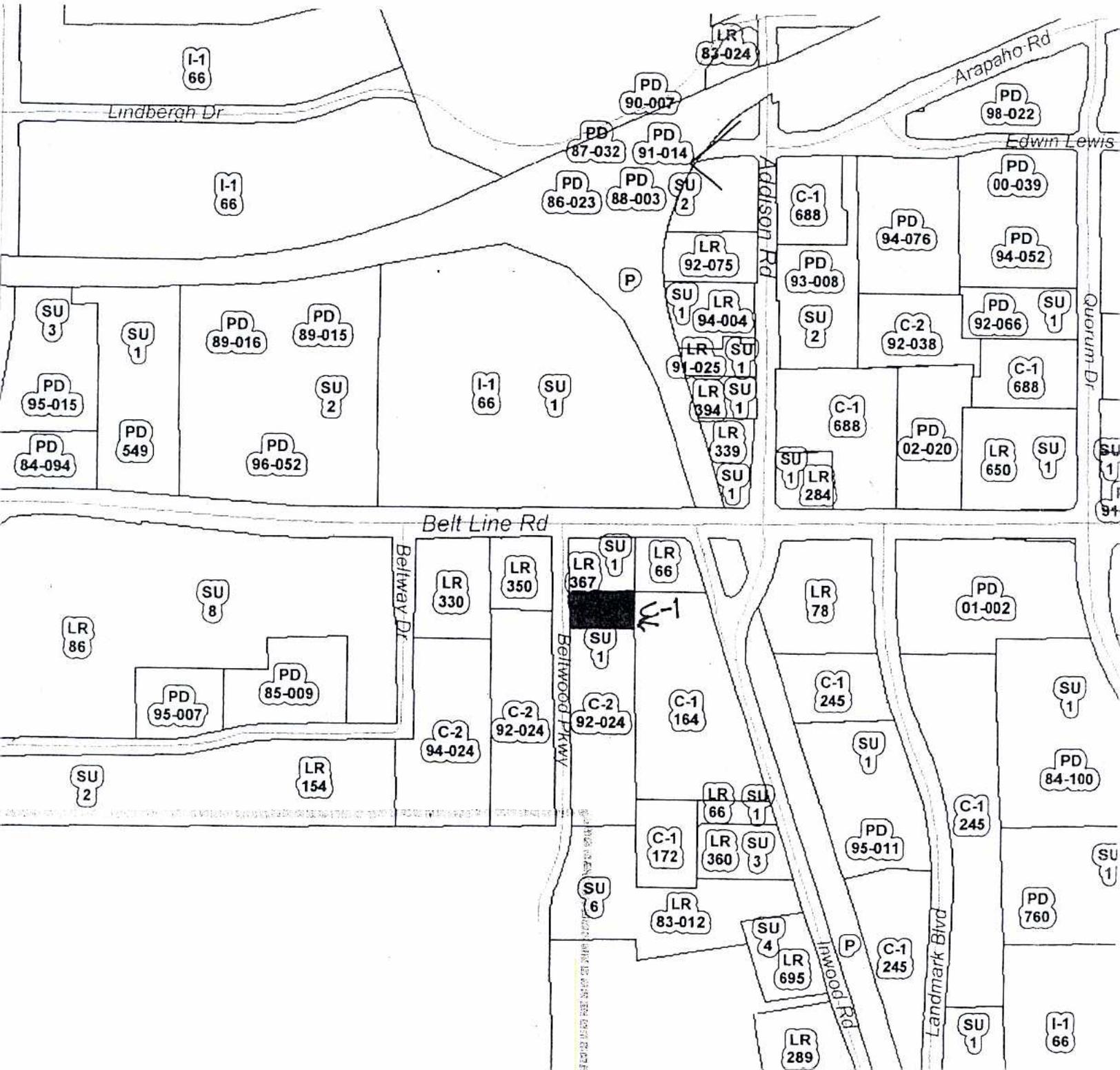
Voting Aye: Bernstein, Chafin, Daseke, Doepfner, Jandura, Meier, Wood

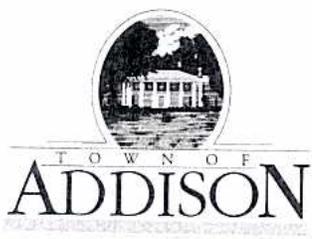
Voting Nay: None

Absent: None

1505-SUP

Case 1505-SUP/Coisas Do Brasil. Requesting approval of a Special Use Permit for a Convenience Store in a Commercial-1 District, located at 15080 Beltwood Parkway East, #102, on application from Ms. Claudia R. Merisio.





Addison 50!

50 YEARS OF FUN!

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

August 18, 2005

STAFF REPORT

RE: Case 1505-SUP/Coisas Do Brasil

LOCATION: 15080 Beltwood Parkway

REQUEST: Approval of a Special Use Permit for a convenience store

APPLICANT: Coisas Do Brasil, represented by Ms. Claudia R. Merisio

DISCUSSION:

Background. This property is currently zoned Commercial-1. A convenience store, even one that does not sell gasoline, requires a Special Use Permit in any district, and therefore is not an allowed use in this Commercial-1 zoning district.

Proposed Plan. The plan indicates a small store that will sell Brazilian Christian books and videos, convenience store items, and coffee. The store may sell some pre-packaged items, similar to those sold at a 7-Eleven convenience store, but will not have on-premises dining. Staff was not sure how to classify this operation, but it went to an existing store this applicant has in Carrollton (southwest corner of Trinity Mills and Midway) and determined that it most closely resembled a convenience store.

Facades. The applicant is not proposing any changes to the existing façade. A photo of the existing lease space was submitted.

Landscaping. The site has existing landscaping, which is in good condition. There are no landscaping conditions for this request.

Food Service Code. The facility will be required to obtain a food service license, and will be required to install a grease trap.

Signs. The applicant did not show any signs on the façade. The applicant should be aware that all signs are permitted under the Addison Sign Ordinance and cannot be approved through this process.

Parking. A convenience store requires parking at a 1/200 ratio. There is sufficient parking on-site for this store.

RECOMMENDATION:

Staff recommends approval of this request subject to no conditions.

Respectfully submitted,

A handwritten signature in black ink that reads "CARMORAN". The signature is stylized with a large, looped "C" and "M".

Carmen Moran
Director of Development Services

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on August 25, 2005, voted to recommend approval of the request for a Special Use Permit for a convenience store on application from Coisas Do Brasil, subject to no conditions.

Voting Aye: Bernstein, Chafin, Daseke, Doepfner, Jandura, Meier, Wood

Voting Nay: None

Absent: None

August 18, 2005

Ms. Carman Moran
Director of Development Services
P.O.Box 9010
Addison, Texas 75001

Re: 1505-SUP-Coisas Do Brasil
15080 Beltwood Parkway East #102
Approval of a Special Use Permit
for a convenience store

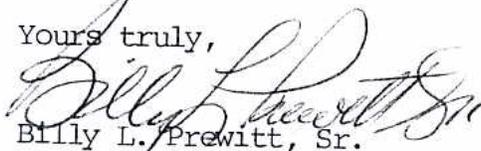
Dear Ms. Moran:

I am writing to protest the request for a special permit captioned above.

This building and the one directly behind already does not have adequate parking spaces available for the current tenants and adding a book shop and convenience store would further add to the problem.

There is also traffic problems for vehicles entering and exiting from Beltwood Parkway onto Beltline Road. There is always a long wait at any time of day at this intersection due to the heavy load on Beltline Road. A signal light should be installed.

Yours truly,



Billy L. Prewitt, Sr.
Property Owner at
15060 Beltwood Parkway East
Addison, Texas 75001

BLP/jap

MERITORIOUS EXCEPTION TO THE ADDISON SIGN ORDINANCE STAFF REPORT

ME 2005-8

Location of Request: 17225 Dallas Pkwy

Date: September 2, 2005

Business Name: Two Rows Restaurant & Brewery

Ordinance Requirement

Sec. 62-183. Number of signs.

Only one detached sign of any type may be erected on any premises except that:

- (1) Premises which have more than 450 feet of property frontage along the public way, other than an alley, may have not more than one additional sign for each additional 300 feet of frontage.
- (2) Any premises with frontage along more than one public way may have a permanent detached sign along each public way provided that each frontage way is at least 300 feet in length.
- (3) All permanent detached signs must be no closer than 150 feet apart, with no two detached signs of any type being closer than 50 feet apart.
- (4) Signs within the visibility triangle at all intersections, which include that portion of the public right-of-way, any corner lot within the adjacent curblines and a diagonal line intersecting such curblines at points 35 feet back from their intersection, are prohibited.

Sec. 62-185. Specifications.

Both single-tenant and multi-tenant pole signs shall be allowed and shall be governed by the design standards and regulations as set forth in this section.

- (1) Single-tenant pole signs must be exactly 36 square feet in effective area and must be exactly 20 feet in height measured from ground elevation to the top of the sign.
- (2) Multi-tenant pole signs must be exactly 72 square feet in effective area and must be exactly 20 feet in height measured from ground elevation to the top of the signs. No single-tenant shall occupy more than 36 square feet of sign area on a multi-tenant sign.
- (3) Design standards shall be as follows:
 - a. *Sign supports:* 8"X 8" structural steel tubing. Structural steel tubing shall be installed in accordance with Figure 62-185A for single-tenant signs and 62-185B for multi-tenant signs.
 - b. *Sign cabinet:* Paint grip sheet metal on angle iron frame with angle retaining rim to secure sign face.
 - 1. Single-tenant sign cabinet dimensions: 6'10" wide x 5'10" high X 12" deep.
 - 2. Multi-tenant sign cabinet dimensions: 6'10" wide X 11'6" high X 12" deep.
 - c. *Sign face:* plastic sheet.
 - d. *Sign finish:* Degrease, prime, and finish coat all exposed metal surfaces as required.
 - e. *Sign support and cabinet color:* Pantone 404(c). Painted surfaces are to match special color; color swatch will be provided by the town. Color number Pantone #404(c).
 - f. *Internal illumination:* Internal illumination provided by fluorescent lamps spaced no further than 12 inches on center.
 - g. *Overall sign height:* All signs are to be 20 feet in height.

Sec 62-286. Interchangeable copy.

Interchangeable copy on any type of sign is specifically prohibited.

STAFF RECOMMENDATION: Staff recommends denial of the sign as requested.

STAFF:

Lynn Chandler
Lynn Chandler, Building Official

Variance

The ordinance limits the number of detached signs and requires them to be a minimum of 150' apart.

The ordinance requires a single-tenant pole sign to have an exact sign face area of 36 square feet, sign supports of 8" X 8" structural steel tubing, and a height of 20'.

The ordinance does not allow interchangeable copy

This property was granted an exception in August 2003 for an additional monument sign with an area of 72 sq ft and a height of 8'.

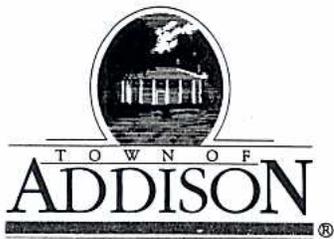
Request

The applicant is requesting an additional pole sign as follows:

A sign 25' in height with an area of 112 sq ft and interchangeable copy approximately 90' from an existing monument sign.

#R5-1

#R5-2



BUILDING INSPECTION DEPARTMENT
(972) 450-2880 Fax: (972) 450-2837

16801 Westgrove
Post Office Box 9010 Addison, Texas 75001-9010

To: Carmen Moran, Director of Development Services

From: *ROC* Lynn Chandler, Building Official

Date: September 2, 2005

Subject: Meritorious Exceptions to the Sign Ordinance

The following exceptions have been granted for detached signs:

- 1. 14951 Dallas Parkway
Carter Crowley Properties (Comp USA)
Meritorious Exception Ord. 093-030, May 11, 1993
Flag and Pole: Pole Height 120', Flag Area 760 sq. ft.

Comp USA was also granted an exception for a corporate flag 96 sq. ft. in area. February 2003.

- 2. 16771 Dallas Parkway
Bent Tree National Bank
Meritorious Exception Ord. 094-070, October 25, 1994
Pole Sign: Height: 25', Area: 71 sq. ft.

- 3. 16251 Dallas Parkway
Mary Kay
Meritorious Exception Ord. 095-022, may 9, 1995
Monument Sign: Height 9', Area 54 sq. ft.

- 4. 14655 Dallas Parkway
Bay Street (Lawry's)
Meritorious Exception Ord. 092-065, October 27, 1992
Pole Sign: Height 30', Area 72 sq. ft.

- 5. 5100 Belt Line Road
Village on the Parkway
Meritorious Exception Ord. 096-022, June 11, 1996
3 Towers: Height 44', Area 77 sq. ft.
And
2 signs from previous meritorious exception allowed to remain.
Ord. 094-047, July 21, 1994
Pole Sign: Height 29'6", Area 156 sq. ft.

6. Addison Town Center Shopping Center located in the 3700 to 3800 block of Belt Line Road was granted an exception for four pole signs that did not meet the design criteria or maximum area of the ordinance. November 2002
7. Two Rows Restaurant & Brewery located at 17225 Dallas Pkwy was granted an exception for an additional monument sign with an area of 72 sq ft and a height of 8'. August 2003.
8. Addison Walk located at 5000 Belt line Road was granted an exception for two 72 sq ft pole signs that did not meet the design criteria of the sign ordinance. January 2004.
9. Lawry's located at 14655 Dallas Pkwy was granted an exception for a pole sign 35' in height and 114 sq ft in area due to it's location on Dallas Pkwy and it's unique design. December 2004

Addison!

BUILDING INSPECTION DEPARTMENT 16801 Westgrove Dr Addison Texas 75001 972/450-2881 fax: 972/450-2837

Application for Meritorious Exception to the Town of Addison Sign Ordinance

Application Date: 8/30/05 Filing Fee: \$200.00

Applicant: The Alphasign Centre Inc.

Address: 8908 Sovereign Row Suite#: _____

Dallas TX 75247 Phone#: 972-438-7497
City State Zip

Fax#: 972-259-2135

Status of Applicant: Owner _____ Tenant _____ Agent X

Location where exception is requested:
17225 Dallas Parkway, Addison, TX 75001

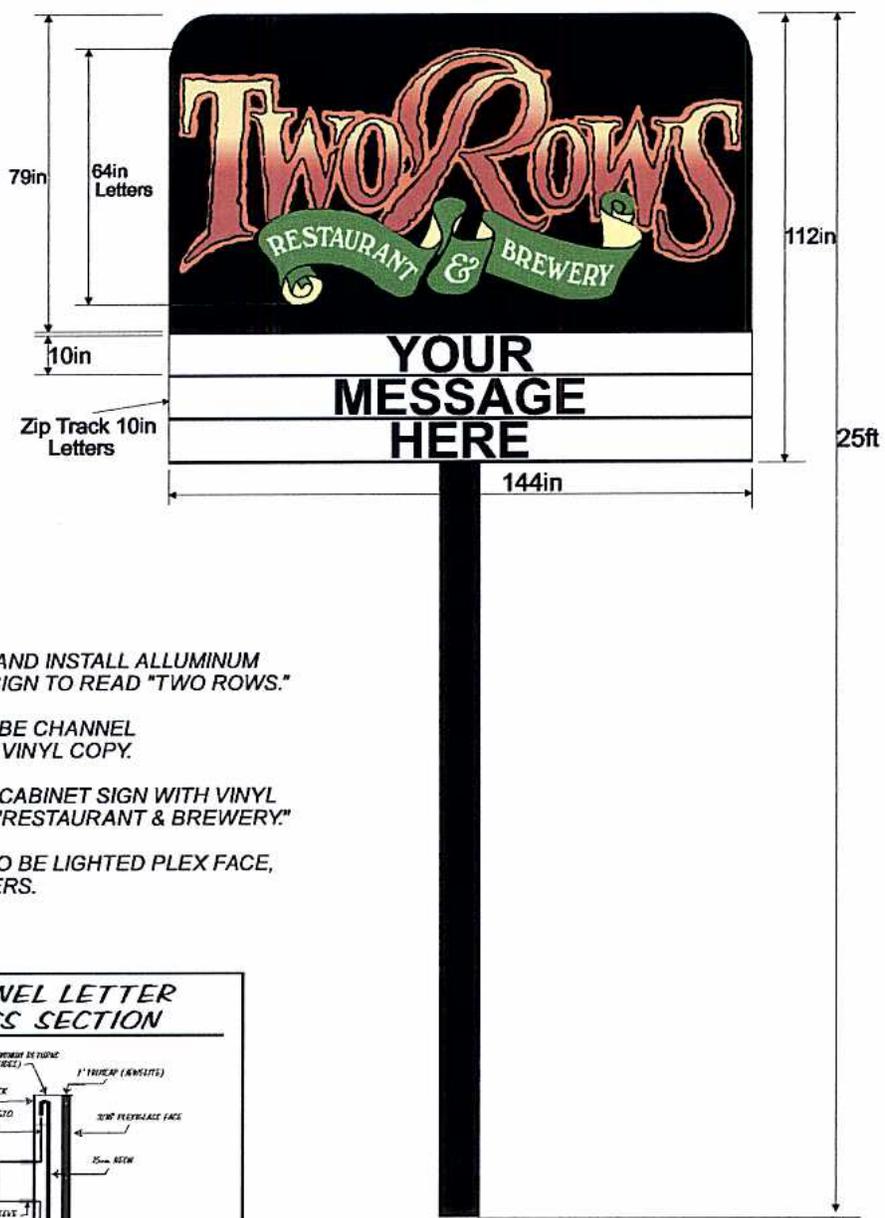
Reasons for Meritorious Exception:
Pole sign: For distance visibility to give people reaction time to exit Turnpike. To allow people to prepare themselves to turn which will provide safer driving.

YOU MUST SUBMIT THE FOLLOWING:

12 COPIES OF THE PROPOSED SIGN SHOWING:

- 1. Lot Lines
- 2. Names of Adjacent Streets
- 3. Location of Existing Buildings
- 4. Existing Signs
- 5. Proposed Signs
- 6. Sketch of Sign with Scale and Dimensions Indicated (8.5 x 11 PLEASE)

Date Fees Paid 9/2/05 Check # 1794 Receipt # _____

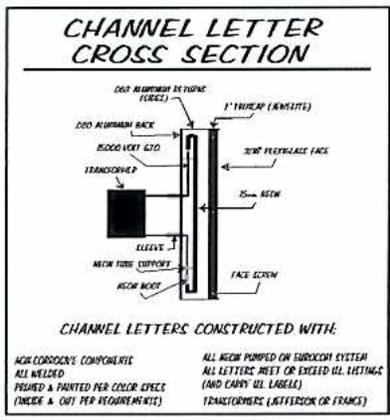


MANUFACTURE AND INSTALL ALLUMINUM CABINET POLE SIGN TO READ "TWO ROWS."

"TWO ROWS TO BE CHANNEL LETTERS, WITH VINYL COPY.

RIBBIN SHAPED CABINET SIGN WITH VINYL COPY TO READ "RESTAURANT & BREWERY."

MARQUE SIGN TO BE LIGHTED PLEX FACE, WITH 10IN LETTERS.



JOB DESCRIPTION: POLE SIGN WITH MARQUEE	CUSTOMER: TWO ROWS	APPROVED BY:	DATE: 07-26-05	The AlphaSIGN CENTRE Custom Signage AlphaNEON Specialty Neon 8908 Sovereign Row OFFICE 972.438.7497 Dallas, TX 75247 FAX 972.259.2135
		DRAWN: WTM		

ADDISON ROAD (ASPHALT PAVING)

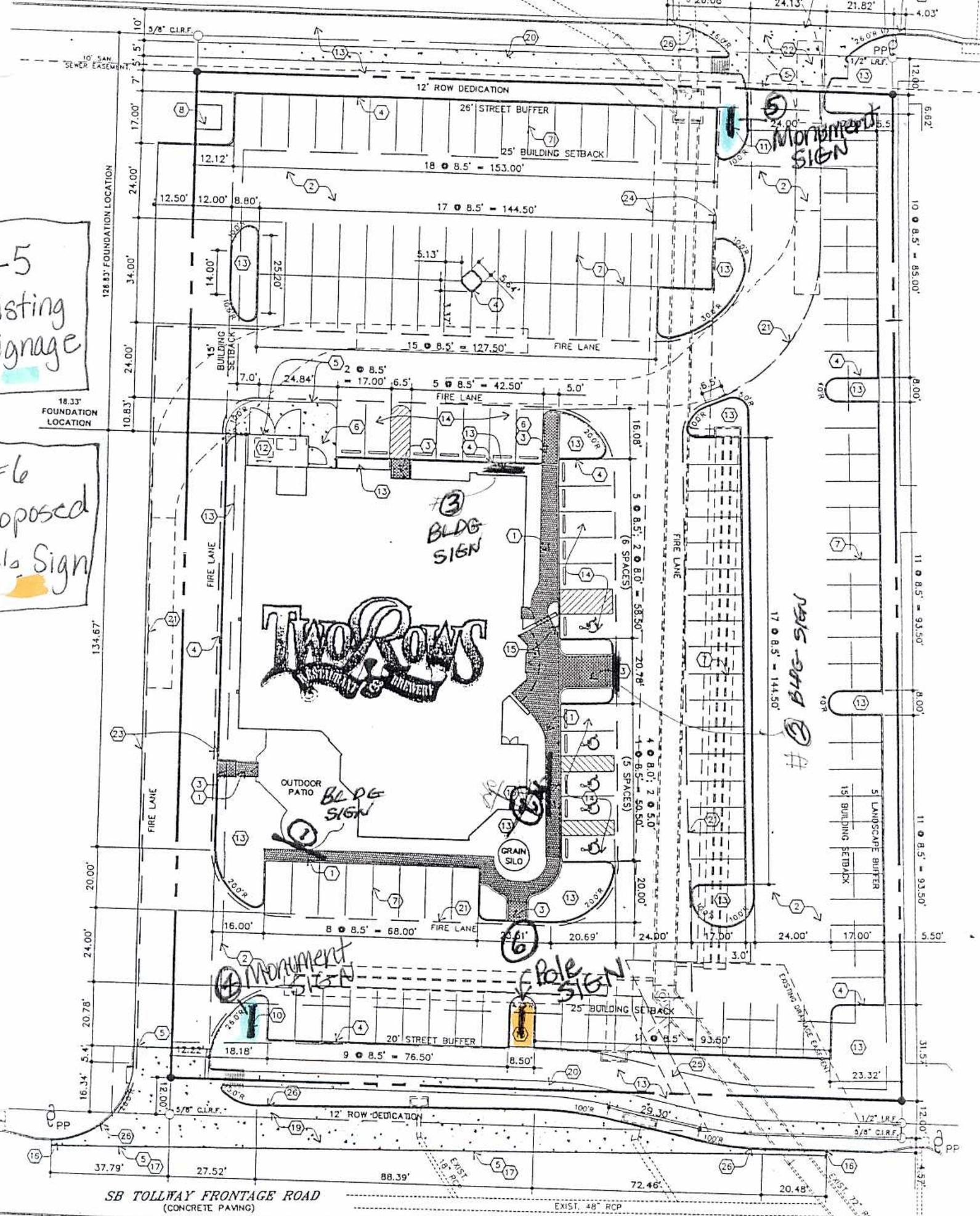
EXIST. 60" RCP

EXIST. 60" RCP

16

18

26



-5 Existing signage

#6 Proposed Pole Sign

5 Monument Sign

3 BLDG SIGN

1 BLDG SIGN

4 Monument Sign

6 Pole Sign

#2 BLDG SIGN

SB TOLLWAY FRONTAGE ROAD (CONCRETE PAVING)

EXIST. 48" RCP

16

18

26

**MERITORIOUS EXCEPTION TO THE ADDISON SIGN ORDINANCE
STAFF REPORT**

ME 2005-9

Business: Wachovia Bank

Date: September 8, 2005 Location of Request: 5080 Spectrum Dr

Ordinance Requirement

Sec. 62-162. Premises signs.

(c) There shall be only one sign for each façade for each tenant.

Sec. 62-163. Area.

Total effective area of attached signs shall not exceed the following schedules:

(1) On an attached sign located at a height of up to 36 ft, the effective area is limited to 1 sq ft of sign area for each linear foot of building frontage not to exceed 100 sq ft

(2) An attached sign located at or exceeding a height of 36 ft shall be permitted an increase in maximum effective area. Such increases shall not exceed 4 sq ft in effective area for each additional 1 ft of height above 36 ft measured from the base of the sign to the building grade.

(3) Attached signs may be located on each façade; however, the sum of the effective area of all attached signs shall not exceed twice the allowable effective area as specified in subsections (1) and (2) of this section.

(4) Building with 4 or more stories in height may have not more than 2 attached signs per façade provided that:

a. Each sign is designated for a separate tenant.

b. One sign must be located on or near the uppermost story of the building while the 2nd sign is to be located on the 1st or ground level floor.

c. Signs may be no closer than 30 ft apart.

d. The combined effective sq footage of both signs may not exceed twice the allowed effective sq footage as specified in subsections (1) and (2) of this section.

(5) Maximum letter/logo height of attached signs shall not exceed twice the allowable effective area as specified in subsections (1) and (2) of this section. Maximum letter/logo height of attached signs shall be determined by the following schedule:

Sign Height (feet)	Maximum Letter/Logo Height (inches)
0 - 36	16
37 - 48	36
49 - 100	48
101 - 150	60
151 and up	7

a. Letter heights in excess of 72 inches must be approved by the city council.

b. Not more than 50% of the letters in each individual sign height category may be 25% taller than the specified maximum letter/logo height.

Request

The applicant is requesting:

An additional sign on the south façade with letters 10' in height, a logo 42' in height and an area of 8,649 sq ft. to be displayed for 60 days.

Variance

The ordinance:

- Only allows one sign per tenant per façade.
- Limits the area of the sign to 100 sq ft.
- Buildings four or more stories are only allowed one sign on or near the top floor, one sign on or near the first floor, they must be designated for separate tenants and be located no closer than 30 feet apart.

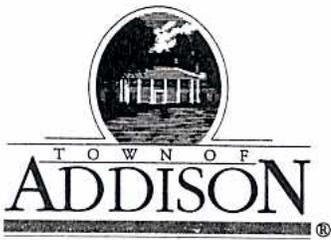
Note: In Nov. 2004 Wachovia was granted an exception for an additional 43 sq ft sign on the south façade.

STAFF RECOMMENDATION: Staff recommends Denial.

STAFF: Lynn Chandler
Lynn Chandler, Building Official

#RB-1

#RB-2



BUILDING INSPECTION DEPARTMENT
(972) 450-2880 Fax: (972) 450-2837

16801 Westgrove
Post Office Box 9010 Addison, Texas 75001-9010

To: Carmen Moran, Director Development Services

From:  Lynn Chandler, Building Official

Date: September 8, 2005

Subject: Exceptions to the Sign Ordinance for Attached Signs

The following list consists of exceptions to attached signs:

1. Addison Town Center Shopping Center located in the 3700 to 3800 block of Belt Line Road was granted an exception for letter heights up to 6' and more than one side per façade. October 1994
2. Village on the Parkway located at 5100 Belt line Road was granted an exception for letter Heights up to 30", more than one sign per façade and blade signs. June 1996
3. Addison Circle was granted an exception for more than two signs on a building four or More stories in height, signs above the roof and blade signs. March 1997
4. Centennial Liquor Store located at 15055 Inwood Road was granted an exception to place more than one sign on the east façade. March 1999
5. Hallmark located at 14312 Marsh Lane was granted an exception for letter heights of 36" and 26" due to the thin stroke of the letters and being located 250' from Marsh Lane. June 2000
6. Abbotsford Court located at 14775 Midway Road was granted an exception for letter heights of 29" and 24 " due to the thin stroke of the letters and being located 300' from Midway road. June 2001
7. Dunhill Property Management was granted an exception to place four murals, 81 Sq. Ft. each, on the south façade and five murals, 75 Sq. Ft. each, on the west façade of Suite 840 at 5100 Belt Line Road. These murals were considered signage but were approved because they were not deemed to be a blight or offensive. October 2001
8. Gilbert's Delicatessen Restaurant located at 4930 Belt Line Road Suite 100 was granted an exception for letter heights of 24", 22" and 20" due to a set back of 278' from Belt Line Road. March 2001

9. Hilton Garden Inn located at 4090 Belt Line Road was granted an exception for letter heights of 22" due to a set back of 355' from Belt Line Road. June 2002.
10. Isotag located at 4355 Excel Parkway Suite 100 was granted an exception for an attached sign with a logo height of 31.5 " and letter heights of 25" due to to a setback of 120' from Excel Parkway. July 2002.
11. BJ's Restaurant located at 4901 Belt Line Road was granted an exception for attached signs with letter heights of 39", 28", and murals with figures 8' and 9' in height. The signs were 110', 163', 135' and 143' respectively from Belt Line Road. December 2002.
12. Chip's Old Fashioned Hamburgers located at 4950 Belt line Suite 190 was granted an exception for an attached sign with letter heights of 30" due to a set back of 250' from Belt Line Road. April 2003.
13. Sigel's Liquor located at 15003 Inwood Road was granted an exception for an attached sign with letter heights of 24" due to a setback of 93' to 100' from Inwood Road. June 2003.
14. Two Rows Restaurant located at 17225 Dallas Pkwy was granted an exception for attached signage with letter heights of 30" due to setbacks of 110' from Dallas Pkwy and 147' from Addison Rd. July and September 2003.
15. Vartec Telcom/ Excel located at 16675 Addison Rd. and 4550 Excel Pkwy was granted an exception for attached signs with logo heights of 48" at 16775 Addison Rd. due to setbacks of 160' Excel Pkwy and 145' from Addison Rd. and logo heights of 36" at 4550 Excel Pkwy due to a setbacks of 95' and 105' from Excel Pkwy.
16. Pot Belly Sandwich Works located at 4945 Belt Line Rd was granted an exception for attached signs with letters 30" in height due to a setback of 95' from Belt line Rd. They were not, however, allowed any area increases. Nov 2003.
17. Mama Fu's Noodle House located at 3711 Belt Line Rd was granted an exception for attached signs with letters 30" in height due to a setback of 115' from Belt Line Rd. Jan 2004.
18. Addison Walk located at 5000 Belt Line Rd was granted an exception for attached signs with letters 36", 30" and 24" in height due to setbacks of 100' to 179' from Belt line Rd. Jan 2004.
19. Authentix was granted an exception for an attached sign with letters 28', 25" and 21.5" in height due to a setback of 120' from Excel Parkway. Feb 2004.
20. Champps Restaurant was granted an exception for attached signs with letters 35", 28", 32.5" and 26" in height due to setbacks of 168' and 133' from Belt Line Rd. Mar 2004.
21. Pot Belly Sandwich Sandwich Works located at 4945 Belt line Rd was granted an exception for attached signs with letters 30" in height due o a setback of 95' from Belt Line Rd. May 2004.

22. Wachovia Bank located at 5080 Spectrum Dr was granted an exception for more than one attached sign on the south façade of the building and attached signs with a logo 30" in height and more than 50% of the letters exceeding 16" in height due to the area of the facades they were located on. November, 2004.
23. Sam's located at 4150 Belt Line Rd was granted an exception for three attached signs, with areas of 147 sq ft and a 36" letter, 92 sq ft and a 24" letter, and 25 sq ft due to a set back of 410 ft from Belt Line Rd, the size of the façade it's on and that the number of signs was reduced from six to three. December, 2004.
24. Charter Furniture located at 15101 Midway Rd was granted an exception for three additional signs on the east façade due to the construction of the Midway Rd bridge next to their building. January 31, 2005.
25. Century Bank located at 3701 Belt Line Rd was granted an exception for an additional sign on the south façade with a logo 24" in height and more than 50% of the letters 20" in height.
26. Auto Care European located at 4304 Wiley Post Rd was granted an exception for a sign with letters 24" in height due to a set back of 130 ft from Wiley Post Rd.
27. Café Japon and Boba Tea located at 4933 Belt line Rd were granted an exceptions for signs with logos 30" in height and letters 24" and 22" in height due to a setback of 95" from Belt Line Rd.

#RB-3

Addison!

BUILDING INSPECTION DEPARTMENT 16801 Westgrove Dr Addison Texas 75001 972/450-2881 fax: 972/450-2837

Application for Meritorious Exception to the Town of Addison Sign Ordinance

Application Date: 9/8/05 Filing Fee: \$200.00

Applicant: WACHOVIA BANK N.A. / MULLEN ADVERTISING

Address: 5080 SPECTRUM DRIVE Suite#: 100 E

ADDISON TX 75001 Phone# (972) 419-3150
City State Zip

Fax#: (972) 419-3113

Status of Applicant: Owner SPECTRUM PROPERTY Tenant WACHOVIA Agent TIM MAHONEY

Location where exception is requested:

SOUTH SIDE / ELEVATION SPECTRUM CENTER 2nd to 9th Floor

Reasons for Meritorious Exception:

- ① TO INFORM CONSUMERS OF WACHOVIA IN ADDISON
- ② TO CREATE PUBLICITY FOR ADDISON AS A FINANCIAL CENTER.

YOU MUST SUBMIT THE FOLLOWING:

12 COPIES OF THE PROPOSED SIGN SHOWING:

- 1. Lot Lines
- 2. Names of Adjacent Streets
- 3. Location of Existing Buildings
- 4. Existing Signs
- 5. Proposed Signs
- 6. Sketch of Sign with Scale and Dimensions Indicated (8.5 x 11 PLEASE)

Date Fees Paid 9-8-05 Check # 210233 Receipt # 25437

Council Agenda Item: #R7

There are no attachments for this item.

Council Agenda Item: #R8

SUMMARY:

Consideration of a resolution authorizing the City Manager to enter into an agreement for the production of the 2006 Addison calendar.

FINANCIAL IMPACT:

Budgeted Amount: \$80,000

BACKGROUND:

The purpose of the calendar is to showcase attributes of the Town and provide pertinent information about the Town. The calendar is distributed to Addison residents and businesses as well as to associates, prospects and friends of Addison. The calendar serves both as an annual report for the Town as well as a marketing tool for prospective businesses and visitors.

A total of 12,500 calendars are produced and delivered to the Town for distribution in December. The total cost to produce the calendar is \$80,000. Staff will present the 2006 calendar theme at the September 13 meeting.

RECOMMENDATION:

Staff recommends that Council authorize the City Manager to enter into an agreement to produce the 2006 calendar.

Council Agenda Item: #R9

SUMMARY:

The Addison Arbor Foundation Citizens Advisory Committee will update the Council on Foundation projects for fiscal year 2005-2006.

BACKGROUND:

The Committee will present the membership requirements and donation levels, the memorial plaque program and development of the AddisonArbor.org website. The presentation will also include a preview of the 2005 Arbor Day event scheduled for Saturday, November 12, 2005.

CITIZEN ADVISORY COMMITTEE MEMBERS:

Tom Braun	Council Ex-Officio
Paula Jandura	Committee Chair
Barbara Hirsch	Vice-Chair
Virgil Burkhardt	
Virginia Wallace	
Evie Miller	
Kathryn Wheeler	
Neil Hewitt	
Gage Hunt	Mary Kay Corporation
Tracey Huff	Amegy Bank
One Vacancy	Elizabeth Knott moved from Addison.

Council Agenda Item: #R10

SUMMARY:

The Addison Arbor Foundation Board of Directors will present two amendments to the Addison Arbor Foundation Bylaws relating to term limits for Citizen Advisory Committee members, and a procedure for appointing Citizen Advisory Committee members.

This is for the Council's information and will not require Council action.

BACKGROUND:

The Addison Arbor Foundation Board of Directors consists of the Slade Strickland, Chris Terry and Randy Moravec. Slade Strickland administers all of the AAF programs and activities. As outlined in the attached Bylaws, Article 4 Committees, the Board of Directors is authorized to appoint committees. The committee has no authority beyond an advisory role.

Amendment 1 - The current Bylaws have no provision for committee member term limits, nor a defined procedure for appointing new committee members. The Board of Directors will amend the Bylaws to include three-year term limits where three of the veteran committee members will roll off the committee in 2007. Three additional members will roll off in 2008 and four in 2009. Establishing term limits will allow other citizens the opportunity to serve on the committee.

Amendment 2 - The 10-member Citizens Committee presently recommends potential appointees to fill vacancies, and appoints new members by unanimous vote. The Board of Directors will amend the Bylaws establishing a written policy for appointing new members. When a vacancy occurs, the Committee will submit potential appointees to the Board of Directors. The appointments will be submitted to the City Manager for review and approval, and then submitted to the Council as an information item to keep the Council current on the committee participants.

Attachments: Articles of Incorporation and Bylaws

**ARTICLES OF INCORPORATION
OF
ADDISON PARKS FOUNDATION**

FILED
In the Office of the
Secretary of State of Texas
MAR 20 1995
CORPORATIONS SECTION

I, the undersigned, natural person over the age of eighteen, ~~acting as an incorporator,~~
adopt the following articles of incorporation of the Addison Parks Foundation (referred to as the
"Foundation") under the Texas Non-Profit Corporation Act (referred to as the "Act"):

ARTICLE I

NAME

The name of the Foundation is the Addison Parks Foundation.

ARTICLE II

NON-PROFIT CORPORATION

The Foundation is a non-profit corporation. Upon dissolution, all of the Foundation's
assets shall be distributed to the State of Texas or an organization exempt from taxes under the
Internal Revenue Code Section 501(c)(3) for one or more purposes that are exempt under the
Texas franchise tax.

ARTICLE III

DURATION

The Foundation shall continue in perpetuity.

ARTICLE IV

PURPOSES

The purposes for which the Foundation is organized and operated shall be exclusively
non-profit and exclusively for charitable, scientific, literary or educational purposes to which
ends the following objects are specified:

- A. To engage in, conduct and promote charitable, scientific, literary, educational,

social and public welfare activities for the benefit of the public parks systems and the parks and recreation programs of the Town of Addison, examples of which activities include but are not limited to the following:

1. To accept and improve land for parks, environmental easements and other public uses.
 2. To develop public park facilities.
 3. To restore and beautify parks, greenbelts and other public land.
 4. To enhance the Addison landscape and public buildings with gifts of visual art.
 5. To develop public cultural, social and educational resources.
 6. To improve opportunities for the visual and performing arts.
 7. To strengthen the delivery of public park and recreation services.
 8. To give grants to qualified non-profit organizations which carry out projects and programs that fulfill the purposes of the foundation provided that the following conditions exist with respect to any recipient organization:
 - a. It is not a private school.
 - b. It is not a religious program.
 - c. It is a functioning organization.
 - d. It has a governing board.
 9. To further the education of the public and quasi-public professionals engaged in services to the community.
- B. To solicit, accept, receive, take and hold gifts, grants, legacies, bequests, devises, funds and property of any kind, nature or description (whether real, personal, mixed or otherwise), without limitation as to amount or value, from individuals, businesses, industries, foundations and governmental agencies.
- C. To sell, convey and dispose of any such funds and property and to invest and re-

invest the principal thereof and to use, apply, employ, deal with, expand, contribute and donate the principal or income, or both, for any of the aforementioned purposes and objectives, either directly or through any charitable, scientific, governmental, literary, educational or public welfare corporation, association, agency or institution.

- D. To exercise, do and perform any, all and every power, act, or thing incidental to or necessary in connection with the accomplishment and furtherance of the aforementioned purposes and objectives.

The Foundation shall not attempt to influence legislation and shall not participate in, or intervene in, including the publishing or distributing of statements, any political campaign on behalf of, or in opposition to, any candidate for public office.

ARTICLE V

POWERS

Except as otherwise provided in these Articles, the Foundation shall have all of the powers provided in the Texas Non-Profit Corporation Act (the "Act"). Moreover, the Foundation shall have all implied powers necessary and proper to carry out its express powers.

ARTICLE VI

RESTRICTIONS AND REQUIREMENTS

The Foundation shall not pay dividends or other corporate income to its directors or officers or otherwise accrue distributable profits or permit the realization of private gain. The Foundation shall have no power to take any action prohibited by the Act. The Foundation shall not have the power to engage in any activities, except to an insubstantial degree, that are not in furtherance of the purposes set forth above.

The Foundation shall have no power to take any action that would be inconsistent with

the requirements for a tax exemption under Internal Revenue Code Section 501(c)(3) and related regulations, rulings, and procedures. The Foundation shall have no power to take any action that would be inconsistent with the requirements for receiving tax deductible charitable contributions under Internal Revenue Code Section 170(c)(2) and related regulations, rulings, and procedures. Regardless of any other provision in these Articles of Incorporation or state law, the Foundation shall have no power to:

1) Engage in activities or use its assets in manners that are not in furtherance of one or more exempt purposes, as set forth above and defined by the Internal Revenue Code and related regulations, rulings, and procedures, except to an insubstantial degree.

2) Serve a private interest other than one that is clearly incidental to an overriding public interest.

3) Devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise, except as provided by the Internal Revenue Code and related regulations, rulings, and procedures.

4) Participate in or intervene in any political campaign on behalf of or in opposition to any candidate for public office. The prohibited activities include the publishing or distributing of statements and any other direct or indirect campaign activities.

5) Have objectives that characterize it as an "action organization" as defined by the Internal Revenue Code and related regulations, rulings, and procedures.

6) Distribute its assets on dissolution other than for one or more exempt purposes; on dissolution, the Foundation's assets shall be distributed to the state government for public purpose, or to an organization exempt from taxes under the Internal Revenue Code Section 501(c)(3) to be used to accomplish the general purposes for which the Foundation was organized.

7) Permit any part of the net earnings of the Foundation to inure to the benefit of any private shareholder or member of the Foundation or any private individual.

8) Carry on an unrelated trade or business except as a secondary purpose related to the Foundation's primary, exempt, purposes.

The Foundation shall make distributions at such times and in such manners as to avoid the tax under Internal Revenue Code Section 4942. The Foundation shall not engage in any act of self-dealing as defined in Section 4941(d). The Foundation shall not retain excess business holdings as defined in Section 4943(c). The Foundation shall not make any investments that would subject it to the tax described in Section 4944. The Foundation shall not make any taxable expenditures as defined in Section 4945(e).

ARTICLE VII

MEMBERSHIP

The Foundation shall have no members.

ARTICLE VIII

INITIAL REGISTERED OFFICE AND AGENT

The street address of the initial registered office of the Corporation is 901 Main Street, Suite 4000, Dallas, Texas 75202. The name of the initial registered agent at this office is John M. Hill.

ARTICLE IX

BOARD OF DIRECTORS

The qualifications, manner of selection, duties, terms, and other matters relating to the Board of Directors (referred to as the "Board of Directors") shall be provided in the Bylaws. The initial Board of Directors shall consist of three persons. The number of directors may be increased or decreased by adoption or amendment of bylaws. The number of directors may not

be decreased to less than three. The initial Board of Directors shall consist of the following persons at the following addresses:

<u>NAME OF DIRECTORS</u>	<u>STREET ADDRESS</u>
Slade Strickland	16801 Westgrove Drive Addison, Texas 75248
Chris Terry	5300 Belt Line Road Addison, Texas 75240
Randy Moravec	5350 Belt Line Road Addison, Texas 75240

ARTICLE X

LIMITATION ON LIABILITY OF DIRECTORS

To the fullest extent permitted by applicable law, as the same may be modified or amended from time to time, no director of the Corporation shall be liable to the Corporation for monetary damages for an act or omission in such director's capacity as a director of the Corporation. Any repeal or amendment of this Article Ten shall be prospective only and shall not adversely affect any limitation on the personal liability of a director of the Corporation existing at the time of such repeal or amendment.

ARTICLE XI

INDEMNIFICATION

The Foundation may indemnify a person who was, is, or is threatened to be made a named defendant or respondent in litigation or other proceedings because the person is or was a director or other person related to the Foundation regardless of the provisions in the Act governing indemnification. As provided in the bylaws, the Board of Directors shall have the power to define the requirements and limitations for the Foundation to indemnify directors, officers or others related to the Foundation.

ARTICLE XII
CONSTRUCTION

All references in these Articles of Incorporation to statutes, regulations, or other sources of legal authority shall refer to the authority cited, or their successors, as they may be amended from time to time.

ARTICLE XIII
INCORPORATORS

The name and street address of the incorporator is:

John M. Hill	901 Main Street, Suite 4000
	Dallas, Texas 75202

ARTICLE XIV
ACTION BY WRITTEN CONSENT

Action may be taken by the use of signed written consents by the number of directors or committee members whose vote would be necessary to take action at a meeting at which all such persons entitled to vote were present and voted. Each written consent must bear the date of signature of each person signing it. A consent signed by less than all of the directors or committee members is not effective to take the intended action unless consents, signed by the required number of persons, are delivered to the Foundation within sixty days after the date of the earliest dated consent delivered to the Foundation. Delivery must be made by hand, or by certified or registered mail, return receipt requested. The delivery may be made to the Foundation's registered office, registered agent, principal place of business, transfer agent, registrar, exchange agent or an officer or agent having custody of books in which the relevant proceedings are recorded. If the delivery is made to the Foundation's principal place of business, the consent must be addressed to the president or principal executive officer.

The Foundation will give prompt notice of the action taken to persons who do not sign consents. If the action taken requires documents to be filed with the Secretary of State, the filed documents will include that the written consent procedures have been properly followed. A telegram, telex, cablegram, or similar transmission by a member, director or committee member, or photographic, facsimile, or a similar reproduction of a signed writing is to be regarded as being signed by the director or committee member.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of MARCH, 1995.



John M. Hill, Incorporator

**BYLAWS OF
ADDISON PARKS FOUNDATION**

These Bylaws (referred to as the "Bylaws") govern the affairs of Addison Parks Foundation, a nonprofit corporation (referred to as the "Foundation") organized under the Texas Non-Profit Corporation Act (referred to as the "Act").

ARTICLE 1

OFFICES

Principal Office

1.01. The principal office of the Foundation in the State of Texas shall be located at 5300 Belt Line Road, Addison, Texas 75240. The Foundation may have such other offices, either in Texas or elsewhere, as the Board of Directors may determine. The Board of Directors may change the location of any office of the Foundation.

Registered Office and Registered Agent

1.02. The Foundation shall comply with the requirements of the Act and maintain a registered office and registered agent in Texas. The registered office may, but need not, be identical with the Foundation's principal office in Texas. The Board of Directors may change the registered office and the registered agent as provided in the Act.

ARTICLE 2

BOARD OF DIRECTORS

Management of the Foundation

2.01. The affairs of the Foundation shall be managed by the Board of Directors, subject to limitation imposed by law, the Articles of Incorporation or by these Bylaws.

Action By Consent of Board of Directors Without Meeting

2.02. Any action required or permitted to be taken by the Board of Directors may be taken without a meeting, and with the same force and effect as a unanimous vote of the Board of Directors, if all members of the Board of Directors consent in writing to the action. Such consent may be given individually or collectively.

Number, Qualifications and Tenure of Directors

2.03. The number of Directors shall be three. Directors shall be at least twenty-one years of age and residents or employees of the Town of Addison, Texas. Each director shall serve for a term of one (1) year. The number of directors may be increased or decreased from time to time by amendment to these Bylaws. Any decrease in the number of directors shall not have the effect of reducing the total number of directors below three (3) nor of shortening the tenure which any incumbent director would otherwise enjoy.

Nomination of Directors

2.04. At any meeting at which the election of a director occurs, any member of the Addison City Council may nominate a person with the second of any other member of the Council.

Election of Directors

2.05. A person who meets any qualification requirements to be a director and who has been duly nominated may be elected as a director. Directors shall be elected by the majority vote of the Addison City Council. Each director shall hold office until a successor is elected and qualified or as otherwise provided for herein. A director may be elected to succeed himself or herself as director.

Vacancies

2.06. Vacancies on the Board of Directors shall exist upon: (a) the death, resignation or removal of any director; (b) an increase in the authorized number of directors; or (c) the failure to elect the full authorized number of members of the Board of Directors at any annual or regular meeting of the Board of Directors at which any director is to be elected. The Addison City Council may declare the office of a director vacant if the director is adjudged incompetent by a court, is convicted of a crime involving moral turpitude, or does not accept the office of director in writing or by attending a meeting of the Board of Directors within sixty (60) days notice of election. Any vacancy occurring in the Board of Directors, and any director position to be filled due to an increase in the number of directors, shall be filled by the Addison City Council. A vacancy is filled by the affirmative vote of a majority of the Addison City Council. A director elected to fill a vacancy shall be elected for the unexpired term of the predecessor in office.

Annual Meeting

2.07. The annual meeting of the Board of Directors may be held without notice other than these Bylaws. The annual meeting of the Board of Directors shall be held at 7:30 P.M. on the second Tuesday of October each year or at another time that the Board of Directors designate.

Regular Meetings

2.08. The Board of Directors may provide for regular meetings by resolution stating the time and place of such meetings. The meetings may be held either within or without the State of Texas and shall be held at the Foundation's registered office in Texas if the resolution does not specify the location of the meetings. No notice of regular meetings of

the Board is required other than a resolution of the Board of Directors stating the time and place of the meetings.

Special Meetings

2.09. Special meetings of the Board of Directors may be called by or at the request of the president or any two directors. A person or persons authorized to call special meetings of the Board of Directors may fix any place within Texas as the place for holding a special meeting. The person or persons calling a special meeting shall notify the secretary of the information required to be included in the notice of the meeting. The secretary shall give notice to the directors as required in the Bylaws.

Notice

2.10. Written or printed notice of any special meeting of the Board of Directors shall be delivered to each director not less than seven (7) nor more than 30 days before the date of the meeting. The notice shall state the place, day, and time of the meeting, who called the meeting, and the purpose or purposes for which the meeting is called.

Quorum

2.11. A majority of the number of directors then in office shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. The directors present at a duly called or held meeting at which a quorum is present may continue to transact business even if enough directors leave the meeting so that less than a quorum remains. However, no action may be approved without the vote of at least a majority of the number of directors required to constitute a quorum. If a quorum is present at no time during a meeting, a majority of the directors present may adjourn and reconvene the meeting one time without further notice.

Duties of Directors

2.12. Directors shall exercise ordinary business judgment in managing the affairs of the Foundation. In acting in their official capacity as directors of this Foundation, directors shall act in good faith and take actions they reasonably believe to be in the best interests of the Foundation and that are not unlawful. In all other instances, the Board of Directors shall not take any action that they should reasonably believe would be opposed to the Foundation's best interests or would be unlawful. A director shall not be liable if, in the exercise of ordinary care, the director acts in good faith relying on written financial and legal statements provided by an accountant or attorney retained by the Foundation.

Actions of Board of Directors

2.13. The Board of Directors shall try to act by consensus. However, the vote of a majority of the Board of Directors present and voting at a meeting at which a quorum is present shall be sufficient to constitute the act of the Board of Directors unless the act of a greater number is required by law or the Bylaws. A director who is present at a meeting and abstains from a vote is not considered to be present and voting for the purpose of determining the decision of the Board of Directors. For the purpose of determining the decision of the Board of Directors, a director who is represented by proxy in a vote is considered present.

Proxies

2.14. A director may vote by proxy executed in writing by the director. No proxy shall be valid after three (3) months from the date of its execution.

Compensation

2.15. Directors shall not receive salaries for the their services. The Board of Directors may adopt a resolution providing for payment to directors of a fixed sum and expenses of attendance, if any, for attendance at each meeting of the Board of Directors. A director may serve the Foundation in any other capacity and receive compensation for those services. Any compensation that the Foundation pays to a director shall be commensurate with the services performed and reasonable in amount.

Removal of Directors

2.16. The Board of Directors at any time may recommend to the Addison City Council that a director be removed, with or without cause. Upon such recommendation or on its own initiative at any time, the Addison City Council may vote to remove a director with or without cause. The director who is the subject of the removal shall have the right to present evidence at the meeting of the Board of Directors or City Council as to why he or she should not be removed. At the meeting, the City Council shall consider possible arrangements for resolving the problems that are in the mutual interest of the Foundation and the director. A director may be removed by the affirmative vote of a majority of the City Council.

ARTICLE 3

OFFICERS

Officer Positions

3.01. The officers of the Foundation shall be a president, vice-president, a secretary, and a treasurer. The Board of Directors may create additional officer positions, define the authority and duties of each such position, and elect or appoint staff members of the Town

of Addison to fill the positions. Any two or more offices may be held by the same person, except the offices of president and secretary.

Election and Term of Office

3.02. The officers of the Foundation shall be elected annually by the Board of Directors at the first meeting of the Board following the annual meeting. If the election of officers is not held at this meeting, the election shall be held as soon thereafter as conveniently possible. Each officer shall hold office until a successor is duly selected and qualified. An officer may be elected to succeed himself or herself in the same office.

Removal

3.03. Any officer elected or appointed by the Board of Directors may be removed by the Board of Directors for any reason and with or without cause. The removal of an officer shall be without prejudice to the contract rights, if any, of the officer.

Vacancies

3.04. A vacancy in any office may be filled by the Board of Directors for the unexpired portion of the officer's term.

President

3.05. The president shall be the chief executive officer of the Foundation. The president shall supervise and control all of the business and affairs of the Foundation. The president shall preside at all meetings of the members and of the Board of Directors. The president may execute any deeds, mortgages, bonds, contracts, or other instruments that the Board of Directors have authorized to be executed. However, the president may not

execute instruments on behalf of the Foundation if this power is expressly delegated to another officer or agent of the Foundation by the Board of Directors, the Bylaws, or statute. The president shall perform other duties prescribed by the Board of Directors and all duties incident to the office of president.

Vice President

3.06. When the president is absent, is unable to act, or refuses to act, a vice president shall perform the duties of the president. When a vice president acts in place of the president, the vice president shall have all the powers of and be subject to all the restrictions upon the president. If there is more than one vice president, the vice presidents shall act in place of the president in the order of the votes received when elected. A vice president shall perform other duties as assigned by the president or Board of Directors.

Treasurer

3.07. The treasurer shall:

(a) Have charge and custody of and be responsible for all funds and securities of the Foundation from any source.

(b) Receive and give receipts for moneys due and payable to the Foundation from any source.

(c) Deposit all moneys in the name of the Foundation in banks, trust companies, or other depositories as provided in the bylaws or as directed by the Board of Directors or president.

(d) Write checks and disburse funds to discharge obligations of the Foundation. Funds may not be drawn from the Foundation or its accounts for amounts greater than Five

Hundred and No/100 Dollars (\$500.00) without the signature of the president or a vice president in addition to the signature of the treasurer.

- (e) Maintain the financial books and records of the Foundation.
- (f) Prepare financial reports at least annually.
- (g) Perform other duties as assigned by the president or by the Board of Directors.
- (h) If required by the Board of Directors, give a bond for the faithful discharge of his or her duties in a sum and with a surety as determined by the Board of Directors.
- (i) Perform all of the duties incident to the office of treasurer.

Secretary

3.08. The Secretary shall:

- (a) Give all notices as provided in the bylaws or as required by law.
- (b) Take minutes of the meetings of the members and of the Board of Directors and keep the minutes as part of the corporate records.
- (c) Maintain custody of the corporate records and of the seal of the Foundation.
- (d) Affix the seal of the Foundation to all documents as authorized.
- (e) Keep a register of the mailing address of each director, officer, and employee of the Foundation.
- (f) Perform duties as assigned by the president or by the Board of Directors.
- (g) Perform all duties incident to the office of secretary.

ARTICLE 4

COMMITTEES

Establishment of Committees

4.01. The Board of Directors may adopt a resolution establishing one or more committees delegating specified authority to a committee, and appointing or removing members of a committee. A committee shall include two or more directors and may include persons who are not directors. If the Board of Directors delegates any of its authority to a committee, the majority of the committee shall consist of directors. The Board of Directors may establish qualifications for membership on a committee. The Board of Directors may delegate to the president its power to appoint and remove members of a committee that has not been delegated any authority of the Board of Directors. The establishment of a committee or the delegation of authority to it shall not relieve the Board of Directors, or any individual director, of any responsibility imposed by the Bylaws or otherwise imposed by law. No committee shall have the authority of the Board of Directors to:

- (a) Amend the Articles of Incorporation.
- (b) Adopt a plan of merger or a plan of consolidation with another corporation.
- (c) Authorize the sale, lease, exchange, or mortgage of all or substantially all of the property and assets of the Foundation.
- (d) Authorize the voluntary dissolution of the Foundation.
- (e) Revoke proceedings for the voluntary dissolution of the Foundation.
- (f) Adopt a plan for the distribution of the assets of the Foundation.
- (g) Amend, alter, or repeal the Bylaws.
- (h) Elect, appoint, or remove a member of a committee or a director or officer of the Foundation.

(i) Approve any transaction to which the Foundation is a party and that involves a potential conflict of interest as defined in paragraph 5.04, below.

(j) Take any action outside the scope of authority delegated to it by the Board of Directors.

Term of Office

4.02. Each member of a committee shall continue to serve on the committee until a successor is appointed. However, the term of a committee member may terminate earlier if the committee is terminated, or if the member dies, ceases to qualify, resigns, or is removed as a member. A vacancy on a committee may be filled by an appointment made in the same manner as an original appointment. A person appointed to fill a vacancy on a committee shall serve for the unexpired portion of the terminated committee member's term.

Chair and Vice-Chair

4.03. One member of each committee shall be designated as the chair of the committee and another member of each committee shall be designated as the vice-chair. The chair and vice-chair shall be elected by the members of the committee. The chair shall call and preside at all meetings of the committee. When the chair is absent, is unable to act, or refuses to act, the vice-chair shall perform the duties of the chair. When a vice-chair acts in place of the chair, the vice-chair shall have all the powers of and be subject to all the restrictions upon the chair.

Notice of Meetings

4.04. Written or printed notice of a committee meeting shall be delivered (whether by U.S. mail or otherwise) to each member of a committee not less than seven nor more

than 30 days before the date of the meeting. The notice shall state the place, day, and time of the meeting, and the purpose or purposes for which the meeting is called.

Quorum

4.05. One half of the number of the members of committee shall constitute a quorum for the transaction of business at any meeting of the committee. The committee members present at a duly called or held meeting at which a quorum is present may continue to transact business even if enough committee members leave the meeting so that less than quorum remains. However, no action may be approved without the vote of at least a majority of the number of committee members required to constitute a quorum. If a quorum is present at no time during a meeting, the chair may adjourn and reconvene the meeting one time without further notice.

Actions of Committees

4.06. Committees shall try to take action by consensus. However, the vote of a majority of committee members present and voting at a meeting at which a quorum is present shall be sufficient to constitute the act of the committee unless the act of a greater number is required by law or the bylaws. A committee member who is present at a meeting and abstains from a vote is [not] considered to be present and voting for the purpose of determining the act of the committee.

Proxies

4.07. A committee member may vote by proxy executed in writing by the committee member. No proxy shall be valid after 3 months from the date of its execution.

Compensation

4.08. Committee members shall not receive salaries for their services. The Board of Directors may adopt a resolution providing for payment to committee members of a fixed sum and expenses of attendance, if any, for attendance at each meeting of the committee. A committee member may serve the Foundation in any other capacity and receive compensation for those services. Any compensation that the Foundation pays to a committee member shall be commensurate with the services performed and shall be reasonable in amount.

Rules

4.09. Each committee may adopt rules for its own operation not inconsistent with the Bylaws or with rules adopted by the Board of Directors.

ARTICLE 5

TRANSACTIONS OF THE FOUNDATION

Contracts

5.01. The Board of Directors may authorize any officer or agent of the Foundation to enter into a contract or execute and deliver any instrument in the name of and on behalf of the Foundation. This authority may be limited to a specific contract or instrument or it may extend to any number and type of possible contracts and instruments.

Deposits

5.02. All funds of the Foundation shall be deposited to the credit of the Foundation in banks, trust companies, or other depositories that the Board of Directors selects.

Gifts

5.03. The Board of Directors may accept on behalf of the Foundation any contribution, gift, bequest, or devise for the general purposes or for any special purpose of the Foundation. The Board of Directors may make gifts and give charitable contributions that are not prohibited by the bylaws, the articles of incorporation, state law, and any requirements for maintaining the Foundation's federal and state tax status.

Potential Conflicts of Interest

5.04. The Foundation shall not make any loan to a director or officer of the Foundation. A director, officer, or committee member of the Foundation may lend money to and otherwise transact business with the Foundation except as otherwise provided by the Bylaws, Articles of Incorporation, and all applicable laws. Such a person transacting business with the Foundation has the same rights and obligations relating to those matters as other persons transacting business with the Foundation. The Foundation shall not borrow money

from or otherwise transact business with a director, officer, or committee member of the Foundation unless the transaction is described fully in a legally binding instrument and is in the best interests of the Foundation. The Foundation shall not borrow money from or otherwise transact business with a director, officer, or committee member of the Foundation without full disclosure of all relevant facts and without the approval of the Board of Directors, not including the vote of any person having a personal interest in the transaction.

Prohibited Acts

5.05. As long as the Foundation is in existence, and except with the prior approval of the Board of Directors, no director, officer, or committee member of the Foundation shall:

- (a) Do any act in violation of the Bylaws or a binding obligation of the Foundation.
- (b) Do any act with the intention of harming the Foundation or any of its operations.
- (c) Do any act that would make it impossible or unnecessarily difficult to carry on the intended or ordinary business of the Foundation.
- (d) Receive an improper personal benefit from the operation of the Foundation.
- (e) Use the assets of this Foundation, directly or indirectly, for any purpose other than carrying on the business of this Foundation.
- (f) Wrongfully transfer or dispose of Foundation property, including intangible property such as good will.

(g) Use the name of the Foundation (or any substantially similar name) or any trademark or trade name adopted by the Foundation, except on behalf of the Foundation in the ordinary course of the Foundation's business.

(h) Disclose any of the Foundation business practices, trade secrets, or any other information not generally known to the business community to any person not authorized to receive it.

ARTICLE 6

BOOKS AND RECORDS

Required Books and Records

6.01. The Foundation shall keep correct and complete books and records of account. The Foundation's books and records shall include:

(a) A file-endorsed copy of all documents filed with the Texas Secretary of State relating to the Foundation, including, but not limited to, the Articles of Incorporation, and any Articles of Amendment, Restated Articles, Articles of Merger, Articles of Consolidation, and Statement of Change of Registered Office or Registered Agent.

(b) A copy of the Bylaws, and any amended versions or amendments to the Bylaws.

(c) Minutes of the proceedings of the Board of Directors, and committees having any of the authority of the Board of Directors.

(d) A list of the names and addresses of the directors, officers, and any committee members of the Foundation.

(e) A financial statement showing the assets, liabilities, and net worth of the Foundation at the end of the three most recent fiscal years.

(f) A financial statement showing the income and expenses of the Foundation for the three most recent fiscal years.

(g) All rulings, letters, and other documents relating to the Foundation's federal, state, and local tax status.

(h) The Foundation's federal, state and local information or income tax returns for each of the Foundation's three most recent tax years.

Inspection and Copying

6.02. Any director, officer, or committee member of the Foundation may inspect and receive copies of all books and records of the Foundation required to be kept by the Bylaws. Such a person may inspect or receive copies if the person has a proper purpose related to the person's interest in the Foundation and if the person submits a request in writing. Any person entitled to inspect and copy the Foundation's books and records may do so through his or her attorney or other duly authorized representative. A person entitled to inspect the Foundation's books and records may do so at a reasonable time no later than five working days after the Foundation's receipt of a proper written request. The Board of Directors may establish reasonable fees for copying the Foundation's books and records by members. The fees may cover the cost of materials and labor, but may not exceed twenty-five (\$.25) cents per page. The Foundation shall provide requested copies of books or records no later than five working days after the Foundation's receipt of a proper written request.

ARTICLE 7

FISCAL YEAR

The fiscal year of the Foundation shall begin on the first day of October and end on the last day in September of each year.

ARTICLE 8

INSURANCE

The Foundation may purchase and maintain insurance on behalf of any person who is or was an Board Member, officer, employee, or agent of the Foundation, or on behalf of any person serving at the request of the Foundation as a Board Member, officer, partner, venturer, proprietor, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise, against any liability asserted against that person and incurred by that person in such a capacity, or arising out of his status as such a person, whether or not the Foundation has the power to indemnify that person against liability for any of those acts.

ARTICLE 9

INDEMNIFICATION

When Indemnification is Required, Permitted, and Prohibited

9.01. (a) The Foundation shall indemnify a director, officer, committee member, employee, or agent of the Foundation who was, is, or may be named defendant or respondent in any proceeding as a result of his or her actions or omissions within the scope of his or her official capacity in the Foundation. For the purposes of this article, an agent includes one who is or was serving at the request of the Foundation as a director, officer, partner, venturer, proprietor, trustee, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise. However, the Foundation shall indemnify a

person only if he or she acted in good faith and reasonably believed that the conduct was in the Foundation's best interests. In a case of a criminal proceeding, the person may be indemnified only if he or she had no reasonable cause to believe that the conduct was unlawful. The Foundation shall not indemnify a person who is found liable to the Foundation or is found liable to another on the basis of improperly receiving a personal benefit. A person is conclusively considered to have been found liable in relation to any claim, issue, or matter if the person has been adjudged liable by a court of competent jurisdiction and all appeals have been exhausted.

(b) The termination of a proceeding by a judgment, order, settlement, conviction, or on a plea of nolo contendere or its equivalent does not necessarily preclude indemnification by the Foundation.

(c) The Foundation may pay or reimburse expenses incurred by a director, officer, committee member, employee, or agent of the Foundation in connection with the person's appearance as a witness or other participation in a proceeding involving or affecting the Foundation when the person is not a named defendant or respondent in the proceeding.

(d) In addition to the situations otherwise described in this paragraph, the Foundation may indemnify a director, officer, committee member, employee, or agent of the Foundation to the extent permitted by law. However, the Foundation shall not indemnify any person in any situation in which indemnification is prohibited by the terms of paragraph 9.01(a), above.

(e) Before the final disposition of a proceeding, the Foundation may pay indemnification expenses permitted by the Bylaws and authorized by the Foundation. However, the Foundation shall not pay indemnification expenses to a person before the final

disposition of a proceeding if: the person is a named defendant or respondent in a proceeding brought by the Foundation; or the person is alleged to have improperly received a personal benefit or committed other willful or intentional misconduct.

(f) If the Foundation may indemnify a person under the Bylaws, the person may be indemnified against judgment, penalties, including excise and similar taxes, fines, settlements, and reasonable expenses (including attorney's fees) actually incurred in connection with the proceeding. However, if the proceeding was brought by or on behalf of the Foundation, the indemnification is limited to reasonable expenses actually incurred by the person in connection with the proceeding.

Procedures Relating to Indemnification Payments

9.02. (a) Before the Foundation may pay any indemnification expenses (including attorney's fees), the Foundation shall specifically determine that indemnification is permissible, authorize indemnification, and determine that expenses to be reimbursed are reasonable, except as provided in paragraph 9.02(c), below. The Foundation may make these determinations and decisions by any one of the following procedures:

- (i) Majority vote of a quorum consisting of directors who, at the time of the vote, are not named defendants or respondents in the proceeding.
- (ii) If such a quorum cannot be obtained, by a majority vote of a committee of the Board of Directors, designated to act in the matter by a majority vote of all directors, consisting solely of two or more directors who at the time of the vote are not named defendants or respondents in the proceeding.
- (iii) Determination by special legal counsel selected by the Board of Directors by vote as provided in paragraph 9.02(a)(i) or 9.02(a)(ii), or if such a quorum

cannot be obtained and such a committee cannot be established, by a majority vote of all directors.

(b) The Foundation shall authorize indemnification and determine that expenses to be reimbursed are reasonable in the same manner that it determines whether indemnification is permissible. If the determination that indemnification is permissible is made by special legal counsel, authorization of indemnification and determination of reasonableness of expenses shall be made in the manner specified by paragraph 9.02(a)(iii), above, governing the selection of special legal counsel. A provision contained in the Articles of Incorporation, the Bylaws, or a resolution of members or the Board of Directors that requires the indemnification permitted by paragraph 9.01, above, constitutes sufficient authorization of indemnification even though the provision may not have been adopted or authorized in the same manner as the determination that indemnification is permissible.

(c) The Foundation shall pay indemnification expenses before final disposition of a proceeding only after the Foundation determines that the facts then known would not preclude indemnification and the Foundation receives a written affirmation and undertaking from the person to be indemnified. The determination that the facts then known to those making the determination would not preclude indemnification and authorization of payment shall be made in the same manner as a determination that indemnification is permissible under paragraph 9.02(a), above. The person's written affirmation shall state that he or she has met the standard of conduct necessary for indemnification under the Bylaws. The written undertaking shall provide for repayment of the amount paid or reimbursed by the Foundation if it is ultimately determined that the person has not met the requirements for indemnification. The undertaking shall be an unlimited general obligation of the person, but

it need not be secured and it may be accepted without reference to financial ability to make repayment.

ARTICLE 10

NOTICES

Notice by Mail or Telegram

10.01. Any notice required or permitted by the Bylaws to be given to a director, officer, or member of a committee of the Foundation may be given by mail, hand-delivery, facsimile or telegram. If mailed, a notice shall be deemed to be delivered when deposited in the United States mail addressed to the person at his or her address as it appears on the records of the Foundation, with postage prepaid. If given by facsimile, notice shall be deemed delivered upon the sending of the same to the telephone facsimile number that appears on the records of the Foundation. If given by telegram, a notice shall be deemed to be delivered when accepted by the telegraph company and addressed to the person at his or her address as it appears on the records of the Foundation. A person may change his or her address by giving written notice to the secretary of the Foundation.

Signed Waiver of Notice

10.02. Whenever any notice is required to be given under the provisions of the Act or under the provisions of the Articles of Incorporation or the Bylaws, a waiver in writing signed by a person entitled to receive a notice shall be deemed equivalent to the giving of the notice. A waiver of notice shall be effective whether signed before or after the time stated in the notice being waived.

Waiver of Notice of Attendance

10.03. The attendance of a person at a meeting shall constitute a waiver of notice of the meeting unless the person attends for the express purpose of objecting to the transaction of any business because the meeting is now lawfully called or convened.

ARTICLE 11

SPECIAL PROCEDURES CONCERNING MEETINGS

Meeting by Telephone

11.01. The Board of Directors, and any committee of the Foundation may hold a meeting by telephone conference-call procedures in which all persons participating in the meeting can hear each other. The notice of a meeting by telephone conference must state the fact that the meeting will be held by telephone as well as all other matters required to be included in the notice. Participation of a person in a conference-call meeting constitutes attendance by that person at the meeting.

Decision Without Meeting

11.02. Any decision required or permitted to be made at a meeting of the Board of Directors, or any committee of the Foundation may be made without a meeting. A decision without a meeting may be made if a written consent to the decision is signed by all of the persons entitled to vote on the matter. The original signed consents shall be placed in the Foundation's minute book and kept with the Foundation's records.

Voting by Proxy

11.03. A person who is authorized to exercise a proxy may not exercise the proxy unless the proxy is delivered to the officer presiding at the meeting before the business of the meeting begins. The secretary or other person taking the minutes of the meeting shall

record in the minutes the name of the person who executed the proxy and the name of the person authorized to exercise the proxy. If a person who has duly executed a proxy personally attends a meeting, the proxy shall not be effective for that meeting. A proxy filed with the secretary or other designated officer shall remain in force until the first of the following occurs:

- (a) An instrument revoking the proxy is delivered to the secretary or other designated officer.
- (b) The proxy authority expires under the terms of the proxy.
- (c) The proxy authority expires under the terms of the Bylaws.

ARTICLE 12

AMENDMENTS TO BYLAWS

The Bylaws may be altered, amended, or repealed, and new bylaws may be adopted by the Board of Directors. The notice of any meeting at which the Bylaws are altered, amended, or repealed, or at which new bylaws are adopted shall include the text of the proposed bylaw provisions as well as the text of any existing provisions proposed to be altered, amended, or repealed. Alternatively, the notice may include a fair summary of those provisions.

ARTICLE 13

MISCELLANEOUS PROVISIONS

Legal Authorities Governing Construction of Bylaws

13.01. The Bylaws shall be construed in accordance with the laws of the State of Texas. All references in the Bylaws to statutes, regulations, or other sources of legal authority shall refer to the authorizes cited, or their successors, as they may be amended from time to time.

Legal Construction

13.02. If any Bylaw provision is held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provision and the Bylaws shall be construed as if the invalid, illegal, or unenforceable provision had not been included in the Bylaws.

Headings

13.03. The headings used in the Bylaws are used for convenience and shall not be considered in construing the terms of the Bylaws.

Gender

13.04. Whenever the context requires, all words in the Bylaws in the male gender shall be deemed to include the female or neuter gender, all singular words shall include the plural, and all plural words shall include the singular.

Seal

13.05. The Board of Directors may provide for a corporate seal. Such a seal would consist of two concentric circles containing the words "Addison Parks Foundation," "Texas,"

in one circle and the word "Incorporated" together with the date of incorporation of the Foundation in the other circle.

Power of Attorney

13.06. A person may execute any instrument related to the benefit of the directors, officers, committee members, employees, and agents of the Foundation and their respective heirs, executors, administrators, legal representatives, successors, and assigns except as otherwise provided in the Bylaws.

CERTIFICATE OF SECRETARY

I certify that I am the duly elected and acting secretary of Addison Parks Foundation and that the foregoing Bylaws constitute the Bylaws of the Foundation. These Bylaws were duly adopted at a meeting of the Board of Directors held on _____, 1995.

DATED: _____, 1995.

Foundation

CHRIS TERRY, Secretary of the

Council Agenda Item: #R11

SUMMARY: In order for the Town of Addison to be eligible for future federal disaster assistance and emergency preparedness grants, we must formally adopt the National Incident Management System (NIMS). NIMS will provide a consistent nationwide approach for federal, state and local governments to work together more effectively and efficiently to prevent, prepare for, respond to, and recover from large-scale domestic emergency incidents.

FINANCIAL IMPACT:

Budgeted Amount: \$0.00

Cost: \$0.00

BACKGROUND: While on the scene of emergency incidents, many emergency organizations operate under various management or incident command systems. Unfortunately, many of these systems are not compatible. These various systems utilize different terminology, different organizational concepts and different reporting procedures. As you can imagine, this does not result in an effective coordinated approach to emergency management. It even becomes more disjointed when the various different levels of government are involved (i.e. local, state, federal).

The NIMS standardized procedures for managing large-scale emergencies will result in a coordinated response to such incidents. All emergency management disciplines (fire, law enforcement, emergency medical, volunteer groups, etc.) at all levels of government will be better prepared to cooperatively respond and work together to bring a large-scale emergency under control.

Due to their emergency management responsibilities, the implementation of this system will have a greater impact on the Town's Fire and Police Departments. However, Town managers, especially those that may be assigned to the Emergency Operations Center during emergencies, will be required to complete an NIMS awareness-training course. The Town's various emergency management documents such as the Emergency Management Plan will have to be modified to ensure utilization of the NIMS.

RECOMMENDATION: The Addison Fire Department recommends the City Council of the Town of Addison to adopt Resolution Number ____, a resolution adopting the implementation of the National Incident Management System.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS, ADOPTING THE IMPLEMENTATION OF THE NATIONAL INCIDENT MANAGEMENT SYSTEM.

WHEREAS, United States President George W. Bush in Homeland Security Presidential Directive-5 ("HSPD-5") directed the Secretary of the Department of Homeland Security to develop and administer a National Incident Management System ("NIMS"), to provide a consistent nationwide approach for federal, state, local and tribal governments to work together more effectively and efficiently to prevent, prepare for, respond to, and recover from domestic incidents, regardless of cause, size or complexity; and

WHEREAS, the collective input and guidance from all federal, state, local and tribal homeland security partners has been, and will continue to be, vital to the development, effective implementation and utilization of a comprehensive NIMS; and

WHEREAS, it is necessary that all federal, state, local, and tribal emergency management agencies and personnel coordinate their efforts to effectively and efficiently provide the highest levels of incident management; and

WHEREAS, to facilitate the most efficient and effective incident management, it is critical that federal, state, local, and tribal organizations utilize standardized terminology, standardized organizational structures, uniform personnel qualification standards, uniform standards for planning, training, and exercising, comprehensive resource management, and designated incident facilities during emergencies or disasters; and

WHEREAS, the NIMS standardized procedures for managing personnel communications, facilities, and resources will improve the state's ability to utilize federal funding to enhance local and state agency readiness, maintain first responder safety, and streamline incident management processes; and

WHEREAS, the Incident Command System components of NIMS are already an integral part of various incident management activities throughout the state, including all public safety and emergency response organizations training programs; and

WHEREAS, the National Commission of Terrorist Attacks ("9-11 Commission") recommended adoption of a standardized Incident Command System;

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

THAT, the National Incident Management System (NIMS) is hereby adopted to be utilized for all emergency incident management in the Town of Addison, Texas. The City Council further directs the City's Fire Department to train all public safety response personnel and supervisors in the use of NIMS. The Town Council further directs that this resolution take effect immediately.

DULY PASSED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS, this the 13th day of September 2005.

Mayor

ATTEST:

City Secretary

Council Agenda Item: #R12

SUMMARY:

This item is for the approval of a supplemental agreement to the Engineering Services Agreement with HNTB Corporation, in the amounts not to exceed \$123,980.00, for additional design and inspection services on the Arapaho Road project, from Surveyor Blvd. to Addison Road, project.

FINANCIAL IMPACT:

Current Design/Inspection Contract Amount: \$1,306,640.00

Additional Design/Inspection Cost: \$123,980.00

Source of Funds: Funds were identified in the budget revision presented and approved in May that includes this additional inspection amount.

BACKGROUND:

The Arapaho Road Phase III extension project extends from Surveyor Blvd. to Addison Road. Construction of this section of Arapaho Road is well underway and will complete an east-west minor arterial roadway that is necessary to relieve traffic congestion on Belt Line Road. Due to the complex nature of this project, the Town entered into an agreement with the firm of HNTB Corporation to provide construction inspection of all improvements, in the amount of \$211,060.00. This cost consisted of using an on-site inspector at a previously determined rate of 40 hours per week. However, as the construction of the project unfolded and demands on the inspector to be present at the project site were elevated, the total inspection hours necessary to keep up with the work increased to approximately 65 hours per week. As a result, the inspector's total billings for work performed resulted in a budget overage with a substantial amount of the project remaining. Consequently, staff requested additional funds for construction services, in the amount of \$149,874.00, on April 12, 2005, with the anticipation that construction of the project would be completed by the end of August 2005.

The Contractor has recently submitted to staff a revised construction schedule for the Arapaho Road, Phase III project. According to the new schedule, construction of the project will not be completed until the end of December 2005. As a result, staff is requesting additional funds, in the amount not to exceed \$118,580.00, in order to

maintain the current level of necessary construction inspection services at the project site, at the rate of 50 hours/week, through the end of the year.

Although the inspection performed during construction of the project has exceeded original estimated expenditures, staff relies on the inspector to inspect and document the numerous construction activities that are underway simultaneously.

In addition, HNTB was asked to revise the plan design elevations at the Railroad “wye” tracks on the east end of the site. This was due to numerous rail elevation changes that the railroad created in order to set new track crossings on the project. Staff is recommending an additional amount of \$5,400.00 be authorized to perform these design revisions.

RECOMMENDATION:

Staff recommends that Council authorize the City Manager to enter into a supplemental agreement to the Engineering Services Agreement with HNTB Corporation, in the amount not to exceed \$123,980.00, for additional design and inspection on the Arapaho Road project from Surveyor Blvd. to Addison Road.

Council Agenda Item #R13

SUMMARY:

This item is for Council approval of Change Order No. 4, in the amount of \$99,560.54, and an extension of 86 calendar days, for the construction of Arapaho Road, Phase III, from Surveyor Blvd. to Addison Road.

FINANCIAL IMPACT:

Budgeted Amount:	Not specifically budgeted
Change Order Cost:	\$99,560.54
Source of Funds:	Funds were identified in the budget revision presented and approved in May that anticipated possible change orders that would cover this amount.

BACKGROUND:

The Arapaho Road, Phase III project is currently under construction from Surveyor Blvd. to Addison Road. In June 2004, a construction contract was awarded to Archer Western, Ltd., in the amount of \$16,702,578.42. During the construction of these improvements, The Public Works Department staff and the Contractor have jointly identified several necessary field changes related to the project. Three previous change orders, in the amounts of \$8,509.00, \$17,548.18, and \$124,766.25, respectively were generated as a result of field changes to the original design. As the construction of Arapaho Road has progressed, it was determined that Change Order No. 4, in the amount of \$99,560.54, is also necessary to complete the project. This change order is the result of numerous construction issues (see attachment) that occurred. In addition, some of the items included in the change order created unavoidable delays in construction. As a result, staff determined that the Contractor should receive a total of 86 days added to the original contract time of 425 calendar days for this project.

The addition of Change Order No 4 increases the total construction cost to \$16,952,962.39. This represents a 1.50% increase over the contract construction cost. Typically, a project of this scope and magnitude will experience change orders totaling approximately 4% of the original contract price. Fortunately, staff has worked with the Contractor to effectively minimize the value of change orders on this project to date. However, due to the nature of these improvements and remaining scope of roadway and bridge improvements remaining to be constructed, it is anticipated that staff may submit a future change order to Council for consideration and approval well within the 4% figure.

RECOMMENDATION:

Staff recommends that Council authorize the City Manager to approve Change Order No. 4, in the amount of \$99,560.54, and an extension of 86 calendar days, for the construction of Arapaho Road, Phase III, from Surveyor Blvd. to Addison Road.

TOWN OF ADDISON, TEXAS

ARAPAHO ROAD - PHASE III

Project No. 04-022

CHANGE ORDER NUMBER: 4

1. CONTRACTOR: Archer Western Contractors

2. Change Order Work Limits: Sta. 34+07 to Sta. 87+88

3. Describe the work being revised:

See Attached Reason Sheet

4. Work to be performed in accordance with Items: See attached Tables

5. New or revised plan sheet(s) are attached and numbered: SW-17, SW-24, Ir-09, SGT-HB03A, MBGF-03A

6. New general notes to the contract are attached: [] Yes [x] No

7. New Special Provisions to Itc N/A No. N/A, Special Specification Item N/A are attached.

Each signatory hereby warrants that each has the authority to execute this Change Order (CO).

Signature box containing contractor signature (Ben J. Wintstead), date (9/7/05), and project title (PROJECT MANAGER). Includes a table with 'The following information must be provided' containing Time Ext. # (1) and Amount added (\$99,560.54).

RECOMMENDED FOR EXECUTION:

Signatures and dates for Construction Inspector (9/7/05) and Project Manager (09-07-05).

Approval checkboxes for Town of Addison (Title) and Date for Construction Inspector, Project Manager, and another official.

NOTE:

Contractor reserves its right to claim extra costs due to extended overhead created by delays at a later date.

**Arapaho Road – Phase III
Surveyor Blvd. to Addison Road
Project No. 04-22**

Change Order No. 4

Reason for Change

This change order will increase work by thirteen new contract work items, the reduction in quantity of one original bid items and the increase in quantity of 3 original bid items. The change order will result in twenty (20) days time extension to the contract.

Item 151 - SGT (8)-03A Single Guardrail System (Related PCO #46):

History of why the change order occurred – Deletion of the original bid item, which is replaced by the new Item 1231.

Impact to the contract amount – A credit amount of \$4,924.50 to the base contract.

Impact to the project schedule – The project calendar day total is not affected.

Item 224 – 8-foot recessed Inlet (Related to PCO #48):

Contractor was instructed to provide an additional 8-foot recessed inlet to be compensated under the existing contract bid item unit price.

History of why the change order occurred – The 8-foot standard inlet was relocated to station 44+85 to eliminate a conflict with the required T4 rail and reduce the impact of the construction on the adjacent property owner. To eliminate these conditions the inlet was installed at the end of the T4 Rail.

Impact to the contract amount – A total dollar amount of \$1,750.00 is approved.

Impact to the project schedule – The project calendar day total is not affected.

Item 228 – 2-Grate Inlet:

The contractor was asked to provide additional 2-Grate Inlets, which would be compensated under the existing contract bid item unit price.

History of why the change order occurred – After the start of the construction, it was observed that storm water runoff from adjacent properties would be trapped or have an excessive sheet flow. Due to these conditions, several areas were redesign to collect the storm water runoff into the future box culverts.

Impact to the contract amount – A total dollar amount of \$16,100.00 is approved.

Impact to the project schedule – The project calendar day total is not affected.

Item 322 – Lighting Control Center:

Contractor was requested to provide one additional lighting control center, which will be compensated under the existing contract bid item unit price.

History of why the change order occurred – The Town of Addison requested the additional lighting control center be installed to separate the pedestrian and street lighting systems from being controlled by one cabinet and meter.

Impact to the contract amount – A total dollar amount of \$6,000.00 is approved.

Impact to the project schedule – The project calendar day total is not affected.

Item 1224 – Relocate Fence at Storage Facility (PCO #14):

History of why the change order occurred – Existing fire hydrant needed to be relocated per construction plans. The temporary security fence constructed along the Watson-Taylor storage facility had to be relocated in order to relocate the fire hydrant.

Impact to the contract amount – The dollar amount of \$554.76 is approved.

Impact to the project schedule – The contractor has not claimed additional days for this work. The project calendar day total is not affected.

Item 1225 – 9x5 Box Culvert Modification-conflict with existing Gas & SBC services (PCO # 19):

Contractor claims a sixteen day delay in being able to lay box culverts A & B due to a conflict with an existing gas line and an SBC ductbank. Contractor also claims \$3,202.48 for additional costs incurred.

History of why the change order occurred – During the installation of the storm sewer box culvert a conflict developed with an existing main and an abandoned SBC ductbank. A new design was developed in order to incorporate the gas line encasement into the bottom slab of the storm sewer box culvert. This work directly impacted the critical path of the project.

Impact to the contract amount – The dollar amount of \$3202.48 is approved.

Impact to the project schedule – The project calendar days will be extended sixteen days.

Item 1226 – Paint System for the T4 Railing (PCO #24):

Contractor was asked to change to a more durable paint system, more suitable for steel application.

History of why the change order occurred – Initial paint specified for the Pedestrian Railing was a System II vinyl paint. After reviewing the specifications and expected performance with the contractor and his paint subconsultant it was determined that a Carboline acrylic paint system was more advantageous to the pedestrian rail.

Impact to the contract amount – The dollar amount of \$18,351.45 is approved.

Impact to the project schedule – The contractor has not claimed additional days for this work. The project calendar day total is not affected.

Item 1227 – Paint System for the Pedestrian Railing (PCO #24):

Contractor was asked to change to a more durable paint system, more suitable for steel application.

History of why the change order occurred – Initial paint specified for the Pedestrian Railing was a System II vinyl paint. After reviewing the specifications and expected performance with the contractor and his paint subconsultant it was determined that a Carboline acrylic paint system was more advantageous to the pedestrian rail.

Impact to the contract amount – The dollar amount of \$11,113.89 is approved.

Impact to the project schedule – The contractor has not claimed additional days for this work. The project calendar day total is not affected.

Item 1228 – Comfort Suite – Irrigation System in along ROW (PCO #30):

Contractor claims \$3,577.65 for additional costs incurred to add 3 additional irrigation zones.

History of why the change order occurred – During design of the project this area was not designed to have irrigation due to existing irrigation coverage. During construction it was noted that the irrigation system in place was owned by a private land owner. The Town made the decision to cover this area with irrigation within their own right of way limits

Impact to the contract amount – The dollar amount of \$3,577.65 is approved.

Impact to the project schedule – The contractor has not claimed additional days for this work. The project calendar day total is not affected.

Item 1229 – Closing Existing Opening in Box Culvert (PCO #41):

Contractor claims a one day delay in closing the opening in the existing Box Culvert. Contractor also claims \$551.65 for additional costs incurred.

History of why the change order occurred – During the construction of the new storm sewer box culvert lines A & B, the existing box culvert line B was found to have two abandoned pipes connected to the culvert which had to be removed to construct line A. The opening created by the removal of the abandoned pipe from the existing box culvert had to be sealed.

Impact to the contract amount – The dollar amount of \$551.65 is approved.

Impact to the project schedule – The contractor has claimed one additional day for this work. This work did not affect the critical path of the project. The project calendar day total is not affected.

Item 1230 – 10x6 Box Culvert Modification-conflict with existing Sanitary Sewer (PCO #42):

Contractor claims a two day delay in being able to lay box culverts A & B due to a conflict with an existing sanitary sewer at Surveyor Blvd. Contractor also claims \$4,315.26 for additional costs incurred.

History of why the change order occurred – During the installation of the storm sewer box culvert, a conflict developed with an existing sanitary sewer. A new design was developed in order to incorporate the sanitary sewer encasement into the bottom slab of the storm sewer box culvert.

Impact to the contract amount – The dollar amount of \$4,315.26 is approved.

Impact to the project schedule – The contractor has claimed two additional days for this work. This work did not affect the critical path of the project. The project calendar day total is not affected.

Item 1231 – SGT (8) HB-03A Single Guardrail System (PCO #46):

Contractor was asked to provide the single guardrail system utilizing a steel post application. Contractor provided a new price per each installation.

History of why the change order occurred – During the submittal process it was discovered that there was a conflict between the bid item description and the notation on the contract plans. The contractor was requested to provide a price for the installation of a single guardrail system utilizing a steel post application.

Impact to the contract amount – A total dollar amount of \$5,612.82 is approved.

Impact to the project schedule – The project calendar day total is not affected.

Item 1232 – Tie-in of new lateral C-3A (PCO #48):

Contractor was requested to provide a cost proposal for the addition of an inlet and all related work along the south side of the East bound traffic lanes at station 80+76.88.

History of why the change order occurred – The roadway alignment across the existing railroad track had to be redesigned due to DGN&O railroad changes to the elevation of the existing rail grade crossing after construction began. Since the designed drainage system had been installed prior to the changes, the new inlet would have to be installed at the new low point along the future roadway.

Impact to the contract amount – A total dollar amount of \$524.36 is approved.

Impact to the project schedule – The project calendar day total is not affected.

Item 1233 – Police Escort for U-Beam Delivery (PCO #50):

Contractor was requested have the delivery of the bridge U-beams at night. This required the contractor to have a police escort through intersections within the Dallas City Limits.

History of why the change order occurred – The contractor original schedule of the delivery of the U54-beams was during day light hours. At the request of the Town of Addison, the first delivery was re-scheduled to after midnight. This created a safety issue of moving the large beams at night through the street intersections. The Dallas police was contracted to provide safe passage through the intersections within their jurisdiction.

Impact to the contract amount – A total dollar amount of \$672.00 is approved.

Impact to the project schedule – The project calendar day total is not affected.

Item 1234 – Pedestrian Rail Pennant Material (PCO #51):

Contractor claims \$3,075.61 for additional costs incurred to change the original gauge steel for the pennant application to the pedestrian. This change was determined during the shop drawing submittal procedure.

History of why the change order occurred – After several discussion between the railing manufacture and designer, it was decided to increase the gage thickness to provide a better weldable steel to prevent buckling and warping that might occur during the attachment of the pennant steel to the railing, while still providing a strong attachment and cleaner look to the surface of the pedestrian railing.

Impact to the contract amount – A total dollar amount of \$3,075.61 is approved.

Impact to the project schedule – The project calendar day total is not affected.

Item 1235 – Traffic Signal Foundation Changes (PCO #57):

Contractor was requested to provide a cost proposal to change the size of two traffic signal foundations.

History of why the change order occurred – The change in the size of the two traffic signal foundations occurred due to the as-built condition of the existing traffic signal anchor bolt pattern being different than what was expected in the plans. The differing anchor bolt pattern was in conflict with newer standards that exist for the required size of the foundation in relationship to anchor bolt pattern dimension.

Impact to the contract amount – A dollar amount of \$1,524.90 is approved.

Impact to the project schedule – The project calendar day total is not affected.

Item 1236 – MBGF Inlet Posts (PCO #46):

Contractor was requested provide a unit price to provide an inlet mounted guardrail fence post.

History of why the change order occurred – The 8-foot standard inlet was relocated to station 44+85 to eliminate a conflict with the required T4 rail and reduce the impact of the construction on the adjacent property owner. To eliminate these conditions the inlet was installed at the end of the T4 Rail.

Impact to the contract amount – A total dollar amount of \$408.21 is approved.

Impact to the project schedule – The project calendar day total is not affected.

Item 1237 – TXU Power Lines @ Midway (PC-#5043):

Contractor claims a seventy-five day delay for being unable to install the box culvert across Midway Road and beginning Span 9 work with the existing overhead power line. Contractor also claims \$30,090.00 for additional costs incurred.

History of why the change order occurred – Archer Western Contractor was request to stop work, allowing the TXU contractor to perform the required work to remove the over head power line. Upon, the stopping and starting of work at Midway Road it was determined that Archer Western Contractor had encounter delays due to the overhead power lines.

Impact to the contract amount – A total dollar amount of \$25,400.00 is approved.

Impact to the project schedule – The seventy -five day portion of the claim was reduced to sixty days base on the critical path and the review of the actual stops and starts of work.

PCO #6 – Oncor Redesign of Conduit Crossing

Item 1202 – Contractor claims a fourteen day delay in being able to lay box culverts A & B due to TXU electrical conduit being altered for clearance requirements set by DWU and TXU. Contractor claims ten day delay between 08/30/04 and 09/09/04. Contractor also claims a four day delay for laying the box in reverse.

History of why the change order occurred – After the project was bid, TXU Electric notified HNTB of a requirement to have a minimum cover of three foot cover over the electrical conduit. During the construction of the conduits we were informed by DWU they needed five foot of clearance between their top of pipe and the electrical conduit.

Impact to the contract amount – The dollar amount of 7,841.51 was approved on change order # 2.

Impact to the project schedule – The ten day portion of the claim is reduced to six days base on the critical path not being exceeded as referenced in a letter from HNTB to Archer Western Contractors, Ltd. dated June 3, 2005 and also allowing Archer Western compensation to excel the schedule. The four day claim to install the box culvert in reverse is agreed to. The project calendar days will be extended a total of ten days.

HNTB Corporation

Guy Van Baulen

Council Agenda Item: #R14

SUMMARY:

Discussion and consideration of a request from Turbine Aircraft Services, Inc., tenant pursuant to a ground lease of certain property located at 4550 Jimmy Doolittle Dr. at Addison Airport, for the Town of Addison, as landlord, to approve an estoppel letter from F&M Bank and Trust Company in connection with a loan from the Bank to be secured by the tenant's leasehold estate.

BACKGROUND:

Turbine Aircraft Services, Inc is a Specialized Aircraft Service Operator (SASO) located at 4550 Jimmy Doolittle Dr. at Addison Airport and provides product support to owners and operators of turboprop aircraft. Most notably, Turbine is under contract with Mitsubishi Heavy Industries America (MHIA) to provide ongoing service-center support for the MU-2 turboprop aircraft, including the distribution of parts, training and the organization of safety seminars.

Turbine is requesting the Town's consent to the creation of a new leasehold mortgage to be inferior to the lien created by the ground lease, to refinance existing debt and provide Turbine working operating capital to be used in direct connection with its business operations at Addison Airport. This action does not exceed the extent of indebtedness already consented to by the Town of \$1,600,000 in the aggregate to date.

Turbine desires to execute a promissory note and leasehold deed of trust with F&M Bank not to exceed \$1,600,000. Turbine and the bank have represented the primary purpose of the new loan is to: 1) payoff the existing SANB debt (of an original principal amount of \$600,000); 2) to have an irrevocable letter of credit issued by F&M Bank which is dedicated to payment of the Hangar Six, Inc. note dated July 12, 2002 (in the original principal amount of \$1,000,000), and in consideration of this letter of credit Hangar Six agrees to subordinate their lien position to F&M Bank; 3) and the remaining proceeds can be made available to Turbine to be used in direct connection with their business operations at Addison Airport, including the financing of repairs and capital improvements made to the demised premises.

RECOMMENDATION:

Airport management (WSAAV) and the City Attorney have reviewed the proposed estoppel letter from F&M Bank and Trust Company requesting the Town's consent and acknowledgement of Turbine's intent to execute a promissory note and leasehold deed of trust securing the note for a sum not to exceed \$1,600,000 and have found it acceptable for the Town's use. With Turbine being in good standing under the Ground Lease, WSAAV recommends the Town give its consent and authorize the City Manager to execute the estoppel letter in favor of F&M Bank and Trust Company as requested. Staff recommends approval.

Attachments: Bill Dyer - Memorandum
Exhibit A- Estoppel

MA

Memorandum

To: Mark Acevedo
Director of General Services, Town of Addison

From: Bill Dyer, Real Estate Manager

Cc: Lisa Pyles, Airport Director

Date: August 30, 2005

Re: Requested Action by Town of Addison by
Turbine Aircraft Services, Inc. (Ground Lease 0200-3502)

Summary of Requested Action and Recommendation by Airport Operator

Turbine Aircraft Services, Inc. (Turbine) requests the Town of Addison, as Landlord, to consider and approve Turbine's intent to create a new leasehold mortgage with F&M Bank and Trust Company (the "F&M Bank") to be secured by, among other things, a lien against their leasehold interest in the referenced Ground Lease.

WSAAV has reviewed the requested action and proposed estoppel letter from F&M Bank (see Exhibit A) requesting the Town's consent and acknowledgement of the proposed \$1,600,000 promissory note secured by a leasehold deed of trust and recommends the Town gives its consent to the requested action. The Town's attorney has reviewed the proposed estoppel letter and has indicated it is acceptable for the Town use.

Background Information

Turbine Aircraft Services, Inc is a Specialized Aircraft Service Operator (SASO) located at 4550 Jimmy Doolittle Dr. at Addison Airport and provides product support to owners and operators of turboprop aircraft. Most notably, Turbine is under contract with Mitsubishi Heavy Industries America (MHIA) to provide ongoing service-center support for the MU-2 turboprop aircraft, including the distribution of parts, training and the organization of safety seminars.

The Ground Lease, which commenced on July 1, 1984 with Hangar Six, Inc. as the Tenant, had a thirty-year term. With the Town's consent, Turbine acquired the leasehold interests of Hangar Six in July 2002 who provided 100% seller financing secured by a leasehold deed of trust subordinated only to the ground lease. Concurrently, Turbine and the Town amended the ground lease so that, among other things, the:

1. Leased premises were modified to be 92,259 square feet, or 2.1 acres,
2. Prevailing lease rate of \$0.4686 per square foot was affirmed and subject to its customary bi-annual adjustment,
3. Lease term was extended an additional 216 months (or, until June 30, 2032) provided Turbine completed certain real property improvements. *(These improvements have since been completed by Turbine and accepted by the Town in accordance to the amendment)*
4. Tenant could enter in to certain sub-leases without further consent from the Town (any other would require Town's prior written consent).
5. Tenant may create a leasehold mortgage for other purposes approved by Landlord in writing from time to time.

On April 16, 2003, Turbine and the Town agreed to modify the demised premises once again in the Second Amendment to Ground Lease to reflect its current configuration of 91,627 square feet. At this same time, Turbine requested and the Town consented to the creation of a second leasehold mortgage in the sum of \$600,000 in favor of San Angelo National Bank (SANB) used to finance the previously referenced improvements. The SANB lien is subordinate to the ground lease and Hangar Six liens.

Current Status:

Property Description	
Date of Report	8/29/2005
Property Number	0200-35
Property Address	4550 Jimmy Doolittle
Ramp Address	A-5
ADS Survey #	20
Property Type	Conventional
Land Area	91,627
Hangar Area	21,000
Office/Shop Area	7,280
Total Building Area	28,280
Year Built	1970
Est. Economic Life	45
End of Eco. Life	2015
% Obsolescent	78%
Hangar Door Clearance	

Lease Information	
Lease #	0200-3502
Tenant Name	Turbine Aircraft Services
Doing Business As	Turbine Aircraft Services
Primary Contact:	Tom Berscheidt
Primary Contact Phone:	972-248-3108 ext. 206
Lease Type	Ground Lease
Lease Commencement Date	7/1/1984
Lease Expiration Date	6/30/2032
Years Remaining in Term	26.85
Current Monthly Rent	\$ 3,855.10
Current Annual Rent	\$ 46,261.20
Annual Rent /SF Land	\$ 0.50
Est. Remaining Contract Rent	1,512,187
Next Rent Adjustment Date	CPI every 2 years

Since acquiring the property, Turbine has expended over \$700,000 in repairs and capital improvements made to the demised premises including 10,000 square feet of expanded conventional hangar and office space, upgraded landscaping and increased vehicle parking. Turbine is proposing to make an additional \$160,000 in repairs and capital improvements financed with the proposed loan proceeds.

Proposed Action:

Consent and acknowledgement of Tenant's intent to execute a note and leasehold deed of trust in favor of F&M Bank in the sum of \$1,600,000.

Turbine desires to execute a promissory note and leasehold deed of trust with F&M Bank not to exceed \$1,600,000. Turbine and the bank have represented the primary purpose of the new loan is to: 1) payoff the existing SANB debt (of an original principal amount of \$600,000); 2) to have an irrevocable letter of credit issued by F&M Bank which is dedicated to payment of the Hangar Six, Inc. note dated July 12, 2002 (in the original principal amount of \$1,000,000), and in consideration of this letter of credit Hangar Six agrees to subordinate their lien position to F&M Bank; 3) and the remaining proceeds can be made available to Turbine to be used in direct connection with their business operations at Addison Airport, including the financing of repairs and capital improvements made to the demised premises.

In addition to Landlord's acknowledgment of the mortgage and Deed of Trust, F&M Bank asks the Landlord to agree that:

1. The mortgage will be an inferior lien to the Ground Lease and will be against only the leasehold interest of Turbine in the demised premises.
2. To Landlord's actual knowledge, the tenant is presently not in default under the Ground Lease.
3. The Ground Lease has not be modified, amended or altered except as described in the bank's proposed estoppel letter.
4. The Town will give the bank written notice of any default by Tenant and that the bank will have 15 days from said notice to take action to cure the default. The Town will not terminate the Ground Lease without first giving the bank an opportunity to cure the default.
5. Should the bank succeed in interest of Tenant by means of foreclosure or deed-in-lieu of foreclosure, the Town agrees to recognize the bank as tenant whom may assign their leasehold interest only with the prior written consent of the Town.

Conclusion and Recommendation of Airport Operator

Turbine is requesting the Town's consent to the creation of a new leasehold mortgage to be inferior to the lien created by the ground lease, to refinance existing debt and provide Turbine working operating capital to be used in direct connection with its business

operations at Addison Airport. This action does not exceed the extent of indebtedness already consented to by the Town of \$1,600,000 in the aggregate to date. Turbine and F&M Bank have represented to the Town that the loan proceeds will be used to 1) retire the SANB debt and secure the release of its 2nd leasehold lien, 2) ensure the repayment of the Hangar Six, Inc. note and secure its release of lien by issuing an irrevocable letter of credit in favor of Hangar Six who will in turn subordinate their lien position to F&M Bank, and 3) any remaining proceeds may be used by Turbine in direct connection with their business operations at Addison Airport including the financing of repairs and capital improvements made to the demised premises.

WSAAV has reviewed the proposed estoppel letter from F&M Bank and Trust Company requesting the Town's consent and acknowledgement of Turbine's intent to execute a promissory note and leasehold deed of trust securing the note for a sum not to exceed \$1,600,000. The Town's Attorney has also reviewed the bank's proposed estoppel letter and has found it acceptable for the Town's use. With Turbine being in good standing under the Ground Lease, WSAAV recommends the Town give its consent and authorize the City Manager to execute the estoppel letter in favor of F&M Bank and Trust Company as requested.

Exhibit A



CARLOS MUNGUIA
PRESIDENT

August 29, 2005

Town of Addison
5300 Beltline Road
Dallas, Texas 75240

RE: Ground Lease dated May 23, 1984 by and among the City of Addison, Texas, a municipal corporation (the "City," the same being the Town of Addison, Texas) and Addison Airport of Texas, Inc., a Texas corporation, as Landlord (the City now being the sole Landlord under the Ground Lease, the "Base Lease" [as defined in the Ground Lease] having expired, and the City alone being referred to herein as the "Landlord") and Hangar Six, Inc., as tenant; the said Ground Lease then having been assigned to Turbine Aircraft Services, Inc., a Texas corporation ("Tenant") by that Assignment of Ground Lease between Hangar Six, Inc. and Tenant entered into on July 2, 2002; the said Ground Lease then having been amended by (i) that Amendment to Ground Lease dated July 2, 2002 (the "First Amendment") and by (ii) that Second Amendment to Ground Lease dated April 16, 2003 (the "Second Amendment") (the said Ground Lease, as amended by and together with the First Amendment and the Second Amendment, being referred to herein as the "Ground Lease"); whereby Landlord leases to Tenant certain real property referred to in the Ground Lease as the "Demised Premises" (and so called herein) located at the Addison Airport in Dallas County, Texas, which Demised Premises are specifically described in the Ground Lease (and are generally located at 4550 Jimmy Doolittle Drive, Addison, Texas 75001, and being approximately 2.10 acres [91,626.59 square feet] in size).

Gentlemen:

The F&M Bank and Trust Company (the "Bank") desires to make a credit facility available to be used directly in connection with the operation of the Tenant's business at Addison Airport in the maximum amount of One Million Six Hundred Thousand and No/100 Dollars (\$1,600,000.00) which includes an irrevocable letter of credit issued by the Bank which is dedicated to payment of the Hangar Six, Inc. note dated July 12, 2002 in the original principal amount of \$1,000,000.00 described in paragraph 4 below (the "Loan") to be secured by, among other things, a lien solely against the leasehold interest of Tenant in the Demised Premises created pursuant to a leasehold deed of trust (the "Leasehold Deed of Trust") to be executed by Tenant to J. Schaad Titus, as Trustee, for the benefit of Bank, which Leasehold Deed of Trust shall be subordinate and inferior to the Ground Lease and Landlord's lien (contractual and statutory) and all other rights thereunder and all terms and conditions thereof, which Leasehold Deed of Trust shall be in substantially the form of the Leasehold Deed of Trust attached hereto.

August 29, 2005

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Bank has advised Tenant that Bank requires the written acknowledgment of Landlord to the execution by Tenant of the Leasehold Deed of Trust and the written acknowledgment of the Landlord to the statements set forth in this letter.

Therefore, by executing the enclosed copy of this letter and returning it to the undersigned, Landlord hereby specifically states as follows (and notwithstanding any statement or provision hereof, Landlord's statements herein do not constitute approval by or consent of Landlord of the Leasehold Deed of Trust or of any of the terms and conditions set forth therein, and nothing herein contained shall be deemed a waiver or release of any of the Landlord's rights under the Ground Lease or otherwise):

1. Landlord takes notice of the Leasehold Deed of Trust and the subordinate and inferior lien provided for therein being impressed solely against the leasehold interest of Tenant in the Demised Premises as set forth in the Ground Lease.
2. To the actual knowledge of Landlord, there presently exists no default by Tenant under the Ground Lease.
3. The Ground Lease has not been modified, altered or amended to the best of Landlord's actual knowledge, except as described herein.
4. Landlord has no actual knowledge of the existence of any lien against the Real Property other than that created by the Ground Lease and any lien for taxes as may be provided by law and the lien against the Ground Lease in favor of Hangar Six, Inc. and evidenced by a Deed of Trust dated July 2, 2002 and recorded on July 12, 2002 in the Deed Records of Dallas County, Texas.
5. Landlord shall give to Bank, at the address of Bank specified in this letter or at such other address as Bank may hereafter designate in writing to the Landlord, prompt written notice of any default by Tenant under the Ground Lease simultaneously with the giving of such notice to Tenant, and Bank shall have the right, for a period of fifteen (15) days after its receipt of such notice or within any longer period of time specified in such notice, to take such action or to make such payment as may be necessary or appropriate to cure any such default so specified, the intent being that Landlord shall not exercise Landlord's right to terminate the Ground Lease without first giving Bank the notice provided for herein and affording Bank the right to cure such default as provided for herein.
6. For the purposes of this letter, any notice to Bank shall be effective upon receipt of the notice.
7. If Bank succeeds to the interest of Tenant in and to the Ground Lease by means of foreclosure under the Leasehold Deed of Trust, by means of a transfer in lieu of such foreclosure, or by any other means due to the failure or inability of Tenant to pay the Loan secured by the Leasehold Deed of Trust, Landlord shall thereafter

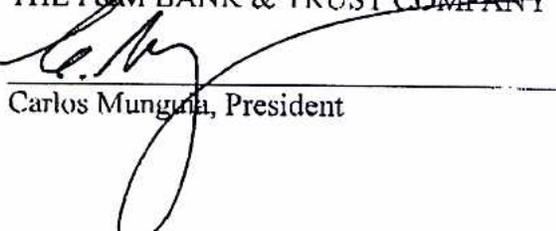
August 29, 2005
Page 3

accept, recognize and treat Bank as the tenant under the Ground Lease and Landlord shall continue to perform all of its obligations under the Ground Lease. Bank may thereafter, with the written consent of the Landlord, which consent shall not be unreasonably withheld, assign its leasehold right, title and interest in and to the Ground Lease. For purposes hereof and any applicable law, and without limitation as to other grounds for Landlord withholding consent, it shall be deemed to be reasonable for Landlord to withhold its consent when any one or more of the following apply:

- (a) the proposed assignee is of a character or of a reputation or is engaged in a business which is not consistent with the master or strategic plan of Addison Airport as determined by Landlord;
- (b) the proposed assignee has not demonstrated sufficient financial responsibility or creditworthiness to the satisfaction of Landlord in light of the duties, obligations, and responsibilities of the tenant under the Lease at the time when the consent is requested;
- (c) the proposed assignee's intended use of the Demised Premises as defined in the Ground Lease is inconsistent with the Ground Lease;
- (d) the proposed assignment would cause Landlord to be in violation of another lease or agreement to which Landlord is a party or to which Landlord or the Addison Airport is subject (including, without limitation, any grant agreements or grant assurances of the Federal Aviation Administration or any other governmental entity or agency);
- (e) if at any time consent is requested or at any time prior to the granting of consent, Tenant is in default under the Ground Lease or would be in default under the Ground Lease but for the pendency of a grace or cure period; or
- (f) the proposed assignee does not intend to occupy the entire Demised Premises as described in the Ground Lease and conduct its business therefrom for a substantial portion of the then remaining term of the Ground Lease.

Very truly yours,

THE F&M BANK & TRUST COMPANY



Carlos Munguia, President

August 29, 2005
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Acknowledged and consented to the _____ day of _____ 20__.

TOWN OF ADDISON, TEXAS

by: **Ron Whitehead, City Manager**

by: **Carmen Moran, City Secretary**

cc: Real Estate Manager
Addison Airport
16051 Addison Road, Suite 220
Addison, Texas 75001

Council Agenda Item: #R15

There are no attachments for this item.

Council Agenda Item: #R16**SUMMARY:**

Presentation and discussion of Modified FY 2005-06 City Manager's recommended budget.

FINANCIAL IMPACT:

No financial impact.

BACKGROUND:

Exhibit A provides a summary of the Modified FY 2005-06 City Manager's recommended budget. While the recommended budget presented on July 31, 2005, attempted to capture all expected future revenues and expenses in the coming year, new information has become available that necessitates a few changes. The major changes to the City Manager's Recommended FY 2005-06 Budget are summarized below.

	Original City Manager's Budget	Modified City Manager's Budget	Variance
Revenues	\$52,535,690	\$52,631,060	\$95,370
Total Appropriations	\$58,548,970	\$59,055,040	\$506,070

Revenues:

- Additional electric franchise fees are expected to generate \$55,370.
- Increased ambulance fee revenue by \$20,000 due to proposed fee adjustments.
- Increased development services fees by \$20,000 due to proposed fee adjustments.

Expenditures:

- Additional worker's compensation expenses for all funds are expected to total approximately \$159,100 for FY 2005-06.
- Recreation utility costs are expected to increase by \$20,000.
- Increased water expenses by \$49,120 due to the proposed Utility rate increase.
- Increased wastewater treatment expenses by \$44,900 in the Utility fund.
- Increased uses of working capital by \$120,000 in the Airport fund by rescheduling engineering projects.
- Increased Fire department budget by \$15,000 for equipment operator assignment pay.
- \$50,000 was added to the Information Technology budget for the purpose of developing an online payment portal. This was originally budgeted in FY 2004-05, but it is not expected to be operational until the next fiscal year.

The Council will vote on the FY 2005-06 budget at the regularly scheduled meeting on September 27, 2005. Other than minor modifications, staff does not anticipate that the budget will need to be revised prior to the vote on September 27th.

TOWN OF ADDISON
COMBINED SUMMARY OF REVENUES AND EXPENDITURES AND CHANGES IN FUND BALANCE
ALL FUNDS SUBJECT TO APPROPRIATION
City Manager Modified 2005-06 Annual Budget With Comparisons to 2004-05 Budget

	General Fund	Special Revenue Funds		Debt Service Funds		Capital Project Funds			Proprietary Funds		TOTAL		
		Hotel	Combined Other	General	Occupancy Tax Revenue	Streets	Parks	Combined Bonds	Airport	Utility	Combined Replacement	2005-06	2004-05
BEGINNING BALANCES	\$ 6,481,620	\$ 4,443,160	\$ 147,240	\$ 1,349,570	\$ 779,120	\$ 3,909,770	\$ 378,000	\$ 3,723,340	\$ 4,817,470	\$ 1,872,240	\$ 3,732,120	\$ 31,633,650	\$ 45,421,250
REVENUES:													
Ad valorem tax	8,464,500	-	-	4,702,500	-	-	-	-	-	-	-	13,167,000	12,706,100
Non-property taxes	10,773,850	3,990,000	-	-	-	-	-	-	-	-	-	14,763,850	13,941,400
Franchise fees	2,751,780	-	-	-	-	-	-	-	-	-	-	2,751,780	2,722,800
Licenses and permits	452,160	-	-	-	-	-	-	-	-	-	-	452,160	399,020
Intergovernmental	1,180,910	1,049,300	-	-	-	752,000	-	-	30,000	-	-	782,000	770,000
Service fees	744,970	-	-	-	-	-	-	-	1,112,000	8,893,300	1,146,390	13,381,500	12,151,910
Fines and penalties	119,000	574,000	35,000	-	-	-	-	-	-	60,000	-	839,970	832,400
Rental income	194,500	94,700	-	-	-	-	-	-	-	-	-	4,023,000	3,625,000
Interest & other income	24,681,670	5,708,000	65,000	4,762,500	12,000	85,000	196,000	1,567,000	59,000	56,200	115,000	2,469,400	693,400
TOTAL REVENUES	24,681,670	5,708,000	65,000	4,762,500	12,000	85,000	196,000	1,567,000	4,531,000	9,009,500	1,261,390	52,631,060	48,941,030
Transfers from other funds	-	-	-	-	705,890	-	263,000	-	-	-	-	968,890	704,610
TOTAL AVAILABLE RESOURCES	31,163,290	10,151,160	212,240	6,112,070	1,497,010	4,746,770	837,000	5,290,340	9,348,470	10,881,740	4,993,510	85,233,600	94,166,890
EXPENDITURES:													
General Government	6,015,170	-	45,000	-	-	-	-	-	-	-	272,000	6,332,170	6,135,040
Public Safety	12,985,540	-	10,000	-	-	-	-	-	-	-	-	13,261,540	13,111,000
Urban Development	637,340	-	-	-	-	-	-	-	-	-	-	637,340	567,180
Streets	1,366,140	-	-	-	-	-	-	-	-	-	-	1,366,140	1,443,930
Parks & Recreation	3,596,810	-	31,500	-	-	-	-	-	-	-	32,000	3,696,310	3,616,730
Tourism	-	5,605,020	-	-	-	-	-	-	-	-	68,000	5,605,020	5,018,060
Aviation	-	-	-	-	-	-	-	-	3,652,870	-	-	3,652,870	3,079,580
Utilities	-	-	-	-	-	-	-	-	-	6,416,660	-	6,416,660	6,047,490
Debt service	-	-	-	4,572,320	707,390	-	-	-	-	-	-	8,014,200	9,526,510
Capital projects	-	-	-	-	-	1,486,000	837,000	3,961,090	384,360	2,350,130	-	8,014,200	9,526,510
TOTAL EXPENDITURES	24,601,000	5,605,020	86,500	4,572,320	707,390	1,486,000	837,000	3,961,090	3,167,500	589,200	-	10,040,790	18,426,190
Transfers to other funds	263,000	705,890	-	-	-	-	-	-	7,204,730	9,355,990	638,000	59,055,040	66,971,710
ENDING FUND BALANCES	\$ 6,299,290	\$ 3,840,250	\$ 125,740	\$ 1,539,750	\$ 789,620	\$ 3,260,770	\$ -	\$ 1,329,250	\$ 2,143,740	\$ 1,525,750	\$ 4,355,510	\$ 25,209,670	\$ 26,490,570

Total Revenues	\$ 52,631,060
Decrease in fund balance	6,423,980
Total Appropriable funds	<u>\$ 59,055,040</u>
Total Appropriations	<u>\$ 59,055,040</u>

Council Agenda Item: #R17

There are no attachments for this item.

Council Agenda Item: #R18

There are no attachments for this item.

Council Agenda Item: #R19

SUMMARY:

Council approval is requested of an ordinance that approves the Town's FY 2005-06 investment policy.

FINANCIAL IMPACT:

There is no financial impact associated with the approval of the investment policy.

BACKGROUND:

The Public Funds Investment Act (PFIA) requires the Council to annually review the Town's investment policy. The Town's investment advisor, First Southwest Asset Management (FSAM), has assisted staff with the development of the investment policy. For FY 2005-06, staff is recommending the following changes:

- Revise the list of authorized investment officers to reflect the revised Department of Financial and Strategic Services organizational structure.
- Revise the list of authorized investments to include bundled certificates of deposit. The justification for adding these investments is addressed in the attached letter from the Town's investment advisory firm, First Southwest Asset Management.

These changes are identified in the attached investment policy document. Since the Town's investment policy is codified, an ordinance is required to make the above changes.

RECOMMENDATION:

Staff recommends approval of the ordinance that approves the Town's FY 2005-06 investment policy.



September 2, 2005

Mr. Bryan Langley
Asst. Finance Director
Town of Addison
5350 Belt Line Rd
Addison, TX 75001-9010

Dear Bryan:

As requested, First Southwest Asset Management, Inc. has performed a review of the Investment Policy of the Town of Addison to determine compliance with the Texas Public Funds Investment Act (the "Act"), Texas Government Code, Chapter 2256. Our review was limited in scope, with the primary purpose being to evaluate conformity with the Act. We did not seek to ensure that all funds and procedures are addressed in the policy, nor have we reviewed compliance with the policy or internal controls of the Town. Based upon our review, we have reached the following conclusion:

The 2005 Texas legislature made minor changes to the Public Funds Investment Act which will require the Town of Addison to amend its policy in order to remain in compliance. With this single exception, we believe the Town's investment policy to be in full compliance with state guidelines for investing public funds.

The following summary represents changes to the Texas Public Funds Investment Act effective September 1, 2005 as they apply to local governments:

Required Change to Existing Authorized Investments

The amended Act actually simplifies general requirements for investing in Bank Certificates of Deposit (CDs). Previous language stated that eligible CDs must be "issued by a state or national bank *domiciled* in this state or state or federal credit union *domiciled* in this state..."

New language (Sec 2256.010) simply states that eligible CDs must be issued by a "depository institution that has its main office or a branch office in the state..."

Newly Authorized Investments

The amended Act adds one new investment type in 2005. Actually, it's expanded CD authority that allows for fully-insured CDs from separate depository institutions, wherever located, to be bundled together by a custodian into a single pooled investment. Although adding this investment type is not required to remain in compliance with state law, we believe that this investment could safely provide enhanced returns to the town and thus recommend that the following language be added to investment policy under the existing authority granted to certificates of deposit::

In addition, separate CDs issued by depositories wherever located, bundled together into a single investment with the full amount of principle and interest of each CD federally insured may be purchased through a selected depository institution with its main office or branch office in Texas.

This depository shall act as the custodian for the various certificates on behalf of the Town.

If you have any questions, please feel free to call me or Greg Warner at 800-575-3792.

Sincerely,

Scott McIntyre
Senior Portfolio Manager

Cc: Mr. David Medanich

TOWN OF ADDISON

INVESTMENT POLICY

For

FY 2005-06

Revised and Adopted:
September 13, 2005

**TOWN OF ADDISON, TEXAS
INVESTMENT POLICY**

I.

SCOPE

The Public Funds Investment Act, Chapter 2256, Texas Government Code, prescribes that each Town is to adopt rules governing its investment practices and to define the authority of the investment officer. The following Investment Policy addresses the methods, procedures, and practices which must be exercised to ensure effective and judicious fiscal management of the Town's funds. This Policy shall not apply to the selection, retention or other issues concerning the depositories of the Town's funds in demand and time deposits as provided under Chapter 105 of the Local Government Code.

This Policy shall apply to the investment and management of all funds of the Town under its control, other than those expressly excluded herein or by applicable law or valid agreement. This Policy shall not supersede the restrictions on investment and use applicable to any specific fund and, in the event of any conflict between this Policy and the requirements of any fund subject hereto, the specific requirement applicable to such fund shall be followed as well as all other provisions of this Policy other than those in conflict. The Employees Deferred Compensation Agency Fund is excluded from coverage under this Policy.

This Policy also requires the formal adoption of an "Investment Strategy Statement" that specifically addresses each of the Town's fund groups. Each Investment Strategy Statement will describe its objectives concerning:

- a) suitability of investment type,
- b) preservation and safety of principal,
- c) liquidity,
- d) marketability of each investment,
- e) diversification of the portfolio, and
- f) yield.

In order to make effective use of the Town's resources, all monies shall be pooled into one investment bank account, except for those monies required to be accounted for in other bank accounts as stipulated by applicable laws, bond covenants or contracts. The income derived from this pooled investment account shall be distributed in accordance with the Town's internal procedures.

II.

OBJECTIVES

The Town's principal investment objectives in order of priority are:

1. Conformance with all Federal regulations, State of Texas statutes and other legal requirements including the Town Charter and Town Ordinances, including this Policy.
2. Preservation of capital and the protection of investment principal.
3. Maintenance of sufficient liquidity to meet anticipated disbursement and cash flows.
4. Diversification to avoid incurring unreasonable risks regarding securities owned.
5. Attainment of a market rate of return equal to or higher than the performance measure established from time to time by the Finance Director of the Town which is commensurate with the acceptable risk and liquidity objectives of this Policy.

III.

DELEGATION OF AUTHORITY

The City Council appoints the ~~Finance~~ Director of Financial and Strategic Services, Assistant ~~Finance~~ Director of Financial and Strategic Services and the ~~Accounting~~ Financial Services -Manager as the "Investment Officers" of the Town. Direct management responsibility for the investment program is delegated by the City Council to the ~~Finance~~ Director of Financial and Strategic Services (hereinafter referred to as the "Director"). The Investment Officers' authority will at all times be limited by all applicable laws and regulations in effect from time to time and this Policy. The Investment Officers shall exercise the judgment and care, under prevailing circumstances, that a prudent person would exercise in the management of the person's own affairs. Unless authorized by law, a person may not deposit, withdraw, transfer, or manage in any other manner the funds of the investing entity.

With written approval from the City Manager, the Director may delegate any phase of the investment management program to any of the Investment Officers. Such approval shall state specifically the functions such person is authorized to perform or that the person is authorized to perform all activities of the Director under this Policy. The Director shall obtain and maintain, at the Town's expense, fidelity bonds for himself and each of his designees in amounts determined adequate by the Director (which shall not be less than five percent of the amounts subject to this Policy) for each fiscal year as shown by the approved budget. No person may engage in an investment transaction except as provided under the terms of this Policy and the internal procedures established by the Director. A current list of persons authorized to transact investment business and wire funds on behalf of the Town shall be maintained by the Director.

The Director shall develop and maintain written administrative procedures for the operation of the investment program consistent with this Policy. The controls shall be designed to prevent, identify and control losses of public funds arising from deviation from this Policy, fraud, employee error, misrepresentation by third parties, or imprudent actions by employees and officers of the Town.

In the discretion of the City Council and in any event upon the termination or reassignment of any Investment Officer authorized to conduct transactions for the Town pursuant to this Policy, the authority of such person shall be revoked and such revocation of authority shall be immediately communicated by the Director orally and in writing to each and every depository, broker/dealer, investment advisor, custodian and other agency or entity with whom the Town has any existing or continuing relationship in the management of its investments.

The Director and all Investment Officers shall attend at least one training session relating to the treasurer's or officer's responsibilities within twelve (12) months after taking office or assuming duties; and attend a training session not less than once every two years and receive not less than ten (10) hours of training. Such training from an independent source shall be approved or endorsed by either Government Finance Officers Association, Government Finance Officers Association of Texas, Government Treasurers Organization of Texas, Texas Municipal League, or the North Central Texas Council of Governments to include education in investment controls, security risks, strategy risks, market risks, and compliance with the Public Funds Investment Act.

IV.

INVESTMENT ADVISORS

The Town may, in the discretion of the Director, appoint one or more Investment Advisors to assist the Town's financial staff in the management of the Town's funds. The Investment Advisor must be registered with the Securities and Exchange Commission under the Investment Advisors Act of 1940 and also be registered with the Texas State Securities Board as an Investment Advisor. To be eligible for consideration, an Investment Advisor shall demonstrate to the Director knowledge of, and experience in, the management of public funds. The Director will satisfy himself as to the Advisor's qualifications by all appropriate means, including reference checks with the Advisor's other clients, the State Securities Board and the Securities and Exchange Commission. An appointed Investment Advisor shall act solely in an advisor and administrative capacity, within the guidelines of this Investment Policy and without any discretionary authority to transact business on behalf of the Town.

Each Investment Advisor, appointed by the Town, shall agree that its investment advice shall at all times be given with the judgment and care, under circumstances then prevailing, which persons paid for their special prudence, discretion and intelligence, in such matters exercise in the management of their client's affairs, not for speculation by the client or production of fee income by the advisor or broker but for investment by the client with emphasis on the probable safety of the capital while considering the probable income to be derived.

Appointment of an Investment Advisor shall otherwise be according to the Town's normal purchasing procedures for selecting professional services. Any approved investment advisor may be terminated with the approval of the City Manager, if in the opinion of the Director, the advisor has not performed adequately. The term of any Investment Advisor contract may not exceed two years. Any renewal or extension of the Investment Advisor contract must be made by the City Council by resolution.

V.

STANDARD OF CARE

As provided for in the Public Funds Investment Act, the standard of care for the Town's investments shall be that such "investments shall be made with judgment and care, under prevailing circumstances, that a person of prudence, discretion and intelligence would exercise in the management of the person's own affairs, not for speculation, but for investment, considering the probable safety of capital and the probable income to be derived."

The overall investment program shall be designed and managed with a degree of professionalism that is worthy of the public trust. The Director and the Investment Officers shall recognize that the investment activities of the Town are a matter of public record.

The Director and the Investment Officers, acting in accordance with written procedures and exercising the proper standard of care, shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided that this Policy and the Director's procedures were followed. In determining whether the Director or an Investment Officer has exercised the proper standard of care, all investments over which the individual had responsibility will be considered rather than a single investment.

VI.

AUTHORIZED SECURITIES INVESTMENTS

Subject to any limitations otherwise imposed by applicable law, regulations, bond indentures or other agreements, (including but not limited to Chapter 2256 Texas Government Code, the Public Funds Investment Act), the following securities and deposits are the only ones permitted as investments for the Town's funds:

- a. Direct obligations of the United States government with a maturity not to exceed five (5) years from the date of purchase; U.S. Treasury Bills, U.S. Treasury Notes, U.S. Treasury Bonds, and U.S. Treasury Strips (book entry U.S. Treasury securities whose coupon has been removed).
- b. Debentures or discount notes with a maturity not to exceed five (5) years from the date of purchase issued by, guaranteed by, or for which the credit of any of the following Federal Agencies and Instrumentalities is pledged for payment: Federal National Mortgage Association (FNMA), Federal Home Loan Bank (FHLB), Federal Farm Credit Bank (FFCB), , and Federal Home Loan Mortgage Corporation (FHLMC). Principal-only and interest-only mortgage backed securities and collateralized mortgage obligations and real estate mortgage investment conduits are expressly prohibited.
- c. Bonds or other interest bearing obligations of which the principal and interest are guaranteed by the full faith and credit of the United States government with a stated maturity not to exceed five (5) years from the date of purchase. A security's "average life" does not constitute a stated maturity. Principal-only and interest-only mortgage backed securities and collateralized mortgage obligations and real estate mortgage investment conduits are expressly prohibited.

d. Time Certificates of Deposit with a maturity not to exceed three (3) years from the date of purchase, insured by the Federal Deposit Insurance Corporation (FDIC) or its successor, in depository institutions that have a main office or a branch office in the state of Texas state or national banks, or state or federally chartered savings banks, located within the State of Texas which have been approved by the Town in accordance with Section XI of this Investment Policy.

In addition, separate CDs issued by depositories wherever located, bundled together into a single investment with the full amount of principle and interest of each CD federally insured may be purchased through a selected depository institution with its main office or branch office in Texas. This depository shall act as the custodian for the various certificates on behalf of the Town.

e. Prime commercial paper with an original maturity of one hundred eighty (180) days or less which at the time of purchase, is rated at least:

A-1 by Standard & Poors,
P-1 by Moodys or
D-1 by Duff & Phelps.

(1) At the time of purchase, the commercial paper must be rated by at least two (2) of the above stated ratings agencies at the above stated minimum credit rating.

(2) If more than two (2) of the above stated agencies rates an issuer, all the rating agencies must rate the issuer in accordance with the above stated minimum credit criteria.

(3) If the commercial paper issuer has senior debt* outstanding, the senior debt must be rated by each service that publishes a rating of the issue at least:

A-1 by Moodys,
A+ by Standard and Poors and
A+ by Duff & Phelps.

*Senior Debt is defined as the most senior secured or unsecured debt of an issuer with an original maturity exceeding one year.

If the commercial paper issuer is given a “plus (+) rating”, the maximum maturity of two hundred seventy (270) days or less will be allowed.

f. Eligible Bankers Acceptances with original maturities not exceeding one hundred eighty (180) days, issued on domestic banks operating under the banking laws of the United States, whose senior long term debt is rated, at the time of purchase, A-1 or higher by Moodys, A+ by Standard and Poors, or A+ by Duff & Phelps.

g. Repurchase agreements with a defined termination date of ninety (90) days or less on U.S. Treasury and Federal Agency securities listed in items “a” and “c” above, collateralized initially at a minimum market value of one hundred two (102) percent of the dollar value of the transaction, with the accrued interest accumulated on the collateral included in the calculation.

If the market value of the collateral falls below one hundred one (101) percent of the dollar value of the transaction, the collateral will be required to be brought up to the one hundred two (102) percent initial maintenance level. A Repurchase Agreement is defined as a simultaneous agreement to buy, hold for ninety (90) days or less, and then sell back an obligation described in item (g) above, the principal and interest of which are guaranteed by the United States.

Repurchase Agreements shall be entered into only with dealers who: 1) are recognized as primary reporting dealers with the Market Reports Division of the Federal Reserve Board of New York; and 2) have an executed, Town approved Master Repurchase Agreement. Collateral (purchased securities) shall be held by the Town’s

custodian bank as safekeeping agent and the market value of the collateral securities shall be marked-to-the market daily based on the bid price for the previous day as reported in the Wall Street Journal.

For the purpose of item “g” of this section, the term “collateral” shall mean “purchased securities” under the terms of the Town approved Master Repurchase Agreement. Collateral bearing no coupon will have a maturity not to exceed five (5) years. All other eligible collateral shall have a maturity limit of ten (10) years.

The term repurchase agreements include reverse repurchase agreements. The term of a reverse repurchase agreement shall not exceed ninety (90) days and any investments acquired with the proceeds from the reverse repurchase agreement shall not exceed the term of that agreement.

h. Money Market Funds meeting each of the following criteria:

- (1) Registered with and regulated by the Securities and Exchange Commission:
- (2) Has provided the Town with a prospectus and other information required by the Securities Exchange Act of 1934 or the Investment Company Act of 1940.
- (3) No commission fee shall be charged on purchases or sales of shares;
- (4) Have an objective of maintaining a constant daily net asset value of \$1.00 per share:
- (5) Limit assets of the fund to those securities listed in paragraphs “a”, “b”, “c” and “g” above; and
- (6) Have a maximum stated maturity of thirteen (13) months and dollar weighted average portfolio maturity of not more than ninety (90) days. A list of Town approved Money Market Funds shall be kept by the Director.

i. State investment pools organized under the Interlocal Cooperation Act that meet the requirements of Chapter 2256 Texas Government Code and have been specifically approved by the Director and authorized by the City Council.

j. Local investment pools organized under the Interlocal Cooperation Act that meet the requirements of Chapter 2256 Texas Government Code and have been specifically approved by the Director and authorized by the City Council.

k. Direct obligations of the State of Texas or its agencies rated as to investment quality by a nationally recognized investment rating firm not less than A or its equivalent with a maturity not to exceed two (2) years from the date of purchase.

l. Other obligations, the principal of and interest on which are unconditionally guaranteed or insured by the State of Texas or the United States with a maturity not to exceed two (2) years from the date of purchase.

VII.

OTHER INVESTMENT GUIDELINES

The Town seeks active management of its portfolio assets. In the effort of meeting the objectives of this Policy, the Town may from time to time sell securities that it owns in order to better position its portfolio assets. Sales of securities prior to maturity, shall be documented and approved by the Director before such a transaction is consummated. Sales of securities, yielding net proceeds less than ninety-eight (98) percent of the book value of the securities, must be approved in advance and in writing by both the City Manager and the Director.

Each investment transaction must be based upon competitive quotations received from at least three (3) broker/dealers who have been approved by the Town in accordance with Texas law.

The purchase and sale of all securities shall be on a delivery versus payment or payment versus delivery basis (i.e. for securities purchases, monies will not be released by the Town's safekeeping bank until securities are received at the Federal Reserve Bank for further credit to the Town's safekeeping bank. In the case of securities sales, monies will be received by the Town's safekeeping bank via the Federal Reserve Bank, as the securities are simultaneously released to the purchaser). In this manner, the Town will always have possession of either its securities or its monies.

An investment that requires a minimum credit rating does not qualify as an AUTHORIZED SECURITIES INVESTMENT during the period the investment does not have the minimum credit rating even if the investment had the appropriate rating at the time of purchase. The Investment Officers shall take all prudent measures that are consistent with this Policy to liquidate an investment that does not have the minimum rating.

VIII.

PORTFOLIO MATURITIES

Maturities shall be selected which provide for both stability of income and reasonable liquidity.

At all times, the Town shall maintain ten (10) percent of its total investment portfolio in instruments maturing in ninety (90) days or less. The weighted average maturity of all securities and certificates of deposit in the Town's total investment portfolio at any given time (not including cash or demand deposits) shall not exceed one and one-half (1 ½) years.

In the case of callable securities, the first "call" date may be used as the "maturity" date for investment purposes in this section if in the opinion of the Director there is little doubt that the security will be called prior to maturity. At all times the stated final maturity shall be used in portfolio average life calculations and reported as outlined in this Policy.

Investment of bond proceeds shall be invested in the investment types listed in Section VI. "a", "b", "c", "h", "i", and "j" for a period of time not to exceed five (5) years. Additionally, bond proceeds may be invested in a repurchase agreement that exceeds ninety (90) days if reductions are allowed from the agreement without penalty for legitimate bond proceed expenditures and the final maturity is within the "temporary period" as defined by the Internal Revenue Service (this arrangement is commonly referred to as a "flexible repurchase agreement").

IX.

INVESTMENT LIMITS

It is the policy of the Town to avoid concentration of assets in a specific maturity, a specific issue, or a specific class of securities, with the exception of U.S. Treasury issues listed in Section VI "a." The asset allocation in the portfolio should, however, be flexible depending upon the outlook for the economy and the securities markets.

The Town will not exceed the following maximum limits as a percentage of the total portfolio for each of the categories listed below:

- 20 percent in Money Market Funds as outlined in Section VI "h"
- 30 percent in Certificates of Deposit
- 30 percent in Commercial Paper
- 30 percent in Bankers Acceptances
- 40 percent in Local Government Investment Pools as authorized in Section VI "h" and "j"
- 70 percent in State Government Investment Pools as authorized in Section VI "i"
- 70 percent in Instrumentality securities described in Section VI "b"

In addition to the limitations set forth above the Town's investment in any single money market fund shall never exceed ten (10) percent of the total assets of the money market fund.

The Director shall evaluate how each security purchased fits into the Town's overall investment strategy.

The amount of investments in U.S. Treasury and Agency Securities and Repurchase Agreements backed by those securities as defined in section VI(a), VI(c) and VI(g), shall at no time be less than thirty (30) percent of the total portfolio. There shall be no maximum limits on these investments.

Bond proceeds shall be exempt from the maximum limitation stated above for State Government Pools, but only for the period of time required to develop a comprehensive draw-down schedule for the project for which the proceeds are intended, the maximum being sixty (60) days, at which time the funds representing bond proceeds must be prudently diversified.

X.

SELECTION OF BROKER/DEALERS

The Town shall maintain a list of approved security broker/dealers maintaining minimum capital of \$10,000,000 and being in business for at least five years. These may include "primary" dealers or regional dealers that qualify under Securities and Exchange Commission (SEC) Rule 15C3-1 (uniform net capital rule). Securities may only be purchased from those authorized institutions and firms identified in the above list.

Broker/dealers and other financial institutions will be selected by the Director on the basis of their financial stability, expertise in cash management and their ability to service the Town's account. Each broker/dealer, bank, or savings bank that has been authorized by the Town, shall be required to submit to the Town and annually update a Broker/Dealer Information Request form which includes the firm's most recent financial statements. The Director shall maintain a file which includes the most recent Broker/Dealer Information Request forms submitted by each firm approved for investment purposes. A copy of the submitted Broker/Dealer Information Request forms as well as a list of those broker/dealers approved by the Town shall be maintained by the Director.

The Director shall review the quality of service and financial stability of each broker/dealer and financial institution approved under this Section at least annually. Any approved broker/dealer or financial institution may be removed from the list of approved broker/dealers with the approval of the Director, if in the opinion of the Director, the firm has not performed adequately or its financial condition is considered inadequate. The City Council shall, at least annually, review, revise, and adopt the list of qualified broker/dealers and financial institutions which are authorized to engage in investment transactions with the Town.

All business organizations eligible to transact investment business with the Town shall be presented a written copy of this Policy. The qualified representative of the business organization seeking to transact investment business with the Town shall execute a written instrument substantially to the effect that the qualified representative has:

- 1) received and thoroughly reviewed this Policy, and
- 2) acknowledged that the business organization has implemented reasonable procedures and controls in an effort to preclude imprudent investment activities with the Town.

The Town shall not enter into an investment transaction with a business organization prior to receiving the written instrument described above. In addition, each Investment Advisor appointed by the Town shall execute the written instrument described above.

If the Council has contracted with a Registered Investment Advisor for the management of its funds, the advisor shall be responsible for performing due diligence on and maintaining a list of broker/dealers with which it shall transact business on behalf of the Town. The advisor shall determine selection criteria. The advisor shall annually present a list of its authorized broker/dealers to the Town for review and likewise shall execute the aforementioned written instrument stating that the advisor has reviewed the Town's investment policy and has implemented reasonable procedures and controls in an effort to preclude imprudent investment activities with the Town. The advisor shall obtain and document competitive bids and offers on all transactions and present these to the Town as part of its standard trade documentation.

XI.

SELECTION OF DEPOSITORIES

The Town shall maintain a list of authorized banks and savings banks which are approved to provide Certificates of Deposit to the Town. To be eligible for authorization, a bank or savings bank must be a member of the FDIC and meet the minimum credit criteria (described below) of a credit analysis provided by a commercially available bank rating service such as Prudent Man Analysis, Inc., or Sheshunoff Public Finance Bank Rating Service. Banks or savings banks failing to meet the minimum criteria or, in the judgment of the Director, no longer offering adequate safety for the Town will be removed from the list.

Bank rating guidelines will be calculated using publicly available information obtained from the Federal Reserve, the Comptroller of the Currency, or the banking institution itself. Data obtained from bank rating services will include factors covering the following: overall rating, liquidity policy, credit risk policy, interest rate policy, profitability and capital policy. Financial institutions selected to issue certificates of deposit to the Town in excess of One Hundred Thousand Dollars (\$100,000.00) or that are selected as Safekeeping or Custodial agents for the Town shall meet the following criteria: 1) have a Sheshunoff Public Finance Peer Group Rating of thirty (30) or better on a scale of zero (0) to one hundred (100) with one hundred (100) being the highest rating at the time of selection; or 2) have a Prudent Man Express Analysis overall rating of three or better on a scale of one (1) to five (5) with one (1) being the highest quality for the most recent reporting quarter before the time of selection; and 3) qualify as a depository of public funds in the State of Texas.

The Director shall maintain a file of the credit rating analysis reports performed for each approved firm. Institutions that meet the above criteria and who wish to provide Certificates of Deposit to the Town are required to provide to the Director a copy of the institution's quarterly Consolidated Report of Conditions and Income (CALL Report). This report will be submitted to the Director within sixty (60) days following the end of each calendar quarter.

In addition to the foregoing requirements, with respect to bond proceeds and reserves or other funds maintained for debt service purposes, a depository of such funds must be selected by competitive bidding by three (3) banks located within the boundaries of the Town or if there are not three banks available within the Town's boundaries that are willing and able to accept such deposits, then at least three (3) bids must be obtained from banks situated in Dallas County that are willing and able to accept such deposits.

XII.

SAFEKEEPING AND CUSTODY

Investment securities purchased for the Town will be delivered by either book entry or physical delivery and shall be held in third-party safekeeping by a Federal Reserve Member financial institution designated as the Town's safekeeping and custodian bank. The Town may designate more than one (1) custodian bank. In no event will the Town's custodial or safekeeping institution also be a counterparty (broker or dealer) to the purchase or sale of those securities. The Town shall execute a written Safekeeping Agreement with each bank prior to utilizing the custodian's safekeeping services. Only a state or national bank located within the State of Texas, may be utilized as a custodian of securities pledged to secure certificates of deposit. The safekeeping agreement must provide that the safekeeping bank will immediately record the receipt of purchased or pledged securities in its books and promptly issue and deliver a signed safekeeping receipt showing the receipt and the identification of the security, as well as the Town's perfected interest.

The Director shall maintain a list of designated custodian banks and a copy of the Safekeeping Agreement executed with each custodian bank.

The Town must approve release of securities, in writing, prior to their removal from the custodial account. A telephonic facsimile of a written authorization shall be sufficient if the custodian orally confirms receipt of the transmission and an exact copy of the document is retained in the Town's files.

All securities shall be confirmed in the name of the Town and delivered to an approved custodial bank or carried at a Federal Reserve Bank in the name of the Town. The Custodian shall not otherwise deposit purchased or pledged securities. All book entry securities, owned by the Town, shall be evidenced by a safekeeping receipt issued to the Town and signed by the appropriate officer at the custodian bank stating that the securities are held in the Federal Reserve system in a CUSTOMER ACCOUNT naming the Town as the "customer". In addition, the custodian bank will, when requested, furnish a copy of the delivery advice received by the custodian bank from the Federal Reserve Bank.

All certificated securities (those transferred by physical delivery) shall: 1) be held by an approved custodian bank or any correspondent bank in New York City approved by the Director; and 2) the correspondent bank or the Town's safekeeping bank shall issue a safekeeping receipt to the Town evidencing that the securities are held by the correspondent bank for the Town.

The original safekeeping receipt for each transaction including purchased securities under a repurchase agreement and collateral securing deposits will be forwarded to the Director or his designee and held in a secured file by the Town.

XIII.

RECORDKEEPING AND REPORTING

A record shall be maintained of all bids and offerings for securities transactions in order to ensure that the Town receives competitive pricing. All transactions shall be documented by the person authorizing the transaction in a form that shows that person's name, the party instructed to execute the transaction, the date, a description of the transaction and a brief statement of the reason(s) for the transaction.

Each depository institution of the Town's funds and purchased securities shall maintain separate, accurate and complete records relating to all deposits of the Town's funds, the securities pledged to secure such deposits and all transactions relating to the pledged securities. Each approved custodian shall maintain separate, accurate and complete records relating to all securities received on behalf of the Town, whether pledged, purchased or subject to repurchase agreement, as well as all transactions related to such securities. In addition, each depository shall file all reports required by the Texas State Depository Board. Each depository and custodian shall agree to make all the records described in this paragraph available to the Director's designee and the Town's auditors at any reasonable time.

At least once each quarter, the Director shall verify that all securities owned by the Town or pledged to the Town are held in safekeeping in the Town's custodial bank with proper documentation. At least annually the Town's investment program, including the records of custodians and depositories, shall be audited by independent certified public accountants selected by the City Council. This annual audit shall include a compliance audit of the management controls on investments and adherence to the Town's Investment Policy and strategies.

All broker/dealers, custodians, depositories, and investment advisors shall maintain complete records of all transactions that they conducted on behalf of the Town and shall make those records available for inspection by the Director or other representatives designated by the City Council or City Manager.

All sales of securities for less than the book value of the security shall be approved by the Director and reported to the City Council at the next regular meeting. Sales of securities for less than ninety-eight (98) percent of the book value of the securities must be approved by both the City Manager and the Director.

All contracted Investment Advisors shall report at least monthly on the straight-line book value, the market value of investment holdings, and total investment return and such other information required by the Director. Unrealized profits or losses in the Town's investment portfolio will be disclosed but will not be used in the calculation of income earned for the month. Contracted Investment Advisors shall postmark their monthly reports to the Director no later than fifteen (15) business days following the close of the reporting month.

An investment report shall be prepared by the Director within forty five (45) days of the quarter end that:

- a) describes in detail the investment position of the Town,
- b) states the reporting period beginning book and market values, additions or changes to the book and market values during the period and ending book and market values for the period of each pooled fund group,
- c) states the reporting period beginning book and market value and ending book and market value for each investment security by asset type and fund type,
- d) states the maturity date of each investment security,
- e) states the fund for which each investment security was purchased,
- f) states fully accrued interest for the reporting period,
- g) states the compliance of the investment portfolio with the Town's Investment Policy, Investment Strategy Statement and the Public Funds Investment Act,
- h) summarizes quarterly transactions, including a detailed list of the gains and losses recognized, and
- i) explains the total investment return during the previous quarter and compares the portfolio's performance to other benchmarks of performance.

This report will be presented to the City Council and signed by all of the Town's Investment Officers. .

Market valuations of investments shall be provided by the Investment Advisor on a monthly basis. The Investment Advisor shall use independent market pricing sources including, but not limited to, Interactive Data Corporation (IDC) and Bloomberg, to monitor the market price of investments acquired with the Town's funds.

Within forty five (45) days after the end of the Town's fiscal year the Director shall prepare, sign and deliver to the City Manager and the City Council an annual report on the Town's investment program and investment activity which has also been signed by each officer and employee of the Town authorized to conduct any of the Town's investment activity. The annual report shall include full year and separate monthly comparisons of investment return. Such annual report shall include an analysis of the compliance with this Policy as well as changes in applicable laws and regulations during the previous year and may include any other items of significance related to the investment program.

If the Town places funds in any investment other than registered investment pools or accounts offered by its depository bank, the above reports shall be formally reviewed at least annually by an independent auditor, and the result of the review shall be reported to the City Council.

XIV.

ETHICS AND CONFLICTS OF INTEREST

Officers and employees of the Town involved in the investment process shall refrain from personal business activity that involves any of the Town's approved custodians, depositories, broker/dealers, or investment advisors and shall refrain from investing in any security issue held by the Town. Employees and officers shall not utilize investment advice concerning specific securities or classes of securities obtained in the transaction of the Town's business for personal investment decisions, shall in all respects subordinate their personal investment transactions to those of the Town particularly with regard to the timing of purchases and sales and shall keep confidential all investment advice obtained on behalf of the Town, and all transactions contemplated and completed by the Town, except when disclosure is required by law.

All Investment Officers of the Town shall file with the Texas Ethics Commission and the City Council a statement disclosing any personal business relationship with business organization seeking to sell investments to the Town or any relationship within the second degree by affinity or consanguinity to an individual seeking to sell investments to the Town.

XV.

COLLATERAL REQUIREMENTS

Any deposits exceeding FDIC insurance limits shall be fully collateralized by securities listed in items "a" and "b" below, and the collateral shall be held by the Town's third party custodian bank.

- a. Direct obligations of the United States government; U.S. Treasury Bills, U.S. Treasury Notes, U.S. Treasury Bonds, and U.S. Treasury Strips (book entry U.S. Treasury securities whose coupon has been removed).
- b. Debentures or discount notes issued by, guaranteed by, or for which the credit of any of the following Federal Agencies and Instrumentalities is pledged for payment: Government National Mortgage Association (GNMA), Federal National Mortgage Association (FNMA), Federal Home Loan Bank (FHLB), Federal Farm Credit Bank (FFCB), and Federal Home Loan Mortgage Corporation (FHLMC). Principal-only and interest-only mortgage backed securities and collateralized mortgage obligations and real estate mortgage investment conduits are expressly prohibited.

Consistent with the requirements of State law, the Town requires all bank and savings bank deposits to be federally insured or collateralized with eligible securities. Financial institutions serving as Town depositories will be required to sign a Security Agreement with the Town and the Town's custodian. The agreement shall define the Town's rights to the collateral in case of default, bankruptcy, or closing and shall establish a perfected security interest in compliance with Federal and State regulations, including:

- a. the Agreement must be in writing;
- b. the Agreement has to be executed by the Depository and the Town contemporaneously with the acquisition of the asset;
- c. the Agreement must be approved by the Board of Directors or the loan committee of the Depository and a copy of the meeting minutes must be delivered to the Town;
- d. the Agreement must be part of the Depository's "official record" continuously since its execution.

XVI.
POLICY REVISIONS

The Investment Policy and Investment Strategy Statements will be reviewed at least annually by the Director and the City Council and may be amended as conditions warrant by the City Council.

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING CHAPTER 2 (ADMINISTRATION), ARTICLE IV (FINANCE), DIVISION 3 (INVESTMENT POLICY) BY AMENDING SECTION 2-204 (DELEGATION OF AUTHORITY), SECTION 2-207 (AUTHORIZED SECURITIES INVESTMENTS); 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 an investment policy regarding the investment of its funds and funds under its control; and

WHEREAS, the said investment policy is set forth in Division 3, Article IV, Chapter 2 of the City's Code of Ordinances; and

WHEREAS, the City Council has reviewed the said investment policy and desires to amend the same 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 Ordinances (the "Code") of the Town of Addison, Texas (the "City") is hereby amended in the following particulars, and all other chapters, articles, sections, subsections, paragraphs, phrases, and words are not amended but are ratified and confirmed:

A. Division 3 (Investment Policy) of Article IV (Finance) of Chapter 2 of the Code is amended in part as follows:

1. Section 2-204 (Delegation of Authority) of the Code is hereby amended by amending subsections (1) thereof to read as follows:

The City Council appoints the ~~Finance~~ Director of Financial and Strategic Services, Assistant ~~Finance~~ Director of Financial and Strategic Services and the Financial Services Accounting Manager as the "Investment Officers" of the Town. Direct management responsibility for the investment program is delegated by the City Council to the ~~Finance~~ Director of Financial and Strategic Services (hereinafter referred to as the "Director"). The Investment Officers' authority will at all times be limited by all applicable laws and regulations in effect from time to time and this Policy. The Investment Officers shall exercise the judgment and care, under prevailing circumstances, that a prudent person would exercise in the management of the person's own affairs. Unless authorized by law, a person may not deposit, withdraw, transfer, or manage in any other manner the funds of the investing entity.

2. Section 2-207 (Authorized Securities Investments) of the Code is hereby amended by amending subsections (4) thereof to read as follows:

(4) Time Certificates of Deposit with a maturity not to exceed three (3) years from the date of purchase, insured by the Federal Deposit Insurance Corporation (FDIC) or its successor, in ~~depository institutions that have a main office or a branch office in the state of Texas state or national banks, or state or federally chartered savings banks, located within the State of Texas~~ which have been approved by the Town in accordance with Section XI of this Investment Policy.

In addition, separate CDs issued by depositories wherever located, bundled together into a single investment with the full amount of principle and interest of each CD federally insured may be purchased through a selected depository institution with its main office or branch office in Texas. This depository shall act as the custodian for the various certificates on behalf of the Town.

Section 3. Savings. This Ordinance shall be cumulative of all other ordinances of the City affecting the City's investment policy 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 3. 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 portions of this Ordinance, and the City Council hereby declares that it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 4. 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.

Joe Chow, Mayor

ATTEST:

By: _____
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: _____
Ken Dippel, City Attorney

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING CHAPTER 2 (ADMINISTRATION), ARTICLE IV (FINANCE), DIVISION 3 (INVESTMENT POLICY) BY AMENDING SECTION 2-204 (DELEGATION OF AUTHORITY), SECTION 2-207 (AUTHORIZED SECURITIES INVESTMENTS); 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 an investment policy regarding the investment of its funds and funds under its control; and

WHEREAS, the said investment policy is set forth in Division 3, Article IV, Chapter 2 of the City's Code of Ordinances; and

WHEREAS, the City Council has reviewed the said investment policy and desires to amend the same 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 Ordinances (the "Code") of the Town of Addison, Texas (the "City") is hereby amended in the following particulars, and all other chapters, articles, sections, subsections, paragraphs, phrases, and words are not amended but are ratified and confirmed:

A. Division 3 (Investment Policy) of Article IV (Finance) of Chapter 2 of the Code is amended in part as follows:

1. Section 2-204 (Delegation of Authority) of the Code is hereby amended by amending subsections (1) thereof to read as follows:

The City Council appoints the ~~Finance~~-Director of Financial and Strategic Services, Assistant ~~Finance~~ Director of Financial and Strategic Services and the Financial Services Accounting Manager as the "Investment Officers" of the Town. Direct management responsibility for the investment program is delegated by the City Council to the ~~Finance~~-Director of Financial and Strategic Services (hereinafter referred to as the "Director"). The Investment Officers' authority will at all times be limited by all applicable laws and regulations in effect from time to time and this Policy. The Investment Officers shall exercise the judgment and care, under prevailing circumstances, that a prudent person would exercise in the management of the person's own affairs. Unless authorized by law, a person may not deposit, withdraw, transfer, or manage in any other manner the funds of the investing entity.

2. Section 2-207 (Authorized Securities Investments) of the Code is hereby amended by amending subsections (4) thereof to read as follows:

(4) Time Certificates of Deposit with a maturity not to exceed three (3) years from the date of purchase, insured by the Federal Deposit Insurance Corporation (FDIC) or its successor, in ~~depository institutions that have a main office or a branch office in the state of Texas state or national banks, or state or federally chartered savings banks, located within the State of Texas~~ which have been approved by the Town in accordance with Section XI of this Investment Policy.

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Section 3. Savings. This Ordinance shall be cumulative of all other ordinances of the City affecting the City’s investment policy 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 3. 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 portions of this Ordinance, and the City Council hereby declares that it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 4. 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.

Joe Chow, Mayor

ATTEST:

By: _____
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: _____
Ken Dippel, City Attorney

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING CHAPTER 2 (ADMINISTRATION), ARTICLE IV (FINANCE), DIVISION 3 (INVESTMENT POLICY) BY AMENDING SECTION 2-204 (DELEGATION OF AUTHORITY), SECTION 2-207 (AUTHORIZED SECURITIES INVESTMENTS); PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

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Joe Chow, Mayor

ATTEST:

By: _____
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: _____
Ken Dippel, City Attorney

OFFICE OF THE CITY SECRETARY

ORDINANCE NO. _____

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING CHAPTER 2 (ADMINISTRATION), ARTICLE IV (FINANCE), DIVISION 3 (INVESTMENT POLICY) BY AMENDING SECTION 2-204 (DELEGATION OF AUTHORITY), SECTION 2-207 (AUTHORIZED SECURITIES INVESTMENTS); PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

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Joe Chow, Mayor

ATTEST:

By: _____
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: _____
Ken Dippel, City Attorney

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING CHAPTER 2 (ADMINISTRATION), ARTICLE IV (FINANCE), DIVISION 3 (INVESTMENT POLICY) BY AMENDING SECTION 2-204 (DELEGATION OF AUTHORITY), SECTION 2-207 (AUTHORIZED SECURITIES INVESTMENTS); PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

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Joe Chow, Mayor

ATTEST:

By: _____
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: _____
Ken Dippel, City Attorney

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING CHAPTER 2 (ADMINISTRATION), ARTICLE IV (FINANCE), DIVISION 3 (INVESTMENT POLICY) BY AMENDING SECTION 2-204 (DELEGATION OF AUTHORITY), SECTION 2-207 (AUTHORIZED SECURITIES INVESTMENTS); PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

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Joe Chow, Mayor

ATTEST:

By: _____
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: _____
Ken Dippel, City Attorney

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING CHAPTER 2 (ADMINISTRATION), ARTICLE IV (FINANCE), DIVISION 3 (INVESTMENT POLICY) BY AMENDING SECTION 2-204 (DELEGATION OF AUTHORITY), SECTION 2-207 (AUTHORIZED SECURITIES INVESTMENTS); PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

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Carmen Moran, City Secretary

APPROVED AS TO FORM:

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Ken Dippel, City Attorney

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ORDINANCE NO. _____

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APPROVED AS TO FORM:

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The City Council appoints the ~~Finance~~ Director of Financial and Strategic Services, Assistant ~~Finance~~ Director of Financial and Strategic Services and the Financial Services Accounting Manager as the "Investment Officers" of the Town. Direct management responsibility for the investment program is delegated by the City Council to the ~~Finance~~ Director of Financial and Strategic Services (hereinafter referred to as the "Director"). The Investment Officers' authority will at all times be limited by all applicable laws and regulations in effect from time to time and this Policy. The Investment Officers shall exercise the judgment and care, under prevailing circumstances, that a prudent person would exercise in the management of the person's own affairs. Unless authorized by law, a person may not deposit, withdraw, transfer, or manage in any other manner the funds of the investing entity.

2. Section 2-207 (Authorized Securities Investments) of the Code is hereby amended by amending subsections (4) thereof to read as follows:

(4) Time Certificates of Deposit with a maturity not to exceed three (3) years from the date of purchase, insured by the Federal Deposit Insurance Corporation (FDIC) or its successor, in ~~depository institutions that have a main office or a branch office in the state of Texas state or national banks, or state or federally chartered savings banks, located within the State of Texas~~ which have been approved by the Town in accordance with Section XI of this Investment Policy.

In addition, separate CDs issued by depositories wherever located, bundled together into a single investment with the full amount of principle and interest of each CD federally insured may be purchased through a selected depository institution with its main office or branch office in Texas. This depository shall act as the custodian for the various certificates on behalf of the Town.

Section 3. Savings. This Ordinance shall be cumulative of all other ordinances of the City affecting the City's investment policy 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 3. 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 portions of this Ordinance, and the City Council hereby declares that it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 4. 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.

Joe Chow, Mayor

ATTEST:

By: _____
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: _____
Ken Dippel, City Attorney

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING CHAPTER 2 (ADMINISTRATION), ARTICLE IV (FINANCE), DIVISION 3 (INVESTMENT POLICY) BY AMENDING SECTION 2-204 (DELEGATION OF AUTHORITY), SECTION 2-207 (AUTHORIZED SECURITIES INVESTMENTS); 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 an investment policy regarding the investment of its funds and funds under its control; and

WHEREAS, the said investment policy is set forth in Division 3, Article IV, Chapter 2 of the City's Code of Ordinances; and

WHEREAS, the City Council has reviewed the said investment policy and desires to amend the same 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 Ordinances (the "Code") of the Town of Addison, Texas (the "City") is hereby amended in the following particulars, and all other chapters, articles, sections, subsections, paragraphs, phrases, and words are not amended but are ratified and confirmed:

A. Division 3 (Investment Policy) of Article IV (Finance) of Chapter 2 of the Code is amended in part as follows:

1. Section 2-204 (Delegation of Authority) of the Code is hereby amended by amending subsections (1) thereof to read as follows:

The City Council appoints the ~~Finance~~-Director of Financial and Strategic Services, Assistant ~~Finance~~ Director of Financial and Strategic Services and the Financial Services Accounting Manager as the "Investment Officers" of the Town. Direct management responsibility for the investment program is delegated by the City Council to the ~~Finance~~-Director of Financial and Strategic Services (hereinafter referred to as the "Director"). The Investment Officers' authority will at all times be limited by all applicable laws and regulations in effect from time to time and this Policy. The Investment Officers shall exercise the judgment and care, under prevailing circumstances, that a prudent person would exercise in the management of the person's own affairs. Unless authorized by law, a person may not deposit, withdraw, transfer, or manage in any other manner the funds of the investing entity.

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(4) Time Certificates of Deposit with a maturity not to exceed three (3) years from the date of purchase, insured by the Federal Deposit Insurance Corporation (FDIC) or its successor, in ~~depository institutions that have a main office or a branch office in the state of Texas state or national banks, or state or federally chartered savings banks, located within the State of Texas~~ which have been approved by the Town in accordance with Section XI of this Investment Policy.

In addition, separate CDs issued by depositories wherever located, bundled together into a single investment with the full amount of principle and interest of each CD federally insured may be purchased through a selected depository institution with its main office or branch office in Texas. This depository shall act as the custodian for the various certificates on behalf of the Town.

Section 3. Savings. This Ordinance shall be cumulative of all other ordinances of the City affecting the City's investment policy 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 3. 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 portions of this Ordinance, and the City Council hereby declares that it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

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

Joe Chow, Mayor

ATTEST:

By: _____
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: _____
Ken Dippel, City Attorney

OFFICE OF THE CITY SECRETARY

ORDINANCE NO. _____

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

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Joe Chow, Mayor

ATTEST:

By: _____
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: _____
Ken Dippel, City Attorney

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

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WHEREAS, the City Council has reviewed the said investment policy and desires to amend the same as set forth herein.

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Section 4. 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.

Joe Chow, Mayor

ATTEST:

By: _____
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: _____
Ken Dippel, City Attorney

Council Agenda Item: #R20

SUMMARY:

Council approval is requested of a resolution that adopts the Town of Addison Investment Strategy for FY 2005-06.

FINANCIAL IMPACT:

There is no financial impact associated with the approval of the investment strategy.

BACKGROUND:

The Public Funds Investment Act (PFIA) requires the Council to annually review the Town's investment strategy. The Town's investment advisor, First Southwest Asset Management, has assisted staff with the development of the strategy. The investment strategy has been drafted to comply with all aspects of the PFIA.

For FY 2005-06, staff is not recommending any change to our investment strategy. The investment strategy has the following priorities (in order of importance):

- Understanding the suitability of the investment to the financial requirements of the Town
- Preservation and safety of principal
- Liquidity
- Marketability of the investment if the need arises to liquidate the investment prior to maturity
- Diversification of the investment portfolio
- Yield

RECOMMENDATION:

Staff recommends that Council adopt the resolution approving the Town's FY 2005-06 investment strategy.

EXHIBIT A

TOWN OF ADDISON

INVESTMENT STRATEGY STATEMENT

For

FY 2005-06

Adopted:
September 13, 2005

PREFACE

It is the policy of the Town of Addison that, giving due regard to the safety and risk of investment, all available funds shall be invested in conformance with State and Federal Regulations, applicable Bond Resolution requirements, and adopted Investment Policy.

In accordance with the Texas Public Funds Investment Act (Chapter 2256, Tex. Gov. Code), the City Council shall adopt Investment Strategy Statements that address the following priorities (in order of importance):

- Understanding the suitability of the investment to the financial requirements of the Town;
- Preservation and safety of principal;
- Liquidity;
- Marketability of the investment if the need arises to liquidate the investment prior to maturity;
- Diversification of the investment portfolio; and
- Yield

Effective investment strategy development coordinates the primary objectives of the Town's Investment Policy and cash management procedures with investment security risk/return analysis to enhance interest earnings and reduce investment risk. Aggressive cash management shall be utilized to increase the available "investment period" for all Town funds. Investment security maturity selections shall be based on cash flow requirements and market conditions to take advantage of interest earnings as viable and material revenue to all Town funds. The Town's portfolios shall be designed and managed in a manner responsive to the public trust and consistent with the Investment Policy.

INVESTMENT STRATEGY

In order to minimize risk of loss due to interest rate fluctuations, investment maturities will not exceed the anticipated cash flow requirements of the funds. Investment guidelines by fund-type are as follows:

Suitability – any investment eligible in the Investment Policy is suitable.

Safety of principal – all investments shall be of high quality securities with no perceived default risk. Market price fluctuations will, however, occur. By managing the weighted average days to maturity for the Operating fund portfolio to less than 270 days and restricting the maximum allowable maturity to five years, the price volatility of the overall portfolio will be minimized.

Liquidity – operating funds require the greatest short-term liquidity of any of the fund types. Short-term investment pools and money market mutual funds should provide daily liquidity and may be utilized as a competitive yield alternative to fixed maturity investments.

Marketability – securities with active and efficient secondary markets are necessary in the event of an unanticipated cash requirement. Historical market “spreads” between the bid and offer prices of a particular security-type of less than a quarter of a percentage point shall define an efficient secondary market.

Diversification – investment maturities should be staggered throughout the budget cycle to provide cash flow based on the anticipated operating needs of the Town. When conditions are favorable, market cycle risk will be reduced by diversifying the appropriate maturity structure out to three years. Adhering to the Investment Policy’s maximum investment-type limits (Section IX. INVESTMENT LIMITS) should restrict the exposure of the fund to any one-market sector.

Yield – attaining a competitive market yield for comparable security-types and portfolio restrictions is the desired objective. The yield of an equally weighted, rolling three-month Treasury bill portfolio should be the minimum yield objective. The Town's Finance Director ("Director") may also compare the operating fund’s performance to other appropriate benchmarks.

The Investment Policy permits the Town to sell securities from time to time that it owns in order to better position its portfolio assets. Sales of securities prior to maturity shall be documented and approved by the Director before such a transaction is consummated. Sales of securities, yielding net proceeds less than ninety-eight (98) percent of the book value of the securities, must be approved in advance and in writing by both the City Manager and the Director.

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING THE CITY’S INVESTMENT STRATEGY STATEMENT AS SET FORTH HEREIN; PROVIDING THAT THE INVESTMENT STRATEGY STATEMENT AS APPROVED SHALL BE IN FORCE AND EFFECT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, in accordance with State law the City Council of the Town of Addison, Texas (the “City”), by the adoption of Resolution No. 04-082, adopted an investment strategy for each of the funds or group of funds under its control; and

WHEREAS, the investment strategy so adopted was set forth in a document entitled “Investment Strategy Statement”; and

WHEREAS, the City Council has reviewed the said Investment Strategy Statement and desires to approve the same as set forth herein;

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

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

Section 2. The Investment Strategy Statement as adopted by Resolution No. 04-082 of the City is hereby shown and set forth in Exhibit A attached hereto and incorporated herein. The Investment Strategy Statement is hereby ratified and confirmed and shall remain in full force and effect.

Section 3. This Resolution shall take effect from and after its date of adoption.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this the ____ day of September 2005.

Joe Chow, Mayor

ATTEST:

By: _____
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: _____
Ken Dippel, City Attorney

Council Agenda Item: #R21

SUMMARY:

Council approval is requested for a contract renewal with First Southwest Asset Management (FSAM) for investment advisory services.

FINANCIAL IMPACT:

Budgeted Amount: \$47,500

Anticipated Cost: \$47,500

The below fee structure will be based on the average month ending balance of the portfolio:

Amount from \$0 to \$10,000,000	0.15%
Amount from \$10,000,001 to \$50,000,000	0.08%
Amount from \$50,000,001 to \$100,000,000	0.05%
Amount \$100,000,001 and over	0.03%

The minimum annual fee for this contract will be \$15,000. The proposed fee structure is identical to the current contract.

BACKGROUND:

The Town's investment policy requires the Council to review the investment advisory services contract every two years. In 2003, staff solicited proposals for investment advisory services from several firms. The proposals were evaluated according to the following criteria:

- Quality and scope of the firm's written proposal and oral presentation
- The firm's experience and performance in providing similar services
- Quality of firm's personnel to be assigned to the engagement
- Cost of advisory services

After carefully considering each proposal, staff determined that FSAM represented the best value for the Town considering cost and other factors.

Since staff recently completed a competitive proposal process, staff recommends that Council renew the FSAM contract. In 2007, it is contemplated that staff will again use a competitive process to select the Town's investment advisor.

RECOMMENDATION:

Staff recommends that Council approve a contract renewal with First Southwest Asset Management for investment advisory services.

**RENEWAL AGREEMENT FOR
INVESTMENT ADVISORY SERVICES BY AND BETWEEN
THE TOWN OF ADDISON
AND
FIRST SOUTHWEST ASSET MANAGEMENT, INC.**

This Renewal Investment Advisory Agreement (the "Agreement") is made by and between the Town of Addison, Texas (the "Investor") and First Southwest Asset Management, Inc. ("FSAM"). This agreement shall be effective as of the date of its acceptance by the Investor, as indicated below.

1. This Agreement renews and extends the two-year Investment Advisory Agreement, dated as of September 9, 2003 ("IA Agreement"), executed by Investor and FSAM.
2. The term of the IA Agreement is hereby extended for a period of two (2) years from the date hereof. As consideration for the services provided by FSAM under this Agreement, FSAM will be entitled to a fee, which Investor agrees to pay, determined in accordance with Schedule A of the IA Agreement.
3. All written communication to the Investor shall be sent to the Investor's address set forth below or as directed in writing to FSAM by the Investor. Any written communication from the Investor to FSAM under this Agreement must be in written form and mailed or delivered to:

First Southwest Asset Management, Inc.
300 West Sixth Street, Suite 1940
Austin, Texas 78701
Attention: Mr. Scott McIntyre
Fax Number: (512) 481-2020

Any notice, statement, or other communication mailed to the other party to this Agreement in accordance with this section will be deemed to be given upon that party's actual receipt of such notice, statement, or other communication.

2. All other terms, provisions, conditions and obligations of the IA Agreement between Investor and FSAM shall remain in full force and effect. The IA Agreement, including any amendments and this Agreement shall be construed together as a single contractual agreement.

Executed this ___ day of _____, 2005

TOWN OF ADDISON, TEXAS

FIRST SOUTHWEST ASSET MANAGEMENT, INC

Signature of Investor

Signature of Officer

Print Name

Scott McIntyre

Capacity of Signatory

Senior Vice President

Address

Fax Number

**AGREEMENT
FOR
INVESTMENT ADVISORY SERVICES
BY AND BETWEEN**

**THE TOWN OF ADDISON, TEXAS
AND
FIRST SOUTHWEST ASSET MANAGEMENT, INC.**

This Investment Advisory Agreement (the "Agreement") is made by and between the Town of Addison, Texas (the "Investor") and First Southwest Asset Management, Inc. ("FSAM"). This Agreement shall be effective as of the date of its acceptance by the Investor as indicated on the signature page hereof.

I. Terms and Conditions

This Agreement sets forth the terms and conditions governing the relationship of the Investor to FSAM with respect to securities and money which the Investor holds, from time to time, and which are available for investment or reinvestment (the "Portfolio"). This Agreement shall apply to any and all investable funds and securities in the Investor's Portfolio during the period in which this Agreement shall be in effect.

II. Investment Advisory Services

A. **Services.** With respect to the Portfolio, FSAM will endeavor to provide investment advisory services and cause to be executed such trades as determined in accordance with Section II.B below. FSAM agrees to provide professional services and its facilities and to direct and coordinate all programs of investing as may be considered and authorized by the Investor and to assume and pay those expenses incurred by FSAM in connection with the execution of investment decisions. Specifically, FSAM agrees to perform the following duties:

1. Assist the Investor in the development of a cash flow model;
2. Recommend appropriate strategies based upon cash flow requirements;
3. Advise the Investor on current market conditions and other general information;
4. Analyze risk/return relationships between various investment alternatives;
5. Attend meetings of the governing body of the Investor, its staff, representatives, or committees as requested by the Investor, when the subject of investments is to be discussed;
6. Assist in the selection of investment securities and, as directed by the Investor, cause the transactions to be executed;
7. Advise on the investment of the Portfolio in a manner consistent with the Investment Policy, any applicable bond covenants, the proceedings of the Investor authorizing the investment of the bond funds and applicable state and federal rules and regulations;
8. Promptly send (or cause to be sent) trade confirmations to the Investor;
9. Assist the Investor in creating quarterly investment reports as required by the Public Funds Investment Act (Sec. 2256.023 of the Texas Government Code); and
10. Provide, as part of this Investment Advisory contract, required IRS arbitrage calculations for existing bond issues of the Investor.

- B. **Scope of Investment Decisions.** In performing the services listed in Section II.A above, FSAM shall not have discretionary authority and, accordingly, shall obtain approval from the Investor for the purchase or sale of securities prior to execution. The Investor hereby represents and acknowledges that its written investment policy and investment strategy includes its investment objectives and all portfolio limitations and restrictions, including, without limitation, acceptable levels of investment risk. The Investor also agrees to notify FSAM in writing at least ten business days in advance of the implementation of any material changes in the Investor's investment objectives, investment limitations, and/or financial condition. Furthermore, the Investor will give FSAM immediate oral notice and written notice within five days of receipt of any trade confirmations should the Investor believe that any investment in the Portfolio violates the Investor's investment objectives or limitations.
- C. **Standard of Care.** In the administration of its duties, FSAM shall exercise the judgment and care, under prevailing circumstances, that persons of prudence, discretion and intelligence would exercise in the management of the person's own affairs, not for speculation, but for investment, considering, with regard to the entire Portfolio rather than any particular investment or security, the probable safety of capital and the probable income to be derived.
- D. **Settlement of Securities.** The purchase of individual securities shall be executed "delivery versus payment" (DVP) through the Investor's safekeeping agent. By so doing, Investor's funds will be released when and if the Investor has received, through the safekeeping agent, the designated securities purchased.
- E. **Payment.** The Investor hereby agrees to pay FSAM, as well as any of its officers, directors, shareholders, affiliates, general partners, employees, agents and trustees, for charges and expenses incurred by FSAM on the Investor's behalf which Investor would otherwise be required to pay.
- F. **Return on the Portfolio.** The Investor expressly affirms and acknowledges that FSAM has not promised or guaranteed any stated or specified return on, or performance of, the Investor's investment portfolio and that Investor agrees that FSAM shall not be liable for Portfolio losses resulting from market conditions or changes.

III. Representations

- A. FSAM represents that it is registered as an investment advisor under the Investment Advisers Act of 1940 (the "Advisers Act") and is authorized and empowered to enter into this Agreement.
- B. The Investor represents and confirms that (1) the Investor has full power and authority to enter into this Agreement; (2) the terms hereof do not violate any obligation by which the Investor is bound, whether arising by contract, operation of law, or otherwise; and (3) this Agreement has been duly authorized and will be binding on Investor according to its terms.
- C. The Investor agrees to:
 - 1. Provide FSAM with the schedule of estimated cash flow requirements related to the Portfolio, and promptly notify FSAM as to any material changes in such estimated cash flow schedule;
 - 2. Provide FSAM, not less than monthly, with all relevant custodian, safekeeping and bank statements relating to all of the Portfolio; and
 - 3. Allow FSAM to rely upon all information regarding schedules or other information pertaining to the Portfolio as provided to it by the Investor as being true and accurate. FSAM shall have no responsibility to verify, through audit or investigation, the accuracy or completeness of such information and FSAM will not undertake to authenticate any such information.

- D. The Investor recognizes that there may be loss or depreciation of the current liquidation, immediate and ongoing value of any investment due to the fluctuation of market values. The Investor represents that no party to this Agreement has made any guarantee, either oral or written, that the Investor's investment objectives will be achieved. FSAM shall not be liable for any error in judgment and/or for any investment losses in the Portfolio in the absence of willful or reckless malfeasance, gross negligence, failure to exercise the standard of care described in this Agreement, or violation of any applicable law, rule, regulation, standard, or policy of a governmental entity. Nothing in this Agreement shall constitute a waiver or limitation of any rights that the Investor may have under applicable state or federal law including without limitation, the state and federal securities laws. FSAM shall be liable and shall reimburse Investor for any losses sustained by Investor which result or arise from FSAM's willful or reckless malfeasance, gross negligence, failure to exercise the standard of care described in this Agreement, or violation of any applicable law, rule or regulation, standard, or policy of a governmental entity.
- E. Investor represents and acknowledges that Investor has reviewed and understands the risk factors and fees associated with investment or reinvestment of the Portfolio.

IV. Fees and Costs of FSAM

As consideration for the services provided by FSAM under this Agreement, FSAM will be entitled to a fee (the "Advisor Fee") determined in accordance with the schedule set forth in the fee schedule ("Schedule A"), a copy of which is attached hereto, is incorporated herein for all purposes and is being delivered to the Investor simultaneously with the execution, and as an integral part, of this Agreement. The obligation of FSAM to pay or incur expenses shall not include any costs incident to litigation, mandamus action, regulatory investigation, test case or other similar legal actions. The Advisor Fee will be payable quarterly in arrears and shall be computed based upon the book value of the Portfolio under management. In the event this Agreement is terminated prior to the end of a quarter, the Advisor Fee shall be prorated (using the number of days that have elapsed in the applicable quarter divided by the number of days in the quarter) and paid within 30 days of termination.

V. Reporting and Account Statements

FSAM will deliver or cause to be delivered to the Investor confirmation of transactions and/or periodic statements for the Portfolio as set forth in this Agreement. FSAM will also provide the Investor with an annual valuation of the Investor's Portfolio and any additional statements that may be required by applicable law, rule, regulation, standard, or policy of a governmental entity, including without limitation the report provisions of the Public Funds Investment Act, or other applicable state law, or any applicable ordinance, policy, or standard of the Town of Addison, Texas, with respect to transactions effected under this Agreement.

VI. Other Services

The investment advisory services provided hereunder by FSAM to the Investor are exclusive of any other services that FSAM may provide to the Investor.

VII. Execution of Investment Transactions

- A. **Affiliated Broker.** FSAM is affiliated through common ownership and control with First Southwest Company ("FSC"), a registered broker/dealer with the National Association of Securities Dealers, Inc. ("NASD"), the U.S. Securities and Exchange Commission ("SEC"), and various state and territorial regulatory authorities. Investor hereby authorizes FSAM to effect transactions for the Portfolio by execution through FSC, subject to the provisions of section VIII. Where transactions are effected through FSC, FSC may act on an agency or principal basis to the extent permitted by applicable law, rule, regulation, standard, or policy of a governmental entity. Pursuant to Rule 206(3) of the Advisers Act, FSAM will obtain the Investor's consent on each investment transaction to allow

FSC to act as a principal in acquiring a security to facilitate a trade. Fees for advisory services will be billed separately in accordance with the terms of this Agreement.

- B. **Bundling of Investment Transactions.** Transactions for each Investor account generally will be effected independently unless FSAM decides to purchase or sell the same securities for several Investors at approximately the same time. FSAM may (but is not obligated to) combine or "batch" such orders to obtain best execution. Under this procedure, transactions will be averaged as to price and will be allocated among FSAM's investors included in the "batch" group in proportion to the purchase and sale orders placed for each Investor in batch transactions.

VIII. Selection of Brokers

The Investor agrees that when FSAM effects or places orders for the execution of transactions for the Portfolio (other than situations where the Investor specifically instructs otherwise in writing), FSAM may allocate such transactions to such brokers and dealers (approved by Investor) for execution on such markets, at such prices as in the judgment of FSAM will be in the best interests of the Investor, taking into consideration, in the selection of such brokers and dealers, the available prices and rates of brokerage commissions and other relevant factors, without having to demonstrate that such factors are of a direct benefit to the Investor. Subject to the foregoing, FSAM will arrange for the execution of securities transactions for the Portfolio through brokers or dealers that FSAM reasonably believes will provide best execution and which are approved by Investor.

IX. Non-Exclusive Relationship

The Investor hereby acknowledges that FSAM's services under this Agreement are nonexclusive, and that FSAM shall be free to render the same or similar services to other Investors. The Investor further acknowledges that FSAM's advice is specific to each individual investor's investment objectives, limitations and financial condition. Therefore FSAM, in the performance of its investment advisory duties, may give advice to, and take action on behalf of, other investors that may differ from the advice given, or the timing and nature of the action taken, with respect to the Investor's Portfolio. Subject to the standard of care set forth herein, nothing in this Agreement shall be deemed to impose upon FSAM any obligation to purchase or sell, or to recommend for purchase or sale for the Investor's Portfolio, any security that FSAM or its affiliates may purchase or sell, for their own account or for the accounts of any other investor if, at the sole discretion of FSAM, it is for any reason undesirable or impractical to take such action or make such recommendation for the Investor's Portfolio. The Investor also acknowledges that FSAM has varying fee structures and arrangements with other investors and may charge other investors different fees, which may be higher or lower than the fees charged with respect to the Investor's Portfolio for similar services.

FSAM hereby acknowledges and agrees that its services hereunder are non-exclusive, and that Investor has and retains the right in its sole discretion to retain or use the services of investment advisers other than FSAM during the term of this Agreement.

X. Instructions from the Investor

FSAM may rely on all instructions (whether oral or written) given by the Investor or its agents that FSAM believes to be genuine. Instructions may be given to FSAM by any officer or agent authorized by (1) the Investor's investment policy; (2) a duly executed (by an Investor representative with authority to execute) "Authorization to Trade Public Funds" form provided by FSAM; or (3) a resolution of the governing body of Investor. FSAM may rely on such authorization until written notice to the contrary is delivered to FSAM by the Investor.

XI. Transactions Subject to Industry Regulations and Standards

All transactions shall be subject to the regulations of all applicable government authorities and self-regulatory agencies including, but not limited to, the constitutions and rules of the clearing agent, exchange, or market where executed. The Investor understands that FSAM is registered as an investment advisor under

the Advisers Act, and as such is obligated to comply with all applicable laws and regulations, including those of the SEC and other regulatory and self-regulatory agencies, and agrees that FSAM shall not be liable to the Investor as a result of any action taken by FSAM to comply with any ruling, interpretation, or directive of such organizations. Further, Investor understands and agrees that FSAM will not accept any instructions from Investor which would require a violation of any such rules or regulations.

XII. Assignment

Neither FSAM nor the Investor may, and shall not have authority to, assign, transfer or otherwise convey any of its rights, authorizations, or obligations under this Agreement without the prior written consent of the other party.

XIII. Term and Investor's Right of Cancellation

This Agreement shall become effective as of the date first set forth above and continue until terminated by either party. Either party may terminate this Agreement upon delivering to the other party thirty (30) calendar days' prior written notice. In addition, the Investor may terminate this Agreement without penalty for a period of five (5) business days after the date it is executed by the Investor. The Investor may exercise this right by giving written notice to FSAM within the required time period. In the event of termination, it is understood and agreed that only the amounts due to FSAM for services provided and expenses incurred to and including the date of termination, will be due and payable. No penalty will be assessed for termination of this Agreement. In addition, the parties hereto agree that upon termination of this Agreement FSAM shall have no continuing obligation to the Investor regarding the investment of funds or performing any other services contemplated herein. Upon such termination, all documents, materials, and information (in whatever form or format) of Investor, and all investments and/or monies of Investor held by FSAM or under its authority, shall be promptly returned by FSAM to Investor.

XIV. Custodial Arrangements

Custody of Portfolio assets will be maintained with a custodian selected by Investor and identified to FSAM (the "Custodian"). FSAM will not have custody of any assets in the Portfolio. Investor will be solely responsible for paying all fees or charges of the Custodian. Investor authorizes FSAM to give Custodian instructions for the purchase, sale, conversion, redemption, exchange or retention of any security, cash or cash equivalent or other investment for the Portfolio in accordance with the terms, standards, and conditions of this Agreement.

XV. Miscellaneous

- A. **Notices to the Investor.** All written communication to the Investor shall be sent to the Investor's address set forth on the signature page hereof or as directed in writing to FSAM by the Investor. Any notice, statement, or other communication mailed to the Investor by FSAM in accordance with this section will be deemed to be given to the Investor personally upon Investor's actual receipt of such notice, statement, or other communication.
- B. **Notices to FSAM.** Any notice, statement, or other communication from the Investor to FSAM under this Agreement must be in written form and will be deemed to be given to FSAM upon actual receipt thereof by FSAM, whether such notice was mailed, personally delivered, or telecopied to:

First Southwest Asset Management, Inc.
98 San Jacinto Blvd. Suite 370
Austin, Texas 78701
Attention: Scott McIntyre
Fax Number: (512) 481-2020

- C. **Confidential Relationship.** All of the information and advice furnished by either party to the other under this Agreement, including their respective agents and employees, will be treated as strictly

confidential by each party and will not be disclosed to third parties under any circumstances except as required by law. The parties agree that the terms of this provision and this Agreement are subject to the Texas Public Information Act, Chapter 552, Tex. Gov. Code, as the same may be amended or superseded.

- D. **Limitations of Liability.** Federal and state securities laws impose liabilities under certain circumstances on persons who do not act in good faith and, therefore, nothing in this Agreement shall in any way constitute a waiver or limitation of any rights that the Investor may have under federal and state securities laws.
- E. **Indemnity.** FSAM agrees to and shall defend, indemnify and hold harmless Investor for any losses Investor may incur as a result of any failure of FSAM to comply or act in accordance with this Agreement, including without limitation, the standard of care set forth herein.
- F. **Inconsistent Provisions; Agreements.** If any provisions of this Agreement should become or be found to be inconsistent with laws, rules, or regulations of any government or regulatory body having jurisdiction over the subject matter herein, such provisions shall be deemed modified or rescinded in accordance with any such laws, rules, or regulations. To the extent that the provisions of this Agreement are inconsistent with the provisions of any account agreement or clearing agreement with FSAM or its clearing agent, as the case may be, then the terms of such account agreement or clearing agreement shall govern and such terms shall supersede the inconsistent terms herein.
- G. **Invalid Provisions.** If any provision or condition of this Agreement shall be held to be invalid or unenforceable by any Court, or regulatory or self-regulatory agency or body, such invalidity or unenforceability shall attach only to such provision or condition. The validity of the remaining provisions and conditions shall not be affected, and this Agreement shall be carried out as if any such invalid or unenforceable provision or condition were not contained herein.
- H. **Waiver of Terms.** FSAM's or Investor's failure to insist at any time upon strict compliance with any terms of this Agreement shall not constitute a waiver of any of FSAM's or Investor's rights as described herein.
- I. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Texas, without regard to its principles of conflicts of laws. Venue for any action under this Agreement shall lie in Dallas County, Texas.
- J. **Extraordinary Events.** Neither FSAM nor any of its officers, directors, shareholders, affiliates, general partners, employees, agents, or trustees shall be liable for losses caused directly or indirectly by government restrictions, exchange or market actions, suspensions of trading, wars, strikes, delays in the transmission of orders due to breakdown or failure of transmission or communication facilities (each being beyond FSAM's reasonable control or anticipation), or any other causes beyond FSAM's reasonable control or anticipation.
- K. **Written Disclosure Statement.** Simultaneously with the execution of this Agreement, FSAM has delivered to the Investor Part II of its Form ADV as filed with the SEC, or a similar disclosure document, as its brochure pursuant to Rule 204.3 of the Advisers Act. The Investor's execution of this Agreement shall be deemed acknowledgment of receipt thereof.
- L. **Verification of Information.** The Investor represents and warrants to FSAM that all information furnished to FSAM in connection with the opening of the Portfolio (and all documents supplied by the Investor in this regard, including financial statements) are true, complete, and correct. FSAM is entitled to rely on this information until FSAM receives written notice of any change, which the Investor agrees to furnish promptly should any material changes occur.

By signing this Agreement, the undersigned Investor acknowledges receipt of a copy of this Agreement, including Schedule A.

TOWN OF ADDISON, TEXAS

R. Whitehead
Signature of Investor

Date

Row Whitehead
Print Name

CITY MANAGER
Capacity of Signatory

Address

FIRST SOUTHWEST ASSET MANAGEMENT, INC.

Scott McIntyre
Signature of Officer

9/9/2003
Date

Scott McIntyre
Print Name

SENIOR Vice President
Capacity of Signatory

SCHEDULE - A

FEE SCHEDULE AND EXPENSE ITEMS

In consideration for the services rendered by First Southwest Asset Management, Inc. ("FSAM") in connection with the investment of the Portfolio for the Investor, it is understood and agreed that its fee will be based upon an annual fee calculated using the scale below applied against the book value of the investment portfolio. The value of the investment portfolio shall be the average month end book value of the Portfolio.

<u>Average Annual Portfolio Balance</u>	<u>Fee</u>
\$0.00 to \$10,000,000	.15%
\$10,000,001 to \$50,000,000	.08%
\$50,000,001 to \$100,000,000	.05%
\$100,000,001 and over	.03%

The fees due FSAM shall be due and payable 30 days following the conclusion of each calendar quarter.

On an annual basis, the minimum fee shall be \$15,000. If the fourth quarterly fee calculation, when accumulated with the fees previously paid for that year, does not exceed \$15,000, then the fourth quarterly fee shall be adjusted to result in an accumulated annual fee equal to \$15,000. For purposes of these fee calculations, the annual billing period will be a regular calendar year, running from January 1st through December 31st.

Said fee includes all costs of services related to the investment services provided under this Agreement, and all reasonable travel and business expenses related to the performance of these services. Any other fees earned by FSAM, relating to Investor transactions, shall be disclosed to the Investor.

To avoid any appearance of a conflict of interest, for any balances the Investor holds in the TexSTAR Investment Pool ("TexSTAR"), managed by FSAM and JP Morgan, the fees calculated under this investment advisory agreement will be reduced by the amount of fee compensation received by FSAM for its role in the management of TexSTAR which is attributable to the Investor's balances in TexSTAR. As of July 1, 2003, FSAM received 1.5 basis points as its portion of the TexSTAR management fee.

Fee Calculation for Investment of Bond Proceeds into Flexible Repurchase Agreements ("Flex Repos") and Guaranteed Investment Contracts ("GIC's"):

In the event that specific bond proceeds are invested by FSAM on behalf of the Investor into either a Flex Repo or GIC, FSAM shall be entitled to a one-time fee equal to: 5 basis points (0.05%) of the average expected annual outstanding balance of funds so invested, including interest earnings thereon, discounted to present value at the stated contract rate. This fee will be paid to FSAM by the winning bidder. All funds invested in a Flex Repo or GIC shall be excluded from the quarterly fee calculation, as described above.

Council Agenda Item: #ES1

There are no attachments for this item.