

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

AGENDA

REGULAR MEETING OF THE CITY COUNCIL

AND / OR

WORK SESSION OF THE CITY COUNCIL

7:30 PM

APRIL 13, 2010

TOWN HALL

5300 BELT LINE ROAD, DALLAS, TX 75254

REGULAR MEETING

Pledge of Allegiance

Item #R1- Consideration of Old Business.
Introduction of Employees
Discussion of Upcoming Events

Item #R2- Consent Agenda.

#2a- Staff recommends entering into a Third Amendment to the Advertising Agreement with Krause Advertising for professional advertising services to provide creative ad production services and administrative account oversight for the Town marketing and special event initiatives in an amount not to exceed \$65,400. The monthly retainer has been eliminated.

Item #R3 - Appointment of a Planning and Zoning Commissioner.

Item #R4 - Presentation by and discussion with the Addison Arbor Foundation regarding the Addison Community Garden.

Item #R5 - **PUBLIC HEARING** Case 1595-SUP/Hookah Nights. Public hearing, discussion and consideration of approval of an ordinance amending the zoning on the property generally described herein by approving a Special Use Permit for a restaurant, and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption, located in a lease space at 14825 Inwood Road, on application from Mr. Arrash Pirasteh.

COMMISSION FINDINGS: The Addison Planning and Zoning Commission, meeting in regular session on March 25, 2010, voted to recommend approval of a Special Use Permit for a restaurant, and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption, subject to the following condition:

-A landscaping plan for the center, indicating either that the center will still have 20% landscaping after the landscaping is taken out for the patio, or that if the remaining landscaping is less than 20% of the site, the existing landscaping in the center will be enhanced by the addition of plant material, shall be submitted and approved by Slade Strickland prior to the issuance of a building permit for the space.

Voting Aye: DeFrancisco, Doherty, Hewitt, Oliver, Wheeler

Voting Nay: none

Absent: Wood, one seat vacant

Attachment(s):

1. Docket Map, Staff Report and Commission Findings

Recommendation:

Administration recommends denial.

Item #R6 - **PUBLIC HEARING** Case 1580-SUP/Schlotzky's Sandwiches. Public hearing, discussion and consideration of approval of an ordinance amending the zoning on the property generally described herein by approving a Special Use Permit for a

restaurant, located in a lease space at 3740 Belt Line Road, on application from Cencor Realty Services, represented by Mr. Bernard Shaw.

COMMISSION FINDINGS: The Addison Planning and Zoning Commission, meeting in regular session on March 25, 2010, voted to recommend approval of a Special Use Permit for a restaurant, subject to the following conditions:

-The landscape plan will need to be revised to describe the method for digging, transplanting and caring for the existing live oaks proposed for transplanting elsewhere on the site. A notation will need to be added to the plans to protect the root systems of the live oaks located on the north and south sides of the proposed drive during construction.

-Engineering drawings for driveway relocation and parking improvements will be required prior to receiving a permit.

Voting Aye: DeFrancisco, Doherty, Hewitt, Oliver, Wheeler

Voting Nay: none

Absent: Wood, one seat vacant

Attachment(s):

1. Docket Map, Staff Report, and Commission Findings

Recommendation:

Administration recommends approval.

Item #R7 - Discussion and consideration of approval of an Interlocal Agreement Relating to George Herbert Walker Bush Elementary School Between Dallas Independent School District and the Town of Addison, regarding the shared use and the installation and maintenance of certain school facilities and amenities, the construction of certain infrastructure improvements in connection with the DISD school, and other matters related thereto.

Attachment(s):

1. DISD Interlocal agreement
2. DISD Interlocal agreement Exhibit A

3. DISD Interlocal agreement Exhibit D

Recommendation:

Staff recommends approval.

Adjourn Meeting

Posted:

04/09/2010, 5:00PM Lea Dunn - 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: #R 2a

AGENDA CAPTION:

Staff recommends entering into a Third Amendment to the Advertising Agreement with Krause Advertising for professional advertising services to provide creative ad production services and administrative account oversight for the Town marketing and special event initiatives in an amount not to exceed \$65,400. The monthly retainer has been eliminated.

FINANCIAL IMPACT:

Funds are available in the approved 2009-10 FY Hotel Fund for these expenditures.

Cost \$ 65,400

BACKGROUND:

In an effort to reduce expenses in the Hotel Fund, staff and Krause have agreed to a reduction in scope and fees. Staff is recommending eliminating the previous monthly retainer of \$7,500/month and moving to project-by-project accounting and billing method which will save the Town approximately \$90,000 annually.

See attached memo for detailed expenditures for each Addison Special Event.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

[Krause Cost Detail](#)

[Krause Agreement](#)

Type:

Cover Memo

Cover Memo

Council Agenda Item: #R 2a....continued

In addition, we recommend approving the following advertising (internal creative labor costs) expenditures for each Addison special event:

| | <u>2010 Costs</u> | <u>2009 Actual Costs</u> |
|-----------------------|--------------------------|---------------------------------|
| Taste Addison | \$26,000 | \$39,000 |
| KaboomTown | \$3,400 | \$5,200 |
| Oktoberfest | \$23,000 | \$36,000 |
| WorldFest | \$13,000 | \$22,500 |
| <i>Total</i> | <i>\$65,400</i> | <i>\$102,700</i> |
| <i>Savings</i> | | <i>\$37,300</i> |

If the Town decides to pursue additional advertising professional services from Krause beyond the scope of this contact, Krause will submit separate cost estimates for such work. An example of this type of work would be creative design services like the recent Super Bowl 45 ad design which Krause executed for \$3,280.

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

THIRD AMENDMENT TO ADVERTISING AGREEMENT

This Third Amendment to Advertising Agreement (“Third Amendment”) is made as of April __, 2010 (“Effective Date”) by and between the Town of Addison, Texas (the “City”) and Krause Advertising, Inc., a Texas corporation (“Krause”) (the City and Krause are herein sometimes referred to together as the “parties” and individually as a “party”).

Recitals:

1. The City and Krause previously entered into an agreement entitled “Advertising Agreement” (the “Original Agreement”) dated October 1, 2007, pursuant to which Krause has provided to the City advertising services as requested by the City. The Advertising Agreement was amended by that First Amendment to Advertising Agreement made as of January 22, 2008 (“First Amendment,” to address a branding research project provided to the City by Krause), and by that Second Amendment to Advertising Agreement made as of February 24, 2009 (“Second Amendment,” to address certain amendments to the Original Agreement). The Original Agreement, as amended, is herein referred to as the “Advertising Agreement.”

2. Subject to the terms and conditions of the Advertising Agreement, the Advertising Agreement was to be in effect for a period of three (3) years, beginning October 1, 2007 and ending September 30, 2010. As set forth herein, the parties desire to extend the term of the Advertising Agreement through September 30, 2011 and to amend and modify the compensation provisions of the Advertising Agreement for that period of time.

NOW, THEREFORE, for and in consideration of the above and foregoing premises, the mutual promises and covenants contained herein, and other good and valuable consideration, the Town of Addison, Texas and Krause Advertising, Inc. do contract and agree as follows:

Section 1. Incorporation of Premises. The above and foregoing premises are true and correct and are incorporated herein in their entirety.

Section 2. Amendment. The Advertising Agreement is modified and amended as set forth below. Capitalized words and phrases used but not defined herein have the meaning given to them in the Advertising Agreement.

A. *Term.* From and after the Effective Date and through September 30, 2011 (the “Remaining Term”), Krause will provide advertising Services to the City in accordance with the Advertising Agreement as further amended by this Third Amendment.

B. *Services; Compensation.*

1. Special Events.

(a) During the Remaining Term, Krause will provide advertising Services, as requested from time to time by the City, for each of the following special events of the City: Taste Addison (scheduled to be held May 21 – 23, 2010), Addison Kaboom Town! (scheduled to be held July 3, 2010), Addison Oktoberfest (scheduled to be held September 16 – 19, 2010), and Addison WorldFest (scheduled to be held October 23 – 24, 2010) (collectively the “Events” and each individually an “Event”).

(b) For the Services provided by Krause for each of the Events and in accordance with the terms and provisions hereof, the City will pay to Krause the following amounts:

| <u>Event</u> | <u>An Amount Not To Exceed:</u> |
|----------------------|---------------------------------|
| Taste Addison | \$26,000.00 |
| Addison Kaboom Town! | \$3,400.00 |
| Addison Oktoberfest | \$23,000.00 |
| Addison WorldFest | \$13,000.00 |

For each of the Events, such amounts will cover, among other things, all of Krause’s internal labor, marketing consultation and planning, and media planning, attendance (as may be requested by the City) at meetings regarding the Services as may be requested by the City, and the fulfillment of image and file requests, and other administrative duties in connection with the Services.

(c) Following the provisions of Services each month, Krause will submit to the City an invoice for the Services performed by Krause during the immediately prior month. The amount of each invoice shall reflect a proportionate share of the maximum amount set forth above for each Event, it being the intent that the amount of an invoice for Services provided for a particular Event shall be proportionate to the amount of Services actually provided (e.g., if 40% of the Services for Taste Addison is provided in April, 2010, the invoice issued by Krause in May, 2010 would reflect an amount proportionate to those Services, or 40% of \$26,000, or \$10,400.00).

Each invoice shall be submitted to the City by Krause no later than the tenth day of each month, and shall include (i) a description of the Services performed, separately delineating the same for each of the respective Events, and (ii) identification of all costs or expenses incurred by Krause in connection with the applicable advertising Services which are eligible for reimbursement from the City. Krause will provide any such additional documents, materials and/or information as the City may request in connection with the invoice and/or the compensation to be paid to Krause, including, without limitation, copies of all receipts and invoices in support of the costs or expenses incurred by Krause.

2. Other Services; Costs.

(a) In addition to the advertising Services described in Section 2.B.1., above, during the Remaining Term Krause will provide additional advertising Services as may be requested from time to time by the City. Such additional advertising Services may include, among other things, general marketing consultation and attendance at social marketing meetings.

(b) Prior to providing any additional advertising Services, Krause will provide to the City a separate cost estimate for the same (such estimate to include, among other things and as needed, Krause's internal labor charges, costs of advertisements, and costs of collateral materials, outside (third-party) production costs and media).

The cost estimate for work on a project for advertising Services may include a flat fee for Krause's internal labor. If an estimate does not include a flat fee, the estimate will reflect the number of hours anticipated by Krause to perform the requested advertising Services and Krause's hourly rates for such services (which hourly rates are set forth in Exhibit A attached hereto and incorporated herein).

Notwithstanding the provisions of this subsection (b), in some instances an estimate for additional advertising Services may not be feasible or practicable. If the City shall request additional advertising Services from Krause, Krause will inform the City whether or not an estimate can be provided.

(c) Krause shall not commence any additional advertising Services until the City has approved the scope of and the cost estimate for the same (or if a cost estimate is not feasible or practicable, until the City has directed Krause to commence). Such approval may include a condition that the estimate not be exceeded without the prior written approval of the City.

(d) An invoice for additional advertising Services (and any costs or expenses related thereto) shall be submitted to the City in the same manner and according to the same process and procedure for invoices for Events as set forth in Section 2.B.1., above. If additional advertising Services are provided for which an estimate was not feasible or practicable, the invoice shall identify the Krause personnel who worked to provide the Services, the number of hours worked by such personnel in providing such Services, and the hourly rate of the personnel.

3. Costs and Expenses.

(a) In connection with the provision of advertising Services for the Events and for all other advertising Services, Krause may have need to retain the services of third-parties to provide various work or services, such as scans, photography, illustrations, and printing services. The amounts incurred by Krause in retaining such third-party services shall be eligible for reimbursement by the City, provided Krause has first submitted to the City a description of such third-party services and the estimated cost thereof, and the City has

approved the same in writing. In connection therewith, the City may require that the amount to be paid for third-party services not exceed a certain amount without the City's further written consent.

All scans, photography, illustrations, printing, and any other outside (third-party) suppliers engaged by Krause on the City's behalf and with the City's prior written consent will be invoiced to Krause and billed to the City with a production management fee equal to 15% of the gross cost thereof. This production management fee is intended to and will cover Krause's time to identify qualified vendors, submit bid sheets, analyze proposals, award the work, oversee and manage the process, provide quality control, and supervise the final production of materials.

(b) In addition to the work and services of such third-party providers, Krause may incur internal costs and expenses in providing advertising Services to the City, such as costs for copying, postage, and long distance telephone. Such costs and expenses are eligible for reimbursement by the City, and shall be in accordance with the schedule of charges set forth in Exhibit B attached hereto and incorporated herein. In connection with any advertising Services provided by Krause hereunder, the City may require that the amount of such internal costs and expenses not exceed a certain amount without the City's further written consent.

(c) All costs and expenses eligible for payment or reimbursement by the City shall be detailed and delineated in each invoice submitted to the City.

4. Provisions Applicable to All Services.

(a) All advertising Services provided by Krause include two rounds of revisions. For all additional revisions as may be requested by the City, Krause will, prior to providing further revisions, provide to the City an estimate of the cost for all of Krause's time and expenses, together with any third-party services in connection therewith. Krause shall not provide any further revisions until such time as the City has approved such estimate in writing.

(b) Krause shall not provided any advertising Services hereunder, or engage the services or work of any third person or entity, until the same has been approved in writing by the City.

(c) Subject to the terms and conditions of the Advertising Agreement, and including this Third Amendment, the City will pay an invoice submitted by Krause within thirty (30) days following the date of the City's receipt of the invoice and all of the additional documents, materials and/or information (if any) requested by the City from Krause.

(d) The City's obligation to pay the advertising Services of Krause and expenses and costs related thereto under this Agreement is subject to the annual appropriation and budgeting of funds by the City to pay the same.

(e) Any provision hereof to the contrary notwithstanding, the City shall not be obligated to make payment to Krause hereunder if:

(i) Krause is in default of any of its obligations under this Agreement or any other documents in connection with the Services (and payment may be withheld to the extent of any such default);

(ii) Any part of such payment is attributable to any work or Services of Krause which are not performed in accordance with this Agreement;

(iii) Krause has failed to make payment promptly to subcontractors or consultants or other third parties used by Krause in connection with Krause's Services or other work hereunder for which the City has made payment to Krause; or

(iv) If the City, in its good faith judgment and after consultation with Krause, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the applicable advertising Services under this Agreement, no additional payments for such Services will be due Krause hereunder unless and until Krause performs a sufficient portion of such Services so that such portion of the compensation remaining unpaid is determined by City to be sufficient to complete such Services.

Section 3. No Third Party Beneficiaries. The Agreement, and all amendments thereto (including this Third Amendment) are solely for the benefit of the parties hereto and are not intended to and shall not create or grant any rights, contractual or otherwise, to any third person or entity.

Section 4. No Other Amendments. Except to the extent modified or amended herein, all other terms, conditions, standards, and obligations of the Advertising Agreement shall remain unchanged and in full force and effect. To the extent of any conflict between this Third Amendment and the Original Amendment, the First Amendment and the Second Amendment, the terms and provisions of this Third Amendment shall control. Without limiting the foregoing, the City and Krause agree that all provisions of the Advertising Agreement, including provisions relating to termination, breach or default of the Advertising Agreement and City remedies for such breach or default, and indemnity obligations and provisions, shall apply to the terms, conditions and provisions of this Third Amendment.

Section 5. Effective Date; Extension of Term. This Third Amendment shall take effect on April 14, 2010. The term of the Advertising Agreement, including as amended by this Third Amendment, is hereby extended for a one year period following September 30, 2010, so that, subject to the earlier termination of the same and subject to the annual appropriation and budgeting of funds by the Town to make payments under the same, it shall end on September 30, 2011. If funds to make any payment or payments under the Advertising Agreement, including as amended by this Third Amendment, are not appropriated and budgeted by the Town, the said Advertising Agreement shall terminate.

Section 6. Authority to Execute. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Amendment on behalf of the parties hereto.

IN WITNESS WHEREOF, the undersigned parties execute this First Amendment To Advertising Agreement effective as of the date first set forth above.

TOWN OF ADDISON, TEXAS

Krause Advertising, Inc.

By: _____
Ron Whitehead, City Manager

Date: _____

By: _____
Typed/printed Name: _____
Title: _____
Date: _____

EXHIBIT A

Krause Hourly Rate Schedule

| | |
|-------------------------|---------------|
| Jim Krause/Principal | \$225.00/hour |
| Creative Director | \$200.00/hour |
| Assoc Creative Director | \$175.00/hour |
| Sr Acct Executive | \$175.00/hour |
| Account Executive | \$150.00/hour |
| Asst Acct Executive | \$75.00/hour |
| Production Manager | \$150.00/hour |
| Production Artist | \$150.00/hour |

EXHIBIT B

Krause Schedule of Rates and Charges

Color copies \$10.00 / copy (each page)

Proofreading \$60.00 / hour

All deliveries and travel expenses will be billed at actual cost (travel expenses are limited to automobile travel in Dallas County, Texas, and will be billed according to relevant mileage reimbursement guidelines issued by the Internal Revenue Service; travel expenses outside of Dallas County shall not be reimbursed unless the same has first been approved in writing by the City)

Council Agenda Item: #R3

AGENDA CAPTION:

Appointment of a Planning and Zoning Commissioner.

FINANCIAL IMPACT:

No Financial Impact

BACKGROUND:

Commissioner Neil Resnik resigned from the Planning and Zoning Commission to run for City Council. Commissioner Resnik was appointed by Councilmember Kimberly Lay.

RECOMMENDATION:

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

Type:

No Attachments Available

Council Agenda Item: #R4

AGENDA CAPTION:

Presentation by and discussion with the Addison Arbor Foundation regarding the Addison Community Garden.

FINANCIAL IMPACT:

NA

BACKGROUND:

na

RECOMMENDATION:

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

Type:

No Attachments Available

Council Agenda Item: #R5

AGENDA CAPTION:

PUBLIC HEARING Case 1595-SUP/Hookah Nights. Public hearing, discussion and consideration of approval of an ordinance amending the zoning on the property generally described herein by approving a Special Use Permit for a restaurant, and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption, located in a lease space at 14825 Inwood Road, on application from Mr. Arrash Pirasteh.

COMMISSION FINDINGS: The Addison Planning and Zoning Commission, meeting in regular session on March 25, 2010, voted to recommend approval of a Special Use Permit for a restaurant, and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption, subject to the following condition:

-A landscaping plan for the center, indicating either that the center will still have 20% landscaping after the landscaping is taken out for the patio, or that if the remaining landscaping is less than 20% of the site, the existing landscaping in the center will be enhanced by the addition of plant material, shall be submitted and approved by Slade Strickland prior to the issuance of a building permit for the space.

Voting Aye: DeFrancisco, Doherty, Hewitt, Oliver, Wheeler

Voting Nay: none

Absent: Wood, one seat vacant

FINANCIAL IMPACT:

No budget impact

BACKGROUND:

None

RECOMMENDATION:

Administration recommends denial.

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

[Docket Map, Staff Report and Commission Findings](#)

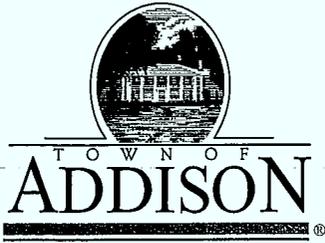
Type:

Backup Material

1595-SUP

PUBLIC HEARING Case 1595-SUP/Hookah Nights. Requesting 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 in a lease space at 14825 Inwood Road, on application from Mr. Arrash Pirasteh.





DEVELOPMENT SERVICES
(972) 450-2880 Fax: (972) 450-2837

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

March 11, 2010

STAFF REPORT

RE: Case 1595-SUP/Hookah Nights

LOCATION: 14825 Inwood Road

REQUEST: 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 only

APPLICANT: Hookah Nights, represented by Mr. Arrash Pirasteh

DISCUSSION:

Background. This lease space was originally part of the Buckhorn Liquor Store. Several years ago, Buckhorn reduced the size of its store, and converted the eastern 4,200 square feet of the building into a 4,200 square-foot cabinet shop. The cabinet shop has been out of business for several months. At this point, Mr. Arrash Pirasteh plans to take over the cabinet shop and convert it into a Hookah Restaurant which will offer the ability to have food and smoke flavored tobaccos from a hookah, or water pipe. There has previously been a Hookah Restaurant in town, the Velvet Hookah, which closed a couple of years ago. In addition, there are hookah pipes smoked at El Amir and at Sidewalk Café in Addison Circle.

Proposed Plan. The applicant indicated on the application that the proposed space was 3,200 square feet. The floor plan submitted shows the space as being scaled at 1" = 100 feet. However, the staff believes the 1/100 to be an error. The staff measured the doors and other fixtures in the space, and believes it to be drawn at 1" = 10 feet. According to the plans submitted, the proposed space is approximately 4,200 square feet with an 832 square foot patio on the east end of the building. This makes the total restaurant square footage 5,032 square feet. The restaurant would feature waiters with table service.

Parking. Parking is provided and required as follows:

| Use | Parking Ratio | Square Footage | Parking Required |
|--------------------------------------|---------------|----------------|------------------|
| Restaurant Square Footage with patio | 1/100 | 5,032 | 50 spaces |
| Retail Square Footage | 1/200 | 4,238 | 21 spaces |
| Total Parking Required | | | 71 spaces |
| Total Parking Provided | | | 58 spaces |
| # of spaces short of requirement | | | 13 spaces |

According to the staff's calculations, based on the plans submitted by the applicant, the site does not have sufficient parking for the restaurant.

Landscaping. The Parks Director notes that the applicant will need to submit a landscape plan with calculations that show the gross site area versus what he intends to provide as landscaping in accordance with the current landscape regulations. The voered landscape area is proposed as a patio; thus reducing the landscape coverage for the site. There is a 20 percent landscape requirement for this site. The site has an existing irrigation system, but it will need to be brought up to current standards as well.

RECOMMENDATION:

Staff has a concern about adding a restaurant to this location. It does not have sufficient parking, and the staff does not believe, when the calculations have been submitted, that it will have the required 20% landscaping. The Commission may remember that it considered a request from Cantina Laredo last month that had a similar circumstance. It was short parking and landscaping. However, that was a request to add a patio to an existing restaurant that had been in business at the same location since 1984. This request is to introduce a new restaurant into a property that has not had a restaurant, and is in an area where historically, restaurants have not done well.

The area on Inwood, south of Belt Line has long been the area where stores could sell alcoholic beverages – both beer and wine and distilled spirits. There has been a conscious effort by the Town to brand this area as the Addison Beverage Center. There have been restaurants in this center in the past, and they have struggled. There was a restaurant where Goody-Goody Liquor is now, and the Italian Club now occupies the site of the former Hannah Japanese Restaurant. The Queen of Sheba Ethiopian restaurant is still in this center, but it was opened several years ago and the lease space it occupies has experienced a lot of turnover. There is a caterer who has been in business in the center for a while, and might add a sandwich bar for lunch patrons, but on the whole, the Town is not encouraging the developments of restaurants in the Addison Beverage District.

It is very expensive to fit out a restaurant space. Items such as a grease trap, vent hood, and fire suppression system make a restaurant lease space expensive to develop

the first time, and then difficult to lease to any other type of use if the restaurant closes. The staff looked at the inventory of empty restaurants in Town, and noted that there are currently 13 other restaurant spaces in Town that are currently vacant and could be re-opened as restaurants. The staff believes that this Hookah concept would be better served by looking at one of those locations rather than developing a new restaurant in a marginal location for restaurants.

Staff recommends denial of this request.

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 25, 2010, voted to recommend approval of a Special Use Permit for a restaurant, and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption, subject to the following condition:

-A landscaping plan for the center, indicating either that the center will still have 20% landscaping after the landscaping is taken out for the patio, or that if the remaining landscaping is less than 20% of the site, the existing landscaping in the center will be enhanced by the addition of plant material, shall be submitted and approved by Slade Strickland prior to the issuance of a building permit for the space.

Voting Aye: DeFrancisco, Doherty, Hewitt, Oliver, Wheeler

Voting Nay: none

Absent: Wood, one seat vacant

Memorandum

Date: March 3, 2010
To: Carmen Moran, Director of Development Services
From: Slade Strickland, Director of Parks and Recreation
Subject: **SUP - Hookah nights**

The applicant will need to submit a landscape plan with calculations that show the gross site area versus what they intend to provide as landscaping in accordance with the current landscape regulations. The covered landscape area is proposed as a patio; thus, reducing the landscape coverage. There is a 20 percent landscape requirement for this site.

The site has an existing irrigation system, but it will need to be brought up to current standards as well.

Addison!

March 8, 2010

To: Carmen Moran, Director, Development Services

From: Neil Gayden, Environmental Services Official

Re: Zoning Case 1580-SUP/Schlotzsky's Sandwiches

Zoning Case 1595-SUP/Hookah Nights

Both of these proposed cases involve lease spaces that have never been occupied by a foodservice related business. Applicants should be aware that all improvements to areas of the building space associated with food and beverage preparation, service, storage, ware washing, etc. must be done in accordance with the Texas Food Establishment Rules and as modified by Town of Addison ordinance. We are available to assist applicants in accessing that information and answering any questions that may arise.

Council Agenda Item: #R6

AGENDA CAPTION:

PUBLIC HEARING Case 1580-SUP/Schlotzky's Sandwiches. Public hearing, discussion and consideration of approval of an ordinance amending the zoning on the property generally described herein by approving a Special Use Permit for a restaurant, located in a lease space at 3740 Belt Line Road, on application from Cencor Realty Services, represented by Mr. Bernard Shaw.

COMMISSION FINDINGS: The Addison Planning and Zoning Commission, meeting in regular session on March 25, 2010, voted to recommend approval of a Special Use Permit for a restaurant, subject to the following conditions:

-The landscape plan will need to be revised to describe the method for digging, transplanting and caring for the existing live oaks proposed for transplanting elsewhere on the site. A notation will need to be added to the plans to protect the root systems of the live oaks located on the north and south sides of the proposed drive during construction.

-Engineering drawings for driveway relocation and parking improvements will be required prior to receiving a permit.

Voting Aye: DeFrancisco, Doherty, Hewitt, Oliver, Wheeler

Voting Nay: none

Absent: Wood, one seat vacant

FINANCIAL IMPACT:

No Financial Impact

BACKGROUND:

None

RECOMMENDATION:

Administration recommends approval.

COUNCIL GOALS:

N/A

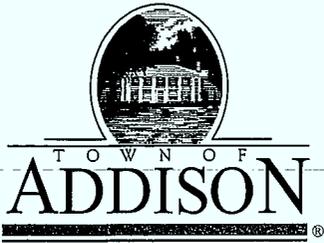
ATTACHMENTS:

Description:

[Docket Map, Staff Report, and Commission Findings](#)

Type:

Backup Material



March 10, 2010

STAFF REPORT

RE: Case 1580-SUP/Schlotzky's Sandwiches

LOCATION: 3740 Belt Line Road

REQUEST: Approval of a Special Use Permit for a restaurant.

APPLICANT: Cencor Realty Services, represented by Mr. Bernard Shaw

DISCUSSION:

Background. This case was originally filed in June of 2009. At that time, the applicant was proposing a driveway on the west side of the site that was 85 feet from the intersection of the private drive into the site and Belt Line Road. The staff felt that the new driveway was too close to Belt Line. In addition, the new driveway would cause two trees to be removed from the site. The staff recommended that the restaurant SUP be approved, but without the new driveway. The applicant withdrew the request before it went to the Planning and Zoning Commission meeting.

At this point, the applicant has returned with a revised request which moves the driveway to a distance of 125 feet from Belt Line, and calls for two trees to be removed, but relocated to another location on the site.

Proposed Plan. The applicant in this request is actually the leasing agent for the center. The leasing company is planning to re-model a former Pay-Less Shoe Store into a drive-thru restaurant. The plan is to move Schlotzky's Sandwiches into the space as a tenant, but if the leasing agent cannot make a deal with Schlotzky's Sandwiches, then it would seek another tenant for a sandwich-style restaurant. Since the SUP would go to the space, not the operator, the leasing agent has designed a standard sandwich shop floor plan that could be utilized by almost any sandwich/fast food operator. The applicant is seeking a Special Use Permit for a restaurant only, not a SUP for alcoholic beverages.

The floor plan indicates the proposed lease space will be 2,841 square feet. It will provide a drive-through on the south side (rear) of the building. The plan indicates

counters for ordering and picking up orders and for self-service beverages. The plan also indicates a 350 square-foot patio area.

Facades. The applicant is not showing any changes to the existing glass store-front facades.

Parking. The restaurant must provide parking at a ratio of one space per 70 square feet of floor area in the restaurant, including exterior patios. The restaurant, plus patio area, totals 3,191 square feet and will require 46 spaces. In addition, the site must provide one space per 200 square feet for all remaining retail uses. The site requires 86 spaces for all tenants, and it provides 87 spaces – one above the requirement.

Public Works. The Public Works Department has reviewed the revised site plan, which moves the new driveway to the south a distance of 125 feet from the intersection with Belt Line Road. The staff feels this is a sufficient distance. The driveway is actually owned by the Target store to the south of this site, and the applicant has submitted a letter from Target approving the new curb cut.

Landscaping. The landscaping for this center is already in place. The Parks Department notes that in the revised plan, two trees will be removed. One is a 12-inch Live Oak that would be removed to add the proposed new driveway. The other is an 8-inch Cedar Oak that would be removed to add the drive-through window. The applicant has agreed to relocate those trees to the east end of the site, adjacent to Babies 'R Us. The landscape plan will need to be revised to describe the method for digging, transplanting and caring for the existing live oaks proposed for transplanting elsewhere on the site. A notation will need to be added to the plans to protect the root systems of the live oaks located on the north and south sides of the proposed drive during construction.

Food Service Code. Neil Gayden notes that this space has never been occupied by a foodservice related business. The restaurant will be subject to all regulations contained in the Addison Food Service Ordinance, including the requirement for a grease trap.

Signage. The applicant has not shown sample signs on the facades. The applicant should be aware that all signage for the restaurant must comply with the requirements of the Addison Sign Ordinance.

RECOMMENDATION:

Staff recommends approval of the Special Use Permit for a restaurant subject to the following condition:

- The landscape plan will need to be revised to describe the method for digging, transplanting and caring for the existing live oaks proposed for transplanting elsewhere on the site. A notation will need to be added to the plans to protect

the root systems of the live oaks located on the north and south sides of the proposed drive during construction.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C Moran". The signature is stylized with a large, looped "C" and a more fluid, less legible "Moran".

Carmen Moran
Director of Development Services

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on March 25, 2010, voted to recommend approval of a Special Use Permit for a restaurant, subject to the following conditions:

-The landscape plan will need to be revised to describe the method for digging, transplanting and caring for the existing live oaks proposed for transplanting elsewhere on the site. A notation will need to be added to the plans to protect the root systems of the live oaks located on the north and south sides of the proposed drive during construction.

-Engineering drawings for driveway relocation and parking improvements will be required prior to receiving a permit.

Voting Aye: DeFrancisco, Doherty, Hewitt, Oliver, Wheeler

Voting Nay: none

Absent: Wood, one seat vacant



Kristine Williams
Real Estate Analyst
Direct Dial: (612) 761-7124
Fax: (612) 761-3735
Email: kris.williams@target.com

January 7, 2010

Via: Email and US Mail

Cencor Realty Services
3102 Maple Avenue, Suite 500
Dallas, TX 75201
Attn: Bernard Shaw

**Re: Target Store T1850
Addison, TX
Request for approval Schlotzky's new curb cut**

Dear Mr. Shaw:

Reference is made to that certain Operation and Easement Agreement dated February 14, 2003 by and between Target Connect, Inc. ("Target") and The Commons at Cliff Creek, Ltd ("Developer") recorded as Document No. 2199857 in the official public records of Dallas County, Texas (the "OEA"). Target has received your request to add a curb cut along the western side of Lot 1, Block D onto the access drive, as depicted on the attached Exhibit A. The curb cut is intended to benefit a proposed Schlotzky's restaurant located on said Lot 1, Block D.

Pursuant to Section 3.2(F) of the OEA, Target hereby approves the new curb cut and modification to the common area as depicted on Exhibit A, subject to these conditions:

- a) Target's receipt of detailed elevations depicting proposed exterior modifications to the Building pursuant to Section 3.3 (B), submitted in compliance with Exhibit D, of the OEA.
- b) Target's receipt of proposed Schlotzky's signage, pursuant to Section 5.3 of the OEA.
- c) Developer may modify Common Area as depicted on Exhibit A provided however, such construction shall be in accordance with all provisions of the OEA.
- d) In the event the curb cut has not been completed and Schlotzky's has not opened for business with the public on or before February 1, 2011, this consent shall automatically expire on said date.

January 7, 2010
Page Two
Schlotzky's Curb Cut

- e) Such consent is not intended to, and shall not be construed to, amend or modify the OEA in any way whatsoever, and such consent shall not be deemed to release or discharge any person or party from liability for all of the obligations to be performed by such person or party under the OEA.

Please feel free to contact me if you have any questions.

Sincerely,



Kristine Williams
Real Estate Analyst

Memorandum

Date: March 3, 2010
To: Carmen Moran, Director of Development Services
From: Slade Strickland, Director of Parks and Recreation
Subject: **SUP - Schlotsky's**

The landscape plan will need to describe the method for digging, transplanting and caring for the existing live oaks proposed for transplanting elsewhere on the site. A notation will need to be added to the plans to protect the root systems of the live oaks located on the north and south sides of the proposed drive during construction.

Carmen Moran

From: Clay Barnett
Sent: Friday, March 19, 2010 11:55 AM
To: Carmen Moran
Cc: Nancy Cline
Subject: Schlozky's Comments

Carmen,

Two comments on Schlozky's:

1. Engineering drawings for driveway relocation and parking improvements will be required prior to receiving a permit.
2. A Letter of Acceptance is required from the property owner on which the driveway is being relocated stating that these revisions are acceptable.

If you have any questions, please let me know.

Thanks,
Clay Barnett, P.E.
Town Engineer
Town of Addison
16801 Westgrove Drive
Addison, TX 75001-2818
Office: (972) 450-2857

 Please consider the environment before printing this e-mail.

[Learn more at AddisonGreen.info](http://AddisonGreen.info)

Addison!

March 8, 2010

To: Carmen Moran, Director, Development Services

From: Neil Gayden, Environmental Services Official

Re: Zoning Case 1580-SUP/Schlotzsky's Sandwiches

Zoning Case 1595-SUP/Hookah Nights

Both of these proposed cases involve lease spaces that have never been occupied by a foodservice related business. Applicants should be aware that all improvements to areas of the building space associated with food and beverage preparation, service, storage, ware washing, etc. must be done in accordance with the Texas Food Establishment Rules and as modified by Town of Addison ordinance. We are available to assist applicants in accessing that information and answering any questions that may arise.

Council Agenda Item: #R7

AGENDA CAPTION:

Discussion and consideration of approval of an Interlocal Agreement Relating to George Herbert Walker Bush Elementary School Between Dallas Independent School District and the Town of Addison, regarding the shared use and the installation and maintenance of certain school facilities and amenities, the construction of certain infrastructure improvements in connection with the DISD school, and other matters related thereto.

FINANCIAL IMPACT:

For the proposed construction of the trail and campus improvements, DISD has committed to pay \$261,000. The Town's share for those improvements is estimated to be \$619,000. For the improvements to Spring Valley, DISD has committed to pay 50% of the estimated construction costs of Section A (see Exhibit D) and 33% of Section B and the dedication of all ROW on the north side of Spring Valley. Grant funds, park capital project funds and bond funds are available.

BACKGROUND:

The proposed interlocal agreement between DISD and the Town provides for the construction of the various improvements, and the shared use of certain facilities and improvements by DISD and the Town. In addition the agreement articulates the landscaping maintenance responsibilities.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

Promote Quality Transportation Services, Pursue the Finest Educational Offerings for the Community, Provide Quality Leisure Opportunities, Work to instill a "Sense of Community" in Addison's residents

ATTACHMENTS:

Description:

- [DISD Interlocal agreement](#)
- [DISD Interlocal agreement Exhibit A](#)
- [DISD Interlocal agreement Exhibit D](#)

Type:

- Cover Memo
- Cover Memo
- Cover Memo

**INTERLOCAL AGREEMENT RELATING TO
GEORGE HERBERT WALKER BUSH ELEMENTARY SCHOOL
BETWEEN
DALLAS INDEPENDENT SCHOOL DISTRICT AND TOWN OF ADDISON**

This Interlocal Agreement Relating to George Herbert Walker Bush Elementary School ("Agreement") is made and entered into by and between THE TOWN OF ADDISON, a Texas municipality, ("Addison") and DALLAS INDEPENDENT SCHOOL DISTRICT, a political subdivision of the State of Texas ("District") (Addison and District are sometimes referred to herein together as the "Parties" and individually as a "Party").

RECITALS

WHEREAS, Addison is a home rule city operating under and pursuant to Article 11, Section 5 of the Texas Constitution and its Home Rule Charter; and

WHEREAS, pursuant to a bond election held May 10, 2008, the District intends to build a new elementary school to be called George Herbert Walker Bush Elementary School (the "School") within the portion of the District located within the boundaries of the Town of Addison; and

WHEREAS, the District intends to build the School on a portion of a 41.33 acre tract of property owned by the District within the municipal boundaries of the Town of Addison located at 3939 Spring Valley Road and known generally as the Alfred P. Loos Complex ("Loos"); and

WHEREAS, the portion of Loos on which the District intends to build the School is comprised of approximately 17.3 acres of land and is shown and described in Exhibit "A" attached hereto and incorporated herein for all purposes (such 17.3 acres of land being the referred to herein as the "Premises," and being the portion of Loos which is the subject of this Agreement); and

WHEREAS, Addison desires to provide services and project enhancements to the Premises in exchange for agreed upon community use of the Premises and the School by Addison and its residents, including but not limited to recreational uses and other governmental purpose uses; and

WHEREAS, TEX. LOC. GOV'T CODE ANN. §332.021(a), authorizes any two political subdivisions including municipalities and independent school districts, that are located in the same or adjacent counties to jointly by agreement establish, provide, maintain, construct, and operate playgrounds, recreation centers, athletic fields,

swimming pools, and other park or recreation facilities located on property owned or acquired by either political subdivision; and

WHEREAS, TEX. GOV'T CODE ANN. Chapter 791, the Interlocal Cooperation Act, authorizes a local government to contract or agree with another local government to perform governmental functions and services, including parks and recreation, under the terms of said act; and

WHEREAS, Addison and District desire to enter into this cooperative agreement that will allow the provision of much needed and improved recreational facilities to the citizens of Addison and District's students, faculty and staff, while sharing certain costs of improvements, development, maintenance and/or operation, and thereby maximize the resources available to both entities and utilization of said resources.

NOW, THEREFORE, Addison and District, for the mutual terms and consideration stated herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, do covenant and agree as follows:

ARTICLE I.
TERM

The term of this Agreement shall be forty (40) years, beginning on the execution date of this Agreement (the "Effective Date") and ending on the fortieth (40th) annual anniversary date of said Effective Date, unless terminated at an earlier date in accordance with the terms of this Agreement.

ARTICLE II.
RENEWAL TERM

If not then in default under this Agreement beyond any applicable cure period, Addison may renew this Agreement, at its option, on the same terms and conditions for two consecutive ten-year periods. Addison may exercise these renewal options for a particular renewal period by written notice to District not sooner than two hundred seventy (270) days, nor later than sixty (60) days, before the end of the immediately preceding term or renewal period, as the case may be. At the end of the second renewal term, if not then in default under this Agreement beyond any applicable cure period, Addison at its option may renew this Agreement annually for as long as the District shall continue to operate a school on its property located on Spring Valley Road by written notice to the District not later than sixty (60) days before the end of the immediately preceding term.

ARTICLE III.
IMPROVEMENTS

3.1 *District's Improvements.* District, at its sole cost and expense, will design and construct on the Premises the School and related improvements including but not limited to parking and facilities. The District intends to build the School according to its adopted educational specifications. In addition, in exchange for the agreements and consideration of Addison described in this Agreement, District agrees to include and maintain certain other items and enhancements to the School and the Premises. These items are identified in the list entitled "District Scope" contained on Exhibit "B" attached to this Agreement and incorporated herein for all purposes and are and constitute playgrounds, athletic fields, and/or other recreation facilities located on property owned by the District.

3.2 *Addison's Improvements.* To enhance and improve the recreational facilities within Addison, Addison will construct the items identified in the list entitled "Addison Scope" contained on Exhibit "B" attached to this Agreement and incorporated herein for all purposes. In addition, and to enhance and improve the recreational facilities within Addison, Addison will provide annual maintenance and landscaping to the Premises as defined within Exhibit "B".

3.3 *Modification.* Any material modification, including changes, additions, or deletions, that either Party wishes to make to the School or Premises is subject to the other Party's prior written approval, such approval not to be unreasonably withheld.

3.4 *Construction Standard.* Each Party agrees that its work required by this Agreement will be performed in a good and workmanlike manner and in accordance with all applicable laws, codes and regulations of all government authorities having jurisdiction and the requirements of this Agreement.

3.5 *Ownership of Improvements.*

(a) Except as otherwise provided for herein, District shall own all improvements, equipment and fixtures placed upon or within or otherwise comprising the Premises and the School, including all improvements required of either Party by this Agreement located within the Premises or the School. If Addison wishes to place personal property, removable fixtures, and/or equipment (collectively, "personalty") used in the conduct of activities by Addison or the District on or in the Premises of the School (e.g., bleachers), such personalty shall not become part of the real property, but shall retain its status as personal property and shall, unless otherwise agreed, remain the property of Addison; without limitation, for purposes of this Agreement, shade structures identified in the attached Exhibit "B" constitute such personalty. Such personalty may be removed by Addison at any time and so long as any damage to the Premises or the School occasioned by such removal is thereupon repaired. Such personalty shall be listed in Exhibit "C" to this Agreement, which may be amended,

modified or supplemented from time to time hereafter as necessary (and, if, subject to the provisions of this Agreement, any personal property, removable fixtures, and/or equipment not listed in Exhibit "C" on the Effective Date is placed on or within the Premises by Addison and is designated by Addison as personalty, District agrees to recognize such designation and the Parties will amend Exhibit "C" accordingly). Other than Addison's personalty, all fixtures, equipment, and improvements constructed, installed, or placed upon the Premises or the School shall be deemed to become part of the real property and shall become the sole and exclusive property of District, free of any and all claims of Addison or any person or entity claiming by or through Addison (subject, however, to the provisions of subsection (b) of this Section 3.5). Notwithstanding the foregoing, neither District nor Addison shall have any obligation to place or maintain any particular inventory or array or personal property, fixtures and equipment (i.e., goals, flags, nets, bleachers, benches, etc.) in, on or about the Premises, but either Party when using the Premises may use whatever is regularly kept there by the other.

(b) If equipment, materials or other improvements, acquired at Addison's cost in whole or in part, are installed or placed on or within the Premises and, in accordance with this Section 3.5, become part of the real property and the sole and exclusive property of District, and if this Agreement is terminated prior to the expiration of 10 years (or such shorter period of time as may be agreed upon by the Parties) following the date of such installation or placement, the Parties agree to negotiate an arrangement reasonably satisfactory to each of District and Addison to allow Addison to recoup its cost in such equipment, materials or other improvements (and this provision shall survive such termination).

3.6 *Capital Improvements.* Addison and District will assess capital improvement needs on the Premises every four years and will endeavor to develop a reasonable capital improvement program for the Premises; provided, however, neither Party shall be under any obligation to expend any funds on or implement any such capital improvements program, unless first approved by their respective governing bodies. The Parties acknowledge that the capital improvements contemplated by this section do not include and are distinct from routine maintenance and repairs and casualty reconstruction and restoration. Routine maintenance and repairs are treated in Articles below.

ARTICLE IV.

USE

4.1 *Permitted Use.* Addison's (and including its citizens' and residents') use of the Premises and the School shall be scheduled in accordance with the District's regular policies and procedures with regard to scheduling use of District facilities and as specified in the attached Exhibit "B", provided however, that any uses proposed by

Addison by third party groups or entities (e.g., third party corporate entities) shall be charged in accordance with the District's normal charges and rental rates. District will make every effort to accommodate reasonable, non-interfering recreational use by the public of the Premises when not being actually used by the School.

The Parties hereby acknowledge, confirm and agree that it is their express intent and one of the primary objectives of this Agreement to maximize the actual day-to-day utilization of the Premises, for reasonable recreational and/or programmatic uses by the School and the citizens and residents of Addison. The Parties shall not exercise their rights in a manner that thwarts or impedes or can be reasonably anticipated to thwart or impede that intent and objective. To that end, neither Party shall intentionally over-reserve the Premises or the School, or attempt to lock-up unreasonably large blocks of reserved use without specific events or activities planned, scheduled or reasonably anticipated.

4.2. *Prohibited Uses.* In no event or circumstance shall Addison use the Premises or School in any manner which violates Federal, State or local laws, regulations, rules and orders, regardless of when they became effective, including without limitation, those related to health, safety, access for and accommodation of the disabled, noise, environmental protection, waste disposal and water and air quality. Addison shall not use the Premises or School in any manner that would render existing insurance, if any, thereon void. Addison shall not use or occupy the Premises or School, or permit them to be used or occupied, in any manner that would constitute a public or private nuisance or waste. Use or possession of alcohol or tobacco of any kind or firearms of any type is strictly prohibited.

4.3 *Fee Simple Title.* The Parties acknowledge that the District owns fee simple title to the Premises and School. The Parties further acknowledge that unless otherwise expressly agreed by the Parties in writing or provided in this Agreement, improvements constructed or installed in accordance with this Agreement on the Premises or the School belong to and automatically vest in District upon construction or installation without further action by either Party hereto, free and clear of all liens and other encumbrances arising by, through or under Addison, subject, however, to the terms of this Agreement. The Parties further acknowledge that unless otherwise expressly agreed by the Parties in writing or provided in this Agreement, improvements constructed or installed in accordance with this Agreement on property owned by Addison belong to and automatically vest in Addison upon construction or installation without further action by either Party hereto, free and clear of all liens and other encumbrances arising by, through or under District. Each Party agrees to take no action during the term of this Agreement that would prejudice the other Party's ownership of the improvements owned by that Party.

4.4 *Parking.* Subject to the needs of the District and the School, Addison (and including its residents and citizens) may use any available parking on the Premises including newly constructed parking within the Premises, in connection with its activities in the Premises or School. Said right to use parking is non-exclusive, shall be on a first-come-first-parked basis, but shall be subject to the needs of the District and the School. Addison shall never seek to charge a fee of drivers for the parking privileges herein provided.

4.5 *Control and supervision.* Addison is solely responsible for the control and supervision of its employees whenever Addison is using the Premises or the School. Addison assumes responsibility and liability for said use. Addison shall provide reasonable and adequate supervision and oversight at all times during its use of the Premises and the School similar to the supervision and oversight Addison provides at its other park facilities.

ARTICLE V.

OPERATION AND MAINTENANCE

5.1 *General Operation and Maintenance.* District shall operate and maintain the School and Premises in accordance with its customary and normal procedures and standards except as may be provided otherwise in the attached Exhibit "B".

5.2 Use of the Premises and the School by Addison or by any other non-District personnel or visitors, shall be subject to District's usual rules and regulations in existence from time to time as well as to Addison's own rules and regulations relating to the use of public property. Addison may impose reasonable additional rules and regulations of its own at times when Addison has access to the use of the Premises or the School, provided that they are reasonably consistent with those applicable within the District.

5.3 *Security.* District is solely responsible for the control and supervision of its students, faculty, employees, contractors, subcontractors, agents and guests and security. Addison will provide, through its Police Department, such security as Addison deems appropriate for the Premises whenever Addison is using the Premises or the School. Subject to applicable law, District police and security personnel shall have the authority to enforce all applicable statutes, ordinances and policies within the Premises and the School.

5.4 *Taxes and Assessments.* It is expressly acknowledged that Addison and District are governmental entities generally exempt from taxes, such that no ad valorem taxes are anticipated as to the Premises. Each Party will be responsible for sales and other taxes, if any, resulting from its activities involving the Premises or the School.

5.5 *Naming and Signage.* Subject to the approval of District, such approval not to be unreasonably withheld, Addison may install signs (consistent with those used generally throughout its park system) identifying the Premises as being open and available to the public. Subject to Addison's own ordinances and regulations, District shall control and must reasonably approve all signage, advertising and naming involving the Premises and the School.

ARTICLE VI.
INSURANCE AND INDEMNITY

6.1 *Insurance.* Each Party may carry such insurance or self-insurance programs as it deems advisable with respect to the Premises, the School and/or this Agreement. Any such insurance or self-insurance program maintained by a Party to this Agreement shall be for the sole and exclusive benefit of the Party carrying such insurance and/or maintaining such self-insurance program. Each party hereto waives any and all claims which arise or may arise in its favor against the other Party hereto for any and all loss of, or damages to, any of its property located within or upon, or constituting a part of the Premises or the School, to the extent that such loss or damage is recoverable under such insurance policies or programs.

6.2 *Responsibility.* It is understood and agreed between the Parties that each shall be responsible for its own acts and omissions. Where injury or property damage result from the joint or concurrent negligence of both Parties, liability, if any, shall be shared by each of the Parties on the basis of comparative responsibility in accordance with the applicable laws of the State of Texas and subject to all defenses available to them, including governmental immunity, and tort limitations. These provisions are solely for the benefit of the Parties and not for the benefit of any person or entity not a party hereto; nor shall any provision hereof be deemed a waiver of any defense, tort limitation, or immunity available by law, in equity, or otherwise.

ARTICLE VII.
AS IS, WHERE IS, AND WITH ALL FAULTS; DISCLAIMER AND WAIVER

District and Addison acknowledge and agree that, to the maximum extent permitted by law, their respective uses of the Premises and the School is on a strictly "AS IS, WHERE IS, WITH ALL FAULTS" basis. Except as otherwise expressly provided in this Agreement, neither District nor Addison has made nor does either of them make to the other any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to the Premises or the School including without limitation their suitability for any and all activities and uses which District or Addison may conduct thereon. Neither

District nor Addison has made, does not make and each specifically disclaims any representations regarding compliance with any environmental protection, pollution or land use laws, rules, regulations, orders or requirements, including the existence in or on the Premises or the School. District and Addison further acknowledge and agree that each is familiar with the Premises and surrounding area and is relying solely on its own investigation and knowledge and not on any information provided or to be provided by the other.

ARTICLE VIII.
EXISTING ENCUMBRANCES

In the event the Premises or the School, or any part thereof, is affected by any liens, restrictions, easements or other encumbrances which if enforced, utilized or foreclosed, could materially interfere with or impede District's development and use of the Premises as herein contemplated, then District shall have the right, as its sole and exclusive remedy, to terminate this Agreement by giving Addison thirty (30) days advance written notice of termination (however, as of the Effective Date, District is not aware of any such liens, restrictions, easements or other encumbrances as of the Effective Date). Addison may (but without obligation to do so) remove said liens, restrictions, easements, or other encumbrances within said 30-day period, in which event this Agreement shall not terminate. If Addison chooses to remove said liens, restrictions, easements, or other encumbrances which interfere with or impede District's development and use of the Premises and Addison money is used, then the District is required to reimburse Addison for the cost of any and all removal of the aforementioned liens, restrictions, easements or other encumbrances.

ARTICLE IX.
DEFAULT

If a Party (the "Defaulting Party") to this Agreement fails to fulfill any condition or term of this Agreement, then the other Party (the "Non-defaulting Party") may provide written notice to the Defaulting Party, identifying those areas requiring corrective action. The Defaulting Party, at its own cost and expense, shall have thirty (30) days from receipt of the notice in the event of monetary defaults to pay said amounts in full and sixty (60) days in the event of non-monetary defaults from receipt of the notice to commence and diligently pursue reasonable and necessary corrective action to remedy said matter. If, after the expiration of said period, the Defaulting Party has not reasonably cured the monetary default or commenced and diligently pursued corrective action on the non-monetary default, the Non-defaulting Party can immediately terminate this Agreement by written notice to the Defaulting Party, and/or pursue such other remedies as it may have at law and in equity, said remedies being cumulative and not exclusive of each other.

ARTICLE XI.
NOTICES

Any notice, consent, approval, request or proposal (collectively for purposes of this Article, "notice") required or permitted to be given hereunder shall be in writing and shall be considered properly given if mailed by First Class United States Mail, postage prepaid, registered or certified with return receipt requested, or by delivering same in person to the intended addressee, or by fax transmission (and if by fax transmission, such notice, etc. shall also be given by mail as set forth above). Such notice shall be effective only if and when received by the addressee. For purposes of notice, the addresses of the Parties shall be as set forth below; provided, however, either Party shall have the right to change such Party's address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days notice to the other Party in the manner set forth hereinabove:

If intended for Addison, to:

City Manager
Town of Addison
Post Office Box 9010
Addison, Texas 75001-9010
Fax: (972) 450-7043
Attn: Ron Whitehead

With a copy to:

Office of the City Attorney
Post Office Box 9010
Addison, Texas 75001-9010

If intended for District, to:

Facilities Services
3700 Ross Avenue
Dallas, Texas 75204
Attn.: Director
Fax: 972-925-5139

With a copy to:

Office of Legal Services
3700 Ross Avenue
Dallas, Texas 75204

Fax: 972-925-3251.

ARTICLE XI.
MISCELLANEOUS

12.1 *Article Headings.* The article and paragraph headings used in this Agreement are for convenience only. They shall not be construed to limit or to extend the meaning of any part of this Agreement.

12.2 *Amendments.* Any amendments or additions to this Agreement shall be made in a writing executed by the Parties hereto, and neither Party shall be bound by oral or implied agreements.

12.3 *Waiver.* The waiver by a Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any other term, covenant, or condition or any subsequent breach of the same or any other term, covenant, or condition herein contained. A Party shall be deemed to have waived a right hereunder only if said Party shall expressly do so in writing.

12.4 *Cumulative Remedies.* Each right, power, and remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Agreement, and the exercise or beginning of the exercise by a Party of any one or more of the rights, powers, or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by said Party of any or all such other rights, powers, or remedies.

12.5 *Assignment; Successors.* Neither Party shall hypothecate, mortgage, assign, transfer, or otherwise alienate or convey this Agreement or any interest therein, without the prior written consent of the other Party. Notwithstanding the foregoing, the covenants and agreements contained in this Agreement shall be binding on the Parties hereto and on their respective successors and assigns.

12.6 *Time of Essence.* Time is expressly declared to be of the essence of this Agreement and each and every covenant of the Parties hereunder.

12.7 *Entire Agreement.* This Agreement contains the entire agreement of the Parties hereto with respect to the matters covered hereby, and no other agreement, statement, or promise made by either Party hereto, or to any employee, officer, or agent of either Party hereto, that is not contained herein, shall be binding or valid.

12.8 *Language.* Terms used herein, shall be applicable to one or more persons as the case may be, and the singular shall include the plural, and the neuter shall include the masculine and feminine, and if there be more than one, the obligations hereof shall be joint and several. The word "persons" whenever used shall include individuals, firms, associations, and corporations. This Agreement has been freely negotiated by the Parties. The language of this Agreement shall in all cases be construed as a whole and in accordance with its fair meaning, and shall not be construed more strictly for or against either Party due to authorship or otherwise. For purposes of this Agreement, "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

12.9 *Invalidity.* If any provision of this Agreement shall prove to be invalid, void, or illegal, it shall in no way affect, impair, or invalidate any other provision hereof.

12.10 *Applicable Law; Venue.* This Agreement shall be construed and enforced in accordance with the laws of the State of Texas and exclusive venue for any legal action involving same shall rest in Dallas, Dallas County, Texas. Furthermore, the Parties shall comply with all city ordinances, codes, rules, and regulations and all applicable state and federal laws, and the applicable regulations of administrative agencies with jurisdiction over the subject matter of this Agreement.

12.11 *Council, Board Approvals, Effective Date.* Notwithstanding any provision to the contrary herein, this Agreement, and the Parties' obligations hereunder, are expressly subject to and conditioned upon acceptance and approval hereof by resolutions of the Addison City Council and the District Board of Trustees. Notwithstanding the foregoing, for purposes of calculating times and dates under this Agreement the date of the last signature below shall be the execution date of this Agreement.

12.12 *Survival.* All obligations of this Agreement performable after the termination date shall not cease upon the termination of this Agreement, but shall continue as obligations until fully performed.

12.13 *Recordation.* Neither this Agreement nor any memorandum thereof shall be recorded in the real property records of Dallas County, Texas.

12.14 *Non-appropriations.* The Parties acknowledge and agree that this Agreement is a commitment of Addison's and District's current revenues only. District's Board and Addison's City Council retain the continuing right to terminate this Agreement at the expiration of their respective budget periods during the term of this Agreement in the event of non-appropriation of funds pertaining to this Agreement. The canceling Party will endeavor to give the other Party as much advance notice of

termination as practicable, but, in no event less than thirty (30) days prior written notice of any such termination.

EXECUTED by Addison acting through its duly authorized officer pursuant to Council Resolution No. _____ dated _____ and District acting through its duly authorized officer pursuant to Board of Trustees Resolution No. _____, dated _____.

TOWN OF ADDISON, TEXAS

DALLAS INDEPENDENT SCHOOL DISTRICT

By: _____
Ron Whitehead, City Manager

By: _____
President, Board of Trustees

Date: _____

Name: Adam Medrano

Attest:

Date: _____

By: _____
Lea Dunn, City Secretary

Attest:
By: _____
Secretary, Board of Trustees

Approved as to form:

By: _____
School Attorney

EXHIBIT "B" **Improvements**

I. Addison Scope

A. Provide annual maintenance around school AND at long jump, discus, shot put fields (which areas are shown and depicted on Exhibit "A" attached to this Agreement) including the following:

- *Annual Mowing;*
- *Tree Pruning;*
- *Fertilizer Applications;*
- *Herbicide Applications;*
- *Fire Ant Control;*
- *Monthly Sprinkler System Checks and Repairs/Adjustments.*

All pesticide and fertilizer applications shall be in accordance with applicable statutes, rules and regulations.

B. Furnish and install landscape & irrigation systems around the school (in those areas shown and depicted on Exhibit "A" attached to this Agreement).

C. Provide landscape and irrigation design of school site (for those areas shown and depicted on Exhibit "A" attached to this Agreement).

D. Provide 500' sanitary sewer extension & manhole to site (to be generally located as shown and depicted on Exhibit "A" attached to this Agreement).

E. Provide sidewalk connection between the school and west side of trail easement (located as shown and depicted on Exhibit "A" attached to this Agreement).

F. Provide and maintain "learning garden" within the DISD trail (located as shown and depicted on Exhibit "A" attached to this Agreement).

G. Provide (2) playgrounds with shade structures (to be generally located as shown and depicted on Exhibit "A" attached to this Agreement)).

- Includes maintenance of play structures;
- Includes maintenance of shade structures.

H. Playground equipment shall be in accordance with applicable statutes, rules, and regulations.

I. Provide the west bound deceleration lane, the east bound left turn lane, and the water main extension across Spring Valley Road.

II. District Scope

- A. Pay for fifty per cent (50%) of landscape water needs. Addison parks department will control watering. Addison shall invoice District for it's one-half share quarterly.
- B. District shall leave the site at +/- 0.10' per the grading plan and provide 4" of tops soil. Additionally District shall also provide sleeves under paving as needed for the irrigation system.
- C. Provide vinyl coated chainlink or **better** fencing on school site & parking lot.
- D. District agrees to adopt the 9/11/09 A101 Site Plan (a true and correct copy is on file in the office of the Addison City Secretary).
- E. District agrees to investigate an Addison "overlay" that will allow children who reside within Addison first right to enroll in the School.
- F. District shall pay Addison \$300,000 for landscape design, playground equipment, east side sidewalks, and sanitary sewer provided pursuant to this Agreement. Such payment shall be made by District within thirty (30) days following Addison's submission of an invoice for the same.
- G. District agrees to construct this new school so that it achieves at least a **TX-CHPS (Collaborative for High Performance Schools)-Designed** rating. District shall provide Addison with documentation of all achieved points.
- H. District shall allow for community use of the school's athletic fields and equipment after school hours per CHPS requirement SS1.4 (a copy of which is attached to and made a part of this Exhibit "B," the same being found in that document entitled "Assessment Tool, 2009 Edition Criteria for New Construction, Major Modernizations, Texas Collaborative for High Performance Schools") Addison will not allow any organized league play on this facility.
- I. District shall provide and allow for a minimum of joint-use space within the school facility for community use per CHPS requirement SS1.3 (a copy of which is attached to and made a part of this Exhibit "B," the same being found in that document entitled "Assessment Tool, 2009 Edition Criteria for New Construction, Major Modernizations, Texas Collaborative for High Performance Schools").
- J. Subject to the execution of a specific agreement relating to installation and use of security cameras, including provisions detailing compliance with Texas Public Information Act and student privacy and security regulations, District agrees to add security cameras if and when the district adopts that standard. District also agrees to provide infrastructure and agreement to allow Addison to attach security cameras to the school building if Addison elects to do so.
- K. District agrees to grant Addison an 11'-0" right of way easement along Spring Valley frontage and re-plat the entire site showing this dedication.
- L. District agrees to pay Addison \$14,000 for the water main extension across Spring Valley Road to be constructed generally in the area show on Exhibit "A" attached to this Agreement and made a part of this Agreement for all purposes. Such payment shall be made by District within thirty (30) days following Addison's submission of an invoice for the same.

- M. District grants to Addison (and its contractors) an easement and right-of-way to use the Premises and the School for the purpose of performing the Addison Scope as set forth in paragraph I., Addison Scope, of this Exhibit "B."

- N. District agrees to pay Addison 50% of the cost incurred by the City to construct the Spring Valley roadway improvements designated as Section "1A" as indicated on Exhibit "D" attached to this Agreement. Additionally, if the Addison elects to construct the Spring Valley roadway improvements designated as section "1B" as indicated on Exhibit "D", the District will pay for 33.3% of the cost incurred by the City to construct Section "1B". Such payments shall be made by District within thirty (30) days following Addison's submission of an invoice for the same.

EXHIBIT "C"
City Personalty

George Herbert Walker Bush Elementary School

Property Owner: Dallas Independent School District
 Property Location: 3815 Spring Valley Road
 Addison, Texas 75001

Proposed Town of Addison
 Bicycle Path

Area indicates landscape and irrigation area to be designed, developed and maintained by the Town of Addison according to the conditions as stated elsewhere in this agreement. The bicycle path, which is both on and off the school district property, as well as any paved connections from the bicycle path to the school paving are to be designed, developed and maintained by the Town of Addison as well.

Area indicates (2) playground areas to be designed, developed and maintained by the Town of Addison according to the conditions as stated elsewhere in this agreement.

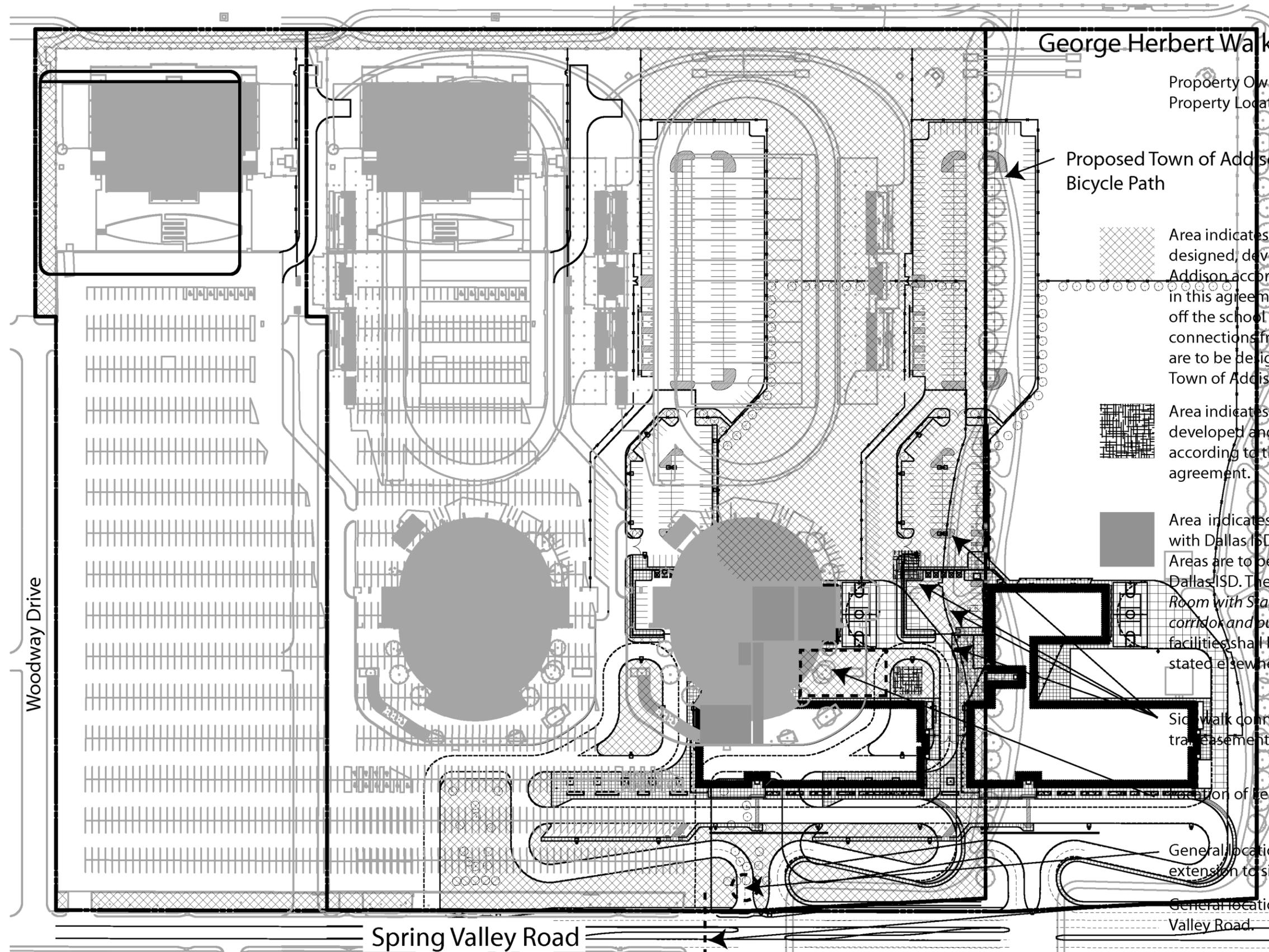
Area indicates indoor area to be designated as joint-use with Dallas ISD and the Town of Addison. These Joint-Use Areas are to be designed, developed and maintained by Dallas ISD. These areas are specifically the *Multi-Purpose Room with Stage*, the *Cafeteria*, the *Gymnasium* and the *corridor and public restrooms* serving all three. These facilities shall be joint-use according to the conditions as stated elsewhere in this agreement.

Side walk connection between school and west side of train easement

Location of Learning Garden

General location of manhole and 500'-0" sanitary sewer extension to site.

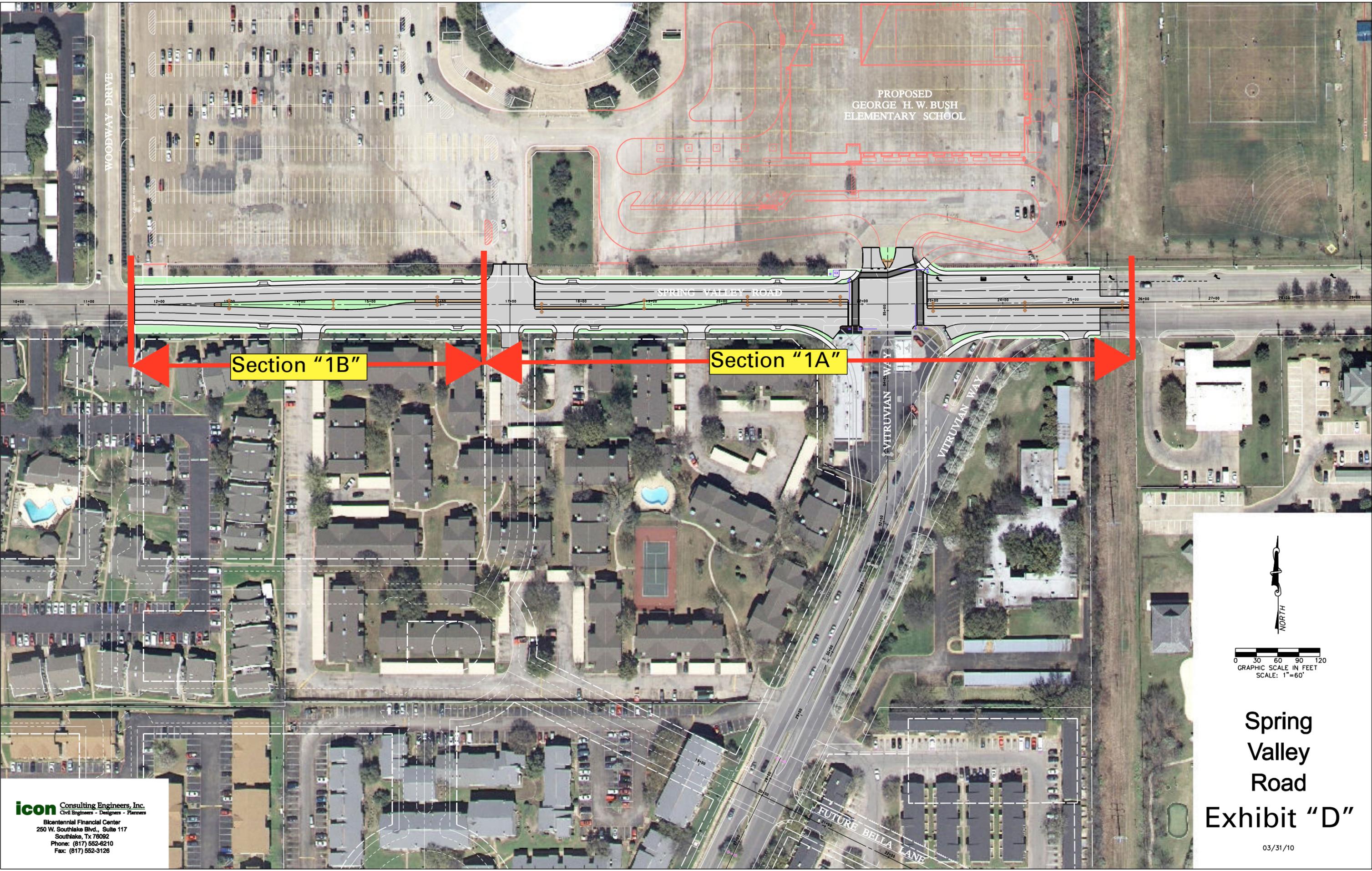
General location of 8" water line extension across Spring Valley Road.



Woodway Drive

Spring Valley Road

Future Vitruvian Parkway



Section "1B"

Section "1A"



0 30 60 90 120
GRAPHIC SCALE IN FEET
SCALE: 1"=60'

Spring Valley Road Exhibit "D"

03/31/10

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