



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

6:30 PM

NOVEMBER 13, 2012

TOWN HALL

ADDISON TOWN HALL, 5300 BELT LINE, DALLAS, TX 75254

WORK SESSION

Item Discussion regarding Town owned real estate and the
#WS1 - process for sale of municipal property.

Attachment(s):

1. Town Owned Real Estate Inventory

REGULAR MEETING

Pledge of Allegiance

Item #R1- Announcements and Acknowledgements regarding Town
and Council Events and Activities

Introduction of Employees

Discussion of Events/Meetings

Item #R2- Consent Agenda.

#2a- Approval of Minutes for the October 23, 2012 Regular Council Meeting.

#2b- Approval of a resolution regarding payment to the Town of a catering fee by a vendor (caterer) selling food and/or beverages at the Addison Arts and Events District and Visit Addison.

#2c- Approval of an ordinance amending section 67-15A (Food and Beverage Commission; Exclusive catering service) of Chapter 67 of the Code of Ordinances by modifying its provisions regarding the payment to the Town by a food and beverage caterer of a catering fee for services at the Addison Arts and Events District and the Town's Visitor Center.

#2d- Approval of a contract renewal related to communications and public relations with Shiroma Southwest in the amount of \$75,000.

#2e- Approval of a contract renewal for crisis communication services with Margulies Communications Group in the amount of \$42,000.

#2f- Approval of annual contract renewal with Rodney Hand & Associates Marketing Communications, LP for the production of Addison Magazine in the amount of

\$111,750.

#2g- Approval of a sponsorship agreement with the Cavanaugh Flight Museum in the amount of \$50,000.

Item #R3 Presentation and recognition of the 2013 Addison Citizen Academy class.

Item #R4 Discussion and consideration of approval of a resolution approving and authorizing the City Manager to execute an agreement requesting the North Central Texas Council of Governments to pursue development of the Cotton Belt Rail Project utilizing Senate Bill 1048 ("Public and Private Facilities and Infrastructure Act").

Attachment(s):

1. Cover Memo
2. DRAFT Resolution
3. Draft Interlocal Agreement

Recommendation:

Staff recommends approval.

Item #R5 Presentation, discussion and consideration of approval of an ordinance amending Chapter 62, Signs, of the Code of Ordinances of the Town by providing for a Meritorious Exception to Article IV, Division 3, Attached Signs, Sec. 62-163 at the UDR Fiori Apartments located at 3990 Vitruvian Way in order to provide for an attached sign with letters up to 8'-1 1/8" in height.

Attachment(s):

1. UDR FIORI SIGN PACKAGE

Recommendation:

Staff recommends denial.

-
- Item #R6 Presentation, discussion and consideration of approval of an ordinance amending Chapter 62, Signs, of the Code of Ordinances of the Town by providing for a Meritorious Exception to Article IV, Division 3, Attached Signs, Sec. 62-162 at the Embry Partners Keller Springs Lofts Apartments located at 4800 Keller Springs Rd. in order to provide for attached signs that project approximately 39" from the surfaces they are attached to.

Attachment(s):

1. KELLER SPRINGS LOFTS SIGN PACKAGE

Recommendation:

Staff recommends denial.

-
- Item #R7 **PUBLIC HEARING.** Case 1655-Z/Addison Heights Apartments. Public hearing, discussion and consideration of approval of an Ordinance changing the zoning on an approximately 3.201-acre tract of land generally located at the southeast intersection of Addison Road and Airport Parkway, from C-2, Commercial-2 District to PD Planned Development District to allow for a multi-family project of approximately 280 units, and limited retail uses, and the adoption of a development plan, concept plan, and development regulations for such tract of land, on application from Henry S. Miller Multi-family Development Group, represented by Mr. Evan Beattie of Good Fulton and Farrell Architects.

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in special session on October 30, 2012, voted to recommend denial of a change in zoning on an approximately 3.201-acre tract of land generally located at the southeast intersection of Addison Road and Airport Parkway, from C-2, Commercial-2 District to PD Planned Development District to allow for a multi-family project of approximately 280 units, and limited retail uses, and the adoption of a development plan, concept plan, and development regulations for such tract of land, on application from Henry S. Miller Multi-family Development Group, represented by Mr. Evan Beattie of Good Fulton and Farrell Architects.

Voting Aye to the motion for denial: Doherty, Groce, Hughes, Oliver, Stockard,

Voting Nay: Wheeler

Absent: Hewitt

Attachment(s):

1. docket map, staff report, commission findings, and letters
2. Agenda Backup Material

Recommendation:

Administration recommends denial.

Item #R8 Presentation, discussion and consideration of approval authorizing the City Manager to enter into an Economic Development Program Grant Agreement with MHSS-MOB - Addison, L.P. in an amount not to exceed \$564,514.67 for the reconstruction of Sojourn Drive.

Attachment(s):

1. Sojourn Drive Agreement

Recommendation:

Staff recommends approval.

Item #R9 - Discussion and consideration of approval of an ordinance providing for increased prior and current service annuities under the act governing the Texas Municipal Retirement system for retiree and beneficiaries of deceased retirees of the Town of Addison.

Attachment(s):

1. Cover Memo
2. Draft Ordinance

Recommendation:

Staff recommends approval.

Item #R10 - Presentation, discussion and consideration of approval authorizing the City Manager to renew the Town's health insurance contract with Blue Cross/Blue Shield of Texas (BCBSTX).

Attachment(s):

1. insurance costs
-

Item #R11 - Presentation, discussion and consideration of approval authorizing the City Manager to enter into an agreement with Cobb, Fendley & Associates, Inc. in an amount not to exceed \$60,000 to provide miscellaneous engineering services as needed.

Attachment(s):

1. Cobb Fendley agreement

Recommendation:

Staff recommends approval.

Adjourn Meeting

Posted:

Chris Terry, 11/9/2012, 5:00 pm

**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

AGENDA CAPTION:

Discussion regarding Town owned real estate and the process for sale of municipal property.

FINANCIAL IMPACT:

n/a

BACKGROUND:

n/a

RECOMMENDATION:

n/a

COUNCIL GOALS:

Mindful Stewardship of Town Resources

ATTACHMENTS:

Description:

 [Town Owned Real Estate Inventory](#)

Type:

Backup Material

Town of Addison Free Parcels

Location	Acreage	2012 Certified Values			Notes
		Land Value	Improvements	Market Value	
Addison Airport	376.4	\$ 65,851,030	\$ 8,043,330	\$ 73,894,360	Includes Service Center, Police Station, and Fire Station 1
4245 Kellway Circle	2.09	\$ 545,980	\$ 190,890	\$ 736,870	Kellway Lift Station
5035 Arapaho	5.6236	\$ 3,062,050	\$ -	\$ 3,062,050	Various lots adjacent to DART Station/Cotton Belt RR
15600 Quorum	3.307	\$ 1,728,640	\$ -	\$ 1,728,640	Various lots adjacent to DART Station/Cotton Belt RR
15411 Julian	0.3271	\$ 171,000	\$ -	\$ 171,000	Various lots adjacent to DART Station/Cotton Belt RR
15410 Julian	0.3271	\$ 171,000	\$ 36,060	\$ 207,060	Various lots adjacent to DART Station/Cotton Belt RR
15409 Julian	0.3271	\$ 171,000	\$ -	\$ 171,000	Various lots adjacent to DART Station/Cotton Belt RR
15408 Julian	0.2181	\$ 114,000	\$ -	\$ 114,000	Various lots adjacent to DART Station/Cotton Belt RR
15407 Julian	0.2181	\$ 114,000	\$ -	\$ 114,000	Various lots adjacent to DART Station/Cotton Belt RR
15405 Julian	0.3271	\$ 171,000	\$ -	\$ 171,000	Various lots adjacent to DART Station/Cotton Belt RR
15404 Julian	0.9279	\$ 485,030	\$ -	\$ 485,030	Various lots adjacent to DART Station/Cotton Belt RR
15416 Addison	0.3271	\$ 171,000	\$ -	\$ 171,000	Various lots adjacent to DART Station/Cotton Belt RR
15412 Addison	0.2181	\$ 114,000	\$ -	\$ 114,000	Various lots adjacent to DART Station/Cotton Belt RR
15408 Addison	0.4362	\$ 228,000	\$ -	\$ 228,000	Various lots adjacent to DART Station/Cotton Belt RR
15406 Addison	0.2181	\$ 114,000	\$ -	\$ 114,000	Various lots adjacent to DART Station/Cotton Belt RR
4831 Broadway	0.23	\$ 120,000	\$ -	\$ 120,000	Various lots adjacent to DART Station/Cotton Belt RR
15810 Addison Road	1	\$ 435,600	\$ -	\$ 435,600	Vacant lots north of Conference Centre
15812 Addison Road	0.75	\$ 327,090	\$ -	\$ 327,090	Vacant lots north of Conference Centre
15500 Addison	3.5813	\$ 1,872,000	\$ -	\$ 1,872,000	Addison Circle Park
15500 Julian	0.6106	\$ 319,200	\$ 500	\$ 319,700	Addison Circle Park
15506 Julian	0.262	\$ 136,800	\$ -	\$ 136,800	Addison Circle Park
15508 Julian	0.3271	\$ 171,000	\$ -	\$ 171,000	Addison Circle Park
15510 Julian	0.2726	\$ 142,500	\$ -	\$ 142,500	Addison Circle Park
15512 Julian	0.229	\$ 119,700	\$ -	\$ 119,700	Addison Circle Park
5300 Belt Line Road	3.29	\$ 370,890	\$ 1,433,120	\$ 1,804,010	Town Hall
5350 Belt Line Road	1.5291	\$ 1,332,160	\$ 892,150	\$ 2,224,310	Finance Building
5510 Celestial Road	4.07	\$ 2,203,590	\$ 45,000	\$ 2,248,590	Celestial Pump Station
4950 Landmark	0.599	\$ 169,600	\$ -	\$ 169,600	@ Inwood and Landmark
1 Landmark Pl	0.37	\$ 104,760	\$ -	\$ 104,760	@ Inwood and Landmark
3900 Beltway Drive	6.1	\$ 2,126,080	\$ 1,476,010	\$ 3,602,090	Addison Athletic Club
15150 Surveyor	2.2	\$ 574,990	\$ 11,890	\$ 586,880	Surveyor Pump Station/Elevated Storage Tank
4500 Belt Line Road	2.321	\$ 1,516,800	\$ 1,206,000	\$ 2,722,800	Chili's/Clay Pit
	419.034	\$ 85,254,490	\$ 13,334,950	\$ 98,589,440	

Addison Parks Inventory

Denotes a Park

LOCATION	TOTAL ACREAGE	TOTAL SQ FEET	COST TO BUILD (IF PARK)
Addison Circle Area - All phases - tree wells	0.4456	19,412	
Addison Circle Park	16.0000	696,960	\$8,000,000
Addison Circle R.O.W. (between Post & RR/Quorum to Pkwy)	0.1580	6,882	
Addison Rd ROW	0.4500	19,468	
Airport Sign & ROW	0.0002	9	
Allegro Streetscape (tree wells)	0.0382	1,665	
Arapaho Extension Lot	6.0000	261,360	
Arapaho Phase I - 6 Medians & ROW	0.5200	22,651	
Arapaho Phase II	1.3490	58,762	
Arapaho Phase III - Park (3acres) & Medians (2.5 acres)	5.5200	240,451	\$2,000,000
Arapaho Lots at Surveyor (SE,NW & SW corners)	2.400	104,544	
Athletic Club	3.1850	138,739	
Bellbrook Estates Entries	0.0200	871	
Belt Line Rd Median	1.1050	48,134	
Beltway Dr Median	1.5749	68,603	
Beltway Median at Belt Line	0.0110	479	
Beltway (Sam's) Park	1.4000	60,984	\$80,000
Beltwood Reservoir R.O.W.	1.5300	66,647	
Bosque Park	1.0000	43,560	\$450,000
Bush Elementary	7.6000		\$935,000
Celestial Park	4.1670	181,515	\$2,900,000
Celestial Place R.O.W.	0.4300	18,731	
Celestial Pump Station	4.0000	174,240	
Celestial Pump Station Triangle	0.429	18,687	
Celestial R.O.W. and Median	0.1200	5,227	
Central Fire & Police	2.2570	98,315	
Conference/Theatre Ctr/Water Tower	2.0430	88,993	
East Belt Line	1.0000	43,560	
Beckert (Esplanade) Park	1.4300	62,291	\$750,000
Excel Parkway - 6 medians	1.5000	65,340	
Fairfield Streetscape (tree wells)	0.0635	2,765	
Finance	1.1550	50,312	
Fire Station #2	0.7310	31,842	
Fuel Farm - Airport	0.4199	18,291	
Inwood Mini-Park	0.5390	23,479	
Inwood R.O.W.	1.7290	75,315	
Keller Springs Median	0.0340	1,481	
Kellway Lift Station	0.7580	33,018	
Landmark - 5 Medians & R.O.W.	1.5800	68,825	
Landmark Park	0.5200	22,651	
Les Lacs Area - Beltway R.O.W. North/South	2.3000	100,188	

Les Lacs Area - Marsh Lane R.O.W.	1.7000	74,052	
Les Lacs Area - Les Lacs Ave. R.O.W. - 2 sides	0.7440	32,409	
Redding Trail - Easement Dog Park	0.8600	37,462	\$60,000
Redding Trail - Les Lacs Dog Park	0.5240	22,825	\$80,000
Redding Trail - Dome Park	0.3510	15,290	\$80,000
Redding Trail - Easement Park	8.3130	362,114	
Redding Trail - Easement Park Extension	2.0000	87,120	
Redding Trail Extension - By Bush Elementary	1.9200		
Redding Trail - Lake	2.7700	120,661	
Redding Trail - Lake Greenbelt	3.3000	143,748	
Les Lacs Park - North Pavilion	7.4000	322,344	\$2,500,000
Les Lacs Park - South Strip/Lot	3.2490	141,526	
Loos R.O.W.	0.6410	27,922	
Marsh Lane Median	0.0900	3,920	
Meridian Streetscape (tree wells)	0.0860	3,730	
Midway Meadows(cul-de-sacs/islands)	0.5130	22,346	
Montfort Median	0.3170	13,809	
Montfort R.O.W.	0.3090	13,460	
Morris Parking Lot Extension	0.1050	4,574	
North Addison Park	3.2000	139,392	\$350,000
North Midway Rd Median	0.6650	28,967	
N Midway Triangle Pocket Park	0.5160	22,477	
Oaks North Subdivision (cul-de-sacs/islands)	1.7690	77,058	
Parkview Park	0.4400	19,166	\$80,000
Proton R.O.W. and Medians	1.7230	75,054	
Quorum Dr Medians	1.8580	80,934	
Quorum Park	3.5000	152,460	\$900,000
Savoie I & 2/Park Road	0.1100		
Service Center	0.8810	38,376	
South Midway Rd Median	0.4460	19,428	
Spring Valley Rd Median	2.0000	87,120	
Spruill Park	1.5600	67,954	\$250,000
Sunbelt	0.0300	1,307	
Surveyor Medians at Belt Line - 2 islands	0.0360	1,567	
Surveyor Pump Station	0.364	15,856	
Surveyour Water Tower	1.500		
Tollway Southbound - RR to Westgrove	1.4200	61,855	
Tollway Northbound - Verde Valley to RR	1.2910	56,236	
Town Hall	1.6880	73,529	
Town Hall- Creek Greenbelt	0.2510	10,934	
Town Park	2.5000	108,900	\$300,000
Vitruvian Way Medians	0.7130	31,054	
Vitruvian Way Mini-Park	0.1590	6,926	
Vitruvian Park	12.2000		\$9,000,000
Westgrove Median	0.0800	3,485	
White Rock Creek Park & Jogging Trail	5.3000	230,868	
White Rock Creek R.O.W.	0.0990	4,312	

Winnwood Park & Median	4.2200	183,823	
Woodway Dr R.O.W.	0.3670	15,987	
TOTALS	163.5903	6,109,585	\$28,715,000

FACILITY	ADDRESS	DATE BUILT	SQ FT	OWN/ LEASE	BLDG VALUE (as of 2012)	NOTES
Town Hall	5300 Belt Line Rd	1939	6,475	Own	\$ 926,700.00	
Finance	5350 Belt Line Rd	1983	6,200	Own	653,500.00	
Police Station	4799 Airport Pkwy	1984	27,000	Own	2,454,600.00	
Fire Station #1	4798 Airport Pkwy	1984	17,410	Own	2,586,500.00	
Fire Station #2	3950 Beltway Dr	1982	5,658	Own	691,900.00	
Service Center	16801 Westgrove	1980	31,600	Own	2,733,000.00	Expansion 1987, added 21,600 sqft to 10,000 sqft
Athletic Center	3900 Beltway Dr	1987	51,500	Own	9,432,800.00	Expansion 2003, added 6,500 sqft to 45,000 sqft
Conference Centre	15650 Addison Rd	1991	17,000	Own	2,305,100.00	
Theatre Centre	15650 Addison Rd	1991	32,000	Own	4,840,500.00	
Stone Cottage	4901 Addison Circle Dr	1939	1,150	Own	125,900.00	Remodeled in 1998
Water Tower	15601 Julian	1979	3,300	Own	2,241,700.00	
Celestial Pump Station ⁽¹⁾	5510 Celestial	1987	6,000	Own	1,118,100.00	
Surveyor Pump Station	15130 Surveyor	1979	2,265	Own	853,100.00	
Addison Lift Station	4245 Kellway Circle	1997	1,200	Own	600,000.00	
Special Events Pavilion	4970 Addison Circle Dr	2003	2,500	Own	484,900.00	
PD Storefront	4943 Addison Circle Dr	1995	500	Lease	N/A	
Visit Addison	5100 Belt Line, Ste 400, 430	1985	26,513	Lease	N/A	Remodeled in 2010
Addison Airport Hangars ⁽²⁾				Own	34,005,000.00	
			238,271			

⁽¹⁾ Celestial Storage Tank Valued at \$2,949,500

⁽²⁾ 24 buildings of various sizes built between 1960 and 1995

Addison Parks Inventory			
Denotes a Park			
LOCATION	TOTAL ACREAGE	TOTAL SQ FEET	COST TO BUILD (IF PARK)
Addison Circle Area - All phases - tree wells	0.4456	19,412	
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Montfort R.O.W.	0.3090	13,460	
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Parkview Park	0.4400	19,166	\$80,000
Proton R.O.W. and Medians	1.7230	75,054	
Quorum Dr Medians	1.8580	80,934	
Quorum Park	3.5000	152,460	\$900,000
Savoye I & 2/Park Road	0.1100		
Service Center	0.8810	38,376	
South Midway Rd Median	0.4460	19,428	
Spring Valley Rd Median	2.0000	87,120	
Spruill Park	1.5600	67,954	\$250,000
Sunbelt	0.0300	1,307	
Surveyor Medians at Belt Line - 2 islands	0.0360	1,567	
Surveyor Pump Station	0.364	15,856	
Surveyour Water Tower	1.500		
Tollway Southbound - RR to Westgrove	1.4200	61,855	

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Tollway Northbound - Verde Valley to RR	1.2910	56,236	
Town Hall	1.6880	73,529	
Town Hall- Creek Greenbelt	0.2510	10,934	
Town Park	2.5000	108,900	\$300,000
Vitruvian Way Medians	0.7130	31,054	
Vitruvian Way Mini-Park	0.1590	6,926	
Vitruvian Park	12.2000		\$9,000,000
Westgrove Median	0.0800	3,485	
White Rock Creek Park & Jogging Trail	5.3000	230,868	
White Rock Creek R.O.W.	0.0990	4,312	
Winnwood Park & Median	4.2200	183,823	
Woodway Dr R.O.W.	0.3670	15,987	
TOTALS	163.5903	6,109,585	\$28,715,000

Council Agenda Item: # R 2a

AGENDA CAPTION:

Approval of Minutes for the October 23, 2012 Regular Council Meeting.

FINANCIAL IMPACT:

N/A

BACKGROUND:

N/A

RECOMMENDATION:

N/A

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

 [October 23 Minutes](#)

Type:

Backup Material

OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL REGULAR MEETING

October 23, 2012

7:30 PM - Town Hall

Addison Town Hall, 5300 Belt Line, Dallas, TX 75254

Chris Terry, 10/19/2012, 5:00 pm

Council Members Present:

Arfsten, Clemens, DeFrancisco, Gunther, Meier, Moore, Resnik

Absent:

None

REGULAR MEETING

Item #R1 - Announcements and Acknowledgements regarding Town and Council Events and Activities

Item #R2 - Consent Agenda

#2a - Approval of an amendment to the Code of Ordinances of the City by amending Chapter 66 (Solid Waste) Article II (Collection And Disposal), Division 2 (Service Charge) by amending Section 66-52 increasing from \$12.24 to \$12.30 the monthly fee for single family residential garbage and recycling collection.

A motion to Approve was made by Council Member Blake Clemens. The motion was seconded by Council Member Neil Resnik.

The motion result was: Passed

Voting Aye: Arfsten, Clemens, DeFrancisco, Gunther, Meier, Moore, Resnik

Voting Nay: None

#2b - Approval of Minutes for the October 9, 2012 Regular Council Meeting.

A motion to Approve was made by Council Member Blake Clemens. The motion was seconded by Council Member Neil Resnik. The motion result was: Passed
Voting Aye: Arfsten, Clemens, DeFrancisco, Gunther, Meier, Moore, Resnik
Voting Nay: None

#2c - Approval of a resolution establishing energy conservation goals per Senate bill 898 by the 82nd Legislative Session of Texas.

A motion to Approve was made by Council Member Blake Clemens. The motion was seconded by Council Member Neil Resnik. The motion result was: Passed
Voting Aye: Arfsten, Clemens, DeFrancisco, Gunther, Meier, Moore, Resnik
Voting Nay: None

#2d - Approval of contracts for services with non-profit organizations (including CONTACT Crisis Line, The Family Place, Launchability, Metrocrest Chamber of Commerce, Metrocrest Family Medical Clinic, Metrocrest Social Services, Senior Adult Services, Texas Wranglers, Dance Council, Water Tower Theatre, and the Addison Arbor Foundation) for Fiscal Year 2012-2013, subject to final review and approval by the City Manager and City Attorney.

A motion to Approve was made by Council Member Blake Clemens. The motion was seconded by Council Member Neil Resnik. The motion result was: Passed
Voting Aye: Arfsten, Clemens, DeFrancisco, Gunther, Meier, Moore, Resnik
Voting Nay: None

Item #R3 - Presentation, discussion, and consideration of approval authorizing the City Manager to negotiate and enter into a Memorandum of Understanding with Baylor University and their Accelerated Ventures Program.

Orlando Campos, Director of Economic Development, and Chris Grubbs, Accelerated Ventures, presented and spoke regarding this item.

Motion was made subject to final review and approval of the City Manager and City Attorney.

A motion to Approve was made by Council Member Neil Resnik.

The motion was seconded by Council Member Janelle Moore.

The motion result was: Passed

Voting Aye: Arfsten, Clemens, DeFrancisco, Gunther, Meier, Moore, Resnik

Voting Nay: None

Item #R4 - Discussion regarding the Addison Legacy Foundation.

Ivan Hughes, Addison Legacy Foundation, presented and spoke regarding this item.

There was no action taken.

Item #R5 - Discussion and consideration of approval of a professional services agreement with the Vivanti Group in an amount not to exceed \$60,000 for the provision of a branding study, subject to final review and approval of the City Manager and City Attorney.

Carrie Rice, Director of Marketing and Communications, presented and spoke regarding this item.

A motion to Approve was made by Council Member Bruce Arfsten.

The motion was seconded by Council Member Margie Gunther.

The motion result was: Passed

Voting Aye: Arfsten, Clemens, DeFrancisco, Gunther, Meier, Moore, Resnik

Voting Nay: None

Item #R6 - Presentation, discussion and consideration of approval authorizing the City Manager to execute a master agreement with Dallas County for the Major Capital Improvement Program.

Alison Ream, Assistant to the City Manager, presented and spoke regarding this item.

A motion to Approve was made by Council Member Bruce Arfsten.

The motion was seconded by Council Member Chris DeFrancisco.

The motion result was: Passed

Voting Aye: Arfsten, Clemens, DeFrancisco, Gunther, Meier, Moore, Resnik

Voting Nay: None

Item #R7 - Presentation, discussion and consideration of adoption of an Ordinance providing for the making of certain findings by the City Council of the Town pertaining to the anticipated adoption by the Town of the Municipal Drainage Utility Systems Act (Subchapter C of Chapter 552, Tex. Loc. Gov. Code) and a declaration of stormwater (drainage) of the Town to be a Public Utility pursuant to the said Act, including that the Town will establish a schedule of stormwater (drainage) charges against all real property in the proposed service area of the Town, that the Town will provide stormwater (drainage) service for all real property in the service area on the payment of stormwater (drainage) charges, except real property exempted under the said Act, and that the Town will offer stormwater (drainage) service on nondiscriminatory, reasonable, and equitable terms; and providing for related matters.

Alison Ream presented and spoke regarding this item.

A motion to Approve was made by Council Member Neil Resnik.
The motion was seconded by Council Member Chris DeFrancisco.
The motion result was: Passed
Voting Aye: Arfsten, Clemens, DeFrancisco, Gunther, Meier, Moore,
Resnik
Voting Nay: None

Item #R8 - PUBLIC HEARING, presentation, discussion and consideration of approval of an Ordinance amending the Town of Addison's Code of Ordinances by amending Chapter 82 (Utilities) thereof to add a new Article VI, Division 1 regarding a Stormwater (drainage) Utility System; declaring the adoption of Chapter 552, Subchapter C, Tex. Loc. Gov. Code (the Municipal Drainage Utility Systems Act) and declaring stormwater (drainage) to be a public utility and establishing a service area in connection therewith; providing definitions; providing for the establishment and calculation of stormwater (drainage) utility fees, including property classifications, for billing policies and procedures, and for credits; providing penalties and remedies for nonpayment of fees, including discontinuance of utility services and the filing of a lien; establishing an administrative appeals process; providing for termination of the stormwater (drainage) utility system; providing for a stormwater (drainage) utility fund; exempting certain property from fees; and providing for other related matters.

Alison Ream presented and spoke regarding this item.

The following people also spoke regarding this item:

Morris Norwood, 14593 Longfellow Court

Tom Hunse, 14784 Winnwood Road

A motion to Approve was made by Council Member Chris DeFrancisco.

The motion was seconded by Council Member Bruce Arfsten.

The motion result was: Passed

Voting Aye: Arfsten, Clemens, DeFrancisco, Gunther, Meier, Moore, Resnik
Voting Nay: None

Item #R9 - PUBLIC HEARING, presentation, discussion and consideration of approval of an Ordinance amending the Town of Addison's Code of Ordinances by amending Chapter 82 (Utilities), Article VI (Stormwater (Drainage) Utility System) thereof by adding a new Division II regarding Stormwater (drainage) Utility Fees; establishing monthly Stormwater (drainage) Utility fees for the purpose of funding the Stormwater (drainage) Utility System; and providing for other related matters.

Alison Ream presented and spoke regarding this item.

Morris Norwood, 14593 Longfellow Court, also spoke regarding this item.

A motion to Approve was made by Council Member Bruce Arfsten. The motion was seconded by Council Member Chris DeFrancisco. The motion result was: Passed
Voting Aye: Arfsten, Clemens, DeFrancisco, Gunther, Meier, Moore, Resnik
Voting Nay: None

Item #ES1 - Closed (executive) session of the Addison City Council pursuant to Section 551.072, Tex. Gov. Code, to deliberate the lease or value of certain real property located at 4460 Belt Line Road.

Council entered executive session at 9:05 pm.
Council left executive session at 10:10 pm.

There was no action taken.

Item #R10 - Presentation, discussion and consideration of any action

regarding the lease between the Town, as landlord, and Durga Services, LLC, as tenant, of the property located at 4460 Belt Line Road.

A motion to Deny was made by Council Member Blake Clemens.
The motion was seconded by Council Member Janelle Moore.
The motion result was: Failed
Voting Aye: Clemens, Meier, Moore
Voting Nay: Arfsten, DeFrancisco, Gunther, Resnik

Motion to approve made by Council Member Arfsten subject to the final review and approval by the City Manager and City Attorney.

A motion to Approve was made by Council Member Bruce Arfsten.
The motion was seconded by Council Member Chris DeFrancisco.
The motion result was: Passed
Voting Aye: Arfsten, DeFrancisco, Gunther, Resnik
Voting Nay: Clemens, Meier, Moore

Mayor-Todd Meier

Attest:

City Secretary-Chris Terry

Council Agenda Item: # R 2b

AGENDA CAPTION:

Approval of a resolution regarding payment to the Town of a catering fee by a vendor (caterer) selling food and/or beverages at the Addison Arts and Events District and Visit Addison.

FINANCIAL IMPACT:

N/A

BACKGROUND:

On September 25, 2012, City Council voted to adopt an ordinance and resolution creating a food and beverage commission for the Addison Conference Centre and Visit Addison. Provisions in the ordinance and resolution state that commission will be charged to caterers based upon total gross receipts. Based upon industry standard, the revision proposed will exclude gratuity, labor, and taxes.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

Mindful Stewardship of Town Resources

ATTACHMENTS:

Description:

 [Food and Beverage Commission Resolution](#)

Type:

Cover Memo

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS REGARDING PAYMENT TO THE TOWN OF A CATERING FEE BY A VENDOR SELLING FOOD AND/OR BEVERAGES AT THE ADDISON ARTS AND EVENTS DISTRICT, INCLUDING THE ADDISON CONFERENCE & THEATRE CENTRE, AND VISIT ADDISON; MODIFYING RESOLUTION NO. ____ REGARDING THE SAME; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the Town of Addison, Texas (the "City") previously adopted Resolution No. _____ regarding, among other things, a commission to be paid by vendors providing food and/or beverage service at the Addison Arts and Events District (the "District"), as defined in Section 67-2 of the City's Code of Ordinances, and at Visit Addison, the City's visitor center located within the City in the Village on the Parkway shopping center ("Visit Addison"), and the City Council desires to modify the basis on which that commission is determined.

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

Section 1. Each vendor that provides food and/or beverage service to the Addison Arts and Events District or to Visit Addison (as defined above) shall pay the City a catering fee (commission) equal to a percentage of the vendor's gross charges (excluding labor costs, gratuity, and taxes) for food and beverages to a user of the vendor's catering services during an event or function within the District or at Visit Addison. The percentage of the vendors' gross charges to be paid to the City is set forth in Exhibit A attached to Resolution No. _____. The catering fee shall be paid by a vendor whether or not the vendor is paid by the user to whom the vendor provides catering services

Section 2. Section 1 of this Resolution modifies Section 2(b) of Resolution No. _____ regarding a food/beverage service commission. Otherwise, Resolution No. _____ is not modified and remains in force and effect.

Section 3. This Resolution shall be effective upon its passage and approval.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this the _____ day of _____, 2012.

Todd Meier, Mayor

ATTEST:

By: _____
Chris Terry, City Secretary

APPROVED AS TO FORM:

By: _____
John Hill, City Attorney

Council Agenda Item: # R 2c

AGENDA CAPTION:

Approval of an ordinance amending section 67-15A (Food and Beverage Commission; Exclusive catering service) of Chapter 67 of the Code of Ordinances by modifying its provisions regarding the payment to the Town by a food and beverage caterer of a catering fee for services at the Addison Arts and Events District and the Town's Visitor Center.

FINANCIAL IMPACT:

N/A

BACKGROUND:

On September 25, 2012, City Council voted to adopt an ordinance and resolution creating a food and beverage commission for the Addison Conference Centre and Visit Addison. Provisions in the ordinance and resolution state that commission will be charged to caterers based upon total gross receipts. Based upon industry standard, the revision proposed will exclude gratuity, labor, and taxes.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

Mindful Stewardship of Town Resources

ATTACHMENTS:

Description:

 [Food and Beverage Commission Ordinance Amendment](#)

Type:

Cover Memo

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING SECTION 67-15A (FOOD AND BEVERAGE COMMISSION; EXCLUSIVE CATERING SERVICE) OF CHAPTER 67 (SPECIAL EVENTS) OF THE CODE OF ORDINANCES OF THE CITY BY MODIFYING ITS PROVISIONS REGARDING THE PAYMENT TO THE CITY BY A FOOD AND BEVERAGE CATERER OF A CATERING FEE (COMMISSION) FOR CATERING SERVICES AT THE ADDISON ARTS AND EVENTS DISTRICT AND THE TOWN'S VISITOR CENTER; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Amendment. Section 67-15A (Food and Beverage Commission; Exclusive Catering Service) of Chapter 67 (Special Events) of the Code of Ordinances (the "Code") of the Town of Addison, Texas (the "City") is hereby amended to read as follows (additions are underlined, deletions are ~~struck through~~):

Section 67-15A. Food and beverage commission; exclusive catering service.

(a) Except as otherwise provided for in this chapter, for all events and functions that take place within the district or at the town's visitor center (known as Visit Addison), a vendor of food and/or beverages shall pay to the town a catering fee (commission) equal to a percentage of ~~on~~ the vendor's gross ~~receipts~~ (excluding labor costs, gratuity, and taxes) for ~~from the sale of all food and/or beverages to a user of the vendor's catering services during an event or function.~~ The percentage amount of which commission shall be as established by resolution or motion of the city council adopted and as the same may be amended or modified from time to time. The catering fee shall be paid by a vendor whether or not the vendor is paid by the user to whom the vendor provides catering services. ~~For purposes of this section, "gross receipts" means the whole, entire, total receipts from the sale of food and beverages, without deduction.~~

(b) In connection with the catering of food and beverage services within the district and at the town's visitor center (known as Visit Addison), the town may select an in-house private label caterer to provide food and beverage catering services.

Section 2. Savings. This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those Ordinances are in direct conflict with the provisions of this Ordinance. Provided, however, that the repeal of such ordinances or parts of such ordinances, and the amendments and changes made by this Ordinance, shall not affect any right, property or claim which was or is vested in the City, or any act done, or right accruing or accrued, or

established, or any suit, action or proceeding had or commenced before the time when this Ordinance shall take effect; nor shall said repeals, amendments or changes affect any offense committed, or any penalty or forfeiture incurred, or any suit or prosecution pending at the time when this Ordinance shall take effect under any of the ordinances or sections thereof so repealed, amended or changed; and to that extent and for that purpose the provisions of such ordinances or parts of such ordinances shall be deemed to remain and continue in full force and effect.

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 portion 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 and approval.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this ___ day of _____, 2012.

Todd Meier, Mayor

ATTEST:

By: _____
Chris Terry, City Secretary

APPROVED AS TO FORM:

By: _____
John Hill, City Attorney

Council Agenda Item: # R 2d

AGENDA CAPTION:

Approval of a contract renewal related to communications and public relations with Shiroma Southwest in the amount of \$75,000.

FINANCIAL IMPACT:

Funds are available in the Fiscal Year 2012-2013 Marketing Department budget. The funding amount is approximately \$15,000 more than the prior fiscal year due to increased professional service requirements.

BACKGROUND:

n/a

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

 [Shiroma Southwest Contract](#)

Type:

Backup Material

October 1, 2012

**LETTER OF AGREEMENT BETWEEN THE TOWN OF ADDISON
AND SOUTHWEST SPEAKERS BUREAU, INC., D.B.A. SHIROMA/SOUTHWEST, FOR
EVENT PUBLIC RELATIONS AND PUBLICITY**

This Letter confirms the agreement between the Town of Addison (Addison or the client) and Southwest Speakers Bureau, Inc., d.b.a., Shiroma/Southwest (the agency):

SERVICES:

A. Shiroma Southwest will develop and execute public relations and media publicity programs to promote the Town of Addison's events, as follows:

EVENTS ARE AS FOLLOWS:

Hotcake Hustle (Run)
Out of the Loop Festival
WorldFest
Taste Addison
Summer Series
Shakespeare in the Park
Kaboom Town!
Oktoberfest
Event Social Media

FEE: The fee for the Services provided by Shiroma Southwest for the above events is an annual fee in the amount of \$75,000.00, with fees allotted proportionately to each event, based on the amount of hours required. The fee will be billed in 12 monthly increments of \$6,250.00.

B. In addition to the Services provided by Shiroma Southwest as set forth in subsection A, above, Shiroma Southwest, upon the client's written request ("Client Request"), will also develop and/or execute public relations and media publicity programs to promote certain special projects for the Town of Addison, as follows (the scope and extent of the special projects and pilot programs for each to be determined by client):

EXAMPLE OF POTENTIAL SPECIAL PROJECT:

Fine Dining PR (enhance Addison's reputation for destination dining, support additional traffic for food segment purveyors that have taken the risk to provide an unusual and unique food experience, utilize non-traditional food media, social media, and the blogging environment to drive traffic and win wider audience shares for Addison's specialty and fine dining)

FEES: Fees for the services provided by Shiroma Southwest for the above special projects and pilot programs will be determined by mutual agreement of Shiroma Southwest and client promptly upon issuance of the Client Request. However, in the event Shiroma Southwest and client are unable to reach a mutual agreement regarding such fees, Shiroma Southwest shall not proceed with or perform any of

the services described in this subsection, and Shiroma Southwest will not be paid for any such services or any expense reimbursement in connection therewith.

ADDENDUMS: If the client elects to continue a special project or pilot program beyond its conclusion date, an addendum will be drafted to cover additional agency services required.

EXPENSE REIMBURSEMENT:

Expenses will be billed monthly. Agency will provide the client with a budget of anticipated charges. Client agrees to provide any necessary collateral pieces, if possible, to reduce the need for additional expenses. Agency will be reimbursed for all expenses pertaining to the programs, which may include copies, long distance phone, faxes, postage, printing, messenger services, overnight deliveries, press kit materials and assembly, photo reproduction, print and electronic clipping services, etc. All outside purchases are made only under the authorization of the client and insomuch, the client agrees to accept full responsibility for all obligations and holds the agency harmless from all liability and payment of such charges as ordered under the client's authorization.

All amounts are due in Dallas, Dallas County, Texas. Balances that are more than sixty (60) days past due are subject to a finance charge of 1.33% per month (16% annually) or the current amount allowable by law.

This agreement is effective immediately upon signing and shall remain in effect through October 31, 2013, subject to the right of either party to terminate this Agreement upon giving the other party at least thirty (30) days notice of termination.

FOR TOWN OF ADDISON

**FOR SOUTHWEST SPEAKERS BUREAU, INC.
D.B.A. SHIROMA/SOUTHWEST**

BY: _____

BY: _____

ITS: _____

ITS: _____

DATE: _____

DATE: _____

Council Agenda Item: # R 2e

AGENDA CAPTION:

Approval of a contract renewal for crisis communication services with Margulies Communications Group in the amount of \$42,000.

FINANCIAL IMPACT:

Funds are available in the Fiscal Year 2012-2013 General Fund budget.

BACKGROUND:

n/a

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

📎 [Margulies Contract](#)

Type:

Backup Material

This letter, when signed by you, will confirm that the Town of Addison (Client) has retained The Margulies Communications Group (MCG), a Texas Corporation as public relations counsel to provide the services described below. Such services shall be provided beginning on October 1, 2012.

Services

MCG will, at Client's request from time to time and to the Client's satisfaction, assist Client in responding to media inquiries concerning crisis communications issues as well as other assignments (non-crisis matters and other matters) given to MCG by Client. MCG shall submit such responses and other work prepared by MCG for Client's review and consideration of approval prior to release to the media or any other third party, except when MCG is called upon by Client to be its representative and spokesperson in connection with an incident or matter and the then existing circumstances do not permit MCG adequate time to submit such responses or other work to Client for its review and consideration prior to its release. MCG will work with Client to develop strategies to minimize any negative publicity during crisis situations and will assist the Client in providing accurate and timely information to the news media. In providing such services, MCG shall comply with all applicable federal, state and local laws, rules and regulations.

For the services described above, Client will pay MCG a monthly retainer of \$3,500 for each calendar month during the term hereof (the "Monthly Fee"). If incurred, MCG will bill Client for reimbursement of out-of-pocket expenses incurred on Client's behalf when these expenses have been approved by Client in advance.

MCG shall submit to Client, on or before the fifth day of each month, an invoice for the Monthly Fee. Each such invoice shall include (i) a description of the work performed for the month preceding the date of the invoice, (ii) time reports for that month for all MCG personnel who work under this contract, (iii) an itemized statement of any reimbursable expenses incurred; (iv) true and correct copies of any and all receipts, invoices, and other documents and materials in support of the invoice, and (v) any such additional documents or materials as Client may request in connection with the invoice and/or the compensation paid to MCG. Client shall pay the Monthly Fee set forth in the invoice for service properly performed and all expenses properly incurred by MCG and set forth in the invoice within thirty (30) days following Client's receipt of the invoice.

This contract shall last for one year from October 1, 2012, subject however to the earlier termination of this contract as provided for herein and subject to the annual appropriation and budgeting of funds by Client to make payments under this contract. If funds to make any payment or payments under this contract during the said term are not appropriated and budgeted by the Town, this contract shall terminate on the last day of the Client's fiscal period in which funds were appropriated and budgeted without penalty or expense to client of any kind whatsoever.

Either party may terminate this contract at any time and for any reason by giving to the other party at least 30 days written notice of such termination. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such

termination. In the event of termination, all finished or unfinished reports and other materials and items (whether kept electronically, in writing, or otherwise) prepared by MCG shall be and become the property of Client, and MCG shall promptly deliver such items to Client. MCG shall be paid for all work satisfactorily completed prior to the effective date of said termination.

If MCG, MCG's agents or employees fail to exercise good behavior either during or outside of working hours that is of such a nature as to bring discredit upon the Client, then Client shall have the right to terminate this contract effective immediately upon the Client giving written notice thereof to MCG. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. In the event of termination, all finished or unfinished reports and other materials and items (whether kept electronically, in writing, or otherwise) prepared by MCG shall be and become the property of the Client and MCG shall promptly deliver such items to the Client. MCG shall be paid for all work satisfactorily completed prior to the effective date of such termination.

In connection with this Agreement, MCG shall provide and maintain in full force and effect during the term of this Agreement:

- (i) Workers Compensation insurance at statutory limits, including Employers Liability coverage a minimum limits of \$500,000 each-occurrence each accident/\$500,000 by disease each-occurrence/\$500,000 by disease aggregate;
- (ii) Commercial general liability insurance at minimum combined single limits of \$1,000,000.00 per occurrence and \$2,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations (\$1,000,000 products/completed operations aggregate) and contractual liability (covering, but not limited to, the liability assumed under the indemnification provisions of this Agreement).
- (iii) Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage.
- (iv) Professional Liability coverage at minimum limits of \$1,000,000. This coverage must be maintained for at least two (2) years after the termination of this letter agreement. If coverage is written on a claims-made basis, a policy retroactive date equivalent to the inception date of the contract (or earlier) must be maintained during the full term of this agreement or any extensions or renewals thereof.

With reference to the foregoing insurance requirement, MCG shall specifically endorse applicable insurance policies as follows:

- (a) The Town of Addison shall be named as an additional insured with respect to General Liability and Automobile Liability.
- (b) All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.

- (c) A waiver of subrogation in favor of the Town of Addison shall be contained in the Workers Compensation and all liability policies.
- (d) All insurance policies shall be endorsed to require the insurer to immediately notify the Town of Addison of any material change in the insurance coverage.
- (e) All insurance policies shall be endorsed to the effect that the Town of Addison will receive at least sixty (60) days notice prior to cancellation or non-renewal of the insurance.
- (f) All insurance policies, which name the Town of Addison as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
- (g) Required limits may be satisfied by any combination of primary and umbrella liability insurances.
- (h) MCG may maintain reasonable and customary deductibles, subject to approval by the Town of Addison.
- (i) Insurance must be purchased from insurers that are financially acceptable to the Town of Addison.

All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of Insurance, satisfactory to Client, shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting the following:

- (a) Sets forth all endorsements and insurance coverages according to requirements and instructions contained herein.
- (b) Shall specifically set forth the notice-of-cancellation or termination provisions to the Town of Addison.

Upon request, MCG shall furnish the Town of Addison with certified copies of all insurance policies.

MCG AGREES TO AND SHALL DEFEND (TO THE EXTENT INSURANCE COVERAGE IS AVAILABLE), INDEMNIFY AND HOLD HARMLESS THE TOWN OF ADDISON, TEXAS, ITS OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES (EACH AN "INDEMNITEE") FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, JUDGMENTS, LIABILITIES, PENALTIES, FINES, EXPENSES, FEES AND COSTS (INCLUDING REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF DEFENSE), AND DAMAGES (TOGETHER, "DAMAGES") ARISING OUT OF OR IN CONNECTION WITH (A) MCG'S PERFORMANCE OF THIS AGREEMENT, (B) ANY BREACH OR DEFAULT IN THE PERFORMANCE OF MCG'S OBLIGATIONS UNDER THIS AGREEMENT, AND (C) WITHOUT LIMITING ANY OF THE FOREGOING, ANY ACT OR OMISSION OF MCG, ITS OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS, AND SUBCONTRACTORS UNDER,

RELATED TO, OR IN CONNECTION WITH, THIS AGREEMENT (AND INCLUDING, WITHOUT LIMITATION, ANY CLAIM OR DAMAGES RELATING TO COPYRIGHT OR ANY OTHER INTELLECTUAL PROPERTY RIGHT), INCLUDING DAMAGES CAUSED BY THE INDEMNITEE'S OWN NEGLIGENCE, EXCEPT AS SPECIFICALLY LIMITED HEREIN.

With respect to MCG's indemnity obligation set forth above, MCG shall have no duty to indemnify an Indemnitee for any Damages caused by the sole negligence of the Indemnitee. If an Indemnitee suffers Damages arising out of or in connection with the performance of this Agreement that are caused by the concurrent negligence of both MCG and the Indemnitee, MCG's indemnity obligation will be limited to a fraction of the total Damages equivalent to MCG's own percentage of responsibility. With respect to MCG's duty to defend set forth herein in subsection, MCG shall have the duty, at its sole cost and expense, through counsel of its choice (subject to the Client's reasonable consent), to litigate, defend, settle or otherwise attempt to resolve any claim, lawsuit, cause of action, or judgment arising out of or in connection with this Agreement. In the event that MCG fails or refuses to provide a defense to any claim, lawsuit, judgment, or cause of action arising out of or in connection with this Agreement, the Client shall have the right to undertake the defense, compromise, or settlement of any such claim, lawsuit, judgment, or cause of action, through counsel of its own choice, on behalf of and for the account of, and at the risk of MCG, and MCG shall be obligated to pay the reasonable and necessary costs, expenses and attorneys' fees incurred by the Client in connection with handling the prosecution or defense and any appeal(s) related to such claim, lawsuit, judgment, or cause of action. The terms and provisions of this defense and indemnity set forth above shall survive the expiration or termination of this Agreement.

Client agrees to indemnify and hold harmless MCG from and against all losses which MCG may incur, based on information, representations, reports or data (together, "information") negligently furnished by Client in writing to MCG under this letter agreement, to the extent that (i) such information is accurately provided by MCG to the media and accurately disclosed by the media to the public, and (ii) the Client is legally liable for making such information available to the public; provided, however, that this indemnity and hold harmless is given by Client subject to and without waiving (i) any immunity available to Client, (ii) any tort limitation and any of its rights under, and the indemnity and hold harmless provided for herein is subject to and shall not exceed the monetary limitations of damages as set forth in, the Texas Tort Claims Act (Chapter 101, Tex. Civ. Prac. & Rem. Code, as amended) or any successor statute thereto, and (iii) any defenses afforded by law or otherwise; and further, in no event shall this indemnity and hold harmless apply to punitive or exemplary damages of whatever kind or nature.

MCG shall keep complete and accurate records for the services performed pursuant to this Contract and any records required by law or government regulation and shall make such records available to Town upon request. MCG shall assure the confidentiality of any records that are required by law to be so maintained. MCG shall prepare and forward such additional or supplementary records as Town may reasonably request.

Inasmuch as this contract is intended to secure the specialized services of MCG, MCG has no authority or power to and may not assign, transfer, delegate, subcontract or otherwise convey any interest herein without the prior written consent of Client, and any such assignment, transfer, delegation, subcontract or other conveyance without the Client's prior written consent shall be considered null and void.

Where the terms of this contract require that notice in writing be provided, such notice shall be deemed received by the party to whom it is directed upon being hand-delivered or upon three (3) days following the deposit of the notice in the United States mail, postage pre-paid, and sent by certified mail, return receipt requested and properly addressed as follows:

To Client:

5300 Belt Line Road
Dallas, Texas 75254
Attn: Chris Terry

To MCG:

6210 Campbell Road
Suite 200
Dallas, Texas 75248

No reports, information, documents, or other materials given to or prepared by MCG under this contract which Client requests to be kept confidential shall be made available to any individual or organization by MCG without the prior written approval of Client.

This letter agreement is entered into for the sole benefit of MCG and Client. Nothing in this letter agreement shall be construed as giving any benefits, rights, remedies or claims to any other person, firm, corporation or other entity, including, without limitation, the general public or any member thereof.

The reports, documents and materials prepared by MCG under this contract shall be the sole property of Client upon payment by Client to MCG for the fees earned under this contract in connection with the preparation and delivery of such reports, documents and materials.

If any clause, paragraph, section or portion of this contract shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the contract shall remain in full force and effect and the parties shall be deemed to have contracted as if said clause, section, paragraph or portion had not been in the contract initially.

Any rights and remedies either party may have with respect to the other arising out of the performance of services during the term of this contract shall survive the cancellation, expiration or termination of this contract. Obligations of either party hereunder arising prior to the termination or cancellation of this contract allocating responsibility or liability of or between Client and MCG shall survive the completion of this services hereunder and termination or cancellation of this contract.

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this contract on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

In the event of any action under this contract, venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Contract; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this contract.

MCG shall, during the entire term of the contract, be construed to be an independent contractor and nothing in this contract is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow the Town to exercise discretion or control over the professional manner in which MCG performs the services which are the subject matter of the contract; provided, however, that the services to be provided by MCG shall be provided in a manner consistent with the highest ethical standards and applicable laws and regulations governing such services.

This contract supersedes all previous contracts and constitutes the entire understanding of the parties hereto. MCG shall be entitled to no other benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both parties.

Margulies Communications Group, Inc



David S. Margulies, President

Date: _____

Accepted and Approved:

Town of Addison

By: _____ (name and title)

Date: _____

Council Agenda Item: # R 2f

AGENDA CAPTION:

Approval of annual contract renewal with Rodney Hand & Associates Marketing Communications, LP for the production of Addison Magazine in the amount of \$111,750.

FINANCIAL IMPACT:

Funds are available in the Fiscal Year 2012-2013 Marketing Department budget.

BACKGROUND:

n/a

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

 [Rodney Hand & Assoc. Contract](#)

Type:

Backup Material

STATE OF TEXAS

Addison/North Dallas Advertising Agreement

COUNTY OF DALLAS

This Agreement is made as of _____, 2012 by and between the Town of Addison, Texas (“Addison” or the “Town”) and Rodney Hand & Associates Marketing Communications, LP (“Hand”).

WHEREAS, the Town is a duly incorporated municipality pursuant to the laws of the State of Texas; and

WHEREAS, Hand is a Texas limited partnership doing business in the State of Texas; and

WHEREAS, Hand is the owner of two publications known as “Addison and The North Dallas Corridor Visitors Guide” (the “Visitors Guide”) and the “Addison and The North Dallas Corridor Magazine” (the “Magazine”) (the Visitors Guide and the Magazine being collectively referred to herein as the “Publications”), and the Town desires to advertise in these Publications for the purpose of promoting the Town and the surrounding area to residents and visitors through distribution in hotel rooms in the Town and North Dallas area;

WHEREAS, the Town and Hand agree that these Publications shall be produced and distributed in accordance with the terms of this Agreement (including Exhibit A attached hereto and incorporated herein).

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 Hand & Associates Marketing Communications do contract and agree as follows:

1. Incorporation of Premises. The above and foregoing premises are true and correct and are incorporated herein in their entirety.
2. Term. This Agreement shall be in effect from the date of execution hereof by the Town and shall terminate, except as otherwise provided for herein, upon completion of the fourth issue of the Publications, including its distribution.
3. Conduct of Publications. Hand shall be the owner/publisher of the Publications and the Town shall be considered an advertiser. The Visitors Guide shall be directed and distributed primarily to Addison and North Dallas hotels and visitors (as identified and agreed upon by the Town and Hand). The Magazine shall be directed and distributed primarily to Addison and North Dallas residential properties (as identified and agreed upon by the Town and Hand). The content of the Visitors Guide and of the Magazine will be similar, but the Magazine may include some additional information or features which is pertinent and unique to a residential audience.
4. Obligations, Representations and Warranties; Indemnification.

A. Hand: Hand represents, warrants and covenants that:

- (1) Hand shall acquire any and all licenses, agreements, permits, waivers, releases, registrations, approvals, authorizations, or any other permit or document required or necessary to produce the Publications.
- (2) In the production of the Publications, Hand shall comply with all applicable federal, state and local laws, rules and regulations.
- (3) During the term of this Agreement, neither Hand nor any of Hand's associates or employees shall participate, whether directly or indirectly, financially or otherwise, in the production of any other publication related to Addison or the North Dallas area.
- (4) Hand shall keep and hold all information provided to it by the Town in connection with this Agreement in confidence and shall not disclose such information to any third party. This paragraph shall survive the termination hereof.
- (5)(a) IN CONSIDERATION OF THE GRANTING OF THIS AGREEMENT, HAND AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN, ITS, OFFICERS, AGENTS AND EMPLOYEES (EACH AN "INDEMNITEE") FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, JUDGMENTS, LIABILITIES, LOSSES, CLAIMS, PENALTIES, FINES, EXPENSES, FEES AND COSTS (INCLUDING REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF DEFENSE), AND DAMAGES (TOGETHER, "DAMAGES") ARISING OUT OF OR IN CONNECTION WITH HAND'S PERFORMANCE OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY NEGLIGENT ACT OR OMISSION OF HAND OR ANY OWNER, PARTNER, OFFICER, EMPLOYEE, AGENT, REPRESENTATIVE, CONTRACTOR, SUBCONTRACTOR, LICENSEE, GUEST, OR INVITEE OF HAND, OR ANY OTHER PERSON OR ENTITY FOR WHOM HAND MAY BE LIABLE UNDER, RELATED TO, OR IN CONNECTION WITH, THIS AGREEMENT, INCLUDING DAMAGES CAUSED BY THE INDEMNITEE'S OWN NEGLIGENCE, OR GROSS NEGLIGENCE, OR CONDUCT THAT MAY EXPOSE AN INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY, EXCEPT AS SPECIFICALLY LIMITED HEREIN.
- (b) WITH RESPECT TO HAND'S INDEMNITY OBLIGATION SET FORTH IN SUBSECTION (A), HAND SHALL HAVE NO DUTY TO INDEMNIFY AN INDEMNITEE FOR ANY DAMAGES CAUSED BY THE SOLE NEGLIGENCE OF THE INDEMNITEE, OR SOLE GROSS NEGLIGENCE OF THE INDEMNITEE, OR

SOLE CONDUCT OF THE INDEMNITEE THAT MAY OR DOES EXPOSE THE INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY.

- (c) IF AN INDEMNITEE SUFFERS DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT THAT ARE CAUSED BY THE CONCURRENT NEGLIGENCE, GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES RESULT IN EXPOSURE TO STRICT LIABILITY, OF BOTH HAND AND THE INDEMNITEE, HAND'S INDEMNITY OBLIGATION SET FORTH IN SUBSECTION (A) WILL BE LIMITED TO A FRACTION OF THE TOTAL DAMAGES EQUIVALENT TO HAND'S OWN PERCENTAGE OF RESPONSIBILITY.
- (d) With respect to Hand's duty to defend set forth herein in subsection (a), Hand shall have the duty, at its sole cost and expense, through counsel of its choice, to litigate, defend, settle or otherwise attempt to resolve any claim, lawsuit, cause of action, or judgment arising out of or in connection with this Agreement; provided however, that the Town shall have the right to approve the selection of counsel by Hand and to reject Hand's selection of counsel and to select counsel of the Town's own choosing, in which instance, Hand shall be obligated to pay reasonable attorney fees and the expenses associated thereto. The Town agrees that it will not unreasonably withhold approval of counsel selected by Hand, and further, the Town agrees to act reasonably in the selection of counsel of its own choosing.
- (e) In the event that Hand fails or refuses to provide a defense to any claim, lawsuit, judgment, or cause of action arising out of or in connection with this Agreement, the Town shall have the right to undertake the defense, compromise, or settlement of any such claim, lawsuit, judgment, or cause of action, through counsel of its own choice, on behalf of and for the account of, and at the risk of Hand, and Hand shall be obligated to pay the reasonable and necessary costs, expenses and attorneys' fees incurred by the Town in connection with handling the prosecution or defense and any appeal(s) related to such claim, lawsuit, judgment, or cause of action.
- (f) The indemnity, hold harmless, and defense obligations of Hand set forth in this section or elsewhere in this Agreement shall survive the expiration or earlier termination of this Agreement.
- (6) **Hand, its officers, agents and employees do hereby waive any and all claims for damage, injury or loss to any person or property, including the death of any person, that may be caused, in whole or in part, by the act or failure to act of any officer, agent or employee of the Town. Hand, its officers agents and employees**

assume the risk of all conditions whether dangerous or otherwise, in and about the premises of the Town, and waive any and all specific notice of the existence of any defective or dangerous condition in or about the said premises. The provisions of this paragraph shall survive the termination of this Agreement.

B. Town: The Town represents, warrants, and covenants that:

- (1) The Town shall pay Hand a sum of \$26,250 for 18 pages of R.O.B. (Run of Book) advertising in the **November 2012** issue of the Publications, \$26,250 for 18 pages of R.O.B. advertising in the **February 2013** issue, \$26,250 for 18 pages of R.O.B. advertising in the **May 2013** issue and \$26,250 for 18 pages of R.O.B. advertising in the **August 2013** issue of the Publications. Such payment shall be made in accordance with the terms of this Agreement, including Exhibit A.
 - (2) The Town shall pay Hand a sum of \$1,687.50 for local distribution of each of the Holiday/Winter 2012/2013, Spring 2013, Summer 2013 and Fall 2013 Publications respectively to various locations approved by the City Manager. The area distribution will include the Town and extends from the borders of the Town south to LBJ Freeway (IH 635), north to Legacy, east to Hillcrest Road, and west to Marsh Lane. The various local distribution points shall be determined by the Town. Such sum shall be paid by the Town to Hand upon the Town receiving proof acceptable to the Town of the completion of the distribution.
6. Termination. This Agreement may be terminated at any time by either party hereto in the event that the other party is in breach of any term of this Agreement and such breach continues for more than three (3) days after receipt by the breaching party of written notice of the breach from the non-breaching party. In the event of such termination Hand shall be compensated for all services properly performed to the date of termination. In the event of such termination, should Hand have been paid by the Town for services not yet properly performed then Hand shall reimburse the Town all such payments. Acceptance or payment of such reimbursement shall not constitute a waiver of any claim that may otherwise arise out of this Agreement.

In addition, the Town may terminate this Agreement at any time and for any reason (or for no reason) by giving Hand at least sixty (60) days written notice of such termination ("Termination Notice"). If a Space Reservation deadline listed on the attached Exhibit "B" for any issue of the Publications will occur prior to the expiration of the said 60 day period that begins on the day that such notice is actually received or deemed received (as set forth in Section 7 below) by Hand and ends at the conclusion of the 60th day thereafter, then this Agreement shall continue in effect as to such Publications only (the "Continued Publications"), and upon the completion of the work and services of Hand in connection with such Publications and payment by the City therefor in accordance with this Agreement, this Agreement shall terminate. Upon receipt of the termination notice, Hand will stop work in an orderly and expeditious manner (except for the Continued Publications), place no further

subcontracts or orders in connection with this Agreement, and terminate all subcontracts (if any).

Example: The Spring 2013 Space Reservation deadline is January 20, 2013 as shown on the attached Exhibit "B." The Town sends written notice to the address for Hand included in Section 7 below on January 5, 2013 that the Town wants to terminate this Agreement. The notice is sent by certified mail and is deposited in the U.S. Mail, postage pre-paid on January 5, 2013, and under Section 7 below is deemed received 3 days thereafter, or January 8, 2013. The 60th day after January 8, 2013 is March 9, 2013. The Space Reservation deadline for Spring 2013 shown in Exhibit "B" - January 20, 2013 – occurs during the 60 day period between January 8, 2013 and March 9, 2013. The Agreement will be terminated at the end of March 9, 2013, but the work and services of Hand for the Spring 2013 Publications will be a Continued Publication. Upon the completion of Hand's work and services for the Spring 2013 Publications and the payment by the City for such work and services in accordance with this Agreement, this Agreement shall end. Accordingly, Hand will not provide work and services, and the Town will not pay Hand, for the Summer 2013 and the Fall 2013 Publications.

7. Delays; Breach. No delay by either of the parties hereto in performing their respective duties, or obligations hereunder shall be deemed a breach of this Agreement if such delay arises from causes beyond the reasonable control of party, including delays resulting from labor disputes, strikes, wars, riots, insurrection, civil commotion, government regulations, fire, flood, storm, or acts of God, provided that such affected party uses its best efforts to avoid non-performance and resumes full performance hereunder as soon as practical. Shortage of material or equipment or changes in price of materials or equipment shall not constitute valid grounds for delay.

It will constitute a breach of this Agreement, allowing for termination and/or recovery of damages which the non-breaching party sustains if:

- (i) The Town fails to make any payment due hereunder within thirty (30) days following the receipt of an invoice therefor, (and each such invoice shall include a summary statement of services rendered; and Hand shall supply such supporting documentation with each invoice regarding the services performed by Hand as may be requested by Town from its Staff employees), or
- (ii) Hand fails to deliver the Holiday/Winter 2012/2013 issue of the Publications, in the required quantities (see Exhibit A) on or before **November 27, 2012**, the Spring 2013 issue in the required quantities (see Exhibit A) on or before **March 1, 2013**, the Summer 2013 issue in the required quantities (see Exhibit A) on or before **May 24, 2013**, or the Fall 2013 issue in the required quantities (see Exhibit A) on or before **August 23, 2013**; provided, however, that the Town agrees to allow Hand a period not to exceed five (5) business days from the delivery date set out above to

fully complete Hand's required distribution of the Publications. Failure by Hand to deliver on the dates set above shall result in a late fee of \$400.00 per day which the Town may deduct from the final amount then payable.

8. Notice: Where the terms of this Agreement require that notice in writing be provided, such notice shall be deemed received by the party to whom it is directed upon being hand-delivered or upon three (3) days following the deposit of the notice in the United States mail, postage pre-paid, and sent by certified mail, return receipt requested and properly addressed as follows:

To Addison:

5300 Belt Line Road
Dallas, Texas 75254
Attn: Carrie Rice
Director of Marketing

To Hand:

Rodney Hand & Associates Marketing
Communications, LP
PO Box 12121
Dallas, Texas 75225
Attn: Rodney Hand

9. Assignment. This Agreement shall not be assigned or otherwise conveyed in whole or in part by Hand without the prior written consent of the Town. Because this is a services contract, the Town is not obligated to consent to any assignment or other conveyance of any portion of this Agreement. Any attempted assignment or other conveyance hereof by Hand shall be null, void and of no force or effect.
10. Independent Contractor. The relationship of Hand to the Town is that of an independent contractor. Neither the Town nor Hand shall be deemed to be the agent of the other and neither is authorized to take any action binding upon the other. No term or provision of this Agreement or any action in the performance hereof is intended nor shall be construed as making Hand the agent, servant or employee of the Town, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship.
11. Texas Law to Apply. This Agreement and Exhibit "A" shall be governed by the laws of the State of Texas (without reference to choice of law provisions of any jurisdiction), and shall be performable and all compensation payable in Dallas County Texas. Exclusive venue under this Agreement lies in Dallas County, Texas.
12. Entire Agreement. This Agreement and the attached "Exhibit A" represents the entire and integrated agreement between the Town and Hand and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both parties.
13. Severability. If any clause, paragraph, section or portion of this Agreement shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Agreement shall remain in full force and effect.

14. Authority to Execute. The undersigned officers and/or agents of the Town and Hand are properly authorized officials of the said parties and have the authority necessary to execute this Agreement on behalf of the respective party, and the parties hereby certify one to the other that any necessary resolutions extending said authority have been duly passed and are now in full force and effect.

EXECUTED at Dallas County, Texas on the day and year first written above.

TOWN OF ADDISON, TEXAS

**RODNEY HAND & ASSOCIATES
MARKETING
COMMUNICATIONS, LP**

By: _____ By: _____
Ron Whitehead, City Manager Rodney Hand, Principal

RODNEY HAND EXHIBIT B
2012-13 Publishing Schedule /Deadlines

HOLIDAY/WINTER ISSUE 2012-13

Space Reservation: October 12, 2012
Materials Deadline: October 19, 2012
Distribution Date: November 12 - 16, 2012

SPRING 2013 ISSUE

Space Reservation: January 18, 2012
Materials Deadline: January 25, 2012
Distribution Date: February 18 - 22, 2012

SUMMER 2013 ISSUE

Space Reservation: April 12, 2012
Materials Deadline: April 19, 2012
Distribution Date: May 13 - 17, 2012

FALL 2013 ISSUE

Space Reservation: July 12, 2012
Materials Deadline: July 19, 2012
Distribution Date: August 12 - 16, 2012

Council Agenda Item: # R 2g

AGENDA CAPTION:

Approval of a sponsorship agreement with the Cavanaugh Flight Museum in the amount of \$50,000.

FINANCIAL IMPACT:

Funds are available in the Fiscal Year 2012-2013 Marketing Department budget.

BACKGROUND:

n/a

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

 [Grant Request](#)

Type:

Backup Material



Council members,

Nov. 6, 2012

This year the Cavanaugh Flight Museum has experimented with different avenues as far as our Marketing approach is concerned. We met with Carrie Rice to start a cooperative marketing plan. We changed PR firms and now work with Shiroma Southwest. We keep Carrie in the loop to merge the museum calendar with the Town's. I feel that working with Carrie and Shiroma has kept things simple and flowing.

The Cavanaugh Flight Museum is requesting \$ 50,000 to help with our marketing efforts for 2013. Attached is a summary of our actual expenses for marketing for fiscal year 2012 (Oct 11 to Oct 12) As well as the projected budget for 2013. Our main focus for 2013 boils down to three main goals:

- Increase general attendance
- Increase event revenue
- Increase rides locally

For point one, we look to expand the impression of what the museum offers to the public, not only in the Metroplex, but anyone who is within a days drive from the museum. While we are obviously known as a historical destination, we believe we can attract more of the total family (not just dad) as a family destination thereby increasing our gate sales. People looking to come to Dallas need to find and view us as a great, local, family destination. For example, in our effort to attract more families, this year we introduced three new events that we plan on building on in the future: Kids Camp, Home school day and museum trick or treat. These events are not only fun for the kids but an invaluable education platform in which we saw kids spell bound by the stories told by the actual veteran's who flew the aircraft in the museum. In addition, with new event partners, we have reintroduced the museum gala with successful results this year.

For point two, we are also on the way. In 2012, we experimented with using local network TV advertising for two of our events and saw great results. We look to be able to increase the TV presence significantly for 2013 as we have many more events to be hosted by the museum.

As for point three, in 2012 we saw our aircraft ride program have a record year in revenues. However, we spent a considerable amount of time, advertising budget and fuel traveling to achieve these results. We believe that with more local advertising, awareness programs and events for the museum, we can do the same in donations and keep fuel sales and travel expenses here in our own community. CFM is positioned to be the premier ride program in the world with more variety of aircraft to experience in one location than any other entity currently offering warbird rides in the world! We just need to get the word out!

Your support is crucial in our continued success at the museum and we do appreciate it!

Blue Skies,

Doug Jeanes
Exec. Director

Cavanaugh Flight Museum

501(C) 3 Non-Profit Educational Organization - www.cavanaughflightmuseum.com
Addison Airport, 4572 Claire Chennault, Addison, Texas 75001 (972) 380-8800

Cavanaugh Flight Museum
Advertising/Marketing Expense
Oct 11 to Oct 12
Summary
Nov. 6, 2012

Dallas Morning News	\$ 2,173
European Publications	5,368
Local TV event advertising	9,766
DFW Airport display	8,902
Travel Host of Dallas	4,340
Social Media advertising	320
Out of town ride program-advertising	14,504
Gala advertng	3,987
Trade show graphics	1,429
Direct mail membership	6,064
Warbird publications print and web	1,730
Addison Magazine	7,504
Trade/air shows	32,030
DFW Folder Display	3,866
Public Relations partners	22,000
Total Expenditures	\$ 123,983

**Cavanaugh Flight Museum
Advertising/Marketing Budget
Fiscal YR 2013 projection
Nov.6, 2012**

Local Guide advertising	\$ 10,000
European Aviation club direct marketing	5,000
Destination websites	8,000
Best of city websites	6,000
Social media advertising	4,500
Gala advertising	1,000
Travel Host of Dallas	7,200
Purchase targeted email lists	5,500
Warbird publications print and web	4,000
Addison and North Dallas Media	10,000
Local TV network advertising	25,000
Trade/air show	22,000
DFW Folder Display	8,400
Public Relations partner (Shiroma)	24,000
Total Budget	\$ 140,600

Council Agenda Item: #R3

AGENDA CAPTION:

Presentation and recognition of the 2013 Addison Citizen Academy class.

FINANCIAL IMPACT:

n/a

BACKGROUND:

n/a

RECOMMENDATION:

n/a

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

Type:

No Attachments Available

Council Agenda Item: #R4

AGENDA CAPTION:

Discussion and consideration of approval of a resolution approving and authorizing the City Manager to execute an agreement requesting the North Central Texas Council of Governments to pursue development of the Cotton Belt Rail Project utilizing Senate Bill 1048 ("Public and Private Facilities and Infrastructure Act").

FINANCIAL IMPACT:

n/a

BACKGROUND:

This resolution directs the North Central Texas Council of Governments (NCTCOG) to advance discussions among transit authorities and member governments along the Cotton Belt Passenger Rail Corridor toward an agreed upon procurement method and structure under Senate Bill 1048.

SB 1048 enables a Responsible Governmental Entity (in this case, NCTCOG), to receive proposals for certain projects on behalf of affected jurisdictions. This removes the need to piecemeal large multi-jurisdictional projects and streamlines delivery schedules accordingly.

This resolution does NOT give ultimate approval to whatever the final project would be. NCTCOG would be responsible for seeking and obtaining agreements with each member government along the Cotton Belt Rail Corridor prior to finalizing the project.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

N/A

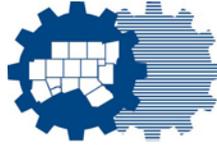
ATTACHMENTS:

Description:

-  [Cover Memo](#)
-  [DRAFT Resolution](#)
-  [Draft Interlocal Agreement](#)

Type:

- Cover Memo
- Backup Material
- Backup Material



November 19, 2012 – Item 7

North Central Texas Council of Governments

TO: Mike Eastland
Executive Director

DATE: November 8, 2012

FROM: Michael Morris, P.E.
Director of Transportation

SUBJECT: Resolution Authorizing Execution of an Agreement with Regional Partners to Pursue Development of the Cotton Belt Rail Project Utilizing Senate Bill 1048 (“Public and Private Facilities and Infrastructure Act”)

Last month, the Executive Board directed staff to work with Dallas Area Rapid Transit (DART), the Fort Worth Transportation Authority (The T), Denton County Transportation Authority (DCTA) and cities along the Cotton Belt Passenger Rail Corridor to establish consensus on a preferred procurement method and governance structure for implementation of the Cotton Belt Rail Project. Much progress has been made since the October Executive Board meeting in developing a joint procurement process to facilitate the region receiving an unsolicited proposal for the Project.

The proposed Joint Procurement Process that has been developed cooperatively by DART, The T, DCTA, and the North Central Texas Council of Governments (NCTCOG), takes advantage of the provisions of Senate Bill 1048 (SB 1048) as well as DART’s authority under Texas Transportation Code Chapter 452 (TTC 452). Under the proposed Joint Procurement Process, the following would occur:

1. NCTCOG, acting as a Responsible Governmental Entity (RGE) under SB 1048, and DART through a Local Government Corporation, would jointly receive an unsolicited proposal for the Cotton Belt Passenger Rail Project with concurrent delivery to all affected jurisdictions along the Corridor.
2. DART and NCTCOG will adopt common guidelines and evaluation criteria to govern the Joint Procurement Process.
3. DART will take the lead on the publication of any Joint Request for Proposals and receipt of proposals thereunder.
4. Proposals will be evaluated through a Joint Evaluation Committee representing 1) DART, The T, and DCTA, 2) NCTCOG, as the RGE, and 3) cities along the corridor. The Committee will make a recommendation regarding best value.
5. DART will be the lead on the technical analysis and NCTCOG, as the RGE, will be the lead on the financial analysis for the Joint Evaluation Committee.

6. DART, under TTC 452 and NCTCOG, as the RGE under SB 1048, will make a Joint Interim Award to be approved by their respective governing bodies, considering the recommendations of the Joint Evaluation Committee.
7. Issuance of a Joint Interim Award will initiate an exclusive period where the selected private sector team would resolve any contingencies associated with implementation of the Project, and if so would be granted authority to develop the Project under the terms and conditions of the Joint Interim Award. It is expected that the governing structure for the Project would execute any Final Comprehensive Award for the Project.

In order for NCTCOG to carry out these responsibilities, three specific actions are required which staff is proposing to accomplish in the November, December, and January Board meetings. First, NCTCOG must execute an agreement with one or more member governments along the corridor requesting NCTCOG to pursue a public-private partnership procurement utilizing SB 1048 for project development. This action will be requested at the November Board meeting. Next, the Executive Board must elect to operate under SB 1048 through adoption of a resolution. Staff is proposing the Board's consideration of this item at its December meeting. Finally, the Executive Board must adopt agency guidelines enabling compliance with SB 1048 prior to requesting or considering a proposal. Staff is proposing the Board review draft guidelines, developed jointly with DART, in December with final adoption in January.

A draft resolution is attached authorizing execution of an agreement with regional partners to pursue development of the Cotton Belt Passenger Rail Project utilizing a joint TTC 452 and Senate Bill 1048 procurement process and describing the additional steps required prior to NCTCOG being authorized to serve in such capacity. I will provide a brief presentation of this item and will be available to answer any questions prior to requesting Executive Board approval.

KK:tmb
Attachments

RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT WITH REGIONAL PARTNERS TO PURSUE DEVELOPMENT OF THE COTTON BELT RAIL PROJECT UTILIZING SENTATE BILL 1048 (“PUBLIC AND PRIVATE FACILITIES AND INFRASTRUCTURE ACT”)

WHEREAS, the North Central Texas Council of Governments (NCTCOG) has been designated as the Metropolitan Planning Organization (MPO) for the Dallas-Fort Worth Metropolitan Area by the Governor of Texas in accordance with federal law; and,

WHEREAS, the Regional Transportation Council (RTC), comprised primarily of local elected officials, is the regional transportation policy body associated with NCTCOG, and has been and continues to be a forum for cooperative decisions on transportation; and,

WHEREAS, NCTCOG and the RTC have championed partnerships to deliver high-priority transportation infrastructure projects and facilitated regional efforts to develop innovative funding and finance methods to implement the Cotton Belt Passenger Rail Project in partnership with regional partners and the private sector; and,

WHEREAS, the Dallas-Fort Worth region is in nonattainment of the federal air quality standard for ozone and NCTCOG is actively involved in the development and implementation of the State Implementation Plan for air quality; and,

WHEREAS, in July 2012, NCTCOG and the RTC authorized pursuit and negotiation of private-sector participation in development of the Cotton Belt Passenger Rail Project with the intent of leveraging resources and speeding delivery of projects; and,

WHEREAS, NCTCOG has since been approached by a private-sector developer which has formally communicated interested in developing the Cotton Belt Passenger Rail Project; and,

WHEREAS, Senate Bill 1048 (“Public and Private Facilities and Infrastructure Act”) authorizes public-private partnerships by eligible governmental entities in the State of Texas, including Regional Planning Commissions operating under Local Government Code Chapter 391, and establishes the framework and processes required to enter into such arrangements; and,

WHEREAS, an eligible governmental entity must elect to operate under Senate Bill 1048 by adoption of a resolution by the governing body of the governmental entity; and,

WHEREAS, before requesting or considering a project proposal a Responsible Governmental Entity with the power to develop or operate an applicable qualifying project must adopt and make publicly available guidelines that enable compliance with Senate Bill 1048; and,

WHEREAS, Senate Bill 1048 enables a Responsible Governmental Entity to receive solicited or unsolicited proposals, encourages competition by requiring posting of and acceptance of competing proposals for a qualifying project, calls for collaboration with affected jurisdictions in which all or part of a project is located, and permits award of interim and/or comprehensive project development agreements; and,

WHEREAS, an agreement with regional partners statutorily authorized to develop passenger rail projects is necessary for NCTCOG to qualify as a Responsible Governmental Entity and assist the region in advancing development of the Cotton Belt Passenger Rail Project; and,

WHEREAS, this innovative public-private partnership approach to develop the Cotton Belt Passenger Rail Project, if proven successful, could provide a model for development of future high-priority passenger rail corridors in the region; and,

WHEREAS, Dallas Area Rapid Transit (DART), the Fort Worth Transportation Authority (The T), Denton County Transportation Authority (DCTA), and NCTCOG have developed a Joint Procurement Process to facilitate the development of the Cotton Belt Passenger Rail Project, utilizing DART's authority under Texas Transportation Code Chapter 452 (TTC 452) and NCTCOG authority under SB 1048.

NOW, THEREFORE, BE IT HEREBY RESOLVED THAT:

- | | | |
|---------------------------|--------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | <u>Section 1.</u> | NCTCOG is directed to work with Dallas Area Rapid Transit, Fort Worth Transportation Authority, Denton County Transportation Authority and member jurisdictions along the Cotton Belt Rail Corridor to carry out a Joint Procurement Process for the Cotton Belt Passenger Rail Project utilizing DART's authority under Texas Transportation Code Chapter 452 and NCTCOG's authority under Senate Bill 1048. NCTCOG recognizes the important role of Dallas Area Rapid Transit in this project as owner of a significant portion of the Cotton Belt Rail Corridor and as a resource for expertise in rail procurement and operations. |
| Procurement Step 1 | <u>Section 2.</u> | NCTCOG is authorized to enter into agreements with one or more member governments statutorily authorized to develop passenger rail projects requesting NCTCOG to serve as a Responsible Governmental Entity and to participate with DART in a joint public-private partnership procurement in collaboration with stakeholders along the Corridor utilizing both TTC 452 and Senate Bill 1048 for development of the Cotton Belt Passenger Rail Project. |
| Procurement Step 2 | <u>Section 3.</u> | NCTCOG is required to adopt a resolution by the Executive Board electing to operate under Senate Bill 1048 as a Responsible Governmental Entity to develop qualifying projects. This will permit NCTCOG to participate with DART in a joint public-private partnership procurement in collaboration with stakeholders along the Cotton Belt Rail Corridor. The Executive Board directs staff to bring such a resolution for Executive Board consideration at its December 2012 meeting. |
| Procurement Step 3 | <u>Section 4.</u> | NCTCOG is required to adopt agency guidelines enabling compliance with Senate Bill 1048 before requesting or considering a proposal for a qualifying project. The Executive Board directs staff to prepare draft guidelines, jointly with DART, for review at its December 2012 |

meeting. The Executive Board anticipates adopting final guidelines at its January 2013 meeting. After adoption of the guidelines, NCTCOG would be authorized to receive and consider private-sector proposals for the Cotton Belt Passenger Rail Project under SB 1048.

Governance

Section 5.

NCTCOG recognizes the importance for all impacted jurisdictions and partners along the Corridor to collaborate and reach consensus on an appropriate governance structure to manage the Cotton Belt Passenger Rail Project. Therefore, NCTCOG is authorized to participate in a joint public-private partnership procurement with DART in collaboration with stakeholders along the Corridor utilizing TTC 452 and Senate Bill 1048.

Limitation of Authority

Section 6.

The authorization under this Resolution is expressly limited to NCTCOG assisting the region in developing the Cotton Belt Passenger Rail Project. NCTCOG's role as a Responsible Governmental Entity does not constitute, nor does NCTCOG support, creation of a fourth (4th) transit agency in the region.

Section 7.

The Executive Director or designee is authorized to execute the necessary agreements to carry out this initiative in the name of the North Central Texas Council of Governments.

Section 8.

This resolution shall be transmitted to Dallas Area Rapid Transit, Fort Worth Transportation Authority, Denton County Transportation Authority and member jurisdictions along the Cotton Belt Rail Corridor.

Section 9.

This motion shall be in effect immediately upon adoption.

Bobbie Mitchell, President
North Central Texas Council of Governments
Commissioner, Denton County

I hereby certify that this resolution was adopted by the Executive Board of the North Central Texas Council of Governments on November 19, 2012.

Bill McElhaney, Secretary-Treasurer
North Central Texas Council of Governments
County Judge, Wise County

MODEL RESOLUTION FOR LOCAL GOVERNMENT**RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT REQUESTING NCTCOG TO PURSUE DEVELOPMENT OF THE COTTON BELT RAIL PROJECT UTILIZING SENTATE BILL 1048 (“PUBLIC AND PRIVATE FACILITIES AND INFRASTRUCTURE ACT”)**

WHEREAS, the North Central Texas Council of Governments (NCTCOG) is a Regional Planning Commission operating under Local Government Code Chapter 391; and

WHEREAS, NCTCOG has been approached by a private-sector developer which has formally communicated interested in developing the Cotton Belt Passenger Rail Project; and,

WHEREAS, Senate Bill 1048 (“Public and Private Facilities and Infrastructure Act”) authorizes public-private partnerships by eligible governmental entities in the State of Texas, including Regional Planning Commissions, and establishes the framework and processes required to enter into such arrangements; and,

WHEREAS, Senate Bill 1048 enables a Responsible Governmental Entity to receive solicited or unsolicited proposals, encourages competition by requiring posting of and acceptance of competing proposals for a qualifying project, calls for collaboration with affected jurisdictions in which all or part of a project is located, and permits award of interim and/or comprehensive project development agreements; and,

WHEREAS, in order for NCTCOG to qualify as the Responsible Governmental Entity and assist the region in advancing development of the Cotton Belt Passenger Rail Project agreements with member governments along the corridor statutorily authorized to develop passenger rail projects is necessary; and,

WHEREAS, PARTY supports innovative approaches to infrastructure delivery and desires to contract NCTCOG to utilize Senate Bill 1048 to procure a public-private partnership to develop the Cotton Belt Passenger Rail Project, in whole or in part, on its behalf; and,

WHEREAS, this innovative public-private partnership approach to develop the Cotton Belt Passenger Rail Project, if proven successful, could provide a model for development of future high-priority passenger rail corridors in the region; and,

WHEREAS, NCTCOG, Dallas Area Rapid Transit (DART), Fort Worth Transportation Authority (The T), and Denton County Transportation Authority (DCTA) have developed a joint procurement process under Senate Bill 1048 and Texas Transportation Code Chapter 452 to develop the Cotton Belt Passenger Rail Project which involves city representation in the evaluation process.

NOW, THEREFORE, BE IT HEREBY RESOLVED THAT:

Section 1. PARTY requests and authorizes NCTCOG to develop the Cotton Belt Passenger Rail Project on its behalf as the Responsible Governmental Entity utilizing Senate Bill 1048 to procure a public-private partnership jointly with DART, The T and DCTA.

MODEL RESOLUTION FOR LOCAL GOVERNMENT

Section 2. This Resolution shall be transmitted to NCTCOG and all affected jurisdictions along the corridor.

Section 3. The City Manager or designee is authorized to execute agreements to effectuate this Resolution in the name of PARTY.

Section 4 This motion shall be in effect immediately upon adoption.

INTERLOCAL COOPERATIVE AGREEMENT

Between

[LOCAL GOVERNMENT]

And

THE NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS

For

**PROCUREMENT OF PUBLIC-PRIVATE PARTNERSHIP TO DEVELOP THE
COTTON BELT PASSENGER RAIL PROJECT**

This AGREEMENT (the "Agreement") is by and between [LOCAL GOVERNMENT] ("LOCAL GOVERNMENT"), a home rule municipality located in COUNTY, Texas; and the North Central Texas Council of Governments ("NCTCOG"), the Regional Planning Commission for the 16-County North Central Texas Region created and existing under Chapter 391 of the Texas Local Government Code, acting by and through their duly authorized representatives.

WHEREAS, the Cotton Belt Passenger Rail Project is located wholly or partially within the territory of LOCAL GOVERNMENT; and,

WHEREAS, LOCAL GOVERNMENT is a NCTCOG member government and is interested in development of the Cotton Belt Passenger Rail Project; and,

WHEREAS, LOCAL GOVERNMENT possesses certain statutory powers to develop or operate passenger rail projects; and,

WHEREAS, NCTCOG may contract with member governments to perform services; and,

WHEREAS, LOCAL GOVERNMENT desires to contract NCTCOG to utilize Senate Bill 1048 as the Responsible Governmental Entity to procure a public-private partnership to develop the Cotton Belt Passenger Rail Project, in whole or in part, on its behalf and jointly with a Local Government Corporation created by the transit authorities; and,

WHEREAS, this Agreement was authorized by Resolution of the LOCAL GOVERNMENT City Council at its meeting on DAY, MONTH, 2012; and,

WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code provides authority for LOCAL GOVERNMENT and NCTCOG to enter into this agreement for the provision of governmental functions and services of mutual interest.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

1.00 Definitions

1.01 Cotton Belt Passenger Rail Project. “Cotton Belt Passenger Rail Project” refers to the approximately 62-mile passenger rail project, or any subsection thereof, from southwest Fort Worth to Plano.

1.02 Senate Bill 1048. “Senate Bill 1048” refers to the Public and Private Facilities and Infrastructure Act passed by the 2011 Texas Legislature and effective September 1, 2011.

1.03 Responsible Governmental Entity. “Responsible Governmental Entity” means a governmental entity that has the power to develop or operate an applicable qualifying project as defined in Senate Bill 1048.

1.04 Local Government Corporation. “Local Government Corporation (LGC)” means a corporation incorporated to act on behalf of one or more transit authorities as provided by Subchapter D of Texas Transportation Code Chapter 431.

1.05 Transit Authorities. “Transit Authorities” collectively refers to Dallas Area Rapid Transit (DART), the Fort Worth Transportation Authority (The T) and the Denton County Transportation Authority (DCTA).

2.00 Purpose. The purpose of this Agreement is to request and authorize NCTCOG to utilize Senate Bill 1048 and act as the Responsible Governmental Entity (“RGE”) to procure, on behalf of LOCAL GOVERNMENT and similarly with other affected member governments, a public-private partnership to develop the Cotton Belt Passenger Rail Project. The procurement will be jointly undertaken by NCTCOG, authorized and representing LOCAL GOVERNMENT as the RGE, and Local Government Corporation (LGC), as lead for the transit authorities.

3.00 Term and Termination

3.01 Initial Term. The Initial Term of this agreement shall begin on the date executed by the last of the Parties and shall end on December 31, 2014.

3.02 Termination. This Agreement may be terminated by either Party one hundred eighty (180) days after written notice of termination is delivered by the Party desiring to terminate the Agreement to the other Party at the address provided herein.

4.00 NCTCOG Duties

4.01 Procurement Role. NCTCOG agrees to initiate statutorily required actions, upon execution of an appropriate number of agreements with member governments along the rail corridor, to become the Responsible Governmental Entity under Senate Bill 1048 for development of the Cotton Belt Passenger Rail Project. Once effective, NCTCOG will initiate procurement of a public-private partnership jointly with LGC, including receipt of solicited or unsolicited proposals, posting of and acceptance of competing proposals, proposal evaluation, and all other actions up to and including execution of a Joint Interim Award with the selected private-sector proposer.

4.02 Joint Procurement Process. Described generally:

- a. NCTCOG and LGC will jointly receive any unsolicited proposal that may be submitted for the Cotton Belt Passenger Rail Project with concurrent delivery to all affected jurisdictions along the corridor by the private sector proposer as required by Senate Bill 1048.
- b. NCTCOG and LGC will adopt common guidelines and evaluation criteria to govern the Joint Procurement Process.
- c. LGC will take the lead on publication of a joint RFP and subsequent receipt of proposals.
- d. Proposals will be evaluated through a Joint Evaluation Committee, consisting of representatives from DART, NCTCOG as the RGE, cities and transit authorities.
- e. LGC will take the lead on the technical evaluation of any proposals.
- f. NCTCOG, as the RGE, will take the lead on the financial evaluation of any proposals.
- g. LGC, under Texas Transportation Code Chapter 452, and NCTCOG, as the RGE under Senate Bill 1048, will make a Joint Interim Award following approval by their respective governing bodies and considering the recommendations of the Joint Evaluation Committee.

NCTCOG will coordinate with all affected member governments when carrying out these functions.

4.03 Limitations. NCTCOG will not execute a Comprehensive Award, as that term is defined in Senate Bill 1048, with the selected proposer. The project governance structure, which is yet to be determined, will execute any final Comprehensive Award.

5.00 LOCAL GOVERNMENT Duties

5.01 Authorization. LOCAL GOVERNMENT covenants that it possesses statutory powers to develop passenger rail projects in its jurisdiction and authorizes NCTCOG, acting on its behalf as the Responsible Governmental Entity, to develop the Cotton Belt Passenger Rail Project through procurement of a public-private partnership utilizing

Senate Bill 1048. This includes all actions and processes contemplated in Senate Bill 1048 up to and including execution of an Interim Award.

5.02 Project Governance. LOCAL GOVERNMENT does not indicate favor or commit to any project governance structure under this Agreement. LOCAL GOVERNMENT agrees, however, to participate in discussions and understands collaboration among affected corridor jurisdictions and transit authorities is needed to reach consensus on governance and representation. Support of any governance structure is subject to future approval by the LOCAL GOVERNMENT.

5.03 No Financial Commitment. LOCAL GOVERNMENT does not commit any financial resources to NCTCOG under this Agreement.

5.04 No Equity Position. LOCAL GOVERNMENT does not indicate support of or commit to any strategy or position addressing equity among jurisdictions along the corridor as part of this Agreement.

5.05 Project Parameters. LOCAL GOVERNMENT does not commit to any project design, alignment or station locations under this Agreement.

5.06 No Fourth (4th) Transit Authority. NCTCOG's role as the Responsible Governmental Entity under this Agreement is expressly limited to the Cotton Belt Passenger Rail Project and does not constitute, nor does LOCAL GOVERNMENT or NCTCOG support, creation of a fourth (4th) transit authority in the region.

6.00 Indemnification. LOCAL GOVERNMENT and NCTCOG agree that each Party is responsible for its individual acts and deeds as well as the acts and deeds of their contractors, employees, representatives and agents.

7.00 Force Majeure. Force Majeure means any circumstance that is reasonably beyond the control of the Party obligated or permitted under this Agreement, and includes, but is not limited to reason of war, civil commotion, act of God, governmental restriction, regulation or interference, fire, explosion, hurricane, flood, failure of transportation, court injunction, or the action or failure to act of any person or entity that is not a Party to this Agreement. It is expressly understood and agreed by the Parties that if the performance of any duty or obligation under this Agreement is delayed by Force Majeure, regardless of whether any such circumstance is similar to any of those enumerated in this paragraph, the Party so obligated or permitted shall be excused from doing or performing the same during such period of delay or, in the alternative, the Parties may agree in writing to the performance of a substantially equivalent substitute.

8.00 Contractual Relationship. It is understood and agreed that the relationship described in this Agreement between the Parties is contractual in nature and is not to be

construed to create a partnership of joint venture or agency relationship between the Parties. Nor shall any Party be liable for any debts incurred by the other Party in the conduct of such other Party's business or functions.

9.00 Miscellaneous Provisions

9.01 Compliance with Regulations. During the performance of this Agreement, each Party, for itself, its assignees, and successors agrees to comply with all applicable local, state, and federal regulations.

9.02 Captions. The captions, headings, and arrangements used in this Agreement are for convenience only and shall not in any way affect, limit, amplify, or modify its terms and provisions.

9.03 Disputes. LOCAL GOVERNMENT and NCTCOG shall negotiate in good faith toward resolving any disputes that arise under this Agreement.

9.04 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas.

9.05 Notice. Notices to either Party by the other Party required under this Agreement shall be in writing and delivered to the addresses shown below. A copy shall concurrently be provided to the Contact Person, provided on the Agreement Cover Sheet, of the Party receiving notice.

[LOCAL GOVERNMENT]

Name, Title
Address
City, State Zip

NCTCOG

Name, Title
Address
City, State Zip

The above contact information may be modified without requiring an amendment to the Agreement.

9.06 Interest of Public Officials. No member, officer, or employee of the public body or of a local public body during his tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

9.07 Assignment. Neither Party may assign this Agreement in whole or in part, without first obtaining the written consent of the other Party.

9.08 Number and Gender. Whenever used herein, unless the context otherwise provides, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all other genders.

9.09 Severability. In the event anyone or more of the provisions contained in this Agreement shall be for any reason held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision(s) hereof, and this Agreement shall be revised so as to cure such invalid, illegal, or unenforceable provision(s) to carry out as near as possible the original intent of the Parties.

9.10 Merger and Amendment. This instrument constitutes the entire agreement of the Parties with respect to the matters contemplated herein and supersedes all prior understandings and agreements regarding such subject matter. This Agreement may be modified or amended only in writing, signed by all Parties hereto.

9.11 Effective Date. This Agreement shall be effective on the date this Agreement is signed by the last of those required to sign this Agreement.

9.12 Nondiscrimination. In its performance of this Agreement, LOCAL GOVERNMENT and NCTCOG each warrants that it shall not discriminate against any person on account of race, color, sex, religious creed, age, disability, ethnic or national origin, or veteran status.

9.13 No Waiver. Neither Party shall be deemed by any act or omission to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the waiving Party, and then only to the extent specifically set forth in such writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event.

EXECUTED by the Parties in duplicate originals.

[LOCAL GOVERNMENT]

NORTH CENTRAL TEXAS
COUNCIL OF GOVERNMENTS

Name
Title

R. Michael Eastland
Executive Director

Date: _____

Date: _____

Council Agenda Item: #R5

AGENDA CAPTION:

Presentation, discussion and consideration of approval of an ordinance amending Chapter 62, Signs, of the Code of Ordinances of the Town by providing for a Meritorious Exception to Article IV, Division 3, Attached Signs, Sec. 62-163 at the UDR Fiori Apartments located at 3990 Vitruvian Way in order to provide for an attached sign with letters up to 8'-1 1/8" in height.

FINANCIAL IMPACT:

None

BACKGROUND:

Sec. 62-163 only allows 50% of the letters that are above 150' above grade to have a maximum height of 7' 6".

RECOMMENDATION:

Staff recommends denial.

COUNCIL GOALS:

Mindful Stewardship of Town Resources

ATTACHMENTS:

Description:

 [UDR FIORI SIGN PACKAGE](#)

Type:

Cover Memo



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: October 24, 2012

Filing Fee: \$200.00

Applicant: UDR, Inc. (Jules D. Roberts, Sr. Project Manager - EMAIL: jdroboters@udr.com)

Address: 3875 Ponte Avenue Suite#: 400

Addison TX 75001 Phone#: 214-437-9679
City State Zip Fax#: 972-866-0163

Status of Applicant: Owner YES Tenant _____ Agent _____

Location where exception is requested:

Fiori on Vitruvian Park - 3990 Vitruvian Way, Addison, TX 75001 (Tower Rooftop Penthouse Sign)

Reasons for Meritorious Exception:

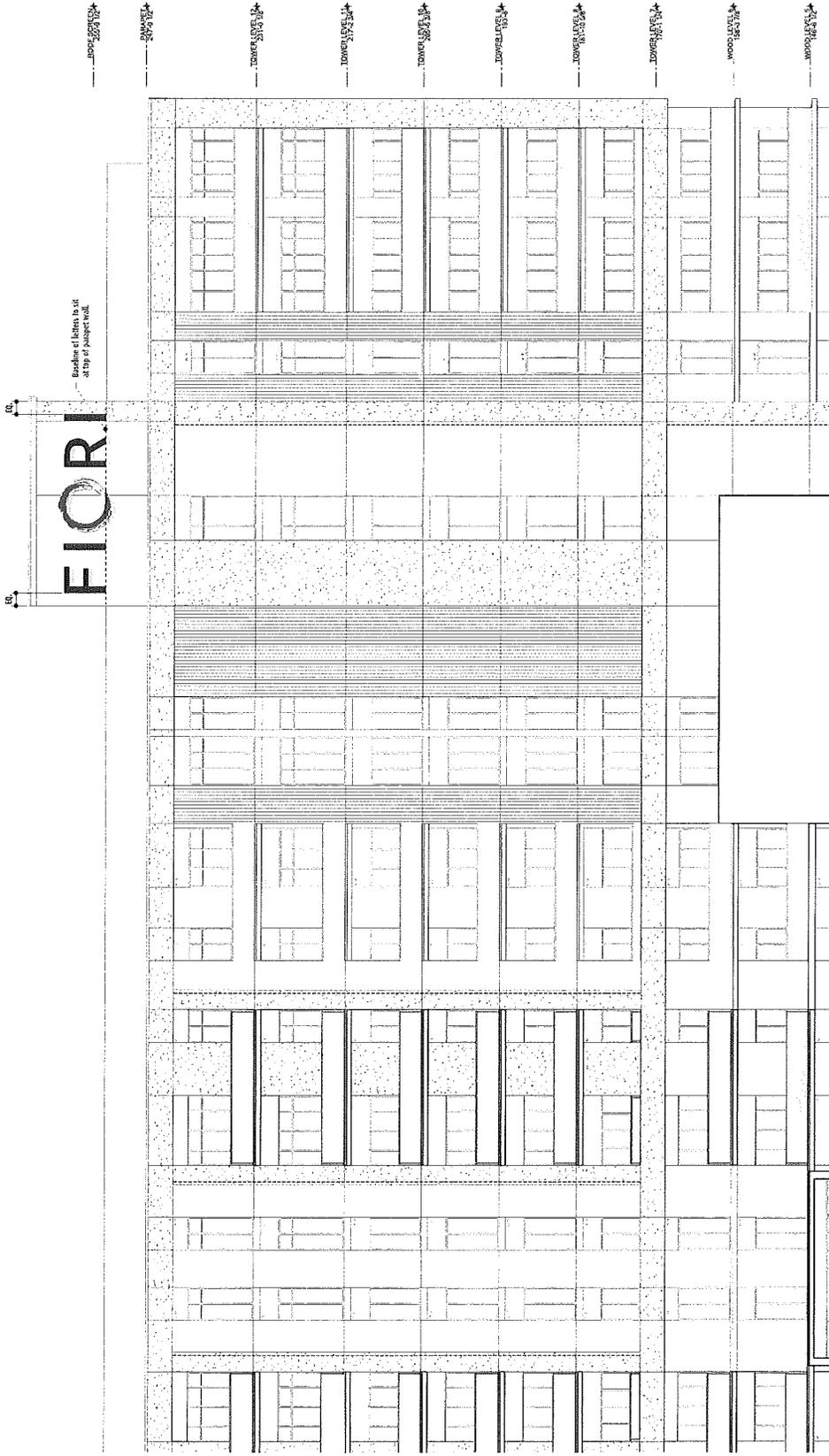
UDR, Inc. respectfully requests a variance to the Town's Sign Ordinance to allow for the installation of a property identification sign "FIORI" on the southwest side of the roof elevator penthouse utilizing letters taller than currently allowed within the ordinance. Specifically we would like to have the letters "F", "I", "R", "I" fabricated to a height of 6'-4 3/4" and the letter "O" fabricated to a height of 8'-1 1/8". This variance is requested to allow a stronger visibility of signage for the Fiori property when viewed from streets and other locations to the west and south of our property. We believe our request to increase the size of these letters from current ordinance standards is minimal and will not be detrimental in any way to maintaining the integrity of the Town of Addison's current sign ordinance.

YOU MUST SUBMIT THE FOLLOWING:

1 ~~12~~ COPIES OF THE PROPOSED SIGN SHOWING:

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

Date Fees Paid 10-25-12 Check # _____ Receipt # _____



Boundary of letters to fit at top of perspective wall.

Location Elevation: Scale: 1/16" = 1'-0"

Project Fiori on Vitruvian Park Location Addison, TX Description Large Building ID Qty. 1		Folder: Schematic Design File Name: ST_1.ai <small>The design is the property of ASI/ASI/ASI. The design is submitted under a conditional relationship for a specified purpose and the user agrees to indemnify ASI/ASI/ASI from any and all claims, damages, costs, expenses, and attorneys' fees that may be incurred by ASI/ASI/ASI in connection with this project. No liability is assumed by ASI/ASI/ASI for any errors or omissions in this design without written permission from ASI/ASI/ASI.</small>		Date 08/17/12 Scale As Noted Drawn JB Page 1
Revisions By _____ Date _____				



Environmental Signage Solutions
 8181 Jetstar Drive
 Irving, TX 75063
 www.asisignage.com

Council Agenda Item: #R6

AGENDA CAPTION:

Presentation, discussion and consideration of approval of an ordinance amending Chapter 62, Signs, of the Code of Ordinances of the Town by providing for a Meritorious Exception to Article IV, Division 3, Attached Signs, Sec. 62-162 at the Embry Partners Keller Springs Lofts Apartments located at 4800 Keller Springs Rd. in order to provide for attached signs that project approximately 39" from the surfaces they are attached to.

FINANCIAL IMPACT:

None

BACKGROUND:

Sec. 62-162 only allows attached signs to project a maximum distance of 18" from the surfaces they are attached to.

RECOMMENDATION:

Staff recommends denial.

COUNCIL GOALS:

Mindful Stewardship of Town Resources

ATTACHMENTS:

Description:

 [KELLER SPRINGS LOFTS SIGN PACKAGE](#)

Type:

Cover Memo

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: 10-26-12

Filing Fee: \$200.00

Applicant: EMERLEY PARTNERS by Pource Communications

Address: 1357 REGAL ROW

Suite#: _____

Dallas TX 75247 Phone#: 214-630-2125 x101

City

State

Zip

Fax#: _____

Status of Applicant: Owner _____ Tenant _____ Agent

Location where exception is requested:

4800 KELLER SPRINGS, ADDISON, TX 75001

Reasons for Meritorious Exception:

REQUESTING ALLOWANCE FOR PROJECTING SIGNS (PER SIGNPOSTS),
to project 36" from building
facade x2 locations per attached on
Addison Road and Keller Springs Frontages.

The Mass of the building demands Sign exposure
greater than the 18" projection allowed by code.
Greater visibility is the ultimate need and request
for consideration.

YOU MUST SUBMIT THE FOLLOWING:

1 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 10-26-12 Check # 439 Receipt # _____



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JOB NO. F-EP-811(A)

The Addison at Keller Springs
 Embrey Partners
 Addison, Texas

APPROVAL

DESIGNER INITIALS
 SAM

DATE
 10/24/2012

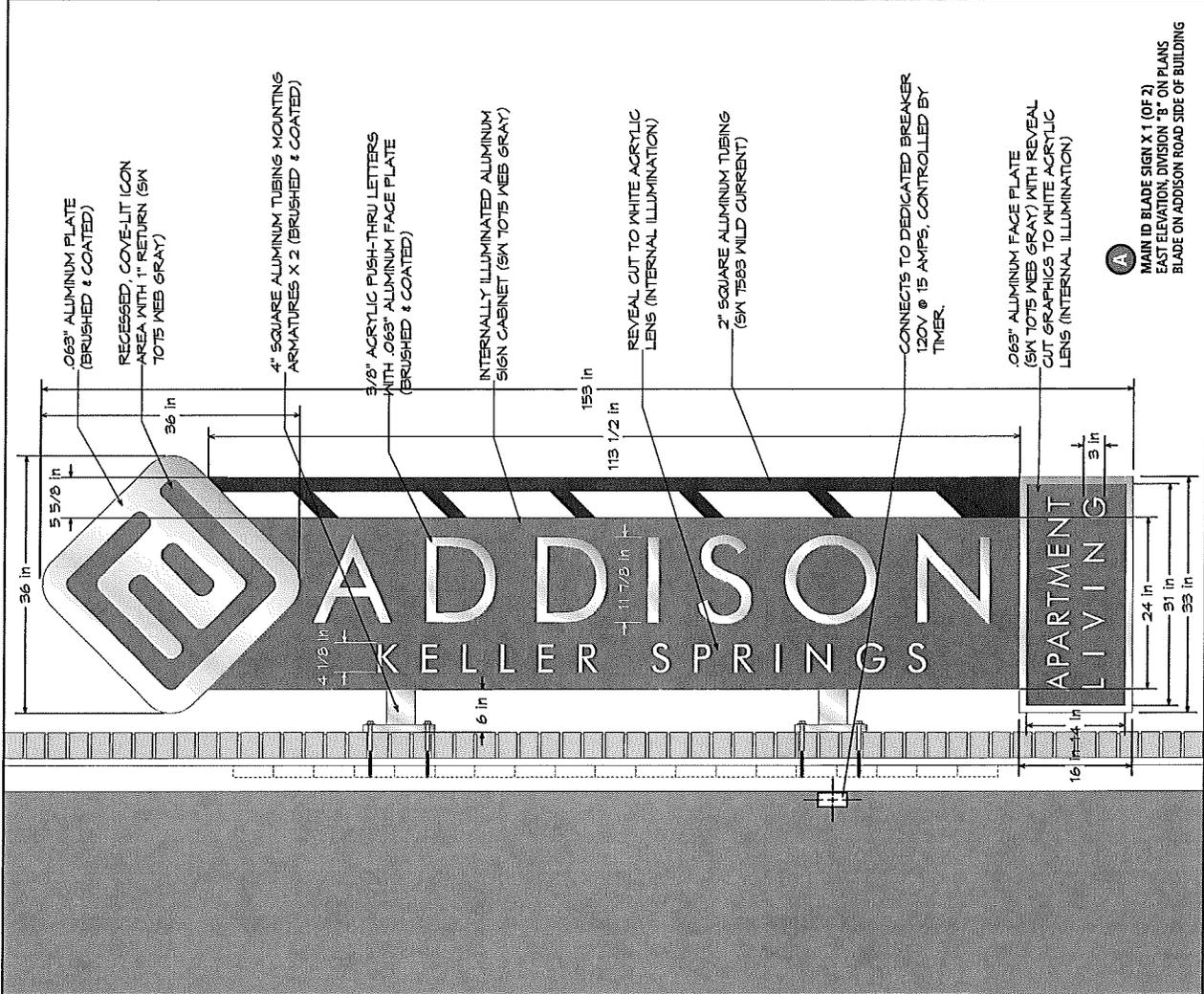
SHEET TITLE
 ENTRY SIGNAGE

ENTRY SIGNAGE

SHEET NO.
 ES01.02



SIMULATED NIGHT VIEW



A MAIN ID BLADE SIGN X 1 (OF 2)
 EAST ELEVATION, DIVISION "B" ON PLANS
 BLADE ON ADDISON ROAD SIDE OF BUILDING



©2011. All ideas, arrangements and plans indicated or required by these drawings are the property of FOURCE CONSULTING and have been created, evolved and developed for the project. No part of the drawings, designs, arrangements or ideas herein shall be reproduced, stored in a retrieval system, or used in any form without the express written consent of FOURCE CONSULTING, LLC.

JOB NO. F-EP-811(A)

The Addison at Keller Springs Embrey Partners Addison, Texas

APPROVAL

The client, Embrey Partners, is pleased to have the design prepared and its contract, liability and responsibility limited to the design of the building. Any colors shown are only representative of the actual colors to be used. Final colors will be determined by the architect and manufacturer and used to verify color to architect materials used in the building.

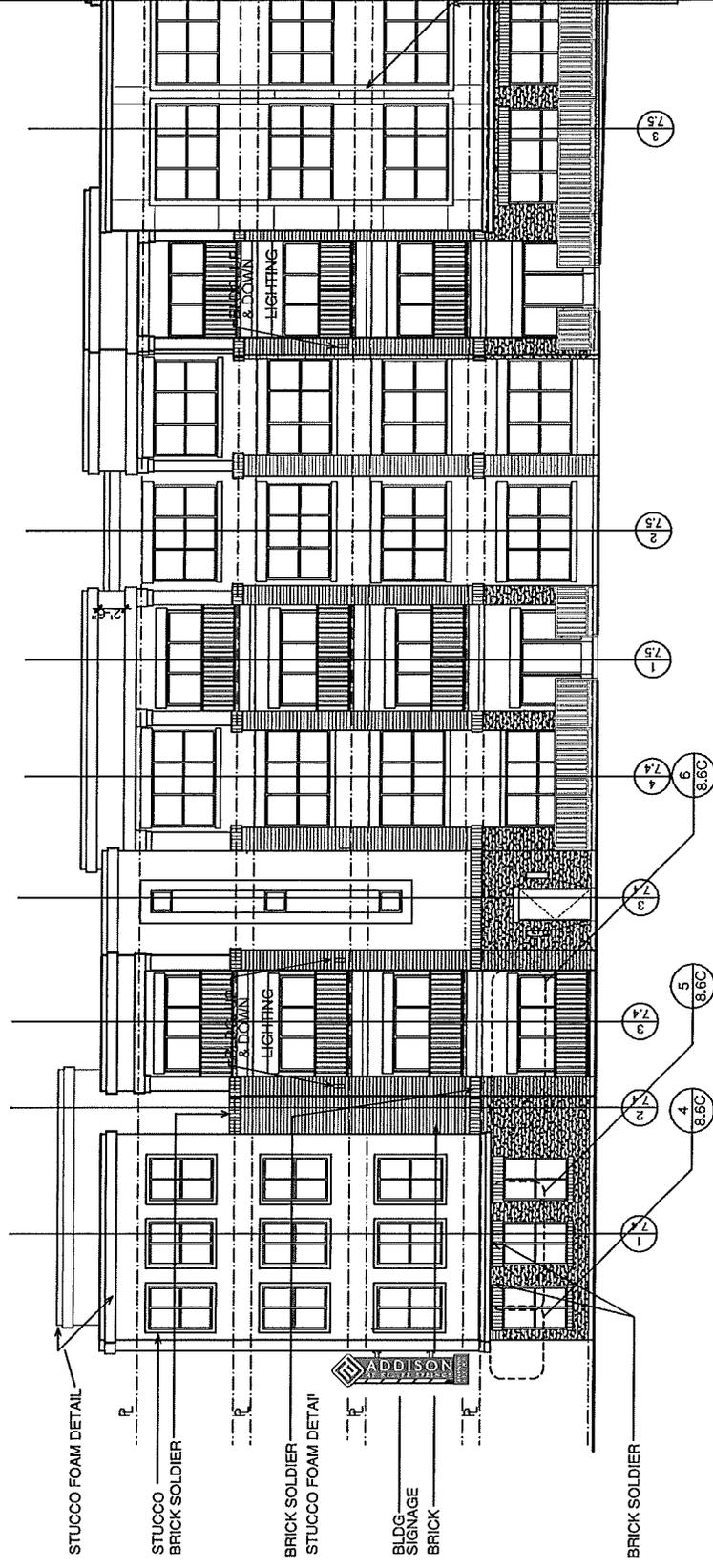
DESIGNER INITIALS
SAM

DATE
10/25/2012

SHEET TITLE

BLADE SIGN
PLACEMENT 01a

SHEET NO.
ES.01a.00



1 DIVISION 'B' SOUTH ELEVATION - AS VIEWED DRIVING NORTH ON ADDISON ROAD
SCALE: 3/8" = 1'-0"



FOURCE
CONSULTANTS, L.P.
40011 All Plans, Specifications, and Plans
Prepared or Approved by Three of the above
signatures of the above firm are hereby
approved for use in connection with the
arrangements or items herein and shall be
void without the express written consent of Fource
Consultants, L.P.

JOB NO.
F-EP-8111(A)

The Addison at Keller Springs
Embrey Partners
Addison, Texas

APPROVAL

2008
The regular authorities of approval of the
Communications, L.P. from any responsibility
regarding information and design.
actual color to be used. Final colors will be
determined by the manufacturer and the
industry.

DESIGNER INITIALS
SAM

DATE
10/24/2012

SHEET TITLE

BLADE SIGN
PLACEMENT

SHEET NO.
ES.01b.00



WEST ELEVATION - AS VIEWED FACING THE BUILDING FROM ADDISON ROAD



FOURCE
COMMUNICATIONS

NOTE: All work shall be in accordance with the University of Texas System and the University of Texas System Communications, LLC. Use of any other materials or methods in connection with the work shall be at the contractor's risk. The contractor shall be responsible for obtaining all necessary permits, approvals, or other work and be held liable for any and all consequences of failure to do so. The contractor shall be held liable for any and all consequences of failure to do so.

JOB NO.
F-EP-8111(A)

The Addison at Keller Springs Embrey Partners Addison, Texas

APPROVAL

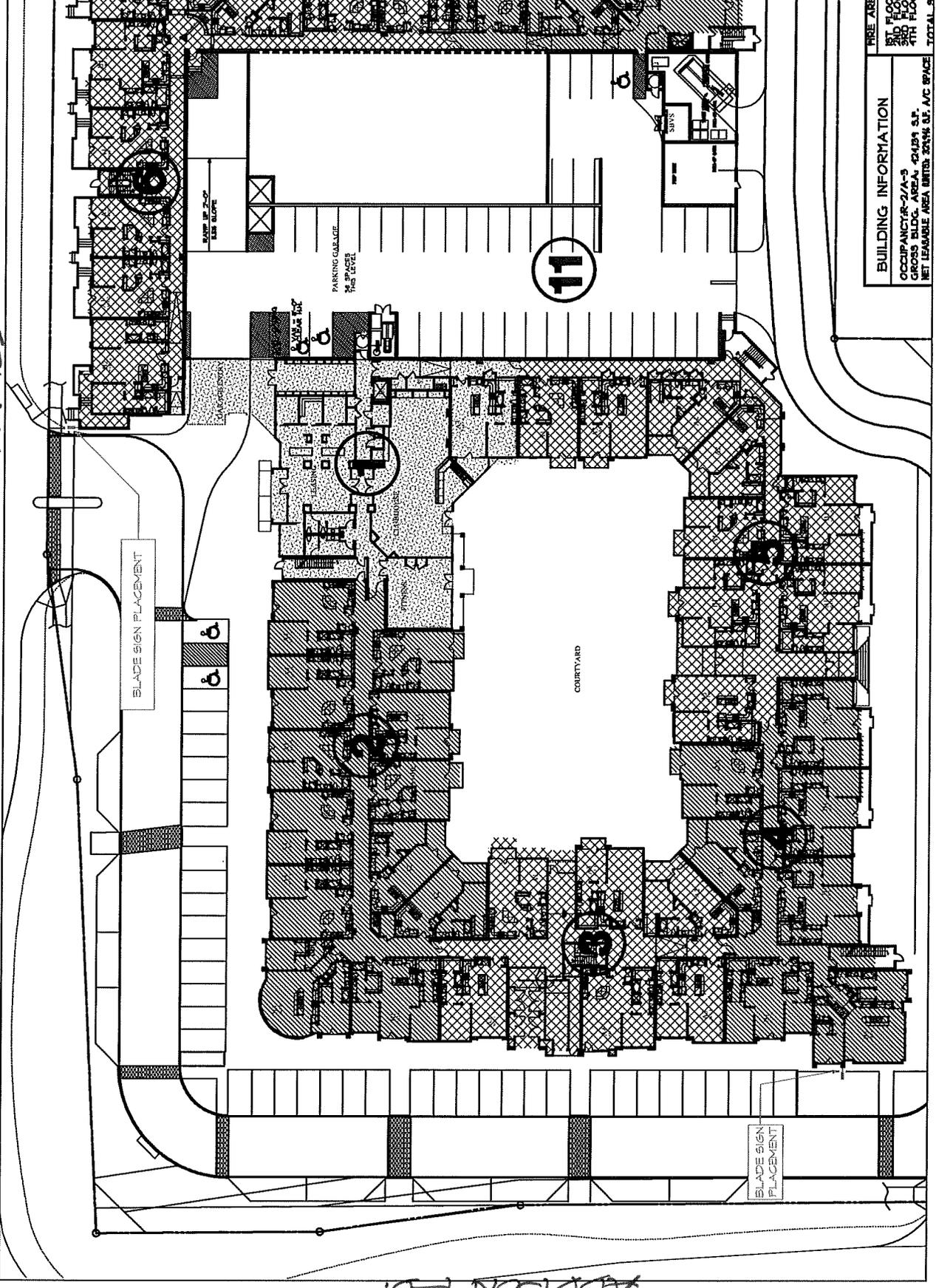
DESIGNER INITIALS
SAM

DATE
10/18/2012

SHEET TITLE
BLADE SIGN
PLACEMENT

SHEET NO.
SPOTTING

KELLER SPRINGS



BUILDING INFORMATION

OCCUPANCY: 2/A-5
GROSS BLDG. AREA: 421,894 S.F.
NET LEASABLE AREA: 318,253 S.F. (75% OF G.C. SPACE)

FLOOR	AREA	TOTAL
1ST FLOOR		
2ND FLOOR		
3RD FLOOR		
4TH FLOOR		
TOTAL		

ADDISON RD.

Council Agenda Item: #R7

AGENDA CAPTION:

PUBLIC HEARING. Case 1655-Z/Addison Heights Apartments. Public hearing, discussion and consideration of approval of an Ordinance changing the zoning on an approximately 3.201-acre tract of land generally located at the southeast intersection of Addison Road and Airport Parkway, from C-2, Commercial-2 District to PD Planned Development District to allow for a multi-family project of approximately 280 units, and limited retail uses, and the adoption of a development plan, concept plan, and development regulations for such tract of land, on application from Henry S. Miller Multi-family Development Group, represented by Mr. Evan Beattie of Good Fulton and Farrell Architects.

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in special session on October 30, 2012, voted to recommend denial of a change in zoning on an approximately 3.201-acre tract of land generally located at the southeast intersection of Addison Road and Airport Parkway, from C-2, Commercial-2 District to PD Planned Development District to allow for a multi-family project of approximately 280 units, and limited retail uses, and the adoption of a development plan, concept plan, and development regulations for such tract of land, on application from Henry S. Miller Multi-family Development Group, represented by Mr. Evan Beattie of Good Fulton and Farrell Architects.

Voting Aye to the motion for denial: Doherty, Groce, Hughes, Oliver, Stockard,

Voting Nay: Wheeler

Absent: Hewitt

FINANCIAL IMPACT:

NA

BACKGROUND:

Article XXIX, Section 4, paragraph (b) of the Addison Zoning

Ordinance states:

Section 4. - Written protest.

(a) If a written protest against such proposed amendment, supplement or change has been filed with the city secretary, duly signed by the owners of 20 percent or more either of the area of the lots or land included in such proposed change, or of the lots or land immediately adjoining the same extending 200 feet therefrom, such amendment shall not become effective except by the favorable vote of three-fourths of all the governing body. (b) Where there is not a written protest against such a proposed amendment, supplement or change, and the decision of the planning and zoning commission is for denial, a three-fourths vote of all of the governing body shall be required to overrule the decision of planning and zoning commission.

Article XXIX, Section 14 states:

Section 14. - Denial; request for public hearing. If the application be denied by the planning and zoning commission, the applicant may, upon his own motion, file with the city secretary, on a form suitable to the city secretary, a written request that a public hearing be scheduled and held before the city council regarding the said application to be held before the city council, giving notice as required by the general laws of the State of Texas.

RECOMMENDATION:

Administration recommends denial.

COUNCIL GOALS:

N/A

ATTACHMENTS:

Description:

[Docket map, staff report, commission findings, and letters](#)

[Agenda Backup Material](#)

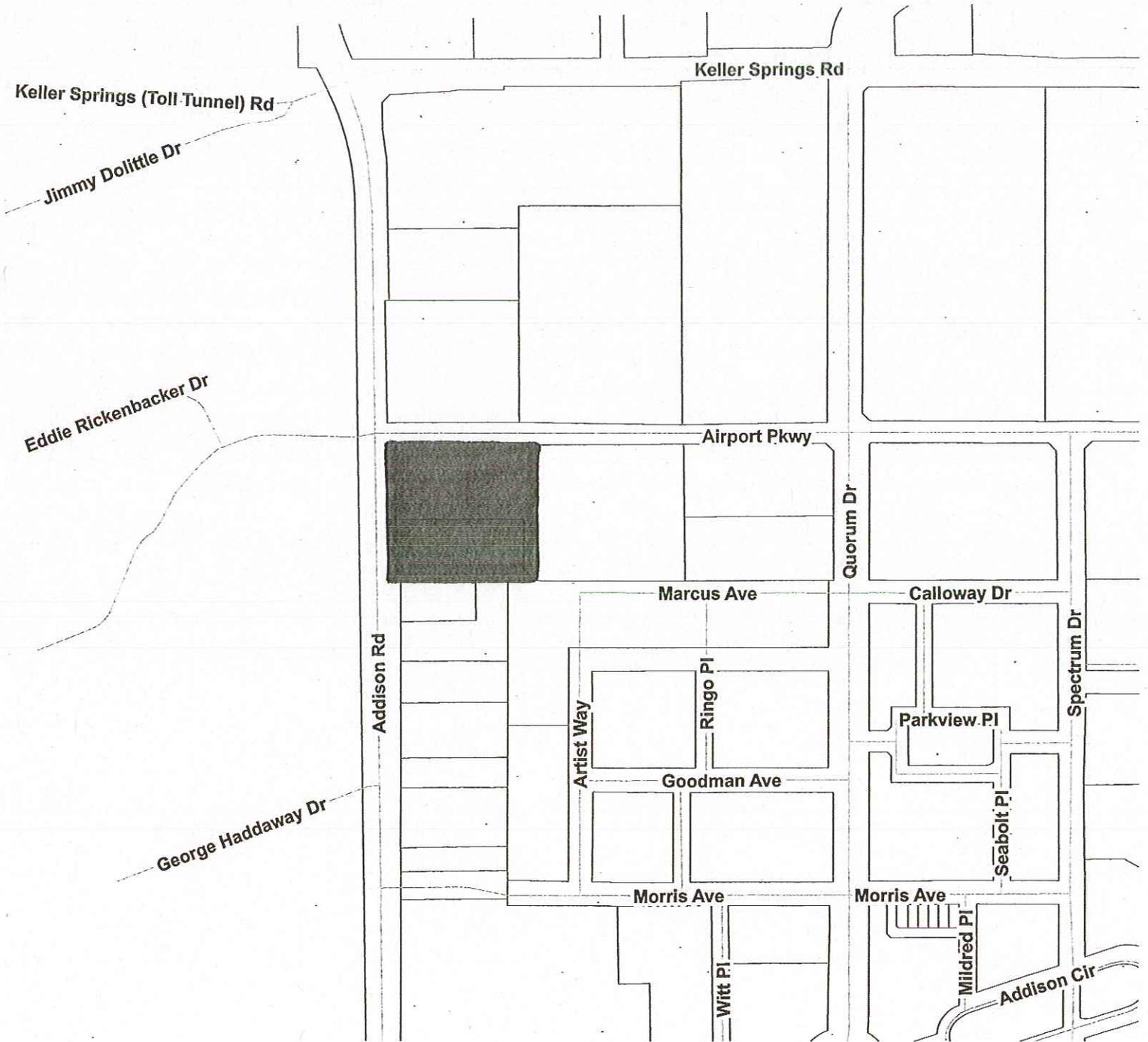
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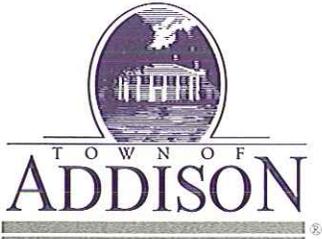
Backup Material

Backup Material

1655-Z

Case 1655-Z/Addison Heights Apartments. Discussion and consideration of making a preliminary report regarding a change in zoning on the land as described below. Public hearing on the said preliminary report and discussion and consideration of approval of a final report to be submitted to the City Council regarding changing the zoning on an approximately 3.201-acre tract of land generally located at the southeast intersection of Addison Road and Airport Parkway, from C-2, Commercial-2 District to PD Planned Development District to allow for a multi-family project of approximately 280 units, and limited retail uses, and the adoption of a development plan, concept plan, and development regulations for such tract of land, on application from Henry S. Miller Multi-family Development Group, represented by mr. Evan Beattie of Good Fulton and Farrell Architects.





October 24, 2012

STAFF REPORT

RE: Case 1655-Z/Addison Heights Apartments

LOCATION: 3.201 acres generally located at the southeast corner of the intersection of Addison Road and Airport Parkway

REQUEST: Approval of change in zoning from C-2 (Commercial-2) to PD Planned Development District, with approval of a development plan, to allow for a multi-family project of approximately 280 units, and limited retail uses,

APPLICANT: Henry S. Miller Multi-family Development Group, represented by Mr. Evan Beattie of Good Fulton and Farrell Architects

DISCUSSION:

Background. This site is currently zoned Commercial-2, which allows for a variety of retail, retail/service/showroom, and light assembly uses. However, it does not allow residential use. The applicant would like to rezone this site to a Planned Development District to provide for a multi-family project of approximately 280 units. The applicant is not proposing any retail uses within this project, but the staff is recommending some limited retail (LR- Local Retail) uses be incorporated into the zoning district so that at some point, a sandwich shop or coffee shop can be added into the building without requiring a zoning change.

As noted, the property is not currently zoned for residential use. It is on the edge of the Urban Center – “UC” zoning district. The Town’s current Comprehensive Plan calls for the Addison Road corridor to contain office uses. However, the current plan was done in 1991 and is in the process of being revised. The Planning and Zoning Commission has not yet studied the Addison Road corridor.

In 1995, after a special visioning study, the Addison Circle Urban Center zoning district was established on the east and west sides of Quorum Drive, south and east of this site. The staff expected that Addison Circle was established, it would be a “catalyst” development which would cause the land uses up and down Addison Road and Quorum Drive to change. There has been some evidence of a change in land use just north of this site at the southeast corner of Addison Road and Keller Springs Road. The Town considered that development in 2006, and felt that it was a logical change for a site on the edge of Addison Circle. It was proposed at a density of 48 units per acre, which the Town felt was appropriate because the site was not within the district and did not provide the same street network and open space amenities for its residents. Keller Springs Lofts, a project of 353 multi-family units, is currently under construction in a location, and it shares similar site characteristics to this site.

Proposed Plan. The applicant is proposing to construct one multi-part building. A five-story, wood-framed portion will form a “U” shape across the west boundary of the site (facing Addison Road). It will contain 174 units. Abutting that building to the east will be a 5-level parking garage, and above the parking garage the applicant is proposing five levels of concrete-framed apartment units (106 tower units). The wood-framed building will wrap around some large existing Live Oak trees which are to remain on the site. The building will also wrap around the pool and amenity area, and a small dog park for use by residents only. The leasing office will be on the southwest corner of the site, adjacent to Addison Road. The floor above the top level of the parking structure will contain a shared residential terrace and amenity deck for residents. The tower units will feature large walls of windows and balconies geared toward views of the Addison Airport runway.

The applicant proposes units ranging in size from efficiency units at 554 square feet, to two-bedroom units at 1,345 square feet. The average unit size is 818 square feet. The breakdown on units proposed is as follows:

Efficiency units	46
1-Bedroom units	189
2-Bedroom units	45
Total units	280

Parking. The plan provides 430 parking spaces in the five-level garage and nine parking surface parking spaces. The provided parking averages 1.57 spaces per unit. Addison’s typical parking requirement is one space per bedroom. By Addison’s standards, the building would require 325 spaces, so the development exceeds the standard requirement by 114 spaces.

Facades. The facades for the building have not been fully developed, but the applicant is proposing a mixture of brick, stucco, and glass.

Airport Issues. The plan was reviewed by the staff at Addison Airport for location within the noise contours and height. The Airport staff found that the building's proposed location is outside the noise contours. In addition, the tallest height of the structure is 146 feet, which is below the horizontal surface (150 feet) and the transitional surface (7:1 slope) of 285 feet. The Airport staff did not see any issues with the proposed development.

Engineering. The proposed civil plans were reviewed by the Town's Engineers. They found several minor technical items that need to be corrected, but on the whole, found the plans conforming to engineering standards. The Engineering review is attached.

In addition, the staff originally had a concern about the capacity of the sanitary sewer system to handle this development. The applicant hired a firm to conduct a sanitary sewer study, which showed there is sufficient capacity in the system to handle the development. The study was reviewed by the Town's engineering staff, and the Town's Engineers agree with the findings of the study and agree there is capacity in the system to handle the sanitary sewer flow from the proposed development. However, the staff notes that the additional flow (as calculated) into the system may put the metering station at 95% capacity.

Landscaping. Slade Strickland has reviewed the proposed landscape plan, and he finds that the concept plan submitted by the applicant complies with the UC – Urban Center, streetscape standards. He also notes that there are approximately 16 existing specimen-quality oak trees on the site that show to remain. However, it appears that some of the trees will be removed for the location of the proposed building. He recommends that the applicant submit a detailed tree inventory that shows species, size and number of trees proposed to remain and those to be removed (comments attached).

Fire Code. The Fire Department reviewed the proposed site plan and notes that the proposed fire lane on the south and east of the building shall be maintained at 24-feet wide, and the applicant shall provide all required fire hydrants.

Proposed Density. The applicant has proposed a density of 87 units per acre for this project and has based that density on the number of units he needs to make it financially feasible for his firm to develop. The applicant has provided information to support the proposed density, and the staff has provided densities of current multi-family projects in Addison.

The applicant and the staff differ on the density numbers. The applicant gave his project (Addison Heights) credit for the open space he is proposing to provide for his residents. However, he did not give the other projects listed: Addison Circle, 15777 Quorum, Savoye at Vitruvian Park, Savoye at Vitruvian Park II, and Fiori at Vitruvian Park, credit for the open space they provided. This would be the applicant's first project in Addison, so he does not have the benefit of knowing what parcels were dedicated by other developers.

The higher-density developers who have already built in Addison have dedicated significant pieces of land that they purchased at full value to provide open space and streets for the residents they would bring to Addison. Those dedications increased the capacity of their sites to accommodate multi-story densities. For example, Addison Circle is listed by the developer at a density of 82.46 units per acre, but that calculation takes only the total number of units (1,334) in the three phases, and divides it by the building sites (16.2 acres) that those sites occupy. That calculation does not take into account that Post dedicated the land for Bosque Park, Beckert Park, the Circle itself, and an additional six acres of land on the southwest corner of Addison Circle that was eventually developed by the Town as Addison Circle Park. When those dedications are taken into account, the density is 54 units per acre.

The staff took into account the land that was purchased at full value by the developers in Addison Circle and Vitruvian Park and then dedicated to the Town for parks and open space. When the staff accounted for the open space provided by the other projects, the densities were reduced. The staff did not give other developers credit for the street right-of-way that they also purchased at full value and then dedicated to the Town. In most instances, the Town built the streets through a public-private partnership, but both Allegro and Fairfield dedicated the street right-of-way and then built the streets, to the very expensive Addison Circle standard, at their own expense. Both park and right-of-way dedications worked to increase the capacity of sites for higher densities. When open space dedications are taken into account, the applicant's proposed density is higher than any other density in Addison.

RECOMMENDATION:

As noted, this site is not in Addison Circle, it is an edge site. As such, the staff does not feel that it provides the capacity for the density proposed. The staff defines "capacity" as a pedestrian network, walkable streets, and open space.

However, the staff does believe this site is suitable for residential development. The staff has noted that this site is similar to the Keller Springs Lofts site, and believes that an appropriate density for this similar edge site is the same 48 units per acre currently being developed on the Keller Springs Lofts site. Therefore, the staff recommends denial of the request as proposed.

Should the developer choose to return with a revised plan at a 48-unit per acre density, the applicant should note that any revised plan should provide for saving the large specimen Live Oak trees that currently exist on the site.

Respectfully submitted,



Carmen Moran
Director of Development Services

Case 1655-Z/Addison Heights Apartments
November 1, 2012

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in special session on October 30, 2012, voted to recommend denial of a change in zoning on an approximately 3.201-acre tract of land generally located at the southeast intersection of Addison Road and Airport Parkway, from C-2, Commercial-2 District to PD Planned Development District to allow for a multi-family project of approximately 280 units, and limited retail uses, and the adoption of a development plan, concept plan, and development regulations for such tract of land, on application from Henry S. Miller Multi-family Development Group, represented by Mr. Evan Beattie of Good Fulton and Farrell Architects.

Voting Aye to the motion for denial: Doherty, Groce, Hughes, Oliver, Stockard,
Voting Nay: Wheeler
Absent: Hewitt

Addison Heights

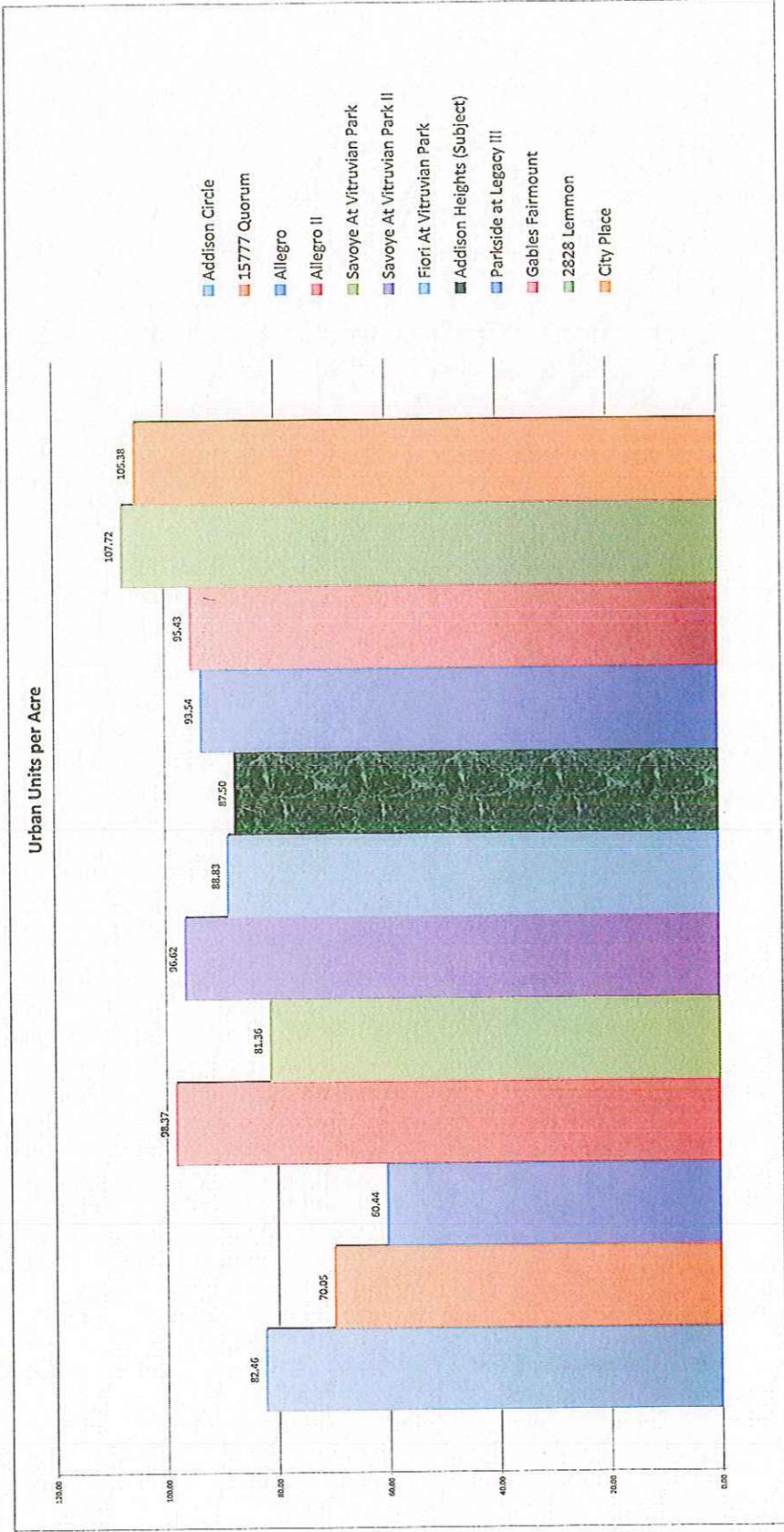
Addison Multi Family Density Study Density Trend

Addison Circle / Vitruvian Urban Market

Number	Property	Developer	Address	Date / Complete	Acres	Units	Units/Acre
1	Addison Circle	Columbus/Post Fairfield	5009 Addison Circle, Addison, TX 75001	1997-2006	16.2	1334	82.46
2	15777 Quorum	Behringer Hanvard	15777 Quorum Dr, Addison, TX 75001	2008	5.9	414	70.05
3	Allegro	Behringer Hanvard	15750 Spectrum Dr, Addison, TX 75001	2009	4.5	272	60.44
4	Allegro II	UDR Inc	15750 Spectrum Dr, Addison, TX 75001	2013	1.2	121	98.37
5	Savoie At Vitruvian Park	UDR Inc	3810 Vitruvian Way, Addison, TX 75001	2010	4.8	392	81.36
6	Savoie At Vitruvian Park II	UDR Inc	3850 Vitruvian Way, Addison, TX 75001	2012	3.6	352	96.62
7	Flori At Vitruvian Park	UDR Inc	3990 Vitruvian Way, Addison, TX 75001	2013	4.4	391	88.83
8	Addison Heights (Subject)	Henry S Miller Multi Family	15842 Addison Rd., Addison, TX 75001	2014	3.2	280	87.50
Addison Average					43.9	3556	81.04

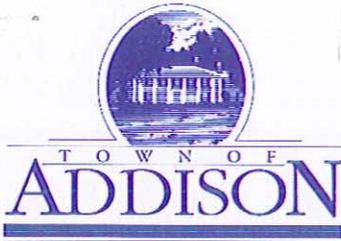
Contrast Urban Markets

Number	Property	Developer	Address	Date / Complete	Acres	Units	Units/Acre
9	Parkside at Legacy III (Legacy Town Ctr.)	Coumbus Realty Partners	5745 Bozeman Dr, Plano TX 75024	2012	3.4	314	93.54
10	Gables Fairmount (Katy Trail)	Gables Residential	2525 Carlisle St, Dallas, TX 75201	2013	3.5	334	95.43
11	2828 Lemmon (West Village)	JLB Partners/CWS Capital Partners	2828 Lemmon Ave, Dallas, TX 75204	2013	3.0	321	107.72
12	City Place (City Place)	JLB partners	2990 Blackburn St, Dallas TX 75204	2013	2.8	294	105.38
Contrast Market Average					9.3	949	102.37



Apartment Densities in Addison

Name of Complex	Property Address	# of Units	Acreage of Site	Units per acre	Notes
Addison Heights	SE corner Addison Road and Airport Parkway	280	3.201	87	would dedicate street right-of-way for turn lane, and provide private open space
Addison Park	14600 Marsh Lane, #1107	212	9.41	22.5	
Allegro Addison Circle (2 projects)	15750 Spectrum Drive	393	5.85	67.6	dedicated street ROW and built street at own expense
Bent Tree Brook	4820 Westgrove Drive	248	14.72	17	
Bent Tree Fountains	16400 Ledgemont Lane	184	13	14	
Bent Tree Oaks	4815 Westgrove Drive	196	10.02	20	
Bent Tree Park	4500 Sojourn	496	24.18	20	
Bent Tree Trails	16300 Ledgemont Lane	202	11.87	17	
Camden Addison	17200 Westgrove Drive	456	22	21	
Clipper Pointe	4015 Vitruvian Way	260	7.83	33	
Fairfield Residential	15777 Quorum Drive	414	7.48	55	dedicated 1.57 acre park, dedicated ROW and built streets at own expense
Garden Oaks	4005 Vitruvian Way	181	7.56	24	
Glenwood	3800 Spring Valley Road	168	6.37	26	
Keller Springs Lofts	Keller Springs at Addison Rd.	353	7.34	48	dedicated street ROW for turn lane, provided private dog park
Post Addison Circle (3 projects)	5009 Addison Circle Drive	1,334	24.27	54	dedicated 2.07 acres for parks, plus 6 acres at SW Corner for Addison Circle Park, plus street ROW
Shadowood	14500 Marsh Lane	184	9.41	19.5	
Springhaven	3820 Spring Valley Road	184	9.19	20	
The Tailskier	3925 Vitruvian Way	204	9.31	21	
Vitruvian Park (3 projects)	3850 Vitruvian Way	1,148	24.82	46	dedicated 11.96 acres for parks, plus street ROW
Walnut Square	4051 Beltway Drive	57	2.94	19	
Waterford Court	14700 Marsh Lane	196	10.15	19.3	
Wynward Addison	3721 Spring Valley Road	136	6.21	22	dedicated trail ROW on Marsh Lane, paid open space fee



PUBLIC WORKS DEPARTMENT
Post Office Box 9010 Addison, Texas 75001-9010

(972) 450-2871 FAX (972) 450-2837
16801 Westgrove

October 23, 2012

Kimley-Horn and Associates, Inc.
Attention: David Meyeres, P.E.
12700 Park Central Drive, Suite 1800
Dallas, TX 75251

Re: Plan review for Addison Heights

Mr. Meyeres:

As the Town's review engineer, Cobb, Fendley & Associates, Inc. (CobbFendley) has reviewed the following plans for compliance with Town of Addison and TCEQ requirements.

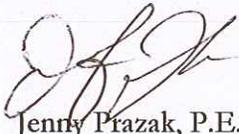
Plan Review: 1st Submittal
Plan Received: October 15, 2012
Plan Date: October 11, 2012
Development: Addison Heights Zoning Submittal

The City staff and review engineer have endeavored to review the plans for compliance with the governing authorities. This review does not relieve the design engineer, developer, and / or contractor from meeting all Town of Addison, TCEQ, TDLR, and other state and federal requirements that apply to this project that may or may not have been identified through this review.

CobbFendley has summarized our review comments along with the comments of the Town of Addison staff on the following pages. The submitting engineer / developer should address the following comments prior to start of construction.

I look forward to working with you on receiving approval for this development. If you have any questions, feel free to call at 972-335-3214.

Sincerely,
COBB, FENDLEY & ASSOCIATES, INC.



Jenny Prazak, P.E.
Project Engineer
Municipal Infrastructure



Cc: Lynn Chandler, Town of Addison
Dave Wilde, Town of Addison

Town of Addison
Summary of Review Comments

Date: October 23, 2012

Plan Review : 1

Received: 10/15/12

Plan Date: 10/11/12

Development: Addison Heights Zoning Submittal

Prepared by: JP



All comments on Plan Review Set and Summary of Review Comment form must be addressed. Summary of Review Comment form may NOT be all inclusive of comments made directly on the Plan Review Set.

Page No.	Comments	Response (See Note)	Explanation
Final Development Plan	Show a dashed line indicating the radii connections to Addison Road for the future road expansion; and		
Final Development Plan	Dumpster pad alignment should be parallel/perpendicular to the internal firelane to allow trash truck to access the dumpster and back up as necessary.		
Final Development Plan	Sidewalks: Show connection to existing sidewalk at NE corner of the property; - Show stub for future sidewalk connection within ROW at SW corner of the property; - Show crosswalk across Airport Pkwy with ADA ramps at the NE and SE corners of the intersection of Airport & Addison; and - Show connection between crosswalk and internal sidewalk at the NW corner of the property. See attached mark-up for water valve location changes		
Preliminary Water & Sewer Plan	See attached mark-up for additional existing water lines to be shown on the plan;		
Preliminary Water & Sewer Plan	Coordinate the location of the FHA & meters at the SW corner of the property with the future road radii connections to remove the need to relocate these in the future;		
Preliminary Water & Sewer Plan	Connection to existing 24" line in Addison Road should call for a 12"x8" reducer, not 12"x6"		

Page No.	Comments	Response (See Note)	Explanation
Preliminary Water & Sewer Plan	The town is concerned that constructing the 8" sanitary sewer line from the northern sewer service will damage and/or undermine the back of curb and stabilization along the right northbound lane of Addison Road. Please consider connecting the two services within the property prior to connecting to the existing 8" line in the ROW. See attached mark-up for additional info.		
Preliminary Storm Sewer Plan	Update intensity values "I" to match the updated Town of Addison Drainage Criteria Manual dated 7/21/2011. Please ensure your drainage system meets all the requirements in the manual.		
Preliminary Storm Sewer Plan	Identify the circular storm structure at the SE corner of the property. Is this the outfall control structure?		
Preliminary Storm Sewer Plan	The Qout identified at the detention vault is labeled as 3.40cfs. The release rate identified at the curb inlet on Addison Road is labeled as 2.45cfs. Please confirm the correct amount.		
Preliminary Storm Sewer Plan	Informational: The curb inlet on Addison Road will need to be relocated with the road expansion and the storm sewer connection will need to be re-worked as part of that process.		

- Notes:**
1. Response: Appropriate response is Agree (Correction Made) or Disagree (Correction Not Made), Explanation Required.
 2. This form must be completed and returned with future submittals.
 3. Previous red lined Plan Review Set must be submitted with future submittals.
 4. **Failure to submit Completed Summary of Review Comments form and previous Plan Review Set will result in a delay of future plan sets being reviewed.**
 5. **Send all plan submittals directly to the Town of Addison**

Memorandum

Date: October 17, 2012
To: Carmen Moran, Director of Development Services
From: Slade Strickland, Director of Parks and Recreation
Subject: **Addison Heights Residential Development – Addison Road**

The concept plan submitted by the applicant complies with the UC-Urban Center streetscape standards.

There are several existing specimen quality oak trees (approximately 16) on the south side of the site, which the plans show to remain. However, it does appear that some of the trees will need to be removed due to the location of the proposed building. Staff recommends that the applicant submit a detailed tree inventory that shows species, size and number of trees proposed to remain and to be removed.



July 23, 2012

City of Addison
Planning and Zoning Department
Attn: Carmen Moran, Director of Development Services
P. O. Box 9010
Addison, TX 75001-9010

In re: Case No. 1655-Z/Addison Heights Apartments

Dear Ms. Moran:

I am General Counsel of Southwest Re Holdings, LP and its affiliated companies that own and occupy the building located at 15920 Addison Road in Addison. Our offices are directly across the street from the planned development. We object to the proposed development and ask that the Planning and Zoning Department disapprove of any amendment or exception that would allow the project to go ahead.

The proposed development would dramatically increase traffic in the area, its building would create an eye sore and block our view. In essence the new project would reduce our property values and create a LESS favorable Addison neighborhood.

Please let the members of the Planning and Zoning Commission understand that this property owner is against the zoning change requested that would allow this project to proceed. If you have any questions or need further information from Southwest Re, please feel free to write or call me at 972-813-0903. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "David May".

David May
General Counsel

cc:
James Smith
Eddie Eckert

SouthwestRe®

October 21, 2012

City of Addison
Planning and Zoning Department
Attn: Carmen Moran, Director of
Development Services
P. O. Box 9010
Addison, TX 75001-9010

SouthwestRe

15920 Addison Road
Addison, TX 75001

877-881-2244
www.reinsure.com

In re: Case No. 1655-Z/Addison Heights
Apartments

Dear Ms. Moran:

I am General Counsel of Southwest Re Holdings, LP and its affiliated companies that own and occupy the building located at 15920 Addison Road in Addison. Our offices are directly across the street from the planned development. We object to the proposed development and ask that the Planning and Zoning Department disapprove of any amendment or exception that would allow the project to go ahead.

The proposed development would dramatically increase traffic in the area, its building would create an eye sore and block our view. In essence the new project would reduce our property values and create a LESS favorable Addison neighborhood.

Please let the members of the Planning and Zoning Commission understand that this property owner is against the zoning change requested that would allow this project to proceed. If you have any questions or need further information from Southwest Re, please feel free to write or call me at 972-813-0903. Thank you.

Sincerely,



David May
General Counsel

cc:
James Smith
Eddie Eckert



October 29, 2012

Carmen Moran, Director of Development Services
Town of Addison, Planning and Zoning Department
PO Box 9010
Addison TX 75001-9010

RE: Zoning Case #1655-Z / Addison Heights Apartments

Dear Ms. Moran:

I own the undeveloped tract of land located on the southwest corner of Quorum Drive and Airport Parkway. I support the proposed development contingent on the multi-level parking garage facing east be properly faced with brick or matching material used on the exterior of the structure. Due to the height of the garage, it will be visible from Quorum Drive and raw or painted concrete will be unsightly and detract from the Addison Circle development.

Please communicate my conditional support to the Planning and Zoning Commission and the Town Council. Thank you.

Sincerely,

A handwritten signature in cursive script that reads 'J.J. Horan'.

JJ Horan
SWGA Ventures, LTD.

JJH/jms



October 29, 2012

Carmen Moran, Director of Development Services
Town of Addison, Planning and Zoning Department
PO Box 9010
Addison TX 75001-9010

RE: Zoning Case #1655-Z / Addison Heights Apartments

Dear Ms. Moran:

I own and occupy the building located at 15835 Quorum Drive in Addison. I support the proposed development contingent on the multi-level parking garage facing east be properly faced with brick or matching material used on the exterior of the structure. Due to the height of the garage, it will be visible from Quorum Drive and raw or painted concrete will be unsightly and detract from the Addison Circle development.

Please communicate my conditional support to the Planning and Zoning Commission and the Town Council. Thank you.

Sincerely,

A handwritten signature in cursive script that reads 'J.J. Horan'.

JJ Horan
SWGA, LTD.

JJH/jms

October 26, 2012

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

RE: Zoning Case #1655-Z/Addison Heights Apartments

Dear Ms. Moran:

I own and occupy the building located at 15841 Addison Road in Addison. I support the proposed development and ask that you communicate my support to the Planning and Zoning Commission and the Town Council. Thank you.

Sincerely,



HJP HOLDINGS LLC
15840 ADDISON RD
ADDISON, TEXAS 750013288

October 26, 2012

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

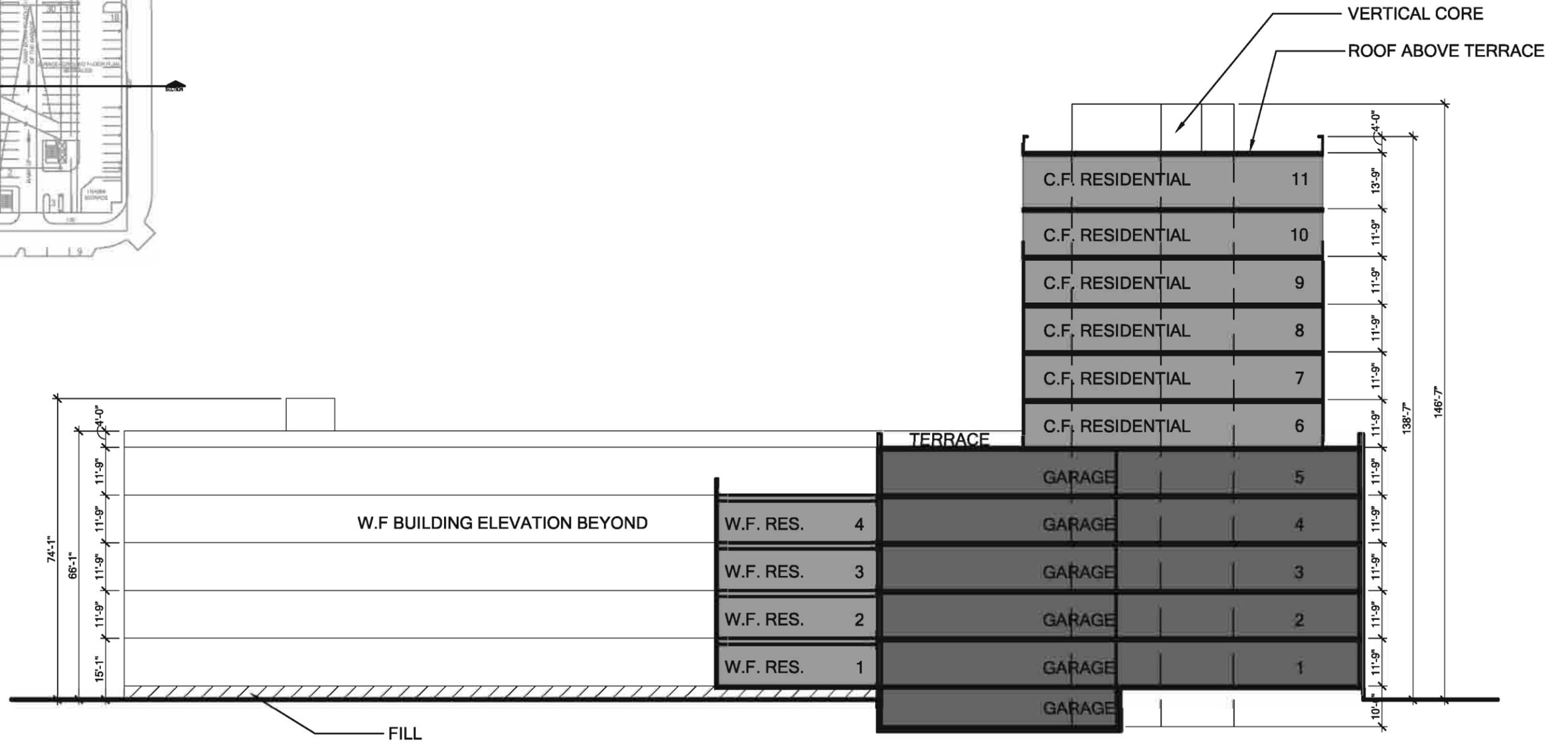
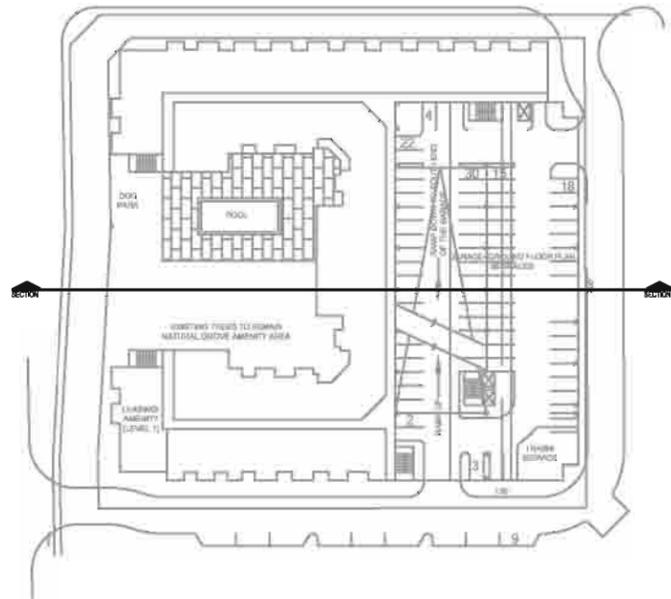
RE: Zoning Case #1655-Z/Addison Heights Apartments

Dear Ms. Moran:

I own and occupy the building located at 15840 Addison Road in Addison. I support the proposed development and ask that you communicate my support to the Planning and Zoning Commission and the Town Council. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to be "B. Moran", is written below the text "Sincerely,".



BUILDING SECTION
SCALE: 1" = 30'



BUILDING SECTION
Addison Heights Apartments
Dallas, Texas

Job #: 12094.00
File Name: Building Section-2012-07-16.dwg
Date: 10.12.2012
Drawn by: ELB & LBO



Good Fulton & Farrell Architects
2808 Fairmount Street
Suite 300
Dallas, Texas 75201
214.303.1500/Tel
214.303.1512/Fax
www.gff.com

TRACT PROJECT DATA

TOTAL SITE AREA 3.201 ACRES (139,419 SF)
 NET SITE AREA (AFTER R.O.W. TAKING) 3.006 ACRES (130,945 SF)
 WOOD BUILDING AREA 180,000 GSF
 TOWER BUILDING AREA 99,000 GSF
 TOTAL BUILDING AREA 279,000 GSF
 GROSS F.A.R. 2.00:1
 NET F.A.R. 2.13:1
 LOT COVERAGE 66,000 SF
 47.3% GROSS
 50.4% NET

APPROX. WOOD RENTABLE AREA 149,700 RSF
 APPROX. TOWER RENTABLE AREA 79,300 RSF
 TOTAL RENTABLE AREA 229,000 RSF
 WOOD UNITS 184 UNITS
 TOWER UNITS 96 UNITS
 TOTAL UNITS 280 UNITS
 AVERAGE UNIT SIZE 818 SF
 GROSS SITE DENSITY 87.5 UPA
 NET SITE DENSITY 93.1 UPA

GARAGE PARKING 430 SPACES
 ON-SITE SURFACE PARKING 9 SPACES
 ON-STREET PARKING TBD
 TOTAL SPACES 439 SPACES
 PARKING RATIO 1.57 SPACES/UNIT

PROJECT LOCATION

15842 ADDISON ROAD
 LOT 1
 BLOCK A

OWNER

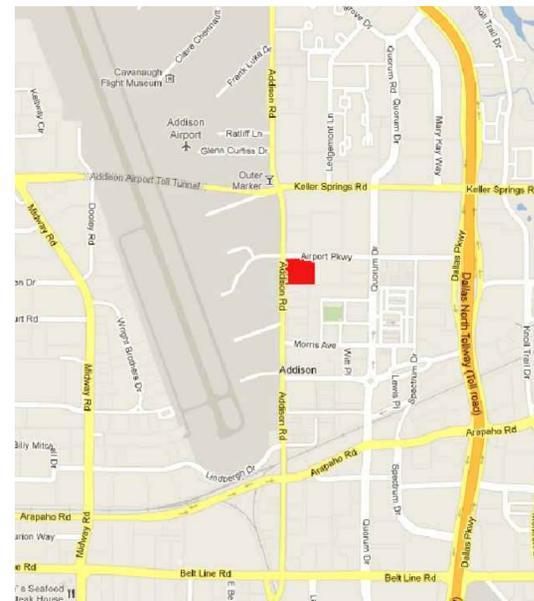
CROSS TIMBERS HOLDINGS LIMITED
 CONTACT: MICHAEL HOPE
 P.O. BOX 429
 ADDISON, TEXAS 75001
 972-239-1325

APPLICANT

HSM MULTIFAMILY DEVELOPMENT GROUP
 CONTACT: BILL BUSH
 5001 SPRING VALLEY ROAD, SUITE 1100 WEST
 DALLAS, TEXAS 75244
 972-419-4055

REPRESENTATIVE

GOOD FULTON & FARRELL ARCHITECTS
 CONTACT: EVAN L. BEATTIE, AIA
 2808 FAIRMOUNT ST. SUITE 300
 DALLAS, TEXAS 75201
 214-303-1500



SITE AREA MAP

5 LEVEL WOOD FRAME
 TYPE 3 CONSTRUCTION
 ALL LEVELS ABOVE GRADE
 64' ABOVE FINISHED FLOOR
 TOP OF PARAPET

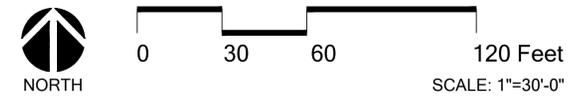
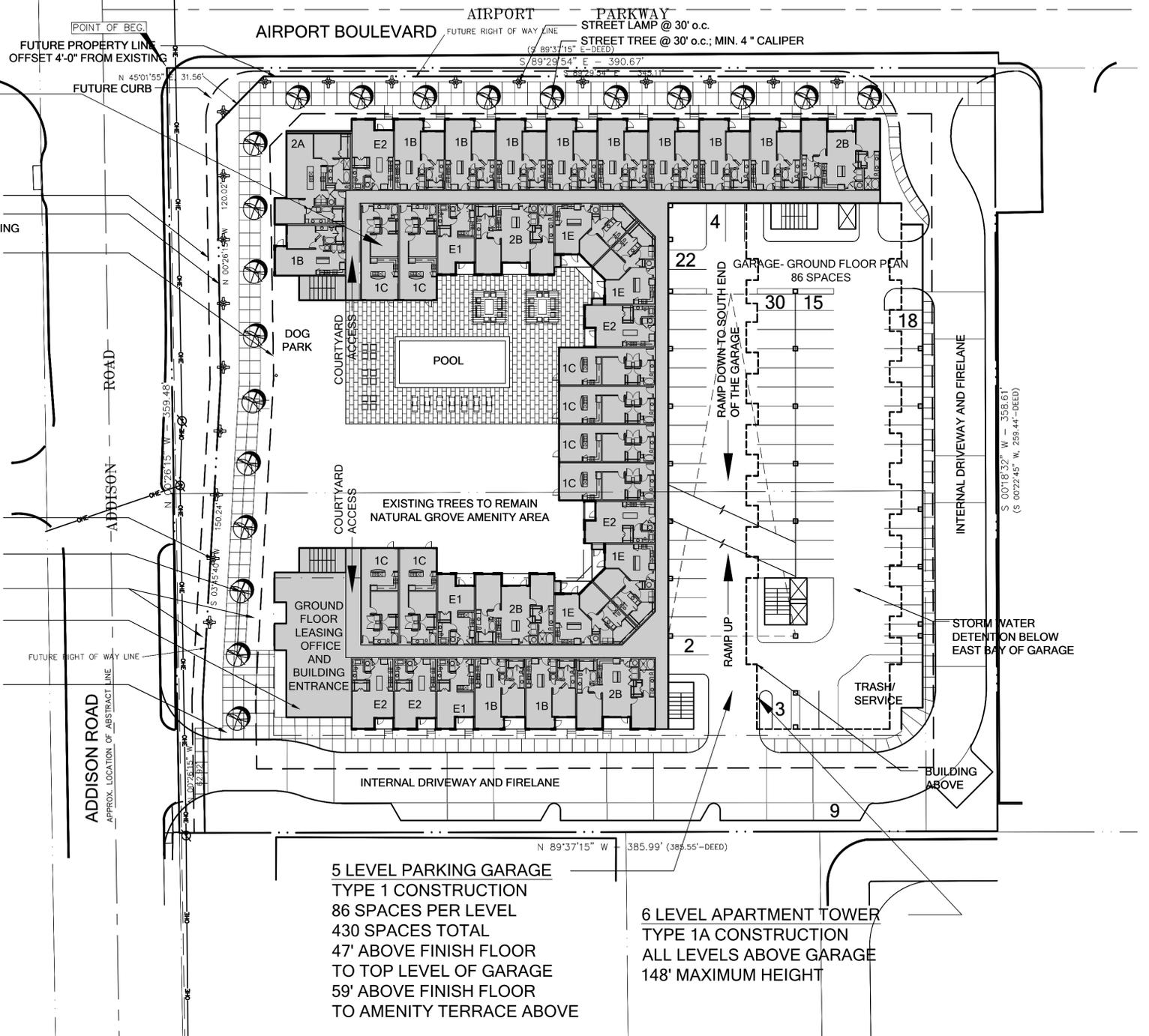
FUTURE CURB
 FUTURE PROPERTY LINE
 OFFSET VARIES FROM EXISTING
 25' SETBACK

STREET LAMP @ 30' o.c.
 STREET TREE @ 30' o.c.
 MIN. 4" CALIPER
 TURF AND LANDSCAPING AREA
 GROUND FLOOR LEASING OFFICE
 10' CONCRETE SIDEWALK
 5' UNOBSTRUCTED

ADDISON ROAD
 APPROX. LOCATION OF ABSTRACT LINE

5 LEVEL PARKING GARAGE
 TYPE 1 CONSTRUCTION
 86 SPACES PER LEVEL
 430 SPACES TOTAL
 47' ABOVE FINISH FLOOR
 TO TOP LEVEL OF GARAGE
 59' ABOVE FINISH FLOOR
 TO AMENITY TERRACE ABOVE

6 LEVEL APARTMENT TOWER
 TYPE 1A CONSTRUCTION
 ALL LEVELS ABOVE GARAGE
 148' MAXIMUM HEIGHT



FINAL DEVELOPMENT PLAN

Addison Heights Apartments at the Southeast Corner Airport and Addison
 Addison, Texas

Job #: 12094.00
 File Name: FP-01.dwg
 Date: 10.12.2012
 Drawn by: ELB



Good Fulton & Farrell Architects

2808 Fairmount Street
 Suite 300
 Dallas, Texas 75201

214.303.1500/Tel
 214.303.1512/Fax
 www.gff.com



CONCEPTUAL LANDSCAPE PLAN

Addison Heights
Addison, Texas



0 20 40 80 Feet



Good Fulton & Farrell Architects

2808 Fairmount Street
Suite 300
Dallas, Texas 75201

214.303.1500/Telex
214.303.1512/Fax
www.gff.com



October 21, 2012

City of Addison
Planning and Zoning Department
Attn: Carmen Moran, Director of
Development Services
P. O. Box 9010
Addison, TX 75001-9010

**In re: Case No. 1655-Z/Addison Heights
Apartments**

Dear Ms. Moran:

I am General Counsel of Southwest Re Holdings, LP and its affiliated companies that own and occupy the building located at 15920 Addison Road in Addison. Our offices are directly across the street from the planned development. We object to the proposed development and ask that the Planning and Zoning Department disapprove of any amendment or exception that would allow the project to go ahead.

The proposed development would dramatically increase traffic in the area, its building would create an eye sore and block our view. In essence the new project would reduce our property values and create a LESS favorable Addison neighborhood.

Please let the members of the Planning and Zoning Commission understand that this property owner is against the zoning change requested that would allow this project to proceed. If you have any questions or need further information from Southwest Re, please feel free to write or call me at 972-813-0903. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "David May".

David May
General Counsel

cc:
James Smith
Eddie Eckert

The logo for Southwest Re, featuring the word "SouthwestRe" in a serif font with a registered trademark symbol. A thin, curved line arches over the text.

15920 Addison Road
Addison, TX 75001

972-881-2244
www.reinsure.com



PERSPECTIVE

Addison Heights Apartments
Dallas, Texas

Job #: 12094.00
Date: 10.12.2012



Good Fulton & Farrell



PERSPECTIVE

Addison Heights Apartments
Dallas, Texas

Job #: 12094.00
Date: 10.12.2012



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Dallas, Texas

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Date: 10.12.2012



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Addison Heights Apartments
Dallas, Texas

Job #: 12094.00
Date: 10.12.2012



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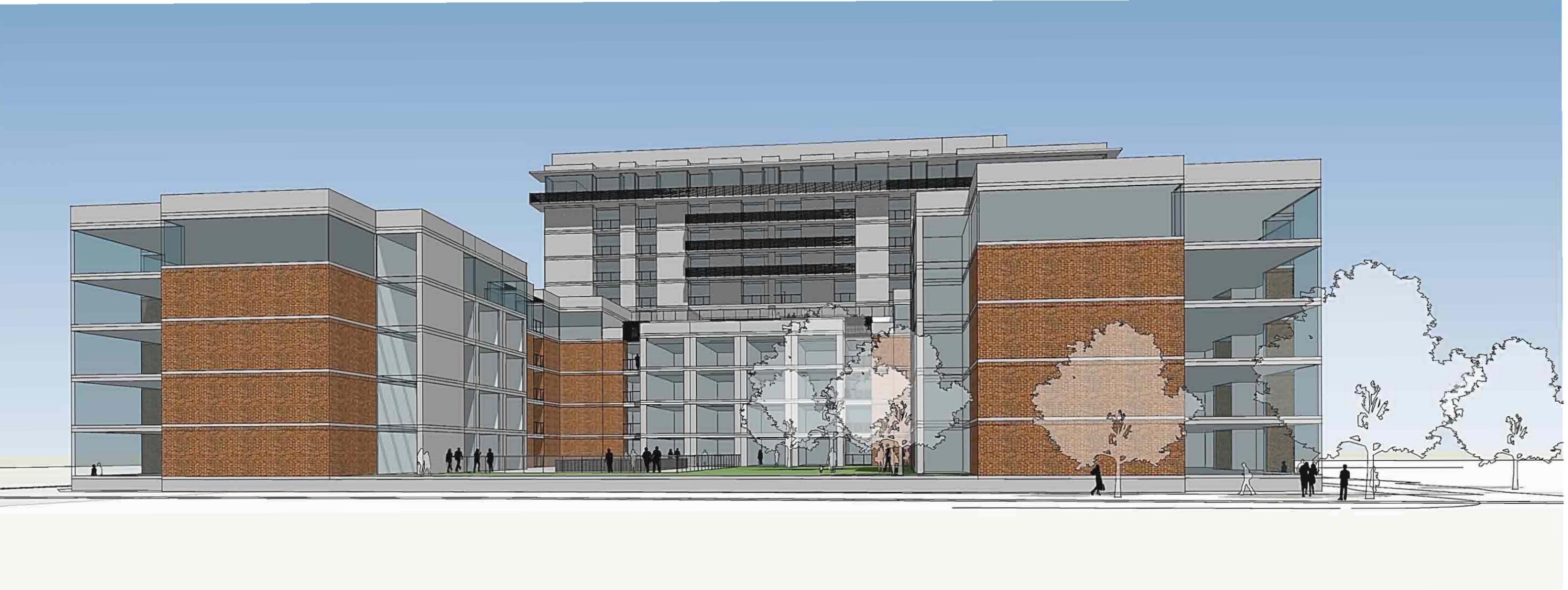
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Job #: 12094.00
Date: 10.12.2012

Addison Heights Apartments
Dallas, Texas



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PERSPECTIVE

Addison Heights Apartments
Dallas, Texas

Job #: 12094.00
Date: 10.12.2012



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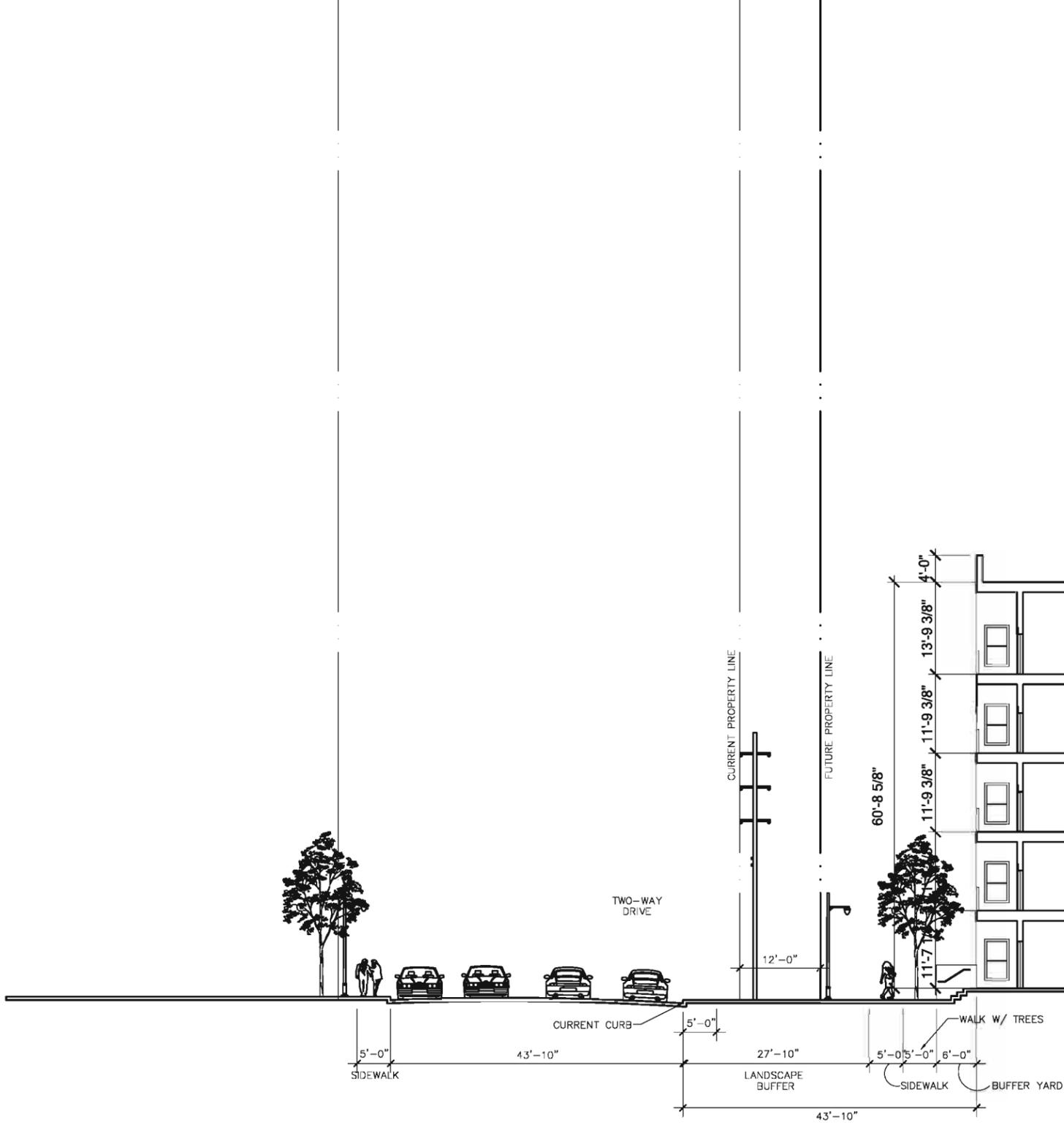
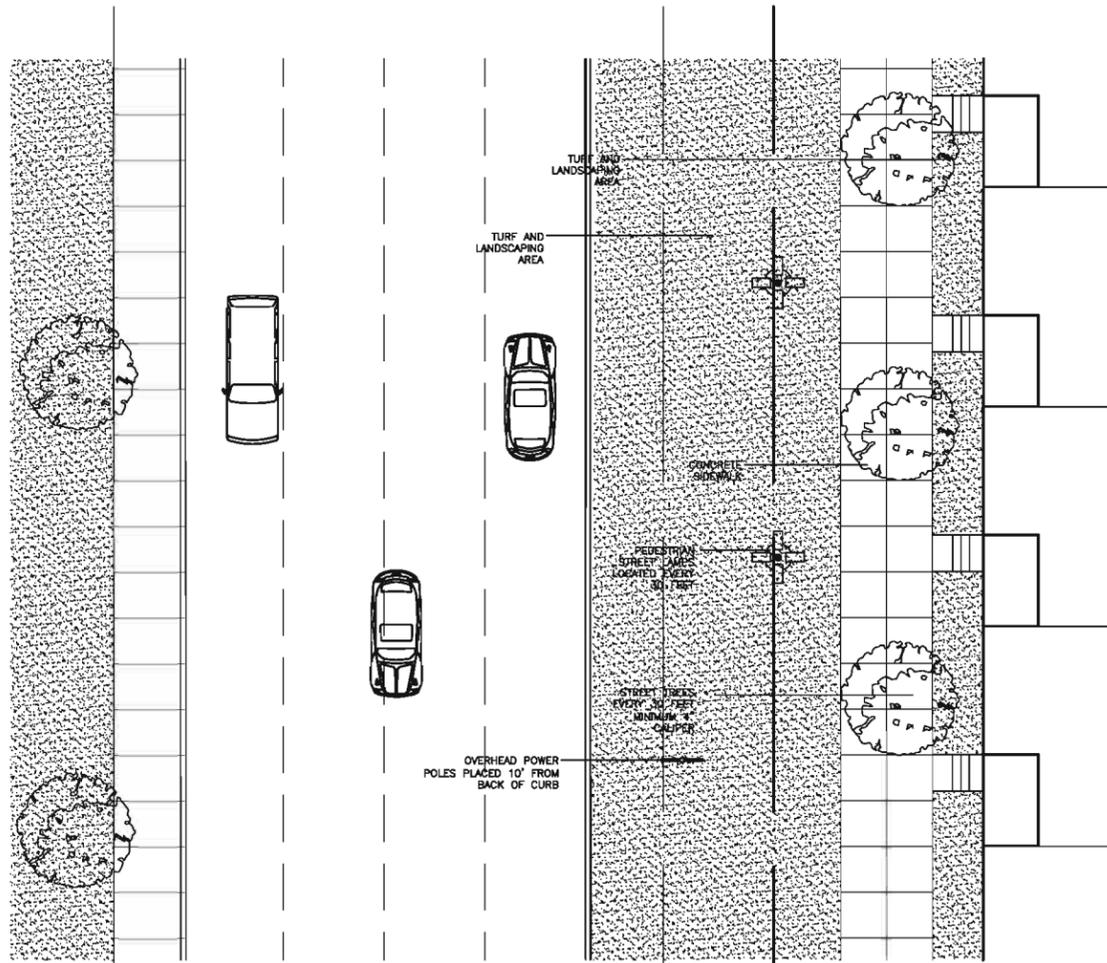
PERSPECTIVE

Addison Heights Apartments
Dallas, Texas

Job #: 12094.00
Date: 10.12.2012



Good Fulton & Farrell



**STREET SECTION: ADDISON ROAD
CURRENT R.O.W.**

Addison Heights Apartments
Addison, Texas

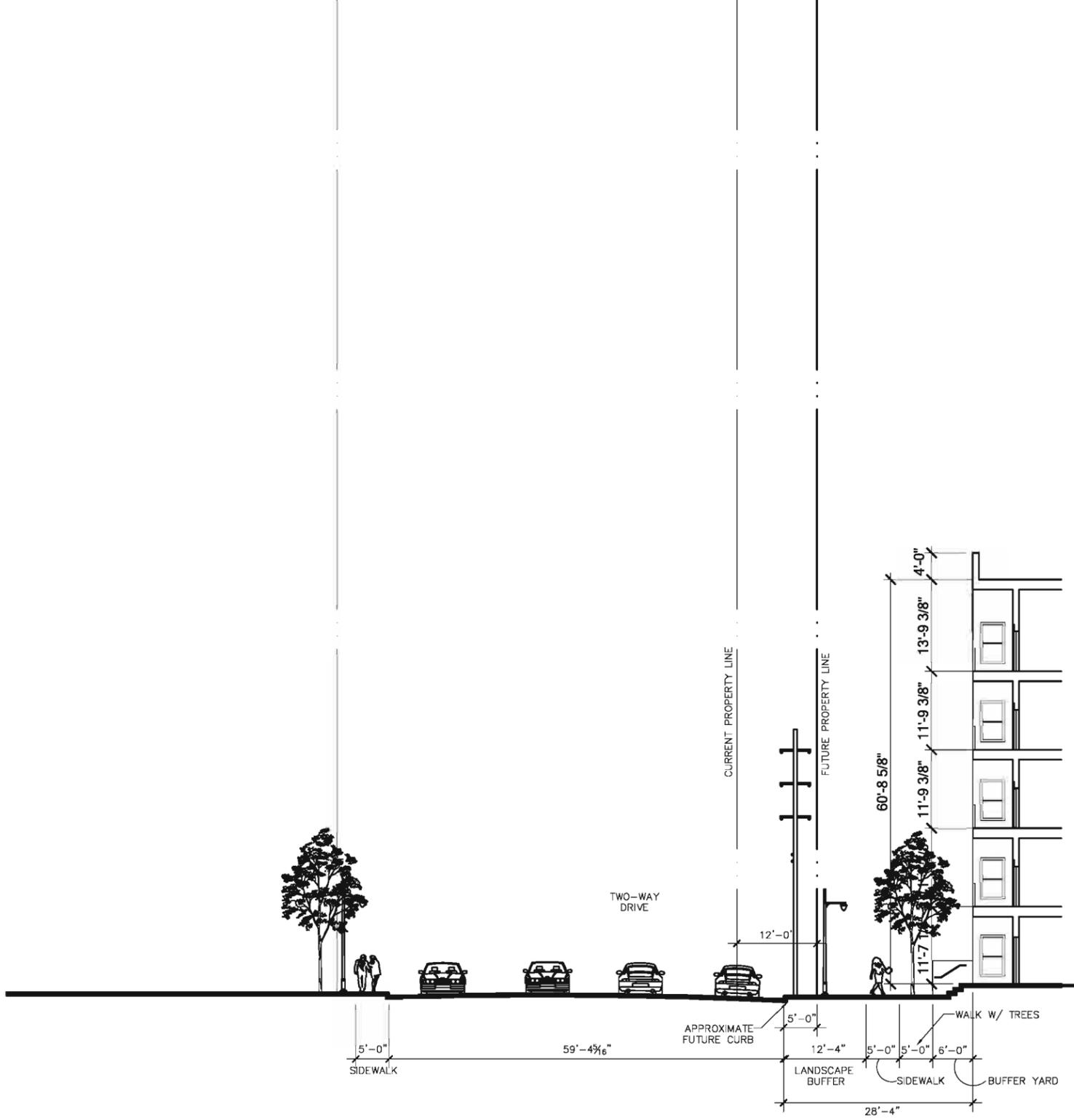
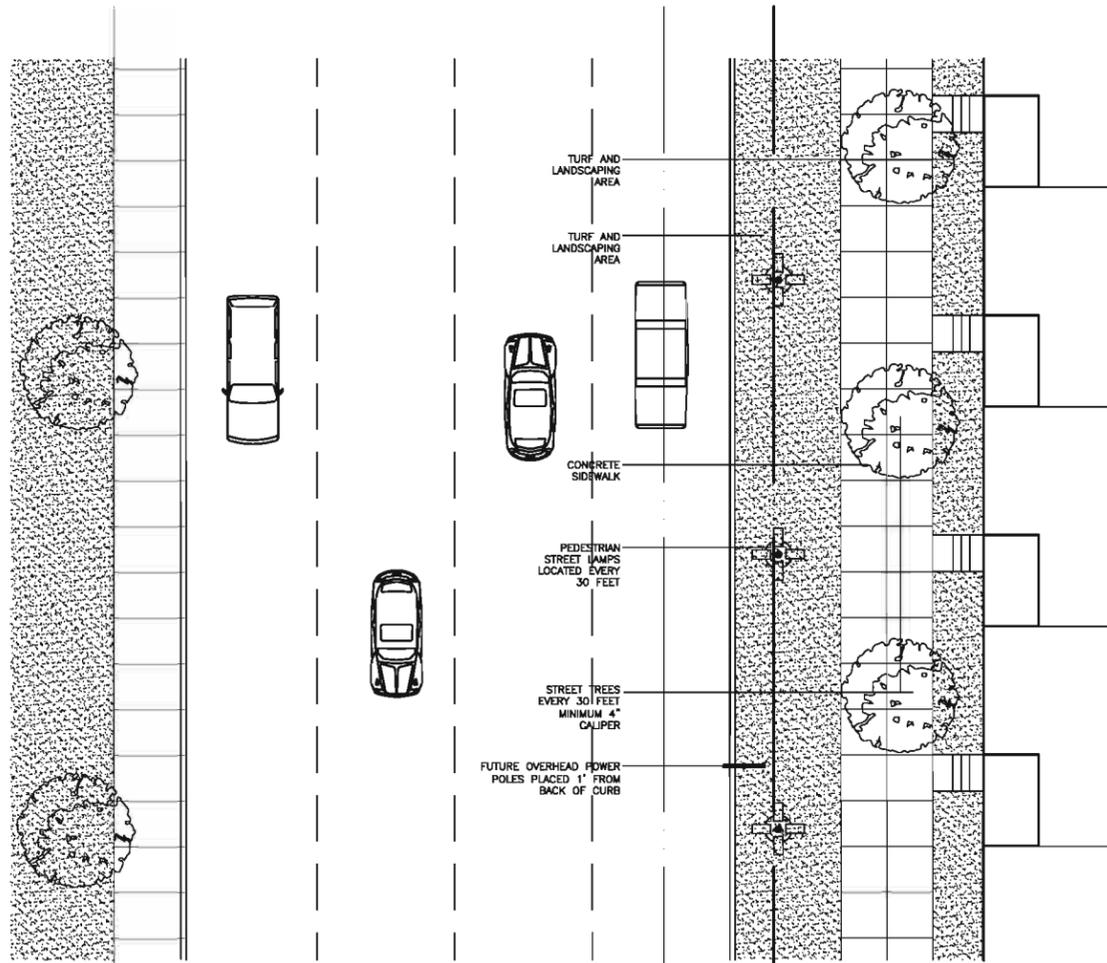
Job #: 12094
File Name: Site-Sections.dwg
Date: 10.12.12
Drawn by: LJB, ELB



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Suite 300
Dallas, Texas 75201

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**STREET SECTION: ADDISON ROAD
FUTURE R.O.W.**

Addison Heights Apartments
Addison, Texas

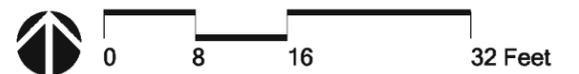
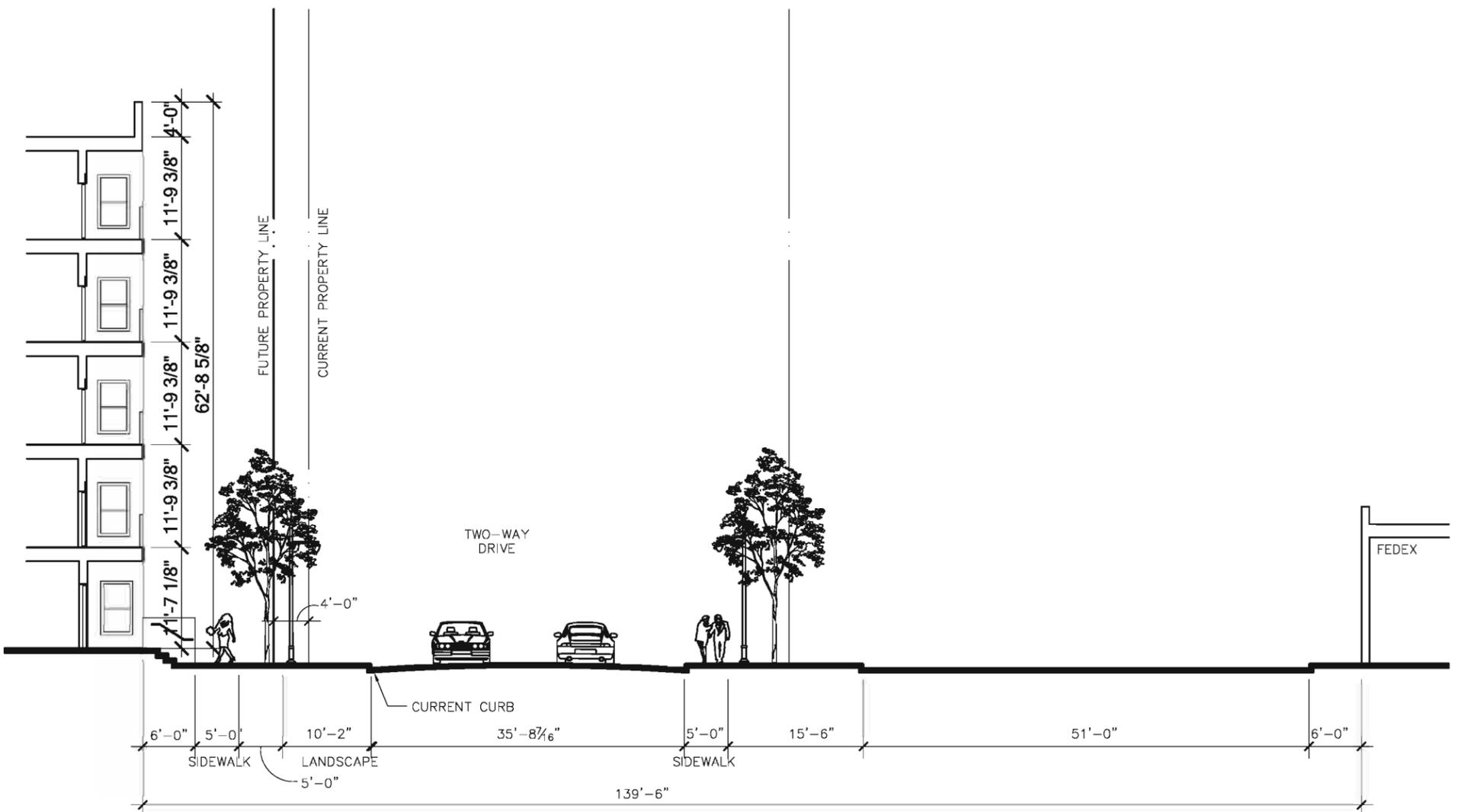
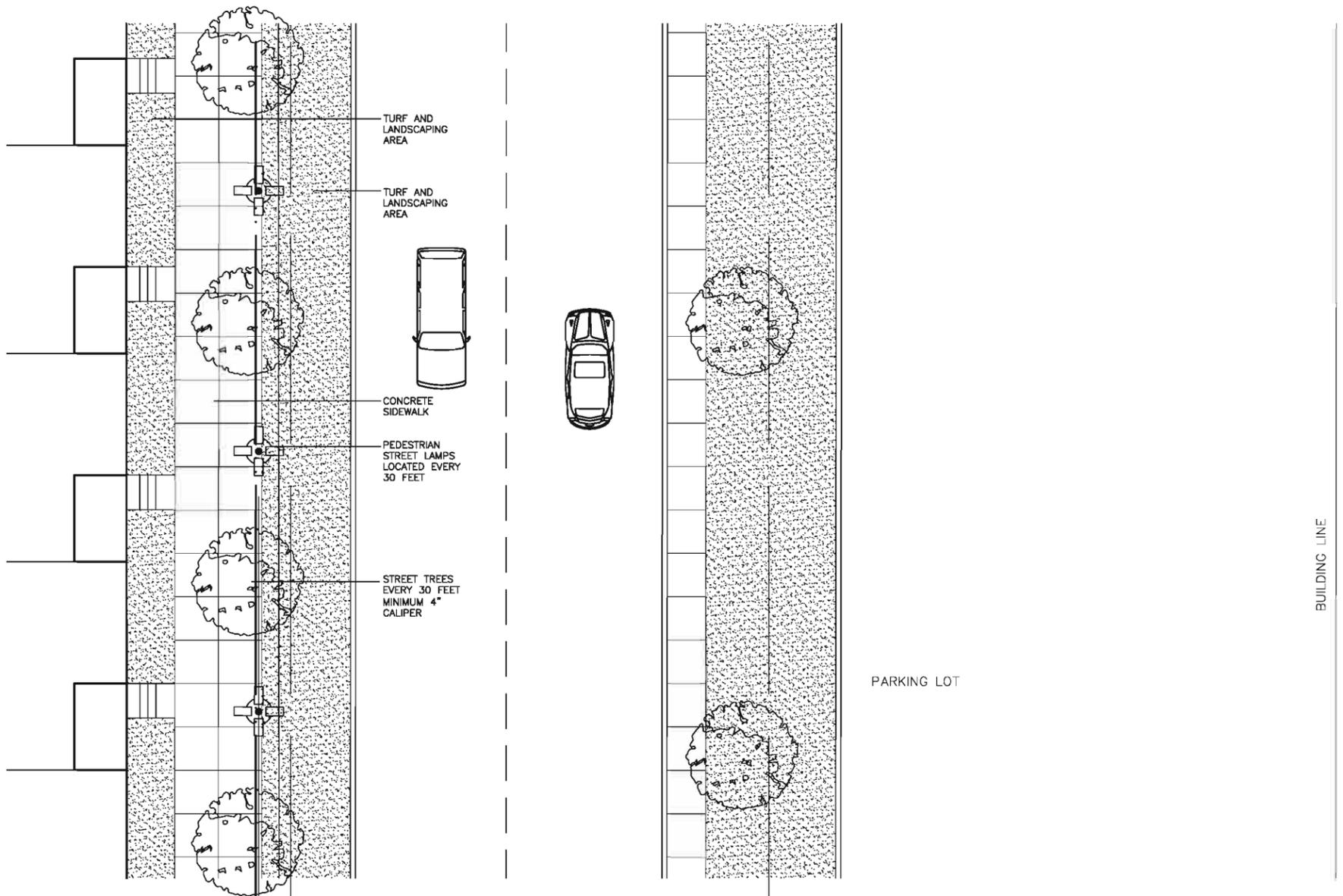
Job #: 12094
File Name: Site-Sections.dwg
Date: 10.12.12
Drawn by: LJB, ELB



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Dallas, Texas 75201

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214.303.1512/Fax
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**STREET SECTION: AIRPORT PARKWAY
CURRENT R.O.W.**

Addison Heights Apartments
Addison, Texas

Job #: 12094
File Name: Site-Sections.dwg
Date: 10.12.12
Drawn by: LJB, ELB



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2808 Fairmount Street
Suite 300
Dallas, Texas 75201

214.303.1500/Tel
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Council Agenda Item: #R8

AGENDA CAPTION:

Presentation, discussion and consideration of approval authorizing the City Manager to enter into an Economic Development Program Grant Agreement with MHSS-MOB - Addison, L.P. in an amount not to exceed \$564,514.67 for the reconstruction of Sojourn Drive.

FINANCIAL IMPACT:

This item would be funded through the interest earnings from the 2008 certificates of obligation.

BACKGROUND:

In June of this year, MHSS MOB, Addison, L.P. brought forward a plan to construct a medical office building adjacent to the existing Methodist Hospital for Surgery at 17101 Dallas Parkway. During the zoning process, the Council and applicant discussed a possible four million dollar (\$4,000,000.00) economic development incentive for the construction of a parking garage, but an incentive was never approved. The applicant redesigned the plan to delete the parking garage and moved forward with the project.

In connection with the development and construction of the Medical Office Building, the developer was required to construct, at its cost, two right-turn lanes, one on westbound Sojourn Drive turning onto northbound Addison Road, and the other on northbound Addison Road turning right onto eastbound Sojourn Drive. During the construction plan review, it was observed by the staff that the existing Sojourn Drive, a public street, was an asphalt road in need of reconstruction. Since the two new right-turn lanes are required to be concrete, it would be problematic and burdensome to tie the new concrete turn lanes into the existing asphalt street. The staff determined that it would be best for the City to reconstruct Sojourn Drive as a concrete street and tie the right-turn lanes into a new concrete street. In addition, there were signals at Addison Road and Sojourn Drive that needed to be updated and realigned in order to move traffic more efficiently. Also, during the review process, the Town's Public Works Department realized an opportunity to install a water line down Sojourn Drive that will tie into Dallas Parkway. Installing the line at this time will keep the Town from having to procure easements and dig up the

street at a later date. In addition, the staff determined that the medians in the new Sojourn Drive should be landscaped in keeping with the Town's other streets, which also added to the cost of the project.

In order to expedite the construction of the right-turn lanes and Sojourn Drive, and reduce construction costs, the Town desires to enter into an agreement with MHSS-MOB to have the contractor who is constructing the Medical Office Building also complete construction of the turn lanes and Sojourn Drive. The staff feels that since it needs to rebuild Sojourn, as well as make additional improvements to the site, and since it will save funds by using a contractor who is already working on the site, that it is reasonable for the Town to pay the cost of constructing the two right-turn lanes as an economic incentive to the developer. The staff recommends making an economic development grant to MHSS-MOB in accordance with the proposed agreement.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

Mindful Stewardship of Town Resources

ATTACHMENTS:

Description:

 [Sojourn Drive Agreement](#)

Type:

Backup Material

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT

This Economic Development Program Grant Agreement (“Agreement”) is made and entered into by and between MHSS MOB - Addison, L.P., a Texas limited partnership (“MHSS-MOB”), and the Town of Addison, Texas (“Addison” or the “City”), a Texas home rule municipality, for the purposes and consideration stated below (MHSS-MOB and the City are sometime referred to herein together as the “parties” and individually as a “party”).

Recitals:

1. MHSS-MOB owns an approximately 4 acre tract of land located at 17051 Dallas Parkway, Addison, Texas, and further described in the attached Exhibit A and the location of which is generally shown (highlighted in yellow) on the map attached as Exhibit B (the “Property”). A hospital, known as Methodist Hospital for Surgery, and related improvements (the “Hospital”) was constructed in 2010 by an affiliate of MHSS-MOB on property in the general vicinity of the Property as generally shown on the attached Exhibit B. MHSS-MOB intends to develop and construct, or is in the process of developing and constructing, a medical office building and related improvements (“MOB”) on the Property that is south of and adjacent to the Hospital, as generally shown on Exhibit B. MHSS-MOB has entered into, or anticipates entering into, a contract (“Construction Contract”) for the development and construction of the MOB with Rogers-O'Brien Construction Company, Ltd. (the “Contractor”).

2. In connection with the development and construction of the MOB, MHSS-MOB was required to construct, at its cost, two right-turn lanes, one on westbound Sojourn Drive turning onto northbound Addison Road, and the other on northbound Addison Road turning right onto eastbound Sojourn Drive (the “right-turn lanes”; see location of right-turn lanes on attached Exhibit B). The existing Sojourn Drive, a public street, is an asphalt road in need of reconstruction, but the new right-turn lanes are required to be made of concrete. To tie the new concrete right-turn lanes into the asphalt Sojourn Drive would be problematic and burdensome. However, reconstructing Sojourn Drive with concrete would mitigate the difficulty of tying the right-turn lanes into Sojourn Drive.

3. In light of the recent construction and current operation of the Hospital and of the development and construction of the MOB, the parties desire that the intersection of Sojourn Drive and Addison Road, including the new right-turn lanes, be constructed so as to alleviate and remove any issues or concerns with tying the right-turn lanes into Sojourn Drive. Accordingly, the City has determined that it would be best to reconstruct Sojourn Drive with concrete, with the result that both the reconstructed Sojourn Drive and the new right-turn lanes would be concrete and could be readily tied together.

4. In order to expedite the construction of the MOB, the right-turn lanes, and the reconstruction of Sojourn Drive (including signal and utility relocations and design fees), MHSS-MOB desires that the Contractor, while constructing the MOB, simultaneously construct the right-turn lanes and the Sojourn Drive reconstruction. The design and construction of the

right-turn lanes and the Sojourn Drive reconstruction (including signal and utility relocations) is included in the Construction Contract or will be included pursuant to a change order (and such portion of the Contract related to the Sojourn Drive Improvements is described herein as the "Sojourn Drive Contract"). Because of contractor mobilization costs and other related costs, such simultaneous construction will reduce the overall cost of the right-turn lane construction and the reconstruction of Sojourn Drive. Further, the simultaneous reconstruction will allow the City to temporarily close the Addison Road/Sojourn Drive intersection only once, thereby reducing traffic issues and concerns.

5. In connection with the cost to develop the MOB, including the cost of constructing the right-turn lanes, MHSS-MOB has asked the City to provide to MHSS-MOB an economic development grant in order to allow MHSS-MOB to defray a portion of those costs. MHSS-MOB desires to use the grant funds to construct the right-turn lanes and to reconstruct Sojourn Drive. The City is authorized by Section 380.001, Tex. Loc. Gov. Code, to establish and provide for the administration of programs for making loans and grants of public money to promote state or local economic development and to stimulate business and commercial activity in the City. This Agreement constitutes such a program for promoting economic development within the City.

6. The City has determined that making an economic development grant to MHSS-MOB in accordance with this Agreement will further the objectives of the City, will benefit the City and the City's inhabitants, and will promote local economic development and stimulate business and commercial activity within the City.

NOW THEREFORE, for and in consideration of the foregoing, and on the terms and conditions hereinafter set forth, the Town of Addison, Texas and MHSS MOB - Addison, L.P. do hereby agree as follows:

Section 1. Definitions. In addition to other definitions included in this Agreement (including the above and foregoing Recitals), the words and phrases set forth below shall have the following meanings ascribed to them:

"City" means the Town of Addison, Texas.

"Contractor" has the meaning set forth in the Recitals, above.

"Event of Bankruptcy or Insolvency" means (i) the liquidation, dissolution, or termination as a going business, (ii) insolvency or a declaration of insolvency under any law, (iii) appointment of a receiver for MHSS-MOB or any of its property, or the interest of MHSS-MOB under this Agreement is levied under other legal process, (iv) any assignment or conveyance of all or a substantial portion of assets for the benefit of creditors, (v) a transfer in fraud of creditors according to any applicable law, or (vi) the filing of a petition for relief, or the filing of a petition for involuntary bankruptcy, under the United States Bankruptcy Code or any other present or future federal or state insolvency, bankruptcy, or similar laws.

"Final Completion of Construction" means that (i) the Sojourn Drive Improvements have been fully and finally completed, including any and all punch list items, (ii) there are no outstanding claims or liens in connection with or related to the Sojourn Drive Improvements by

any contractor, subcontractor, or provider of materials, supplies, or any outstanding labor claims in connection therewith or related thereto, (iii) MHSS-MOB has provided to the City a fully executed two-year maintenance bond from the Contractor, in form and content satisfactory to the City and MHSS-MOB, applicable to the Sojourn Drive Improvements, and (iv) the City has accepted the Sojourn Drive Improvements (in accordance with normal process of the City).

“Include(s)” 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.

“MHSS-MOB” means MHSS MOB - Addison, L.P., a Texas limited partnership.

“MOB” has the meaning set forth in the Recitals, above (and is shown in construction plans submitted by or on behalf of MHSS-MOB to the City).

“Program” means the payment of an economic development grant pursuant to the terms of this Agreement.

“Program Grant” means the grant in the amount set forth in Section 3 of this Agreement to be paid by the City during the Term of this Agreement.

“Property” means that certain tract of land located within the municipal limits of the City at 17051 Dallas Parkway, Addison, Texas, as more particularly described on Exhibit A attached hereto, together with the building and all other improvements located thereon.

“Right-turn lanes” has the meaning set forth in the Recitals, above.

“Sojourn Drive Contract” has the meaning set forth in the Recitals, above.

“Sojourn Drive Improvements” means the reconstruction of Sojourn Drive and the construction of two new right-turn lanes, as generally described in the attached Exhibit C. The same includes signal and utility relocations and design fees.

“Substantial Completion of Construction” means that (i) the Sojourn Drive Improvements have been substantially completed by the Contractor, (ii) a certificate of substantial completion reflecting the substantial completion of the Sojourn Drive Improvements has been issued by the Contractor and any engineer for the Sojourn Drive Improvements, and (iii) the City agrees with such certificate.

Section 2. Term. This Agreement shall be effective as of the date of execution of this Agreement by both the City and MHSS-MOB (the “Effective Date”), will continue in effect from the Effective Date until the last installment is paid by the City to MHSS-MOB pursuant to Section 4.C below (the “Term”), subject, however, to the earlier termination of this Agreement in accordance with the terms of this Agreement.

Section 3. Program Grant. In consideration of the performance by MHSS-MOB of the obligations outlined and identified in this Agreement, and subject to MHSS’s satisfaction of and compliance with all of the terms and conditions of this Agreement, the City agrees, subject

to the terms of this Agreement, to pay to MHSS-MOB (as set forth in Section 4, below) a Program Grant in an amount equal to the amount of the cost of the Sojourn Drive Contract, but in any event not to exceed a maximum amount of Five Hundred Twenty-Seven Thousand and No/100 Dollars (\$527,000.00) (the "Maximum Program Grant"). Payment of the Program Grant (and any portion thereof) is subject to the timely satisfaction and fulfillment by MHSS-MOB of the following:

A. MHSS-MOB shall cause the Contractor to construct the Sojourn Drive Improvements. Substantial Completion of Construction shall have been achieved by no later than _____, 201__, and Final Completion of Construction shall have been achieved by no later than _____, 201__.

B. Upon Final Completion of Construction, MHSS-MOB shall cause the Contractor to give to the City a written warranty in favor of the City and MHSS-MOB that (i) that materials and equipment furnished under the Sojourn Drive Contract were all of good quality and new, (ii) that the construction of the Sojourn Drive Improvements was free from defects not inherent in the quality required or permitted, and that (iii) the construction of the Sojourn Drive Improvements conformed to the requirements of the Sojourn Drive Contract (a true and correct copy of which has been given to the City, or will be promptly given to the City by MHSS-MOB upon execution of this Agreement; and no changes will be made to the Sojourn Drive Contract without the City's prior written consent). Any work on the Sojourn Drive Improvements not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective, and the City shall enforce the warranty directly against the Contractor.

C. MHSS-MOB shall have included in any agreement it has with the Contractor for the construction of the Sojourn Drive Improvements (i) that the Contractor shall diligently prosecute the construction of the Sojourn Drive Improvements to completion, (ii) that the Sojourn Drive Improvements shall be constructed and the work performed in a good and workmanlike manner and in accordance with and subject to all applicable laws, ordinances, codes, rules and regulations, including those of the City and any other governmental entity having jurisdiction, and with the Sojourn Drive Contract. MHSS-MOB shall enforce the Sojourn Drive Contract so that the provisions of this Agreement, including this Section 3, are fulfilled.

D. MHSS-MOB shall cause the Contractor to have the Town of Addison, Texas named as an additional insured on all liability insurance policies provided by the Contractor in connection with the construction of the Sojourn Drive Improvements, and shall cause the Contractor to indemnify, hold harmless, and defend (in form and content satisfactory to the City) the City in connection with the construction of the Sojourn Drive Improvements.

E. MHSS-MOB shall timely pay the Contractor in accordance with the terms and conditions of the Sojourn Drive Contract. MHSS-MOB shall use commercially reasonable efforts to ensure that all Sojourn Drive Improvements are completed in a timely manner in accordance with the Sojourn Drive Contract. In the event the cost of the Sojourn Drive Contract exceeds the Maximum Program Grant, MHSS-MOB will pay the Contractor such excess.

F. MHSS-MOB shall cause the Contractor, at Final Completion of Construction, to assign to the City and MHSS-MOB any and all manufacturer's warranties relating to material

and labor used in the construction of the Sojourn Drive Improvements, and shall further cause the Contractor to perform the construction of the Sojourn Drive Improvements in such a manner so as to preserve any and all such manufacturer's warranties.

At all times in connection with the construction of the Sojourn Drive Improvements, the City has the right to inspect, test, measure or verify the construction work on the Sojourn Drive Improvements as the City deems necessary, at the City's sole risk, and provided that such inspections, tests, measurements and verification do not interfere with the Contractor's performance of the Sojourn Road Improvements.

Under no circumstances shall any of the City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Further, the City shall not be obligated to pay any commercial bank, lender or similar institution or any other person or entity for any loan or credit agreement made by MHSS-MOB. None of the City's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution or other person or entity.

Section 4. Payment.

A. Within ten (10) days following the Effective Date (at least half of the work of the Sojourn Drive Contract having been completed by the Contractor as of the Effective Date) and provided MHSS-MOB has timely submitted the First Payment Invoice as described in subsection D.1. of this section, the City will pay to MHSS-MOB an amount equal to 50% of the lesser of (i) the cost (amount) of the Sojourn Drive Contract, or (ii) the Maximum Program Grant.

B. Upon Substantial Completion of Construction, the City will pay to MHSS-MOB an amount equal to 40% of the lesser of (i) the cost (amount) of the Sojourn Drive Contract or (ii) the Maximum Program Grant.

C. Upon Final Completion of Construction, the City will pay to MHSS-MOB an amount equal to 10% of the lesser of (i) the cost (amount) of the Sojourn Drive Contract or (ii) the Maximum Program Grant. It is the parties' intent that MHSS-MOB receive reimbursement of 100% of the cost of the Sojourn Drive Contract, not to exceed the Maximum Program Grant. To the extent the remaining balance at the time of Final Completion of Construction exceeds 10%, then such final installment payable under this paragraph C. shall equal the remaining balance (so long as the aggregate of all payments made under this Section does not to exceed the Maximum Program Grant).

D. Payment of the Program Grant as set forth in paragraphs A., B. and C. of this Section will be made in accordance with and is subject to the following:

1. Within three (3) days after the Effective Date, and upon each of Substantial Completion of Construction and Final Completion of Construction, MHSS-MOB shall submit to the City an invoice for the applicable payment amount (e.g., for Substantial Completion of Construction, an invoice equal to the amount described in paragraph B. of this Section) (a "Payment Invoice"; the Payment Invoice to be submitted within 3 days after the Effective Date being the "First Payment Invoice"). Each Payment Invoice shall be in form and content reasonably acceptable to the City and shall be accompanied by a

certification from MHSS-MOB stating and providing:

(a) that MHSS-MOB has inspected the applicable portion (e.g., Substantial Completion of Construction) and to MHSS-MOB's actual knowledge and belief the applicable portion has been completed in accordance and conformance with:

(i) the Sojourn Drive Contract,

(ii) any applicable design (e.g., engineering) plans related to the construction of the Sojourn Drive Improvements, and

(iii) this Agreement, and

(b) that there are no outstanding claims or liens by any contractor, subcontractor, or provider of materials, supplies, or labor in connection with work on the applicable portion of the Sojourn Drive Improvements.

The certification shall be by affidavit sworn to by an appropriate officer of MHSS-MOB authorized to submit the same.

2. Each Payment Invoice shall also be accompanied by (a) a copy of lien releases (which may be conditioned upon payment) from the Contractor and all subcontractors and material suppliers, and (b) a certificate from any design professional (e.g., professional engineer registered in Texas) that prepared the design of the Sojourn Drive Improvements that the applicable portion of the Sojourn Drive Improvements have been completed in accordance and conformity with the Sojourn Drive Contract and any design plans related thereto prepared by the design professional. If any lien release is conditioned on payment, MHSS-MOB shall cause the Contractor to timely make all payments to the subcontractor or material supplier who so conditioned the lien release and to obtain from the subcontractor or material supplier an unconditional release of lien upon payment (and provide a copy of the same to the City); and MHSS-MOB will cause the Contractor to indemnify and hold harmless the City from any and all claims arising out of the non-payment of any such subcontractor or material supplier.

3. Payment of the final installment of the Program Grant is further conditioned on and subject to the City's prior receipt from MHSS-MOB of all as-built drawings, certifications, maintenance manuals, operating instructions, written guarantees, warranties, and bonds relating to the Sojourn Drive Improvements, and assignments of all guarantees and warranties from the Contractor, subcontractors, vendors, suppliers, or manufacturers, in connection with or relating to all or any portion of the work on the Sojourn Drive Improvements.

D. Upon the City's receipt and review (to the City's satisfaction) of (a) a Payment Invoice, (b) MHSS-MOB's certification that the work on the Sojourn Drive Improvements has been completed as described in this Agreement, (c) the other information to be submitted by MHSS-MOB in accordance with this Agreement, and (d) the compliance by MHSS-MOB (to the City's satisfaction) with applicable portions of this Agreement, the City shall pay to MHSS-MOB within 30 days thereafter the amount of the Payment Invoice. All payments by the City to

MHSS-MOB under this Agreement shall, upon receipt by MHSS-MOB, be promptly transferred by MHSS-MOB to the Contractor in payment for work properly performed by the Contractor under the Sojourn Drive Contract.

Section 5. Intentionally Deleted.

Section 6. Intentionally Deleted.

Section 7. Termination; Reimbursement. This Agreement shall terminate without notice or demand upon the occurrence of any one of the following:

- A. the execution by both parties of a written agreement terminating this Agreement;
- B. as otherwise provided for in this Agreement;
- C. the expiration of the Term;
- D. at the option of either party (the "non-breaching party") in the event the other party (the "breaching party") breaches or fails to comply with any term, condition, or provision of this Agreement, and such breach or failure is not cured or remedied to the satisfaction of the non-breaching party within thirty (30) days after written notice thereof from the non-breaching party to the breaching party;
- E. if MHSS-MOB suffers an Event of Bankruptcy or Insolvency; or
- F. at the City's option, if any Impositions owed by MHSS-MOB to the City or the State of Texas shall become delinquent (provided, however, that MHSS-MOB retains the right to timely and properly protest and contest any such Impositions, and the City's right to terminate this Agreement shall be suspended during such protest and contest period).

If this Agreement is terminated under subsections D, E, F, or G of this section, above, MHSS-MOB shall be liable and responsible to the City for all actual damages, fees (including reasonable attorney fees), costs, penalties, and claims incurred by the City in connection with or related to such termination. This obligation, and all other parts of this Agreement related thereto, shall survive termination of this Agreement.

In the event this Agreement is terminated due to default of MHSS-MOB before the Contractor achieves Final Completion of Construction, the City reserves the right to continue the construction of the Sojourn Drive Improvements and utilize any portion of the Program Grant not paid to MHSS-MOB or that is obligated to be repaid by MHSS-MOB hereunder. In such event, any portion of the Program Grant paid to MHSS-MOB but not paid by MHSS-MOB to the Contractor shall be promptly repaid by MHSS-MOB to the City. MHSS-MOB shall have no claim for any other funds from the City. The provisions of this paragraph shall survive termination of this Agreement.

All repayment and/or reimbursement amounts under this Agreement shall bear and include interest at the rate of 4% per year, compounded, from the date that the payment was initially made to MHSS-MOB.

Section 8. Representations by the City.

The City represents that the City is a home rule Texas municipal corporation and to the best of its actual knowledge has the power to enter into this Agreement and to carry out its obligations hereunder.

Section 9. Representations and Warranties by MHSS-MOB. MHSS-MOB represents and warrants that:

A. MHSS-MOB is a limited partnership organized and validly existing under the laws of the State of Texas, has the legal capacity and the authority to enter into and perform its obligations under this Agreement, and the same shall be true and accurate at all times in connection with this Agreement;

B. The execution and delivery of this Agreement and the performance and observance of its terms, conditions and obligations have been duly and validly authorized by all necessary action on its part to make this Agreement, and this Agreement is not in contravention of MHSS-MOB's partnership instruments, or any agreement or instrument to which MHSS-MOB is a party or by which it may be bound as of the date hereof;

C. MHSS-MOB has the necessary legal ability to perform its obligations under this Agreement;

D. No litigation or governmental proceeding is pending, or, to the knowledge of any of MHSS-MOB's officers, threatened against or affecting MHSS-MOB, which may result in a material adverse change in MHSS-MOB's business, properties or operations sufficient to jeopardize MHSS-MOB as a going concern; and

E. This Agreement constitutes a valid and binding obligation of MHSS-MOB, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

Section 10. Entire Agreement; Changes and Amendments. This Agreement represents the entire and integrated agreement between the City and MHSS-MOB with regard to the matters set forth herein and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Agreement may be amended only by written instrument signed by authorized representatives of each of the City and MHSS-MOB.

Section 11. Successors and Assigns; No Third Party Beneficiaries.

MHSS-MOB shall not, and has no authority to, assign, sell, pledge, transfer, encumber, or otherwise convey (any of the foregoing, and the occurrence of any of the foregoing, a "Conveyance") in any manner or form whatsoever (including by operation of law, by merger, or otherwise) all or part of its rights and obligations hereunder without the prior written approval of the City, which may be withheld in the City's sole discretion. Any Conveyance of any kind or by any method without the City's prior written consent shall be null and void.

Any Conveyance approved by the City shall be expressly subject to all of the terms, conditions and provisions of this Agreement. In the event of any such Conveyance approved by the City, MHSS-MOB shall obtain a written agreement (the "Assumption Agreement") from each such assignee, transferee, buyer, pledgee, or other person or entity to whom this Agreement is otherwise conveyed whereby each such assignee, transferee, buyer, pledgee, or other person or entity to whom this Agreement is otherwise conveyed agrees to be bound by the terms and provisions of this Agreement.

This Agreement shall be binding on and inure to the benefit of the parties, their respective permitted successors and permitted assigns. This Agreement and all of its provisions are solely for the benefit of the parties hereto and do not and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

Section 12. Notice. Any notice, invoice, or other document or instrument required or permitted to be given or delivered shall be in writing and shall be deemed to have been properly given for all purposes (i) if sent by a nationally recognized overnight carrier for next business day delivery, on the first business day following deposit of such notice with such carrier unless such carrier confirms such notice was not delivered, then on the day such carrier actually delivers such notice, or (ii) if personally delivered, on the actual date of delivery, or (iii) if sent by certified U.S. Mail, return receipt requested postage prepaid, on the third business day following the date of mailing. Addresses for any such notice, statement and/or report hereunder are as follows:

To the City:

Town of Addison, Texas
5300 Belt Line Road
Dallas, Texas 75254
Attention: City Manager

To MHSS-MOB:

MHSS MOB – Addison, L.P.
8343 Douglas Avenue, Suite 350
Dallas, Texas 75225
Attention: Marc Goldman

Section 12. Applicable Law; Venue. This Agreement is subject to the provisions of the Charter and ordinances of the City, as amended or modified. This Agreement shall be construed under, governed by and is subject to the laws (including the constitution) of the State of Texas, without regard to choice of law rules, and all obligations of MHSS-MOB and the City created by this Agreement are performable in Dallas County, Texas. Venue for any suit, action or proceeding under this Agreement shall lie exclusively in Dallas County, Texas. Each party hereby submits to the exclusive jurisdiction of the courts in Dallas County, Texas for purposes of any such suit, action, or proceeding hereunder. Each party waives any claim that any such suit, action, or legal proceeding has been brought in an inconvenient forum or that the venue of that proceeding is improper.

Section 13. Legal Construction/Partial Invalidity of Agreement. The terms, conditions and provisions of this Agreement are severable, and in case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be considered as if such invalid, illegal, or

unenforceable provision had never been contained in this Agreement.

Section 14. Miscellaneous.

A. The Recitals to this Agreement are incorporated into this Agreement and made a part hereof for all purposes.

B. MHSS-MOB is an independent contractor, and MHSS-MOB shall accomplish all of its obligations and services provided for herein in such capacity, and under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture, joint enterprise, or employment between the parties. All officers, employees, personnel, contractors, subcontractors, agents, and representatives supplied or used by MHSS-MOB shall be deemed employees, contractors, or subcontractors of MHSS-MOB, as applicable, and shall not be considered employees, representatives, agents, contractors, or subcontractors of the City for any purpose whatsoever.

C. In connection with this Agreement and the matter set forth herein, all of MHSS-MOB's books and other records related to the Sojourn Drive Improvements shall be available for inspection by the City at MHSS-MOB's notice address set forth above.

D. Pursuant to Texas Government Code, Chapter 2264 (entitled "Restrictions on Use of Certain Public Subsidies"), MHSS-MOB certifies that neither MHSS-MOB, nor any branch, division, or department of MHSS-MOB, knowingly employs, or will employ, an undocumented worker (as the term "undocumented worker" is defined in Section 2264.001 of the said Chapter 2264, Tex. Gov. Code) in connection with this Agreement. MHSS-MOB agrees that if, during the Term of this Agreement and after it receives any payment or funds from the City pursuant to this Agreement, MHSS-MOB, or a branch, division, or department of MHSS-MOB, is convicted of a violation under 8 U.S.C. Section 1324a(f) (after final, non-appealable adjudication), MHSS-MOB shall repay the amount of the payment or funds paid by the City to MHSS-MOB with interest, at the rate of 4% per year, compounded, from the date that the payment was initially made to MHSS-MOB, not later than the 120th day after the date the City notifies MHSS-MOB of the violation.

E. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall or may be deemed to be, or shall or may be construed to be, a waiver or relinquishment of any immunity, defense, or tort limitation to which the City, its officials, officers, employees, representatives, and agents are or may be entitled, including, without limitation, any waiver of immunity to suit.

F. Except as set forth in or otherwise limited by this Agreement, the remedies and rights set forth in this Agreement: (a) are and shall be in addition to any and all other remedies and rights either party may have at law, in equity, or otherwise, (b) shall be cumulative, and (c) may be pursued successively or concurrently as either party may elect. The exercise of any remedy or right by either party shall not be deemed an election of remedies or rights or preclude that party from exercising any other remedies or rights in the future. All waivers must be in writing and signed by the waiving party.

G. All exhibits to this Agreement are incorporated herein by reference and made a

part hereof for all purposes wherever reference is made to the same.

H. This Agreement is not confidential information and may be disclosed to the public.

I. Any of the representations, covenants, and obligations of the parties hereto, as well as any rights and benefits of the parties, pertaining to a period of time following the termination or expiration of this Agreement shall survive termination or expiration. Any rights and remedies either party may have with respect to the other arising out of the performance of services during the Term of the Agreement shall survive the termination or expiration of this Agreement.

J. The undersigned officers and/or agents of the parties hereto are the properly authorized persons and have the necessary authority to execute this Agreement on behalf of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

TOWN OF ADDISON, TEXAS

**MHSS MOB – ADDISON, L.P.,
a Texas limited partnership**

By: _____
Ron Whitehead, City Manager

By: SRP – Addison MOB GP, LLC,
a Texas limited liability company,
its general partner

Date: _____

By: _____

Typed name: _____

Title: _____

Date: _____

*[remainder of page left intentionally blank;
acknowledgments follow on next page]*

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Before me, the undersigned authority, on this day personally appeared Ron Whitehead, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 201__.

[SEAL]

Notary Public, State of Texas

Print Name: _____

My commission expires: _____

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Before me, the undersigned authority, on this day personally appeared _____, the _____ of SRP – Addison MOB GP, LLC, a Texas limited liability company, the general partner of MHSS MOB – Addison, L.P., a Texas limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 201__.

[SEAL]

Notary Public, State of Texas

Print Name: _____

My commission expires: _____

TRACT 1:

BEING a tract of land out of the Eli Shepard Survey, Abstract No. 1361 and the William Lomax Survey, Abstract No. 792, City of Addison, Dallas County, Texas, being all of The Arbor, an addition to the City of Addison, Texas according to the plat recorded in Volume 81202, Page 260, Deed Records of Dallas County, Texas; said tract also being all of a tract of land described as "Tract III" in Special Warranty Deed to MHSS-Addison LP, recorded in Instrument No. 200900153048, Official Public Records of Dallas County, Texas and being more particularly described as follows:

BEGINNING at a "X" cut in concrete set at the intersection of the east right-of-way line of Addison Road (a variable width right-of-way) and the south right-of-way line of Sojourn Drive

(a 60-foot wide public right-of-way); from said point a PK nail found bears North 09°05' West, a distance of 0.4 feet;

THENCE with said south right-of-way line, North 89°07'06" East, a distance of 350.32 feet to a "X" cut in concrete found for corner at the intersection of said south right-of-way line and the west right-of-way line of the Dallas North Tollway (a variable width public right-of-way, south bound service road know as Dallas Parkway);

THENCE with said west right-of-way line, South 1°33'44" West, a distance of 300.00 feet to a 5/8" iron rod with "KHA" cap found for corner; said point being the northeast corner of M. & M. Office Park, an addition to the City of Addison, Texas according to the plat recorded in Volume 79160, Page 1293, Deed Records of Dallas County, Texas;

THENCE departing said west right-of-way line, with the north line of said M. & M. Office Park, South 89°07'06" West, a distance of 350.32 feet to a 5/8" iron rod with "KHA" cap found for corner in said east right-of-way line of Addison Road; said point being the northwest corner of said M. & M. Office Park; from said point, a 3/8" iron rod found bears North 48°05' West, a distance of 0.4 feet;

THENCE with said east right-of-way line, North 1°33'44" East, a distance of 300.00 feet to the **POINT OF BEGINNING** and containing 2.410 acres or 105,001 square feet of land.

TRACT 2:

BEING all of Lot 2, Block A, MHS Addition, an addition to the City of Addison, Texas according to the plat recorded in Instrument No. 201000204888, Official Public Records of Dallas County, Texas.

PAVING, GRADING, DRAINAGE AND UTILITY CONSTRUCTION PLANS FOR METHODIST PAVILION ONE

DALLAS NORTH TOLLWAY
ADDISON, TEXAS

PW #2012 - 01



PLANS SUBMITTAL/REVIEW LOG

DATE	DESCRIPTION
00/12/2012	CIVIL DRAWINGS FOR CONSTRUCTION
00/28/2012	REVISION 1 - CORRECTIONS AND SITE CHANGES
07/16/2012	REVISION 2 - SO-COURN IMPROVEMENTS
08/23/2012	REVISION 2 - SO-COURN IMPROVEMENTS AND SUBMITTAL
09/14/2012	REVISION 2 - SO-COURN IMPROVEMENTS AND SUBMITTAL

EXHIBIT C

DEVELOPER
SPT DEVELOPMENT
8343 DOUGLAS, SUITE 350
DALLAS, TX 75225
TEL: 972-214-6355
FAX: 214-635-4766

ARCHITECT
BOCA POWELL, LLC
6015 PARK VUE, SUITE 300
DALLAS, TX 75244
TEL: 972-761-9000
FAX: 972-591-3000

ENGINEER
Kinley-Horn
and Associates, Inc.
5725 REGIS COURT
SUITE 200
FRISCO, TEXAS 75034
TEL: (972) 355-3560
FAX: (972) 355-3569
CONTACT: DAVID KOCHALKA, P.E.
STATE OF TEXAS REGISTRATION NO. F-228



STOP!
CALL BEFORE YOU DIG
DIG TESS
1-800-DIG-TESS
(@ least 72 hours prior to digging)

SEPTEMBER 2012

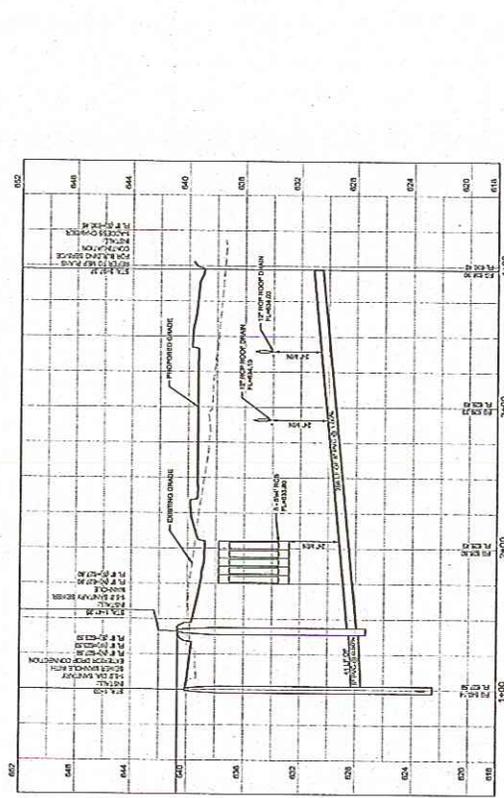
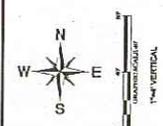
UTILITY PROFILES

METHODIST PAVILION ONE
 TOWN OF JACKSON PLANNING DEPARTMENT

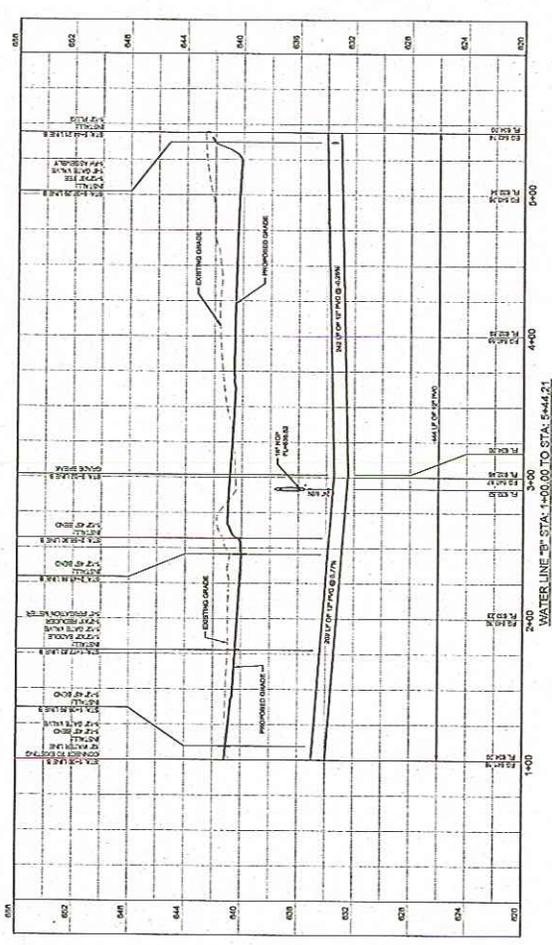


Kimley-Horn
 and Associates, Inc.
 2700 Orange Grove, Suite 200
 Raleigh, North Carolina 27604
 Tel. (919) 286-3300
 Fax (919) 286-3399

No.	Date	Revisions



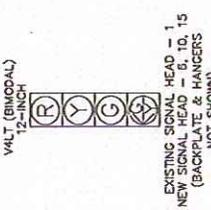
SANITARY SEWER LINE "A" STA. 1+00.00 TO STA. 3+02.37



WATER LINE "B" STA. 1+00.00 TO STA. 5+44.21

LEGEND OF SYMBOLS

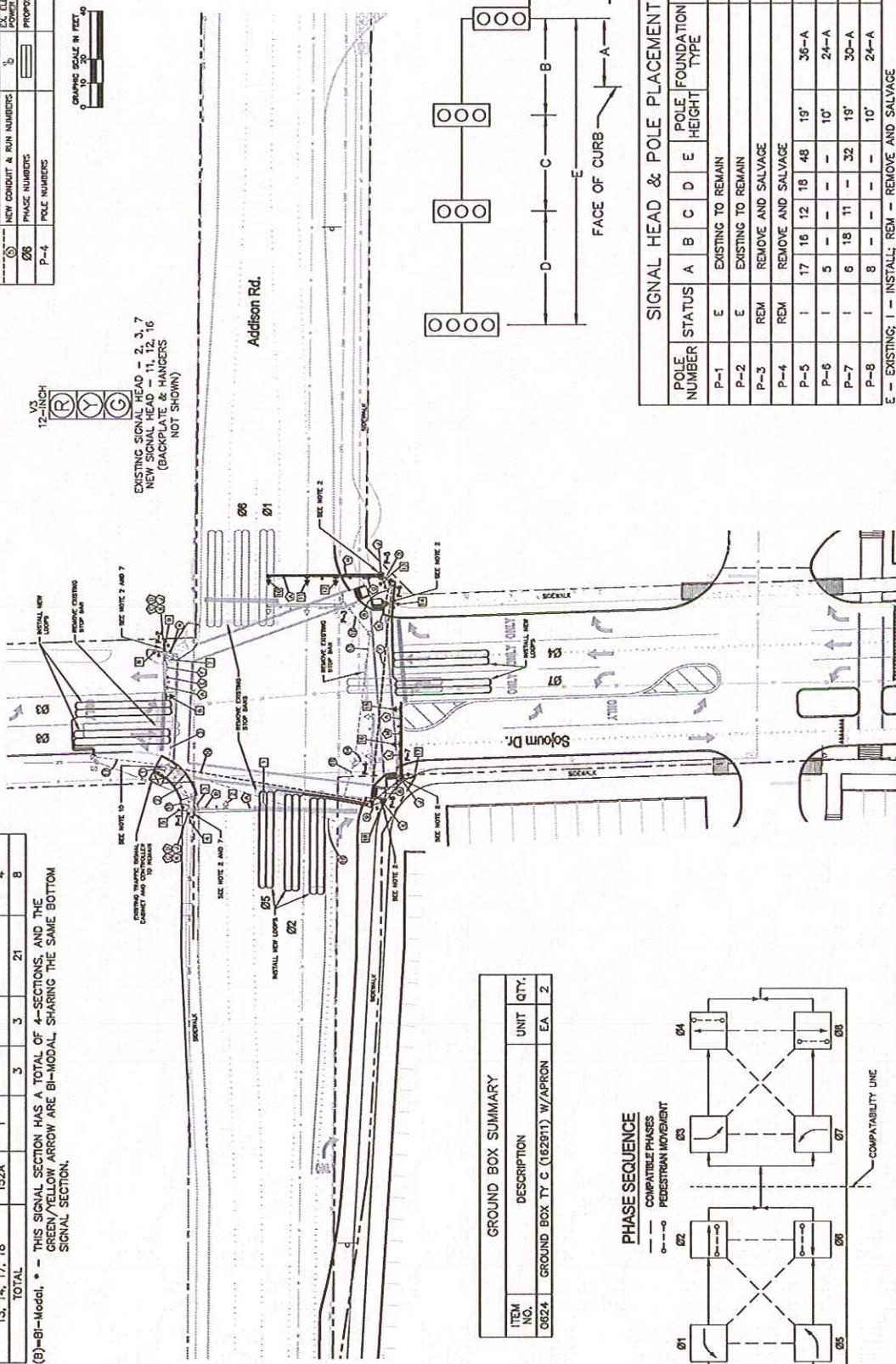
EXISTING	PROPOSED
Signal Pole/Arm Set Up	Signal Pole/Arm Set Up
Signal Head	Signal Head
Luminaire	Luminaire
Existing Ground Box	Proposed Ground Box
Existing Conduit & Run Numbers	Proposed Conduit & Run Numbers
Existing Pole Numbers	Proposed Pole Numbers
Existing Phase Numbers	Proposed Phase Numbers
Existing Loop Detectors	Proposed Loop Detectors



12-IN SIGNAL HEADS

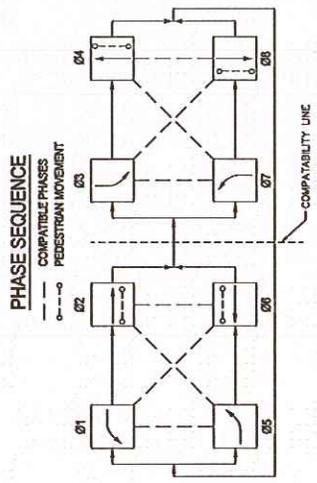
SIGNAL HEADS NUMBER	TYPE	STATUS	BACKPLATES		VEHICLE SIGNAL SECTIONS	PED. SIGNAL SECTIONS
			SECT.	SECT.		
2, 3, 7	V3	E	3	4	9	12
11, 12, 16	VALT (B)	E	1	3	3	3
* 6, 10, 15	VALT (B)	I	1	1	4	4
4, 5, 8, 9	143C	I	1	1	4	4
13, 14, 17, 18	152A	I	3	3	21	8
TOTAL						

(B)-Bi-Modal, * - THIS SIGNAL SECTION HAS A TOTAL OF 4-SECTIONS, AND THE GREEN/YELLOW ARROW ARE BI-MODAL, SHARING THE SAME BOTTOM SIGNAL SECTION.



GROUND BOX SUMMARY

ITEM NO.	DESCRIPTION	UNIT	QTY.
0824	GROUND BOX T.Y.C (162511) W/APRON	EA	2



SIGNAL HEAD & POLE PLACEMENT

POLE NUMBER	STATUS	A	B	C	D	E	POLE FOUNDATION TYPE	HEIGHT	LUMINAIRE
P-1	E	EXISTING TO REMAIN							N
P-2	E	EXISTING TO REMAIN							N
P-3	REM	REMOVE AND SALVAGE							N
P-4	REM	REMOVE AND SALVAGE							N
P-5	I	17	16	12	18	48	19'	36-A	N
P-6	I	5	-	-	-	-	10'	24-A	N
P-7	I	6	18	11	-	32	19'	30-A	N
P-8	I	8	-	-	-	-	10'	24-A	N

E - EXISTING; I - INSTALL; REM - REMOVE AND SALVAGE

EXHIBIT C

- NOTES**
- CONTRACTOR TO REMOVE AND SALVAGE EXISTING POLE AND MAST ARM ASSEMBLIES P-3 AND P-4. CONTRACTOR WILL DELIVER SALVAGED EQUIPMENT TO THE TOWN OF ADDISON. CONTRACTOR TO COORDINATE WITH THE TOWN OF ADDISON AS TO TIME AND PLACE OF DELIVERY. CONTRACTOR TO INSTALL NEW POLE AND MAST ARM ASSEMBLY COMPLETE IN PLACE PRIOR TO REMOVAL OF EXISTING ASSEMBLY.
 - CONTRACTOR TO PAINT EXISTING POLES P-1 & P-2 AND MAST ARMS BLACK TO MATCH NEW POWDER COATED POLES P-3, P-6, P-7, & P-8.
 - CONTRACTOR RESPONSIBLE FOR LOCATING UTILITY LINES PRIOR TO INSTALLATION OF TRAFFIC SIGNAL EQUIPMENT.
 - CONTRACTOR TO COORDINATE WITH THE TOWN OF ADDISON TO DETERMINE PROPER OFF PEAK TIME DURING WHICH SIGNAL WILL BE OUT OF OPERATION. PROPER TRAFFIC CONTROL SHOULD BE COORDINATED WITH THE TOWN OF ADDISON AND TOWN OF ADDISON POLICE.
 - ALL NEW VEHICLE SIGNAL HEADS AND PEDESTRIAN SIGNAL HEADS SHALL MATCH EXISTING COLOR (BLACK).
 - EXISTING PEDESTRIAN SIGNAL HEADS 4, 5, 8, AND 9 AND CORRESPONDING PUSH BUTTON ASSEMBLIES SHALL BE REMOVED AND REPLACED WITH NEW LED COUNTDOWN PEDESTRIAN SIGNAL HEADS AND PUSH BUTTON ASSEMBLIES WITH SIGNS R10-3a(L or R).
 - ILSN, SIGNS AND OPTICOM DETECTORS TO BE RELOCATED FROM EXISTING POLES TO PROPOSED POLES P-5 AND P-7.
 - TOWN OF ADDISON TO PROVIDE CABLE TERMINATION CHART.
 - CONTRACTOR TO LEVEL EXISTING GROUND BOX AND MAKE TOP OF GROUND BOX FLUSH WITH PROPOSED PEDESTRIAN RAMP. SEE ROADWAY PLANS FOR PEDESTRIAN RAMP DETAILS.
 - EXISTING WI-FI ANTENNA ON POLE P-3 SHALL BE RETURNED TO THE TOWN OF ADDISON.

CONDUIT AND CABLE CHART

WIRE SIZE AND TYPE

RUN NO	CONDUIT SIZE AND TYPE		CABLE STATUS	ITEM 620 ELECTRICAL CONDUCTORS		ITEM 684 SIG CAB		3M OPTICOM CABLE	LENGTH OF RUN	RUN NO
	3" PVC (BONDED)	4" PVC (BONDED)		NO. 6 BARE	16 CHDR NO. 14	2 CHDR SHLD NO. 14	NO. 14			
1	E		E & I			2	3	2	10	1
2	E		E						25	2
3	E		E & I						55	3
4	E		E & I						10	4
5	E	10		1				1	10	5
6	I	15		1					15	6
7	I	100		1		2		1	100	7
8	I	25		1				1	25	8
9	I	10		1					10	9
10	I	95		2		5		2	95	10
11	E		E						10	11
12	A		REM						20	12
13	A		REM						55	13
14	A		REM						10	14
15	A		REM						25	15
16	A		REM						90	16
17	E								30	17
TOTAL (LF)										
60 195 335 420 805 345										

CONDUIT STATUS: E = EXISTING, I = INSTALLED, A = ABANDONED, REM = REMOVE

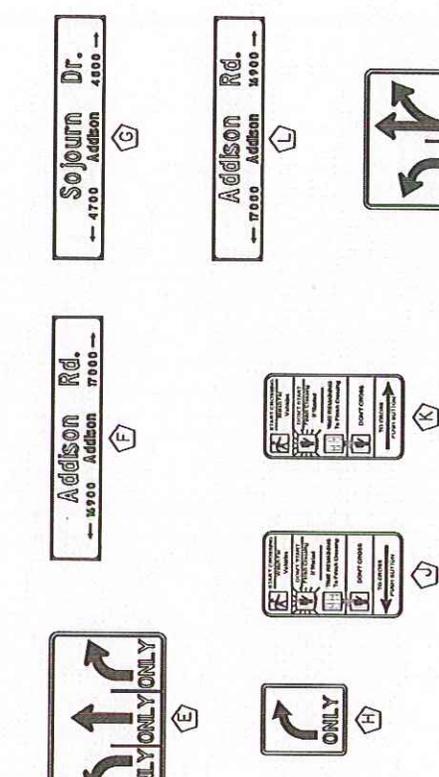
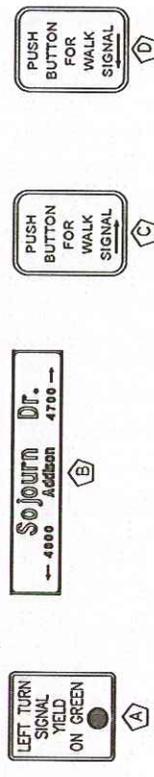
QUANTITIES IN TABLE ABOVE DOES NOT REFLECT THE CABLE INSIDE THE POLE (I.E. SC#14 FOR 3-SECTION HEADS AND 7C#14 FOR 4-SECTION HEADS) OR SAWCUTS AND LOOPS.

SIGN SUMMARY

SIGN	SIGN TYPE	SIGN LEGEND	STATUS	SUPPORT	SIGN DIMENSION (in x in)	REFLECTIVE SHEETING
A	R10-12	LEFT TURN YIELD ON GREEN (BALL)	E	P-1	30" X 36"	C
			R	P-3		
			I	P-2, P-5, P-7		
B	ST. NAME	4800 SOJOURN DR 4700	E	P-1	ILSN	-
C	R10-4R	PUSH BUTTON FOR WALK SIGNAL (RIGHT ARROW)	REM	P-1, P-2	9" X 12"	C
D	R10-4L	PUSH BUTTON FOR WALK SIGNAL (LEFT ARROW)	REM	P-1, P-2	9" X 12"	C
E	R3-8b	LANE ASSIGNMENT	I	P-2	30" X 48"	C
F	ST. NAME	16900 ADDISON RD 17000	E	P-2	ILSN	-
G	ST. NAME	4700 SOJOURN DR 4800	R	P-3	ILSN	-
			I	P-5		
H	R3-5R	RIGHT TURN ONLY	I	P-5	30" X 36"	C
J	R10-3aL	PUSH BUTTON FOR (WALK SYMBOL) LEFT ARROW	I	P-1, P-2 P-3, P-7	9" X 15"	C
K	R10-3aR	PUSH BUTTON FOR (WALK SYMBOL) RIGHT ARROW	I	P-1, P-2 P-6, P-8	9" X 15"	C
L	ST. NAME	17000 ADDISON RD 16900	R	P-4	ILSN	-
M	R3-8LK	LANE ASSIGNMENT	I	P-7	ILSN	-
			I	P-7	30" X 36"	C

SIGN STATUS: E = EXISTING, I = INSTALLED, R = RELOCATE, REM = REMOVE, REP = REPLACED

EXHIBIT C



October 02, 2012

SRP Medical
8343 Douglas
Suite 350
Dallas, TX 75225

ATTN: Brian Radican

RE: Sojourn Drive Improvements
11017 Methodist Medical Office Pav 1
Change Request # 14

Dear Brian:

1. Pricing does not include relocation of existing franchise utilities (AT&T, Level 3, Atmos, TWC, etc.).
2. Traffic control is estimated at 16 weeks.
3. Blinking pedestrian light is not included.
4. Landscape/Irrigation is allowance.
5. Pricing includes a \$35,000 utility allowance.

Attached please find our pricing for the above referenced revision item.

The total amount to provide this work is: \$564,514.67

Please note the attached exclusions/qualifications.

If you have any questions or need further clarification, please contact me at (512) 486-3800.

Sincerely,

Braylon Byford
Rogers-O'Brien Construction Co

OWNER AUTHORIZED SIGNATURE

ATTACHMENT

EXHIBIT C

Change Request 14 Price Breakdown

Job Name: Methodist Medical Office Pav 1
Description: Sojourn Drive Improvements

Date: 10/2/2012
Change Request #: 14

No	Description	QTY	Unit	Labor		Material		Equipment	Subcontract	Other	Price
				Unit	Total	Unit	Total				
1	Demo/Excavation								87,189.00		\$87,189.00
2	Water Line								43,137.00		\$43,137.00
3	Concrete (Labor)								94,334.00		\$94,334.00
4	Concrete Reinforcing (Material)								9,131.00		\$9,131.00
5	Concrete Mix (Material)								60,583.00		\$60,583.00
6	Asphalt								7,882.00		\$7,882.00
7	Landscaping/Irrigation								5,000.00		\$5,000.00
8	Pavement Marking/Signage								17,397.00		\$17,397.00
9	Traffic Signal Relocation								54,430.00		\$54,430.00
10	Temporary Traffic Signal								20,305.00		\$20,305.00
11	Traffic Control								13,044.00		\$13,044.00
12	Electric Pole Relocation								16,722.00		\$16,722.00
13	Test Holes								8,943.00		\$8,943.00
14	General Conditions				31,266.00						\$31,266.00
15	Bond								3,000.00		\$3,000.00
16	Utility Allowance								35,000.00		\$35,000.00
<p style="text-align: center;">****EXCLUSIONS AND QUALIFICATIONS****</p> <p>See attached backup for labor, material and subcontractor and supplier detail. Price excludes all federal, state and local fees. Price does include sales and / or remodel taxes. Written authorization and / or signature on this PC required prior to performing the above described work.</p>								Subtotal:		\$507,363.00	
								Insurance			\$35,439.57
								Fee		4.00%	\$21,712.10
								Total:			\$564,514.67

Council Agenda Item: #R9

AGENDA CAPTION:

Discussion and consideration of approval of an ordinance providing for increased prior and current service annuities under the act governing the Texas Municipal Retirement system for retiree and beneficiaries of deceased retirees of the Town of Addison.

FINANCIAL IMPACT:

Item is budgeted.

BACKGROUND:

Council Member Resnik will lead the discussion.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

Mindful Stewardship of Town Resources, Maintain and enhance our unique culture of creativity and innovation

ATTACHMENTS:

Description:

-  [Cover Memo](#)
-  [Draft Ordinance](#)

Type:

- Cover Memo
- Backup Material



September 26, 2012

Via E-Mail

Ms. Passion Hayes
Director of Human Resources
Town of Addison
P.O. Box 9010
Addison, TX 75001-9010

Dear Passion:

We are pleased to enclose a model ordinance for your city to adopt:

***70% CPI Increases to Annuitants
Ad Hoc (one time only basis)***

This provision allows for annuity increases for your city's retirees and is based on a percentage of the Consumer Price Index (inflation index).

With the adoption of this additional benefit your city's contribution for 2013 will be **10.69%**.

We will appreciate receiving a copy of this ordinance within as soon as possible after its adoption.

Please feel free to contact me at 1-800-924-8677 if you need additional information or assistance.

Sincerely,

A handwritten signature in cursive script that reads 'Eric W. Davis'.

Eric W. Davis
Executive Director



Plan Change Study

00007 Addison

GRID 2013

For Informational Purposes Only
 Effective Date - January 1, 2013
 Report Date - September 26, 2012

Proposed Plans

	Current	1
Plan Provisions		
Deposit Rate	7.00%	7.00%
Matching Ratio	2 to 1	2 to 1
Updated Service Credit	100% (Repeating)	100% (Repeating)
Transfer USC **	Yes	Yes
Annuity Increase	0%	70% ✓
20 Year/Any Age Ret.	Yes	Yes
Vesting	5 years	5 years
Contribution Rates		
Normal Cost Rate	2013 9.41%	2013 9.41%
Prior Service Rate	0.68%	1.12%
Retirement Rate	10.09%	10.53%
Supplemental Death Rate	0.16% (A & R)	0.16% (A & R)
Total Rate	10.25%	10.69%
Unfunded Actuarial Liability	\$1,255,797	\$1,948,935
Amortization Period	30 years	30 years
Funded Ratio	98.6%	97.9%
Phase-In Total Rate	N/A	N/A
Study exceeds 15.50% stat max	No	No

**This is the addition to the Initial Prior Service Rate for USC for transfers. There were 36 eligible transfer employees on the valuation date.

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS PROVIDING FOR INCREASED PRIOR AND CURRENT SERVICE ANNUITIES UNDER THE ACT GOVERNING THE TEXAS MUNICIPAL RETIREMENT SYSTEM FOR RETIREES AND BENEFICIARIES OF DECEASED RETIREES OF THE TOWN OF ADDISON, AND ESTABLISHING AN EFFECTIVE DATE FOR THE ORDINANCE.

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

Section 1. Increase in Retirement Annuities.

(a) On the terms and conditions set out in Section 854.203 of Subtitle G of Title 8, Government Code, as amended (the "TMRS Act"), the Town of Addison, Texas (the "City") hereby elects to allow and to provide for payment of the increases below stated in monthly benefits payable by the Texas Municipal Retirement System (the "System") to retired employees and to beneficiaries of deceased employees of the City under current service annuities and prior service annuities arising from service by such employees to the City. An annuity increased under this section replaces any annuity or increased annuity previously granted to the same person.

(b) The amount of the annuity increase under this section is computed as the sum of the prior service and current service annuities on the effective date of retirement of the person on whose service the annuities are based, multiplied by **70%** of the percentage change in Consumer Price Index for All Urban Consumers, from December of the year immediately preceding the effective date of the person's retirement to the December that is 13 months before the effective date of the increase under this Section.

(c) An increase in an annuity that was reduced because of an option selection is reducible in the same proportion and in the same manner that the original annuity was reduced.

(d) If a computation hereunder does not result in an increase in the amount of an annuity, the amount of the annuity will not be changed hereunder.

(e) The amount by which an increase under this Section exceeds all previously granted increases to an annuitant is an obligation of the City and of its account in the Benefit Accumulation Fund of the System.

Section 2. Effective Date. Subject to approval by the Board of Trustees of the System, this Ordinance shall be and become effective on the 1st day of January 2013.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this the 13th day of November, 2012.

Todd Meier, Mayor

ATTEST:

By: _____
Chris Terry, City Secretary

APPROVED AS TO FORM:

By: _____
John Hill, City Attorney

Council Agenda Item: #R10

AGENDA CAPTION:

Presentation, discussion and consideration of approval authorizing the City Manager to renew the Town's health insurance contract with Blue Cross/Blue Shield of Texas (BCBSTX).

FINANCIAL IMPACT:

The increased contribution cost to the Town is \$108,008.55 for the 2013 calendar year and \$81,006.41 for nine months of the fiscal year (January - September).

The increased contribution costs can be absorbed in the budget from salary savings from the vacant positions that were approved by Council in the FY 12/13 budget that have not been filled.

BACKGROUND:

In 2004, the Town entered into a contract with BCBSTX to provide group health insurance coverage for its employees. Over the last several years, Town staff and BCBSTX have worked together closely in monitoring trends and medical claim data.

Due to some unexpected large claims the renewal rate was initially proposed at 14.6%, which would have created a financial impact to the Town of \$318,570.67.

However, after several conversations with BCBSTX, the Town was able to negotiate additional rate relief, to a new proposed rate increase of 4.95%.

RECOMMENDATION:

Staff recommends approval of the proposed negotiated rate of 4.95%. However, based on Council approval of a benefits consultant in the FY12/13 budget, staff plans to release an RFQ to bring on a benefits consultant in early spring to lead a group of employees, representing various Town departments, and Council liaisons through a process of reviewing various innovative and creative benefit plan design options to bring back to Council during the budget time for consideration.

COUNCIL GOALS:

Create raving fans of the Addison Experience, Mindful Stewardship of Town Resources

ATTACHMENTS:

Description:

 [insurance costs](#)

Type:

Cover Memo

2012 Calendar Year	
HMO/PPPO	\$2,989,028.64
Town Contribution	\$2,181,990.91
Employee Contribution	\$807,037.73

2013 Calendar Year	
HMO/PPPO (14.6%) <i>Original Proposal</i>	\$3,425,426.82
Town Contribution	\$2,500,561.58
Employee Contribution	\$924,865.24

Difference	\$436,398.18
	\$318,570.67
	\$117,827.51

HMO/PPPO	\$2,989,028.64
Town Contribution	\$2,181,990.91
Employee Contribution	\$807,037.73

HMO/PPPO (7.25%) <i>Current Proposal</i>	\$3,205,811.04
Town Contribution	\$2,340,242.06
Employee Contribution	\$865,568.98

\$216,782.40
\$158,251.15
\$58,531.25

ALTERNATIVE PLAN CONSIDERED

HMO/PPPO	\$2,989,028.64
Town Contribution	\$2,181,990.91
Employee Contribution	\$807,037.73

PPPO Base/PPPO Buy Up (7.47%)	\$3,212,152.20
Town Contribution	\$2,344,871.11
Employee Contribution	\$867,281.09

\$223,123.56
\$162,880.20
\$60,243.36

RECOMMENDED PLAN FOR ADOPTION

HMO/PPPO	\$2,989,028.64
Town Contribution	\$2,181,990.91
Employee Contribution	\$807,037.73

HMO/PPPO (4.95%) <i>Current Proposal</i>	\$3,136,985.56
Town Contribution	\$2,289,999.46
Employee Contribution	\$846,986.10

\$147,956.92
\$108,008.55
\$39,948.37

Council Agenda Item: #R11

AGENDA CAPTION:

Presentation, discussion and consideration of approval authorizing the City Manager to enter into an agreement with Cobb, Fendley & Associates, Inc. in an amount not to exceed \$60,000 to provide miscellaneous engineering services as needed.

FINANCIAL IMPACT:

This item is budgeted in the Streets and Utilities operations budgets.

BACKGROUND:

In 2010 the Town solicited request for qualifications (RFQ) to provide program/project management professional services on an as needed basis. Based on that RFQ, R.H. Shackelford was selected to provide those services. Part of the Shackelford team included Cobb, Fendley and Associates who were designated to provide miscellaneous engineering services. Since outsourcing our engineering function, the Town has utilized Cobb, Fendley on an as needed basis to provide engineering review for development submittals. The proposed agreement provides for the continuation of these services.

RECOMMENDATION:

Staff recommends approval.

COUNCIL GOALS:

Mindful Stewardship of Town Resources

ATTACHMENTS:

Description:

 [Cobb Fendley agreement](#)

Type:

Cover Memo

**MASTER AGREEMENT
TO FURNISH
CONSULTING SERVICES TO
TOWN OF ADDISON, TEXAS**

For consideration hereinafter set forth, Cobb, Fendley & Associates, Inc. (Engineer) a Texas corporation with an office in Frisco, Texas, agrees to provide consulting services to the TOWN OF ADDISON, TEXAS, (Owner), for various projects located within Dallas County, Texas. This Master Agreement to Furnish Consulting Services to the TOWN OF ADDISON, TEXAS, (Agreement) is effective as of _____ and unless earlier terminated by Owner pursuant to Section 6-2, shall continue through the completion of performance of any Task Order(s) executed by both Parties on the dates designated on the appropriate Task Orders.

ARTICLE 1. SCOPE OF SERVICES

At Owner's request and in Owner's sole discretion, Owner may engage from time to time the Engineer to perform professional engineering services in connection with a Project (as defined in Section 7-2). Engineer agrees to perform such services in accordance with the terms and conditions of this Agreement and with any individual Task Order. Owner reserves the right, in its sole discretion, to hire other engineers for any reason and for any purpose. In performing its professional engineering services hereunder and in connection with each Project and Task Order, the Engineer shall follow the degree of professional engineering standard of care and skill set forth in Section 4-3 of this Agreement.

The Services to be provided by the Engineer shall be as mutually agreed to in separate written Task Orders executed by Owner and Engineer in substantially the form attached as Exhibit A. Accordingly, whenever used in this Agreement, the term Services shall mean those services specified in a Task Order and all related work. Each Task Order shall include, directly or by reference, appropriate cost and pricing data and such other documentation as required by the Owner. Each Task Order shall be subject to and integrated into this Agreement, and the terms of this Agreement shall be incorporated into and made a part of each Task Order. All Services shall be performed by the employees of Engineer or his Associates unless otherwise provided in a Task Order. Engineer shall be wholly and solely responsible for any Services or Subcontracted Services provided by any officer, employee, agent, representative, contractor or subcontractor of Engineer (collectively, Engineer's Personnel').

ARTICLE 2. COMPENSATION

2-1. ENGINEER

Compensation by the Owner to the Engineer for Services shall be on a fixed fee or a time and materials basis as specified in the applicable Task Order. All time shall be billed at the Engineer's then current labor billing rates. Said rates shall be subject to a cost of living adjustment on an annual basis as agreed to between the Parties. Then current billing and labor rates shall be made available to the Owner upon request; billing and labor rates in effect on the effective Date of this Agreement are attached hereto as Exhibit B. Owner shall also reimburse Engineer for any Direct Expenses (as defined in Article 7) reasonably and necessarily incurred by Engineer in performing Services, plus any applicable sales, use, or other similar taxes (which shall not include any payroll, withholding or income taxes). This Agreement contemplates that alternate compensation may be proposed by either Party on a Task Order specific basis, including fixed price or time and materials tasks, or negotiated rates which, if applicable, shall be specified in the Task Order.

2-2. SUBCONTRACTED SERVICES

When necessary, technical or professional contracted or subcontracted work or services and / or other outside services and facilities (collectively, the Subcontracted Services) shall be procured by the Engineer in connection with the work, subject to Owner's prior written consent. Engineer shall issue subcontracts for Subcontracted Services in its own name. Engineer shall be compensated for its work related to the

Subcontracted Services for the actual amount invoiced by the subcontractor times a multiplier or the equivalent staff hourly billing rate, whichever is greater and agreed to by the parties in a Task Order.

Except as set forth above, neither Engineer nor Owner may assign, sublet, transfer, or otherwise convey (together, an Assignment), or has the power to assign, sublet, transfer, or otherwise convey, any or all of the rights, duties and obligations or interest in this Agreement without the prior written consent of the other. Unless specifically stated to the contrary in any written consent to an Assignment, no Assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

ARTICLE 3. TERMS OF PAYMENT

3-1. PAYMENT

Engineer shall submit to Owner monthly invoices for Services and any compensation due under Section 2. Each invoice shall be accompanied by such documentation as Owner may reasonably require to verify the accuracy of the invoice, including an itemized statement of reimbursable costs incurred, and the sum of all prior payments under this Agreement in connection with each Task Order. Payment to the Engineer shall be made within 30 days of receipt of such invoices and accompanying documentation, subject to Owner's right to withhold payment pursuant to Section 3-2 of this Agreement. Engineer shall not be entitled to any compensation for any services or work not actually performed or for any lost profits as a result of any abandonment or suspension of any work by the Owner.

Any provision hereof to the contrary notwithstanding, Owner shall not be obligated to make payment to Engineer hereunder if:

1. Engineer is in default of any of its obligations under this Agreement or any Task Order or any other documents in connection with a Project (and payment may be withheld to the extent of any such default);
2. Any part of such payment is attributable to any services of Engineer which are not performed in accordance with this Agreement;
3. Engineer has failed to make payment promptly to subcontractors or consultants or other third parties used by Engineer in connection with Engineer's services hereunder for which the Owner has made payment to Engineer; or
4. If Owner, in its good faith judgment and after consultation with Engineer, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the Services in connection with a Task Order, no additional payments will be due Engineer hereunder unless and until Engineer performs a sufficient portion of the Services so that such portion of the compensation remaining unpaid is determined by Owner to be sufficient to complete the Services.

3-2. DISPUTED BILLING

In the event Owner disputes or contests any invoice, Owner shall nevertheless pay any undisputed amounts in accordance with Section 3-1. The Owner shall not dispute or contest any invoice without a reasonable basis. Owner's dispute or contest shall be submitted to Engineer in writing within 5 days of receipt of such disputed invoice. The parties shall use their best efforts to resolve any dispute within 5 days of Engineer's receipt of the written dispute or contest.

3-3. BILLING ADDRESS

Engineer shall submit monthly the original invoice and necessary and reasonable accompanying documentation to the following address:

Owner Town of Addison
 Attn: Lea Dunn
 16801 Westgrove Drive
 Addison, TX 75001-5190

3-4. ACCOUNTING RECORDS

Engineer shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement; the accounting and control systems to be reasonably satisfactory to Owner. Owner and Owner's accountants shall be afforded reasonable access to the Engineer's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, memoranda, and other data relating to this Agreement during normal business hours at the location where such documents are stored by Engineer, including to audit or inspect the same. Engineer shall preserve all such related documentation for a period of five (5) years after final payment is made of each Task Order.

ARTICLE 4. OBLIGATIONS OF THE ENGINEER

4-1. GENERAL

Engineer shall serve as Owner's professional consultant for all Services or Subcontracted Services in connection with any Task Order between the Parties and shall provide professional consultation and advice and furnish customary services incidental thereto. Engineer shall perform all work hereunder in a manner satisfactory and acceptable to Owner in accordance with the terms and conditions of this Agreement, including the Standard. Engineer shall perform all Services in a timely and professional manner, utilizing at all times an economical and expeditious manner for performing such Services consistent with the Standard (as defined in Section 4-3) and shall cause all Subcontracted Services to be similarly undertaken and performed. No less than monthly, Engineer shall keep Owner informed, orally or in writing, as to the status of all Services and Subcontracted Services in process. All oral information shall be subsequently confirmed in writing if requested by Owner. Notwithstanding anything to the contrary in this Agreement, Engineer shall not be deemed to be an agent of Owner for any purpose but shall in all events be an independent contractor exercising control over its work and the manner in which it is performed. Except as specifically set forth in this Agreement or a Task Order, (a) this Agreement shall not make Engineer a partner or agent of Owner for any purpose, and Owner shall not be deemed an agent for Engineer, and (b) neither Engineer nor Owner shall have the right or authority to assume, create, or enlarge any obligations or commitment on behalf of the other and shall not represent itself as having the authority to bind the other in any manner. Nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture or joint enterprise relationship, or to allow the Town to exercise discretion or control over the professional manner in which the Engineer performs the Services which are the subject matter of this Agreement or any Task Order; provided always however that the Services to be provided by Engineer shall be provided in a manner consistent with all applicable standards and regulations governing such Services. The method and manner in which Engineer's Services hereunder and under any Task Order shall be performed shall be determined by the Engineer in its sole discretion. The employees, agents, and representatives of, and the methods, equipment and facilities used by, the Engineer shall at all times be under the Engineer's exclusive direction and control.

Upon completion of any documents, drawings, specifications, and information, Engineer shall provide to Owner two (2) sets of such documents for review and approval. Notwithstanding Owner's approval of any of such documents, drawings, specifications or information, Engineer attests that such documents, drawings, specifications, and information, as the same may be amended or supplemented by the

Engineer, shall be sufficient and adequate for the Project for which they are prepared. Notwithstanding Owner's approval of any of the documents, drawings, specifications, and information, Engineer attests and represents that the same, may be amended or supplemented by Engineer, per the Standard, shall, to the best of Engineer's knowledge, information and belief as a civil engineer performing the practice of civil engineering in accordance with the standards, duties, and obligations set forth herein, be free from material error, and shall be satisfactory to the Client. In accordance with the standard of care, Engineer agrees that if it shall recommend unsuitable materials in connection with any Project and this Agreement or if the design of a Project should be defective in any way, Engineer will assume sole responsibility for any damages, loss, claims, or expenses to the extent caused by Engineer's recommendation of unsuitable materials or defective design. Approval by the Owner of any of Engineer's documents, drawings, specifications, and information or work pursuant to this Agreement shall not constitute nor be deemed a release of the responsibility and liability of Engineer, its employees, subcontractors, agents and consultants for the accuracy and competency of the same, nor shall such approval be deemed to be an assumption of or an indemnification for such responsibility or liability by the Owner for any defect, error or omission in such documents, drawings, specifications, and information or work, it being understood that the Owner at all times is ultimately relying on Engineer's skill and knowledge in preparing the documents, drawings, specifications, and information.

4-2. AUTHORIZATION TO PROCEED

The Engineer shall not begin work on any Services until the Owner directs Engineer in writing to proceed. Unless otherwise specified in a Task Order, each Task Order shall constitute notice and authorization to proceed in connection with the applicable Services.

4-3. STANDARD OF CARE; REPRESENTATIONS

The standard of care applicable to Engineer, including Engineer's Personnel, in rendering Services or Subcontracted Services shall be the standard of professional ethics and the degree of skill, care and diligence normally employed by professional engineers performing the same or similar Services or Subcontracted Services in the same locality in which the work and services hereunder are being provided (collectively, the Standard). The Engineer shall re-perform and otherwise remedy any Services, including Subcontracted Services, not meeting the Standard without additional compensation. Further, Engineer and all subcontractors shall perform all Services in accordance with any applicable law, rule, regulation or order of any federal, state or local agency having jurisdiction over any matter related to this Agreement that is in effect or effective at the time such Services or Subcontracted Services are performed.

Engineer represents that it is authorized to practice civil engineering in the State of Texas and that any necessary licenses, permits or other authorization to practice civil engineering and professional surveying and to provide the Services set forth herein have been heretofore acquired as required by law, rule or regulation. Engineer agrees and acknowledges that Owner is entering into this Agreement in reliance on Engineer's professional abilities with respect to performing the Services set forth herein.

4-4. ENGINEER'S INSURANCE

The Engineer shall maintain during the term of this Agreement the following policies of insurance or such other policies as may be required by applicable law or the Engineer decides to maintain consistent with safe, efficient professional business practices:

- a) Worker's Compensation as required by the State of Texas or the jurisdiction where the Services are to be performed, whichever is greater, including coverage under the broad form, all states endorsement and with Employer's liability primary coverage with limits of Five Hundred Thousand Dollars (\$500,000) for each occurrence and in the aggregate.
- b) Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, including on-site and offsite operations, and owned, non-owned, or hired vehicles, with \$500,000 combined single limit.

- c) Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any covered negligent act of the Engineer including any of Engineer's Personnel, with a limit of \$500,000 per occurrence and \$1,000,000 in the annual aggregate.
- d) Professional Liability insurance covering claims resulting from engineering errors and omissions with a limit of \$500,000 per occurrence and \$1,000,000 in the annual aggregate.
- e) Engineer shall submit insurance certificates to Owner in connection with each Task Order prior to commencement of Services or site mobilization. All liability insurance required under this section 4-4 shall include Owner, Owner's agents and employees as additional name insured and be with a company or companies satisfactory to Owner.
- f) Engineer shall require any person providing Subcontracted Services to carry adequate insurance in connection with each Task Order prior to commencement of Subcontracted Services or site mobilization if required by Owner.

All insurance shall be procured and maintained by Engineer and any person providing Subcontracted Services at its own cost and expense. The insurance coverage referenced in this Agreement and maintained by Engineer and any person providing Subcontracted Services shall be primary as to any valid and collectible insurance maintained by Engineer. Each policy of insurance referenced in this Agreement and maintained by Engineer or any person providing Subcontracted Services shall provide that written notice shall be delivered to Owner not less than sixty (60) days prior to cancellation of such policy. A waiver of subrogation in favor of the TOWN OF ADDISON, TEXAS shall be contained in the workers compensation and all liability policies. Engineer shall submit insurance certificates to Owner prior to commencement of Services or Subcontracted Services or site mobilization which shall evidence on the face thereof compliance with the basic requirements of this Agreement, including the requirements set forth in the two sentences immediately preceding this sentence. Owner reserves the right to reasonably adjust the types and amounts of insurance set forth herein.

4-5. FEDERAL, STATE AND LOCAL REGULATIONS

Engineer shall comply with federal, state and local laws, standards, rules, and regulations applicable to this Agreement.

4-6. CONFIDENTIALITY

Engineer acknowledges that Owner is a Municipality and must comply with the rules and regulations of the Public Information Act, as the same may be amended or superseded. However, the Engineer is not an employee, but a contractor for the Owner and as such the Engineer hereby agrees that Engineer shall not use the Owner's insignia, logo, service mark, or other intellectual property of Owner, but shall be allowed to use photographs of the Service product work, or any other publicity pertaining to the work in any magazine, trade paper, newspaper, or other medium.

4-7. LIENS - Not applicable for municipal projects

ARTICLE 5. OBLIGATIONS OF THE OWNER

5-1. OWNER-FURNISHED DATA AND ACCESS TO SITE

The Owner shall provide to the Engineer available (i.e., in the Owner's custody and control) technical data that Owner determines to be needed to perform the Services on the Project. Subject to the Standard, Engineer may reasonably rely upon the accuracy, timeliness, and completeness of the information provided by the Owner. Engineer shall be entitled to additional compensation and time to complete the Services to the extent the cost or time to complete the Services are increased due to inaccurate technical data or inaccurate information provided by the Owner.

5-2. PROMPT NOTICE

The Owner shall give prompt written notice to Engineer whenever Owner observes or becomes aware of any development that affects the scope or timing of Services or any Subcontracted Services, or any defect in the Services or Subcontracted Services of the Engineer, including Engineer's Personnel; provided, however, that Owner's failure to comply with its obligations under this paragraph shall not be construed to adversely affect any liability responsibility or obligation of Engineer to Owner under this Agreement. The Engineer shall give prompt written notice to Owner whenever Engineer observes or becomes aware of any development that affects the scope or timing of Services, or any defect in the Services or Contracted Services of the Engineer, including Engineer's Personnel.

5-3. CHANGES

No changes in the general scope of Services or Subcontracted Services and no amendment may be made to any Task Order (collectively, Changes) unless first agreed to by Owner and Engineer in writing. Engineer's key personnel shall not be permitted to be changed or substituted unless first authorized in writing by the Owner. If any approved Changes affect the Engineer's cost of or time required for performance of the Services, an equitable adjustment shall be made through a written amendment to this Agreement or Task Order signed by Owner and Engineer within seven (7) days after Change.

ARTICLE 6. GENERAL LEGAL PROVISIONS

6-1. FORCE MAJEURE

The Engineer is not responsible to Owner for any damages to Owner or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the Engineer and not avoidable by the diligence of the Engineer; in such event, Engineer shall give Owner prompt notice of such delay and the performance of this Agreement shall be excused for the period of such delay. If such an event necessitates a change in the time required for performance of the Services or Subcontracted Services, the Parties shall make an equitable adjustment of the schedule and maximum price; provided, however, that Engineer shall continue to promptly perform all of its obligations under this Agreement, including the Services, while the Parties are determining the nature and extent of any such adjustments. This Section shall not excuse Owner's obligation to make payment for Services or Subcontracted Services in accordance with this Agreement; provided, however, that Owner's obligations under this Agreement, including Owner's obligation to pay Engineer, may be excused for such period of time as Owner is not able to perform as a result of acts of God, strikes, lockouts, accidents, or other events beyond the control of Owner and not avoidable by the diligence of Owner.

6-2. TERMINATION

This contract shall remain in effect for one (1) calendar year from the date of execution and shall include the option for renewal for an additional four (4) years. This Agreement or any Task Order may be terminated (Termination for Convenience) by either Party through written notice to the other Party to be effective thirty (30) calendar days after the other Party's receipt of such notice; provided, however, that Owner shall be responsible to pay the Engineer for all authorized Services and Subcontracted Services properly performed up to the termination date. Upon receipt of notice of termination for any reason, Engineer shall cause to be promptly delivered to Owner's offices a copy of all confidential information and Work Product. In the event of a Termination for Convenience by either Party, Engineer shall have no recourse against Owner except as stated in the preceding sentence; additionally, in the event of a Termination for Convenience by the Town, Engineer shall also be entitled to receive reimbursement from Owner of an amount equal to the sum of: (i) the reasonable out-of-pocket costs actually and necessarily incurred by Engineer in withdrawing its equipment and personnel from the projects and otherwise demobilizing; and (ii) the actual, reasonable and necessary costs incurred by Engineer in terminating those contracts, not assumed by Owner, for Subcontractors Services. Engineer shall document any cost claimed by it to Owner's reasonable satisfaction and shall supply Owner with copies of all invoices for Subcontracted Services covering the amounts claimed as costs for such purpose. Engineer shall submit

an invoice to Owner for the amount of reimbursement claimed by Engineer with all supporting information and requisite documents. Owner shall pay such invoice in accordance with Article 3.

Either Party may terminate this Agreement or any Task Order because of default of the other Party, to be effective fifteen (15) days after receipt by the breaching Party of a written notice specifying such default, unless the breaching Party corrects such default or presents a mutually agreeable plan to cure such default within such time.

Notwithstanding any termination of this Agreement, unless otherwise agreed by Owner, Engineer shall complete all Task Orders executed prior to the effective date of termination. Owner shall pay for such work in accordance with Article 3. Upon termination of this Agreement for any reason, if Owner has compensated Engineer for work not yet performed, Engineer shall promptly return such compensation to Owner.

6-3. SUSPENSION, DELAY, OR INTERRUPTION OF WORK

Upon seven (7) days prior written notice, the Owner may suspend, delay, or interrupt for up to six (6) months the services of the Engineer for the convenience of the Owner. Nothing in this Section 6-3 shall be construed to apply to any such suspension, delay or interruption caused by an event identified in Section 6-1. A suspension may be withdrawn by Owner upon five (5) days written notice to Engineer accompanied by Owner's payment to Engineer of 10% of the sum of all prior Task Orders signed in connection with the Project on which the Task Orders have been issued. Any suspension, delay or interruption that exceeds six (6) months shall be deemed to be a termination by Owner and Engineer shall be compensated by Owner as if this Agreement were a Termination for Convenience.

6-4. INDEMNIFICATION

Notwithstanding any other provision herein which may be to the contrary:

- (A) IN CONSIDERATION OF THE GRANTING OF THIS AGREEMENT, ENGINEER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE OWNER, ITS, OFFICERS, AGENTS AND EMPLOYEES (EACH AN "INDEMNITEE") FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, JUDGMENTS, LIABILITIES, PENALTIES, FINES, EXPENSES, FEES AND COSTS (INCLUDING REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF DEFENSE), AND DAMAGES (TOGETHER, "DAMAGES") TO THE EXTENT SUCH DAMAGES ARE CAUSED BY OR RESULT FROM ANY NEGLIGENT ACT, ERROR OR OMISSION OR WILLFUL MISCONDUCT OF ENGINEER, INCLUDING ENGINEER'S PERSONNEL, UNDER THIS AGREEMENT.
- (B) WITH RESPECT TO THE ENGINEER'S DUTY TO DEFEND SET FORTH HEREIN IN SUBSECTION (A), THE ENGINEER SHALL HAVE THE DUTY, AT ITS SOLE COST AND EXPENSE, THROUGH COUNSEL OF ITS CHOICE, TO LITIGATE, DEFEND, SETTLE OR OTHERWISE ATTEMPT TO RESOLVE ANY CLAIM, LAWSUIT, CAUSE OF ACTION, OR JUDGMENT ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.
- (C) THE OBLIGATIONS SET FORTH IN THIS SECTION SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.
- (D) Engineer shall cause all contracts for Subcontracted Services to include a like indemnity which shall cover both Owner and Engineer. Nothing herein shall limit the insurance requirements or applicability under Section 4-4.
- (E) The above indemnity is a business understanding between the Parties and applies to all different theories of recovery, including breach of contract or warranty, tort including negligence, statutory liability, or any other cause of action.

6-5. JURISDICTION

The law of the State of Texas shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Agreement. In the event of any action under this Agreement, venue for all causes of action shall be instituted and maintained in state courts located in Dallas County, Texas.

6-6. SEVERABILITY

If any of the provisions contained in this Agreement are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceable provisions shall not affect any other provision, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein; and it is the intention of the Parties that in lieu of each provision that is found to be illegal, invalid, or unenforceable, the Parties agree to seek to reasonably negotiate a new provision to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6-7. ASSIGNMENT

Neither Party may sell, transfer or assign any or all of its respective rights and obligations pursuant to this Agreement to a third party without the prior written consent of the other Party, which shall not be unreasonably withheld.

6-8. SURVIVAL

Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination or expiration of this Agreement shall survive termination or expiration. Without limiting the foregoing, Articles 4 and 6 shall survive termination of this Agreement.

6-9. NO THIRD PARTY RIGHTS

Except as provided in Sections 4-4 and 6-4, this Agreement shall not create any rights or benefits to parties other than Engineer, Owner, and any Owner affiliated entity including, but not limited to, an entity formed for purposes of developing and/or owning the Project.

6-10. USE OF WORK PRODUCT

The Work Product (including all drawings, plans, specifications, reports, documents, records, plans, and designs, in whatever form or format) prepared by the Engineer shall be the property of the Owner and may be used by the Owner solely on the Project in connection with which the Task Order has been issued without the prior written consent of the Engineer. Engineer shall provide to Owner all such Work Product.

6-11. NOTICE

Except as otherwise provided herein, all notices and other communications required or permitted to be given under this Agreement, including Exhibits and Task Orders, shall be in writing, addressed to the Parties at their respective addresses as provided below, and may be delivered in person, sent by overnight express mail or courier service, or by certified mail, postage prepaid, return receipt requested. The addresses of each Party are as follows:

IF TO OWNER:

Town of Addison
Attention: Lea Dunn
16801 Westgrove Drive
Addison, TX 75001-5190

IF TO ENGINEER:

Cobb Fendley & Associates
Ted B. Sugg, P.E.
6801 Gaylord Parkway, Suite 302
Frisco, Texas 75034

Each Party may from time to time change its address for receipt of notices by sending notice thereof in the manner provided herein to the other Party. Each notice given by certified mail shall be deemed delivered on the date of delivery as shown on the return receipt, or if delivery is attempted, at the last address specified and the notice is returned, notice shall be deemed delivered on the date the notice was originally sent. Each notice delivered in any other manner shall be deemed delivered as of the time of actual receipt thereof. The Parties acknowledge and agree to provide to the other Party within 72 hours of transmission such documents bearing the original signatures.

6-12. LIMITATIONS

All indemnities against, releases from, and limitations on liability, and limitations on remedies expressed in this Agreement, as well as waivers of rights, including, but not limited to, subrogation rights, shall apply even in the event of the fault, negligence, or strict liability of the Party indemnified or released or whose liability is limited or against whom remedies have been limited and shall extend to the partners, officers, directors, employees, licensors, agents, subcontractors, vendors and related entities of such Party.

6-13. RIGHT OF ENTRY

Owner shall permit Engineer reasonable access to a Project as may be required to permit Engineer to perform the Services; provided, however, Engineer shall coordinate all Services so as not to interfere with any of Owner ' s operations at a Project site.

6-14. INTERPRETATION AND FAIR CONSTRUCTION OF AGREEMENT

This Agreement has been reviewed and approved by each of the Parties. In the event it should be determined that any provision of this Agreement is uncertain or ambiguous, the language in all parts of this Agreement shall be in all cases construed as a whole according to its fair meaning.

6-15. NON-WAIVER

The failure of either Party to insist upon or enforce strict performance by the other Party of any provision of this Agreement or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party ' s right to assert or rely upon any such provision or right in that or any other instance, rather, the same shall be and remain in full force and effect.

6-16. OPINIONS OF PROBABLE COST (COST ESTIMATES)

Any opinions provided by the Engineer concerning probable project cost or probable construction cost are made on the basis of information available to Engineer and on the basis of Engineer's experience and qualifications, and represents its judgment as an experienced and qualified professional engineer. However, since Engineer has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s) methods of determining prices, or over competitive bidding or market conditions, Engineer does not guarantee that proposals, bids or actual project or construction cost shall not vary from the opinions of probable cost Engineer prepares. The Engineer shall advise the Owner if it appears that the construction cost may exceed the latest approved Project budget and make recommendations for corrective action.

6-17. CONSTRUCTION PROCEDURES

For construction work contracted directly to or with Owner, Engineer's observation or monitoring portions of the work performed under construction contracts shall not relieve the contractor from its responsibility for performing work in accordance with applicable contract documents. Engineer shall not control or have charge of, and shall not be responsible for, construction means, methods, techniques, sequences, procedures of construction, health or safety programs or precautions connected with the construction work and shall not manage, supervise, control or have charge of construction. Further, Engineer shall not be responsible for the acts or omissions of the contractor or other parties on a Project.

Engineer's visits to a Project site during the construction phase of a Project are to allow Engineer to become generally familiar with and to observe the progress and quality of the construction work, and to determine in general if the work is being performed and is proceeding in a manner indicating that the work, when completed, will be in accordance with the Work Product prepared by or for Engineer hereunder. However, it is understood that the contractor, not Engineer, is solely responsible for the construction of the Project, for safety programs and procedures at the site, and for its own acts or omissions and those of any subcontractor. Engineer shall recommend to Owner that contractor's work be disapproved and rejected while it is in progress if, on the basis of such on-site visits and observations, Engineer believes that such work will not produce a completed Project that conforms generally to the contract documents and Work Product or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the contract documents and Work Product.

On the basis of on-site visits and observations, Engineer shall keep the Owner informed of the progress and quality of the construction work, and shall endeavor to guard the Owner against defects and deficiencies in the work and to the extent Engineer observes or is made aware of such defects and deficiencies, Engineer will report any such defects and deficiencies to the Owner. Engineer shall require such special inspections or tests of contractor's work as Engineer deems appropriate, and shall receive and review certificates of or other documents regarding inspections, tests and approvals as requested by the Owner and as required by laws, rules, regulations, ordinances, codes, orders or the contract documents and Work Product; Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the same.

Engineer shall promptly correct any defective Work Product or other information furnished by Engineer at no cost to the Owner. The Owner's approval, acceptance, use of or payment for all or any part of Engineer's services hereunder, including, without limitation, the Work Product or any portion thereof, or of the Project itself, shall in no way alter Engineer's obligations or the Owner's rights hereunder. If requested by Owner, Engineer shall review and take appropriate action on the contractor's submittals and application for payment (including, without limitation, certifying any amounts due the contractor based upon Engineer's visits to and observations at the site, and such certification shall constitute a representation to the Owner, based on Engineer's visits and observations at the site and on the data comprising the Contractor's applications for payment, that, to the best of Engineer's knowledge, information and belief, the work has progressed to the point indicated and the quality of the work is in accordance with the Work Product. Engineer shall furnish to the contractor such additional details, interpretations, and clarifications as are customary during the Construction Phase. All changes, substitutions, and deviations from the Work Product shall be subject to Owner's approval.

Engineer shall review and approve or take other appropriate action upon contractor's submittals such as shop drawings, product data and samples for the purpose of checking such submittals for conformance with, and the design concept expressed in the requirements of the contract documents and Work Product. Engineer's action shall be taken with such reasonable promptness as to cause no delay in the contractor's work on in construction by the Owner's own forces (if any), while allowing sufficient time in Engineer's professional judgment to permit adequate review. Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by Engineer, of construction means, methods, techniques, sequences or procedures. Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the contract documents and Work Product, Engineer shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the contract documents and Work Product.

At Owner's request, Engineer shall review or take other appropriate action on construction change orders and construction change directives. Engineer shall also issue necessary clarifications and interpretations (and report the same to Owner) of the contract documents and Work Product as appropriate to the orderly completion of the work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the contract documents and Work Product.

Based on Engineer's observations and on its review of applications for payment and accompanying supporting documentation from the contractor (if Owner has requested such review), Engineer shall, at Owner's request, determine the amounts that Engineer recommends the contractor be paid. Such recommendations of payment (if requested by Owner) will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, (i) the contractor's work has progressed to the point indicated, (ii) such work is generally in accordance with the contract documents and Work Product (subject to an evaluation of the work as a functioning whole upon substantial completion, to the results of any subsequent tests called for in the contract documents and Work Product and to any other qualifications stated in the recommendation), and (iii) the conditions precedent to contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe contractor's work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of contractor's work, based on observations and measurements of quantities provided by the contractor with contractor's pay requests.

Engineer shall secure, review, and transmit to Owner all original documents Engineer receives from the contractor, including without limitation any required lien waivers, releases, bonds, affidavits, certificates of inspection, tests and approvals, warranties and similar submittals, and deliver all keys, manuals, record drawings and maintenance books to Owner, as required by the contract documents which are to be assembled by contractor in order to obtain final payment.

Promptly after notice from the contractor that the contractor considers the work ready for its intended use, Engineer, accompanied by Owner and the contractor, shall conduct a visit and observation to determine if the work is substantially complete. If after considering any objections of Owner, Engineer considers the work on the Project substantially complete, Engineer shall notify the Owner and contractor and shall issue a certificate of substantial completion to Owner and the contractor. Simultaneous with Engineer's determination that the Project is substantially complete and the issuance of a certificate of substantial completion, Engineer shall, jointly with the contractor, prepare for Owner a list of incomplete or unsatisfactory items and a schedule for their completion (the "punch list"). If requested by Owner, Engineer shall observe and monitor the correction and final completion of the work. Following issuance of a certificate of substantial completion of the work, if requested by Owner, Engineer shall evaluate the completion of the work of the contractor and make recommendations to Owner when the work is ready for final inspection. Promptly after notice from the contractor that the contractor considers the entire work finally complete and all items on the punch list completed, Engineer, accompanied by Owner and the contractor, shall conduct an inspection of the Project to determine if the work is finally complete.

When the Engineer determines that work of the contractor has been finally completed, is acceptable, and is generally in accordance with the contract documents and Work Product, Engineer will recommend, in writing, final payment to the contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice that the work meets the intent of Engineer's design, is acceptable, and is generally in accordance with the contract documents and Work Product to the best of Engineer's knowledge, information, and belief and based on the extent of the Services provided by Engineer under this Agreement.

Engineer shall assemble and deliver to the Owner (i) one full size bond set, (ii) one half size bond set, and (iii) a CD in AutoCAD format and PDF format, of reproducible Record Construction Drawings as prepared by Engineer showing changes in the construction work during the construction process, including the final location of all buried utilities, based on marked up prints and drawings and other data furnished by the contractor.

Engineer shall advise and consult with the Owner during construction until final payment to the contractor is made and during any maintenance bond period and warranty by the contractor for a Project.

6-18. HAZARDOUS WASTES

Owner represents to Engineer that, to its actual knowledge, no hazardous wastes (as hereinafter defined) are present at a Project site, except as may be disclosed orally to Engineer or set forth in a Task Order. However, in the event hazardous wastes are known to Owner to be present, Owner represents that it shall disclose to Engineer the existence, including type, quantity and location of such hazardous wastes. In the event Engineer or any other party encounters undisclosed hazardous wastes, Engineer shall have the obligation to notify Owner and, to the extent required by law or regulation, the appropriate governmental officials, and Engineer may, at its option and without liability for consequential or any other damages to Owner, suspend performance of Services on that portion of a Project affected by such hazardous wastes. For purposes of this section, "hazardous wastes" has the same meaning as such term is defined in the Resource Conservation and Recovery Act or any applicable state law, rule or regulation then in effect.

ARTICLE 7. DEFINITIONS; MISCELLANEOUS

7-1. DIRECT EXPENSES

Direct Expenses shall mean those out-of-pocket reasonable costs or expenses directly and necessarily incurred by Engineer, including its employees, for Services including, but not limited to, transportation costs, including current rates for Engineer's vehicles; meals and lodging (however, in order to be reimbursed, any costs associated with out-of-town travel shall receive the prior approval of Owner), laboratory tests and analysis; and special Owner-requested and Project-related insurance, not including the insurance described in Section 4-4. Direct Expenses shall not include payroll costs and compensation, capital expenses, overhead, or costs incurred as a result of the application of Section 4-3 or Section 6 of the Agreement or otherwise as a result of the negligent act, error or omission or willful misconduct of Engineer or Engineer's Personnel. Reimbursement for Direct Expenses shall be on the basis of actual charges when furnished by commercial sources and, when furnished by Engineer, on the basis of current rates specified in the applicable Task Order.

7-2. OTHER DEFINITIONS

Whenever used in this Agreement, the term (a) including shall mean including without limitation, (b) "Party shall mean Owner or Engineer, and "Parties" shall mean Owner and Engineer, collectively, and (c) "Project" shall mean the project for which a Task Order has been issued in accordance with Article 1.

7-3. MISCELLANEOUS

All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination or expiration of this Agreement shall survive termination or expiration.

The undersigned officers and/or agents of the Parties hereto are the properly authorized persons 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 motions, resolutions or other act extending such authority have been duly passed and are now in full force and effect.

This Agreement may be only amended or altered by written instrument signed by both of the Parties.

ARTICLE 8. SIGNATURES

This Agreement and the Task Orders, and any Exhibits, constitute the entire Agreement, supersede all prior written or oral understandings, and may only be changed by a written amendment to the Agreement executed by both Parties.

IN WITNESS WHEREOF, the Parties execute below:

Town of Addison, Texas	Cobb Fendley & Associates, Inc.
	J. Cal Bostwick, P.E., Principal

Date: _____

Date: _____

ATTACHMENT A

TASK ORDER

MASTER SERVICE AGREEMENT (MSA), Task Order No. _____

Pursuant and subject to the above captioned MSA dated _____ between _____
_____ and _____. CLIENT hereby requests that CONSULTANT
performs the work described below upon the terms set forth:

CLIENT PROVIDED INFORMATION:

Work Site: _____

Work to Be Performed: _____

Drawings, plans, specifications (are) (are not) attached: _____

Date and Time to Commence: _____

Date and Time to Complete: _____

Equipment, vehicles, tools, materials, supplies to be furnished or obtained through third parties by
CLIENT (if any): _____

Invoice Mailing Instructions: _____

Other Requirements or Variance from MSA (if any): _____

CONSULTANT PROVIDED INFORMATION:

Compensation: _____

Scope of Work:

ACCEPTANCE:

The foregoing TASK ORDER is accepted on the terms set forth as indicated by the signatures below.

CONSULTANT

COBB, FENDLEY & ASSOCIATES, INC.

By: _____

Printed Name: _____

Title: _____

Date: _____

CLIENT

By: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT B

COBB, FENDLEY & ASSOCIATES, INC.

2012 STANDARD RATE SCHEDULE #450

January 1, 2012 – December 31, 2012

Principal	\$245.00/HR
Senior Project Manager	\$175.00/HR
Project Manager.....	\$160.00/HR
Project Engineer III	\$150.00/HR
Project Engineer II	\$130.00/HR
Project Engineer I	\$105.00/HR
Senior Engineer	\$195.00/HR
Senior Hydrologist.....	\$175.00/HR
Senior Technician	\$115.00/HR
Technician III.....	\$100.00/HR
Technician II.....	\$90.00/HR
Technician I.....	\$80.00/HR
Licensed State Land Surveyor.....	\$200.00/HR
Registered Professional Land Surveyor	\$145.00/HR
4- Man Survey Crew	\$160.00/HR
3- Man Survey Crew	\$140.00/HR
2- Man Survey Crew	\$125.00/HR
Construction Manager.....	\$137.00/HR
Senior Field Construction Observer.....	\$100.00/HR
Field Construction Observer	\$88.00/HR
Utility Specialist.....	\$115.00/HR
Telecommunications Designer.....	\$85.00/HR
Telecommunications Fieldman	\$75.00/HR
GIS Manager.....	\$130.00/HR
GIS Analyst.....	\$90.00/HR
Post Processing GPS Data.....	\$95.00/HR
Right-of-Way Agent.....	\$105.00/HR
Administrative	\$85.00/HR

Clerical\$60.00/HR
 GPS\$32.00/HR/Receiver

SUBSURFACE UTILITY ENGINEERING

Level C & D (Without Level B)\$0.45/Foot
 Level B – Designation (Without Level C & D)\$1.43/Foot
 Level A – Location (Non-Destructive Excavation):

- Vertical Depth: 0 Ft. – 5 Ft.\$1,125/Hole
- 5 Ft. – 8 Ft.\$1,580/Hole
- 8 Ft. – 13 Ft.\$1,825/Hole
- 13 Ft. – 20 Ft.\$2,510/Hole
- > 20 Ft.\$3,600/Hole

Ground Penetrating Radar\$250/HR
 SUE Technician (With Equipment)\$98/HR
 Vacuum Excavation Truck with 2 Technicians\$250/HR
 Traffic Control Officer @ Cost + 10%
 Traffic Control (Lane Closures, etc.) To Be Negotiated
 Permits (Local, State, etc.) @ Cost + 10%
 Designation & Traffic Control Vehicles \$3.40/Mile
 Location Vehicles \$6.80/Mile

REIMBURSABLE EXPENSES

Technology Fee (*)\$3.75/HR
 Consultant or Specialty Contractor (Outside Firm) @ Cost + 10%
 Courier, Special Equipment Rental @ Cost + 10%
 Reasonable Out of Town Travel Expenses (Air, Hotel, Rental, etc.) @ Cost
 Mileage (Standard Car or Truck) IRS Approved Rate
 Per Diem for Out of Town Travel (Per Day/Person)\$35/Day
 Title Plant Charges @ Cost + 10%
 Other Misc. Expenses Related to the Project @ Cost + 10%

In-House Reproduction:

- Copies (Up to 11" x 17")\$0.15/Each
- Color Prints (Up to 11" x 17")\$1.50/Each
- Color Prints (Larger than 11" x 17") \$3.00/Sq. Ft.
- Bluelines (All Sizes)\$1.00/Each
- Bond Prints (All Sizes)\$2.00/Each
- Mylar Prints\$12.00/Each
- Vellum Prints\$9.00/Each

(*) Technology charges added to each billable m