



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

AGENDA

APRIL 11, 2006

6:00 P.M.
WORK SESSION OF THE CITY COUNCIL
COUNCIL CHAMBERS
5300 BELT LINE ROAD

AND

7:30 P.M.
REGULAR MEETING OF THE CITY COUNCIL
COUNCIL CHAMBERS
5300 BELT LINE ROAD

WORK SESSION

Item #WS1 - Discussion and presentation of Policies and Strategies for Belt Line Road Redevelopment.

Item #WS2 - Discussion regarding the fuel license for the receipt, storage, and dispensing of fuel at Addison Airport.

REGULAR SESSION

Item #R1 - Consideration of Old Business.

Item #R2 - Consent Agenda.

CONSENT AGENDA

#2a -

Approval of the Minutes for the March 28, 2006, Council Meeting.

#2b -

Consideration and approval of a resolution authorizing the City Manager to enter into an agreement with NICE Systems, Inc., through Houston Galveston Area Cooperative (HGAC), in the amount of \$31,005, to replace and install the equipment used to record phone and radio traffic.

#2c -

Consideration and approval of a resolution to award bid to Dowager Construction, Inc., in the amount of \$105,000 for construction of the Chatham Court, Phase I, Water Service Replacement Project.

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

Administrative Comment:

First term for Commissioner Chafin will expire on April 13, 2006. (Niemann)

Item #R4 - Appointment of one member to the Addison Board of Zoning Adjustment (BZA).

Administrative Comment:

Boardmember Maggie McQuowan's first term on the board expired on March 23, 2006. BZA appointments do not belong to individual Councilmembers.

Item #R5 - **PUBLIC HEARING** regarding, and consideration of approval of, an Ordinance approving an amendment to an existing Planned Development district (085-047), in order to provide for residential (townhome) as an allowed use, and provide for revised development plans, located on 2.37 acres at the southeast corner of Montfort Road and Celestial Road, on application from Zachary Custom Builders, represented by Jones and Boyd, Inc.

Attachments:

1. Docket Map
2. Staff Report
3. Letters and petition regarding request.
4. Plans

The Planning and Zoning Commission Findings:

The Addison Planning and Zoning Commission, meeting in regular session on March 23, 2006, voted to recommend approval of the request on application from Zachary Custom Builders, subject to the following conditions:

- There shall be no views allowed from second-story windows that look into the adjacent properties on the north, east, and south. Windows shall be constructed in accordance with the drawings contained in the development plans. Windows on

the second story that face north shall be screened with evergreen trees in a manner that prohibits views into the lots across Celestial Drive in the Oaks North neighborhood.

- An 8-foot fence and retaining wall, which shall maintain a finished height of 14 feet above existing grade, shall be constructed on the east property line of this tract, between this tract and the home at 14757 Celestial Place. Final design for retaining wall/fence along entire east property line shall be reviewed and approved by the staff prior to the issuance of the first construction permit.
- Landscape buffer at east property line shall be planted with a combination of large shrubs and trees that will provide immediate screening. The final planting plan for the buffer shall be reviewed and approved by the staff prior to issuance of the first construction permit.
- 4-inch trees, spaced at 35 feet, shall be required around the entire perimeter of the site.
- The masonry wall along Montfort and Celestial Roads shall be raised to eight feet in height.
- Sidewalks on Montfort and Celestial Roads shall be moved adjacent to proposed wall.
- In the event that no permits for site engineering or construction have been issued on this property by April 12, 2007, the Commission may call this zoning case up for review, and may recommend to the Council that the zoning approval be altered or repealed.

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

Voting Nay: None

Absent: None

Administrative Recommendation:

Administration recommends approval.

Item #R6 - **PUBLIC HEARING** regarding, and consideration of approval of, an Ordinance approving a Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for

on-premises consumption, located at 3716 Belt Line Road, on application from Quizno's Sub Shop represented by Mr. George Kriske of JKLA Architects, Inc.

Attachments:

1. Docket Map
2. Staff Report
3. Plans

The Planning and Zoning Commission Findings:

The Addison Planning and Zoning Commission, meeting in regular session on March 23, 2006, voted to recommend approval of the request on application from Quizno's Sub Shop, subject to the following condition:

- All dead and missing landscape material shall be replaced on the site prior to the issuance of a Certificate of Occupancy for the space.

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

Voting Nay: None

Absent: None

Administration Recommendation:

Administration recommends approval.

Item #R7 -

PUBLIC HEARING regarding, and consideration of approval of, an Ordinance approving development plans for a drive-through bank in a Planned Development district (093-018), located at 3790 Belt Line Road, on application from Capital One Bank Corporation, represented by Mr. Michael Rosson of Levinson Associates, L.P.

Attachments:

1. Docket Map
2. Staff Report
3. Plans

The Planning and Zoning Commission Findings:

The Addison Planning and Zoning Commission, meeting in regular session on March 23, 2006, voted to recommend approval of the request for development plan approval, on application from Capital One Bank, subject to the following conditions:

- Staff recommends revising the tree planting alignment and sidewalk location along Belt Line to match as closely as possible to the goals established for the development of the concept plans. In addition, staff recommends revising the plans showing elimination of the shrub bed along the Belt Line frontage where no parking spaces are planned, which is also in keeping with the master plan to provide an open ground plane for visibility from the street into the site. Some of this proposed planting can be massed with the shrub bed shown on the northwest corner of the property.
- The massed trees shown on the northwest corner will need to be revised to avoid blocking the Kroger Center sign from view when looking toward the west on Belt Line Road.
- There is not adequate room for planting the proposed red oaks along the east end of the property. The existing row of live oaks addresses the tree planting requirement for this side of the property. One of the existing live oaks has declined to a point that it will need to be removed and replaced with a 5 inch caliper tree. This will need to be coordinated with the Kroger Center management since this area is a shared landscape buffer that falls on the edge of the retail center's property.
- The trees shown on the west side of the property are spaced too closely and should be spaced 35 feet apart.
- The final plan will need to show the total landscape area percentage versus the gross site area calculation.

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

Voting Nay: None

Absent: None

Administrative Recommendation:

Administration recommends approval.

Item #R8 - Approval of a replat for one lot of 1.731 acres, located at 3790 Belt Line Road, on application from Capital One Bank Corporation, represented by Mr. Matthew Thomas of Carter Burgess, Inc.

Attachments:

1. Docket Map
2. Staff Report
3. Plans

The Planning and Zoning Commission Findings:

The Addison Planning and Zoning Commission, meeting in regular session on March 23, 2006, voted to recommend approval of the replat for Lot 2, Block D, Addison Town Center, subject to the following conditions:

- Staff will provide plat boundary closure comments in the next seven days to the applicant's engineer.
- Engineering plans should be approved before plat is filed.
- Please provide a detail of what utility lines are in the easements proposed to be abandoned. Staff will okay the abandonment of the utility lines at time of engineering plan approval.

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

Voting Nay: None

Absent: None

Administrative Recommendation:

Administration recommends approval.

Item #R9 - **PUBLIC HEARING** regarding, and in consideration of approval of, ordinance amending Chapter 14 (Aviation) of the Code of Ordinances by amending Article III (Municipal Airport) thereof by adding a new Division 2A regarding a fuel license for the receipt, storage and dispensing of fuel at Addison Airport, and deleting Division 4 (Airport Fuel Farm Facilities) from Article III, including Section 14-110 relating to fuel tank lease rates.

Attachments:

1. Council Agenda Item Overview
2. Ordinance

Administrative Recommendation:

Administration recommends approval.

Item #R10 - Consideration and approval of an Ordinance granting meritorious exception to Sec. 62-123, Area, for AMF Fun Fest, located at 3805 Belt Line Road.

Attachments:

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

Administrative Recommendation:

Administration recommends approval.

Item #R11 - Consideration and approval of a resolution approving Change Order #6 in the amount of \$44,688.62 and an extension of 28 calendar days for the construction of Arapaho Road Phase III from Surveyor Boulevard to Addison Road.

Attachments:

1. Council Agenda Item Overview
2. Change Order #6

Administrative Recommendation:

Administration recommends approval.

Item #R12 - Consideration and approval of a resolution authorizing the payment of utility billing refunds totaling \$2,702.37 and approving the waiver of \$49,831.31 in utility fees.

Attachments:

1. Council Agenda Item Overview
2. Memorandum from Shanna Sims

Administrative Recommendation:

Administration recommends approval.

Item #R13 - Consideration and approval of an ordinance of the Town of Addison, Texas amending Chapter 82 of the Code of Ordinances of the Town by amending Section 82-79 Definitions; 82.79.5 Security Deposit Refunds; 82.80.1 Payment; 82.80.2 Billing Dispute; 82.80.3 Service Termination Procedures; 82.83.1 Miscellaneous Charges and Provisions; and 82-83.2 Discrepancies in Amount of Bill; Providing a savings clause; Providing a severability clause; providing an effective date.

Attachments:

1. Council Agenda Item Overview
2. Ordinance

Administrative Recommendation:

Administration recommends approval.

Adjourn Meeting

Posted 12:00 p.m.
April 6, 2006
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.**

Council Agenda Item: #WS1

There are no attachments for this item.

Council Agenda Item: #WS2

Please refer to Item #R9

OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL

March 28, 2006
6:30 p.m. - Council Chambers
5300 Belt Line Road

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

Absent: None

Item #WS1 – Presentation of the new dog park design to be located east of the Easement Park within the TXU electric transmission right-of-way.

No action taken.

Item #WS2 – Presentation of the Addison Arbor Foundation (AAF) Comprehensive Streetscape Plan prepared by RTKL.

No action taken.

Item #R1 - Consideration of Old Business.

The following employees were introduced to the Council: Sheryl Donihoo (Information Technology), Judy Taylor (Finance), Jeff Sharp (Police).

Item #R2 - Consent Agenda.

Item #2c and Item #2d were considered separately.

#2a – Approval of the Minutes for the March 14, 2006, Council Meeting. (Approved as written)

#2b – Consideration and approval of a resolution to award bid to Allegra Print and Imaging, for the Town’s printing services annual contract. (Approved Resolution No. R06-026)

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

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

#2c – Approval of final payment to Nortex Concrete Life and Stabilization, Inc., for raising and undersealing concrete pavement on Midway Road.

Councilmember Kraft moved to approve final payment to Nortex Concrete Life and Stabilization, Inc., for raising and undersealing concrete pavement on Midway Road. Councilmember Braun seconded. Motion carried.

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

#2d – Consideration and approval of a resolution to award bid to Sta-Dri, Inc., in the amount of \$108, 977 for roof replacement and repairs at the Service Center and Fire Station #2 municipal facilities.

Councilmember Braun moved to duly pass Resolution No. R06-027 to award bid to Sta-Dri, Inc., in the amount of \$108, 977 for roof replacement and repairs at the Service Center and Fire Station #2 municipal facilities. Councilmember Mallory seconded. Motion carried.

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

Item #R3 – **PUBLIC HEARING** on Case 1509-Z/Town of Addison concerning, and consideration of approval regarding, an ordinance amending the Town's Comprehensive Plan by inclusion of Policies designating sub-districts, outlining standards for residential and non-residential development of the Belt Line Road corridor, and identifying other strategies, for enhancing the corridor, and by incorporating a conceptual plan of such districts.

Mayor Chow opened the meeting as a public hearing.

Scott Long of Midway Meadows spoke in favor of the request.

Mayor Chow closed the meeting as a public hearing.

Councilmember Mallory moved to duly pass Ordinance No. 006-014 approving an ordinance amending the Town's Comprehensive Plan by inclusion of Policies designating sub-districts, outlining standards for residential and non-residential development of the Belt Line Road corridor, and identifying other strategies, for enhancing the corridor, and by incorporating a conceptual plan of such districts. Councilmember Niemann seconded. Motion carried.

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

Item #R4 – **PUBLIC HEARING** regarding, and consideration of, an approval of a resolution approving the new dog park design to be located east of the Easement Park within the TXU electric transmission right-of-way.

Mayor Chow opened the meeting as a courtesy public hearing.

The following spoke in opposition of the request:

Scott Bobands
4043 Rive Lane

Cathy Ways
4104 Rush Circle

Myra Prescott
4105 Rush Circle

Scott Wanham
4107 Rive Lane

Nancy Wright
4111 Rive Lane

Lucinda Ellis
Manager of Marriott Courtyard

Sandy Smallwood
4104 Rive Lane

The following spoke in favor of the request:

Elizabeth Rutledge

Paul Hayes
4100 Leadville Pl.

Susan Hayes
4100 Leadville Pl.

Mark Lanford
4021 Dome Drive

Theresa Wilkin
Towne Lake

Dan Molton
Azure Lane & Canot Lane

Cameron Stevens
3757 Brookwood Lane

Councilmember Hirsch moved to duly pass Resolution No. R06-028 approving the new dog park design to be located east of the Easement Park within the TXU electric transmission right-of-way, and approving a budget of \$49,754 for the project and specifying that any increases to the cost of the project shall be brought back to the Council for separate approval. Councilmember Mellow seconded. Motion carried.

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

Item #R5 – Consideration and approval of a resolution approving the Addison Arbor Foundation (AAF) Comprehensive Streetscape Plan prepared by RTKL.

Councilmember Hirsch moved to duly pass Resolution No. R06-029 approving the Addison Arbor Foundation (AAF) Comprehensive Streetscape Plan prepared by RTKL. Councilmember Braun seconded. Motion carried.

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

Item #R6 – Consideration and approval of a resolution to award bid to Union Metal Corporation in the amount of \$46,650 for the purchase of five (5) traffic signal poles and arms for the Congestion Mitigation Air Quality (CMAQ) Program, Project #12 on Midway Road.

Councilmember Niemann moved to duly pass Resolution No. R06-030 to award bid to Union Metal Corporation in the amount of \$46,650 for the purchase of five (5) traffic signal poles and arms for the Congestion Mitigation Air Quality (CMAQ) Program, Project #12 on Midway Road. Councilmember Braun seconded. Motion carried.

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

Item #R7 – Consideration and approval of a resolution to award bid to Advanced Paving, in the amount of \$677,765 for construction of the Addison Airport Asphalt Improvements Project for the Town of Addison.

Councilmember Kraft moved to duly pass Resolution No. R06-031 to award bid to Advanced Paving, in the amount of \$677,765 for construction of the Addison Airport Asphalt Improvements Project for the Town of Addison. Councilmember Niemann seconded. Motion carried.

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

Item #R8 – Consideration and approval of a resolution authorizing the City Manager to accept and enter into a Grant Agreement for Non-Primary Entitlement Funds (NPE) in the amount of \$236,145 from the Texas Department of Transportation for airport improvements at Addison Airport.

Councilmember Mallory moved to duly pass Resolution No. R06-032 authorizing the City Manager to accept and enter into a Grant Agreement for Non-Primary Entitlement Funds (NPE) in the amount of \$236,145 from the Texas Department of Transportation for airport improvements at Addison Airport. Councilmember Mellow seconded. Motion carried.

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

Item #R9 – **PUBLIC HEARING** regarding, and consideration of, an approval of an ordinance amending Chapter 14 (Aviation) of the Code of Ordinances by amending Article III (Municipal Airport) thereof by adding a new Division 2A regarding a fuel license for the receipt, storage and dispensing of fuel at Addison Airport, and deleting Division 4 (Airport Fuel Farm Facilities) from Article III, including Section 14-110 relating to fuel tank lease rates.

Mayor Chow opened the meeting as a courtesy public hearing.

The following spoke in opposition of the request:

Steve Waggoner

Bill Signs
16300 Ledgemont

Jeff Carr
MillionAir

Jim Hornbaker
General Aviation

Mayor Chow closed the meeting as a public hearing.

Councilmember Kraft moved to table the item. Councilmember Hirsch seconded. Motion carried.

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

Councilmember Niemann recused himself and left the Council Chambers.

Item #R10 – Consider a resolution approving a gas standing steering committee participation agreement regarding the Town’s participation with other cities in connection with matters related to Atmos Energy; authorizing the city manager to execute the agreement on behalf of the Town; providing for the Director of Financial & Strategic Services to receive information in connection with the agreement and to carry out the city’s responsibilities thereunder; providing for the payment of a fee for the Town’s participation in the agreement; providing an effective date.

Councilmember Braun moved to duly pass Resolution No. R06-033 approving a gas standing steering committee participation agreement regarding the Town’s participation with other cities in connection with matters related to Atmos Energy; authorizing the city manager to execute the agreement on behalf of the Town; providing for the Director of Financial & Strategic Services to receive information in connection with the agreement and to carry out the city’s responsibilities thereunder; providing for the payment of a fee for the Town’s participation in the agreement; providing an effective date. Councilmember Hirsch seconded. Motion carried.

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

Councilmember Niemann returned to the Council Chambers.

EXECUTIVE SESSION. At 10:45 p.m., Mayor Chow announced that the council would convene into Executive Session to discuss the following items:

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(s) on a matter or matters in which the duty of the attorney(s) to the Town Council under the Texas Disciplinary Rules of Professional Conduct of the

State Bar of Texas clearly conflicts with Chapter 551, Tex. Gov. code, regarding and relating to property taxation.

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

The Council came out of Executive Session at 11:37 p.m.

Item #R11 – Consideration and approval of a resolution approving a merit increase and salary adjustment for the City Manager.

Councilmember Kraft moved to duly pass Resolution No. R06-034 approving a merit increase and salary adjustment for the City Manager. Councilmember Mallory seconded. Motion carried.

Voting Aye: 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:

Council approval is required to replace the recording equipment for the police department's Dictaphone equipment. This system is used to record incoming and outgoing phone calls and radio communications between dispatchers, police officers and firefighters in the field. A recording and instant playback system is an essential component of dispatch operations. The item is to authorize the City Manager to enter into an agreement with NICE Systems Inc. for the amount of \$31,005 to replace and install the equipment used to record phone and radio traffic. The purchase will be through Houston Galveston Area Cooperative (HGAC) which we are a member. HGAC sought competitive bids for this product, therefore we elected not to go out for bids.

FINANCIAL IMPACT:

This is an unbudgeted replacement item. In the 2005 / 2006 budget \$13,000 was designated for maintenance on the existing Dictaphone equipment, and is available to apply toward this purchase. Savings from other accounts in the police budget will be used to make up the unbudgeted difference.

BACKGROUND:

Dictaphone Prolog is an analogue system purchased in 1998. As is often the case in Addison, we tend to keep equipment beyond the average serviceable life expectancy set by the manufacturer. Depending on parts availability we could continue to operate the older equipment, however, we have reached the point where parts are hard to come by and increasingly more expensive. We are currently facing a repair to the system that will be at least \$5000 using salvaged parts. Other less costly repairs have been required over the last two years but are increasing in both frequency and cost as salvaged parts become harder to find. For this reason we feel the most cost effective option is to go ahead and replace the entire system.

Recommendation:

Staff recommends approval.

MEMORANDUM

To: Chief Ron Davis
From: Joni Ramsey
Date: March 30, 2006
Subject: Replacing recording equipment

RECORDING EQUIPMENT-UPGRADE REQUEST

Currently, all audio for phones and radio traffic is recorded on the Dictaphone Prolog System, purchased in 1998. This system is used to record incoming and outgoing phone calls and radio communications between dispatchers and police officers and firefighters in the field. A recording and instant playback system is an essential component of dispatch operations.

The Dictaphone Prolog equipment is outdated and is no longer supportable with new replacement equipment. Repairs are dependent upon part availability. Should a part not be repairable or a new/used part located, we would be forced to make an unbudgeted emergency replacement of the system. Our existing maintenance for the Dictaphone components that records calls is \$10,000 per year. Another \$3,000 is budgeted for repairs to the instant playback feature. We are currently faced with a repair that has a projected cost of \$5000. For this reason we feel the timing is right to replace the entire system.

HISTORY:

Dictaphone Prolog is an analogue system purchased in 1998. As the equipment gets older, the higher the yearly maintenance contract due to the possibility of costly repairs. In spite of the high cost of the maintenance contract, it only covers the recording equipment and not call checks. Call checks are used by dispatchers to instantaneously review radio or phone traffic from the consoles. An additional \$3000 is budgeted for the call check equipment in addition to the money for the maintenance contract each year in the event repairs or replacement is necessary.

WHY WE SHOULD CONSIDER UPGRADING SYSTEMS:

- The Freedom System is a digital recording system with little or no maintenance.
- Maintenance costs are locked in at the time of the upgrades.
- Technical service is available with an on-site local service and numerous other avenues for customer support.
- Current system uses dat tapes and newer digital system uses DVD, reducing the expense of recording.
- Time to record or review audio is greatly reduced. The speed of searching for calls is minimal and has the ability to email the recording to a requestor.
- The new system will include the replacement of our 5 call checks.
- The current system is considered obsolete and Nice will continue to service the equipment for a certain period of time, but we will be exposed to a significant increase in the annual maintenance expenditure. Parts will become scarce and the equipment more difficult to maintain.
- The average annual maintenance cost for the current system over the next 5 years is approximately \$45,000 vs. a new digital system for \$31,005. The maintenance for years 4 and 5 is an estimated \$9900. A new system will cost less than the cost of maintaining the current system.

CONCLUSION:

Our investment comparison indicates we are able to upgrade to a new state of the art digital audio recording system. The equipment will be more reliable, save time, provide faster service, and includes maintenance on call checks.

Freedom has been chosen by the HGAC as the recorder of choice and only HGAC members can buy off this contract since HGAC has already gone out to bid.

Attached is additional information on the Freedom system and a copy of the proposed contract for your review.

Joni Ramsey
Manager Public Safety Communications
Town of Addison
4799 Airport Parkway
Addison, TX 75001



March 30, 2006

Dear Joni,

Thank you for the opportunity to present a comprehensive Communications Analysis for the upgrade of the older recording equipment within Town of Addison Department of Public Safety facility. I appreciate your assistance throughout this entire process.

Some options to consider:

- 1. Purchase New Freedom Recording system with 1 year maintenance=\$21,240.00***
 - Maintenance subject to annual increases each year
 - Total maintenance and equipment in 5 years= approximately \$41,714.00, subject to additional increases.
- 2. Purchase New Freedom Recording system with 3 years Prepaid maintenance=\$31,005.00***
 - Maintenance subject to annual increases each year starting year 4
 - Approximately \$41,000.00 for 5 years
- 3. Pay 5 annual payments of \$8,145.92 which include new Freedom Equipment and 5 years of maintenance, take ownership at end of 5 years. Total cost \$40,729.60***
 - *all inclusive, total cost is amount paid over 5 years.
 - *No Increase in Maintenance cost for 5 years
 - This is equal to what you will pay for just maintenance alone for 5 years on the current equipment.**

IN SUMMARY:

**Lease equipment with 5 years of Maintenance,
Annual Payment=\$8,145.92
Total 5 Year Investment=\$40,729.60**

**Purchase Equipment with 1 year Maintenance,
\$21,240.00
Total 5 year Investment with Maintenance paid annually,**

> NICE Systems Inc
301 Route 17th No. 10th Floor
Rutherford, NJ 07070

> T 321-777-5125 F 201-964-2610>
E susan.dauria@nice.com

Insight from Interactions

**Approximately =\$39,880.00
Subject to annual increases**

**Purchase Equipment with 3 years prepaid maintenance, \$31,005.00
Total 5 year Investment with Maintenance paid annually, approximately=\$41,000.00
Subject to annual increase after year 4**

**Sincerely,
Susan D'Auria
National Inside Sales Manager**



NICE Systems Inc.
 301 Rt 17 North 10th Floor
 Rutherford NJ 07070
 Tel: 1 201 964-2600

Nice Hardware & Software Proposal

Customer Information

Name: TOWN OF ADDISON
 Address: 4799 AIRPORT PARKWAY
 City: ADDISON State: TX Zip: 75001
 Attn: JONI RAMSEY
 Phone: (972) 450-7156

Contact Information

Date: 03/22/06
 Contact: Susan D'Auria
 Telephone: 321-777-5125
 Fax: (201) 964-2610
 SIC Code:

24 CHANNEL FREEDOM RECORDER

Qty	Model	Description	Line Total	TOTAL
1	0FREPAK	Freedom System Software Pack	\$ 3,062.00	
1	CRSTCD	Freedom Training CD	\$ 707.00	
3	0FRECHK	Adding Call Check Capability To Existing Recorder	\$ 2,949.00	
		Subtotal		\$ 6,718.00
1	05FA000	Freedom Combo Recorder Raid Option	\$ 5,373.00	
6	0428357	Analog Coupler Board	\$ 9,330.00	
1	0428581-024	16 Port Compression Card Kit W/Cables (20 To 24 Channels)	\$ 3,105.00	
1	0428581	Freedom Compression Card - 16 Port	\$ 3,105.00	
		Subtotal		\$ 20,913.00
		HGAC CONTRACT INCLUDED 3 YEARS 8 X 5 WARRANTY		

Project Information
 Name:

Subtotal	\$ 27,631.00
3 year warranty	Included
Installation	\$ 1,759.00
Shipping & Handling	\$ 200.00
HGAC Fee	\$ 445.00
TOTAL	\$ 30,035.00

Price includes a warranty of 1 YEAR PARTS & LABOR
 Applicable taxes not included in above stated pricing
 Pricing Valid for 30 Days 33% Deposit due on orders >\$50,000.00
 Invoice for presentation purposes only

HGAC CONTRACT TOTAL	\$31,005.00
PAGES 1 & 2	



NICE Systems Inc.
 301 Rt 17 North 10th Floor
 Rutherford NJ 07070
 Tel: 1 201 964-2600

Nice Third Party Hardware Proposal

Customer Information

Name	TOWN OF ADDISON			
Address	4799 AIRPORT PARKWAY			
City	ADDISON	State	TX	Zip 75001
Attn:	JONI RAMSEY			
Phone:	(972) 450-7156			

Contact Information

Date	01/00/00		
Contact	Susan D'Auria		
Telephone	321-777-5125		0
Fax	(201) 964-2610		
SIC Code			

Qty	Model	Description	TOTAL
1	0FWSDK-X2D	Kit - Two DVD Drive	\$ 820.00
1	0428034	PACK of 10 9.4GB DVD MEDIA	\$ 150.00
Subtotal			\$ 970.00
APP			
Software Maintenance Agreement			\$ -
Installation			
Shipping & Handling			
TOTAL			\$ 970.00

Project Information

Name:			
Ref No.:		Delivery:	
		Days ARO	

Subtotal	\$ 970.00
APP	
Software Maintenance Agreement	\$ -
Installation	
Shipping & Handling	
TOTAL	\$ 970.00

*Price includes a warranty of 90 days labor & 1 year parts
 Applicable taxes not included in above stated pricing
 Pricing Valid for 30 Days 33% Deposit due on orders >\$50,000.00
 Invoice for presentation purposes only*

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

This item is to award a contract to Dowager Construction, Incorporated in the amount of \$105,000.00 for construction of the Chatham Court, Phase I, Water Service Replacement Project.

FINANCIAL IMPACT:

Budgeted Amount: \$110,000.00

Construction Cost: \$105,000.00

Source of Funds: This Project is funded for 2006 in the Water and Sewer Fund, as indicated in the Five Year Capital Replacement Program.

BACKGROUND:

The Public Works Department established the need for the replacement of existing water service lines on Chatham Court Drive, Chancey Street and Lakeway Court. This project is the result of numerous water service line breaks in the area that have disrupted service to affected residences. The firm of GSWW, Inc. prepared engineering plans and specifications for the construction of these improvements. A similar water line repair project was completed in 2005.

Attached is a bid tabulation for this project. Dowager Construction, Inc. submitted the lowest bid, in the amount of \$105,000.00. This contractor has successfully completed similar waterline improvement projects in other municipalities in the area. It is estimated that this project will take 75 calendar days to complete.

RECOMMENDATION:

Staff recommends that Council authorize the City Manager to enter into a contract for \$105,000.00 with Dowager Construction, Inc. for the Chatham Court, Phase I, Water Service Replacement Project.

**Chatham Court Phase I Water Service Replacement
Bid No. 06-16**

**DUE: March 14, 2006
2:00 PM**

BIDDER	Bid Bond	Signed	Total Bid
Dowager Construction, Inc.	y	y	\$105,000.00
Davis Excavation, Inc.	y	y	\$122,500.00

Shanna N. Sims

Shanna N. Sims, Strategic Services Manager

Katie H. Roller

Katie H. Roller, Witness

PLANNING AND ZONING COMMISSION

Ted Bernstein

3875 Weller Run Court
Addison, TX 75001-7931
(H) (972) 406-9677
Term Expires: 04/12/2007 – 2nd Term
KRAFT

Paula Jandura

14936 Oaks North Drive
Dallas, TX 75254-7632
(H) (972) 702-0202
Term Expires: 03/25/2007 – 2nd Term
MALLORY

Roger Chafin

3761 Park Place
Addison, TX 75001-4002
(H) (972) 488-8828
Term Expires: 04/13/2006 – 1st Term
NIEMANN

Todd Meier

Vice Chairman
14857 Towne Lake Circle
Addison, TX 75001-4951
(W) (214) 561-8730
Term Expires: 03/08/2007 - 1st Term
MELLOW

Don Daseke

5656 Celestial Road
Dallas, TX 75254-7614
(H) (972) 960-9015
(W) (972) 866-9423
Term Expires: 08/23/2007 – 1st Term
BRAUN

Alan Wood

Chairman
14609 Lexus Avenue
Addison, TX 75001-3132
(W) (214) 269-3114
Term Expires 04/12/2007 – 1st Term
CHOW

Carol Doepfner

4006 Bobbin Lane
Addison, TX 75001-7931
(H) (972) 233-9722
(W) (972) 307-3229
Term Expires: 02/10/2006 – 3rd Term
HIRSCH

Carmen Moran

Staff Liaison
P.O. Box 9010
Addison, TX 75001-9010
(W) (972) 450-7018
Fax (972) 450-7043

BOARD OF ZONING ADJUSTMENT**MEMBERS****Corie Ewing**

4000 Bobbin Lane
Addison, TX 75001-4901
(H) 972-386-7741
Term Expires: 03-08-2007 – 3rd Term

W. David Griggs

14605 Dartmouth Court
Addison, TX 75001-4439
(W) 214-979-9378
(H) 972-406-9667
Term Expires: 03-08-2007 – 3rd Term

Charles “Chick” Martin

14810 Lochinvar Drive
Dallas, TX 75254-7528
(H) 972-733-3177
Term Expires: 12-13-2007 – 2nd Term

Maggie McQuown

14600 Brookwood Lane
Addison, TX 75001-0234
(W) 972-247-0234
Term Expires: 3-23-2006 1st Term

Beverly Roberts

4040 Morman Lane
Addison, TX 75001-3103
(W) 972-851-2181
(H) 972-392-9460
Term Expires: 03-08-2007 2nd Term

ALTERNATES**Virgil Burkhardt**

4007 Winter Park Lane
Addison, TX 75001-4904
(H) 972-490-8517
Term Expires: 9-28-2006 1st Term

Joel Davis

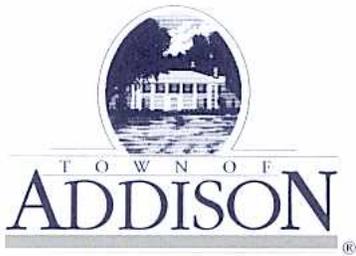
4067 Beltway Drive #148
Addison, TX 75001-4920
(W) 214-743-5427
(H) 972-490-0440
Term Expires: 9-28-2006 – 1st Term

William Green

3845 Canot Lane
Addison, TX 75001-7904
(H) 972-454-3284
Term Expires: 9-28-2006 – 1st Term

Carmen Moran

Staff Liaison
P.O. Box 9010
Addison, TX 75001-9010
(W) (972) 450-7018
Fax (972) 450-7043



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

FAX (972) 450-7043

March 17, 2006

STAFF REPORT

RE: Case 1512-Z/Stanford Court

LOCATION: 2.37 acres at the southeast corner of Montfort Road and Celestial Road (Walden School)

REQUEST: Approval of an amendment to an Existing Planned Development District (Ordinance 085-047)

APPLICANT: Zachary Custom Builders, represented by Jones and Boyd

DISCUSSION:

Background. The Walden School has occupied this site since the 1970s. In 1985, the City rezoned this property to a Planned Development district so that any redevelopment of it would be subject to the Town's review and approval. The allowed use on the property was Garden Offices. The conditions placed on the rezoning were that the height be limited to a maximum of two stories, and a seventy-five (75) foot wide landscape/buffer zone along Celestial Road would be required. The Celestial place subdivision, which borders this site on the east and south, was constructed in 1994. There are three lots on the east and five lots on the south that back directly to this property (aerial photo attached).

At this time, Walden School would like to sell its property and move the school to another location. The staff has talked with the Walden School board and several brokers about possible uses for this site, and concluded that a residential neighborhood is the highest and best use for the property. Although a garden office use was approved for the site in 1985, it is not a viable use for the property now. Retail uses are not viable, nor are they desirable for the adjacent neighborhoods. The site is adjacent to two zero-lot-line residential neighborhoods of Celestial Place and Oaks North, but it suffers from some constraints. It is at the corner of Montfort and Celestial, so it gets traffic noise from Montfort Road, and it is directly across from the Anne Frank School, which also generates noise and traffic. Therefore, the staff felt that a product with a

townhome density was more suitable to this site than a true detached, single-family product.

The staff reviewed several plans before this application. CityHomes took a run at this property, but wanted to develop it with 32, 3-story townhomes, similar to the product it is currently building in Addison Circle. The staff felt that 32 units were too many for the site, and it also had concerns because the units did not have individual driveways.

The staff advised several potential buyers to look at the condominium products that already exist in two other locations: the Towne Lake townhomes on Beltway Drive, and the Proton Drive townhomes on the south side of Proton Drive. Both of those developments look like townhomes, but the owners have a condominium interest. They do own an individual lot, and they share a common roof. This project is proposed to be a true townhome with individual ownership of each lot and a firewall between each unit that extends through the roof deck.

The zoning approval is the first step of a two-step process for this development. If the Planned Development zoning is approved, the applicant would then have to come back and plat the lots. The applicant is proposing the streets be kept as private streets. The Towne Lakes development and the Proton Townhomes are both developed with private streets. Both of those neighborhoods were platted with private streets, but the City Attorney has advised that the subdivision ordinance does not currently provide for city approval of private streets, and that it should be amended before these streets are platted as private. The staff is working on an amendment to the subdivision ordinance that should come to the Planning and Zoning Commission in April.

Proposed Plan. The applicant submitted a site plan that shows 23 townhome lots that vary from 25 to 35 feet in width and 90 to 95 feet in depth. Each unit provides a 2-car garage and each lot provides a driveway that will hold two vehicles. The applicant has submitted Planned Development Regulations (Exhibit B, attached) which indicate the units will have a minimum size of 1,800 square feet and a maximum height of 2 stories, not to exceed 35 feet to the top plate line.

Facades. The staff asked for elevations of the proposed buildings when the site plan was submitted, and asked again for them on March 13th. The staff was assured the elevations would be delivered, but they have not been delivered yet. Staff does not know what the materials will be for the units or what they will look like.

Traffic. The staff did not conduct a traffic study for this proposed development and did not ask the applicant to submit a study. Generally, residential traffic is more dispersed through the day than office or retail traffic, and it provides a less noticeable impact on a neighborhood.

Parking. Staff feels that the parking provided is adequate because each unit has two spaces in the garage and two spaces provided in the driveway. In addition, the street is wide enough to allow cars to park in it. There are also three visitor spaces provided. Therefore, the staff feels that the parking is adequate.

Engineering Comments. Nancy Cline has reviewed the proposed street lay-out. She notes that the width of the street looks acceptable. Most of her comments will relate to the location of utilities and paving details. Therefore most of her comments will come at the platting step or second step of this process.

Landscaping. Slade Strickland reviewed the plans. He notes that all trees proposed on the site need to be a minimum of 4-inch caliper shade trees, selected from the recommended shade tree list in the Town's landscape regulations. In addition, all trees should be spaced 35 feet apart, as opposed to the 3-inch trees, spaced 40 feet that are currently shown.

The plans indicate a sidewalk on Montfort and Celestial Roads that is directly back of curb. The Planned Development guidelines indicate the walk will meander through the parkway. Slade Strickland recommends the sidewalk be placed directly against the 6-foot masonry wall that is specified in the guidelines.

Staff agrees with Slade's comment about moving the sidewalk, but has some concern about a 6-foot masonry wall. The maximum allowed height for a fence or wall in Addison is eight feet. If the applicant builds a 6-foot fence, the individual owners may then come and add to the top of the wall to get eight feet. Evidence of that "adding on" exists immediately north of this site where the Oaks North neighborhood abuts Montfort. Staff believes the applicant should construct the fence at the maximum allowed eight feet so that additional height is not tacked on by different homeowners in a random fashion.

The plan also needs to show the landscape area and gross site calculations. The site should provide 20% landscaping. However, portions of the site that is in the public right-of-way can count toward that 20% on a foot-per-foot basis.

Fire Code. The Fire Department reviewed the plan and did not have any comments.

Building Code. Lynn Chandler notes that the units will be required to be constructed under the 2003 IRC (International Residential Code). Firewalls between each unit shall comply with the IRC. In addition, the IRC also limits the distance that projections, such as soffits, can be from the property line.

RECOMMENDATION:

Staff believes that a townhome product is a good development for this under-utilized piece of property. The staff has worked through several site plans with the applicant, and it believes that this plan, which uses the streets as a distance buffer between these townhomes and the existing Celestial Place homes, is a good design solution that will allow this property to develop, while protecting the privacy of the Celestial Place homeowners.

The most important question remains "Will the people in these townhomes be able to see into the back yards of their Celestial Place neighbors?" Staff does not feel it has enough information to answer this question. Elevations have not been provided that indicate where windows will be. In addition, staff does not have the finished floor elevations of these proposed townhomes so that it can see how high or low they will sit on the site. Therefore, line-of-site drawings cannot be constructed to show what the views will be from the upper-story windows of the townhomes.

Staff recommends this case be tabled until sufficient information is provided to show what the elevations of the townhome units will look like, and what views will be available out of these units. In addition, the applicant should revise the site plan to provide for the following:

- 4-inch trees, spaced at 35 feet around all perimeters of the site
- masonry wall along Montfort and Celestial raised to eight feet in height
- sidewalks on Montfort and Celestial Road moved adjacent to proposed wall

Respectfully submitted,

Carmen Moran

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on March 23, 2006, voted to recommend approval of the request on application from Zachary Custom Builders, subject to the following conditions:

-there shall be no views allowed from second-story windows that look into the adjacent properties on the north, east, and south. Windows shall be constructed in accordance with the drawings contained in the development plans. Windows on the second story that face north shall be screened with evergreen trees in a manner that prohibits views into the lots across Celestial Drive in the Oaks North neighborhood.

-an 8-foot fence and retaining wall, which shall maintain a finished height of 14 feet above existing grade, shall be constructed on the east property line of this tract, between this tract and the home at 14757 Celestial Place. Final design for retaining wall/fence along entire east property line shall be reviewed and approved by the staff prior to the issuance of the first construction permit.

-Landscape buffer at east property line shall be planted with a combination of large shrubs and trees that will provide immediate screening. The final planting plan for the buffer shall be reviewed and approved by the staff prior to issuance of the first construction permit.

- 4-inch trees, spaced at 35 feet, are required around the entire perimeter of the site

- the masonry wall along Montfort and Celestial Roads shall be raised to eight feet in height

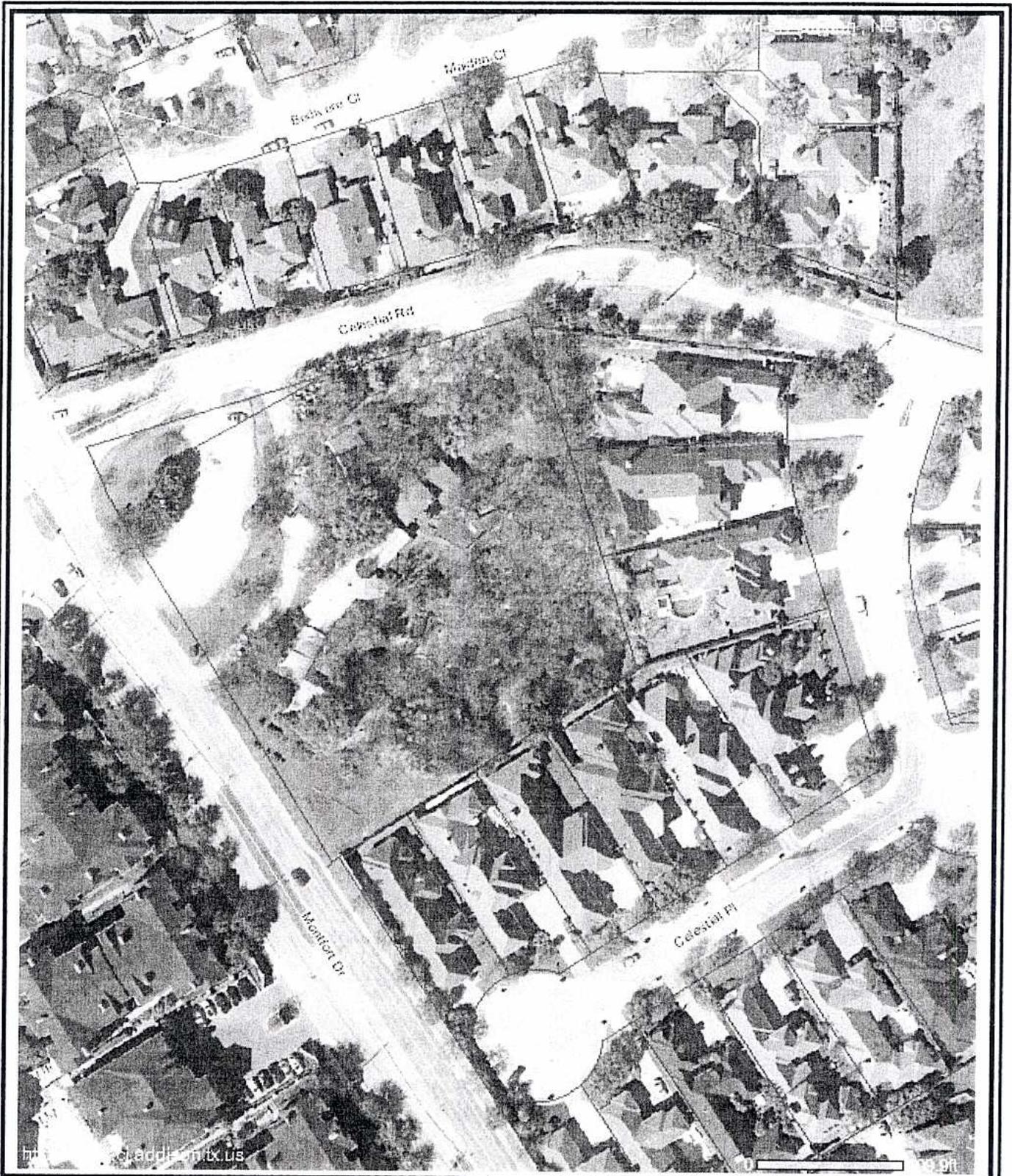
- sidewalks on Montfort and Celestial Roads shall be moved adjacent to proposed wall.

- in the event that no permits for site engineering or construction have been issued on this property by April 12, 2007, the Commission may call this zoning case up for review, and may recommend to the Council that the zoning approval be altered or repealed.

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

Voting Nay: None

Absent: None



Town of Addison
 5300 Belt Line Rd.
 Dallas, TX 75254
 3/16/2006

**Town of
 Addison**

DISCLAIMER

This data has been compiled for the Town of Addison. Various official and unofficial sources were used to gather this information. Every effort was made to ensure the accuracy of this data, however, no guarantee is given or implied as to the accuracy of said data.



Exhibit B Planned Development Regulations

Development shall take place in general accordance with the attached Comprehensive Site Plan (Exhibit C), as well as in accordance with the regulations established below.

PERMITTED USES

1. Townhouses.
2. Recreation Buildings.

YARD REQUIREMENTS

1. Minimum Front Yard: 10'. Where a garage door faces the street, the minimum front yard for that portion of the building shall be 20'. In those instances where a lot has a depth of at least 95', the minimum front yard shall be 25' for that portion of the building where a garage is located and 15' for any other portion of the building.
2. Minimum Side Yard: 0' for an interior townhome. 5' for an exterior townhome. The uniform building code will regulate construction requirements where side property lines intersect with buildings.
3. Minimum Rear Yard: 5'.
4. Every part of a required yard or court shall be maintained as open space; provided that ordinary projections may extend into a minimum side yard not more than 24 inches.

DENSITY

1. Maximum Allowable Density: 10 homes/acre.
2. Maximum Lot Coverage: 67%
3. Building; Lot Ratio: There shall be at least 2,250 square feet of lot area for each dwelling unit built on any lot.
4. Minimum Dwelling Size: Every dwelling unit, hereafter erected, shall have a floor area exclusive of breezeways, basements, open and screened porches and garages of not less than 1,800 air conditioned square feet.
5. Maximum Height: 2 stories, not to exceed 35' to the top plate line.
6. Minimum Lot Width: 25'. (Measured at the front building line.)
7. Minimum Lot Depth: 90'.

PARKING

1. Two parking spaces shall be provided for each dwelling unit.
2. Additional off-street parking spaces, as identified on the Comprehensive Site Plan (Exhibit C), shall be provided.
3. Fire lanes, as required by the fire code, shall be provided and clearly marked.
4. Security lighting must be provided to illuminate parking and public areas; placed so as to reflect the lighting away from adjacent dwelling units.

STREETS, ALLEYS, AND ACCESSWAYS

1. All areas for locating dwelling units shall be platted property and located on private streets. The streets and open spaces located within the development shall be controlled and maintained by a homeowner association.
2. The private streets shall have a minimum paving width of 27' (back-to-back), a minimum parkway width of 1.5', and shall be constructed in accordance with the Town of Addison's paving standards.

OPEN SPACE

1. In addition to paved parking and driving areas, at least 10% of the lot shall be maintained in landscaped open area. All landscaped areas shall have adequate and inconspicuous irrigation systems. All parking areas shall be designed and constructed in a manner to include landscaping.
2. A minimum 10' wide landscape buffer shall be provided adjacent to all perimeter property lines for the development. For those areas adjacent to public right-of-way, the buffer shall be located "outside" of the development. For those areas adjacent to private property, the buffer shall be located "interior" to the development. The buffer shall be landscaped. Included in said landscaping shall be minimum 3" caliper trees, planted 40' on center. Said landscaping shall be maintained by the homeowner association.
3. A minimum 6' tall masonry wall shall be provided as part of the landscape buffer when the buffer is adjacent to public right-of-way.
4. Sidewalks adjacent to Montfort and Celestial Roads shall meander through the landscape buffer and the adjacent parkway.

UTILITIES

1. Each townhome shall have its own underground electrical service.
2. Each townhome shall have washer and dryer connections.

POSTAL SERVICE

1. Individual mail provision shall be provided for each townhome and shall be located in accordance with the guidelines established by the postal service.

REFUSE COLLECTION AND STORAGE

1. Individual curbside refuse collection shall be required for each townhome.

DEED RESTRICTIONS AND OWNER ASSOCIATION AGREEMENTS

1. Agreements shall be approved by the Town of Addison and recorded in the county clerk's office, prior to the issuance of a certificate of occupancy.

FIREWALLS SEPARATING DWELLING UNITS

1. The common walls and ceiling of each unit must be constructed of materials of one-hour construction.
2. The attic space must be fire stopped as required by the Uniform Building Code.

Memorandum

Date: March 16, 2006
To: Carmen Moran, Director of Development Services
From: Nancy S. Cline, P.E. Director of Public Works
Subject: Case 1512-Z/Stanford Court

Public Works has the following comments:

1. Width of street looks acceptable. Please provide engineering plans indicating actual placement of utilities, drainage, etc. Sidewalks should not be at the back of curb. We have received a schematic of the placement and would prefer that the sanitary sewer line not be placed under the street pavement.
2. Engineering plans shall be submitted with the plat. Engineering plans should be approved before plat is filed.

Memorandum

Date: Marsh 16, 2006
To: Carmen Moran, Director of Development Services
From: Slade Strickland, Director of Parks and Recreation
Subject: Case 1512-Z/Stanford Court

The following conditions apply to the Comprehensive Site Plan (Exhibit C) and to the Planned Development Regulations (Exhibit B):

1. Under the Open Space section of Exhibit B – Planned Development Regulations, the trees shall be 4" caliper shade trees selected from the recommended shade tree list in the town's landscape regulations spaced 35 feet apart.
2. The sidewalk along Montfort should be aligned against the proposed 6' tall masonry wall provided as part of the landscape buffer to gain separation from the back of curb instead of a meandering walk. The trees need to be aligned along Montfort between the curb and the sidewalk.
3. The plan needs to show the landscape area and gross site calculations. Twenty percent landscaping is required for this site.
4. The trees within the interior 10' wide landscape buffer need to be spaced 35' apart instead of 40' apart.
5. The 6' tall masonry wall provided as part of the landscape buffer shall be maintained by the Stanford Court Homeowner's Association.

To: Carmen Moran, Director Development Services

From: Lynn Chandler, Building Official

Date: March 10, 2006

Subject: Case 1512-2/Stanford Court

The owner/developer should be made aware that these town-homes will be required to be constructed under the 2003 IRC. As such, firewalls between each unit shall comply with the IRC. The IRC also limits the distance that projections, such as soffits, are from the property line. If the projection requirement becomes a design problem, the owner may implement a unity agreement.



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

March 22, 2006

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

Re: Case 1512 – Z / Stanford Court
Planning and Zoning Commission Public Hearing

Dear Ms. Moran:

I own the home located at 14757 Celestial Place in Addison. This property is the first home located on the southeast corner of Celestial and Celestial Place Roads and is adjacent to the existing stonewall on the north side of the Celestial Place community. The back of my property is adjacent to the above referenced planned development, and without doubt my home and lot is clearly going to be the most negatively impacted. I have three main concerns that I am asking the Commission to address when making its recommendations to council regarding the required zoning change for the development.

1. Line-of-Site from town home windows to my backyard and pool.

It appears from discussions I have had with Zachary Custom Builders that the town homes backing up to my property will not have windows facing my backyard and pool area. The March 17th staff report states the "Finished Floor Elevations" are not complete so Line-of-Site drawings are not yet constructed. It is critical that my backyard and pool privacy stay in tack to protect my property value.

2. Height of proposed retaining wall and fence.

An 8-foot fence and retaining wall needs to maintain 14 feet in height above existing grade along back property line of lot at 14757 Celestial Place. Final design and material to be approved by homeowner.

Ms. Carmen Moran
March 23, 2006
Page 2

3. Landscape Screening

The preliminary landscape plan looks good and proposed tree and shrub selection appears to be well thought out. I have not seen a final plan so am unable to provide specific comments. Making sure that the initial planting along my property line is done with large shrubs and trees that will provide immediate screening to my property is critical. Special attention should be given to screening the height difference between the stone wall on Celestial and the proposed property line screening barrier / fence. Final landscape plan pertaining to the landscape buffer directly behind screening barrier / fence to be approved by homeowner.

In addition, I request the town to review the current landscaping buffer between Celestial Road and the adjacent stone wall. Four large pine trees along the wall were recently cut down due to disease. When the plan is developed along Celestial Road adjacent to Stanford Court, it would make good sense to continue the landscape theme down Celestial Road to fill the void that has recently been created. I request a meeting with Slade Strickland to discuss this issue.

I have owned my home in Addison for 10 years, and also own commercial property in addition to an office building on Quorum Drive. I have chosen to heavily invest in this town because of its superior ability to distinguish itself from Dallas and surrounding cities. It is my request that these items be incorporated as "Conditions" in the Commission's recommendation to Council and stay with the ordinance if passed.

Sincerely,



J.J. Horan

JJH/hdc



Carmen Moran
Director of Development Services
Town of Addison
PO Box 9010
Addison, TX 75001-9010

Dear Ms Moran:

Case No: 1512Z/Stanford Court

This is to advise my wife and I are filing a protest against the development of 23 townhomes on the land currently occupied by Walden School. We have lived on the south boundary of Walden School for almost ten years. We believe this proposed development would alter the lifestyle we have enjoyed as a citizen of Addison. Here are our issues:

■ Noise

We believe the addition of 23 townhomes would create continuous noise problems during the day and night for adjacent property owners

■ Traffic

The addition of up to 46 cars would cause traffic problems on Celestial Road, Montfort and Wynnwood

■ Environment – Tree Removal

The addition of 23 townhomes would require the removal of many large trees on this property that have aided in noise abatement and are part of the natural beauty.

■ Environment – Natural Springs

The preparation – grading and tree removal on this property could alter the course of natural springs which form underground on the south side of this property.

■ Property Values

It is believed the addition of townhomes will cause deterioration of adjacent property values

We believe it would be a mistake for the city to approve this project. If this property is to be developed it should be developed as single family homes consistent with the neighborhood. Please vote against this proposal.

Sincerely



Lee and Sherry Farlander
14741 Celestial Place
Addison, TX 75254

CITY COUNCIL
TOWN OF ADDISON
ADDISON TEXAS

COUNCIL &
ZONING BOARD

REGARDING ZONING AT MONTFORT AND CELESTIAL
CURRENTLY: Walden School

It has come to our attention that a developer is interested in building 23 townhomes on the Walden property. Current Residential zoning in the area would not allow more than six to ten units at the most and probably closer to four or five homes.

We live in the area and chose to be here because it is quiet and peaceful. Because most of the lots are large, the area is not congested. In addition, there is not a great deal of automobile traffic. Were you to allow a high density development at the entry to our homes (regardless of the price of the homes) it would affect us all greatly. It would bring a minimum of 46 new cars, trucks, delivery vans and a host of other unwanted vehicles. It would be even more difficult to get on to Montfort from Celestial, as well as, pose additional congestion and potential risk to the children crossing the street to attend school. Of utmost importance is the development and the size of the lots would not be consistent and in keeping with the lots surrounding the Walden site.

We live in Addison because it is a well kept secret and we are proud to be here. Most of us left neighborhoods where high density developments encroached upon our single family homes. We don't want a high density project, it is not in keeping with the rest of the residential community adjacent to or very close to the site.

We the undersigned respectively request that if you are to approve a residential development that you limit the number of building sites to a maximum of 6 which we can all live with and won't adversely affect the character of our community. As we understand it any new zoning must keep the lots sizes comparable and in CONFORMITY with those that surround it.

Name	Address	Date
Lawrence	14784 W. Winnwood RD.	3/29/06
Brenda McElroy	14828 Bellbrook	3/19/06
John McElroy	14828 Bellbrook	3/19/06
Chuck T. Jordan	14800 Winnwood Rd.	3/20/06
Dwan Jordan	14800 Winnwood Rd.	3/20/06

March 13, 2006

CITY COUNCIL
TOWN OF ADDISON
ADDISON TEXAS

COUNCIL &
ZONING BOARD

REGARDING ZONING AT MONTFORT AND CELESTIAL
CURRENTLY: Walden School

It has come to our attention that a developer is interested in building 23 townhomes on the Walden property. Current Residential zoning in the area would not allow more than six to ten units at the most and probably closer to four or five homes.

We live in the area and chose to be here because it is quiet and peaceful. Because most of the lots are large, the area is not congested. In addition, there is not a great deal of automobile traffic. Were you to allow a high density development at the entry to our homes (regardless of the price of the homes) it would affect us all greatly. It would bring a minimum of 46 new cars, trucks, delivery vans and a host of other unwanted vehicles. It would be even more difficult to get on to Montfort from Celestial, as well as, pose additional congestion and potential risk to the children crossing the street to attend school. Of utmost importance is the development and the size of the lots would not be consistent and in keeping with the lots surrounding the Walden site.

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Name	Address	Date
Rachel K Emmett	14530 Winnwood	3/15/06
Tom Hunse	14784 Winnwood	3/15/06
Denise Hunse	14784 Winnwood	3/15/06
Amy Castillo	14781 Winnwood	3/15/06
Tom Castillo	14781 Winnwood	3/15/06
Joni Montoya	14748 Winnwood	3/15/06

COUNCIL &
ZONING BOARD

REGARDING ZONING AT MONTFORT AND CELESTIAL

CURRENTLY: Walden School

Mike Emmert	14530 Winnwood	3/17/06
Caraxane	14516 Winnwood	3/15/06
DE Johnson	5530 Celestial	3/16/06
Michelle	14753 Celestial	3/16/06
Mandley Alwade	14400 Montfort 306	3/16/06
Russ Alwade	14400 Montfort 304	3/16/06
Jeanette Jones	14750 Celestial Pl.	3/17/06
Carl Jones	" "	"
LEE FARWING	14741 CELESTIAL PLACE	3/17/06
Sherry Farled	" "	"
Sharon Altman	14733 CELESTIAL PLACE	3-17-06
Pat Lal	14516 Winnwood	3-17-06

Landscaping. The landscaping which is currently installed meets the requirements of the landscaping ordinance and is generally well maintained. However, the applicant should be advised that any dead or missing landscape material must be installed prior to the issuance of a Certificate of Occupancy for the sub shop.

Parking. As noted above, the center provides parking for all restaurant uses at one space per 100 square feet. This space will require 12 spaces, which are available.

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

RECOMMENDATION:

Staff feels that Quizno's Sub Shop is an appropriate use for this space, and recommends approval of this request for a Special Use Permit for a restaurant, and the Special Use Permit for the sale of alcoholic beverages for on-premises consumption, subject to the following condition:

-All dead and missing landscape material shall be replaced on the site prior to the issuance of a Certificate of Occupancy for the space.

Respectfully submitted,

A handwritten signature in black ink that reads "CMORAN". The letters are stylized and connected, with a large "C" and "M" at the beginning.

Carmen Moran
Director of Development Services

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on March 23, 2006, voted to recommend approval of the request on application from Quizno's Sub shop, subject to the following condition:

-All dead and missing landscape material shall be replaced on the site prior to the issuance of a Certificate of Occupancy for the space.

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

Voting Nay: None

Absent: None

Carmen Moran

From: Neil Gayden
Sent: Monday, March 06, 2006 9:38 AM
To: Carmen Moran
Subject: Zoning Case 1514 - SUP/Quiznos Sub Shop

Carmen,

The preliminary drawings generally cover and include kitchen requirements. At permit application time, a closer plan review will be done and some minor comments may be forthcoming.

At this time, the applicant does need to be informed that a grease trap (250 lb. minimum located out-of-doors) and a fly fan at the service entrance will be required.

We are available to meet with or discuss these matters with the applicant.

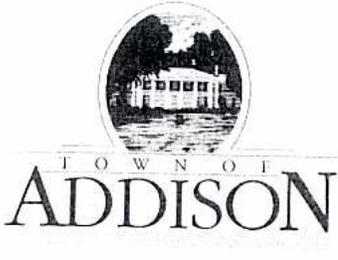
Much Thanks

Neil Gayden
Environmental Services Official
972-450-2821

Memorandum

Date: March 16, 2006
To: Carmen Moran, Director of Development Services
From: Slade Strickland, Director of Parks and Recreation
Subject: Case 1514-SUP/Quiznos Sub Shop

All dead or missing plant material will need to be replaced according to the previously approved landscape plan for this site.



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

March 16, 2006

FAX (972) 450-7043

STAFF REPORT
RE:

Case 1513-Z/Capital One Bank

LOCATION:

1.77 acres located at 3790
Belt Line Road

REQUEST:

Approval of development plans in an
Existing PD (Planned Development)
District, (Ordinance 093-018)

APPLICANT:

Capital One Bank Corporation, represented by
Mr. Michael Rosson of Levinson
Associates, LP

DISCUSSION:

Background. This site is a pad site in the Addison Town Center shopping center at the southeast corner of the intersection of Marsh Lane and Belt Line Road. The site was originally developed as an Applebee's Restaurant through Ordinance 093-032, approved on May 11, 1993. Applebee's operated until 1997, but then closed. The building was taken over by Herrera's Mexican Restaurant, which added a patio to the building on April 14, 1998 through Ordinance 098-019. In September of 2004, Hererra's closed, and Bank One planned to immediately begin converting the restaurant building into a bank with drive-through windows. Bank One actually obtained approval for the renovation through Ordinance 004-030, approved by the City Council on June 22, 2004. However, Bank One never went forward with its remodel plan. At this point, Capital One Bank proposes to purchase the site, tear down the Hererra's building, and build a new bank building (with drive-thru windows) on the site.

Proposed Plan. The plans show a bank of 5,336 square feet with six lanes for drive-through service. The bank will contain a lobby with teller service, private offices, a larger area for drive-through tellers, a conference room, and other support uses such as storage spaces, restrooms, and an employee break room. The plans do not show where the mechanical equipment will be, but the applicant should be aware that all mechanical equipment must be screened from view.

Façade. The exterior of the building is EIFS (engineered insulating finish system) with a cast stone base and limestone columns and trim.

Parking and traffic. The plans indicate 57 parking spaces for the 5,336-square foot bank. The required parking for a bank is one space per 300 square feet. Under that ratio, the bank would require 18 spaces. The site provides more than sufficient parking. With any drive-thru use, the staff always looks carefully at the queuing for the drive thru windows. Staff requires at least 100 feet (5 cars) stacking from the transaction point. This site provides at least 100 feet of queuing for all six drive-thru lanes.

Landscaping. The applicant submitted a landscape plan that complies with the current landscape ordinance. However, the staff has been working with RTKL on a new Belt Line Corridor Streetscape Master Plan. Although the plan has not been formally adopted, the staff asked RTKL to revise the applicant's plan to meet the new standards. A reduced copy of the new plan is attached. The plan involves moving the sidewalk away from the curb at least 10 feet in order to separate pedestrians from the moving lanes of traffic. In addition, the plan calls for trees to be clustered rather than spaced evenly apart. The clustering should accomplish the goal of having trees on the street, but allow view windows into the site. In addition, the staff is recommending eliminating the shrub beds against the street, in locations where there are not parking spaces, to better tie the building to the street.

Slade Strickland has several recommendations for revising the plan:

1. Although the Belt Line Corridor Streetscape Master Plan has not been formally adopted by the Council, staff recommends revising the tree planting alignment and sidewalk location along Belt Line to match as closely as possible to the goals established for the development of the concept plans. This involves moving the sidewalk away from the curb at least 10 feet as shown on the attached RTKL sketch. The purpose is to gain separation for pedestrian safety, and provide tree spacing to allow for more visibility into the site. The recommended tree spacing is 35 feet apart, or the alternative is to cluster the trees to create visual windows from Belt Line if the trees are planted closer than 35 feet apart. In addition, staff recommends revising the plans showing elimination of the shrub bed along the Belt Line frontage where no parking spaces are planned, which is also in keeping with the master plan to provide an open ground plane for visibility from the street into the site. Some of this proposed planting can be massed with the shrub bed shown on the northwest corner of the property.
2. The massed trees shown on the northwest corner will need to be revised to avoid blocking the Kroger Center sign from view when looking toward the west on Belt Line Road.
3. There is not adequate room for planting the proposed red oaks along the east end of the property. The existing row of live oaks addresses the tree planting

requirement for this side of the property. One of the existing live oaks has declined to a point that it will need to be removed and replaced with a 5 inch caliper tree. This will need to be coordinated with the Kroger Center management since this area is a shared landscape buffer that falls on the edge of the retail center's property.

4. The trees shown on the west side of the property are spaced too closely and should be spaced 35 feet apart.
5. The final plan will need to show the total landscape area percentage versus the gross site area calculation.

Dumpster. The plans indicate a dumpster enclosure on the site. The dumpster screening enclosure shall be constructed of the same material as the bank building.

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

RECOMMENDATION:

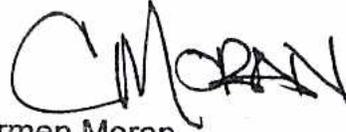
Staff recommends approval of the request for development plan approval for the Capital One Bank building, subject to the following conditions:

- Staff recommends revising the tree planting alignment and sidewalk location along Belt Line to match as closely as possible to the goals established for the development of the concept plans. In addition, staff recommends revising the plans showing elimination of the shrub bed along the Belt Line frontage where no parking spaces are planned, which is also in keeping with the master plan to provide an open ground plane for visibility from the street into the site. Some of this proposed planting can be massed with the shrub bed shown on the northwest corner of the property.
- The massed trees shown on the northwest corner will need to be revised to avoid blocking the Kroger Center sign from view when looking toward the west on Belt Line Road.
- There is not adequate room for planting the proposed red oaks along the east end of the property. The existing row of live oaks addresses the tree planting requirement for this side of the property. One of the existing live oaks has declined to a point that it will need to be removed and replaced with a 5 inch

caliper tree. This will need to be coordinated with the Kroger Center management since this area is a shared landscape buffer that falls on the edge of the retail center's property.

- The trees shown on the west side of the property are spaced too closely and should be spaced 35 feet apart.
- The final plan will need to show the total landscape area percentage versus the gross site area calculation.

Respectfully submitted,

A handwritten signature in black ink that reads "CMORAN". The letters are stylized and connected, with a large "C" and "M" at the beginning.

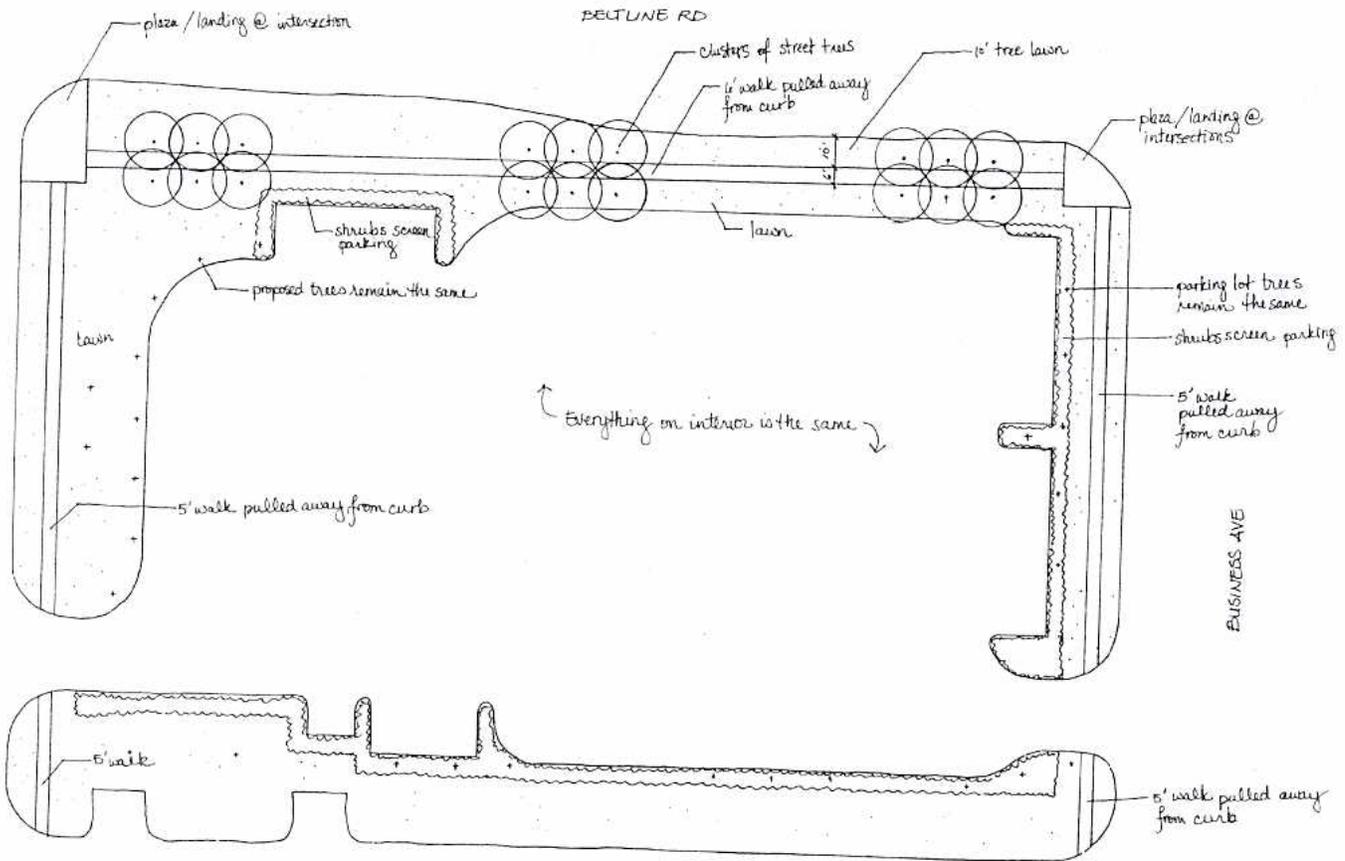
Carmen Moran
Director of Development Services

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on March 23, 2006, voted to recommend approval of the request for development plan approval, on application from Capital One Bank, subject to the following conditions:

- Staff recommends revising the tree planting alignment and sidewalk location along Belt Line to match as closely as possible to the goals established for the development of the concept plans. In addition, staff recommends revising the plans showing elimination of the shrub bed along the Belt Line frontage where no parking spaces are planned, which is also in keeping with the master plan to provide an open ground plane for visibility from the street into the site. Some of this proposed planting can be massed with the shrub bed shown on the northwest corner of the property.
- The massed trees shown on the northwest corner will need to be revised to avoid blocking the Kroger Center sign from view when looking toward the west on Belt Line Road.
- There is not adequate room for planting the proposed red oaks along the east end of the property. The existing row of live oaks addresses the tree planting requirement for this side of the property. One of the existing live oaks has declined to a point that it will need to be removed and replaced with a 5 inch caliper tree. This will need to be coordinated with the Kroger Center management since this area is a shared landscape buffer that falls on the edge of the retail center's property.
- The trees shown on the west side of the property are spaced too closely and should be spaced 35 feet apart.
- The final plan will need to show the total landscape area percentage versus the gross site area calculation.

Voting Aye: Bernstein, Chafin, Daseke, Doepfner, Jandura, Meier, Wood
Voting Nay: None
Absent: None



Capital One
 11-20-01

Memorandum

Date: March 16, 2005
To: Carmen Moran, Director of Development Services
From: Slade Strickland, Director of Parks and Recreation
Subject: Case 1513-Z/Capital One Bank

The landscape plan submitted by the applicant complies with the minimum standards of the landscape regulations; however the plan will need to be revised to address the following conditions:

1. Although the Belt Line Corridor Streetscape Master Plan has not been formally adopted by the Council, staff recommends revising the tree planting alignment and sidewalk location along Belt Line to match as closely as possible to the goals established for the development of the concept plans. This involves moving the sidewalk away from the curb at least 10 feet as shown on the attached RTKL sketch. The purpose is to gain separation for pedestrian safety, and provide tree spacing to allow for more visibility into the site. The recommended tree spacing is 35 feet apart, or the alternative is to cluster the trees to create visual windows from Belt Line if the trees are planted closer than 35 feet apart. In addition, staff recommends revising the plans showing elimination of the shrub bed along the Belt Line frontage where no parking spaces are planned, which is also in keeping with the master plan to provide an open ground plane for visibility from the street into the site. Some of this proposed planting can be massed with the shrub bed shown on the northwest corner of the property.
2. The massed trees shown on the northwest corner will need to be revised to avoid blocking the Kroger Center sign from view when looking toward the west on Belt Line Road.
3. There is not adequate room for planting the proposed red oaks along the east end of the property. The existing row of live oaks addresses the tree planting requirement for this side of the property. One of the existing live oaks has declined to a point that it will need to be removed and replaced with a 5 inch caliper tree. This will need to be coordinated with the Kroger Center management since this area is a shared landscape buffer that falls on the edge of the retail center's property.
4. The trees shown on the west side of the property are spaced too closely and should be spaced 35 feet apart.
5. The final plan will need to show the total landscape area percentage versus the gross site area calculation.



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

FAX (972) 450-7043

March 17, 2006

STAFF REPORT

RE: REPLAT/Lot 2, Block D, Addison
Town Center

LOCATION: One lot on 1.731 acres, located
at 3790 Belt Line Road

REQUEST: Approval of a replat

APPLICANT: Mr. Matthew Thomas of Carter
Burgess, Inc.

DISCUSSION:

Background. This site is an out-parcel of the Addison Town Center shopping center. It was originally developed as an Applebee's Restaurant. That restaurant was later converted to a Herrera's Mexican Restaurant, which closed. At one point, Bank One was going to take over the building and convert it to a bank, but that deal failed. At this time, Capital One Bank is proposing to purchase the site, tear down the existing restaurant, and build a new Capital One Bank building with drive-thru windows. In order to build the new building, some of the easements that served the restaurant building will need to be abandoned, and new easements needed to serve the new building need to be dedicated. The staff decided it would be more efficient to handle these easements through a replat rather than a separate instrument.

Public Works Review.

Nancy Cline has reviewed the proposed plat, and she requests the following conditions:

1. Staff will provide plat boundary closure comments in the next seven days to the applicant's engineer.
2. Engineering plans should be approved before plat is filed.

3. Please provide a detail of what utility lines are in the easements proposed to be abandoned. Staff will okay the abandonment of the utility lines at time of engineering plan approval.

Staff recommends approval of the proposed replat subject to the conditions listed above.

Respectfully submitted,

A handwritten signature in black ink that reads "CMORAN". The letters are stylized and connected, with a large "C" and "M" at the beginning.

Carmen Moran
Director of Development Services

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on March 23, 2—6, voted to recommend approval of the replat for Lot 2, Block D, Addison Town Center, subject to the following conditions:

Staff will provide plat boundary closure comments in the next seven days to the applicant's engineer.

Engineering plans should be approved before plat is filed.

Please provide a detail of what utility lines are in the easements proposed to be abandoned. Staff will okay the abandonment of the utility lines at time of engineering plan approval.

Voting Aye: Bernstein, Chafin, Daseke, Doepfner, Jandura, Meier, Wood
Voting Nay: None
Absent: None

Memorandum

Date: March 16, 2006
To: Carmen Moran, Director of Development Services
From: Nancy S. Cline, P.E. Director of Public Works
Subject: Replat / Lot 2, Block D, Addison Town Center

Public Works has the following comments:

1. We will provide plat boundary closure comments in the next 7 days to engineer
2. Engineering plans should be approved before plat is filed.
3. Please provide a detail of what utility lines are in the easements proposed to be abandoned. We will okay the abandonment of the utility lines at time of engineering plan approval.

Council Agenda Item: #R9

SUMMARY:

Consideration of adoption of an Ordinance amending Chapter 14 (Aviation) of the Code of Ordinances by amending Article III (Municipal Airport) thereof by adding a new Division 2A regarding a fuel license for the receipt, storage and dispensing of fuel at Addison Airport, and deleting Division 4 (Airport Fuel Farm Facilities) from Article III, including Section 14-110 relating to fuel tank lease rates.

BACKGROUND:

In order to provide state-of-the-art facilities for the Airport and to meet current environmental regulations, the Town of Addison has constructed a new fuel farm at Addison Airport. Airport Management recommends the Town of Addison adopt a new Division 2A to Chapter 14, Article III of the Town of Addison Code of Ordinances that requires all parties authorized to receive, store or dispense fuel of any kind at the Airport be issued an Addison Airport Fuel Farm License Agreement substantially in the form of Exhibit "A" to the Ordinance. Any person who holds and complies with the License shall be in compliance with the current requirements of Division 2 of Article II, Chapter 14 of the Code of Ordinances relating to a "fuel-dispensing permit". The proposed Ordinance also repeals and deletes Division 4 of Article III, Chapter 14, including Section 14-110 wherein it provides an annual fee for the use of a fuel tank, which is superseded by the terms and conditions of the new Addison Airport License Agreement.

At the March 28, 2006, Town Council Meeting, the Council tabled this item and instructed staff to reevaluate the terms and conditions of the License Agreement. Attached are staff's proposed modifications to the Airport Fuel Farm License Agreements, which will be presented to the Council at the Work Session on April 11, 2006, along with additional information as it relates to this item.

A summary of the salient terms and conditions of the agreement are included in the attached memorandum from Bill Dyer, Airport Real Estate Manager. The city attorney has reviewed the proposed Ordinance and the License Agreement attached to the Ordinance as Exhibit "A".

RECOMMENDATION:

Staff recommends approval.

Attachments: **Alternative Terms And Conditions To Fuel Farm License Agreement**
 Memorandum – Bill Dyer
 Proposed Ordinance -
 Exhibit A – Fuel Farm License Agreement
 Exhibit B - Survey – Addison Airport Fuel Farm
 Exhibit C - Site Plan and Tank Capacity
 Exhibit D – Term Extensions
 Exhibit E – Statement of Licensor's Initial Construction Responsibility
 Exhibit F – Licensee's Areas of Maintenance & Repair Responsibility



William M. Dyer
Real Estate Manager
16051 Addison Road,
Suite 220
Addison, Texas 75001

Main: 972-392-4650
Direct: 972-392-4856
Fax: 972-788-9334
bill.dyer@staubach.com

Memorandum

To: Mark Acevedo
From: Bill Dyer
CC: Lisa Pyles
Date: 4/6/2006
Re: Alternative Terms And Conditions To Fuel Farm License Agreement

At the Town's request, Airport Management is offering the following alternative language to the Addison Airport Fuel Farm License Agreement for the City Councils consideration. The suggested language provides:

1. Licensee commits to use its "best efforts" to maximize its use of the fuel farm over the Term of the Agreement.
2. The Quarterly Minimum Gallons required of a "stabilized" Public Fixed Based Operator for any three (3) consecutive calendar months has been reduced from 390,000 gallons received into the Fuel Tanks to 320,000 gallons per year. This revised requirement represents the equivalent of a 15% market share of the 8.5 million gallons now received at Addison Airport and is less than the volume reported by each of the Public Fixed Based Operators for 2005.
3. Each Public Fixed Base Operator, including those who are existing, is provided a one-year "ramp-up" period where it is required only to receive 320,000 gallons over the *first 6 months* of the Term and 876,000 gallons (approximately 70% of a stabilized operator) by the end of the first year of the Term. Thereafter, it is expected the Public Fixed Based Operator shall meet or exceed the Quarterly Minimum Gallons standard. In the event a Public Fixed Based Operator fails to achieve the minimum requirement and the Licensor gives Licensee written notice of the deficiency, the operator has three

calendar months after receiving the notice to satisfy the deficiency while continuing with its performance obligations.

4. Non-public Operators are not provided a ramp-up period, however their minimum performance standard is reduced from 320,000 gallons per quarter to *180,000 gallons over any consecutive six-month period*. The lowered requirement and extended performance period should mitigate any seasonal variances, which may be more acute to such operators. In the event the Non-public Operator fails to achieve these objectives, they have six months after their receipt of written notice from the Licensor to satisfy any deficiency while continuing with their performance obligations.
 5. The Town of Addison reserves the right to increase or decrease, or temporarily waive and then reinstitute the performance standards as it may deem appropriate, including but not limited to, in the event Licensor deems that *force majeure* has prevented the Licensees from receiving the minimum quantity of fuel required under the License.
-

1.1 (s) **“Licensee’s Minimum Standard to Operate Fuel Tanks”**: The Licensees’ minimum standard to operate fuel tanks as described with more particularity in Section 7.7.

7.7 Licensee shall continuously during the Term of this License use its “best efforts” to maximize the quantity of fuel it receives, stores and dispenses from the Fuel Tanks. Under no circumstance, however, shall Licensee receive less than the following quantities of fuel at the Fuel Tanks (**“Licensee’s Minimum Standard to Operate Fuel Tanks”**), except as expressly provided under this Section 7.7. Any such failure shall constitute an immediate event of default entitling Licensor to exercise its remedies under this License, at law and in equity:

- (a). If the Permitted Use of the Fuel Tanks is for a Public Fixed Based Operator as defined in Section 1.1(q), Licensor’s minimum acceptable standard to operate fuel tanks by Licensee is 320,000 gallons of fuel received into the Fuel Tanks over any three (3) consecutive calendar month period of the Term (the **“Quarterly Minimum Gallons”**). Notwithstanding the above, during the first six (6) calendar months immediately following the Commencement Date, Licensee shall exercise its “best efforts” to receive no less than 320,000 gallons of fuel, in the aggregate, into the Fuel Tanks and, no less than 896,000 gallons of fuel, in the aggregate, by no later than the first anniversary of the Commencement Date (**“Licensee’s Start-up Period”**). Licensee’s failure to achieve the stipulated minimum requirement during Licensee’s Start-up Period or the Quarterly Minimum Gallons shall not constitute an event of default under this License if, within the three (3) consecutive calendar months immediately after Licensee receives written notice of such failure (the **“Notice Period”**) from Licensor giving an account of the deficiency (the

“Deficiency”), Licensee receives at the Fuel Farm and deposits into the Fuel Tanks an amount of fuel equal to or greater than the Deficiency resulting from such failure in addition to the expected Quarterly Minimum Gallons for the Notice Period.

- (b). If the Permitted Use of the Fuel Tanks is for a Non-public Operator as defined in Section 1.1(q), Licensees’ Minimum Standard to Operate Fuel Tanks is 180,000 gallons received into the Fuel Tanks over any six (6) consecutive calendar month period (the **“Semi-annual Minimum Gallons”**) provided, however, that such failure shall not constitute an event of default under this License if, within the six (6) consecutive calendar months immediately after Licensee receives written notice of such failure (the **“Notice Period”**) from Licensor giving an account of the deficiency (the **“Deficiency”**), Licensee receives at the Fuel Farm and deposits into the Fuel Tanks the amount of fuel equal to or greater than the Deficiency resulting from such failure in addition to the expected Semi-annual Minimum Gallons for the Notice Period.
- (c) Licensee’s cure rights under Section 20.1 shall not apply to the occurrence of any default under this Section 7.7.
- (d) Licensor reserves the right, in its sole discretion, without prior notice, to increase or decrease the Quarterly Minimum Gallons or the Semi-Annual Minimum Gallons, or temporarily suspend or waive, and then reinstitute, the Licensee’s Minimum Standard of Operation, as Licensor may deem to be necessary or appropriate, in its sole discretion, including, but not limited to, in the event Licensor deems that a *force majeure* event has prevented Licensee from receiving the minimum quantity of fuel required under this Section 7.7.



William M. Dyer
Real Estate Manager
16051 Addison Road,
Suite 220
Addison, Texas 75001

Main: 972-392-4850
Direct: 972-392-4856
Fax: 972-788-9334
bill.dyer@staubach.com

To: Mark Acevedo, Director of General Services

From: Bill Dyer

Cc: Lisa Pyles

Date: March 17, 2006

Re: Addison Airport Fuel Farm License

Airport Management is pleased to submit to the Town of Addison for its consideration and adoption proposed Ordinance (the "Ordinance") amending Chapter 14 (Aviation), Article III (Municipal Airport) of the Town of Addison Code of Ordinances by adding Division 2A which, upon its adoption, requires that all parties authorized to receive, store or dispense fuel of any kind at the Airport must be issued a License by the City. Referenced as "Exhibit A" to the Ordinance is the form of the Addison Airport Fuel Farm License Agreement ("License Agreement") that sets forth the terms and conditions for operating at the Addison Airport fuel dispensing facility. The proposed Ordinance also repeals and deletes Division 4 of Article III, Chapter 14, including Section 14-110 wherein the annual fee of \$6,120.65 (\$510.05 per month) for the use of a fuel tank is superseded by the terms and conditions contained in the new License.

Airport Management recommends the Town of Addison adopt the attached Ordinance. The City Attorney has reviewed the Ordinance as presented.

Background Information

In April, 1987, the Town of Addison City Council approved Ordinance 087-017, which, as later modified, amended the Code of Ordinances by providing for the issuance of four types of aircraft fuel dispensing permits: 1) public, 2) nonpublic, 3) self-service and, 4) FAA Supplemental Type Certificate (STC Certified). In addition, holders of these permits

leased real property from Addison Airport to accommodate underground fuel storage tanks required for their fueling operations. In order to meet current environmental regulations, the Town of Addison has constructed a new fuel farm on the Airport. In consideration of this new facility the License Agreement was prepared, setting forth the terms and conditions under which licensees are to operate from the new fuel farm and on the Airport.

General Structure of the License Agreement

The Addison Airport Fuel Farm License Agreement (the "License" or "Agreement") is the agreement by and between the Town of Addison and the public fixed base operators (FBO) or non-public fuelers authorized to receive and pump fuel at Addison Airport (currently self-service and STC Certified are not recognized at the Airport). The current City ordinance requires that an operator hold an aircraft fuels dispensing permit; under the proposed Ordinance, a person who holds and complies with a License will be deemed to have complied with the aircraft fuels dispensing permit requirement.

Considering the fact that the Town of Addison has dedicated Airport land for the specific purpose for erecting the new centralized fuel farm, has incurred all construction costs associated with the new facility, and has committed to be responsible for the ongoing maintenance of the facility, the License prohibits the License holder from bartering or using the facility as collateral. The Agreement grants the fueler a license to use designated fuel tanks and common facilities associated with the fuel farm for the specific purpose of receiving, storing and dispensing fuels used in connection with their approved (public or non-public fueling) aeronautical operations.

Summary of Salient Terms and Conditions of the Agreement

The License consists of 28 sections and six exhibits. Among its provisions, the Agreement provides for an initial 60-month term and four 5-year renewal options. The fueler may exercise the renewal options no earlier than 60 months or later than 180 days prior to the expiration of the term or any renewal period. By exercising a renewal option at the earliest opportunity, the licensee may, in effect, maintain the equivalent of a 10-year term up and until all options have been exercised.

Section 1 of the Agreement outlines three monetary components that constitute the consideration to be paid by the licensee: the "Base Fee", "Additional Fee," and "Fuel Flowage Fee." Collectively, these fees are established with due regard to the property and improvements used and the expense of operation to the Airport.

- "Base Fee" is an annual fee paid in monthly installments and is calculated by multiplying the total gallon capacity of the fuel tanks for each licensee (being a portion of the total gallon capacity for the entire fuel farm) times the Base Fee rate specified in the Agreement. The Base Fee rate remains constant over the term (\$.2651 per gallon) but incrementally increases at the beginning of each renewal period as set forth in Exhibit D, provided the renewal options are exercised.
- "Additional Fee" is an annual fee paid in monthly installments together with the Base Fee. The Additional Fee may vary over the term similar to "additional rent" in a

commercial office lease and is intended to offset the variable operating and maintenance costs over the term or renewal period of the License Agreement. Because we do not have the benefit of actual operating history for the new Fuel Farm, an initial rate of \$.3290 per gallon has been established through September 2007. Prior to October 1, 2007, and at the beginning of each fiscal year thereafter, the Town will estimate its annual costs of operating the Fuel Farm for the ensuing year. The fueler will pay their proportionate share of these projected costs, but in no event less than the floor rate of \$.3290 per gallon. At the end of the fiscal year, the Town will provide each Fueler a statement reconciling the estimated costs paid to actual costs, issuing a credit or debit to the fueler's account accordingly.

- A "Fuel Flowage Fee" is assessed under the License which is identical to and a continuation of the fee currently required of fuelers under the current permit. The fee is paid each month in arrears, and is based upon the actual quantity of fuel received for the preceding month multiplied by the prevailing Fuel Flowage Rate established by the Town (currently \$.12 per gallon received) which may be modified from time to time.
- "Quarterly Minimum Gallons Received" is the minimum amount of fuel that the fueler must receive at the Airport during any three consecutive calendar month period over the term of the License in order to continue the privilege of using the Fuel Farm. Based upon the historical performance of the fuelers at Addison Airport, Airport Management recommends this minimum performance standard to be 390,000 gallons (average of 130,000 gallons/month) for public and non-public operators over any three-month period. The new Fuel Farm is regarded as a valuable asset to the Airport intended to provide first-class support for ongoing aeronautical activities and to generate revenue for the Airport. Should the City give written notice to the licensee of the licensee's failure to fulfill the minimum volume requirements over a three month period, and if the licensee then fails to make up this deficiency (in addition to the minimum requirements) over the subsequent three month period, the City may terminate the licensee's rights and substitute another fueler in their place.

Example Given of Typical Fee (the "Consideration") Calculation

Given the Base Fee and Additional Fees described above and in the Agreement, the cost to the typical public fueler (an "FBO") is as follows:

Tank #	Tank Permitted Use	Total Tank Capacity	% Of Total Fuel Farm Combined Capacity
#01	Jet A	25,000	7.937 %
#02	Jet A	25,000	7.937 %
#03	100LL	15,000	4.762 %
Total		65,000	20.635 % *

Table from Section 1.1(j) of the License

** Difference Due To Rounding*

- 1) Assume for purposes of this example that the License includes two 25,000 gallon Jet-A tanks and one 15,000 gallon Avgas tank, the fueler has a Total Tank Capacity of 65,000 gallons or a proportionate share of 20.635% of the entire Fuel Farm facility (total

combined fuel farm tank capacity is 315,000 gallons). This percentage is used to determine the fueler's pro-rata share of the estimated and actual costs included as Additional Fees.

Also assume that the Licensee received 140,000 gallons of fuel for the previous month. Finally, assume that the Airport's total estimated costs to maintain, manage and, insure the fuel farm plus reasonable allowance for replacement reserves for the fiscal year is \$103,635.

Cost Category	Estimate Fiscal Year 2006 – 2007 Costs
Management	\$13,638.37
Maintenance	\$21,815.17
Insurance	\$14,011.45
Replacement Recovery Allowance	\$54,170.01
Total Additional Fees	\$103,635

2) Based on the above, the monthly consideration for the License is as follows:

(a) the fueler's Base Fee is \$17,231.50 (\$0.2651 x 65,000 gals.) payable in twelve monthly installments of \$1,435.96. This amount will remain constant over the term but will increased incrementally at the beginning of each renewal period; and

(b) the fueler's Additional Fees are \$21,385.08 (\$1,782.09/mo.) calculated by multiplying the total qualifying operating costs for the fuel farm including an allowance for reserves times the fueler's proportionate share calculated above (\$103,635 x 20.635%); and

	Estimate Fiscal Year 2006 – 2007 Costs	Fuelers Estimated Additional Fees @ 20.635%
Management	\$13,638.37	\$ 2,814.28
Maintenance	\$21,815.17	\$ 4,501.56
Insurance	\$14,011.45	\$ 2,891.26
Replacement Recovery Allowance	\$54,170.01	\$11,177.98
Total Additional Fee	\$103,635.00	\$21,385.08 (\$0.329/gal cap.)

(c) the Fuel Flowage Fee is paid each month in arrears, based upon actual quantities recorded by the fueler during the previous calendar month. The Fuel Flowage Fee rate, currently \$.12/gallon, is adopted by the Town of Addison. In this example, the fueler's fuel flowage fee is \$16,800 (140,000 gallons x \$.12).

In the example given, the fueler's *total monthly consideration* to be paid to the Town of Addison in this example is \$20,018.14.

PAYMENT IN ADVANCE	Monthly
Base Fee (\$.2651 x 65,000 gals.) (Section 1.1(m) and 4.3)	\$1,435.96
Additional Fees ((\$103,635 x 20.635%)/12mos.) (Section 1.1.(n) and 4.4.)	\$1,782.09
Subtotal of Payment In Advance (due beginning of the month)	\$3,218.05
PAYMENT IN ARREARS:	
Fuel Flowage Fee (\$.12 x 140,000 gals.)	\$16,800
Total Monthly Consideration	\$20,018.05

Table from Section 1.2

Example of Estimating Replacement Reserve Component of Additional Fees Per Sections 4.5, 4.6 & 4.8

Fuel Tanks		
Replacement Reserve Allowance Calc.		
Typical Tank Total Useful Life In Months	300	
Estimated Ave. Tank Remaining Useful Life	288	
Cost To Replace Today (Tanks Only)	\$ 1,041,585	100%
Less Accumulated Reserves	\$ (41,600)	4%
Tank Reserve Requirement	\$ 999,984.24	96%
Divided by remaining useful life in months	281	
Monthly Installment	\$ 3,472	
Annual Installment	\$ 41,666	
Per gallon (\$41,666/315,000 gals.)	\$ 0.13	
Canopy System		
Canopy System typical Useful Life In Months	120	
Estimated Ave. Tank Remaining Useful Life	108	
Cost To Replace Today	\$ 125,000	100%
Less Accumulated Reserves	\$ (12,500)	10%
Tank Reserve Requirement	\$ 112,500	90%

Divided by remaining useful life in months	108	
Monthly Installment	\$ 1,042	
Annual Installment	\$ 12,504	
Per gallon (\$12,504/315,000 gals.)	\$ 0.04	
Total Annual Reserve Requirement	\$ 54,170.01	
Per Gallon (\$54,170.01/315,000 gals.)	\$ 0.17	

Licensor’s & Licensee’s Obligation to Maintain the Fuel Farm and Fuel Tanks

Under the License, the Town of Addison will maintain, repair, and replace the Fuel Farm systems and Fuel Tanks, except for what is characterized to be the fueler’s responsibilities outlined in Sections 9, 15 and 16 of the Agreement. Generally, the fueler will be responsible, at its sole expense, to maintain, repair, and replace, as required, all fuel loading and unloading hoses, couplings, swivels and any other device used in connection with and between the Fuel Tank’s hose flange and their fuel trucks. The fueler is responsible for the continued maintenance and replacement of all filters, separators or other filtering medium, or such devices specified by the Town in connection with fueler’s use of the Fuel Tanks. Additionally, a fueler is responsible, at the fueler’s sole expense, for all contents deposited, stored, and discharged from the Fuel Tanks including, but not limited to approved fuels, waste, discharge or spoils as a result of the fueler’s use of the Fuel Tanks.

Insurance:

The Town of Addison is to procure and maintain standard fire and extended coverage and liability insurance typically available to municipalities for such purposes in the State of Texas. The cost of this insurance is a qualified pass-through expense to be included among Additional Fees.

Separate from the above, each license holder is required to procure and maintain without interruption a policy or policies of insurance, at its sole costs and expense, to meet or exceed the requirements specified in the prevailing Airport Minimum Standards.

Regulations:

Given the technical nature of the fueling operations to be carried out at the new Fuel Farm and elsewhere on the Airport, the Town of Addison and the fuelers are subject to various federal, state, county and municipal laws, orders, rules, directives and regulations that governs the conduct of the parties accordingly. Among these various regulations:

- The Town of Addison, Code of Ordinances
- “Addison Airport Rules and Regulations” as amended or modified

- “Addison Airport Minimum Standards and Requirements For Commercial Aeronautical Service Providers” (the “Minimum Standards”) which may be amended or modified from time to time
- The license holder acknowledges that the Town is bound by the terms and conditions of any and all FAA, TxDOT, or other grant agreements, grant assurances or regulations regarding the Airport, and the terms of any grant, loan, regulation, or agreement under Section 22.055 of the Texas Transportation Code, as amended or superseded, whether now existing or made in the future.
- The U.S. Code of Federal Regulations Title 40 Part 112 – *Oil Pollution Prevention* governs the conduct of the parties under the License.
- The National Fire Protection Association, Inc. (NFPA) 407, *Standard for Aircraft Fuel Servicing* governs the conduct of the parties under the License.

Conclusion & Recommendation:

In order to provide state-of-the-art facilities for the Airport and to meet current environmental regulations, the Town of Addison has constructed a new fuel farm at Addison Airport. Airport Management recommends the Town of Addison adopt a new Division 2A to Chapter 14, Article III of the Town of Addison Code of Ordinances that requires all parties authorized to receive, store or dispense fuel of any kind at the Airport be issued an Addison Airport Fuel Farm License Agreement substantially in the form of Exhibit “A” to the Ordinance. Any person who holds and complies with the License shall be in compliance with the current requirements of Division 2 of Article II, Chapter 14 of the Code of Ordinances relating to a “fuel-dispensing permit”. The proposed Ordinance also repeals and deletes Division 4 of Article III, Chapter 14, including Section 14-110 wherein it provides an annual fee for the use of a fuel tank, which is superseded by the terms and conditions of the new Addison Airport License Agreement.

The Town’s attorney has reviewed the proposed Ordinance and the License Agreement attached to the Ordinance as Exhibit “A”.

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING CHAPTER 14 (AVIATION), ARTICLE III (MUNICIPAL AIRPORT) OF THE CODE OF ORDINANCES BY ADDING A NEW DIVISION 2A. REGARDING A FUEL LICENSE FOR THE RECEIPT, STORAGE AND DISPENSING OF FUEL AT ADDISON AIRPORT; REPEALING AND DELETING DIVISION 4 (AIRPORT FUEL FARM FACILITIES) OF THE SAID ARTICLE III, CHAPTER 14, INCLUDING SECTION 14-110, OF THE CODE OF ORDINANCES REGARDING AN ANNUAL FEE FOR A FUEL TANK; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

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

Section 1. Amendment. Chapter 14 (Aviation), Article III (Municipal Airport) 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, divisions, sections, sentences, phrases and word of the said Code are not amended hereby:

A. The Code is amended by adding to Chapter 14, Article III thereof a new Division 2A. to read as follows:

DIVISION 2A. FUEL LICENSE

Section 14-95. Definitions.

Airport means Addison Municipal Airport located within the City.

Airport Manager means the manager of the Airport designated by the City (whether designated pursuant to an agreement between the City and a third party or otherwise).

City means the Town of Addison, Texas.

City Manager means the City Manager of the City.

Fuel Farm means the fuel storage and dispensing facility located on the Airport and as described in Section 14-96.

License means the Addison Airport Fuel Farm License Agreement, the form of which is attached as Exhibit A to Ordinance No. _____ of the City and incorporated herein for all purposes by this reference.

Person or Persons means an individual, assumed name entity, partnership, joint venture, association, limited liability company, corporation, or any other entity whatsoever, but excluding the City, its contractors, agents, and representatives.

Section 14-96. Background.

There is located at the Airport a fuel storage and dispensing facility constructed by or for the City, which consists of and includes above-ground fuel storage tanks, related equipment and appurtenances, and certain adjacent premises for the common use of persons having the right to use the facility. Such facility is referred to in this Division as the "Fuel Farm." The Fuel Farm is anticipated to be opened and operating in 2006, and replaces a fuel farm or fuel storage and dispensing facility located on another portion of the Airport. Except as may be otherwise authorized by the City, the Fuel Farm is the only location at the Airport where fuel may be received, stored, or dispensed.

Section 14-97. License.

No person may receive, store, or dispense fuel of any kind whatsoever at the Fuel Farm or any other portion of the Airport without a License issued by the City. The form of License may be adjusted from time to time by the City by and through its City Manager. The City Council finds that the charges, rentals and fees set forth in this Article III, this Division, and the License are reasonable and uniform for the same class of privilege or service and are established with due regard to the property and improvements used and the expenses of operation to the City.. A License shall be issued in accordance with minimum standards adopted from time to time by the City or the Airport Manager. Any person who holds and complies with a License issued by the City shall be deemed to be in compliance with the requirements of Division 2 of this Article III, Chapter 14 of the Code of Ordinances relating to a fuel dispensing permit, provided, however, that the requirement for the payment of a fuel flowage fee under Division 2 of this Article III (as set forth in the form of aircraft fuels dispensing permit incorporated by reference therein) shall continue in full force and effect. Any License issued under this Division 2A shall be conditioned on and shall specifically include or incorporate the requirement for a fuel flowage fee to be paid in accordance with Division 2 of this Article III.

B. The Code is further amended by deleting and repealing in its entirety Division 4 of Article III, Chapter 14, which Division is entitled "Airport Fuel Farm Facilities", including deleting and repealing in its entirety Section 14-110 relating to fuel tank lease rates:

~~DIVISION 4. AIRPORT FUEL FARM FACILITIES~~

~~Section 14-110. — Rates and Fees. For that area of Addison Airport which is designated as the fuel facility or fuel farm, the annual rate or fee to lease a fuel tank from the town shall be \$6,120.65 (\$510.05 per month).~~

Section 2. Savings. This Ordinance shall be cumulative of all other ordinances, including, without limitation, the Code of Ordinances of the Town of Addison, and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct and irreconcilable 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 _____, 2006.

Joe Chow, Mayor

ATTEST:

By: _____
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: _____
Ken Dippel, City Attorney



Addison Airport

Fuel Farm License Agreement

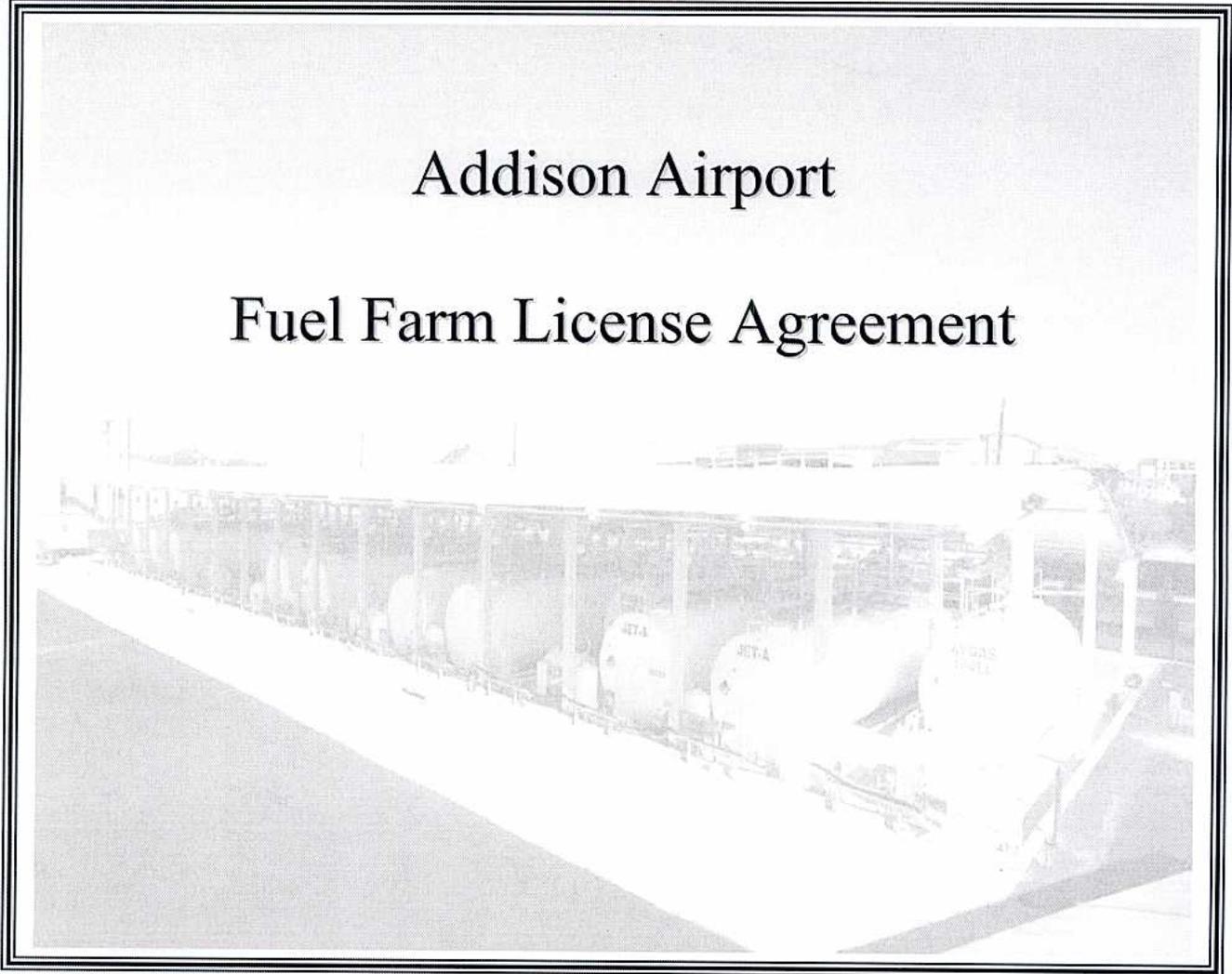


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ADDISON AIRPORT FUEL FARM LICENSE AGREEMENT

SECTION 1

DEFINITIONS AND CERTAIN BASIC PROVISIONS

1.1 The following list sets out certain defined terms and certain financial and other information pertaining to this License Agreement (“**License**” and “**Agreement**” are interchangeably used herein to mean one and the same):

- (a) “**Licensor**”: **TOWN OF ADDISON**, a Texas home-rule municipality.
- (b) Licensor's Address: 5300 Belt Line Road, Dallas, Texas 75254.
- (c) “**Manager**”: Washington Staubach Addison Airport Joint Venture
- (d) Manager's Address: 16051 Addison Road, Suite #220, Addison, Texas 75001
- (e) “**Licensee**”: _____
- (f) Licensee's Address: _____
 Primary Contact: _____ Phone Number: _____
- (g) Licensee's Trade Name: _____
- (h) Licensee's Guarantor (if applicable, attach Guaranty as an exhibit): _____

- (i) “**Fuel Farm**”: Licensor's property located in the Town of Addison, Dallas County, Texas, which property is described on Exhibit “A” and shown on Exhibit “B” attached to this License. With regard to Exhibits “A” and “B”, the parties agree that they are attached solely for the purpose of depicting the location of the Fuel Farm and the Fuel Tanks within the Fuel Farm and that no representation, warranty, or covenant is to be implied by any information shown on such exhibits.
- (j) “**Fuel Tanks**”: The _____ () above-ground storage tanks, together with all equipment attached thereto necessary for Licensee's use of the Fuel Tank in accordance with this License, situated in the Fuel Farm and identified on Exhibit “C” attached hereto, with a stipulated combined capacity of _____ gallons (“**Total Licensee Gallon Capacity**”) of fuel, also being known as

Tank #	Designated Fuel Type	Licensee Gallon Capacity	% Of Total Fuel Farm Combined Capacity
#			%
#			%
#			%
#			%
Total			% **

** The “**Licensee's Proportionate Share**”, calculated accordance with Section 4.10, on the Commencement Date is established to be _____ Percent (_____ %).

- (k) “**Commencement Date**”: The earlier of (i) the date upon which Licensee commences use of the Fuel Tanks; or (ii) _____.

PAYMENTS IN ADVANCE:	Annual	Monthly
Base Fee (Section 1.1(m) and 4.3)	\$ _____	\$ _____
Additional Fee (Section 1.1(n) and 4.4)	\$ _____	\$ _____
Subtotal of Payments in Advance	\$ _____	\$ _____
PAYMENT IN ARREARS:		
Fuel Flowage Fee \$0.12 x _____ total gallons received during the preceding month (Section 7).	\$ <u>TBD</u>	\$ <u>TBD</u>
TOTAL MONTHLY CONSIDERATION (Payment In Advance plus Payment In Arrears)	\$ <u>TBD</u>	\$ <u>TBD</u>

SECTION 2

GRANTING CLAUSE

2.1 Licensor licenses the Fuel Tanks to Licensee, subject to and only upon the terms and conditions set forth in this License and further subject to all laws, codes, ordinances, rules, standards, policies, permits, and regulations now in effect or hereafter adopted, modified, or amended by Licensor or any governmental or quasi-governmental authority having jurisdiction over the Airport or any part thereof, and all requirements, conditions, and standards of any Airport grant or funding or any grant agreements or grant assurances of the Airport now in effect or as hereafter agreed to, adopted, issued, modified, amended, or established. This License is not a lease and grants no interest or estate in the Fuel Farm, including, without limitation, any leasehold interest.

SECTION 3

DELIVERY OF PREMISES

3.1 BY ACCEPTANCE OF THIS LICENSE, LICENSEE HEREBY AGREES THE FUEL FARM IS BEING DELIVERED TO LICENSEE IN GOOD WORKING CONDITION AND UNDERSTANDS THAT THE FUEL TANKS ARE BEING LICENSED TO LICENSEE, ON AN “AS IS”, “WHERE IS” AND “WITH ALL FAULTS” BASIS, WITH LICENSEE ACCEPTING ALL DEFECTS, IF ANY AND LICENSOR MAKES NO REPRESENTATIONS (OTHER THAN AS TO LICENSOR'S OWNERSHIP OF THE FUEL FARM), WARRANTIES OR COVENANTS OF ANY KIND OR NATURE, WHETHER EXPRESS OR IMPLIED, AS TO THE HABITABILITY, FITNESS OR SUITABILITY OF THE FUEL FARM FOR A PARTICULAR PURPOSE, INCLUDING, BUT NOT LIMITED TO (AND LICENSOR HEREBY EXPRESSLY DISCLAIMS THE SAME), ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LICENSEE ACKNOWLEDGES AND AGREES THAT LICENSEE HAS HAD THE OPPORTUNITY TO INSPECT THE FUEL FARM, AND THAT ANY SUCH INSPECTION HAS BEEN ADEQUATE TO ENABLE LICENSEE TO MAKE LICENSEE’S OWN DETERMINATION REGARDING THE SUITABILITY OR FITNESS OF THE FUEL TANKS AND FUEL FARM. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LICENSEE HEREBY ASSUMES ALL RISK AND LIABILITY (AND AGREES THAT LICENSOR SHALL NOT BE LIABLE FOR ANY SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL OR OTHER DAMAGE) RESULTING OR ARISING FROM OR RELATING TO THE USE, CONDITION, LOCATION, MAINTENANCE, REPAIR OR OPERATION OF THE FUEL FARM, EXCEPT TO THE EXTENT OTHERWISE EXPRESSLY HEREIN AGREED AND CONSENTED TO BY LICENSOR.

3.2 Licensor shall have the right upon ninety (90) day’s prior written notice, to relocate Licensee to another Fuel Tank or Fuel Tanks (the “**Replacement Fuel Tank(s)**”) in the Fuel Farm as Licensor deems, at its sole discretion, to be reasonably necessary. In the event of such relocation, the cost of relocating Licensee and the cost

of altering the Replacement Fuel Tanks to make them comparable to the current Fuel Tanks shall be borne by Licensor (except for those alterations or improvements made to the Fuel Tanks by Licensee with or without Licensor's prior consent). If Licensor exercises such right of relocation, this License shall continue in full force and effect without any change to the terms or other conditions, except that the Replacement Fuel Tanks shall be deemed substituted in Section 1.1(j) and an appropriate adjustment shall be made to the amount of the Consideration and any Security Deposit.

SECTION 4

PAYMENT OF BASE FEE AND ADDITIONAL FEE

4.1 The Base Fee and all other sums or charges payable by Licensee, including but not limited to Additional Fee and Fuel Flowage Fees and other fees required by this License, are sometimes herein referred to collectively as "**Consideration**". All payments of Consideration are to be paid by corporate, personal or cashier's check or money order. Payments of Consideration are not to be made in cash. The Licensor shall have the same remedies in the case of a default in the payment of Additional Fee and Fuel Flowage Fees and any other Consideration as are available to Licensor in the case of a default in the payment of the Base Fee.

4.2 The Consideration shall be payable to Licensor at Licensor's address set forth in Section 1.1(b) or, such other address designated by Licensor with prior written notice given to Licensee. Consideration shall not be considered paid until actually received by Licensor or Licensor's designee.

4.3 Beginning with the Commencement Date and continuing throughout the Term of this License, Licensee shall pay an annual Base Fee in the amount specified in Section 1.1(m), which Base Fee shall be paid by Licensee (separately or together with other Consideration due and payable) in equal monthly installments as required herein, without any interruption, offset or deduction of any nature. The first such monthly installment shall be due and payable on or before the Commencement Date, and subsequent installments shall be due and payable on or before the first day of each succeeding calendar month during the Term. If the Term of this License commences on a day other than the first day of a calendar month, or terminates on a day other than the last day of a calendar month, the Base Fee installment of such partial month as provided for under this Section 4.3 shall be prorated and such installment or installments so prorated shall be paid in advance (i.e., the quotient that results from dividing the number of calendar days of such partial month included in the Term by the total number of days in that month, then multiplying such quotient by one-twelfth of the Base Fee).

4.4 In addition to the Base Fee and any other Consideration required under this License, Licensee shall pay an Additional Fee which is to be assessed by Licensor annually for each fiscal year of Licensor, but said amount shall never be less than that specified in Section 1.1(n).

4.5 The Additional Fee payable by the Licensee under this License shall be equivalent to Licensee's Proportionate Share of Licensor's cost of operating and maintaining the Common Area and the Replacement Recovery Allowance provided for under Section 4.6. Such costs, hereinafter referred to as the "**Common Area Charge**", may include but not be limited to: all utilities which serve the Fuel Farm including water, sewer, electricity, gas and data/tele-communications; all systems and system components necessary and appurtenant to the operation of the Fuel Farm (i.e., motors, pumps, pipes, hoses, valves, regulators, vents, safety systems, separators, auxiliary power supply); structural systems including roof and canopy repair and maintenance; the costs of any third-party service agreement which may include the repair, maintenance and inspection of the Fuel Farm and any of its systems and system components; painting, cleaning, sweeping, landscaping, inspecting, repairing and replacing the Fuel Farm or any portion thereof; Licensor's reasonable overhead costs for administration and management; and the cost of any Real Estate Charges or Insurance Expenses for which Licensor is not reimbursed pursuant to Section 5, but specifically excluding all expenses paid or reimbursed by Licensee to Licensor pursuant to Section 6.

4.6 Licensor and Licensee agree that Licensor may include in the Additional Fee a reasonable reserve sufficient to pay the costs of the future replacement of the Fuel Tanks and Roofing System (the "**Replacement Recovery Allowance**"), which costs are to be amortized over a twenty-five (25) year and ten (10) year useful lifespan, respectively. Licensor, in its sole discretion, may adjust the monthly amount collected from Licensee for the Replacement Recovery Allowance from time to time to coincide with the industry's generally accepted replacement values for fuel tanks and roofing systems comparable to the Fuel Tanks and Roofing System.

4.7 If the Term of this License commences on a day other than the first day of a calendar month, or terminates on a day other than the last day of a calendar month, the Additional Fee for such partial month shall be pro-rated and paid in advance similarly as provided for the Base Fee under Section 4.3.

4.8 Prior to the commencement of Licensor's fiscal year beginning October 1, 2007 and prior to the commencement of each fiscal year of Licensor thereafter, Licensor shall provide Licensee an estimate of the Additional Fee for such fiscal year. The Additional Fee shall be due and payable by Licensee (separately or together with other Consideration due and payable) in equal monthly installments during such fiscal year, without any interruption, offset or deduction of any nature. The first such monthly installment shall be due and payable on the Commencement Date, and subsequent installments, as adjusted for each fiscal year during the Term, shall be due and payable on or before the first day of each succeeding calendar month during the Term. If the Term of this License commences on a day other than the first day of a calendar month, or terminates on a day other than the last day of a calendar month, the Additional Fee installment of such partial month as provided for under this Section 4.8 shall be prorated and such installment so prorated shall be paid in advance (i.e., the quotient that results from dividing the number of calendar days of such partial month included in the Term by the total number of days in that month, then multiplying such quotient by one-twelfth of the Additional Fee).

4.9 Within one hundred twenty (120) days following the conclusion of the Licensor's fiscal year ending September 30, 2008, and within one hundred twenty (120) days following the conclusion of each fiscal year of Licensor thereafter, or as soon thereafter as reasonably possible, Licensor shall furnish to Licensee an itemized statement reconciling the actual Common Area Charge and other costs for that fiscal year (or part thereof during the Term of this License) against the Additional Fee for such fiscal year or partial fiscal year. Within thirty (30) days of the delivery of such statement to Licensee, Licensee shall pay to Licensor the Licensee's Proportionate Share of the positive difference, if any, resulting from subtracting the Additional Fee paid by Licensee for such fiscal year from the Licensee's Proportionate Share of the actual Common Area Charge and other costs for such fiscal year. If such Additional Fee paid by Licensee exceeds Licensee's Proportionate Share of such Common Area Charge and other costs for such fiscal year or partial fiscal year, Licensor shall have the right, at its option, to credit such excess against the next accruing payment(s) of the Additional Fee due under this License or return such excess to Licensee.

4.10 The Licensee's Proportionate Share is that percentage, at the time when the applicable cost was incurred, determined by dividing the Total Licensee Gallon Capacity by the combined capacity of the fuel tanks in the Fuel Farm, as reasonably determined by Licensor. Licensee's Proportionate Share on the Commencement Date is stipulated by the parties in Section 1.1(j).

4.11 The amount of the actual Common Area Charge and other costs determined by Licensor under Section 4.9 shall be final, conclusive and binding upon the parties hereto on the date which is one hundred-eighty (180) calendar days following the date Licensor provides such itemized statement of reconciliation to Licensee.

4.12 In the event any Consideration due is not actually received by Licensor by the fifth (5th) day after such amount is due, or if any Consideration payment is made by check, which check is returned for insufficient funds, then in addition to the past due amount, immediately on Licensor's demand, Licensee shall pay to Licensor one of the following (the choice to be at the sole option of Licensor unless one of the choices is improper under applicable law, in which event the other alternative, if proper under applicable law, will automatically be deemed to have been selected): (a) a late charge in an amount equal to ten percent (10%) of such late Consideration, in order to compensate Licensor for its administrative and other overhead expenses; or (b) interest on such late Consideration then due at the maximum rate of interest which could legally be charged in the event of a loan of such late Consideration to Licensee (but in no event to exceed 1 ½% per month), such interest to accrue continuously on any unpaid balance of such Consideration due to Licensor by Licensee during the period commencing with the due date of such late Consideration and terminating with the date on which Licensee makes full payment of all such late Consideration. Any such late charge or interest payment shall be payable immediately on demand as additional Consideration. It is hereby agreed that in no event shall any charges permitted under this License, to the extent the same are considered to be interest under applicable law, ever exceed the maximum lawful rate of interest allowed under applicable law.

4.13 If Licensor fails to receive from Licensee any installment of Base Fee or Additional Fee within ten (10) days after the same is due for any two (2) consecutive calendar months, or if the payment of any Consideration is made by check, which check is returned for insufficient funds twice within any consecutive twelve (12) month period, Licensor may, by giving written notice to Licensee, and in addition to any late charge or interest accruing pursuant to Section 4.12 above, as well as any other rights and remedies accruing pursuant to Section 20 or Section

22 below, or any other provision of this License, at law or in equity, require subsequent Base Fee and Additional Fee installments to be paid quarterly in advance by cashier's check or money order and the delivery of Licensee's corporate or personal check will no longer constitute a payment of such Consideration. Any acceptance of a corporate or personal check for such Consideration shall not be construed as a subsequent waiver of said right to require payment by cashier's check or money order.

4.14 The obligation of Licensee to pay Consideration shall survive the expiration or earlier termination of this License.

SECTION 5

LICENSEE'S RESPONSIBILITY FOR PERSONAL PROPERTY TAXES AND REAL PROPERTY TAXES

5.1 Licensee shall be liable for all taxes, if any, levied against personal property owned by Licensee and placed within or used by Licensee within the Fuel Farm. If any personal property taxes are validly levied against Licensor or Licensor's property and Licensor pays the same, such taxes shall be included in the Common Area Charge.

5.2 If any Real Estate Charges (as defined below) are validly levied against Licensor or Licensor's property and Licensor pays the same, such Real Estate Charges shall be included in the Common Area Charge. All Insurance Expenses (as defined below) related to the Fuel Farm or Licensor's ownership of the Fuel Farm shall be included in the Common Area Charge. "**Real Estate Charges**" shall include, if any, ad valorem taxes, general and special assessments, any tax or excise on fees including Consideration, any tax or charge for governmental services (such as street maintenance or fire protection) and any tax or charge which replaces any of such above-described Real Estate Charges; provided, however, that Real Estate Charges shall not be deemed to include any franchise, estate, inheritance or general income tax. "**Insurance Expenses**" shall include all premiums and other expenses incurred by Licensor for liability insurance, and fire and extended coverage property insurance (plus whatever endorsements or special coverages which Licensor, in Licensor's sole discretion, may consider appropriate) and the amount of any deductible paid by Licensor in connection with any claim thereunder.

SECTION 6

COMMON AREA OF THE FUEL FARM

6.1 The term "**Common Area**" is defined for all purposes of this License as that part of the Fuel Farm which is maintained by Licensor, the expense of which may be incurred by Licensor and included as Common Area Expenses as provided for in Section 4.5, intended for the common use of all licensees of the Fuel Farm and other authorized persons. The Common Area includes all systems that comprise the Fuel Farm and are appurtenant thereto including but not limited to all utilities (water, sewer, electricity, gas and data/tele-communications); all systems and system components necessary to the operation and function of the Fuel Farm (i.e., motors, pumps, pipes, hoses, valves, regulators, vents, life and safety systems, separators, auxiliary power, lights, switches, meters, tanks), building infrastructures, parking areas, driveways, landscaping, curbs, loading area, lighting facilities, roofs and the like. Licensor reserves the right to change from time to time the rights and interests to, and the dimensions and location of, the Common Area, as well as the rights and interests to and the dimensions, identities, locations and types of any improvements in the Fuel Farm.

6.2 Licensee shall have the nonexclusive right to use the Common Area as constituted from time to time for the purpose or purposes described in Section 1.1(q), such use to be in common with Licensor, other licensees in the Fuel Farm and other authorized persons subject to such reasonable rules and regulations governing use as Licensor may from time to time prescribe.

SECTION 7

FUEL RECEIPT, REPORTING AND FUEL FLOWAGE FEES

7.1 As additional Consideration under this License, Licensee shall pay to Licensor the Fuel Flowage Fee at the Flowage Fee Rate. The "Flowage Fee Rate" (herein so called) is twelve cents (\$0.12) for each gallon of aviation fuel received by Licensee at the Airport during the Term, excluding any fuel not intended for aeronautical use (i.e.,

diesel and mobile fuel used in connection with ground support operations) during the Term; provided, however, the Town of Addison, Texas reserves the right to increase or decrease the Flowage Fee Rate as, in its sole discretion, may be necessary or reasonably appropriate. This License is conditioned upon the payment of the Fuel Flowage Fee at the Flowage Fee Rate, and such payment is required as set forth in and in accordance with Chapter 14, Article III, Division 2 of the Code of Ordinances of the Town of Addison, Texas (as the same may be amended or superseded). Licensor and Licensee herein agree and acknowledge that any payment made by Licensee of said Fuel Flowage Fee required hereunder is in satisfaction of the Fuel Flowage Fee at the Flowage Fee Rate established by the City Council of the Town of Addison, Texas. Licensor shall give Licensee at least thirty (30) days prior written notice before any change in the Flowage Fee Rate becomes effective.

7.2 The Fuel Flowage Fee shall be paid, with respect to each calendar month during the Term beginning with the month in which the Commencement Date occurs, on or before the fifth (5th) day of the calendar month following such month, without offset or deduction of any nature, at a sum equal to the product of the applicable Flowage Fee Rate multiplied by the total amount of fuel received at the Airport by Licensee during the preceding full or partial calendar month.

7.3 Licensee shall submit to Licensor with each monthly payment of the Fuel Flowage Fee, but in no event later than the fifth (5th) day of each month during the Term, a monthly fuel report (the "**Monthly Report**"), certified as being true and correct by a duly authorized representative of Licensee, showing for the preceding calendar month the amount of fuel received, sold or dispensed.

7.4 On or before the sixtieth (60th) day after the expiration of each calendar year, and the thirtieth (30th) day after the expiration or termination of this License, Licensee shall deliver to Licensor an annual fuel report (the "**Annual Report**"), certified as being true and correct by an authorized representative of Licensee, showing the amount of aviation fuel received, sold or dispensed during the calendar year preceding the date on which the Annual Report is due. In the event any provision of this License or the enforcement thereof by the Licensor, requires accounting of the Fuel Flowage Fee and the payment thereof for a period less than twelve (12) months, such shorter period shall be treated as one (1) year for the purpose of an Annual Report, and such Annual Report shall be delivered to Licensor within thirty (30) days after termination of such shorter period.

7.5 In addition to the information described in Section 7.4, each Monthly Report and each Annual Report shall include any and all additional information required by Licensor, and shall be in the form established by Licensor (which form may be modified, revised, or amended by Licensor in its sole discretion at any time). Each of the Monthly Reports and the Annual Reports are hereinafter referred to as a "**Fuel Report**." In the event Licensor is not satisfied with any Fuel Report provided by Licensee, Licensor shall have the right to cause its auditors or designated representative to inspect Licensee's books and records, wherever located, evidencing and accounting for all aviation fuel received, sold or dispensed in or from the Airport for the reporting period or periods in question. Licensee hereby agrees to make available all books and records, including but not limited to its bills of lading, general ledgers, bank accounts and fuel sales receipts available for inspection during Licensee's normal business hours within five (5) days upon receipt of written demand by Licensor. If it is determined by the auditors that the amount of fuel received, sold or dispensed during such period(s) is understated by more than two percent (2%), the reasonable expense of such audit shall be borne by Licensee. Licensee shall promptly pay to Licensor any deficiency, or Licensor shall promptly refund to Licensee any overpayment, as the case may be, which is established by such audit.

7.6 If Licensee fails to prepare and deliver promptly any Fuel Report or other document required under this License, Licensor may, in addition to exercising any of the remedies provided to Licensor under this License or any law, rule, or regulation, engage a Certified Public Accountant to make an audit of all books and records of Licensee, including (without limitation) Licensee's bank accounts, which in any way pertain to or show the aviation fuel received, sold or dispensed and prepare the Fuel Report or other document that Licensee failed to prepare and deliver to Licensor. The Fuel Report or other document prepared by such Certified Public Accountant shall be conclusively binding on Licensee, and Licensee shall pay upon demand all expenses of the audit and other services in regard to preparing such Fuel Report or other document.

7.7 Licensee shall receive at the Fuel Farm and deposit into the Fuel Tanks at least the Quarterly Minimum Gallons Received (as defined in Section 1(s)) during each three (3) consecutive month period during the Term; provided, however, that such failure shall not constitute an event of default under this License if, within the three (3) consecutive calendar months after Licensee receives written notice of such failure by Licensor, Licensee receives at the Fuel Farm and deposits into the Fuel Tanks the fuel deficiency resulting from such failure (in addition to the

Quarterly Minimum Gallons Received for such three (3) consecutive calendar months). The thirty (30) day cure period in Section 20.1(b) shall not apply to Licensee's obligations under this Section 7.

SECTION 8

USES AND CARE OF THE FUEL FARM

8.1 Licensee shall commence all of its fueling operations at the Fuel Farm on or immediately after the Commencement Date and shall perform such operations in a commercially reasonable manner so as to produce the maximum amount of sales from the Fuel Tanks.

8.2 Licensee shall not use the Fuel Farm or the Fuel Tanks for any purpose other than the purpose authorized by Section 1.1(q). Licensee, without Licensor's prior written consent, shall not store anything in the Fuel Tanks, other than the designated fuel type and grade of fuel authorized in Section 1.1(j), or use the Fuel Farm for any purpose which creates a risk of release of toxic or otherwise Hazardous Substances or increases the insurance premium cost for the Fuel Farm or the Airport or invalidates any insurance policy carried on the Fuel Farm or the Airport, other than the ordinary risk associated with the prudent use of any substantially similar aircraft fuel farm. All fuel kept, stored or maintained in the Fuel Tanks by Licensee, and all other property of Licensee that is maintained or used at the Fuel Farm shall be delivered, kept, stored, maintained, transported, dispensed and otherwise used at Licensee's sole risk. Without limiting the generality of the foregoing, Licensee covenants and agrees that Licensee shall not, nor shall Licensee allow or permit any of Licensee's owners, officers, employees, agents, contractors or other representatives, or any other person for whom Licensee may be responsible or liable (Licensee, together with such other persons and entities being sometimes hereinafter collectively referred to as "Licensee Parties"), to cause, directly or indirectly, any release or discharge of any Hazardous Substances (as defined in Section 8.4) at the Fuel Farm or any other portion of the Airport or premises adjacent thereto. Without limiting the generality of the foregoing, Licensee further covenants and agrees that Licensee shall not, nor shall Licensee allow or permit any of the Licensee Parties to, bring into, maintain upon, generate, use, store, dispense or dispose of any Hazardous Substances in or about the Fuel Farm or any other portion of the Airport or premises adjacent thereto, unless such Hazardous Substances are maintained upon, generated, used, stored, dispensed or disposed of only (a) in such quantities as are reasonably necessary for Licensee's operations, (b) in accordance with the standards and instructions of the producer and distributor of such Hazardous Substances and, if fuel, the manufacturer of the Fuel Tanks and in compliance with all applicable laws, and (c) in such a manner as would prevent a release or discharge thereof in violation of applicable laws. Upon request of Licensor at any time, Licensee shall provide Licensor with a written list, certified to by Licensee in writing, identifying any Hazardous Substances then maintained upon, generated, used, stored, dispensed or disposed of at the Fuel Farm or elsewhere at the Airport or premises adjacent thereto by Licensee and the approximate quantity of same, together with a representation that neither Licensee nor any other Licensee Parties have released or discharged any Hazardous Substances in or about the Fuel Farm or any other portion of the Airport or adjacent premises in violation of these provisions, all certified as being true and correct by a duly authorized representative of Licensee. Upon any violation of the foregoing covenants, Licensee shall be obligated, at Licensee's sole cost, to immediately cease such violation and, if any Hazardous Substance has been released or discharged, remediate, clean-up and remove from the Fuel Farm or other portions of the Airport or premises adjacent thereto all such Hazardous Substances; provided, however, that any such remediation, clean-up and removal shall be undertaken only after written notice of the release or discharge has been given by Licensee to Licensor and Licensor has approved the method of remediation, clean-up and removal. Notwithstanding the proceeding or any other provision of this Agreement, the introduction, receipt, delivery, creation, use, storage, dispensing or disposal of any Hazardous Substances at the Fuel Farm or elsewhere at the Airport or premises adjacent thereto, and any remediation, clean-up or removal of released or discharged Hazardous Substances, by or on behalf of Licensee or any other Licensee Parties shall be conducted to the satisfaction of Licensor.

8.3 **INDEMNITY.** LICENSEE SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE LICENSOR, ITS OFFICIALS, OFFICERS, EMPLOYEES, AGENTS AND OTHER REPRESENTATIVES, AND THEIR RESPECTIVE HEIRS, SUCCESSORS AND ASSIGNS (TOGETHER, "LICENSOR INDEMNIFIED PERSONS"), FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, LOSSES, JUDGMENTS, DAMAGES (INCLUDING DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, AND OTHER DAMAGES), ACTIONS, FINES, PENALTIES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COSTS OF DEFENSE) (TOGETHER, "INDEMNIFIED DAMAGES") INCURRED BY LICENSOR OR OTHER SUCH

LICENSOR INDEMNIFIED PERSONS, OR ANY OF THEM, AS A RESULT OF, ARISING OUT OF, OR IN CONNECTION WITH ANY BREACH OF ANY PROVISION OF SECTION 8.2 OR ANY ACT OR OMISSION OF LICENSEE OR OF ANY OF LICENSEE PARTIES UNDER, RELATED TO, OR IN CONNECTION WITH THE RECEIPT, DELIVERY, STORAGE, MAINTENANCE, TRANSPORTATION, DISPENSING, OR OTHER USE OF ANY HAZARDOUS SUBSTANCES, **INCLUDING INDEMNIFIED DAMAGES CAUSED BY THE NEGLIGENCE OF THE LICENSOR AND ANY OF THE OTHER LICENSOR INDEMNIFIED PERSONS, PROVIDED THAT LICENSEE SHALL HAVE NO DUTY TO INDEMNIFY LICENSOR OR ANY LICENSOR INDEMNIFIED PERSON FOR INDEMNIFIED DAMAGES CAUSED BY THE SOLE NEGLIGENCE OF LICENSOR OR SUCH LICENSOR INDEMNIFIED PERSON, UNLESS THE INSURANCE OF LICENSEE COVERS THE INDEMNIFIED DAMAGES CAUSED BY SUCH NEGLIGENCE.**

8.4 As used in this Section 8, "**Hazardous Substances**" shall include, without limitation, any and all hazardous or toxic substances, materials, contaminants, pollutants, or wastes pertaining to health or the environment as are identified, defined or listed elsewhere in any applicable local, state and federal ordinances, rules, regulations, laws and statutes, as the same may hereafter be passed, issued, enacted and/or amended, such as asbestos, petroleum products, hazardous materials, hazardous wastes and hazardous and/or toxic substances as defined or used in the Comprehensive Environmental Response, Compensation And Liability Act Of 1980, as amended (42 U.S.C. §9601 Et Seq.) and The Resource Conservation And Recovery Act, as amended (42 U.S.C. §6901 Et Seq.).

8.5 Licensee shall not, nor shall Licensee permit or allow any other Licensee Parties to, (a) cause any damage or waste at or about the Fuel Farm; (b) overload the Fuel Tanks; (c) cause any objectionable or unpleasant odors to emanate from the Fuel Tanks, except odors ordinarily emanating from a substantially similar aircraft fuel farm; (d) take any other action which would constitute a nuisance or would disturb or endanger Licensor, its employees, agents and other representatives, other licensees of the Fuel Farm, other occupants or users of the Airport or any neighbors of the Airport; or (e) permit any unlawful practice to be carried on or committed on the Fuel Farm.

8.6 Licensee shall procure, at its sole expense, any permits and licenses required for the use of the Fuel Farm including, without limitation, any permit or license required by the fire department of Licensor. At Licensor's request, Licensee shall deliver to Licensor copies of all such permits and licenses.

8.7 Only authorized and properly trained personnel of Licensee shall use the Fuel Farm pursuant to Licensee's rights under this License. In addition, if Licensee's business makes it advisable for Licensee to take any extra precautions at the Fuel Farm, Licensee shall take all such extra precautions.

SECTION 9

MAINTENANCE AND REPAIR OF FUEL TANKS AND OTHER EQUIPMENT

9.1 During the Term, Licensee, at Licensee's sole expense, shall maintain, repair and replace, as reasonably and prudently required, all equipment at the Fuel Farm diagonally cross-hatched on Exhibit "F" attached hereto (collectively, the "**Licensee Equipment**"). Without limiting the generality of the forgoing, the Licensee Equipment shall include all fuel loading and unloading equipment, such as hoses, couplings, swivels and such devices used in connection with the Fuel Tanks, and all filters, separators or other filtering medium or such devices related to the Fuel Tanks. With regard to Exhibit "F", the parties agree that no representation, warranty, or covenant is to be implied by Exhibit "F". If any such maintenance, repairs or replacements required to be made by Licensee are not made within ten (10) days after written notice delivered to Licensee by Licensor (except in the event of an emergency, in which case such repairs, replacements, changes or upgrades shall be required to be made by Licensee, as quickly as reasonably possible under the circumstances), then Licensor may perform such maintenance, repairs and replacements, and Licensee shall pay to Licensor, on demand, the costs of such maintenance, repairs and replacements, plus 15% for Licensor's overhead, plus interest on such sums). If Licensor elects to perform such maintenance, repairs or replacements, Licensor shall have no liability to Licensee for any loss or damage that may result to Licensee's business by reason of the same.

9.2 Except for the obligations of Licensee to be responsible for the continued maintenance, repairs and replacements of the Licensee Equipment described in Section 9.1 and Licensee's obligations under Section 9.3, and subject to the other obligations of Licensee under this License, Licensor shall at all times keep the Fuel Farm in good condition and repair generally in keeping with the standards of Licensor for the Airport and prevailing industry standards. Licensor, however, shall not be required to make any repairs occasioned by the act, omission, damage or negligence of Licensee, its employees, agents or other representatives, or any other person entering or using the Fuel Farm allegedly through the rights granted to Licensee under this License; and the provisions of the previous sentence are expressly recognized to be subject to the provisions of Section 15 and Section 16 of this License. In the event that the Fuel Tanks or other parts of the Fuel Farm should become in need of repair required to be made by Licensor hereunder, Licensee shall give immediate written notice thereof to Licensor and Licensor shall have a commercially reasonable time after receipt of such written notice in which to make such repairs. The costs of Licensor incurred pursuant to this Section 9.2 shall be included in the Common Area Charge.

9.3 During the Term, Licensee shall keep the Fuel Tanks, and cooperate with Licensor and other licensees of the Fuel Farm in keeping the Fuel Farm sidewalks, service-ways and loading areas, neat, clean and free from debris.

SECTION 10

ALTERATIONS

10.1 Licensee shall not make any installations, alterations or replacements of improvements, fixtures or equipment at the Fuel Farm without the prior written consent of Licensor, which consent may be withheld in Licensor's sole discretion. Without limiting the generality of the immediately preceding sentence, any installation, alteration or replacement consented to by Licensor must be effected strictly in accordance with Licensor's instructions and shall not unreasonably interfere with or disrupt the activities of Licensor or any other licensees of fuel tanks at the Fuel Farm. Licensee shall, promptly following the completion of any installations, alterations or replacements consented to by Licensor, deliver to Licensor "as built" plans and specifications with respect to any such installations, alterations and replacements. Any permitted installation, alteration or replacement which may be made or installed by Licensee in connection with the Fuel Farm shall remain upon and become the property of Licensor on completion of such installation, alteration or replacement; provided, however, that Licensor may request their removal upon the expiration or earlier termination of this License, in which event Licensee shall remove the same and restore the Fuel Farm to its condition immediately preceding such installation, alteration or replacement, ordinary wear and tear excepted and subject to Sections 9.2, 15 and 16, at Licensee's sole cost and expense. In the event that Licensee fails to remove such installation, alteration and replacement from the Fuel Farm within ten (10) days after the date of expiration or earlier termination of this License, Licensor may, at its option, keep or dispose of the same as Licensor shall determine at its sole discretion, without any liability or obligation to Licensee whatsoever. Licensee shall be obligated to reimburse Licensor for any costs incurred by Licensor in removing and disposing of such installation, alteration and replacement, and restoring the Fuel Farm to its original condition immediately preceding such construction, ordinary wear and tear excepted and subject to Sections 9.2, 15 and 16.

10.2 **INDEMNITY.** All construction work done by Licensee on the Fuel Farm shall be performed in a good and workmanlike manner, lien-free and in compliance with all applicable laws, and in such manner as to cause a minimum of interference with other construction in progress at the Fuel Farm or the use of the Fuel Farm by Licensor or any other licensees of fuel tanks at the Fuel Farm. **LICENSEE AGREES TO DEFEND AND INDEMNIFY LICENSOR AND LICENSOR INDEMNIFIED PERSONS AND HOLD LICENSOR AND THE OTHER LICENSOR INDEMNIFIED PERSONS HARMLESS FROM AND AGAINST ANY INDEMNIFIED DAMAGES RESULTING FROM SUCH WORK, INCLUDING INDEMNIFIED DAMAGES CAUSED BY THE NEGLIGENCE OF THE LICENSOR OR ANY OF THE LICENSOR INDEMNIFIED PERSONS, PROVIDED THAT LICENSEE SHALL HAVE NO DUTY TO INDEMNIFY LICENSOR OR ANY LICENSOR INDEMNIFIED PERSON FOR INDEMNIFIED DAMAGES CAUSED BY THE SOLE NEGLIGENCE OF LICENSOR OR SUCH LICENSOR INDEMNIFIED PERSON, UNLESS THE INSURANCE OF LICENSEE COVERS THE INDEMNIFIED DAMAGES CAUSED BY SUCH NEGLIGENCE.**

10.3 In the event Licensee uses a general contractor to perform any installations, alterations or replacements on the Fuel Farm, Licensee shall, prior to the commencement of such work, require said general contractor to execute

and deliver to Licensor a waiver and release of lien (in form and content reasonably satisfactory to Licensor) of any and all claims against Licensor and liens against the Fuel Farm to which such contractor might at any time be entitled, and to execute and record a Bond to Pay Claims (the "**Bond**") in accordance with Chapter 53, Subchapter I of the Texas Property Code, as such may be amended, superseded or replaced from time to time, and shall deliver a copy of the recorded Bond to Licensor. The delivery of the waiver and release of lien and the Bond within the time period set forth above shall be a condition precedent to Licensee's ability to enter on and begin its installation, alteration or replacement work on the Fuel Tanks and, if applicable, to any reimbursement from Licensor for Licensee's work.

10.4 In the event that Licensor elects to modify all or any portion of the Fuel Farm, Licensee will cooperate with Licensor during such modification, including Licensee's tolerating temporary inconveniences.

SECTION 11

ACCESS TO FUEL FARM, FUEL TANKS AND EQUIPMENT

11.1 Licensor shall have the right to enter upon the Fuel Farm at any time for any purpose consistent with this License.

11.2 Neither Licensee nor any Licensee Parties shall enter onto the roof of the Fuel Farm.

11.3 Neither Licensee nor any Licensee Parties shall use or manipulate in any manner any fuel tanks at the Fuel Farm (other than the Fuel Tanks), or any equipment used solely therewith.

11.4 Licensor shall have no liability to Licensee for any loss of access by Licensee to the Fuel Farm or the Fuel Tanks by reason of any security requirement, legal requirement, casualty, accident, condemnation, alteration, maintenance, repair, strike, act of God, force majeure, or cause beyond the reasonable control of Licensor.

SECTION 12

UTILITIES

12.1 Failure by Licensor to furnish, or the interruption or termination of utility services in whole or in part, resulting from any security requirement, legal requirement, casualty, accident, condemnation, alteration, maintenance, repair, strike, act of God, force majeure, or cause beyond the reasonable control of Licensor, shall not render Licensor liable in any respect nor be construed as a breach of this License, nor work as an abatement of the Consideration, nor relieve Licensee from the obligation to fulfill any covenant or agreement hereof. Should any of the equipment or machinery used in providing such services for any cause cease to function properly, Licensor shall use reasonable diligence to repair such equipment or machinery but, except as otherwise expressly provided herein, Licensee shall have no claim for offset, abatement of the Consideration, damages or termination of this License on account of an interruption in service thereby or resulting therefrom.

SECTION 13

INSURANCE COVERAGE

13.1 Licensor shall procure and maintain throughout the Term of this License a policy or policies of insurance, causing the Fuel Farm to be insured under standard fire and extended coverage insurance and liability insurance or that which is typically available to a municipality for such purposes in the State of Texas (plus whatever endorsements or special coverages Licensor, at its sole and reasonable discretion, may consider appropriate), to the extent necessary to comply with Licensor's obligations pursuant to the provisions set forth in this License.

13.2 Licensee shall procure and maintain throughout the Term a policy or policies of insurance, at its sole cost and expense to meet or exceed the requirements specified in the then prevailing "Addison Airport Minimum

Standards and Requirements For Commercial Aeronautical Service Providers” (the “**Minimum Licensee Insurance Standards**”) which may be amended or modified by Licensor from time to time.

13.3 In the event no Minimum Licensee Insurance Standards are known to be in effect, Licensee shall procure and maintain throughout the Term, at the minimum, at its sole cost and expense: (a) a policy or policies of insurance causing the Licensee Equipment and Licensee's personal property at the Fuel Farm to be insured under standard Special Form or similar property insurance; (b) business automobile liability insurance for all owned and non-owned automobiles with a combined single limit of \$5,000,000 for bodily injury and property damage; and (c) commercial general liability insurance insuring Licensee on an occurrence basis against all claims, demands or actions arising out of or in connection with Licensee's use or occupancy of the Fuel Farm, or by the condition of the Fuel Farm. Licensee's commercial general liability policy or policies must provide coverage with a combined single limit of not less than \$5,000,000 per occurrence (with no offset for occurrences on property other than the Fuel Tanks), and Licensee's insurance policy or policies must list Licensor as a loss payee (as to the Special Form or similar property insurance) as to Licensor's interest in any of Licensee's property and as an “Additional Insured” as to all other insurance including, without limitation, the commercial general liability insurance, which shall also name as Additional Insured's any management personnel or company retained by Licensor to operate or manage the Fuel Farm and/or the Airport.

13.4 All such insurance must be written by insurance companies and on forms and with deductibles satisfactory to Licensor, and Licensee's insurance shall be primary (with any policies of Licensor being excess, secondary and non-contributory). If it becomes customary or otherwise a prudent business practice within Licensee's industry to provide insurance policies with limits higher than the foregoing limits or with coverages other than the foregoing coverages, then Licensee will provide Licensor with such additional insurance as may be requested by Licensor. Licensee also agrees to provide and maintain adequate workers' compensation insurance insuring against and satisfying Licensee's obligations and liabilities under the workers' compensation laws of the State of Texas in no less than statutorily required amounts, covering Licensee's agents and employees in the Fuel Tanks, and containing a waiver of subrogation in favor of Licensor.

13.5 **INDEMNITY. LICENSEE** HEREBY INDEMNIFIES, AGREES TO HOLD HARMLESS AND DEFEND LICENSOR AND THE OTHER LICENSOR INDEMNIFIED PERSONS FROM AND AGAINST ANY AND ALL INDEMNIFIED DAMAGES SUFFERED BY LICENSEE OR ANY OF LICENSEE'S EMPLOYEES, AGENTS OR OTHER REPRESENTATIVES AT OR ABOUT THE FUEL FARM WHICH WOULD HAVE BEEN OR IS COVERED BY AN APPROPRIATE WORKERS' COMPENSATION INSURANCE POLICY (AS MAY BE REQUIRED BY LAW TO BE CARRIED BY LICENSEE) AND/OR EMPLOYER'S LIABILITY INSURANCE POLICY, INCLUDING ANY INDEMNIFIED DAMAGES CAUSED BY THE NEGLIGENCE OF THE LICENSOR OR ANY LICENSOR INDEMNIFIED PERSONS, PROVIDED THAT LICENSEE SHALL HAVE NO DUTY TO INDEMNIFY LICENSOR OR ANY LICENSOR INDEMNIFIED PERSON FOR INDEMNIFIED DAMAGES CAUSED BY THE SOLE NEGLIGENCE OF LICENSOR OR SUCH LICENSOR INDEMNIFIED PERSON, UNLESS THE INSURANCE OF LICENSEE COVERS THE INDEMNIFIED DAMAGES CAUSED BY SUCH NEGLIGENCE.

13.6 Licensee shall obtain a written obligation on the part of each insurance company to notify Licensor at least thirty (30) days prior to cancellation, non-renewal or modification of all such insurance described above. Such policies or duly executed certificates or other evidence of such insurance (in any event in form and content reasonably satisfactory to Licensor) shall be delivered to Licensor prior to the Commencement Date. Renewals of insurance shall be delivered to Licensor at least thirty (30) days prior to the expiration of the respective policy term(s). If Licensee should fail to comply with the foregoing requirement relating to insurance, Licensor may obtain such insurance on Licensee's behalf, and Licensee shall pay to Licensor on demand as additional Consideration the premium cost plus interest on such additional Consideration at the maximum contractual rate which could legally be charged in the event of a loan of such late Consideration to Licensee (but in no event to exceed 1 ½% per month).

SECTION 14

WAIVER OF LIABILITY; MUTUAL WAIVER OF SUBROGATION

14.1 Licensor and its agents, employees or authorized representatives shall not (a) be liable to Licensee, nor to Licensee's officers, owners, employees, representatives, contractors, agents or visitors, nor to any other person whomsoever, for any injury to person (including, without limitation, death) or damage to or destruction of property caused by the Fuel Tanks or other portion of the Fuel Farm becoming out of repair or by defect or failure of any structural element of the Fuel Tanks or of any equipment, pipes or wiring, or broken glass, or by the backing up of drains, or by fuel, gas, water, steam, electricity or oil leaking, escaping or flowing into the Fuel Tanks or the Fuel Farm, except where due to Licensor's willful acts or gross negligence in failing to maintain or make repairs required to be made hereunder, after the expiration of a reasonable time after written notice to Licensor of the need for such repairs and Licensor failed to remedy said condition; and (b) be liable to Licensee, nor to Licensee's officers, owners, employees, representatives, contractors, agents or visitors, nor to any other person whomsoever, for any loss or damage that may be occasioned by or through the acts or omissions of other licensees of fuel tanks at the Fuel Farm or of any other persons whomsoever, except for the willful misconduct or gross negligence of authorized employees, agents or authorized representatives of Licensor.

14.2 **INDEMNITY.** Licensor shall not be liable to Licensee, any Licensee Parties or any other person for (a) any injury to person (including, without limitation, death) or damage to or destruction of property on or about the Fuel Farm or any other portion of the Airport or premises adjacent thereto caused by the act or omission of Licensee, any Licensee Parties or any other person using the Fuel Farm or any equipment used in connection therewith under the express or implied invitation of Licensee; or (b) events, acts or occurrences arising out of any breach or default by Licensee in the performance of its obligations under this License. LICENSEE AGREES TO AND SHALL DEFEND AND INDEMNIFY LICENSOR AND THE OTHER LICENSOR INDEMNIFIED PERSONS AND HOLD LICENSOR AND THE OTHER LICENSOR INDEMNIFIED PERSONS HARMLESS FROM AND AGAINST ANY AND ALL INDEMNIFIED DAMAGES ARISING OUT OF SUCH INJURY, INDEMNIFIED DAMAGES OR DESTRUCTION, OR INDEMNIFIED DAMAGES CAUSED BY (I) LICENSEE'S PERFORMANCE OF THIS AGREEMENT, (II) THE USE OF THE FUEL FARM, FUEL TANKS, OR ANY OTHER PORTION OF THE AIRPORT OR PROPERTY ADJACENT THERETO BY LICENSEE OR BY ANY LICENSEE PARTIES; (III) THE CONDUCT OF LICENSEE'S BUSINESS OR ANYTHING ELSE DONE OR PERMITTED BY LICENSEE (OR ANY OF LICENSEE PARTIES) TO BE DONE IN OR ABOUT THE FUEL FARM, FUEL TANKS, OR ANY OTHER PORTION OF THE AIRPORT OR PROPERTY ADJACENT THERETO; (IV) ANY MISREPRESENTATION OR BREACH OF WARRANTY BY LICENSEE UNDER THIS AGREEMENT; OR (V) WITHOUT LIMITING ANY OF THE FOREGOING, ANY ACT OR OMISSION OF LICENSEE OR OF ANY OF LICENSEE PARTIES UNDER, RELATED TO, OR IN CONNECTION WITH THIS AGREEMENT, **INCLUDING INDEMNIFIED DAMAGES CAUSED BY THE NEGLIGENCE OF THE LICENSOR OR ANY OF THE OTHER LICENSOR INDEMNIFIED PERSONS, PROVIDED THAT LICENSEE SHALL HAVE NO DUTY TO INDEMNIFY LICENSOR OR ANY LICENSOR INDEMNIFIED PERSON FOR INDEMNIFIED DAMAGES CAUSED BY THE SOLE NEGLIGENCE OF LICENSOR OR SUCH LICENSOR INDEMNIFIED PERSON, UNLESS THE INSURANCE OF LICENSEE COVERS THE INDEMNIFIED DAMAGES CAUSED BY SUCH NEGLIGENCE.**

14.3 Licensor and Licensee each hereby waives all right of recovery against the other, and releases the other from any and all liability or responsibility to the other, or to any other party claiming through or under them by way of subrogation or otherwise, for any loss or damage to property arising from any cause that is insurable under standard Special Form or similar property insurance or which is required herein to be insured thereby (and each party agrees to obtain an endorsement to that effect in their respective Special Form or similar property insurance policies), **EVEN IF SUCH LIABILITY OR LOSS IS CAUSED BY THE NEGLIGENCE OF THE OTHER PARTY**; provided, however, that this mutual waiver and release is applicable only with respect to any loss or damage occurring during the time when such Special Form or similar property insurance policies which are readily available in the marketplace contain a clause or permitted endorsement to the effect that any such waiver and release does not adversely affect or impair the policy or the right of the insured party to proceeds under such policy and further provided that this waiver and release shall be applicable only to the extent that insurance proceeds are actually paid and collected to cover for such loss or damage and shall not be applicable to the portion of any such loss or damage which is not reimbursed by the damaged party's insurer because of the "deductible" in the damaged party's insurance coverage. The release specified in this Section 14.3 is cumulative with any releases or exculpations, which may be contained in any other provisions of this License.

SECTION 15

DAMAGES BY CASUALTY

15.1 Licensee shall give immediate written notice to the Licensor of any damage caused to the Fuel Farm or any Fuel Tank by fire or other casualty.

15.2 In the event that the Fuel Farm or any Fuel Tank is damaged or destroyed by fire or other casualty insurable under standard fire and extended coverage insurance, and Licensor does not elect to terminate this License as hereinafter provided, Licensor shall proceed with reasonable diligence and at its sole cost and expense (to the extent that insurance proceeds are available therefore, and provided that Licensee shall reimburse Licensor for any such costs and expenses for which Licensee may be liable under this License) to rebuild and repair the Fuel Farm or any Fuel Tank. In the event (a) the Fuel Farm or any Fuel Tank is destroyed or substantially damaged by a casualty not covered by Licensor's insurance or (b) the Fuel Farm or any Fuel Tank is destroyed or rendered unusable (as determined by Licensor), then Licensor may elect either to terminate this License as to all Fuel Tanks or just the damaged, destroyed or unusable Fuel Tank(s) or to proceed to rebuild and repair the Fuel Farm or any damaged, destroyed or unusable Fuel Tank. Licensor shall give written notice to Licensee of any such election within sixty (60) days' after the occurrence of such casualty and, if Licensor elects to rebuild and repair, shall proceed to do so with commercially reasonable diligence.

15.3 Licensor's obligation to rebuild and repair under this Section 15 shall, in any event, be limited to restoring the Fuel Farm or any Fuel Tank to substantially the condition in which the same existed prior to such fire or other casualty, exclusive of any Licensee Equipment, alterations, additions, improvements, fixtures and other equipment installed by Licensee. Licensee agrees that promptly after completion of such work by Licensor, Licensee will proceed with reasonable diligence and at Licensee's sole cost and expense to restore, repair and replace all Licensee Equipment and all alterations, additions, improvements, fixtures, signs and equipment installed by Licensee.

15.4 Licensee agrees that during any period of reconstruction or repair of the Fuel Farm or any Fuel Tank pursuant to this Section 15, it will continue the operation of its business within the Fuel Farm to the extent practical.

SECTION 16

EMINENT DOMAIN

16.1 If less than all of the Fuel Farm should be taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or by private purchase in lieu thereof, at Licensor's election, this License shall terminate and Licensor shall credit Licensee for unearned Consideration, if any, effective on the date physical possession is taken by the condemning authority.

16.2 If less than all of the Fuel Farm should be taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or by private purchase in lieu thereof, and Licensor elects not to terminate this License, Licensor shall make all necessary repairs or alterations to the remaining Fuel Farm and, promptly after completion of such work by Licensor, Licensee shall restore, repair and replace all Licensee Equipment and all alterations, additions, improvements, fixtures, signs and equipment installed by Licensee.

16.3 If all of the Fuel Farm should be taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or by private purchase in lieu thereof, this License shall terminate effective on the date physical possession is taken by the condemning authority.

16.4 All compensation awarded for any taking (or the proceeds of private sale in lieu thereof) of the Fuel Farm shall be the property of Licensor, and Licensee hereby assigns its interest in any award related to such taking to Licensor.

16.5 Licensee agrees that during any period of reconstruction or repair of the Fuel Farm or any Fuel Tank pursuant to this Section 16, it will continue the operation of its business within the Fuel Farm to the extent practical.

SECTION 17

ASSIGNMENT AND SUBLETTING

17.1 Licensee shall not and has no authority to assign or in any manner transfer this License or any interest herein, sublicense its interest under this License or any part thereof, or grant any license, concession or other right of use of any portion of the Fuel Farm without Licensor's prior written consent, which may be withheld in Licensor's sole discretion. Any attempted assignment or transfer, or any attempt to grant any sublicense, concession or other right of use, in violation of the preceding sentence shall be null and void, *ab initio*. In determining whether or not to grant its consent, Licensor shall be entitled to take into consideration all factors including, without limitation, Licensor's desired Licensee mix, the reputation and net worth of the proposed transferee, purported intent and use of the facilities by the proposed transferee (even beyond what is specified in Section 1.1(q)) and the then-current market conditions (including market consideration). In addition, Licensor shall also be entitled to charge an assignment fee for processing and considering, but not necessarily consenting to, Licensee's request. Consent by Licensor to one or more assignments, transfers, or sublicenses shall not constitute a novation or waiver of Licensor's rights as to any subsequent assignments, transfers, and sublicenses. If Licensor consents, any unexercised extension options of Licensee described on Exhibit "D" attached hereto shall be deemed null and void, *ab initio*, and of no force or effect.

17.2 If Licensee is a corporation, partnership or other entity (other than a publicly traded entity), and if at any time during the Term of this License the person or persons who own a majority of either the outstanding voting rights or controlling interests of Licensee at the time of the execution of this License cease for any reason to own a majority of such voting rights or controlling interests (except as a result of transfers by devise or descent) of Licensee, the loss of a majority of such voting rights or controlling interests shall be deemed an assignment of this License by Licensee and, therefore, subject in all respects to the provisions of Section 17.1 above. For purposes hereof, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities or partnership interests, by contract, or otherwise. Licensee shall give to Licensor, upon Licensor's request, a list of such person or persons.

17.3 Any assignee or other transferee of an interest in and to this License shall be deemed, by acceptance of such assignment or other transfer or by use of the Fuel Farm, to have assumed all of the obligations set forth in or arising under this License. Such assumption shall be effective as of the earlier of the date of such assignment or other transfer, or the date on which the assignee or other transferee commences use of the Fuel Farm.

17.4 Notwithstanding any assignment, other transfer or subletting, Licensee shall at all times remain fully responsible and liable for the payment of the Consideration herein specified and for compliance with all of its other obligations under this License (even if future assignments, transfers and sublicenses occur subsequent to the assignment, transfer or sublicensing by Licensee, and regardless of whether or not Licensee's approval has been obtained for such future assignments, transfers and sublicensing). In the event that for any reason any assignment or transfer, or sublicense, concession or other right of use of any portion of the Fuel Farm, prohibited by this Section 17 is consummated without the prior written consent of Licensor, or if an assignment, sublicense or other transfer by Licensee is permitted by Licensor, and the consideration paid and/or payable by an assignee, transferee, sublicensee or other user by reason of this License exceeds the Consideration paid payable under this License, then Licensee shall be bound and obligated to pay Licensor all such excess consideration within ten (10) days following receipt thereof by Licensee from such assignee, transferee, sublicensee or other user. Finally, in the event of any assignment or transfer, or sublicense, concession or other right of use of any portion of the Fuel Farm, whether permitted by Licensor or otherwise consummated without Licensor's consent, it is understood and agreed that all consideration paid to Licensee by the assignee, transferee, sublicensee or other user shall be received by Licensee in trust for Licensor to be forwarded immediately to Licensor without offset or reduction of any kind, and upon election by Licensor such consideration shall be paid directly to Licensor as specified in Section 4.2 of this License (to be applied as a credit and offset to Licensee's Consideration obligation).

17.5 Licensee shall not and has no authority to mortgage, pledge or otherwise encumber its interest in this License, without the prior written consent of Licensor, which consent may be withheld in Licensor's sole discretion. Any such mortgage, pledge or other encumbrance in violation of the preceding sentence shall be null and void, *ab initio*.

17.6 In the event of the transfer and assignment by Licensor of its interest in this License to a person or persons expressly assuming Licensor's obligations under this License, Licensor shall thereupon be released from any further obligations hereunder, and Licensee agrees to look solely to such successor in interest of the Licensor for performance of such obligations. Any security given by Licensee to secure performance of Licensee's obligations hereunder may be assigned and transferred by Licensor to such successor in interest and Licensor shall thereby be discharged of any further obligation relating thereto.

SECTION 18

ESTOPPELS

18.1 Licensee agrees that it will, from time to time upon request by Licensor, execute and deliver to Licensor a written statement addressed to Licensor (or to a party designated by Licensor), which statement shall identify Licensee and this License, shall certify that this License is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified), shall confirm that Licensor is not in default as to any obligations of Licensor under this License (or if Licensor is in default, specifying any default), shall confirm Licensee's agreements contained in this License, and shall contain such other information or confirmations as Licensor may reasonably request. Licensor is hereby irrevocably appointed and authorized as the agent and attorney in fact of Licensee to execute and deliver any such written statement on Licensee's behalf if Licensee fails to do so within fourteen (14) business days after the delivery of a written request from Licensor to Licensee.

SECTION 19

NON-COMPETE

19.1 Licensee covenants and agrees that during the Term of this License, neither Licensee nor any person, firm or corporation, directly or indirectly controlling, controlled by or under common control with Licensee (and also, in the event Licensee is a corporation, if any officer or director thereof or shareholder owning more than ten percent (10%) of the outstanding stock thereof, or parent, subsidiary or related or affiliated corporation) either directly or indirectly shall operate or commence operation of any facility selling or that otherwise offers for sale any aircraft fuel of the type to be used by Licensee in the Fuel Tanks or similar or related items, or in any manner competes with the business of the Fuel Farm, within a straight-line radius of seven (7) miles of the Fuel Farm, which Licensee acknowledges is a reasonable area for the purpose of this provision. It is acknowledged that Licensor will incur damages by reason of the diversion of business from the Fuel Tanks and Fuel Farm to such other facility within such radius, as a proximate result of the establishment of such other facility.

SECTION 20

DEFAULT AND REMEDIES

20.1 Default by Licensee. The following events shall be deemed to be events of default by Licensee under this License:

- (a) Licensee shall fail to pay when due any Base Fee or other sum of Consideration including, but not limited to, Licensee's Additional Fee or adjusted Additional Fee and Fuel Flowage Fees as required to be paid by Licensee to Licensor under this License (hereinafter sometimes referred to as a "**Monetary Default**").
- (b) Licensee shall fail to comply with any term, provision or covenant of this License (other than a Monetary Default) and shall not cure such failure within thirty (30) days after delivery to Licensee notice of the occurrence of such default.
- (c) Licensee shall become insolvent, or shall make a transfer in fraud of creditors, or shall seek relief under Title 11 of the Bankruptcy Code (defined in Section 20.3 below) or shall make an

assignment for the benefit of creditors, or Licensee shall admit in writing its inability to pay its debts as they become due.

- (d) Licensee shall file a petition under any section or chapter of the Bankruptcy Code, as amended, pertaining to bankruptcy or under any similar insolvency or debtor-relief law or statute of the United States or any state thereof, or Licensee shall be adjudged bankrupt or insolvent in proceedings filed against Licensee thereunder; or an involuntary case is commenced under 11 U.S.C. § 303 as amended or an insolvency, receivership or any similar proceedings are commenced under Federal or State law and such proceedings are not fully and finally dismissed, or a petition or answer proposing the adjudication of Licensee as bankrupt or its reorganization under any present or future federal or state bankruptcy or similar insolvency or debtor-relief law shall be filed in any court and such petition or answer shall not be discharged or denied within sixty (60) days after the filing thereof.
- (e) A receiver or trustee shall be appointed for all or substantially all of the assets of Licensee, or for the Fuel Tanks or any of Licensee's property located therein, in any proceeding brought by Licensee; or any such receiver or trustee shall be appointed in any proceeding brought against Licensee and shall not be discharged within sixty (60) days after such appointment or Licensee shall consent to or acquiesce in such appointment.
- (f) The license hereunder shall be revoked upon execution or other process of law in any action against Licensee.
- (g) The liquidation, termination, dissolution, forfeiture of right to do business or death of Licensee.

20.2 Remedies of Licensor. Upon the occurrence of any event of default by Licensee under this License, Licensor may:

- (a) immediately terminate this License and at the expense and liability of the Licensee, alter or change any or all locks or other security or power devices controlling access to the Fuel Farm or Fuel Tanks without posting or giving notice of any kind to Licensee.
- (b) do whatever Licensee is obligated to do under the terms of this License; and Licensee agrees to reimburse Licensor on demand for any expense which Licensor may incur in thus effecting compliance with Licensee's obligations under this License together with interest at the lesser of (i) the maximum rate permitted under applicable law or (ii) eighteen percent (18%) per annum.

20.3 Event of Bankruptcy. In addition to, and in no way limiting the other remedies set forth in this Section 20, Licensor and Licensee agree that if Licensee ever becomes the subject of a voluntary or involuntary bankruptcy, reorganization or other similar type proceeding under the federal bankruptcy laws, as now enacted or hereinafter amended, then:

(a) "adequate protection" and "adequate assurance" of Licensor's interest under this License pursuant to the provisions of Sections 361, 362, 363, 364 and 365 (or their successor sections) of the Bankruptcy Code, 11 U.S.C. Paragraph 101, et seq. (such Bankruptcy Code as amended from time to time being herein referred to as the "**Bankruptcy Code**"), prior to assumption and/or assignment of this License by Licensee shall include, but not be limited to, all or any part of the following:

- (1) curing all monetary and non-monetary defaults, including, without limitation, payment of attorneys' fees incurred by Licensor related to enforcing the terms and conditions of this License and the continued payment by Licensee of the Base Fee and all other Considerations due and owing hereunder and the performance of all other covenants and obligations hereunder by Licensee;
- (2) the furnishing of an additional and/or new security deposit by Licensee in the amount of three (3) times the then-current monthly Base Fee and other Considerations payable hereunder; and
- (3) in addition, the Licensee shall provide financial statements evidencing the financial condition and operating performance of any proposed assignee and guarantors, if any, which is sufficient to show that the proposed assignee is capable of performing in Licensor's sole discretion, all of the Licensee's obligations under the terms and conditions of this License,

including, without limitation, the "adequate assurance" and "adequate protection" requirements set forth herein.

(b) in the event Licensor consents, in its sole discretion, to the assignment of this License, any person or entity, to which this License is assigned pursuant to the provisions of the Bankruptcy Code, shall be deemed without further act or deed to have assumed all of the obligations of Licensee arising under this License on and after the effective date of such assignment, including, without limitation, adequate protection and adequate assurance requirements under Section 20.3(a). Any such assignee shall, upon demand by Licensor, execute and deliver to Licensor an instrument confirming such assumption of liability, along with applicable guaranties of any principals of the assignee.

(c) notwithstanding the prohibition against assignment contained in Section 17.1 herein, if this License is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, any and all monies or other considerations payable or otherwise to be delivered to Licensor including Base Fees and other Considerations hereunder, shall be and remain the exclusive property of Licensor and shall not constitute property of Licensee or of the bankruptcy estate of Licensee. Any and all monies or other considerations constituting Licensor's property under the preceding sentence not paid or delivered to Licensor shall be held in trust by Licensee or Licensee's bankruptcy estate for the benefit of Licensor and shall be promptly paid to or turned over to Licensor.

(d) to the extent permitted by law, Licensor and Licensee agree that this License is a contract under which applicable law excuses Licensor from accepting performance from, or rendering performance to, any person or entity other than Licensee within the meaning of the Bankruptcy Code, 11 U.S.C. Paragraph 101, et seq.

20.4 No Waiver. The following do not constitute a waiver of any rights Licensor may have under the License:

(a) failure of Licensor to declare any default immediately upon its occurrence, or delay in taking any action in connection with an event of default, shall not constitute a waiver of such default, nor shall it constitute an estoppel against Licensor, but Licensor shall have the right to declare the default at any time and take such action as is lawful or authorized under this License; (b) failure by Licensor to enforce its rights with respect to any one default shall not constitute a waiver of its rights with respect to any subsequent default; (c) receipt by Licensor of Licensee's keys to the Fuel Tanks or the Fuel Farm shall not constitute a termination of this License; and (d) no payment by Licensee or receipt by Licensor of (i) a lesser amount than the Consideration due under this License shall be deemed to be other than on account of the earliest Consideration due hereunder; and (ii) any endorsement or statement on any check or any letter accompanying any check or payment as Consideration shall not be deemed an accord and satisfaction and Licensor may accept such check or payment without prejudice to Licensor's right to recover the balance of such Consideration or pursue any other remedy in this License provided.

20.5 Remedies Cumulative. No right or remedy herein conferred upon or reserved to Licensor is intended to be exclusive of any other right or remedy it may have, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing by agreement, applicable law, common law, in equity, or otherwise. In addition to other remedies provided in this License, Licensor shall be entitled, to the extent permitted by applicable law, but without the requirement of a bond or evidence of irreparable harm, to injunctive relief in case of the violation, or attempted or threatened violation, of any of the covenants, agreements, conditions or provisions of this License, or to a decree compelling performance of any of the other covenants, agreements, conditions or provisions of this License, or to any other remedy allowed to Licensor by law, common law, in equity, or otherwise.

20.6 Evidence of Termination. To the extent any provision of applicable law requires some action by Licensor to evidence or effect the termination of this License or to evidence the termination of Licensee's right of occupancy, Licensee and Licensor hereby agree that written notice by Licensor to Licensee or to any of Licensee's agents, servants or employees, which states, in substance, that Licensor has elected to and has terminated this License, shall be sufficient to evidence and effect the termination herein provided for.

20.7 Licensor Default. Licensee shall not exercise any remedy for any breach or default by Licensor under this License without first giving written notice of such breach or default to Licensor and a commercially reasonable opportunity to cure such breach or default of not less than thirty (30) days from the date Licensor receives such notice.

SECTION 21

HOLDING OVER

21.1 In the event Licensee continues use of the Fuel Farm after the termination or expiration of this License and without the execution of a new license, it will be deemed to be using the Fuel Farm as a licensee under a license terminable at will at a daily fee equal to the Consideration herein provided plus one hundred percent (100%) of such amount, pro-rated on a daily basis, otherwise subject to all the conditions, provisions and obligations of this License insofar as the same are applicable to a license terminable at will.

SECTION 22

EXPIRATION OR TERMINATION OF LICENSE

22.1 Immediately prior to the expiration or earlier termination of Licensee's right to use the Fuel Farm pursuant to this License, Licensee shall:

- a) deliver the Fuel Tanks back to Licensor in good repair, excepting reasonable wear and tear and losses required to be restored by Licensor provided for in Section 9.1, Section 15 and Section 16;
- b) completely remove all sludge, solids, and residual substances from inside of the Fuel Tanks, piping and filtration devices in accordance with state and federal guidelines;
- c) dispose of tank bottom sludge according to state and federal laws and regulations;
- d) remove and replace all filters, separators or other filtering medium or such devices typically required under Section 9.1;
- e) secure the Fuel Tanks by bolting and locking all manways, valves and cap or plug fill lines, gauge openings or pump lines; and
- f) take all other actions reasonably necessary to empty, secure and stabilize the Fuel Tanks as instructed by Licensor.

22.2 On the surrender of the Fuel Tanks at the expiration or earlier termination of this License, Licensee shall give Licensor at least seventy-two (72) hours advance notice that the Fuel Tanks are ready for Licensor's inspection and acceptance. Upon this notification, Licensor shall then inspect the Fuel Tanks and call for the inspection by the Town of Addison Fire Department and any other regulatory entity having jurisdiction over such matters. Licensee agrees to remedy, at first reasonable opportunity, any exception or exceptions reported as a result of said inspections. Once all exceptions have been resolved and accepted by Licensor, Licensor shall deliver written notice to Licensee that Licensor has accepted the surrender of the Fuel Tanks pursuant to this Section 22, and Licensee's right to access and use of the Fuel Tanks and Fuel Farm is terminated.

SECTION 23

NOTICES

23.1 Wherever any notice is required or permitted hereunder, such notice shall be in writing. Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered when actually received by the designated addressee or, if earlier and regardless of whether actually received or not, when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the parties hereto at the respective addresses set out in Section 1.1 above, or at such other address as they might specify by written notice.

23.2 If and when included within the term "Licensor" as used in this License there are more than one person, firm or corporation, all shall jointly arrange among themselves for their joint execution of such notice specifying some individual at some specific address for the receipt of notices and payments to the Licensor; if and when included within the term "Licensee" as used in this instrument there are more than one person, firm or corporation, all shall jointly arrange among themselves for their joint execution of such a notice specifying some individual at some specific address for the receipt of notices and payments to Licensee. All parties included within the terms "Licensor" and "Licensee", respectively, shall be bound by notices and payments given in accordance with the provisions of this Section. 23.2 to the same effect as if each had received such notice or payment. In addition, Licensee agrees that Licensor's attorney, property manager or other agent may give notices to Licensee on Licensor's behalf.

SECTION 24

COMMISSIONS

24.1 EACH PARTY HERETO REPRESENTS TO THE OTHER THAT IT HAS NOT AUTHORIZED ANY BROKER OR FINDER TO ACT ON ITS BEHALF IN CONNECTION WITH THE NEGOTIATION AND EXECUTION OF THIS LICENSE, AND LICENSOR AND LICENSEE EACH AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE OTHER FROM AND AGAINST ANY AND ALL INDEMNIFIED DAMAGES ARISING OUT OF OR RESULTING FROM ANY AGREEMENT, ARRANGEMENT OR UNDERSTANDING MADE OR ALLEGED TO HAVE BEEN MADE BY SUCH INDEMNIFYING PARTY WITH ANY SUCH OTHER BROKER OR FINDER IN CONNECTION WITH THIS LICENSE, INCLUDING ANY SUCH CLAIM, LOSS, DAMAGE, COST OR EXPENSE ARISING OUT OF THE NEGLIGENCE OF THE INDEMNIFIED PARTY, PROVIDED THAT INDEMNIFYING PARTY SHALL HAVE NO DUTY TO INDEMNIFY THE INDEMNIFIED PARTY FOR INDEMNIFIED DAMAGES CAUSED BY THE SOLE NEGLIGENCE OF THE INDEMNIFIED PARTY.

SECTION 25

CHANGES DUE TO LEGAL REQUIREMENTS

25.1 If for any reason the Fuel Farm was not constructed in compliance with any legal requirements in existence at the time of construction, Licensor shall have no liability to Licensee or any Licensee Parties as a result thereof, except that Licensor shall have a reasonable period of time after notification from Licensee of such noncompliance to cause the Fuel Farm to comply with such legal requirements. If there are any changes to such legal requirements after the date of completion of Licensor's construction of the Fuel Farm that require changes thereto, Licensor shall have a reasonable period of time after notification from Licensee to make such changes. All costs incurred by Licensor in causing the Fuel Farm to comply with applicable laws may be included in the Common Area Charge.

SECTION 26

APPLICABLE LAWS

26.1 Licensor and Licensee acknowledge that there are in effect federal, state, county and municipal laws, rules, regulations, standards, and policies (together, "laws") and that the same may hereafter be modified or amended and additional laws may hereafter be enacted or go into effect, relating to or affecting the Fuel Farm or the Fuel Tanks. Licensee shall not cause, or permit or allow the Licensee Parties to cause, any violation of any applicable laws. Moreover, Licensee shall have no claim against Licensor by reason of any changes Licensor may make in the Fuel Farm or the Fuel Tanks required by any applicable laws or any charges imposed upon Licensee, Licensee's customers or other invitees as a result of applicable laws.

26.2 If any provision in this License is held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this license shall not be affected thereby.

26.3 Licensee hereby acknowledges that Licensor is bound by the terms and conditions of any and all Federal Aviation Administration, Texas Department of Transportation, and other grant agreements, grant assurances and regulations regarding the Airport, and the terms of any grant, loan, regulation, or agreement under Section 22.055 of the Texas Transportation Code, as amended or superseded, whether now existing or made in the future. Without limiting the generality of Section 26.1, Licensee agrees not to take any action or omit to take any action in relation to the Fuel Farm that would cause Licensor to be in violation of such terms, conditions, agreements, assurances, regulations, grant or loan.

26.4 Licensor and Licensee hereby specifically acknowledge that U.S. Code of Federal Regulations Title 40 Part 112 – *Oil Pollution Prevention*, governs the conduct of the parties under the License. Licensor and Licensee hereby further specifically acknowledge that the National Fire Protection Association, Inc. (NFPA) 407, *Standard for Aircraft Fuel Servicing*, governs the conduct of the parties under the License. Without limiting the generality of Section 26.1, Licensee agrees not to take any action or omit to take any action in relation to the Fuel Farm that would cause Licensor to be in violation of such regulations or standards.

26.5 If, by reason of any applicable laws, the payment to, or collection by, Licensor of any Consideration or other charges payable by Licensee to Licensor pursuant to the provisions of this License is in excess of the amount (the "**Maximum Charge**") permitted by laws, then Licensee, during the period when such laws shall be in force and effect (the "**Freeze Period**"), shall not be required to pay, nor shall Licensor be permitted to collect, any sum in excess of the Maximum Charge. Upon the earlier of (i) the expiration of the Freeze Period, or (ii) the issuance of a final order or judgment of a court of competent jurisdiction declaring such laws to be invalid or not applicable to the provisions of this License, Licensee, to the extent not then proscribed by applicable law, and commencing with the first day of the month immediately following, shall pay to Licensor as additional Consideration, prorated in equal monthly installments over the balance of the Term of this License, a sum equal to the cumulative difference between the Maximum Charge and such Consideration or other charge during the Freeze Period. If any provision of this Section 26.5, or the application thereof, shall to any extent be declared to be invalid and unenforceable, the same shall not be deemed to effect the validity and enforceability of any of the other provisions of this Section 26.5 or of this License, all of which shall remain in effect to the fullest extent permitted by law.

SECTION 27

MANDATORY NON-BINDING MEDIATION

27.1 The parties have entered into this License in the belief that it is mutually advantageous to them. It is with that same spirit of cooperation that they pledge to attempt to resolve any dispute (unless the Dispute involves an event of default of a payment obligation under this License) amicably without the necessity of litigation. Accordingly, they agree if any dispute arises between them relating to this License (the "**Dispute**"), they will first utilize the following procedures specified in this Section 27 (the "**Procedure**") before resorting to any court proceedings, unless the lack of immediate court proceedings would cause irreparable harm without an adequate remedy at law:

(a) The party seeking to initiate the Procedure (the "**Initiating Party**") will give Notification to the other party. The Notification must describe in general terms the nature of the Dispute and the Initiating Party's requested relief. Additionally, the Notification must identify one or more individuals with authority to settle the Dispute on the Initiating Party's behalf. The party receiving the Notification (the "**Responding Party**") will have five (5) business days within which to designate by reply Notification to the Initiating Party one or more individuals with authority to settle the Dispute on the Responding Party's behalf. The individuals so designated will be known as the "**Authorized Individuals**". The Initiating Party and the Responding Party will collectively be referred to as the "**Disputing Parties**" or individually as a "**Disputing Party**".

(b) The Authorized Individuals may investigate the Dispute as they deem appropriate, but they agree to promptly, and in no event not later than fourteen (14) days from the date of the Initiating Party's Notification, meet to discuss the resolution of the Dispute. The Authorized Individuals will meet at the times and places and with the frequency as they may agree. If the Dispute has not been resolved within fourteen (14) days from their initial meeting date, the Disputing Parties will cease direct negotiations and will submit the Dispute to mediation in accordance with the following procedure:

(i) The Authorized Individuals will have five (5) business days from the date they cease direct negotiations to submit to each other by Notification a written list of acceptable qualified attorney-mediators not affiliated with any party. Within five (5) days from the date the list is received, the Authorized Individuals will rank the mediators in numerical order of preference and exchange the rankings. If one or more names are on both lists, the highest-ranking person will be designated as the mediator. If no mediator has been selected under this procedure, the Disputing Parties agree jointly to request a state district or federal district judge of their choosing, from the State of Texas, to supply a list of potential qualified attorney-mediators. Within five (5) days from the date the list is received, the Authorized Individuals will rank the mediators in numerical order of preference and exchange the rankings. If one or more names are on both lists, the highest-ranking person will be designated as the mediator. If no mediator has been selected under this procedure, either of the Disputing Parties may unilaterally request a local state district judge for Dallas County, Texas, to supply the list. Within five (5) business days from the date the list is received, the Authorized Individuals will again rank the proposed mediators in numerical order of preference and will simultaneously exchange the list and will select as the mediator the individual receiving the highest combined ranking. If the mediator is not available to serve, they will proceed to contact the mediator who was next highest in ranking until they are able to select a mediator.

(ii) In consultation with the mediator selected, each Disputing Party will cause its Authorized Individual to cooperate with the other Authorized Individual in promptly designating a mutually convenient time and place for the mediation. Unless circumstances require otherwise, the time for mediation shall not be later than thirty (30) days after selecting the mediator.

(iii) If any Disputing Party has substantial need for information in another Disputing Party's possession or control in order to prepare for the mediation, all Disputing Parties will attempt to agree to procedures to expeditiously request and exchange the information and the scope of such request with the mediator's help if required.

(iv) At least seven (7) days before the first scheduled mediation session, each Disputing Party will deliver to the mediator, and by Notification deliver to the other Disputing Party, a general and concise written summary of its views on the Dispute and any other matters required by the mediator. The mediator may also request that a confidential issue paper be submitted by each Disputing Party to the mediator.

(v) In the mediation, each Disputing Party will be represented by its Authorized Individual and may also be represented by counsel. In addition, each Disputing Party may, with the mediator's permission and subject to the confidentiality provisions of this Section 27, bring additional persons as needed to respond to questions, contribute information and participate in the negotiations.

(vi) The mediator will determine the format for the meetings. The format must be designed to insure that (A) both the mediator and the Authorized Individuals have an opportunity to hear an

oral presentation of each Disputing Party's views on the Dispute, and (B) the Authorized Individuals attempt to negotiate to resolve the Dispute, with or without the assistance of counsel or others permitted to attend, but with the mediator's assistance. To this end, the mediator is authorized to conduct both joint meetings and separate private caucuses with the Disputing Parties. The mediation session will be private and the Disputing Parties agree to not disclose or release any information to third-parties (except as allowed under Subsection (x) below). The Parties will require the mediator to keep confidential all information learned in private caucus with any Disputing Party unless specifically authorized by the Disputing Party to disclose the information to the other Disputing Party. The Disputing Parties commit to participate in the proceedings with the intention of resolving the Dispute if at all possible.

(vii) The Disputing Parties agree to participate in the mediation procedure to its conclusion. The mediation will be terminated by (a) executing a settlement agreement between the Disputing Parties, (b) declaring to the mediator that the mediation is terminated, or (c) a Disputing Party declaring in writing that the mediation process is terminated when one (1) full day's mediation session is concluded.

(viii) Even if the mediation is terminated without the resolution of the Dispute, the Disputing Parties agree not to terminate negotiations and not to commence any court proceedings before five (5) days following the termination of the mediation. In any event, any Disputing Party may terminate the mediation procedure if the other Disputing Party fails to comply with this Procedure or if any claim in the Dispute, in the absence of such termination, could be barred by any applicable statute of limitations.

(ix) The mediator's fees and expenses will be shared equally among the Disputing Parties. The mediator will be disqualified as a witness, consultant, expert, or counsel for any Disputing Party with respect to the Dispute and any related matters.

(x) Mediation is a compromise and offer to compromise subject to Rule 408 of the Texas and Federal Rules of Evidence. The entire mediation process is confidential, and no stenographic, visual or audio record will be made. Subject to Rule 408 of the Texas and Federal Rules of Evidence, all conduct, statements, promises, offers, views and opinions, whether oral or written, made in the course of the mediation by any Disputing Party, their Authorized Individuals or any of their agents, employees, representatives or other invitees and by the mediator are confidential and, in addition and where appropriate, will be deemed privileged, and shall not be disclosed to anyone who is not (A) a party's agent, employee, expert, witness, or representative and (B) bound by the same confidentiality standards as the parties hereto. Evidence otherwise discoverable or admissible, however, is not excluded from discovery or admission as a result of its use in the mediation.

SECTION 28

MISCELLANEOUS

28.1. **INDEMNITY.** LICENSEE SHALL ALSO DEFEND AND INDEMNIFY LICENSOR AND THE LICENSOR INDEMNIFIED PERSONS AGAINST AND HOLD LICENSOR AND THE LICENSOR INDEMNIFIED PERSONS HARMLESS FROM ALL COSTS, EXPENSES, DEMANDS AND LIABILITY LICENSOR OR THE LICENSOR INDEMNIFIED PERSONS MAY INCUR IF LICENSOR OR ANY OF THE LICENSOR INDEMNIFIED PERSONS BECOME OR ARE MADE A PARTY TO ANY CLAIM OR ACTION (A) INSTITUTED BY LICENSEE AGAINST ANY THIRD PARTY, OR BY ANY THIRD PARTY AGAINST LICENSEE, OR AGAINST ANY PERSON HOLDING ANY INTEREST UNDER OR USING THE FUEL FARM BY LICENSE OR BY AGREEMENT WITH LICENSEE; (B) FOR FORECLOSURE OF ANY LIEN FOR LABOR OR MATERIAL FURNISHED TO OR FOR LICENSEE OR SUCH OTHER PERSON; (C) OTHERWISE ARISING OUT OF OR RESULTING FROM ANY ACT, OMISSION OR TRANSACTION OF LICENSEE, ANY OF LICENSEE PARTIES, OR SUCH OTHER PERSON; OR (D) NECESSARY TO PROTECT LICENSOR'S INTEREST UNDER THIS LICENSE IN A BANKRUPTCY

PROCEEDING, OR OTHER PROCEEDING UNDER THE BANKRUPTCY CODE, 11 U.S.C. PARAGRAPH 101, ET SEQ., INCLUDING SUCH COSTS, EXPENSES, DEMANDS, AND LIABILITIES AS ARE OR MAY BE CAUSED BY THE NEGLIGENCE OF THE LICENSOR OR ANY OF THE LICENSOR INDEMNIFIED PERSONS, PROVIDED THAT LICENSEE SHALL HAVE NO DUTY TO INDEMNIFY LICENSOR OR ANY LICENSOR INDEMNIFIED PERSON FOR INDEMNIFIED DAMAGES CAUSED BY THE SOLE NEGLIGENCE OF LICENSOR OR SUCH LICENSOR INDEMNIFIED PERSON, UNLESS THE INSURANCE OF LICENSEE COVERS THE INDEMNIFIED DAMAGES CAUSED BY SUCH NEGLIGENCE.

28.2 Nothing in this License shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture or joint enterprise between the parties hereto, it being understood and agreed that neither the method of computation of Consideration, nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of Licensor and Licensee.

28.3 Licensee shall not, for any reason, withhold or reduce Licensee's required payments of Consideration and other charges provided in this License, it being agreed that the obligations of Licensor under this License are independent of Licensee's obligations except as may be otherwise expressly provided herein.

28.4 Licensee shall deposit the Security Deposit with Licensor upon Licensee's execution of this Lease. Licensor shall hold the Security Deposit without interest as security for the performance by Licensee of Licensee's covenants and obligations under this License. Licensor shall not be required to keep the Security Deposit separate from its other accounts and no trust relationship is created with respect to the Security Deposit. The Security Deposit is not an advance payment of rental or a measure of liquidated damages in case of an event of default by Licensee. Upon the occurrence of an event of default by Licensee, Licensor, from time to time, in addition to and without prejudice to any other remedy provided herein or provided by law, may use the Security Deposit to the extent necessary to make good any arrearages of Consideration and any other damage, injury, expense or liability caused to Licensor by any events of default by Licensee. If at any time during this License the Security Deposit then being held by Licensor is less than one monthly installment of the Base Fee plus the then prevailing Additional Fee, Licensee will be required to make an additional payment to Licensor so that the Security Deposit being held by Licensor is always equal to one monthly installment of the Base Fee plus the then prevailing Additional Fee. If an event of default by Licensee does not exist, and no condition exists, which, with the passage of time or the giving of notice, or both, would constitute an event of default, when this License expires or terminates, any remaining balance of such Security Deposit not used by Licensor in accordance with this License and applicable law shall be returned by Licensor to Licensee at the last address of Licensee according to the records of Licensor within a commercially reasonable time following such expiration or termination. Licensee's actual or attempted assignment, transfer, or encumbrance of the Security Deposit will not bind Licensor.

28.5 One or more waivers of any covenant, term or condition of this License by either party shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition. The consent or approval by either party to or of any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

28.6 If any provision of this License is held to be illegal, invalid, or unenforceable, under present or future governmental laws, rules, or regulations, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions shall remain in full force and effect. Licensee shall not record this License or any memorandum or short form hereof, nor shall Licensee permit or cause this License or any memorandum or short form hereof to be recorded. Any attempt at recordation of this License or of a memorandum or short form hereof by Licensee without having first obtained Licensor's written approval shall, at Licensor's option, constitute an automatic event of default by Licensee and, at Licensor's option, may void this License and Licensee's rights hereunder.

28.7 THE LAWS OF THE STATE OF TEXAS (WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS) SHALL GOVERN THE INTERPRETATION, VALIDITY, PERFORMANCE AND ENFORCEMENT OF THIS LICENSE. THIS LICENSE IS PERFORMABLE IN DALLAS COUNTY, TEXAS. VENUE FOR ANY ACTION UNDER THIS LICENSE SHALL BE IN DALLAS STATE DISTRICT COURT, DALLAS COUNTY, TEXAS, THE COUNTY IN WHICH CONSIDERATION SHALL BE PAID PURSUANT TO SECTION 1 AND SECTION 4.2 OF THIS LICENSE. BY EXECUTING THIS LICENSE, EACH PARTY HERETO (i) EXPRESSLY CONSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF THE

COURTS OF SUCH COUNTY AND THE STATE OF TEXAS; (II) WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY CLAIM OR DEFENSE THAT THE COURTS OF SUCH COUNTY AND STATE ARE NOT A PROPER OR CONVENIENT VENUE OR FORUM; AND (III) CONSENTS TO THE SERVICE OF PROCESS IN ANY MANNER AUTHORIZED BY TEXAS LAW.

28.8 The captions used herein are for convenience only and do not limit or amplify the provisions hereof.

28.9 Whenever herein the singular number is used, the same shall include the plural, and words of any gender shall include each other gender.

28.10 The terms, provisions and covenants contained in this License shall apply to, inure to the benefit of and be binding upon the parties and their respective heirs, successors in interest, legal representatives and permitted assigns except as otherwise herein expressly provided. Neither party shall be bound by this License in any way until both parties have executed this License and each party has received a copy of this License duly executed by the other. No provision of this License is intended to inure to the benefit of any third party.

28.11 This License and the schedules, riders and exhibits attached, if any (all of which are hereby incorporated by reference herein and made a part hereof), together with the rules and regulations adopted and promulgated by Licensor pursuant to the provisions of this License, contain the entire agreement between the parties, and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties, and no rights are created in favor of either party other than as specified or expressly contemplated in this License, and this License supersedes and revokes all previous negotiations, arrangements, letters of intent, offers to lease or license, lease or license proposals, brochures, representations and information conveyed, whether oral or in writing, between the parties or their respective representatives or any other person purporting to represent Licensor or Licensee. Licensee acknowledges that it has not been induced to enter into this License by any representations or warranties not set forth in this License, that Licensee has not relied upon any representations or warranties not contained in this License and that any rules of interpretation which would otherwise guide the interpretation of this License by virtue of the identity of the party drafting the terms and provisions of this License shall not apply (it being acknowledged and agreed that each party has been represented or had the opportunity to be represented by able counsel in connection with the negotiation and interpretation of this License and all terms and provisions hereof). No brochure, rendering, information, correspondence, representation, warranty or discussion shall be deemed to be a part of this License unless specifically set forth herein or specifically incorporated herein by reference. In addition, no agreement, discussion, course of dealing or course of performance between the parties shall be effective to change, modify or terminate this License or to release Licensee or any other obligated party with respect to liability for this License, either in whole or in part unless the same shall be in writing and duly signed by the party against whom enforcement of such change, modification or termination is sought.

28.12 Licensee agrees to treat the financial terms of this License as confidential and shall not allow disclosure of such financial terms without the prior written consent of Licensor unless required to undertake such disclosure by applicable law. The parties acknowledge that the financial terms of this License are confidential to the maximum extent allowed under applicable law, and any disclosure of it by Licensee would cause Licensor irreparable harm, which could not be measured in actual damages.

28.13 This License consists of twenty-eight (28) Sections and Exhibits "A" through "F". In the event any provision of an exhibit or other attached page shall be inconsistent with a provision in the body of this License, the provision set forth in the License shall be deemed to control.

28.14 If Licensee executes this License as a corporation or partnership, each of the persons executing this License on behalf of Licensee does hereby personally represent and warrant that Licensee is a duly authorized and existing corporation or partnership, that Licensee is qualified to do business in the state in which the Fuel Farm is located, that such corporation or partnership has full right and authority to enter into this License, and that each person signing this License on behalf of such corporation or partnership is authorized to do so. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect. In the event any representation or warranty set forth in this Section 28.14 is materially false, all persons who execute this License on behalf of, or as the act and deed of Licensee, shall be individually liable as Licensee.

28.15 In addition to provisions of this Agreement expressly providing for the survival of provisions of this Agreement following the expiration or earlier termination of this Agreement, any other provision of this Agreement, including, without limitation, remedies for a breach or default under this Agreement or the payment of Compensation, that could be reasonably construed to be intended by the parties to survive such expiration or termination shall so survive. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

28.16 Licensor and Licensee hereby acknowledge and agree that they are knowledgeable and experienced in commercial transactions and further hereby acknowledge and agree that the provisions of this License for determining Consideration and other charges payable by Licensee are commercially reasonable and valid even though such methods may not state precise mathematical formulae for determining such charges. ACCORDINGLY, LICENSEE HEREBY VOLUNTARILY AND KNOWINGLY WAIVES ALL RIGHTS AND BENEFITS TO WHICH LICENSEE MAY BE ENTITLED UNDER SECTION 93.004 OF THE TEXAS PROPERTY CODE, AS ENACTED BY HOUSE BILL 2186, 77TH LEGISLATURE, AS SUCH SECTION NOW EXISTS OR AS SAME MAY BE HEREAFTER AMENDED OR SUCCEDED, TO THE EXTENT SUCH SECTION IS APPLICABLE.

NOTICE OF INDEMNIFICATION

THE PARTIES TO THIS LICENSE AGREEMENT HEREBY ACKNOWLEDGE AND AGREE THAT THIS LICENSE CONTAINS CERTAIN INDEMNIFICATION PROVISIONS FOR THE LICENSEE TO INDEMNIFY THE LICENSOR AND OTHER LICENSOR INDEMNIFIED PERSONS. IF A CLAIM IS MADE AGAINST LICENSOR OR ANY OTHER LICENSOR INDEMNIFIED PERSON THAT IS INDEMNIFIED BY LICENSEE UNDER THIS AGREEMENT, LICENSEE SHALL DEFEND LICENSOR OR SUCH LICENSOR INDEMNIFIED PERSON AT LICENSEE'S SOLE COST AND EXPENSE WITH COUNSEL REASONABLY ACCEPTABLE TO LICENSOR OR SUCH LICENSOR INDEMNIFIED PERSON, OR, AT LICENSEE'S ELECTION, LICENSEE SHALL REIMBURSE LICENSOR OR SUCH LICENSOR INDEMNIFIED PERSON FOR ANY FEES OR COSTS LICENSOR OR SUCH LICENSEE INDEMNIFIED PERSON INCURS IN DEFENDING ANY SUCH CLAIM. LICENSEE'S DEFENSE, INDEMNITY AND HOLD HARMLESS OBLIGATIONS UNDER THIS AGREEMENT SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

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EXECUTED effective as of _____, 2006.

LICENSOR:

TOWN OF ADDISON, TEXAS

By: _____
Ron Whitehead, City Manager

ATTEST:

By: _____
Carmen Moran, City Secretary

LICENSEE:

By: _____

Print Name: _____

Title: _____

Date of Signature: _____

Taxpayer Identification No. _____

ATTEST:

By: _____

Print Name: _____

Title: _____

EXHIBIT "A"

LEGAL DESCRIPTION OF ADDISON AIRPORT FUEL FARM

DESCRIPTION:

BEING 106,831 Square Feet or 2.4525 Acres, Tract of land in the E. Cook Survey, Abstract 326, Dallas County, Texas, and located on Addison Municipal Airport, Addison, Texas and being more particularly described by metes and bounds as follows:

COMMENCING at a 5/8 inch iron rod found in the West Right-of-Way line of Addison Road (60' Right-of-Way), said point also being the southeast corner of a 0.6983 acres Addison Airport lease Tract; THENCE South 00° 52' 49" East and along said West line of Addison Road, a distance of 129.60 feet to a 5/8 inch iron rod set for the POINT OF BEGINNING, said point also being the northeast corner of said 2.4525 subject tract;

THENCE South 00° 52' 49" East and continuing along the said West line of Addison Road, a distance of 598.6 feet to a 5/8 inch iron rod set for corner;

THENCE South 89° 07' 11" West and departing said West line of Addison Road, a distance of 104.06 feet to a 5/8 inch iron rod set for corner;

THENCE North 14° 20' 57" West a distance of 390.27 feet to a PK Nail set for corner;

THENCE North 21° 29' 45" West a distance of 130.61 feet to a PK Nail set for corner;

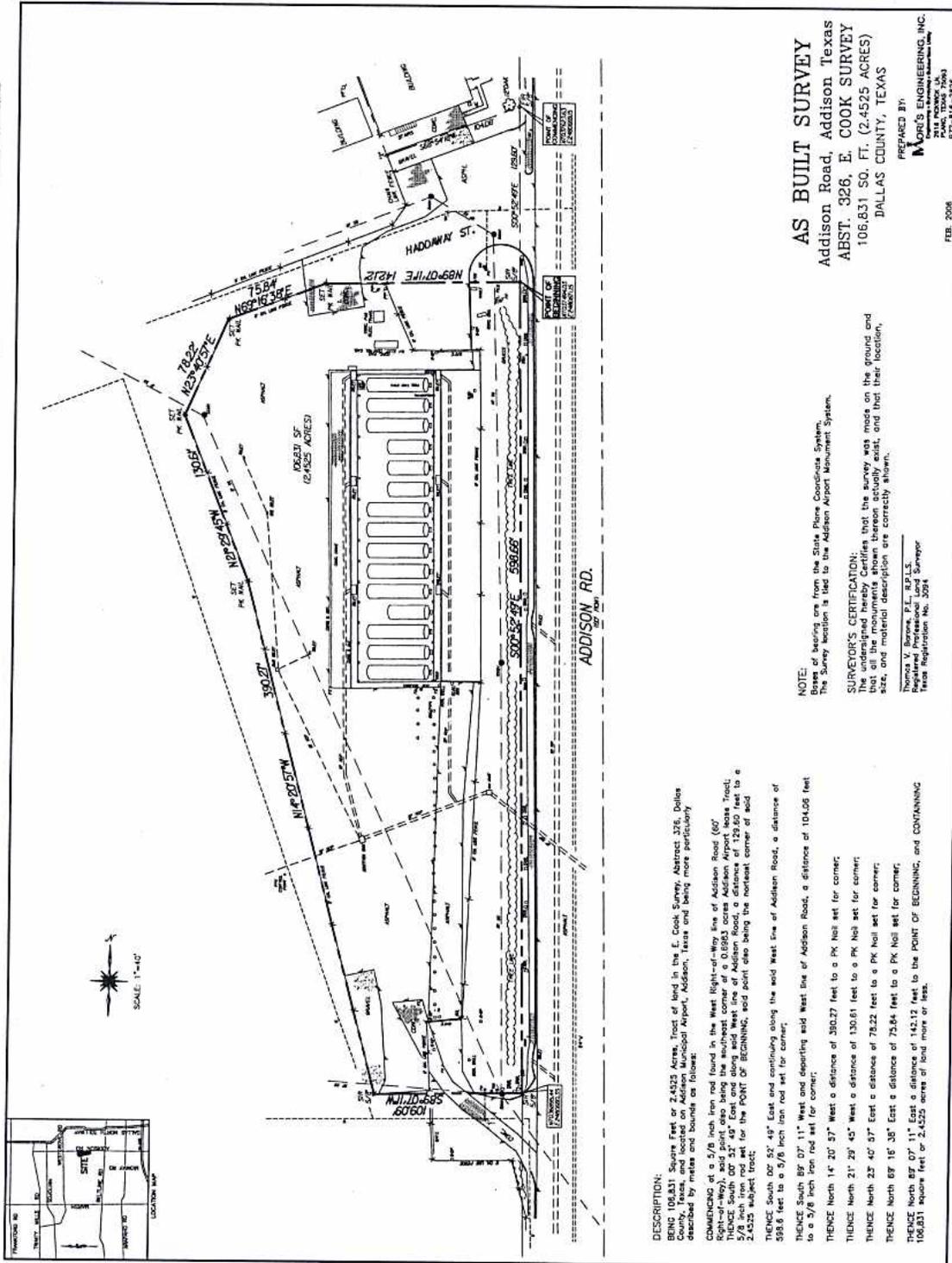
THENCE North 23° 40' 57" East a distance of 78.22 feet to a PK Nail set for corner;

THENCE North 69° 16' 38" East a distance of 75.84 feet to a PK Nail set for corner;

THENCE North 89° 07' 11" East a distance of 142.12 feet to the POINT OF BEGINNING, and CONTAINING 106,831 square feet or 2.4525 acres of land more or less.

EXHIBIT "B"

SURVEY OF ADDISON AIRPORT FUEL FARM



AS BUILT SURVEY
 Addison Road, Addison Texas
 ABST. 326, E. COOK SURVEY
 106.631 SQ. FT. (2.4525 ACRES)
 DALLAS COUNTY, TEXAS

PREPARED BY:
MORIS ENGINEERING, INC.
 2114 POWERS LA.
 ADDISON, TEXAS 75001
 972-818-1825

FEB. 2006

NOTE:
 Bases of bearing are from the State Plane Coordinate System.
 The Survey location is tied to the Addison Airport Monument System.

SURVEYOR'S CERTIFICATION:
 I, the undersigned hereby certify that the survey was made on the ground and that all the bearings, distances, and material description are correctly shown.

Thomas V. Boyce, P.L., R.P.L.S.
 State Registration No. 2094

DESCRIPTION:
 BEING 106.631 Square Feet or 2.4525 Acres, Tract of land in the E. Cook Survey, Abstract 326, Dallas County, Texas, being a portion of the Addison Airport, Addison, Texas and being more particularly described by metes and bounds as follows:

COMMENCING at a 5/8 inch iron rod found in the West Right-of-Way line of Addison Road (60' Right-of-Way), said point also being the southeast corner of the subject tract;

THENCE South 07° 51' 45" East and along said West line of Addison Road a distance of 139.8 feet to a 5/8 inch iron rod set for the POINT OF BEGINNING, said point also being the northeast corner of said 2.4525 subject tract;

THENCE South 07° 52' 45" East and continuing along the said West line of Addison Road, a distance of 388.9 feet to a 5/8 inch iron rod set for corner;

THENCE South 87° 07' 11" West and departing said West line of Addison Road, a distance of 104.06 feet to a 5/8 inch iron rod set for corner;

THENCE North 14° 20' 57" West a distance of 380.27 feet to a PK Nail set for corner;

THENCE North 21° 29' 45" West a distance of 130.61 feet to a PK Nail set for corner;

THENCE North 23° 40' 57" East a distance of 78.22 feet to a PK Nail set for corner;

THENCE North 89° 16' 38" East a distance of 75.84 feet to a PK Nail set for corner;

THENCE North 87° 07' 11" East a distance of 142.12 feet to the POINT OF BEGINNING, and CONTAINING 106.631 Square feet or 2.4525 acres of land more or less.

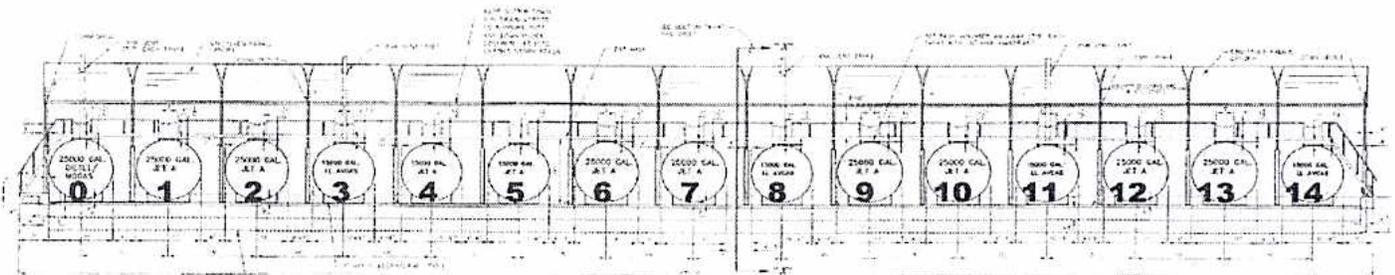
EXHIBIT "C"

SITE PLAN AND TANK CAPACITY OF ADDISON AIRPORT FUEL FARM

This Exhibit "C" is presented for the purpose of identifying the Fuel Tanks within the Fuel Farm, their capacity in gallons and percentage relative to the aggregate. This Exhibit "C" is subject to change at Licensor's discretion except as otherwise expressly restricted in the Agreement.

License Holder	Tank ID#	Designated Fuel Type	Tank Gallon Capacity	Capacity as % of Total Gallons	TCEQ #
Mercury Air Center – Addison, Inc.	00 _a	Motor Vehicle Gasoline	10,000	0.03175	
Mercury Air Center – Addison, Inc.	00 _b	Diesel	15,000	0.04762	
Mercury Air Center – Addison, Inc.	01	Jet A	25,000	0.07937	
Mercury Air Center – Addison, Inc.	02	Jet A	25,000	0.07937	
Cherry Air, Inc.	03	100 LL	15,000	0.04762	
Cherry Air, Inc.	04	Jet A	15,000	0.04762	
Cherry Air, Inc.	05	Jet A	15,000	0.04762	
R. Stern FBO, Ltd.	06	Jet A	25,000	0.07937	
R. Stern FBO, Ltd.	07	Jet A	25,000	0.07937	
R. Stern FBO, Ltd.	08	100 LL	15,000	0.04762	
	09	Jet A	25,000	0.07937	
	10	Jet A	25,000	0.07937	
	11	100 LL	15,000	0.04762	
RR Investments, Inc.	12	Jet A	25,000	0.07937	
RR Investments, Inc.	13	Jet A	25,000	0.07937	
RR Investments, Inc.	14	100 LL	15,000	0.04762	
Totals			315,000	1.0000	

TCEQ=Texas Commission on Environmental Quality or its equivalence



East Sectional View

EXHIBIT "D"

TERM EXTENSIONS

Licensee (but not any assignee, sublicensee or other transferee of Licensee, even if Licensor's consent thereto is obtained in accordance with the terms and conditions of Section 17 of this License) is granted the option(s) to extend the Term of this License for four (4) consecutive term(s) of sixty (60) months each (each, a "Term Extension"), provided (a) Licensee is not in default under the License or any other agreement with the Town of Addison at Addison Airport at the time of its exercise of the Term Extension, nor at the commencement date of the applicable Term Extension, and (b) Licensee gives written notice to Licensor of its exercise of the option to extend the Term between that period of time being sixty (60) months prior to the end of Term and six (6) months prior to the end of Term or Term Extension (the "Option Period"). Each Term Extension shall commence on the day immediately following the date of expiration of the immediately preceding original Term or Term Extension and shall be upon the same terms, conditions and Consideration as were in effect hereunder during such immediately preceding original Term or Term Extension, except (i) Licensee shall have no further right of renewal after the last Term Extension described above; and (ii) the monthly Base Fee during such each Term Extension will be as follows:

(a) the first Term Extension, from _____ to _____, shall be at the monthly Base Fee rate of \$.2786 per gallon/yr.; and

(b) the second Term Extension, from _____ to _____, shall be at the monthly Base Fee rate of \$.2928 per gallon/yr.; and

(c) the third Term Extension, from _____ to _____, shall be at the monthly Base Fee rate of \$.3078 per gallon/yr.; and

(d) the fourth Term Extension, from _____ to _____, shall be at the monthly Base Fee rate of \$.3235 per gallon/yr.

Licensee's rights under this Exhibit "D" shall terminate if the License or Licensee's right to use of the Fuel Tanks is terminated, or if Licensee fails to timely exercise Licensee's option to extend the Term of this License in accordance with the terms and conditions of this Exhibit "D" with TIME BEING OF THE ESSENCE WITH RESPECT TO LICENSEE'S EXERCISE THEREOF.

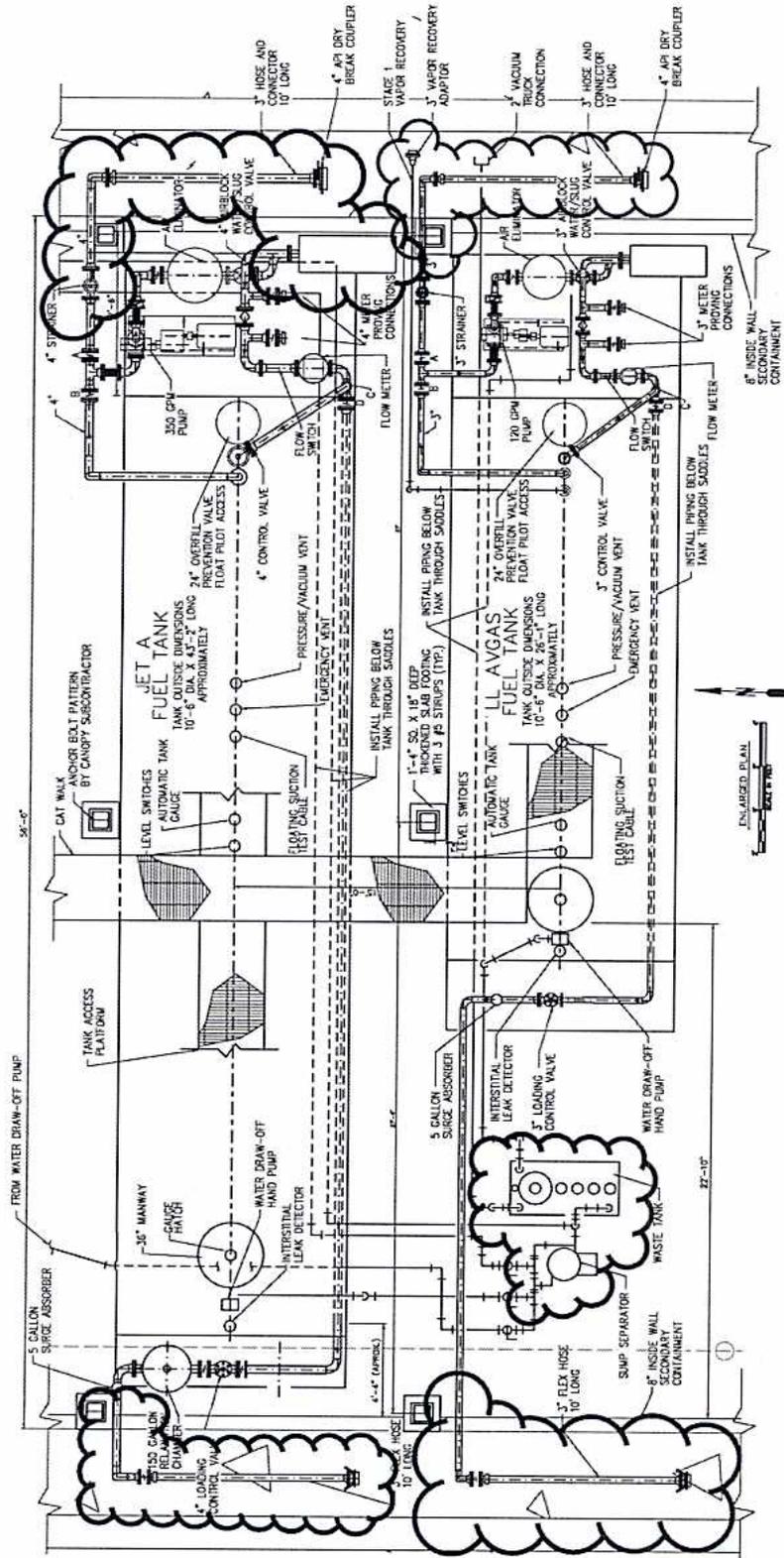
EXHIBIT "E"**STATEMENT OF LICENSOR'S INITIAL CONSTRUCTION RESPONSIBILITY**Description of Bulk Fuel and Dispensing System For Addison Airport

The proposed Bulk Fuel Storage and Dispensing System is to be centrally located with fifteen (15) individual bulk fuel storage tanks, with off-load and five (5) Fixed Base Operator (FBO) metered dispensing systems, in a consolidated, environmentally protected site, including tanks and operating equipment, with suitable architectural considerations to blend into the site. The horizontal mounted cylindrical tanks will have an approximate dimension of ten and one-half feet (10.5' W) diameter by forty-three feet (43' L) in length (25,000 gal), or alternatively, ten and one half feet (10.5') diameter by twenty-six feet (26') in length (15,000 gal). Fuel storage tanks will be double wall, 2-hour fire rated, protected tanks. Primary products to be dispensed are Low Lead AVGAS and Jet A Fuel, with one two-compartment tank of 10,000 and 15,000 gallon, with dispensing equipment for LL MoGas and Diesel. The Jet A off-load systems will be capable of off-loading 8,000 gallons to an over-the-road fuel tanker truck within 20 minutes at approximately 350 gallons/minute and the dispensing systems into the Airport refueling vehicles will be rated at approximately 300 gallons/minute. Industry standard filtration systems with automatic shutdown and alarms will be installed on the off-load side of the storage tanks, to protect product in the fuel storage tanks. Overflow protection devices will be installed on all fuel storage tanks and connected to the pump control panel. Pump/dispensing control panel or panels, will be logically sequenced, gauged to fuel storage tanks for fuel level indication, and clearly marked for ease of operations. An oil/water separator will be installed and connected to the secondary containment dike area, using a valve connection and the off-load/dispensing pad to allow for immediate wash-down of any spilled product. The off-load/dispensing pad will be large enough to provide a designated parking spot for any aircraft-refueling vehicle that develops a leak. Fuel storage area will have explosion proof electrical fixtures and control panel. A fresh water line will be required for emergency eye wash unit and a 1" hose and reel unit installed for wash down. The hose must reach all areas of the facility, including the oil/water separator. An emergency telephone/intercom/transmitter device will be installed with direct link to the Main Fire Station alarm room located at 4798 Airport Parkway, Addison, Texas 75001-3364. Fuel storage tanks will be mounted in an 18" high concrete low wall secondary containment area, connected to the oil/water separator so that any major spill in the containment area can be washed down and pumped out through the oil/water separator. Design will include area lighting, site storm drainage and connection, any required utilities relocation, and site appearance considerations. Access from the outside (airport land side) will be controlled with electrically operated gates and/or a code or key access pad. Paved access will be required from the street and from the airfield areas. Street connection will include driveways, curb and gutter.

Source: Addison Airport Project Specification Book for Bulk Fuel Storage and Dispensing System, Section 01000A, Paragraph 9, Page 5

EXHIBIT "F"

LICENSEE'S GENERAL AREAS OF RESPONSIBILITY FOR MAINTENANCE AND REPAIR



LL AVGAS AND JET A FUEL TANK LAYOUT PLAN

This diagram is attached for the purpose of depicting Licensee's general area of responsibility for the maintenance and repair within the Fuel Farms and with respect to the Fuel Tanks and that no representation, warranty, or covenant is to be implied by its accuracy, deviation, from actual conditions or any other information shown including dimensions, locations, title, reference or classification. Should a arise between this Exhibit and the meaning of the License Agreement, the License Agreement shall prevail.

**MERITORIOUS EXCEPTION TO THE ADDISON SIGN ORDINANCE
STAFF REPORT
ME 2006-5**

Date: March 23, 2006
Location of Request: 3805 Belt Line Road
Business: AMF Fun Fest Lanes

<u>Ordinance Requirement</u>	<u>Request</u>	<u>Variance</u>																		
<p>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:</p> <table border="1" data-bbox="941 1218 1169 1512"> <thead> <tr> <th>Sign Height (feet)</th> <th>Letter/Logo Height (inches)</th> <th>Maximum</th> </tr> </thead> <tbody> <tr> <td>0 - 36</td> <td>16</td> <td></td> </tr> <tr> <td>37 - 48</td> <td>36</td> <td></td> </tr> <tr> <td>49 - 100</td> <td>48</td> <td></td> </tr> <tr> <td>101 - 150</td> <td>60</td> <td></td> </tr> <tr> <td>151 and up</td> <td>7</td> <td></td> </tr> </tbody> </table> <p>a. Letter heights in excess of 72 inches must be approved by the city council. b. Not more than 50% of the letters in each individual sign height category may be 25% taller than the specified maximum letter/logo height. (6) Copy on awnings is allowed in accordance with the above regulations for area and letter height. For back-lit awnings, the area of the sign shall be based on the area of the awning that is back-lit or illuminated.</p>	Sign Height (feet)	Letter/Logo Height (inches)	Maximum	0 - 36	16		37 - 48	36		49 - 100	48		101 - 150	60		151 and up	7		<p>The applicant is requesting: Signs on South West and South East facades with a logo 5'3" in height, numerals 3'9" and 2'9" in height and an area of 81.5 sq ft.</p>	<p>The ordinance allows 1 Sq. Ft. of signage for each Ft. of building length up to 100 Sq. Ft. and a maximum letter height of 20" for 50% of the letters with the remaining letters to be 16" or less in height. An exception was granted in Jan 1995 for letters 48" in height.</p>
Sign Height (feet)	Letter/Logo Height (inches)	Maximum																		
0 - 36	16																			
37 - 48	36																			
49 - 100	48																			
101 - 150	60																			
151 and up	7																			

STAFF RECOMMENDATION: The signs will be located approximately 250' from Business Ave and Commercial Dr. Staff recommends approval of letters, numerals or logos up to 41.25" in height.

STAFF: Lynn Chandler
Lynn Chandler, Building Official

#RID

03/27/2006 14:38 9729864456

ACCENT GRAPHICS INC

PAGE 01

MAR 27 2006 1:44PM HP LASERJET 3200

P - 1

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: 3/27/2006

Filing Fee: \$200.00

Applicant: ACCENT GRAPHICS INC

Address: 523 E ROCK ISLAND RD Sutoff:

GRAND PRAIRIE TX 75050 Phone#: (972) 399-0333
City State Zip

Fax#: (972) 986-4456

Status of Applicant: Owner _____ Tenant _____ Agent X

Location where exception is requested:
3805 BELTLINE RD

Reasons for Meritorious Exception:
ATTACHED

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 3-27-06 Check # 21902 Receipt # 27103



March 20, 2006

Re: Request For Variance To Install Wall Channel Letters

Location: AMF Fun Fest Lanes 3805 Beltline Rd. Addison Texas 75001.

To Whom It May Concern:

We are requesting a variance to the Sign Ordinance for the purpose of install new channel letter sets on the façade of the AMF Fun Fest Lanes.

We recommend the sign be approved as per Ad Vice, Inc. drawing 1434-W1.1 R3 dated March 17, 2006 (Preferred Option) In our professional opinion the sign as show on the referenced drawing should be approved due to the following reasons:

- 1) The location of the sign is 250' from the nearest road. A smaller identifier will be illegible from the road and may cause a safety / traffic hazard. See "Preferred Option" drawing.
- 2) A smaller letter set will be ineffective as a communication tool due to the height of the building and distance from main road. See "Alternate Option" drawing.
- 3) The proposed logo has a smaller neon stroke (1.5" width) than the existing signs, which were granted a variance in the past. See "Preferred Option" drawing.
- 4) The square footage of the "Preferred Option" is 81.5. The existing channel letter set, which was previously granted a variance, is 84 square feet.
- 5) Proposed sign was designed and specified to match square footage of existing letters.
- 6) All text on proposed sign would match or be smaller than existing copy height.

Please feel free to contact me at 804-730-0503 if I may be of any assistance.

Regards,

A handwritten signature in black ink, appearing to read "Richard Thompson". The signature is written in a cursive, flowing style with a prominent initial "R".

Richard Thompson
Ad Vice, Inc.

Council Agenda Item: #R11

SUMMARY:

This item is for Council approval of Change Order No 6 in the amount of \$44,688.62 and an extension of 28 calendar days for the construction of Arapaho Road Phase III from Surveyor Blvd to Addison Road.

FINANCIAL IMPACT:

Budgeted Amount:	included in \$250,000 budgeted for change orders in agenda item presented in April 2005
Change Order Cost:	\$44,688.62
Source of Funds:	Funds have been identified to support excess amounts, primarily from the 2006 bond sales

BACKGROUND:

The Arapaho Road, Phase III project is nearing completion of 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. Five previous change orders in the amounts of \$8,509.00, \$17,548.18, \$124,766.25, \$99,560.54 and \$63,942.44, 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. 6, in the amount of \$44,688.62 is also necessary to complete the project. This change order is the result of numerous construction issues (see attachment) that occurred. DWU has agreed to reimburse the Town for Item number 1249 which was a 10-inch air release valve on the 60-inch water main. Also, some of the items included in the change order created delays in the critical path for the construction. As a result, staff determined that the contractor should receive a total of 28 days added to the current contract time of 544 calendar days for this project. The current time is the result of 425 calendar days in the original contract plus 86 calendar days approved in Change Order Number 4 and 33 calendar days approved in Change Order No. 5.

The addition of Change Order No 6 increases the total construction cost to \$17,061,593.45. This represents a 2.1 percent increase over the original contract amount. This is expected to be the last change order on this project. The final payment to Archer Western is anticipated to be brought to Council in June 2006 once warm weather plantings are completed.

RECOMMENDATION:

Staff recommends the Council authorize the City Manager to approve Change Order No 6 in the amount of \$44,688.45 and an extension of 28 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: 6

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:

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

7. New Special Provisions to lte 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, date (4/4/06), typed name (BEN J. WITHERED), typed title (PROJECT MANAGER), and provided information (Time Ext. #: 3 Days, Amount added: \$44,688.62).

RECOMMENDED FOR EXECUTION:

Construction Inspector signature and date (04-04-06)

Town of Addison Director of Pubic Works APPROVED

Town of Addison Asst. Pubic Work Director APPROVED

Town of Addison Asst. City Engineer APPROVED

TOWN OF ADDISON, TEXAS

ARAPAHO ROAD - PHASE III

Project No. 04-022

CHANGE ORDER NO. 6

TABLE A: Change Order and Extra Force Account Work

ITEM	DESCRIPTION	DAYS	UNIT	UNIT PRICE	ORIGINAL CONTRACT + PREVIOUSLY REVISED		CHANGE ORDER	REVISED CONTRACT		CHANGE ORDER
					QUANTITY	ITEM COST	QUANTITY	QUANTITY	ITEM COST	OVERRUN/ UNDERRUN
1246	Railroad Grade Crossing Asphalt & Assoc. work		LS	\$13,214.06		\$0.00	1.00	1.00	\$13,214.06	\$13,214.06
1249	60" Main extra work & 10" Air Release Valve System	5	LS	\$63,600.82		\$0.00	1.00	1.00	\$63,600.82	\$63,600.82
1250	Weld Splice at Span 9 Beam Connection	10	LS	\$10,750.00		\$0.00	1.00	1.00	\$10,750.00	\$10,750.00
1251	Type C Lighting Changes: Drivers, TVSS & Reflectors		LS	\$6,487.28		\$0.00	1.00	1.00	\$6,487.28	\$6,487.28
1252	Change of Cross Walk Bedding- Credit		SF	\$0.20		\$0.00	-2,164.86	(2,164.86)	(\$432.97)	(\$432.97)
1253	16ft Base section of street pole (6 poles)		LS	\$21,222.16		\$0.00	1.00	1.00	\$21,222.16	\$21,222.16
1254	Red Aviation Obstruction light for Pedestian Poles		LS	\$8,808.12		\$0.00	1.00	1.00	\$8,808.12	\$8,808.12
1255	Review of Repair Analysis to Diaphragm #6 (URS)		LS	\$1,705.00		\$0.00	-1.00	(1.00)	(\$1,705.00)	(\$1,705.00)
1256	Bent protection at underneath Park lot		LS	\$1,792.95		\$0.00	1.00	1.00	\$1,792.95	\$1,792.95
1257	Storm Drainage System for Building Roof Leader Drains	3	LS	\$9,012.33		\$0.00	1.00	1.00	\$9,012.33	\$9,012.33
1258	Additional Post Lengths for Security Fence		LS	\$2,111.00		\$0.00	1.00	1.00	\$2,111.00	\$2,111.00
1259	Aluminum Handrail at Park 'A'		LS	\$1,715.77		\$0.00	1.00	1.00	\$1,715.77	\$1,715.77
1260	Railroad Ties Removal at Tree Wells		LS	\$959.51		\$0.00	1.00	1.00	\$959.51	\$959.51
1261	Bronze Plaques		LS	\$524.04		\$0.00	1.00	1.00	\$524.04	\$524.04
1262	Sign Post Upgrade		LS	\$807.70		\$0.00	1.00	1.00	\$807.70	\$807.70
1263	Aluminum Traffic Control Signs		LS	\$573.67		\$0.00	1.00	1.00	\$573.67	\$573.67
1264	Wall Light Change (Credit)		LS	\$2,144.00		\$0.00	-1.00	(1.00)	(\$2,144.00)	(\$2,144.00)
1265	Irrigation Sleeves Credit		LS	\$700.00		\$0.00	-1.00	(1.00)	(\$700.00)	(\$700.00)
1266	T4 Railing Credit		LS	\$3,500.00		\$0.00	-1.00	(1.00)	(\$3,500.00)	(\$3,500.00)
1267	6" red paint striping for fire lane with markings		LF	\$221.76		\$0.00	1.00	1.00	\$221.76	\$221.76
1268	Rail Road Sign Credit for Installation		LS	\$312.83		\$0.00	-1.00	(1.00)	(\$312.83)	(\$312.83)
1269	Concrete Retaining Wall Unit Price Adjustment		LS	\$341.55		\$0.00	1.00	1.00	\$341.55	\$341.55
1270	Wire Cost Adjustment-Install #8 wire en-lieu of #6		LF	\$1.00		\$0.00	-7,072.00	(7,072.00)	(\$7,072.00)	(\$7,072.00)
1271	Testing Reinburstment for T4 Railing		LS	\$176.50		\$0.00	-1.00	(1.00)	(\$176.50)	(\$176.50)
1272	Irrigation System Credit		LS	\$3,809.00		\$0.00	-1.00	(1.00)	(\$3,809.00)	(\$3,809.00)
1273	Credit for Pre-emetion Cables (Surveyor/Midway)		LS	\$1,507.00		\$0.00	-1.00	(1.00)	(\$1,507.00)	(\$1,507.00)
1274	Compension for time for celebration	3	LS	\$0.00		\$0.00	0.00	0.00	\$0.00	\$0.00
1275	Traffic Signal - Ground Box & Pole adjustments		LS	\$6,461.00		\$0.00	1.00	1.00	\$6,461.00	\$6,461.00
1276	Charater Furniture Parking Lot Ashplat Credit		LS	\$1,186.63		\$0.00	-1.00	(1.00)	(\$1,186.63)	(\$1,186.63)
1277	Additional Landscape Boulders		LS	\$1,124.97		\$0.00	1.00	1.00	\$1,124.97	\$1,124.97
1278	Relocation of Type 'D' Lights for Span 14		LS	\$4,563.62		\$0.00	1.00	1.00	\$4,563.62	\$4,563.62
1279	Installation of Telephone Line for Kiosk		LS	\$3,266.55		\$0.00	1.00	1.00	\$3,266.55	\$3,266.55
1280	Pedestal for Bronze Plaque		LS	\$5,121.56		\$0.00	1.00	1.00	\$5,121.56	\$5,121.56
1281	Delays encounter due to early opening	7	LS	\$0.00		\$0.00	0.00	0.00	\$0.00	\$0.00
TOTALS					28		\$ -		\$140,134.49	\$140,134.49

TOWN OF ADDISON, TEXAS

ARAPAHO ROAD - PHASE III

Project No. 04-022

CHANGE ORDER NO. 6

QUANTITY ADJUSTMENT TO CONTRACT BID ITEMS DUE TO FIELD CONDITON

TABLE B: Contract Items (Continued)

ITEM	DESCRIPTION	UNIT	UNIT PRICE	ORIGINAL CONTRACT + PREVIOUSLY REVISED		CHANGE ORDER	REVISED CONTRACT		CHANGE ORDER
				QUANTITY	ITEM COST	QUANTITY	QUANTITY	ITEM COST	OVERRUN/UNDERRUN
103	Full depth saw cut existing concrete	LF	\$2.40	1,564	\$3,753.60	268.00	1,832.00	\$4,396.80	\$643.20
106	Remove and dispose of existing driveway	S.Y.	\$3.40	86	\$292.40	25.00	111.00	\$377.40	\$85.00
108	EMBANKMENT	CY	\$3.92	56,000.00	\$219,520.00	-4,067.00	51,933.00	\$203,577.36	(\$15,942.64)
109	Furnish & Place 10" Thick Reinforced Pavement	SY	\$31.94	23,930.00	\$764,324.20	-630.00	23,300.00	\$744,202.00	(\$20,122.20)
110	Furnish and place 6" thick integral concrete curb, 4000 psi @ 28 days	LF	\$2.05	11,325	\$23,216.25	434.00	11,759.00	\$24,105.95	\$889.70
111	Furnish and place monolithic median nose, 4000 psi @ 28 days	EA	\$546.94	8	\$4,375.52	-1.00	7.00	\$3,828.58	(\$546.94)
112	Furnish and place 8" thick reinforced concrete driveway, 4000 psi @ 28 days	SY	\$34.18	450	\$15,381.00	150.89	600.89	\$20,538.42	\$5,157.42
113	Furnish and place reinforced concrete island, 4000 psi @ 28 days	SY	\$25.00	300	\$7,500.00	18.57	318.57	\$7,964.25	\$464.25
117	Furnish and install Speed Limit sign (R2-1)	EA	\$150.00	5	\$750.00	-1.00	4.00	\$600.00	(\$150.00)
120	Furnish and install Merge Right sign (R4-7)	EA	\$150.00	3	\$450.00	2.00	5.00	\$750.00	\$300.00
124	Furnish and install No Parking sign (R8-3A)	EA	\$150.00	3	\$450.00	-1.00	2.00	\$300.00	(\$150.00)
132B	Monthly Maintenance of Devices	MONTHLY	\$1,200.00	14	\$16,800.00	4.00	18.00	\$21,600.00	\$4,800.00
133	Furnish and place 4" white/red reflective square acrylic buttons	EA	\$2.75	550	\$1,512.50	41.00	591.00	\$1,625.25	\$112.75
134	Furnish and place 4" white non-reflective raised ceramic buttons	EA	\$3.50	550	\$1,925.00	42.00	592.00	\$2,072.00	\$147.00
135	Furnish and place 4" yellow double-reflective square acrylic buttons	EA	\$3.50	497	\$1,739.50	58.00	555.00	\$1,942.50	\$203.00
138	Furnish and place pavement directional markers	EA	\$85.00	22	\$1,870.00	1.00	23.00	\$1,955.00	\$85.00
140	RR Xing Pavement Markings, as show on plans	EA	\$279.00	8	\$2,232.00	8.00	16.00	\$4,464.00	\$2,232.00
141	Furnish and place 24" solid white thermoplastic stop bar	LF	\$3.99	128	\$510.72	137.71	265.71	\$1,060.18	\$549.46
142	Furnish and place 4" solid yellow thermoplastic stripe	LF	\$0.95	100	\$95.00	83.08	183.08	\$173.93	\$78.93
148	Furnish and install temporary construction fence (orange plastic)	LF	\$0.82	8,100	\$6,642.00	-3,200.00	4,900.00	\$4,018.00	(\$2,624.00)
149	Furnish and install Pedestrian Rail (TXDOT Item 450)	LF	\$66.94	690	\$46,188.60	-35.00	655.00	\$43,845.70	(\$2,342.90)
150	Furnish and install Traffic Rail Type T4 (S) (MOD) (TXDOT Item 450)	LF	\$75.13	1,950	\$146,603.50	-267.00	1,683.00	\$126,443.79	(\$20,059.71)
152	Furnish and install wheel stops	EA	\$47.13	116	\$5,467.08	3.00	119.00	\$5,608.47	\$141.39
153	Engineer's Field Office	MONTHLY	\$1,675.00	14	\$23,450.00	4.00	18.00	\$30,150.00	\$6,700.00
161	Unclassified Brickyard excavation	CY	\$7.08	30,000	\$212,400.00	-19,840.00	10,160.00	\$71,932.80	(\$140,467.20)
162	Furnish and place 4" white stripe	LF	\$1.00	2,740	\$2,740.00	190.20	2,930.20	\$2,930.20	\$190.20
202	Furnish and install 4" diameter sanitary sewer manhole, complete and in place	EA	\$1,706.41	6	\$10,238.46	2.00	8.00	\$13,651.28	\$3,412.82
203	Furnish and install 4" diameter sanitary sewer manhole with internal drop, complete and in place	EA	\$3,585.96	4	\$14,343.84	-1.00	3.00	\$10,757.88	(\$3,585.96)
205	Furnish and install 24" steel encasement pipe for sanitary sewer lines as shown on the plans, incl	LF	\$75.89	300	\$22,767.00	-21.00	279.00	\$21,173.31	(\$1,593.69)
208B	Monthly Maintenance of Devices	MONTHLY	\$3,300.00	14	\$46,200.00	4.00	18.00	\$59,400.00	\$13,200.00
218	Remove 2-4'x2' headwall	EA	\$416.80	2	\$833.60	-1.00	1.00	\$416.80	(\$416.80)
220	Construct concrete pilot channel	SY	\$25.00	85	\$2,125.00	-32.42	52.58	\$1,314.50	(\$810.50)
222	10' standard curb inlet	EA	\$1,980.00	3	\$5,940.00	1.00	4.00	\$7,920.00	\$1,980.00
227	10' modified curb inlet	EA	\$2,500.00	1	\$2,500.00	-1.00	0.00	\$0.00	(\$2,500.00)
229	"Y" inlet	EA	\$1,400.00	13	\$18,200.00	-2.00	11.00	\$15,400.00	(\$2,800.00)
237	18" RCP storm sewer pipe	LF	\$59.01	8	\$472.08	2.00	10.00	\$590.10	\$118.02
241	36" RCP storm sewer pipe	LF	\$106.12	40	\$4,244.80	-2.00	38.00	\$4,032.56	(\$212.24)
242	54" RCP storm sewer pipe	LF	\$219.93	19	\$4,178.67	-2.00	17.00	\$3,738.81	(\$439.86)
244	4'x2' box culvert	LF	\$145.44	24	\$3,490.56	8.00	32.00	\$4,654.08	\$1,163.52
246	6'x5' box culvert	LF	\$221.10	112	\$24,763.20	-10.00	102.00	\$22,552.20	(\$2,211.00)
256	8" Schedule 40 PVC pipe	LF	\$28.06	15	\$420.90	-15.00	0.00	\$0.00	(\$420.90)
259	10" Reinf. Conc. Pavemt sawcut/removal/replacnt at Surveyor Blvd. & Midway Rd (incl. Midway Rd median)	SY	\$81.16	510	\$41,391.60	848.31	1,358.31	\$110,240.44	\$68,848.84
262	8" DIA. C909 PVC Class 150 water line	LF	\$55.18	85	\$4,690.30	-3.00	82.00	\$4,524.76	(\$165.54)
263	60" RCCP water lowering incl. but not limited to all thrust blocking, fittings, and appurtenances	LF	\$1,413.99	80	\$113,119.20	15.00	95.00	\$134,329.05	\$21,209.85
264	16" C900 PVC Class 150 Water lowering	LF	\$143.17	30	\$4,295.10	6.70	36.70	\$5,254.34	\$959.24
265	8" C909 PVC Class 150 Water lowering	LF	\$145.67	40	\$5,826.80	-0.63	39.37	\$5,735.03	(\$91.77)
266	Trench Safety	LF	\$1.00	14,536	\$14,536.00	180.00	14,716.00	\$14,716.00	\$180.00
271	GROUTED RIP RAP	SY	\$36.29	750.00	\$27,217.50	-576.71	173.29	\$6,288.69	(\$20,928.81)
272	Temporary 8" thick Asphalt Pavement (2" HMAC Type D, 6" HMAC Type B), per Traffic Control Plan	SY	\$23.05	500	\$11,525.00	439.13	939.13	\$21,646.95	\$10,121.95
306	Conduit (RM) (1-1/2")	LF	\$20.00	243	\$4,860.00	-203.00	40.00	\$800.00	(\$4,060.00)
308	Pedestrian base and light pole	EA	\$3,400.00	64.00	\$217,600.00	-2.00	62.00	\$210,800.00	(\$6,800.00)
312	Cable, Insulated, #6 AWG	LF	\$1.00	22,706.00	\$22,706.00	-13,854.00	8,852.00	\$8,852.00	(\$13,854.00)
313	Cable, Insulated, #8 AWG	LF	\$0.85	770	\$654.50	6,342.00	7,112.00	\$6,045.20	\$5,390.70
315	Bare ground, #6 AWG	LF	\$1.00	11,353	\$11,353.00	-7,660.00	3,693.00	\$3,693.00	(\$7,660.00)
317	Bare ground, #4 AWG	LF	\$1.00	390	\$390.00	6,960.00	7,350.00	\$7,350.00	\$6,960.00
318	Foundation, 35' 3" street light pole	EA	\$800.00	21	\$16,800.00	1.00	22.00	\$17,600.00	\$800.00
319	Foundation, pedestrian light pole	EA	\$800.00	64	\$51,200.00	-2.00	62.00	\$49,600.00	(\$1,600.00)
320	Ground mounted pullbox, Type A	EA	\$500.00	24	\$12,000.00	7.00	31.00	\$15,500.00	\$3,500.00
407	Furnish and install Fringe Flower (5 gal.)	EA	\$19.43	108	\$2,098.44	-7.00	101.00	\$1,962.43	(\$136.01)
409	Furnish and install Mary Nell Holly (5 gal.)	EA	\$19.43	178	\$3,458.54	5.00	183.00	\$3,555.69	\$97.15
411	Furnish and install Asian Jasmine (1 gal)	EA	\$2.27	14,706	\$33,382.62	-1,613.00	13,093.00	\$29,721.11	(\$3,661.51)
413	Furnish and install Bushy Bluestem Grass (5 gal)	EA	\$21.59	130	\$2,806.70	14.00	144.00	\$3,108.96	\$302.26
415	Furnish and install Lindheimer's Muhly (3 gal)	EA	\$17.27	104	\$1,796.08	-2.00	102.00	\$1,761.54	(\$34.54)
418	Furnish and install tree protection	LF	\$1.62	4,000	\$6,480.00	-3,124.00	876.00	\$1,419.12	(\$5,060.88)
423	Furnish and install crosswalk brick pavers (see specs)	S.F.	\$14.25	2,016	\$28,728.00	148.86	2,164.86	\$30,849.26	\$2,121.26
424	Furnish and install median pavers (see specs)	S.F.	\$17.31	3,074	\$53,210.94	1,189.32	4,263.32	\$73,798.07	\$20,587.13
425	Furnish and install walkway pavers (see specs)	S.F.	\$10.75	4,472	\$48,074.00	-667.43	3,804.57	\$40,899.13	(\$7,174.87)
426	Furnish and place 5" reinforced concrete paving	S.F.	\$3.11	43,207	\$134,373.77	5,363.91	48,570.91	\$151,055.53	\$16,681.76
427	Furnish and place 5" reinforced concrete path	S.F.	\$3.70	28,845	\$106,726.50	2,541.90	31,386.90	\$116,131.53	\$9,405.03
428	Furnish and place 12" concrete bands	LF	\$12.57	2,396	\$30,117.72	-413.00	1,983.00	\$24,926.31	(\$5,191.41)
431	Furnish and place decomposed granite paving	S.F.	\$1.78	32,488	\$57,828.64	-418.24	32,069.76	\$57,084.17	(\$744.47)
433	Furnish and install flagstone paving	S.F.	\$15.69	6,100	\$95,709.00	-4,684.00	1,416.00	\$22,217.04	(\$73,491.96)
435	Furnish and install tree grate	EA	\$293.92	22	\$6,466.24	4.00	26.00	\$7,641.92	\$1,175.68
437	Furnish and install CMU wall (includes footing)	LF	\$78.11	144	\$11,247.84	-5.50	138.50	\$10,818.24	(\$429.61)
439	Furnish and install cast stone cap	LF	\$20.39	144	\$2,936.16	-5.20	138.80	\$2,830.13	(\$106.03)
440	Furnish and install modular retaining wall system (Mesa)	S.F.	\$17.35	1,708	\$29,633.80	971.48	2,679.48	\$46,488.98	\$16,855.18
446	Furnish and install steel edging	LF	\$2.43	484	\$1,176.12	-484.00	0.00	\$0.00	(\$1,176.12)
502	60" Dia. Concrete Drilled Shaft (TXDOT Item 416)	LF	\$229.63	312	\$71,644.56	10.00	322.00	\$73,940.86	\$2,296.30
505	Cast-In-Place Concrete Bents 2-8 & 11-14 (TXDOT Item 420) (Class F Concrete - 5000psf)	CY	\$600.00	1,037.50	\$622,500.00	3.50	1,041.00	\$624,600.00	\$2,100.00
509	Precast Prestressed Concrete Members (TXDOT Item 425) (U54 Beams)	LF	\$250.00	6,089	\$1,522,250.00	23.05	6,112.05	\$1,528,012.50	\$5,762.50
520	Standard 24"x24" Monument Plaque	EA	\$1,139.01	2	\$2,278.02	2.00	4.00	\$4,556.04	\$2,278.02
601	Furnish & install Conduit, 3/4" schedule 40 PVC	LF	\$3.00	3,870	\$11,610.00	847.50	4,717.50	\$14,152.50	\$2,542.50
603	Furnish & install Conduit, 3/4" schedule 40 RMC	LF	\$10.00	3,620	\$36,200.00	306.00	3,926.00	\$39,260.00	\$3,060.00
606	Furnish & install Electrical Conductor, # 2, Insulated	LF	\$2.00	1,000	\$2,000.00	17,120.00	18,120.00	\$36,240.00	\$34,240.00
607	Furnish & install Electrical Conductor, # 6, Bare	LF	\$1.00	1,040	\$1,040.00	-80.00	960.00	\$960.00	(\$80.00)
608	Furnish & install Electrical Conductor, # 6, Insulated	LF	\$1.00	3,680	\$3,680.00	-1,040.00	2,640.00	\$2,640.00	(\$1,040.00)
609	Furnish & install Electrical Conductor, # 8, Bare	LF	\$0.85	1,485	\$1,262.25	35.00	1,520.00	\$1,292.00	\$29.75
610	Furnish & install Electrical Conductor, # 8, Insulated	LF	\$0.85	3,130	\$2,660.50	-90.00	3,040.00	\$2,584.00	(\$76.50)
611	Furnish & install Electrical Conductor, # 10, Bare	LF	\$0.45	4,630	\$2,083.50	60.00	4,690.00	\$2,110.50	\$27.00
612	Furnish & install Electrical Conductor, # 10, Insulated	LF	\$0.45	10,410	\$4,684.50	129.00	10,539.00	\$4,742.55	\$58.05
614	Furnish & install Electrical Conductor, # 12, Insulated	LF	\$0.35	6840	\$2,394.00	-310.00	6,530.00	\$2,285.50	(\$108.50)
615	Furnish & install Ground Box (Type E)	EA	\$500.00	9	\$4,500.00	-9.00	0.00	\$0.00	(\$4,500.00)
616	Furnish & install Junction Box	EA	\$150.00	52	\$7,800.00	35.00	87.00	\$13,050.00	\$5,250.00
617									

Council Agenda Item: #R12**SUMMARY:**

Council approval is requested for 1) the payment of utility billing refunds totaling \$2,702.37 and 2) the waiver of \$49,831.31 in utility fees.

FINANCIAL IMPACT:

The Town has completed an audit of its utility meters and compared this information to our billing system. As a result, staff has determined that we overbilled customers \$5,363.48 (\$2,661.11 was authorized by the Council on February 28, 2006 to be refunded) and underbilled other customers by \$49,831.31 over the past six months.

BACKGROUND:

As discussed during the February 28th Council meeting, the Financial and Strategic Services department began a joint initiative with the Department of Public Works in October to 1) verify that the billing system accurately reflected the meters in service, and 2) develop a systematic plan to test and replace aging meters. The first phase of the project involved developing an electronic inventory of the meters in service and then comparing this information to the Town's billing system. Staff has completed this process and uncovered that we have underbilled customers by a net amount of \$44,467.83 over the past six months. A summary of the meter inventory findings are summarized in the attached memorandum from Shanna Sims, Strategic Services Manager.

Since these discrepancies are not the fault of our customers, staff recommends that the Town refund charges when customers have been overbilled and waive charges when customers have been underbilled. In this way, the Town will settle all billing disputes in favor of the customer.

Going forward, staff has implemented a peer review strategy for both the Public Works and Financial & Strategic Services departments so that these errors do not occur in the future. We will also be revisiting the meter inventory on a more frequent basis to verify that the meter information is accurate. Additionally, we will also be exploring new technologies that may assist our departments in accurately measuring and billing customers for consumption.

Town staff has also begun work on developing a formalized plan to test and replace aging meters, and it is expected that this project will be complete by summer 2006. During the upcoming budget process, staff will provide Council with our observations and recommendations so that relevant information can be incorporated into the FY 2007 budget.

RECOMMENDATION:

Staff recommends that Council approve 1) the payment of utility billing refunds totaling \$2,702.37 and 2) the waiver of \$49,831.31 in utility fees related to incorrect meter reading and billing.

Memo

To: Lea Dunn, Deputy City Manager
 From: Shanna Sims, Strategic Services Manager
 Copy: Randy Moravec, Bryan Langley
 Nancy Cline, Jerry Davis
 Date: March 24, 2006
 Re: Review of Meter Data – Findings for All Routes

Public Works completed a review of all seven routes on March 16th as part of our strategy to continually improve the utility meter reading and billing systems. A summary of the findings from the meter audit will be presented at the April 11th City Council meeting. This memo summarizes the findings of the results of the audit for all seven routes.

Findings:

A total of 3,595 meters were reviewed by utility staff during the past four months. For each meter, staff reviewed seven key data elements including meter size, meter number, unit of measure and user type. After reviewing approximately 25,000 data points, a total of 969 errors were detected - or an error rate of 3.85%. A total of 49 errors had a financial impact. 67.3 % of errors were related to the incorrect user type being listed for these accounts and 32.6% of errors were related to the incorrect perms being listed

Total financial impact for all routes is a net under-billing of \$44,467.83. We under-billed customers in the amount of \$49,831.31 and we over-billed customers in the amount of \$5,363.48.

Below is a list of customers that will be impacted and the estimated under-billing/over-billing impact for the past six months. Also included is an estimate of the cost of water to the Town associated with the under-billings related to the perm errors.

<i>Customer</i>	<i>Error Type</i>	<i>Over-bill/Under-bill</i>	<i>Est. Financial Impact</i>
Grand Addison Residential	User Type	Under	\$103.93
George Sierra	Perms	Under	\$312.56
Outback Steakhouse	User Type	Under	\$29.91
Dallas Gymnastics Center	User Type	Under	\$296.89
Mission Aire IV LP	User Type	Under	\$1,229.93
R & B Distributors	Perms	Over	\$5.77
Office In the Park Ltd. (multiple accounts)	User Type	Net Under	\$3,798.01

Folsom Investments	User Type	Under	\$1,237.62
Jeff Staffin Inc.	User Type	Over	\$193.05
Loos Swimming Pool	Perms	Under	\$1,376.39
Berkshire of Addison Apts.	Perms	Under	\$186.37
Town of Addison (Athletic Club)	Perms	Under	\$10,945.25
Belt Line Square Ltd.	User Type	Under	\$257.44
Watson and Taylor	User Type	Under	\$518.55
Joe's Crab Shack*	User Type	Under	\$45.05
Chipolte	User Type	Under	\$280.65
Osteomed Corp.	User Type	Under	\$257.42
Boston Market	User Type	Over	\$257.41
Hilton Gardens Inn	User Type	Under	\$257.38
Addison Town Center	User Type	Under	\$257.40
The Print Place	User Type	Over	\$1,257.68
Barrett, Burke Wilson and Cast (multiple accounts)	User Type	Net Under	\$202.25
Sreers Real Estate	User Type	Under	\$1,239.34
Inwood Quorum Village	User Type	Under	\$82.74
Racetrack Petroleum (multiple accounts)	User Type	Net Over	\$986.25
Pei Wei Restaurant	Perms	Under	\$6,602.85
Arthur's Restaurant	User Type	Over	\$81.85
Kensington Properties	User Type	Under	\$383.80
Town of Addison	Perms	Under	\$199.64
Trinity Christian Academy	Perms	Over	\$28.08
Spring Hill Suites	Perms	Over	\$1,658.52
Camden Property Trust*	Perms	Under	\$11,409.41
Tom Castillo	User Type	Over	\$147.26
The Addison	User Type	Over	\$422.12
TX Commerce Bank	User Type	Over	\$325.49
Glen Argitelly	Perms	Under	\$571.96
Bob Tennison	Perms	Under	\$990.70
Dennis Zanatta	Perms	Under	\$37.79

Thomas O'Brien	Perms	Under	\$1,031.25
Town of Addison	Perms	Under	\$3,731.31
Behringer Harvard Quorum	Perms	Under	\$5,315.52

*** Five months of data used for estimate*

If you have any questions or would like any additional information, please let me know.

Council Agenda Item: #R13**SUMMARY:**

Council approval is requested of an ordinance amending chapter 82 of the code of ordinances related to utility administration for the Town.

FINANCIAL IMPACT:

There is no financial impact associated with this item.

BACKGROUND:

As a result of an examination of the utility billing system, it has been determined that the code of ordinances should be updated in a variety of areas. The following changes are recommended.

- The name of the department should be properly reflected as the Department of Financial and Strategic Services.
- Clarify that accounts are considered paid when the department actually receives the payment. The prior ordinance had indicated that the date of postmark would be considered the date paid. This creates operational difficulties for staff, and undermines the true due date for the payments. This change should have a minimal impact on our customers.
- Allow the Director the latitude to effectively manage billing adjustments under \$2,500 and the City Manager for amounts over \$2,500 but under \$25,000. This is routinely necessary, but the current ordinance is silent on this issue. Council will still retain the right to approve any adjustment greater than \$25,000.
- Stipulate that adjustments in billing will be limited to six month in arrears. The limit reduces the any potential liability of both the Town (over-billing) and the customer (under-billing). The current ordinance does not address this issue.
- Allow the Director to delay termination of service processes to avoid unnecessary hardship for customers. The Town has typically delayed terminating service for customers during the Thanksgiving and Christmas holiday seasons, but the ordinance did not specifically provide for this discretion.

These changes are identified in the attached ordinance

RECOMMENDATION:

Staff recommends that Council approve an ordinance amending chapter 82 of the code of ordinances related to utility administration for the Town.

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING CHAPTER 82 OF THE CODE OF ORDINANCES OF THE TOWN BY AMENDING SECTION 82-79 DEFINITIONS; 82.79.5 SECURITY DEPOSIT REFUNDS; 82.80.1 PAYMENT; 82.80.2 BILLING DISPUTE; 82.80.3 SERVICE TERMINATION PROCEDURES; 82.83.1 MISCELLANEOUS CHARGES AND PROVISIONS; AND 82-83.2 DISCREPANCIES IN AMOUNT OF BILL; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Addison’s water and sewer revenue is vital to ensuring the financial health of the Utility Fund.

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

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

A. Chapter 82 (Utilities), Article I (In General), Division 5 (Rates and Charges) of the Code is hereby amended in part as follows:

1. Section 82-79 (Definitions) is amended to read as follows:

Sec. 82-79. Definitions.

The following definitions apply in the construction of this chapter:

Applicant: A person who makes application to receive a service from the department.

City or Town: Town of Addison, Texas.

Commercial customer: Nonresidential consumer who receives service from the city under this chapter. Such term includes, but is not limited to, all businesses, restaurants, hospitals, apartments, etc.

Commercial large classification: Nonresidential accounts which have meters two inches or greater in size. Such accounts include restaurants, retail establishments, professional offices, office complexes, and other commercial endeavors.

Commercial small classification: Nonresidential accounts which have meters less than two inches in size. Such accounts include restaurants, retail establishments, professional offices, office complexes, and other commercial endeavors.

Consumer or customer: A person who:

- (a) Has an account in his name with the department for a service;
- (b) Has made application for a service, and the service has been provided or made available by the department at the location specified in the application; or
- (c) Uses, receives or benefits from service, even though no account for service may exist or no application for service may have been made.

Department: ~~The water and sewer department of the city.~~ The Department of Financial and Strategic Services

Director: The director of the department or his authorized assistants, representatives and designees.

Fire meter classification: Accounts which have been established for the sole purpose of monitoring water flow for building fire suppression systems.

Hotel/motel classification: All hotels and motels as defined in Chapter 351 of the Tax Code, Vernon's Annotated Civil Statutes.

Industrial large classification: Accounts which have meters two inches or greater in size and which manufacture products on site.

Multi-family residential classification: Accounts in this classification are residential units which are metered collectively under one account (apartment complexes).

Municipal/schools classification: Accounts which have been established by a municipality, county, independent school district, or a nonprofit educational corporation.

Permittee: A person granted a permit under this chapter.

Person: An individual, private or public corporation, partnership, association, governmental entity, firm, industry or other entity.

Property owner: The record title holder of premises who receives Service from the city.

Residential customer: Owners or occupiers of single-family dwellings who receive service from the city under this chapter. Such term includes individually metered homes, townhomes, condominiums and duplexes.

Service: All water and water-related service provided for the use and benefit of persons inside and outside the city through the operations and facilities of the department, including, but not limited to:

- (a) Supply of treated water;
- (b) Wastewater collection, treatment and disposal;
- (c) Building and extension of service mains;
- (d) Providing of meters and service connection to property;
- (e) Discontinuance, restoration or repair of service;
- (f) Issuance and use of permits;
- (g) Extension or replacement of service mains for which pro rata or other assessments are charged;
- (h) Collections of rates or fees for service; and

- (i) Other department activities for the benefit of the general public authorized under this chapter.

Single-family residential classification: Accounts in this classification are detached residential units which are individually metered by the town and include homes, townhomes, condominiums, and duplexes.

Sprinkler large classification: Accounts which have meters two inches or greater in size and have been established for the sole purpose of providing water for irrigation of lawns and landscaped areas.

Sprinkler small classification: Accounts which have meters less than two inches in size and have been established for the sole purpose of providing water for irrigation of lawns and landscaped areas.

(Code 1982, § 18-79; Ord. No. 087-072, § 3, 10-27-87; Ord. No. 088-050, § 4, 11-8-88; Ord. No. 089-002, § 2, 1-10-89)

- 2. Section 82-79.5 (Security Deposit Refunds) is amended to read as follows:

Sec. 82-79.5. Security deposit refunds.

(a) *Refund requirements.* ~~At~~ At his/her sole discretion, the director may refund a security deposit to the residential customer when the customer meets all of the following conditions:

- (1) The customer has been receiving service for 12 continuous months;
- (2) The customer has acquired a satisfactory credit history with the department;
- (3) The customer has not made payment during the past 12 months with a check returned due to insufficient funds; and
- (4) The customer has no delinquent bills outstanding.

(b) *Refusal to refund.* Notwithstanding subsection (a), the director may refuse to refund a security deposit where the director determines from the circumstances of a customer's account that there is a substantial risk of financial loss to the department.

(c) *Review for eligibility.* The director shall review all residential customer payment histories at least once a year to determine eligibility for refund. The director will make refunds by check payable to the customer.

(Code 1982, § 18-79.5; Ord. No. 087-072, § 4, 10-27-87)

- 3. Section 82-80.1 (Payment; Late Payments) is amended to read as follows:

Sec. 82-80.1. Payment; Late Payments

(a) All charges under this Ordinance Number 087-072, including any penalties assessed, unless otherwise specifically provided for, shall be payable monthly in accordance with bills rendered therefore to the customer by the department.

"Render" shall mean deposit in the United States mail by the department.

(b) The bill as rendered shall be the net amount due and payable to the department for all services. The charges so rendered shall be due and payable

upon receipt of such bill and shall become delinquent after the tenth day of the following month. If payment is to be made in person or by mail, the date of receipt shall be the date received by the department.

~~(c) Payment shall be made to the department as provided in this subsection.~~

~~(1) If payment is to be made by mail, whether in cash or by check, the date of receipt by the department shall be conclusively deemed to be the date of the postmark upon the envelope that contains the payment; provided that, the payment enclosed in said envelope is fully negotiable; provided further that, the burden of proof as to the date of receipt in such a case shall be upon the party asserting it.~~

~~(2) If payment is to be made in person and in cash, the date of receipt shall be the date stamped upon the cash receipt issued therefor by the department; provided that, if payment in person is to be made by check, the date of receipt shall be the date of receipt stamped upon the reverse thereof as part of the endorsement of the department.~~

(d) If such bill is not paid, as of the date indicated in this subsection:

(1) Such liability shall be discharged upon payment of the delinquent bill, plus the penalty herein provided, prior to the due date of the next succeeding bill, and provided further that;

(2) If such payment of a delinquent bill, plus the penalty herein provided, be not paid prior to the due date of the next succeeding bill, the amount of the delinquent bill, plus the penalty herein provided, shall be added to and become a part of the net amount of the next succeeding bill.

(e) Failure to receive any bill provided by this section shall not relieve the customer of any liability therefore.

(Code 1982, § 18-80.1; Ord. No. 087-072, § 6, 10-27-87)

4. Section 82-80.2 (Billing Dispute) is amended to read as follows:

Sec. 82-80.2. Customer Billing dispute.

(a) The director is responsible for ensuring the integrity of the utility billing system. Upon discovery of facts that reveal billing errors, the director is charged with resolving the billing issue in a manner satisfactory to both the city and customer. The director may make adjustments to bills delivered to the customer for amounts up to \$2,500.00. For adjustments involving amounts of between \$2,500.01 and \$24,999.99, the director shall obtain approval from the city manager. For adjustments involving amounts of \$25,000.00 or greater, the city manager shall obtain approval from the city council.

(b) The city's and customer's liability for amounts related to billing errors shall be limited to the six months preceding discovery of the error.

(a) (c) At any time before the date of termination of service for nonpayment of the amount(s) shown on a utility bill, a notice of rejection or a notice of termination, a customer may dispute the correctness of all or part of the amount(s) shown in accordance with the provisions of this division. A customer shall be

entitled to dispute the correctness of all or part of the amount(s) if all or part of the amount(s) was (were) the subject of a previous dispute under this section.

~~(b)~~ (d) The procedure for customer disputes shall be as follows:

(1) Before the date of termination, the customer shall notify the director, orally or in writing, that he disputes all or part of the amount(s) shown on a utility bill, a notice of rejection or a notice of termination, stating as completely as possible the basis for the dispute.

(2) If the director determines that the present dispute is untimely or that the customer previously disputed the correctness of all or part of the amount(s) shown, the director shall mail to the customer a notice stating that the present dispute is untimely or invalid. The director shall then proceed as if the customer had not notified him of the present dispute.

(3) If the director determines that the present dispute is not untimely or invalid under this section, the director, within three days after receipt of the customer's notice, shall arrange an informal meeting between the customer and himself or a designee.

(4) Based on the department's records, the customer's allegations and all other relevant materials available to the director, he shall resolve the dispute, attempting to do so in a manner satisfactory to both the city and the customer.

(5) Within five days of completion of the meeting, the director shall mail to the customer a copy of his decision resolving the dispute.

(6) If the decision is unsatisfactory to the customer, the customer, within five days of receipt of the director's decision, may request, in writing, a formal hearing before the city manager.

(7) The formal hearing before the city manager shall be held within ten (10) days of the city's receipt of the customer's written request.

(8) At the hearing the director and the customer shall be entitled to present all evidence that is, in the city manager's view, relevant and material to the dispute, and to examine and cross-examine witnesses. A tape-recorded (or at the option of the city manager, a stenographic) record of the hearing may be maintained.

(9) Based on the record established at hearing, the city manager, within five days of the completion of the hearing shall issue his written decision formally resolving the dispute. His decision shall be final and binding on the city and the customer.

~~(e)~~ (e) Utilization of this dispute procedure shall not relieve a customer of his obligation to timely and completely pay all other undisputed utility charges and/or installments and surcharges, and the undisputed portion(s) of the amount(s) which is (are) the subject of the present dispute. Notwithstanding subsection (d), failure to timely and completely pay all such undisputed amounts shall subject the customer to termination of service in accordance with the provisions of this division.

~~(d)~~ (f) Until the date of the city manager's or the director's decision, whichever is later, the director shall not terminate the service of this customer and shall not issue a notice of termination to him solely for nonpayment of the disputed

amount(s). If it is determined that the customer must pay some or all of the disputed amount(s), the director shall promptly mail to, or personally serve upon the customer a notice of termination as provided in section 82-80.3. (Code 1982, § 18-80.2; Ord. No. 087-072, § 6, 10-27-87; Ord. No. 089-002, § 3, 1-10-89)

5. Section 82-80.3 (Service termination procedures) is amended to read as follows:

Sec. 82-80.3. Service termination procedures.

- (a) Except as provided in section 82-80.2(d), and 82-80.4, the provisions of this section shall govern all terminations of service for nonpayment of utility charges and/or installments and surcharges by residential and commercial customers.
- (b) If by the payment date shown on a utility bill or a notice of rejection the director has not received complete payment of the amount(s) shown on the bill or the notice, the director shall mail to, or personally serve upon the customer a notice of termination at least three days after the payment date.
- (c) The notice of termination shall contain the following:
- (1) The amount to be paid;
 - (2) The date of the notice of termination;
 - (3) The date of termination, which shall be at least ten days from the date of the notice of termination;
 - (4) Notice that unless the director receives complete payment of the amount shown prior to the date of termination, service shall be terminated under subsection (d);
 - (5) Notice that in lieu of paying the entire amount shown, a residential customer, prior to the date of termination, may notify the director that he disputes the correctness of all or part of the amount shown, if all or part of the amount shown was not the subject of a previous dispute under section 82-80.2.
- (d) If, prior to the date of termination,
- (1) The director has not received complete payment of the amount shown on the notice of termination; or
 - (2) The residential customer has not notified the director that he disputes the correctness of all or part of the amount shown on the notice of termination, then the director shall terminate service on the date of termination.
- (e) If the director receives payment of the entire amount shown on the notice of termination prior to the date of termination, such payment shall be considered a timely and complete payment for purposes of this Division Number 087-072.
- (f) Cutting and plugging connections. The directors' authority to discontinue service includes the right to cut and plug water or wastewater connections to private property. The costs of cutting and plugging connections will be charged to the customer in addition to the delinquent charges due.

(g) Restoration of service. Discontinued service will not be restored until the customer, owner or some other person either pays all charges due (including the charges to restore connections; a \$20.00 reconnection fee and a security deposit in the amount specified at section 82-79.3), or, where applicable, ceases violation of the particular Code provision in question. The decision to restore service while delinquent charges or Code violations still exist rests solely with the director.

(h) Exceptions to notice requirement. Notice as provided in this Division Number 087-072 does not apply to discontinuance of service resulting from a violation of this chapter if the director determines that immediate discontinuance is necessary to prevent an imminent threat or occurrence of:

- (1) Harm to the health or safety of persons;
- (2) Damage to city or private property; or
- (3) Contamination of the water system.

(i) Customer's request to discontinue. Upon a customer's written request, the director may discontinue service to the customer. Upon receipt of the request, the director may remove the water meter and service connections. However, the customer is liable for all charges incurred prior to removal of the meter. Where service is furnished through more than one meter, the customer may request discontinuance of one or more meters and thereafter be billed on the basis of the remaining meter or meters.

(j) The director may delay termination of service processes to avoid unnecessary hardship to customers. However, under no circumstances shall the delay exceed two weeks.

(+) (k) Cumulative remedies. Enforcement of this section does not waive any additional remedies, civil or criminal, available to the city under law.

(Code 1982, § 18-80.3; Ord. No. 087-072, § 6, 10-27-87)

6. Section 82-83.1 (Miscellaneous Charges and Provisions) is amended to read as follows:

Sec. 82-83.1. Miscellaneous charges and provisions; rates where no charge specified.

(a) *Returned check charge.* A customer will be assessed the maximum amount allowed by the State of Texas Business and Commerce Code, Section 3.506 ~~A charge of \$15.00 will be assessed~~ when a customer pays a service bill by check, the check is presented to the bank, and the bank does not honor the check.

(b) *Where no charge specified.* When charges for a service are not specified in this chapter, the director shall establish charges which are based on the cost of performing the services, including, but not limited to, such services as the moving of meter locations, repair to damaged facilities, field location of mains, fire hydrant relocation, installation of traffic lids on meter boxes, replacement of a meter with a meter larger than one inch, water and wastewater main abandonments, installation and removal of temporary service, abandonment of manholes and provision of printed materials.

(c) *Where money credited.* All sums of money collected as a charge or fee authorized under this chapter, at the rates specified in this chapter, shall be credited to the appropriate water and wastewater fund of the city.

(d) The service charges and fees provided in this section shall be in addition to, not in lieu of, any charges, fees, rates or penalties assessed under other provisions of this chapter or of the Code of Divisions, Town of Addison.

(Code 1982, § 18-83.1; Ord. No. 087-072, § 6, 10-27-87)

7. Section 82-83.2 (Discrepancies in Amount of Bill) is amended to read as follows:

Sec. 82-83.2. Discrepancies in amount of bill.

In any case in which there appears to be a material discrepancy in the net amount of the bill rendered to the customer, it shall be the ~~city~~-responsibility of the department, upon written notice from the customer, to send an inspector to inspect and to verify the reading of the meter within five days of receipt of the complaint, at no charge to the customer; provided that if the number of such complaints shall exceed three within any six-month period, the department shall be entitled to charge the customer \$50.00 for any inspection made as provided in this subsection during the succeeding twelve-month period, said charge to be added to and made a part of the net amount of the bill next rendered to the customer by the department after the inspection is made.

(Code 1982, § 18-83.2; Ord. No. 087-072, § 6, 10-27-87)

Section 2. This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of those ordinances, except in those instances where the provisions of those Ordinances are in direct conflict with the provisions of this Ordinance.

Section 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 portion 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 portion shall remain in full force and effect.

Section 4. Effective Date. This Ordinance shall become effective from and after its date of passage as provided by law.

DULY PASSED BY THE CITY COUNCIL OF THE TOWN OF ADDISON,
TEXAS on this 28th day of February, 2006.

Mayor Joe Chow

ATTEST:

By: _____
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: _____
Ken Dippel, City Attorney