



Addison 50!

50 YEARS OF FUN!

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

## AGENDA

### REGULAR MEETING OF THE CITY COUNCIL

MAY 11, 2004

7:30 P.M.

COUNCIL CHAMBERS  
5300 BELT LINE ROAD

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### REGULAR SESSION

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Item #R1 – Consideration of Old Business

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Item #R2 – Consent Agenda

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**CONSENT AGENDA**

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#2a – Approval of the Minutes for the April 26, 2004 and April 27, 2004 Council Meetings.

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Item #R3 – Presentation of Proclamations to Doug Jeanes, Director and Kevin Raulie, Assistant Director of the Cavanaugh Flight Museum.

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Item #R4 – **PUBLIC HEARING** and consideration of an Ordinance approving a Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 5000 Belt Line Road, Suite 320, on application from Freebird’s World Burrito, represented by Ms. Lori Chandler of Mayse and Associates, Inc.

Attachments:

1. Docket Map
2. Staff Report
3. Plans

The Planning and Zoning Commission Findings:

The Addison Planning and Zoning Commission, meeting in regular session on April 22, 2004, voted to recommend approval of the Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, subject to the following conditions:

1. The new landscaping for the site shall be installed and the irrigation system for the site to be inspected prior to the issuance of a Certificate of Occupancy for this restaurant.
2. The applicant shall not use any terms, including the term “bar”, “tavern”, or any graphic depictions that denote alcoholic beverages in exterior signs.

Voting Aye: Benjet, Bernstein, Chafin, Knott, Mellow

Voting Nay: None

Absent: Jandura

Administrative Recommendation:

Administration recommends approval.

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Item #R5 – Consideration of approval of award of bid and a Resolution authorizing the City Manager to enter into a contract in the amount of \$145,267.42 with Ratliff Hardscape, LTD. for replacement of masonry walls on Chancey Drive and Proton Drive in the Les Lacs residential area.

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Attachments:

1. Council Agenda Item Overview
2. Site Maps
3. Bid Sheet

Administrative Recommendation:

Administration recommends approval.

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Item #R6 – Consideration of a Resolution encouraging the Dallas County Commissioners Court to find a regional funding solution for the construction of a football stadium for the Dallas Cowboys Football Club, LLC.

Attachments:

1. Memorandum from Ron Whitehead, City Manager
2. Resolution
3. Letter from Denis Clive Braham
4. Proposal
5. News Article

Administrative Recommendation:

Administration recommends approval.

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Item #R7 – Consideration of a Resolution approving an Administrative Services Agreement with ICMA-RC to administer the Town's Section 457 Deferred Compensation Plan, approving the Plan and Trust Document, approving a group trust with Vantage Trust Company for collective investments, and appointing members to the Plan Committee and appointing the Plan Coordinator.

Attachments:

1. Council Agenda Item Overview
2. Resolution
3. Appendices

Administrative Recommendation:

Administration recommends approval.

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## EXECUTIVE SESSION

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Item #ES1 – Closed (executive) session of the Addison City Council pursuant to Section 551.071, Texas Government Code, to conduct a private consultation with its attorney to seek the advice of its attorney about contemplated litigation related to the Addison Airport.

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Item #ES2 – Closed (executive) session of the City Council, pursuant to Section 551.071 of the Texas Government Code to consult with its attorney to seek advice regarding certain pending litigation, to wit: Transcontinental Realty Investors, Inc., et al. v. The Town of Addison, Texas, et al., Civil Action No. 3:03-CV-2132L, US District Court, Northern District of Texas, Dallas Division.

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Adjourn Meeting

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Posted 5:00 p.m.  
May 6, 2004  
Carmen Moran  
City Secretary

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

OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL

April 26, 2004  
6:30 p.m. –Town Hall, Upstairs Conference Room  
5300 Belt Line Road

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

Item #WS1 – Presentation of Department’s Quarterly Operation Reports.

No action taken.

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

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Secretary

**OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL**

April 27, 2004  
7:30 p.m. - Council Chambers  
5300 Belt Line Road

Present: Mayor Wheeler, Councilmembers Hirsch, Mallory, Niemann, Silver, Turner  
Absent: Chow

Item #R1 – Consideration of Old Business

The following employees were introduced to the Council: Erik Gaume (Public Works) and Tim Hastings (Environmental Services).

Ron Whitehead, City Manager, announced the following upcoming events: DART Meeting at the Addison Conference Centre on April 29, 2004; Addison Garage Sale on May 1, 2004; Taste Addison on May 14-16, 2004; Election Day on May 15, 2004 and Texas Rangers Game on May 21, 2004.

Item #R2 – Consent Agenda

Item #2a – Approval of the Minutes for the April 13, 2004 Council Meeting.

Councilmember Turner moved to duly approve the Minutes of the April 13, 2004 Council Meeting as written. Councilmember Silver seconded. The motion carried.

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

Item #R3 – Presentation of Peace Officers Memorial Day Proclamation.

Mayor Wheeler presented a proclamation to Chief Franklin for Peace Officers Memorial Day, May 15, 2004.

Item #R4 – Presentation and discussion of proposed co-sponsorship from Annheuser-Busch at Taste Addison.

No action was taken.

Item #R5 – Consideration of a Resolution approving the revised plan and authorization to solicit bids for the fabrication and installation of an identification and directional sign package for the Addison Circle Park.

Councilmember Silver moved to duly pass Resolution No. R04-027 approving the revised plan and authorization to solicit bids for the fabrication and installation of an identification

and directional sign package for the Addison Circle Park, subject to the design being revised to incorporate the next Addison Circle Park logo. Councilmember Mallory seconded. The motion carried.

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

Item #R6 – Consideration of a Resolution approving the purchase of Ballistic Vests in an amount not to exceed \$43,200.00 for the Addison Police Department.

Councilmember Turner moved to duly pass Resolution No. R04-028 approving the purchase of Ballistic Vests in an amount not to exceed \$30,000.00, which reflects the actual purchase cost for the Addison Police Department. Councilmember Mallory seconded. The motion carried.

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

Item #R7 – Consideration of a Resolution approving an award of bid and authorizing the City Manager to enter into a contract in the amount of \$81,700.00 with Nortex Concrete Lift and Stabilization, Inc. for raising and undersealing concrete pavement on Midway Road.

Councilmember Turner moved to duly pass Resolution No. R04-029 awarding a bid and authorizing the City Manager to enter into a contract in the amount of \$81,700.00 with Nortex Concrete Lift and Stabilization, Inc. for raising and undersealing concrete pavement on Midway Road. Councilmember Mallory seconded. The motion carried.

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

Item #R8 – Consideration of a Resolution authorizing the City Manager to enter into an Interlocal Agreement in the amount of \$31,489.00 with Dallas County to utilize county forces and matching funds to resurface Addison Road from the railroad crossing north to Morris Avenue.

Councilmember Turner moved to duly pass Resolution No. R04-030 authorizing the City Manager to enter into an Interlocal Agreement in the amount of \$31,489.00 with Dallas County to utilize county forces and matching funds to resurface Addison Road from the railroad crossing north to Morris Avenue. Councilmember Mallory seconded. The motion carried.

Voting Aye: Wheeler, Hirsch, Mallory, Niemann, Silver, Turner  
Voting Nay: None

Absent: Chow

Item #R9 – Consideration of a Resolution approving a compensation plan (bonus) for the City Manager, and for other City employees including the Deputy City Manager, Assistant City Manager, Assistant to the City Manager, Department heads and assistant Department heads.

Councilmember Niemann moved to duly pass Resolution No. R04-031 approving a compensation plan (bonus) for the City Manager, and for other City employees including the Deputy City Manager, Assistant City Manager, Assistant to the City Manager, Department heads and assistant Department heads. Councilmember Mallory seconded. The motion carried.

Voting Aye: Wheeler, Hirsch, Mallory, Niemann, Silver, Turner

Voting Nay: None

Absent: Chow

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

\_\_\_\_\_  
Mayor

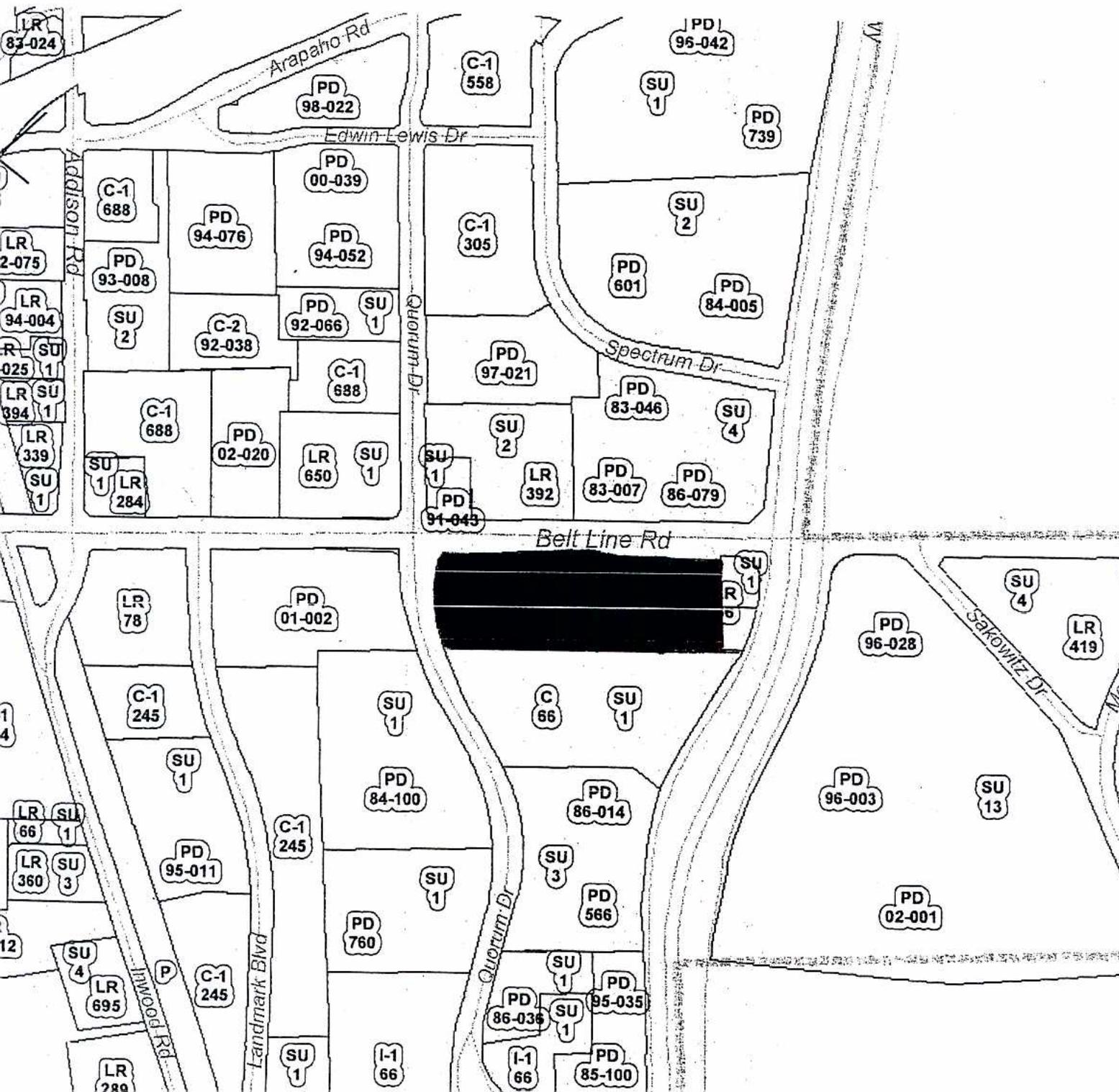
Attest:

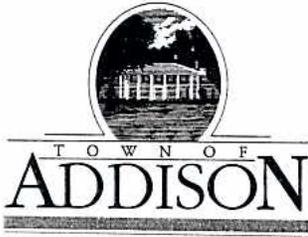
\_\_\_\_\_  
City Secretary

**THERE ARE NO  
ATTACHMENTS  
FOR ITEM #R3**

# 1454-SUP

Case 1454-SUP/Freebird's World Burrito. Requesting approval of a Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption, located at 5000 Belt Line Road, Suite 320, on application from Freebird's World Burrito, represented by Ms. Lori Chandler of Mayse and Associates, Inc.





#R4-2

Addison 50!

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

April 15, 2004

STAFF REPORT

RE: Case 1454-SUP/Freebird's World Burrito Restaurant

LOCATION: 5000 Belt Line Road, Suite 320  
Addison Walk Shopping Center

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

APPLICANT: Freebird's World Burrito, represented By Ms. Lori Chandler of Mayse and Associates, Inc.

DISCUSSION:

Background. This lease space is located in the Plaza at the Quorum Shopping Center. The Center is undergoing a renovation, and will be re-named "Addison Walk" (Case 1444-Z). The Council approved the rezoning plan for the shopping center on January 13, 2004. The goal of the redevelopment is to allow room for additional restaurants in the center, and this would be the third of the new restaurants. Nothing But Noodles, and Buffalo Wild Wings Grill have already been approved and are under construction.

Freebird's World Burrito features a custom-made burrito menu, much like Chipotle. It is an independent restaurant chain that was started in College Station, Texas. There are other locations in Austin and Houston.

Proposed Plan. The floor plan shows a 3,180 square foot restaurant with seating for 112. The plan does not show a separate bar area, but the applicant intends to serve beer and wine. Food is ordered at a deli-style counter and then picked up by the customers. The drinks are self-service. The kitchen will take up 2,088 square feet (65%) and the dining area and restrooms will take up the remaining 1,092 square feet (35%) of the floor area.

The plans do not indicate any patio dining. However, new restaurants often do not show patio space, but then come back in and want it immediately. The Commission and Council just added patio space for Potbelly Sandwich Works. The process cost Potbelly \$425.00 and took 45 days. It was a minor request, and could have been handled during the first hearing, but the Potbelly staff did not realize that parking was allocated to outside tables and did not request additional space for them.

The staff understands from the applicant that Freebird's will sell beer and wine only, and thus will not have to have a fenced patio. Staff recommends that square footage, and the parking that must go with it, be allocated to a patio area now so that the applicant will not have to return to add tables and chairs on the sidewalk outside the restaurant. The sidewalk area that could be available for tables and chairs is approximately 200 square feet and is indicated on the site plan. This would take the total amount of square footage approved for this restaurant to 3,380 square feet. The applicant is not obligated to use the patio, but it would be available for his use without having to go through the 45-day Special Use Permit process again.

Parking. Restaurant uses in this center have a parking ratio of one space per 180 square feet. This restaurant will require 19 spaces, including the spaces required for the patio. The site will provide sufficient parking. However, the applicant should be aware that there is a limit to the amount of restaurant space that can be added to the center. The current restaurant uses on this site take up 22,357 square feet of space and require 124 parking spaces. That leaves 251 spaces required for the rest of the center at a ratio of 1 space per 200 square feet. Under the present lease plan, the center requires 405 spaces, and it provides 435. Therefore, there are 30 extra spaces, or an additional 5,400 square feet of space, that could be converted from retail to restaurant use.

Landscaping. The landscaping in this center is currently being renovated as part of the center's redevelopment. As Slade Strickland notes in his memo, the new landscaping will meet the requirements of the ordinance. It must be installed, and an inspection of the irrigation system done, before a Certificate of Occupancy can be issued for this restaurant.

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

Signage. The applicant has shown signs on the plans. He should be advised that signs cannot be approved through this process. All signs for the restaurant must comply with the requirements of the Addison Sign Ordinance. The applicant should be aware that the Town has a policy against allowing any exterior signs, which contain the words

bar", "tavern" or any terms, or graphic depictions, which relate to alcoholic beverages on exterior signs for the restaurant.

**RECOMMENDATION:**

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

-the new landscaping for the site shall be installed and the irrigation system for the site inspected prior to the issuance of a Certificate of Occupancy for this restaurant.

-the applicant shall not use any terms, including the term "bar," "tavern," or any graphic depictions that denote alcoholic beverages in exterior signs.

Respectfully submitted,

A handwritten signature in black ink that reads "CMORAN". The letters are cursive and somewhat stylized.

Carmen Moran  
Director of Development Services

## **Memorandum**

Date: April 14, 2004  
To: Carmen Moran, Director of Development Services  
From: Slade Strickland, Director of Parks and Recreation  
Subject: Case 1454-SUP/Freebird's World Burrito

The landscape plan has been approved for the re-development of this center, so there are no landscape conditions.

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on April 22, 2004, voted to recommend approval of your request subject to the following conditions:

-the new landscaping for the site shall be installed and the irrigation system for the site inspected prior to the issuance of a Certificate of Occupancy for this restaurant.

-the applicant shall not use any terms, including the term "bar," "tavern," or any graphic depictions that denote alcoholic beverages in exterior signs.

Voting Aye: Benjet, Bernstein, Chafin, Knott, Mellow

Voting Nay: None

Absent: Jandura

**ATTACHMENT  
#R4-3 IS NOT  
AVAILABLE  
ELECTRONICALLY**

**Council Agenda Item: #R5**

**SUMMARY:**

We are recommending that the Council award a bid to Ratliff Hardscape, LTD totaling \$145,267.42 for replacement of masonry walls on Chancey Drive and Proton Drive in the Les Lacs residential area. The attachments include a location map, two aerial photos of the wall replacement sites and a bid tabulation.

**FINANCIAL IMPACT:**

Budgeted Amount:       **\$140,000.00 – Budgeted Project - Parks Fy 03-04 Operations Budget**

Cost:                       **\$145,267.42**

The additional \$5,267.42 will be funded from surplus funds left over from the Brookhaven Club Drive median grass planting project. The engineer's estimate was \$150,000.

There were 413 companies contacted about the project via DemandStar and six plans were picked up at the purchasing department. Three out of the six plan holders were plan rooms.

**BACKGROUND:**

This is the first phase of perimeter residential “thin” wall replacement in the Les Lacs area, which were constructed in 1991.

Staff requested the engineering services of PBSJ engineers to evaluate repairing or reconstructing the walls based on the level of structural/aesthetic damage. Their analysis concluded that the wall damage was caused by the inability of the wall panel sections to float during ground movement or heavy wind loads, due to being rigidly connected during the original construction. In addition, they visually inspected the existing concrete piers and footings and found them to be structurally sound.

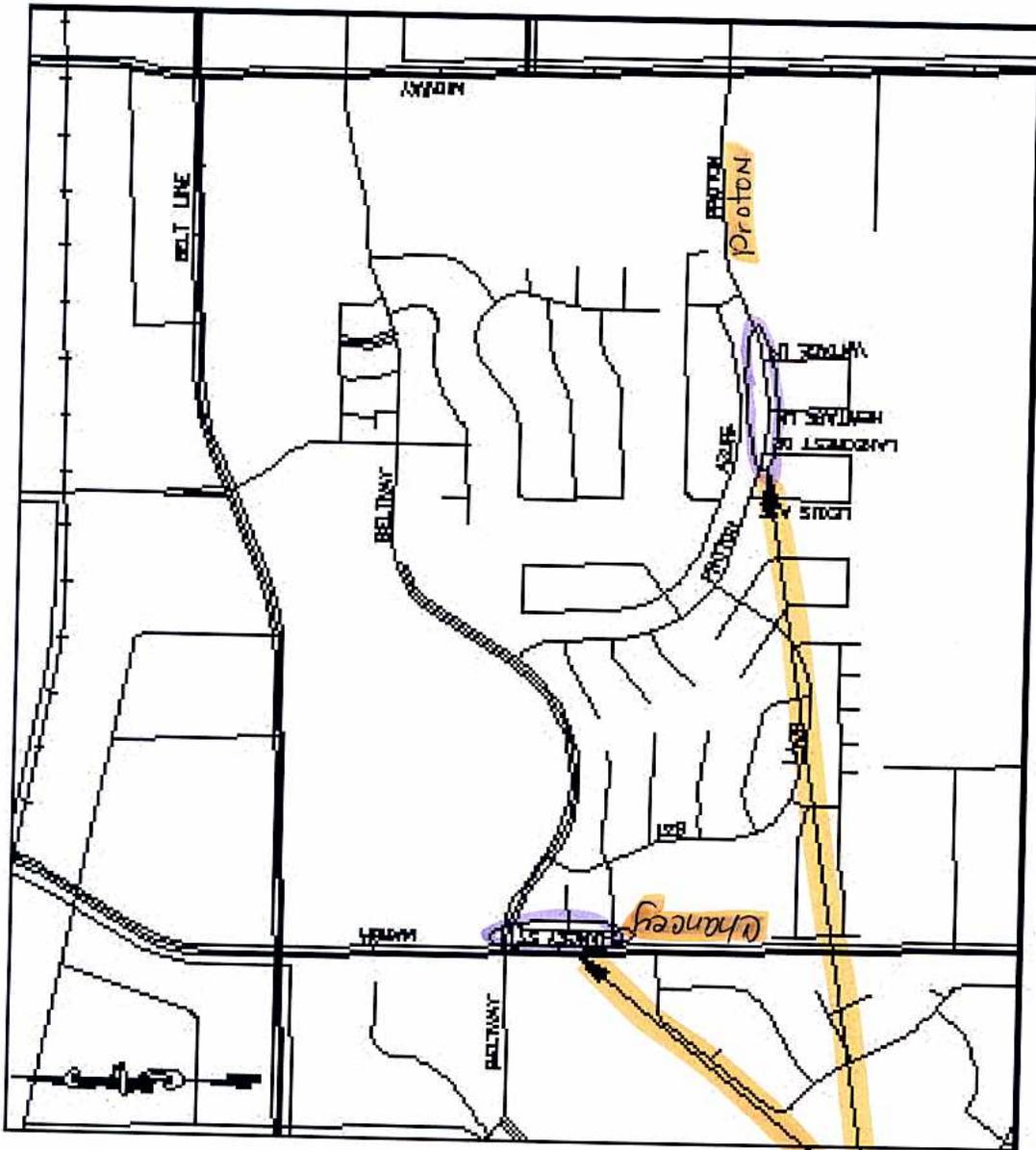
The engineer's contract includes site inspection to insure that the construction methods are carried according to the plans to prevent the problem from occurring again.

Before wall demolition begins, temporary chain link screen fencing will be placed along the Proton Drive wall section. Temporary fencing will also be placed along the wall on the west side of the alley behind the homes on Chancey Drive that back up to Marsh Lane.

Construction notices will be mailed out to all residents in the two neighborhoods, as well as, door hangers will be distributed to those residences adjacent to the construction. Staff will personally visit with the three residences along Proton Drive to present the temporary fencing plan, so they are comfortable that their property will be protected and screened properly.

**RECOMMENDATION:**

Ratliff has successfully completed extensive masonry wall construction and repairs for the City of Plano and completed several repairs for the Addison Parks Department. Staff recommends approval.



PROJECT LOCATIONS

VICINITY MAP  
N.T.S.

PROJECT LOCATION



*Area Along Marsh Lane West of Chancey Street*

PROJECT LOCATION



**#R5-3**

**Chancey St. & Proton Dr. Screening Wall Reconstruction**

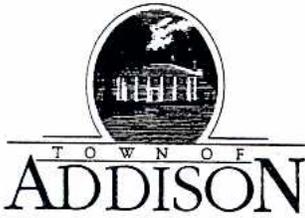
**Bid NO 04-15**

**DUE: April 27, 2004**

**9:00AM**

<b>BIDDER</b>	<b>SIGNED</b>	<b>BOND</b>	<b>TOTAL</b>
Ratliff Hardscape	y	y	\$145,267.42
American Civil Constructors	y	y	\$162,158.00

Addison 50!



OFFICE OF THE CITY MANAGER

50 YEARS OF FUN!

(972) 450-7000 • FAX (972) 450-7043

Post Office Box 9010 Addison, Texas 75001-9010

5300 Belt Line Road

May 3, 2004

Honorable Mayor and Council

Re: Dallas Cowboys Proposed Stadium Financing Plan

Attached for your review is the latest stadium proposal from the Dallas Cowboys to Dallas County. As you are aware the Cowboy organization is asking for a public funding contribution made up in part by an increase of 3% in the hotel occupancy tax.

I visited with the Mayor and we would like to propose a resolution that supports the idea of a regionally funded stadium for the Cowboys, but not to the detriments of the hospitality industry in Dallas County. The proposed 3% increase in the Hotel / Motel tax in Dallas County would put us at a major competitive disadvantage with communities in surrounding counties that do not have this 3% surcharge for a stadium. For this reason we feel it is important for Council to begin to discuss the potential impact this surcharge could have on our Hotel / Motel revenues and what, if any, alternatives you may wish to propose.

So that you may begin this process I plan to bring this to you as an agenda item at the next Council meeting.

Ron Whitehead  
City Manager

**TOWN OF ADDISON, TEXAS**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS ENCOURAGING THE DALLAS COUNTY COMMISSIONERS COURT TO FIND A REGIONAL FUNDING SOLUTION FOR THE CONSTRUCTION OF A FOOTBALL STADIUM FOR THE DALLAS COWBOYS FOOTBALL CLUB, LLC, WITHOUT INCREASING THE HOTEL OCCUPANCY TAX OR USING LOCAL HOTEL OCCUPANCY TAXES; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Dallas Cowboys Football Club, LLC ("Dallas Cowboys") have proposed a private/public partnership and are in discussions with Dallas County and the City of Dallas to build a new, state-of-the-art football stadium in Dallas County at Fair Park; and

**WHEREAS**, Fair Park is an extraordinary but underutilized civic asset featuring museums, concert venues, irreplaceable art deco architecture, and the Cotton Bowl, with its rich history of hosting professional, collegiate and high school football; and

**WHEREAS**, the most recent stadium proposal from the Dallas Cowboys to Dallas County describes a projected construction budget for the stadium in the amount of \$650 million, to be funded through \$225 million in private investment and \$425 million in public investment, with the public investment portion to be funded in part by an increase in the hotel occupancy tax of up to 3%; and

**WHEREAS**, to increase the hotel occupancy tax by 3% would raise the hotel occupancy tax of the Town of Addison to 16% and other Dallas County municipalities up to a maximum of 18%, the highest rate in the nation, thereby adding an additional burden on a hospitality industry still recovering from the consequences of the September 11, 2001 terrorist attacks; and

**WHEREAS**, while the Town of Addison is in support of regional funding for a new stadium, to increase the hotel occupancy tax by an additional 3% would have devastating consequences for the hospitality industry both within Dallas County and the Town of Addison.

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

Section 1. That the City Council of the Town of Addison, Texas does hereby encourage the Dallas County Commissioners' Court to find a regional funding solution for the construction of a new football stadium for the Dallas Cowboys at Fair Park without increasing the hotel occupancy tax or using local hotel occupancy taxes to fund the construction.

Section 2. That the City Manager is hereby directed to submit a true and correct copy of this Resolution to the Dallas County Commissioners Court.

Section 3. That this Resolution shall take effect from and after the date of its adoption.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS, this the 11<sup>th</sup> day of May, 2004.**

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

**ATTEST:**

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Kenneth C. Dippel, City Attorney

# WINSTEAD

April 30, 2004

direct dial: 713.650.2743  
dbraham@winstead.com

## VIA MESSENGER

Mr. Gene Locke  
Andrews & Kurth, L.L.P.  
600 Travis, Suite 4200  
Houston, TX 77002

Re: Dallas Cowboys Stadium Proposal

Dear Gene:

As you know, we are counsel to the Dallas Cowboys Football Club, LLC ("Dallas Cowboys") in connection with their interest in developing a new stadium facility that would serve as the new home of their franchise as well as provide a new venue to host numerous other major sporting and entertainment events, such as future NFL Super Bowls, Cotton Bowl Classic games, Texas/OU and Grambling State/Prairie View A&M football games, and NCAA Final Fours, among others. The Dallas Cowboys are very excited about the prospect of developing this facility which would serve as a new world-class, state of the art venue for the Dallas metroplex.

The Dallas Cowboys have spent a considerable amount of time, effort and expense in evaluating a number of locations, including locations in Las Colinas, Lower Cedars adjacent to the Trinity River, as well as a potential renovation of their existing facilities at Texas Stadium. More recently, our client was approached about the possibility of considering the location of a new venue facility at Fair Park in Dallas. Consequently, over the last number of weeks, the Dallas Cowboys have been working diligently to evaluate the possibility of returning to the City of Dallas and redeveloping Fair Park with a new stadium complex. There are, of course, numerous challenges that will need to be overcome in order to successfully redevelop Fair Park. While the other locations still remain very viable options for our client, they are keenly interested in beginning negotiations with Dallas County towards the execution of a Memorandum of Understanding in an attempt to develop such a stadium project at Fair Park.

Accordingly, I am pleased to enclose with this letter, a Stadium Proposal from the Dallas Cowboys for you to present to Dallas County for consideration. If this project is to be successful, we will need to work collaboratively and expeditiously to finalize a Memorandum of Understanding between our respective clients. As you will see in the enclosed Proposal, there is a considerable amount of work that will need to be accomplished over a very short period of time

VIA MESSENGER

Mr. Gene Locke

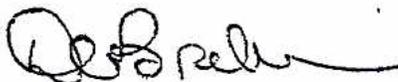
April 30, 2004

Page 2

in order to achieve timely commencement and completion of construction of the facility. We have little time to lose and a resolution of the Memorandum and a subsequent public referendum to approve the creation of a venue project and to permit the necessary public funding within the time frames outlined in the Proposal are critical to the success of this project.

We look forward to a favorable response from the County and the opportunity to convene with you as soon as possible to begin the process of preparing and finalizing a Memorandum of Understanding between our respective clients.

Sincerely yours,



Denis Clive Braham

DCB:db

Enclosure

cc: Mr. Jerral Jones  
Mr. J. Stephen Jones  
Mr. George Bayoud  
Mr. Jud W. Heflin  
Mr. David Frey  
Mr. Brett Daniels  
Mr. W. Mike Baggett  
Mr. Todd B. Brewer  
Mr. Franklin D.R. Jones, Jr.  
Mr. Robert M. Collie, Jr.  
Mr. Mark Arnold

## DALLAS COWBOYS STADIUM PROPOSAL

April 30, 2004

The Dallas Cowboys propose to Dallas County that the parties begin negotiations towards the execution of a Memorandum of Understanding by June 30, 2004 representing their commitment and intent to develop a two million square foot world-class, state-of-the-art, multi-purpose sports and entertainment facility (the "Stadium Project"). The budget for the Stadium Project is projected to be \$650 million. Construction of the Stadium Project would begin no later than September 30, 2005, with completion scheduled for December 1, 2008, in time for the official public opening to host the 2009 Cotton Bowl Classic.

Recognizing the benefit of the Cowboys returning to the City of Dallas, and the strong sentiment for the Cowboys to develop the Stadium Project in Fair Park, the Cowboys are supportive of Fair Park as the potential site for the Stadium Project. The Cowboys appreciate the positive impact a revitalized Fair Park would have on the community and will work diligently with the County, the City and all stakeholders on this site. The Cowboys' commitment to Fair Park is, of course, subject to significant further physical, economic and financial feasibility analysis. The Cowboys welcome the opportunity to work closely with the County and the City, as well as the Parks and Recreation Board and State Fair of Texas to successfully revitalize Fair Park.

The overall Stadium Project consists of the development of a new Stadium and related stadium infrastructure, including stadium parking with no less than 22,500 parking spaces. Under this plan, the City would dedicate the necessary land to accommodate the Stadium site to the County, and the Cowboys would, in turn, lease the land from the County. The County and the Cowboys would enter into a thirty (30) year lease with renewal options.

The Stadium and related improvements will provide a facility designed and constructed to support the occupancy of the Cowboys football franchise, be the new year-round location for the team (including executive offices, practice facilities and the team's summer training camp), and would provide a venue to host numerous other major sporting and entertainment events, such as future NFL Super Bowls, Cotton Bowl Classic games, Texas/OU and Grambling State/Prairie View A&M football games, and NCAA Final Fours. The Stadium would be designed to accommodate 75,000 patrons, including approximately 6,000 club seats and 380 private luxury suites. The Stadium would also include the capability to open one of its end zones to a multi-purpose, layered atmosphere with partial views to the seating bowl and playing field, providing seating and/or standing room for additional patrons, and allowing the facility to accommodate an additional 25,000 patrons within and in adjacent proximity to the Stadium when in use. To facilitate covered events, the Stadium would have a retractable roof. End walls would create an "open air" facility with the capability of being reversed to become an enclosed venue. Not only would the Stadium be home to the Cowboys, it would also be home to the Cotton Bowl Association and the Cotton Bowl Classic Hall of Fame.

Financing for the Project would be obtained from a combination of private and public sources to be negotiated between the Cowboys and the County, which combination may include \$225 million in private investment by the Cowboys (in the form of direct investment by the team owners, team related user fees and tax rebate credits), together with \$425 million in tax-exempt bonds (funded by state-approved sources such as a potential combination of up to 3% hotel occupancy taxes, up to 6% car rental taxes, non-team related user fees and sales tax rebates). The composition and structure of this financing package will be the subject of these negotiations.

The selection of Fair Park as the site of the new Stadium is contingent on the successful conclusion of these negotiations on or before June 30, 2004.

The Cowboys would be responsible for the design and construction of the Stadium Project. In addition, the Cowboys would assume construction cost overruns related to the design, construction and equipping of the Stadium Project in excess of the proposed budget. The Cowboys would have the responsibility for and control of the design for the Stadium Project, which would be aesthetically compatible with and integrated into Fair Park's existing architectural environment. The County would have the right to approve the basic program plan for the design of the Stadium and would be protected against any material deviations from the general description of the preliminary project proposal. The Cowboys will select the architects, construction manager, and other consultants and design professionals. With the desire to be inclusive of all members of the Dallas community, the Cowboys and its affiliates will work with the County to identify historically underutilized businesses that can provide products and professional services for the construction of the Stadium Project.

The Cowboys will assume responsibility under the lease for maintenance and operation of the Stadium Project. The County will not be responsible for any operating costs or for maintenance or capital repair expenses.

In return, the Cowboys will control all marketing and intellectual property rights to, and all economic benefits from, all Stadium Project revenue streams generated from games or events. The Cowboys will have the right to determine all vendors and suppliers providing products or services to the Stadium Project, and will have the exclusive right to schedule any and all events in the Stadium Project. Coordination of events, marketing and services at Fair Park with the new Stadium will be addressed in the definitive documents.

In order to complete the Stadium Project in time to host the scheduled 2009 Cotton Bowl Classic, the Dallas Cowboys would work with the County on a diligent and a good-faith effort basis to achieve the following initial Stadium Project milestones:

- ◆ Resolve the Fair Park/Venue Tax usage issue by June 30, 2004
- ◆ Execute a Memorandum of Understanding by June 30, 2004 (including all necessary Inter-Local Agreements with the City, DART and the State Fair)
- ◆ Hold a November 2, 2004 referendum to create a venue project and to permit the necessary public funding
- ◆ Execute definitive Project documents by January 5, 2005
- ◆ Approve the bonds issued by the County by April 1, 2005
- ◆ Have the Stadium Site delivered to the Cowboys to allow commencement of construction by September 30, 2005

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- ◆ Target substantial completion for the Project by September 30, 2008
- ◆ First major public event at the Stadium – January, 2009 Cotton Bowl Classic

The Cowboys look forward to beginning negotiations with the County to finalize a detailed Memorandum of Understanding to facilitate the Project on a timely basis.

EDITORIALS

# Cowboys at Fair Park

## Stadium deal must be fair to all

**T**he Dallas Cowboys have broken the huddle, and the play they've called for their proposed football stadium in Fair Park is a nail-biter at best.

On Friday, Dallas County commissioners got a look at the team's formal proposal for financing the stadium, and they said they weren't impressed. While they support the Fair Park location, county commissioners expressed disappointment at a plan that was virtually unchanged from the one that team officials had floated for months.

The Cowboys are asking for \$425 million in public funding from higher hotel and rental-car taxes to finance the stadium. The team then would contribute another \$225 million toward the estimated \$650 million price tag.

No doubt this is just an opening bid, which Dallas County Judge Margaret Keliher describes as the team "asking for the moon." But asking for the moon and receiving it are two very different things. Unless the football team antes up more dollars, county commissioners and, ultimately, taxpayers aren't likely to accept the plan.

It would be a big mistake if this plan withered away, because Fair Park is an excellent location for the stadium. It would breathe economic life into that neighborhood and boost the economy of the entire city. But for the Cowboys to return to Fair Park, there needs to be a more equitable split in the

financing than the Cowboys have proposed.

The county and the Cowboys must be willing to engage in some good-faith negotiations to reach a deal in Fair Park.

To their credit, the Cowboys' proposal leaves the door open to using ticket, parking and other surcharges on events at the new stadium to finance construction. The team

also is floating the idea of designating sales tax dollars generated by the new stadium to help underwrite the cost, a move that would require separate negotiations with the city of Dallas. While the city isn't formally part of the current negotiations between the team and the county, it needs to be kept in the loop. If the county is smart, Judge Keliher will work closely with Mayor Laura Miller.

Equally important, Dallas' legislative delegation must show a united front during

the special session under way in Austin. Lawmakers need to fix a quirk in state law that prohibits cities and counties from using hotel and rental-car tax dollars to fund projects in public parks such as Fair Park. Getting the problem quickly resolved is crucial to a stadium deal. A delay could endanger getting the stadium-financing proposal on the November ballot for voter approval.

Fair Park is the right place for a new Cowboys stadium. Now, it's up to everybody to make the numbers work.

### On DallasNews.com

For the latest on the stadium proposal and your chance to respond, log on to [DallasNews.com](http://DallasNews.com).



**Council Agenda Item: #R7**

**SUMMARY:**

Council approval is requested of a resolution that adopts several documents related to the ICMA-RC Section 457 Deferred Compensation Plan and appointing a plan coordinator and plan committee.

**FINANCIAL IMPACT:**

The Town has included \$371,110 in the 2004 budget for its share of contributions into the deferred compensation program. Changing administrators of the program will have no financial impact on the budget.

**BACKGROUND:**

At its April 13<sup>th</sup> meeting, Council was presented with a staff recommendation that ICMA-RC be selected to be the new administrator of the Town's Section 457 Deferred Compensation Plan. Council authorized the city manager to negotiate the contract documents for Council approval. Our city attorneys recommended that we acquire the services of Linda Wilkins with the firm of Locke Liddell & Sapp LLP. Ms. Wilkins specializes in retirement and deferred compensation benefit plans. Ms. Wilkins has worked to obtain more favorable and precise terms to the standard ICMA-RC administrative services agreement.

Once Council approves the resolution, it is anticipated the transition to the new plan will take place between 90 and 120 days.

**RECOMMENDATION:**

It is recommended Council approve the attached resolution with supporting documents.

TOWN OF ADDISON, TEXAS

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING AND ADOPTING A RESTATEMENT OF THE CITY'S DEFERRED COMPENSATION PLAN FOR THE BENEFIT OF ITS EMPLOYEES IN THE FORM OF THE DEFERRED COMPENSATION PLAN AND TRUST SUBMITTED TO THE CITY BY THE ICMA RETIREMENT CORPORATION; APPROVING AND ADOPTING THE DECLARATION OF TRUST OF THE VANTAGE TRUST COMPANY; APPROVING AN ADMINISTRATIVE SERVICES AGREEMENT WITH ICMA RETIREMENT CORPORATION; PROVIDING AN EFFECTIVE DATE FOR THE SAID DOCUMENTS; AUTHORIZING THE CITY MANAGER TO EXECUTE DOCUMENTS IN CONNECTION HEREWITH; ESTABLISHING A PLAN COMMITTEE TO PROVIDE PLAN ADMINISTRATION AND OVERSIGHT; PROVIDING THAT THE PLAN ASSETS SHALL BE HELD IN TRUST FOR THE EXCLUSIVE BENEFIT OF PLAN PARTICIPANTS AND THEIR BENEFICIARIES, AND NOT DIVERTED TO ANY OTHER PURPOSE; PROVIDING THAT THE CITY'S DIRECTOR OF HUMAN RESOURCES SHALL BE THE PLAN COORDINATOR; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Addison, Texas (the "City") has previously established a deferred compensation plan ("Plan") for the benefit of its employees, which serves the interests of the City by enabling its employees to save for their retirement on a pre-tax basis, and to receive matching contributions from the City, thereby assisting in the attraction, motivation, and retention of competent personnel; and

**WHEREAS**, the City Council has been provided with copies of a proposed Administrative Services Agreement with ICMA Retirement Corporation ("ICMA-RC"), attached hereto as Appendix C, for third party administration of the Plan and proposed plan and trust documents prepared by ICMA-RC; and

**WHEREAS**, the City Council has determined that engaging ICMA-RC for administration of the Plan is prudent and desirable; and

**WHEREAS**, it is prudent and desirable that some or all of the funds held under the Plan be invested in the Vantage Trust Company, a trust established by public employers for the collective investment of funds held under their retirement and deferred compensation plans:

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

Section 1. A. That the City Council hereby approves and adopts a restatement of the Plan in the form of the ICMA-RC Deferred Compensation Plan & Trust, attached hereto as Appendix A;

B. That the City Council hereby approves and adopts the Declaration of Trust of the Vantage Trust Company, attached hereto as Appendix B;

C. That the City Council hereby approves the Administrative Services Agreement with ICMA-RC, attached hereto as Appendix C, and authorizes the City Manager to execute and deliver the Agreement on its behalf;

D. That the effective date for the foregoing documents be the earliest date practicable, but not later than 150 days after the date this Resolution is adopted;

E. That the City's Director of Finance and Director of Human Resources shall, and are hereby appointed to serve as members of the committee charged with internal administration and oversight of the Plan (the "Plan Committee");

F. That the Plan Committee shall have the discretion to make nonsubstantive amendments to the Plan and Trust based on recommendation of legal counsel;

G. That the assets of the Plan shall be held in trust, and the City will continue to serve as trustee, for the exclusive benefit of Plan participants and their beneficiaries, and the assets shall not be diverted to any other purpose;

H. That the City's Director of Human Resources shall be the coordinator for the Plan, shall receive reports, notices, etc., from ICMA-RC or the Vantage Trust Company, shall cast, on behalf of the City and with the approval of the City Manager, any required votes under the Vantage Trust Company, and may delegate any administrative duties relating to the Plan to appropriate City departments; and

I. That the City Council hereby authorizes the City Manager to execute all necessary agreements with ICMA-RC incidental to the administration of the Plan.

Section 2. That this Resolution shall take effect from and after the date of its adoption.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this the 11th day of May, 2004.

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

ATTEST:

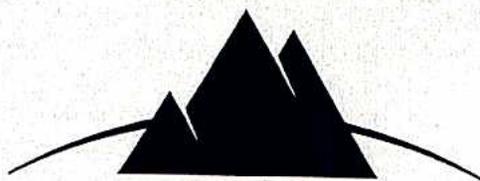
By: \_\_\_\_\_  
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Kenneth C. Dippel, City Attorney

# 457 Deferred Compensation Plan

## PLAN & TRUST DOCUMENT



**ICMA RETIREMENT CORPORATION**  
The Public Sector Expert

## 457 Plan and Trust Document

### DEFERRED COMPENSATION PLAN & TRUST

As Amended and Restated Effective January 1, 2002

#### Article I. Purpose

The Employer hereby establishes the Employer's Deferred Compensation Plan and Trust, hereafter referred to as the "Plan." The Plan consists of the provisions set forth in this document.

The primary purpose of this Plan is to provide retirement income and other deferred benefits to the Employees of the Employer and the Employees' Beneficiaries in accordance with the provisions of Section 457 of the Internal Revenue Code of 1986, as amended (the "Code").

This Plan shall be an agreement solely between the Employer and participating Employees. The Plan and Trust forming a part hereof are established and shall be maintained for the exclusive benefit of Participants and their Beneficiaries. No part of the corpus or income of the Trust shall revert to the Employer or be used for or diverted to purposes other than the exclusive benefit of Participants and their Beneficiaries.

#### Article II. Definitions

**2.01 Account:** The bookkeeping account maintained for each Participant reflecting the cumulative amount of the Participant's Deferred Compensation, including any income, gains, losses, or increases or decreases in market value attributable to the Employer's investment of the Participant's Deferred Compensation, and further reflecting any distributions to the Participant or the Participant's Beneficiary and any fees or expenses charged against such Participant's Deferred Compensation.

**2.02 Accounting Date:** Each business day that the New York Stock Exchange is open for trading, as provided in Section 6.06 for valuing the Trust's assets.

**2.03 Administrator:** The person or persons named to carry out certain nondiscretionary administrative functions under the Plan, as hereinafter described. The Employer may remove any person as Administrator upon 60 days' advance notice in writing to such person, in which case the Employer shall name another person or persons to act as Administrator. The Administrator may resign upon 60 days' advance notice in writing to the Employer, in which case the Employer shall name another person or persons to act as Administrator.

**2.04 Automatic Distribution Date:** April 1 of the calendar year after the Plan Year the Participant attains age 70-1/2 or, if later, has a Severance Event.

**2.05 Beneficiary:** The person or persons designated by the Participant in his or her Joinder Agreement who shall receive any benefits payable hereunder in the event of the Participant's death. In the event that the Participant names two or more Beneficiaries, each Beneficiary shall be entitled to equal shares of the benefits payable at the Participant's death, unless otherwise provided in the Participant's Joinder Agreement. If no beneficiary is designated in the Joinder Agreement, if the Designated Beneficiary predeceases the Participant, or if the designated Beneficiary does not survive the Participant for a period of fifteen (15) days, then

## 457 Plan and Trust Document

the estate of the Participant shall be the Beneficiary. If a married Participant resides in a community or marital property state, the Participant shall be responsible for obtaining appropriate consent of his or her spouse in the event the Participant designates someone other than his or her spouse as Beneficiary. The preceding sentence shall not apply with respect to a Deemed IRA under Article IX.

**2.06 Deemed IRA:** A separate account or annuity established under the Plan that complies with the requirements of Section 408(q) of the Code and any regulations promulgated thereunder.

**2.07 Deferred Compensation:** The amount of Includible Compensation otherwise payable to the Participant which the Participant and the Employer mutually agree to defer hereunder, any amount credited to a Participant's Account by reason of a transfer under Section 6.09 or 6.10, a rollover under Section 6.11, or any other amount which the Employer agrees to credit to a Participant's Account.

**2.08 Dollar Limitation:** The applicable dollar amount within the meaning of Section 457(b)(2)(A) of the Code, as adjusted for the cost-of-living in accordance with Section 457(e)(15) of the Code.

**2.09 Employee:** Any individual who provides services for the Employer, whether as an employee of the Employer or as an independent contractor, and who has been designated by the Employer as eligible to participate in the Plan.

**2.10 Employer:** \_\_\_\_\_, which is a political subdivision, agency or instrumentality of the [State/Commonwealth] of \_\_\_\_\_, described in Section 457(e)(1)(A) of the Code.

**2.11 457 Catch-Up Dollar Limitation:** Twice the Dollar Limitation.

**2.12 Includible Compensation:** Includible Compensation of a Participant means the "Participant's compensation," as defined in Section 415(c)(3) of the Code, for services performed for the Employer. Includible Compensation shall be determined without regard to any community property laws. Includible Compensation shall include any pre-tax contributions to an integral part trust of the employer providing retiree health care benefits.

**2.13 Joinder Agreement:** An agreement entered into between an Employee and the Employer, including any amendments or modifications thereof. Such agreement shall fix the amount of Deferred Compensation, specify a preference among the investment alternatives designated by the Employer, designate the Employee's Beneficiary or Beneficiaries, and incorporate the terms, conditions, and provisions of the Plan by reference.

**2.14 Normal Limitation:** The maximum amount of Deferred Compensation for any Participant for any taxable year (other than amounts referred to in Sections 6.09, 6.10, and 6.11).

**2.15 Normal Retirement Age:** Age 70-1/2, unless the Participant has elected an alternate Normal Retirement Age by written instrument delivered to the Administrator prior to a Severance Event. A Participant's Normal Retirement Age determines the period during

## 457 Plan and Trust Document

which a Participant may utilize the 457 Catch-Up Dollar Limitation of Section 5.02(b) hereunder. Once a Participant has to any extent utilized the catch-up limitation of Section 5.02(b), his Normal Retirement Age may not be changed.

A Participant's alternate Normal Retirement Age may not be earlier than the earliest date that the Participant will become eligible to retire and receive immediate, unreduced retirement benefits under the Employer's basic defined benefit retirement plan covering the Participant (or a money purchase pension plan in which the Participant also participates if the Participant is not eligible to participate in a defined benefit plan), and may not be later than the date the Participant will attain age 70-1/2. If a Participant continues employment after attaining age 70-1/2, not having previously elected an alternate Normal Retirement Age, the Participant's alternate Normal Retirement Age shall not be later than the mandatory retirement age, if any, established by the Employer, or the age at which the Participant actually has a Severance Event if the Employer has no mandatory retirement age. If the Participant will not become eligible to receive benefits under a basic defined benefit retirement plan (or money purchase pension plan, if applicable) maintained by the Employer, the Participant's alternate Normal Retirement Age may not be earlier than 65 and may not be later than age 70-1/2.

In the event the Plan has Participants that include qualified police or firefighters (as defined under Section 415(b)(2)(H)(ii)(I) of the Code), a normal retirement age may be designated for such qualified police or firefighters that is not earlier than age 40 or later than age 70-1/2. Alternatively, qualified police or firefighters may be permitted to designate a normal retirement age that is between age 40 and age 70-1/2.

**2.16 Participant:** Any Employee who has joined the Plan pursuant to the requirements of Article IV. For purposes of section 6.11 of the Plan, the term Participant includes a former Employee of the Employer.

**2.17 Percentage Limitation:** 100 percent of the participant's Includible Compensation available to be contributed as Deferred Compensation for the taxable year.

**2.18 Plan Year:** The calendar year.

**2.19 Retirement:** The first date upon which both of the following shall have occurred with respect to a participant: Severance Event and attainment of age 65.

**2.20 Severance Event:** A severance of the Participant's employment with the Employer within the meaning of Section 457(d)(1)(A)(ii) of the Code.

In general, a Participant shall be deemed to have experienced a Severance Event for purposes of this Plan when, in accordance with the established practices of the Employer, the employment relationship is considered to have actually terminated. In the case of a Participant who is an independent contractor of the Employer, a Severance Event shall be deemed to have occurred when the Participant's contract under which services are performed has completely expired and terminated, there is no foreseeable possibility that the Employer will renew the contract or enter into a new contract for the Participant's services, and it is not anticipated that the Participant will become an Employee of the Employer, or such other events as may be permitted under the Code.

## 457 Plan and Trust Document

2.21 **Trust:** The Trust created under Article VI of the Plan which shall consist of all compensation deferred under the Plan, plus any income and gains thereon, less any losses, expenses and distributions to Participants and Beneficiaries.

### Article III. Administration

3.01 **Duties of the Employer:** The Employer shall have the authority to make all discretionary decisions affecting the rights or benefits of Participants which may be required in the administration of this Plan. The Employer's decisions shall be afforded the maximum deference permitted by applicable law.

3.02 **Duties of Administrator:** The Administrator, as agent for the Employer, shall perform nondiscretionary administrative functions in connection with the Plan, including the maintenance of Participants' Accounts, the provision of periodic reports of the status of each Account, and the disbursement of benefits on behalf of the Employer in accordance with the provisions of this Plan.

### Article IV. Participation in the Plan

4.01 **Initial Participation:** An Employee may become a Participant by entering into a Joinder Agreement prior to the beginning of the calendar month in which the Joinder Agreement is to become effective to defer compensation not yet earned, or such other date as may be permitted under the Code. A new employee may defer compensation in the calendar month during which he or she first becomes an employee if a Joinder Agreement is entered into on or before the first day on which the employee performs services for the Employer.

4.02 **Amendment of Joinder Agreement:** A Participant may amend an executed Joinder Agreement to change the amount of Includible Compensation not yet earned which is to be deferred (including the reduction of such future deferrals to zero). Such amendment shall become effective as of the beginning of the calendar month commencing after the date the amendment is executed, or such other date as may be permitted under the Code. A Participant may at any time amend his or her Joinder Agreement to change the designated Beneficiary, and such amendment shall become effective immediately.

### Article V. Limitations on Deferrals

5.01 **Normal Limitation:** Except as provided in Section 5.02, the maximum amount of Deferred Compensation for any Participant for any taxable year, shall not exceed the lesser of the Dollar Limitation or the Percentage Limitation.

5.02 **Catch-Up Limitations:**

- (a) **Catch-up Contributions for Participants Age 50 and Over:** A Participant who has attained the age of 50 before the close of the Plan Year, and with respect to whom no other elective deferrals may be made to the Plan for the Plan Year by reason of the Normal Limitation of Section 5.01, may enter into a Joinder Agreement to make elective deferrals in addition to those permitted by the Normal Limitation in an amount not to exceed the lesser of (1) the applicable

## 457 Plan and Trust Document

dollar amount as defined in Section 414(v)(2)(B) of the Code, as adjusted for the cost-of-living in accordance with Section 414(v)(2)(C) of the Code, or (2) the excess (if any) of (i) the Participant's compensation (as defined in Section 415(c)(3) of the Code) for the year, over (ii) any other elective deferrals of the Participant for such year which are made without regard to this Section 5.02(a). An additional contribution made pursuant to this Section 5.02(a) shall not, with respect to the year in which the contribution is made, be subject to any otherwise applicable limitation contained in Section 5.01 above, or be taken into account in applying such limitation to other contributions or benefits under the Plan or any other plan. This Section 5.02(a) shall not apply in any year to which a higher limit under Section 5.02(b) applies.

- (b) **Last Three Years Catch-up Contribution:** For each of the last three (3) taxable years for a Participant ending before his or her attainment of Normal Retirement Age, the maximum amount of Deferred Compensation shall be the lesser of: (1) the 457 Catch-Up Dollar Limitation, or (2) the sum of (i) the Normal Limitation for the taxable year, and (ii) the Normal Limitation for each prior taxable year of the Participant commencing after 1978 less the amount of the Participant's Deferred Compensation for such prior taxable years. A prior taxable year shall be taken into account under the preceding sentence only if (x) the Participant was eligible to participate in the Plan for such year, and (y) compensation (if any) deferred under the Plan (or such other plan) was subject to the Normal Limitation.

**5.03 Sick, Vacation and Back Pay:** If the Employer so elects, a Participant may defer all or a portion of the value of the Participant's accumulated sick pay, accumulated vacation pay and/or back pay, provided that such deferral does not cause total deferrals on behalf of the Participant to exceed the Dollar Limitation or Percentage Limitation (including any Catch-up Dollar Limitation) for the year of deferral. The election to defer such sick, vacation and/or back pay must be made pursuant to a Joinder Agreement entered into before the beginning of the month in which the amounts would otherwise be paid or made available to the Participant, and the Participant must be an Employee in that month. In the case of sick, vacation and back pay that is payable before the Participant has a Severance Event, the preceding requirements are deemed to be satisfied if the Joinder Agreement providing for the deferral is entered into before the amount is currently available.

**5.04 Other Plans:** Notwithstanding any provision of the Plan to the contrary, the amount excludible from a Participant's gross income under this Plan or any other eligible deferred compensation plan under Section 457(b) of the Code shall not exceed the limits set forth in Sections 457(b) and 414(v) of the Code.

**5.05 Excess Deferrals:** Any amount that exceeds the maximum Dollar Limitation or Percentage Limitation (including any applicable Catch-Up Dollar Limitation) for a taxable year, shall constitute an excess deferral for that taxable year. Any excess deferral shall be distributed in accordance with the requirements for excess deferrals under the Code and Section 1.457-4(e) of the Income Tax Regulations.

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### Article VI. Trust and Investment of Accounts

6.01 **Investment of Deferred Compensation:** A Trust is hereby created to hold all the assets of the Plan (except Deemed IRA contributions and earnings thereon held pursuant to Article IX) for the exclusive benefit of Participants and Beneficiaries, except that expenses and taxes may be paid from the Trust as provided in Section 6.03. The trustee shall be the Employer or such other person that agrees to act in that capacity hereunder.

6.02 **Investment Powers:** The trustee or the Administrator, acting as agent for the trustee, shall have the powers listed in this Section with respect to investment of Trust assets, except to the extent that the investment of Trust assets is directed by Participants, pursuant to Section 6.05.

- (a) To invest and reinvest the Trust without distinction between principal and income in common or preferred stocks, shares of regulated investment companies and other mutual funds, bonds, loans, notes, debentures, certificates of deposit, contracts with insurance companies including but not limited to insurance, individual or group annuity, deposit administration, guaranteed interest contracts, and deposits at reasonable rates of interest at banking institutions including but not limited to savings accounts and certificates of deposit. Assets of the Trust may be invested in securities that involve a higher degree of risk than investments that have demonstrated their investment performance over an extended period of time.
- (b) To invest and reinvest all or any part of the assets of the Trust in any common, collective or commingled trust fund that is maintained by a bank or other institution and that is available to Employee plans described under Sections 457 or 401 of the Code, or any successor provisions thereto, and during the period of time that an investment through any such medium shall exist, to the extent of participation of the Plans the declaration of trust of such commonly collective, or commingled trust fund shall constitute a part of this Plan.
- (c) To invest and reinvest all or any part of the assets of the Trust in any group annuity, deposit administration or guaranteed interest contract issued by an insurance company or other financial institution on a commingled or collective basis with the assets of any other 457 plan or trust qualified under Section 401(a) of the Code or any other plan described in Section 401(a)(24) of the Code, and such contract may be held or issued in the name of the Administrator, or such custodian as the Administrator may appoint, as agent and nominee for the Employer. During the period that an investment through any such contract shall exist, to the extent of participation of the Plan, the terms and conditions of such contract shall constitute a part of the Plan.
- (d) To hold cash awaiting investment and to keep such portion of the Trust in cash or cash balances, without liability for interest, in such amounts as may from time to time be deemed to be reasonable and necessary to meet obligations under the Plan or otherwise to be in the best interests of the Plan.

## 457 Plan and Trust Document

- (e) To hold, to authorize the holding of, and to register any investment to the Trust in the name of the Plan, the Employer, or any nominee or agent of any of the foregoing, including the Administrator, or in bearer form, to deposit or arrange for the deposit of securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by any other person, and to organize corporations or trusts under the laws of any jurisdiction for the purpose of acquiring or holding title to any property for the Trust, all with or without the addition of words or other action to indicate that property is held in a fiduciary or representative capacity but the books and records of the Plan shall at all times show that all such investments are part of the Trust.
- (f) Upon such terms as may be deemed advisable by the Employer or the Administrator, as the case may be, for the protection of the interests of the Plan or for the preservation of the value of an investment, to exercise and enforce by suit for legal or equitable remedies or by other action, or to waive any right or claim on behalf of the Plan or any default in any obligation owing to the Plan, to renew, extend the time for payment of, agree to a reduction in the rate of interest on, or agree to any other modification or change in the terms of any obligation owing to the Plan, to settle, compromise, adjust, or submit to arbitration any claim or right in favor of or against the Plans to exercise and enforce any and all rights of foreclosure, bid for property in foreclosure, and take a deed in lieu of foreclosure with or without paying consideration therefor, to commence or defend suits or other legal proceedings whenever any interest of the Plan requires it, and to represent the Plan in all suits or legal proceedings in any court of law or equity or before any body or tribunal.
- (g) To employ suitable consultants, depositories, agents, and legal counsel on behalf of the Plan.
- (h) To open and maintain any bank account or accounts in the name of the Plan, the Employer, or any nominee or agent of the foregoing, including the Administrator, in any bank or banks.
- (i) To do any and all other acts that may be deemed necessary to carry out any of the powers set forth herein.

6.03 **Taxes and Expenses:** All taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon the Plan, or in respect to the Trust, or the income thereof, and all commissions or acquisitions or dispositions of securities and similar expenses of investment and reinvestment of the Trust, shall be paid from the Trust. Such reasonable compensation of the Administrator, as may be agreed upon from time to time by the Employer and the Administrator, and reimbursement for reasonable expenses incurred by the Administrator in performance of its duties hereunder (including but not limited to fees for legal, accounting, investment and custodial services) shall also be paid from the Trust.

## 457 Plan and Trust Document

6.04 **Payment of Benefits:** The payment of benefits from the Trust in accordance with the terms of the Plan may be made by the Administrator, or by any custodian or other person so authorized by the Employer to make such disbursement. The Administrator, custodian or other person shall not be liable with respect to any distribution of Trust assets made at the direction of the Employer.

6.05 **Investment Funds:** In accordance with uniform and nondiscriminatory rules established by the Employer and the Administrator, the Participant may direct his or her Accounts to be invested in one (1) or more investment funds available under the Plan; provided, however, that the Participant's investment directions shall not violate any investment restrictions established by the Employer. Neither the Employer, the Administrator, nor any other person shall be liable for any losses incurred by virtue of following such directions or with any reasonable administrative delay in implementing such directions.

6.06 **Valuation of Accounts:** As of each Accounting Date, the Plan assets held in each investment fund offered shall be valued at fair market value and the investment income and gains or losses for each fund shall be determined. Such investment income and gains or losses shall be allocated proportionately among all Account balances on a fund-by-fund basis. The allocation shall be in the proportion that each such Account balance as of the immediately preceding Accounting Date bears to the total of all such Account balances as of that Accounting Date. For purposes of this Article, all Account balances include the Account balances of all Participants and Beneficiaries.

6.07 **Participant Loan Accounts:** Participant Loan Accounts shall be invested in accordance with Section 8.03 of the Plan. Such Accounts shall not share in any investment income and gains or losses of the investment funds described in Sections 6.05 and 6.06.

6.08 **Crediting of Accounts:** The Participant's Account shall reflect the amount and value of the investments or other property obtained by the Employer through the investment of the Participant's Deferred Compensation pursuant to Sections 6.05 and 6.06. It is anticipated that the Employer's investments with respect to a Participant will conform to the investment preference specified in the Participant's Joinder Agreement, but nothing herein shall be construed to require the Employer to make any particular investment of a Participant's Deferred Compensation. Each Participant shall receive periodic reports, not less frequently than annually, showing the then current value of his or her Account.

6.09 **Post-Severance Transfers Among Eligible Deferred Compensation Plans:**

- (a) **Incoming Transfers:** A transfer may be accepted from an eligible deferred compensation plan maintained by another employer and credited to a Participant's or Beneficiary's Account under the Plan if: (i) in the case of a transfer for a Participant, the Participant has had a Severance Event with that employer and become an Employee of the Employer; (ii) the other employer's plan provides that such transfer will be made; and (iii) the Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer. The Employer may require such documentation from the predecessor plan as it deems necessary to effectuate the transfer in accordance

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with Section 457(e)(10) of the Code, to confirm that such plan is an eligible deferred compensation plan within the meaning of Section 457(b) of the Code, and to assure that transfers are provided for under such plan. The Employer may refuse to accept a transfer in the form of assets other than cash, unless the Employer and the Administrator agree to hold such other assets under the Plan.

- (b) **Outgoing Transfers:** An amount may be transferred to an eligible deferred compensation plan maintained by another employer, and charged to a Participant's or Beneficiary's Account under this Plan, if: (i) in the case of a transfer for a Participant, the Participant has a Severance Event with the Employer and becomes an employee of the other employer; (ii) the other employer's plan provides that such transfer will be accepted; (iii) the Participant or Beneficiary and the employers have signed such agreements as are necessary to assure that the Employer's liability to pay benefits to the Participant has been discharged and assumed by the other employer; and (iv) the Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer. The Employer may require such documentation from the other plan as it deems necessary to effectuate the transfer, to confirm that such plan is an eligible deferred compensation plan within the meaning of Section 457(b) of the Code, and to assure that transfers are provided for under such plan. Such transfers shall be made only under such circumstances as are permitted under Section 457 of the Code and the regulations thereunder.

### 6.10 Transfers Among Eligible Deferred Compensation Plans of the Employer:

- (a) **Incoming Transfers.** A transfer may be accepted from another eligible deferred compensation plan maintained by the Employer and credited to a Participant's or Beneficiary's Account under the Plan if: (i) the Employer's other plan provides that such transfer will be made; (ii) the Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer; and (iii) the Participant or Beneficiary whose deferred amounts are being transferred is not eligible for additional annual deferrals in the Plan unless the Participant or Beneficiary is performing services for the Employer.
- (b) **Outgoing Transfers.** A transfer may be accepted from another eligible deferred compensation plan maintained by the Employer and credited to a Participant's or Beneficiary's Account under the Plan if: (i) the Employer's other plan provides that such transfer will be accepted; (ii) the Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer; and (iii) the Participant or Beneficiary whose deferred amounts are being transferred is not eligible for additional annual deferrals in the Employer's other eligible deferred compensation plan unless the Participant or Beneficiary is performing services for the Employer.

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### 6.11 Eligible Rollover Distributions:

- (a) Incoming Rollovers: An eligible rollover distribution may be accepted from an eligible retirement plan and credited to a Participant's Account under the Plan. The Employer may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Section 402 of the Code and to confirm that such plan is an eligible retirement plan within the meaning of Section 402(c)(8)(B) of the Code. The Plan shall separately account (in one or more separate accounts) for eligible rollover distributions from any eligible retirement plan that is not an eligible deferred compensation plan described in Section 457(b) of the Code maintained by an eligible governmental employer described in Section 457(e)(1)(A) of Code.
- (b) Outgoing Rollovers: Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- (c) Definitions:
  - (1) Eligible Rollover Distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Sections 401(a)(9) and 457(d)(2) of the Code; and any distribution made as a result of an unforeseeable emergency of the employee. For purposes of distributions from other eligible retirement plans rolled over into this Plan, the term eligible rollover distribution shall not include the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).
  - (2) Eligible Retirement Plan: An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Sections 403(a) or 403(b) of the Code, a qualified trust described in Section 401(a) of the Code, or an eligible deferred compensation plan described in Section 457(b) of the Code which is maintained by an eligible governmental employer described in Section 457(e)(1)(A) of the Code, that accepts the distributee's eligible rollover distribution.

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- (3) **Distributee:** A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.
- (4) **Direct Rollover:** A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

**6.12 Trustee-to-Trustee Transfers to Purchase Permissive Service Credit:** All or a portion of a Participant's Account may be transferred directly to the trustee of a defined benefit governmental plan (as defined in Section 414(d) of the Code) if such transfer is (A) for the purchase of permissive service credit (as defined in Section 415(n)(3)(A) of the Code) under such plan, or (B) a repayment to which Section 415 of the Code does not apply by reason of subsection (k)(3) thereof, within the meaning of Section 457(e)(17) of the Code.

**6.13 Treatment of Distributions of Amounts Previously Rolled Over From 401(a) and 403(b) Plans and IRAs.** For purposes of Section 72(t) of the Code, a distribution from this Plan shall be treated as a distribution from a qualified retirement plan described in Section 4974(c)(1) of the Code to the extent that such distribution is attributable to an amount transferred to an eligible deferred compensation plan from a qualified retirement plan (as defined in Section 4974(c) of the Code).

**6.13 Employer Liability:** In no event shall the Employer's liability to pay benefits to a Participant under this Plan exceed the value of the amounts credited to the Participant's Account; neither the Employer nor the Administrator shall be liable for losses arising from depreciation or shrinkage in the value of any investments acquired under this Plan.

### Article VII. Benefits

#### 7.01 Retirement Benefits and Election on Severance Event:

- (a) **General Rule:** Except as otherwise provided in this Article VII, the distribution of a Participant's Account shall commence as of a Participant's Automatic Distribution Date, and the distribution of such benefits shall be made in accordance with one of the payment options described in Section 7.02. Notwithstanding the foregoing, but subject to the following paragraphs of this Section 7.01, the Participant may elect following a Severance Event to have the distribution of benefits commence on a fixed determinable date other than that described in the preceding sentence, but not later than April 1 of the year following the year of the Participant's Retirement or attainment of age 70-1/2, whichever is later. The Participant's right to change his or her election with respect to commencement of the distribution of benefits shall not be restrained by this Section 7.01. Notwithstanding the foregoing, the Administrator, in order to ensure the orderly administration of this provision, may establish a deadline after which such election to defer the commencement of distribution of benefits shall not be allowed.

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- (b) Loans: Notwithstanding the foregoing provisions of this Section 7.01, no election to defer the commencement of benefits after a Severance Event shall operate to defer the distribution of any amount in the Participant's Loan Account in the event of a default of the Participant's loan.

**7.02 Payment Options:** As provided in Sections 7.01, 7.04 and 7.05, a Participant may elect to have value of the Participant's Account distributed in accordance with one of the following payment options, provided that such option is consistent with the limitations set forth in Section 7.03.

- (a) Equal monthly, quarterly, semi-annual or annual payments in an amount chosen by the Participant, continuing until his or her Account is exhausted;
- (b) One lump-sum payment;
- (c) Approximately equal monthly, quarterly, semi-annual or annual payments, calculated to continue for a period certain chosen by the Participant.
- (d) Annual Payments equal to the minimum distributions required under Section 401(a)(9) of the Code, including the incidental death benefit requirements of Section 401(a)(9)(G), over the life expectancy of the Participant or over the life expectancies of the Participant and his or her Beneficiary.
- (e) Payments equal to payments made by the issuer of a retirement annuity policy acquired by the Employer.
- (f) A split distribution under which payments under options (a), (b), (c) or (e) commence or are made at the same time, as elected by the Participant under Section 7.01, provided that all payments commence (or are made) by the latest benefit commencement date under Section 7.01.
- (g) Any other payment option elected by the Participant and agreed to by the Employer and Administrator.

A Participant's selection of a payment option made after December 31, 1995, under Subsections (a), (c), or (g) above may include the selection of an automatic annual cost-of-living increase. Such increase will be based on the rise in the Consumer Price Index for All Urban Consumers (CPI-U) from the third quarter of the last year in which a cost-of-living increase was provided to the third quarter of the current year. Any increase will be made in periodic payment checks beginning the following January.

**7.03 Limitation on Options:** No payment option may be selected by a Participant under subsections 7.02(a) or (c) unless the amount of any installment is not less than \$100. No payment option may be selected by a Participant under Sections 7.02, 7.04, or 7.05 unless it satisfies the requirements of Sections 401(a)(9) and 457(d)(2) of the Code, including that payments commencing before the death of the Participant shall satisfy the incidental death benefit requirements under Section 401(a)(9)(G).

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### 7.04 Post-Retirement Death Benefits:

- (a) Should the Participant die after he/she has begun to receive benefits under a payment option, the remaining payments, if any, under the payment option shall continue until the Administrator receives notice of the Participant's death. Upon notification of the Participant's death, benefits shall be payable to the Participant's Beneficiary commencing not later than December 31 of the year following the year of the Participant's death, provided that the Beneficiary may elect to begin benefits earlier than that date.
- (b) In the event that the Beneficiary dies before the payment of death benefits has commenced or been completed, the remaining value of the Participant's Account shall be paid to the estate of the Beneficiary in a lump sum. In the event that the Participant's estate is the Beneficiary, payment shall be made to the estate in a lump sum.

### 7.05 Pre-Retirement Death Benefits:

- (a) Should the Participant die before he or she has begun to receive the benefits provided by Section 7.01, the value of the Participant's Account shall be payable to the Beneficiary commencing not later than December 31 of the year following the year of the Participant's death, provided that the Beneficiary may elect to begin benefits earlier than that date.
- (b) In the event that the Beneficiary dies before the payment of death benefits has commenced or been completed, the remaining value of the Participant's Account shall be paid to the estate of the Beneficiary in a lump sum. In the event that the Participant's estate is the Beneficiary, payment shall be made to the estate in a lump sum.

### 7.06 Unforeseeable Emergencies:

- (a) In the event an unforeseeable emergency occurs, a Participant or Beneficiary may apply to the Employer to receive that part of the value of his or her Account that is reasonably needed to satisfy the emergency need. If such an application is approved by the Employer, the Participant or Beneficiary shall be paid only such amount as the Employer deems necessary to meet the emergency need, but payment shall not be made to the extent that the financial hardship may be relieved through cessation of deferral under the Plan, insurance or other reimbursement, or liquidation of other assets to the extent such liquidation would not itself cause severe financial hardship.
- (b) An unforeseeable emergency shall be deemed to involve only circumstances of severe financial hardship to the Participant or Beneficiary resulting from a sudden unexpected illness, accident, or disability of the Participant, Beneficiary, or of the spouse or dependent (as defined in Section 152(a) of the Code) of the Participant or Beneficiary, loss of the Participant's or Beneficiary's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster), or other

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similar and extraordinary unforeseeable circumstances arising as a result of events beyond the control of the Participant or Beneficiary. The imminent foreclosure of or eviction from the Participant's or Beneficiary's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication may constitute an unforeseeable emergency. The need to pay for the funeral expenses of a spouse or a dependent (as defined in Section 152(a)) of the Code may also constitute an unforeseeable emergency. Absent extraordinary circumstances, the need to send a Participant's or Beneficiary's child to college or to purchase a new home shall not be considered unforeseeable emergencies. The determination as to whether such an unforeseeable emergency exists shall be based on the merits of each individual case.

**7.07 De Minimis Accounts:** Notwithstanding the foregoing provisions of this Article, if the value of a Participant's Account is less than \$1,000, the Participant's Account shall be paid to the Participant in a single lump sum distribution, provided that (a) no amount has been deferred under the Plan with respect to the Participant during the 2-year period ending on the date of the distribution and (b) there has been no prior distribution under the Plan to the Participant pursuant to this Section 7.07. If the value of the Participant's Account is at least \$1,000 but not more than the dollar limit under Section 411(a)(11)(A) of the Code and (a) no amount has been deferred under the Plan with respect to the Participant during the 2-year period ending on the date of the distribution and (b) there has been no prior distribution under the Plan to the Participant pursuant to this Section 7.07, the Participant may elect to receive his or her entire Account. Such distribution shall be made in a lump sum.

### Article VIII. Loans to Participants

#### 8.01 Availability of Loans to Participants:

- (a) The Employer may elect to make loans available to Participants in this Plan. If the Employer has elected to make loans available to Participants, a Participant may apply for a loan from the Plan subject to the limitations and other provisions of this Article. However, no loans are available from Deemed IRAs.
- (b) The Employer shall establish written guidelines governing the granting of loans, provided that such guidelines are approved by the Administrator and are not inconsistent with the provisions of this Article, and that loans are made available to all Participants on a reasonably equivalent basis.

#### 8.02 Terms and Conditions of Loans to Participants:

Any loan by the Plan to a Participant under Section 8.01 of the Plan shall satisfy the following requirements:

- (a) **Availability.** Loans shall be made available to all Participants on a reasonably equivalent basis.

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- (b) Interest Rate. Loans must be adequately secured and bear a reasonable interest rate.
- (c) Loan Limit. No Participant loan shall exceed the present value of the Participant's Account.
- (d) Foreclosure. In the event of default on any installment payment, the outstanding balance of the loan shall be a deemed distribution. In such event, an actual distribution of a plan loan offset amount will not occur until a distributable event occurs in the Plan.
- (e) Reduction of Account. Notwithstanding any other provision of this Plan, the portion of the Participant's Account balance used as a security interest held by the Plan by reason of a loan outstanding to the Participant shall be taken into account for purposes of determining the amount of the Account balance payable at the time of death or distribution, but only if the reduction is used as repayment of the loan.
- (f) Amount of Loan. At the time the loan is made, the principal amount of the loan plus the outstanding balance (principal plus accrued interest) due on any other outstanding loans to the Participant from the Plan and from all other plans of the Employer that are either eligible deferred compensation plans described in section 457(b) of the Code or qualified employer plans under Section 72(p)(4) of the Code shall not exceed the lesser of:
  - (1) \$50,000, reduced by the excess (if any) of
    - (a) The highest outstanding balance of loans from the Plan during the one (1) year period ending on the day before the date on which the loan is made, over
    - (b) The outstanding balance of loans from the Plan on the date on which such loan is made; or
  - (2) One-half of the value of the Participant's interest in all of his or her Accounts under this Plan.

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- (g) Application for Loan. The Participant must give the Employer adequate written notice, as determined by the Employer, of the amount and desired time for receiving a loan. No more than one (1) loan may be made by the Plan to a Participant's in any calendar year. No loan shall be approved if an existing loan from the Plan to the Participant is in default to any extent.
- (h) Length of Loan. Any loan issued shall require the Participant to repay the loan in substantially equal installments of principal and interest, at least monthly, over a period that does not exceed five (5) years from the date of the loan; provided, however, that if the proceeds of the loan are applied by the Participant to acquire any dwelling unit that is to be used within a reasonable time (determined at the time of the loan is made) after the loan is made as the principal residence of the Participant, the five (5) year limit shall not apply. In this event, the period of repayment shall not exceed a reasonable period determined by the Employer. Principal installments and interest payments otherwise due may be suspended for up to one (1) year during an authorized leave of absence, if the promissory note so provides, but not beyond the original term permitted under this subsection (h), with a revised payment schedule (within such term) instituted at the end of such period of suspension.
- (i) Prepayment. The Participant shall be permitted to repay the loan in whole or in part at any time prior to maturity, without penalty.
- (j) Promissory Note. The loan shall be evidenced by a promissory note executed by the Participant and delivered to the Employer, and shall bear interest at a reasonable rate determined by the Employer.
- (k) Security. The loan shall be secured by an assignment of the participant's right, title and interest in and to his or her Account.
- (l) Assignment or Pledge. For the purposes of paragraphs (f) and (g), assignment or pledge of any portion of the Participant's interest in the Plan and a loan, pledge, or assignment with respect to any insurance contract purchased under the Plan, will be treated as a loan.
- (m) Other Terms and Conditions. The Employer shall fix such other terms and conditions of the loan as it deems necessary to comply with legal requirements, to maintain the qualification of the Plan and Trust under Section 457 of the Code, or to prevent the treatment of the loan for tax purposes as a distribution to the Participant.

The Employer, in its discretion for any reason, may also fix other terms and conditions of the loan, including, but not limited to, the provision of grace periods following an event of default, not inconsistent with the provisions of this Article and Section 72(p) of the Code, and any applicable regulations thereunder.

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### 8.03 Participant Loan Accounts:

- (a) Upon approval of a loan to a Participant by the Employer, an amount not in excess of the loan shall be transferred from the Participant's other investment fund(s), described in Section 6.05 of the Plan, to the Participant's Loan Account as of the Accounting Date immediately preceding the agreed upon date on which the loan is to be made.
- (b) The assets of a Participant's Loan Account may be invested and reinvested only in promissory notes received by the Plan from the Participant as consideration for a loan permitted by Section 8.01 of the Plan or in cash. Uninvested cash balances in a Participant's Loan Account shall not bear interest. Neither the Employer, the Administrator, nor any other person shall be liable for any loss, or by reason of any breach, that results from the Participant's exercise of such control.
- (c) Repayment of principal and payment of interest shall be made by payroll deduction or, where repayment cannot be made by payroll deduction, by check, and shall be invested in one (1) or more other investment funds, in accordance with Section 6.05 of the Plan, as of the next Accounting Date after payment thereof to the Trust. The amount so invested shall be deducted from the Participant's Loan Account.
- (d) The Employer shall have the authority to establish other reasonable rules, not inconsistent with the provisions of the Plan, governing the establishment and maintenance of Participant Loan Accounts.

### Article IX. Deemed IRAs

9.01 **General:** This Article IX of the Plan reflects section 602 of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), as amended by the Job Creation and Worker Assistance Act of 2002. This Article is intended as good faith compliance with the requirements of EGTRRA and is to be construed in accordance with EGTRRA and guidance issued thereunder. This Article IX shall supercede the provisions of the Plan to the extent that those provisions are inconsistent with the provisions of this Article IX.

Effective for Plan Years beginning after December 31, 2002, the Employer may elect to allow Employees to make voluntary employee contributions to a separate account or annuity established under the Plan that complies with the requirements of Section 408(q) of the Code and any regulations promulgated thereunder (a "Deemed IRA"). The Plan shall establish a separate account for the designated Deemed IRA contributions of each Employee and any earnings properly allocable to the contributions, and maintain separate recordkeeping with respect to each such Deemed IRA.

9.02 **Voluntary Employee Contributions:** For purposes of this Article, a voluntary employee contribution means any contribution (other than a mandatory contribution within the meaning of Section 411(c)(2) of the Code) that is made by the Employee and which the

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Employee has designated, at or prior to the time of making the contribution, as a contribution to which this Article applies.

**9.03 Deemed IRA Trust Requirements:** This Article shall satisfy the trust requirement under Section 408(q) of the Code and the regulations thereto. IRAs established pursuant to this Article shall be held in one or more trusts or custodial accounts (the "Deemed IRA Trusts"), which shall be separate from the Trust established under the Plan to hold contributions other than Deemed IRA contributions. The Deemed IRA Trusts shall satisfy the applicable requirements of Sections 408 and 408A of the Code, which requirements are set forth in section 9.05 and 9.06, respectively, and shall be established with a trustee or custodian meeting the requirements of Section 408(a)(2) of the Code ("Deemed IRA Trustee"). To the extent that the assets of any Deemed IRAs established pursuant to this Article are held in a Deemed IRA Trust satisfying the requirements of this Section 9.03, such Deemed IRA Trust, and any amendments thereto, is hereby adopted as a trust maintained under this Plan with respect to the assets held therein, and the provisions of such Deemed IRA Trust shall control so long as any assets of any Deemed IRA are held thereunder.

**9.04 Reporting Duties:** The Deemed IRA Trustee shall be subject to the reporting requirements of Section 408(i) of the Code with respect to all Deemed IRAs that are established and maintained under the Plan.

**9.05 Deemed Traditional IRA Requirements:** Deemed IRAs established in the form of traditional IRAs shall satisfy the following requirements:

(a) Exclusive Benefit. The Deemed IRA account shall be established for the exclusive benefit of an Employee or his or her Beneficiaries.

(b) Maximum Annual Contributions.

(1) Except in the case of a rollover contribution (as permitted by Sections 402(c), 402(e)(6), 403(a)(4), 403(b)(8), 403(b)(10), 408(d)(3) and 457(e)(16) of the Code), no contributions will be accepted unless they are in cash, and the total of such contributions shall not exceed:

\$3,000 for any taxable year beginning in 2002 through 2004;  
\$4,000 for any taxable year beginning in 2005 through 2007; and  
\$5,000 for any taxable year beginning in 2008 and years thereafter.

After 2008, the limit will be adjusted by the Secretary of the Treasury for cost-of-living increases under Section 219(b)(5)(C) of the Code. Such adjustments will be in multiples of \$500.

(2) In the case of an Employee who is 50 or older, the annual cash contribution limit is increased by:

\$500 for any taxable year beginning in 2002 through 2005; and  
\$1,000 for any taxable year beginning in 2006 and years thereafter.

(3) No contributions will be accepted under a SIMPLE IRA plan established by any employer pursuant to Section 408(p) of the Code. Also, no transfer or

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rollover of funds attributable to contributions made by a particular employer under its SIMPLE IRA plan will be accepted from a SIMPLE IRA, that is, an IRA used in conjunction with a SIMPLE IRA plan, prior to the expiration of the 2-year period beginning on the date the Employee first participated in that employer's SIMPLE IRA plan.

(c) Collectibles. If the Deemed IRA Trust acquires collectibles within the meaning of Section 408(m) of the Code after December 31, 1981, Deemed IRA Trust assets will be treated as a distribution in an amount equal to the cost of such collectibles.

(d) Life Insurance Contracts. No part of the Deemed IRA Trust funds will be invested in life insurance contracts.

(e) Minimum Required Distributions.

(1) Notwithstanding any provision of this Deemed IRA to the contrary, the distribution of the Employee's interest in the account shall be made in accordance with the requirements of Section 408(a)(6) of the Code and the regulations thereunder, the provisions of which are herein incorporated by reference. If distributions are made from an annuity contract purchased from an insurance company, distributions thereunder must satisfy the requirements of Q&A-4 of section 1.401(a)(9)-6T of the Temporary Income Tax Regulations, rather than paragraphs (2), (3) and (4) below and section 9.05(f). The required minimum distributions calculated for this IRA may be withdrawn from another IRA of the Employee in accordance with Q&A-9 of section 1.408-8 of the Income Tax Regulations.

(2) The entire value of the account of the Employee for whose benefit the account is maintained will commence to be distributed no later than the first day of April following the calendar year in which such Employee attains age 70-1/2 (the "required beginning date") over the life of such Employee or the lives of such Employee and his or her Beneficiary.

(3) The amount to be distributed each year, beginning with the calendar year in which the Employee attains age 70-1/2 and continuing through the year of death, shall not be less than the quotient obtained by dividing the value of the IRA (as determined under section 9.05(f)(3)) as of the end of the preceding year by the distribution period in the Uniform Lifetime Table in Q&A-2 of section 1.401(a)(9)-9 of the Income Tax Regulations, using the Employee's age as of his or her birthday in the year. However, if the Employee's sole Beneficiary is his or her surviving spouse and such spouse is more than 10 years younger than the Employee, then the distribution period is determined under the Joint and Last Survivor Table in Q&A-3 of section 1.401(a)(9)-9 of the Income Tax Regulations, using the ages as of the Employee's and spouse's birthdays in the year.

(4) The required minimum distribution for the year the Employee attains age 70-1/2 can be made as late as April 1 of the following year.

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The required minimum distribution for any other year must be made by the end of such year.

(f) Distribution Upon Death.

(1) Death On or After Required Beginning Date. If the Employee dies on or after the required beginning date, the remaining portion of his or her interest will be distributed at least as rapidly as follows:

(A) If the Beneficiary is someone other than the Employee's surviving spouse, the remaining interest will be distributed over the remaining life expectancy of the Beneficiary, with such life expectancy determined using the Beneficiary's age as of his or her birthday in the year following the year of the Employee's death, or over the period described in paragraph (1)(C) below if longer.

(B) If the Employee's sole Beneficiary is the Employee's surviving spouse, the remaining interest will be distributed over such spouse's life or over the period described in paragraph (1)(C) below if longer. Any interest remaining after such spouse's death will be distributed over such spouse's remaining life expectancy determined using the spouse's age as of his or her birthday in the year of the spouse's death, or, if the distributions are being made over the period described in paragraph (1)(C) below, over such period.

(C) If there is no Beneficiary, or if applicable by operation of paragraph (1)(A) or (1)(B) above, the remaining interest will be distributed over the Employee's remaining life expectancy determined in the year of the Employee's death.

(D) The amount to be distributed each year under paragraph (1)(A), (B) or (C), beginning with the calendar year following the calendar year of the Employee's death, is the quotient obtained by dividing the value of the IRA as of the end of the preceding year by the remaining life expectancy specified in such paragraph. Life expectancy is determined using the Single Life Table in Q&A-1 of section 1.401(a)(9)-9 of the Income Single Life Tax Regulations.

If distributions are being made to a surviving spouse as the sole Beneficiary, such spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to such spouse's age in the year. In all other cases, remaining life expectancy for a year is the number in the Single Life Table corresponding to the Beneficiary's or Employee's age in the year specified in paragraph (1)(A), (B) or (C) and reduced by 1 for each subsequent year.

(2) Death Before Required Beginning Date. If the Employee dies before the required beginning date, his or her entire interest will be distributed at least as rapidly as follows:

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(A) If the Beneficiary is someone other than the Employee's surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the Employee's death, over the remaining life expectancy of the Beneficiary, with such life expectancy determined using the age of the Beneficiary as of his or her birthday in the year following the year of the Employee's death, or, if elected, in accordance with paragraph (2)(C) below.

(B) If the Employee's sole Beneficiary is the Employee's surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the Employee's death (or by the end of the calendar year in which the Employee would have attained age 70-1/2, if later), over such spouse's life, or, if elected, in accordance with paragraph (2)(C) below. If the surviving spouse dies before distributions are required to begin, the remaining interest will be distributed, starting by the end of the calendar year following the calendar year of the spouse's death, over the spouse's Beneficiary's remaining life expectancy determined using such Beneficiary's age as of his or her birthday in the year following the death of the spouse, or, if elected, will be distributed in accordance with paragraph (2)(C) below. If the surviving spouse dies after distributions are required to begin, any remaining interest will be distributed over the spouse's remaining life expectancy determined using the spouse's age as of his or her birthday in the year of the spouse's death.

(C) If there is no Beneficiary, or if applicable by operation of paragraph (2)(A) or (2)(B) above, the entire interest will be distributed by the end of the calendar year containing the fifth anniversary of the Beneficiary's death (or of the spouse's death in the case of the surviving spouse's death before distributions are required to begin under paragraph (2)(B) above).

(D) The amount to be distributed each year under paragraph (2)(A) or (B) is the quotient obtained by dividing the value of the IRA as of the end of the preceding year by the remaining life expectancy specified in such paragraph. Life expectancy is determined using the Single Life Table in Q&A-1 of section 1.401(a)(9)-9 of the Income Tax Regulations. If distributions are being made to a surviving spouse as the sole Beneficiary, such spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to the Beneficiary's age in the year specified in paragraph (2)(A) or (B) and reduced by 1 for each subsequent year.

(E) The "value" of the IRA includes the amount of any outstanding rollover, transfer and recharacterization under Q&As-7 and -8 of section 1.408-8 of the Income Tax Regulations.

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(F) If the sole Beneficiary is the Employee's surviving spouse, the spouse may elect to treat the IRA as his or her own IRA. This election will be deemed to have been made if such surviving spouse makes a contribution to the IRA or fails to take required distributions as a Beneficiary.

(g) Nonforfeitable. The interest of an Employee in the balance in his or her Deemed IRA account is nonforfeitable at all times.

(h) Reporting. The Deemed IRA Trustee of a Deemed Traditional IRA shall furnish annual calendar-year reports concerning the status of the Deemed IRA account and such information concerning required minimum distributions as is prescribed by the Commissioner of Internal Revenue.

(i) Substitution of Deemed IRA Trustee. If the Deemed IRA Trustee is a non-bank trustee or custodian, the non-bank trustee or custodian shall substitute another trustee or custodian if the non-bank trustee or custodian receives notice from the Commissioner of Internal Revenue that such substitution is required because it has failed to comply with the requirements of section 1.408-2(e) of the Income Tax Regulations.

9.06 **Deemed Roth IRA Requirements:** Deemed IRAs established in the form of Roth IRAs shall satisfy the following requirements:

(a) Exclusive Benefit. The Deemed Roth IRA shall be established for the exclusive benefit of an Employee or his or her Beneficiaries.

(b) Maximum Annual Contributions.

(1) Maximum Permissible Amount. Except in the case of a qualified rollover contribution or a recharacterization (as defined in (6) below), no contribution will be accepted unless it is in cash and the total of such contributions to all the Employee's Roth IRAs for a taxable year does not exceed the applicable amount (as defined in (2) below), or the Employee's compensation (as defined in (8) below), if less, for that taxable year. The contribution described in the previous sentence that may not exceed the lesser of the applicable amount or the Employee's compensation is referred to as a "regular contribution." A "qualified rollover contribution" is a rollover contribution that meets the requirements of section 408(d)(3) of the Code, except the one-rollover-per-year rule of section 408(d)(3)(B) does not apply if the rollover contribution is from an IRA other than a Roth IRA (a "nonRoth IRA"). Contributions may be limited under (3) through (5) below.

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(2) Applicable Amount. The applicable amount is determined under (A) or (B) below:

(A) If the Employee is under age 50, the applicable amount is --

\$3,000 for any taxable year beginning in 2002 through 2004,  
\$4,000 for any taxable year beginning in 2005 through 2007 and  
\$5,000 for any taxable year beginning in 2008 and years thereafter.

(B) If the Employee is 50 or older, the applicable amount is --

\$3,500 for any taxable year beginning in 2002 through 2004,  
\$4,500 for any taxable year beginning in 2005, \$5,000 for any  
taxable year beginning in 2006 through 2007 and \$6,000 for any  
taxable year beginning in 2008 and years thereafter.

After 2008, the limits in paragraph (2)(A) and (B) above will be adjusted by the Secretary of the Treasury for cost-of-living increases under Section 219(b)(5)(C) of the Code. Such adjustments will be in multiples of \$500.

(3) Regular Contribution Limit. If (A) and/or (B) below apply, the maximum regular contribution that can be made to all the Employee's Roth IRAs for a taxable year is the smaller amount determined under (A) or (B).

(A) The maximum regular contribution is phased out ratably between certain levels of modified adjusted gross income ("modified AGI," defined in (7) below) in accordance with the following table:

Filing Status	Full Contribution	Phase-out Range	No Contribution
		Modified AGI	
Single or Head of Household	\$95,000 or less	Between \$95,000 and \$110,000	\$110,000 or more
Joint Return or Qualifying Widower	\$150,000 or less	Between \$150,000 and \$160,000	\$160,000 or more
Married- Separate Return	\$0	Between \$0 and \$10,000	\$10,000 or more

If the Employee's modified AGI for a taxable year is in the phase-out range, the maximum regular contribution determined under this table for that taxable year is rounded up to the next multiple of \$10 and is not reduced below \$200.

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(B) If the Employee makes regular contributions to both Roth and nonRoth IRAs for a taxable year, the maximum regular contribution that can be made to all the Employee's Roth IRAs for that taxable year is reduced by the regular contributions made to the Employee's nonRoth IRAs for the taxable year.

(4) Qualified Rollover Contribution Limit. A rollover from a nonRoth IRA cannot be made to this IRA if, for the year the amount is distributed from the nonRoth IRA, (i) the Employee is married and files a separate return, (ii) the Employee is not married and has modified AGI in excess of \$100,000 or (iii) the Employee is married and together the Employee and the Employee's spouse have modified AGI in excess of \$100,000. For purposes of the preceding sentence, a husband and wife are not treated as married for a taxable year if they have lived apart at all times during that taxable year and file separate returns for the taxable year.

(5) SIMPLE IRA Limits. No contributions will be accepted under a SIMPLE IRA plan established by any employer pursuant to Section 408(p) of the Code. Also, no transfer or rollover of funds attributable to contributions made by a particular employer under its SIMPLE IRA plan will be accepted from a SIMPLE IRA, that is, an IRA used in conjunction with a SIMPLE IRA plan, prior to the expiration of the 2-year period beginning on the date the Employee first participated in that employer's SIMPLE IRA plan.

(6) Recharacterization. A regular contribution to a nonRoth IRA may be recharacterized pursuant to the rules in section 1.408A-5 of the Income Tax Regulations as a regular contribution to this IRA, subject to the limits in (3) above.

(7) Modified AGI. For purposes of (3) and (4) above, an Employee's modified AGI for a taxable year is defined in Section 408A(c)(3)(C)(i) of the Code and does not include any amount included in adjusted gross income as a result of a rollover from a nonRoth IRA (a "conversion").

(8) Compensation. For purposes of (1) above, compensation is defined as wages, salaries, professional fees, or other amounts derived from or received for personal services actually rendered (including, but not limited to commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, and bonuses) and includes earned income, as defined in Section 401(c)(2) of the Code (reduced by the deduction the self-employed individual takes for contributions made to a self-employed retirement plan). For purposes of this definition, Section 401(c)(2) of the Code shall be applied as if the term trade or business for purposes of section 1402 included service described in subsection (c)(6). Compensation does not include amounts derived from or received as earnings or profits from property (including but not limited to interest and dividends) or amounts not includible in gross income. Compensation also does not include any amount received as a pension or annuity or as deferred compensation. The term "compensation" shall

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include any amount includible in the Employee's gross income under Section 71 of the Code with respect to a divorce or separation instrument described in subparagraph (A) of Section 71(b)(2) of the Code. In the case of a married Employee filing a joint return, the greater compensation of his or her spouse is treated as his or her own compensation, but only to the extent that such spouse's compensation is not being used for purposes of the spouse making a contribution to a Roth IRA or a deductible contribution to a nonRoth IRA.

(c) Collectibles. If the Deemed IRA Trust acquires collectibles within the meaning of Section 408(m) of the Code after December 31, 1981, Deemed IRA Trust assets will be treated as a distribution in an amount equal to the cost of such collectibles.

(d) Life Insurance Contracts. No part of the Deemed IRA Trust funds will be invested in life insurance contracts.

(e) Distributions Before Death. No amount is required to be distributed prior to the death of the Employee for whose benefit the account was originally established.

(f) Minimum Required Distributions.

(1) Notwithstanding any provision of this IRA to the contrary, the distribution of the Employee's interest in the account shall be made in accordance with the requirements of Section 408(a)(6) of the Code, as modified by section 408A(c)(5), and the regulations thereunder, the provisions of which are herein incorporated by reference. If distributions are made from an annuity contract purchased from an insurance company, distributions thereunder must satisfy the requirements of section 1.401(a)(9)-6T of the Temporary Income Tax Regulations (taking into account Section 408A(c)(5) of the Code), rather than the distribution rules in paragraphs (2), (3) and (4) below.

(2) Upon the death of the Employee, his or her entire interest will be distributed at least as rapidly as follows:

(A) If the Beneficiary is someone other than the Employee's surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the Employee's death, over the remaining life expectancy of the Beneficiary, with such life expectancy determined using the age of the beneficiary as of his or her birthday in the year following the year of the Employee's death, or, if elected, in accordance with paragraph (2)(C) below.

(B) If the Employee's sole Beneficiary is the Employee's surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the Employee's death (or by the end of the calendar year in which the Employee would have attained age 70-1/2, if later), over such spouse's life, or, if elected, in accordance with paragraph (2)(C)

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below. If the surviving spouse dies before distributions are required to begin, the remaining interest will be distributed, starting by the end of the calendar year following the calendar year of the spouse's death, over the spouse's Beneficiary's remaining life expectancy determined using such Beneficiary's age as of his or her birthday in the year following the death of the spouse, or, if elected, will be distributed in accordance with paragraph (2)(C) below. If the surviving spouse dies after distributions are required to begin, any remaining interest will be distributed over the spouse's remaining life expectancy determined using the spouse's age as of his or her birthday in the year of the spouse's death.

(C) If there is no Beneficiary, or if applicable by operation of paragraph (2)(A) or (2)(B) above, the entire interest will be distributed by the end of the calendar year containing the fifth anniversary of the Employee's death (or of the spouse's death in the case of the surviving spouse's death before distributions are required to begin under paragraph (2)(B) above).

(D) The amount to be distributed each year under paragraph (2)(A) or (B) is the quotient obtained by dividing the value of the IRA as of the end of the preceding year by the remaining life expectancy specified in such paragraph. Life expectancy is determined using the Single Life Table in Q&A-1 of section 1.401(a)(9)-9 of the Income Tax Regulations. If distributions are being made to a surviving spouse as the sole Beneficiary, such spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to such spouse's age in the year. In all other cases, remaining life expectancy for a year is the number in the Single Life Table corresponding to the Beneficiary's age in the year specified in paragraph (2)(A) or (B) and reduced by 1 for each subsequent year.

(3) The "value" of the IRA includes the amount of any outstanding rollover, transfer and recharacterization under Q&As-7 and -8 of section 1.408-8 of the Income Tax Regulations.

(4) If the sole Beneficiary is the Employee's surviving spouse, the spouse may elect to treat the IRA as his or her own IRA. This election will be deemed to have been made if such surviving spouse makes a contribution to the IRA or fails to take required distributions as a Beneficiary.

(g) Nonforfeitable. The interest of an Employee in the balance in his or her account is nonforfeitable at all times.

(h) Reporting. The Deemed IRA Trustee of a Deemed Roth IRA shall furnish annual calendar-year reports concerning the status of the Deemed IRA account and such information concerning required minimum distributions as is prescribed by the Commissioner of Internal Revenue.

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(i) Substitution of Deemed IRA Trustee. If the Deemed IRA Trustee is a non-bank trustee or custodian, the non-bank trustee or custodian shall substitute another trustee or custodian if the non-bank trustee or custodian receives notice from the Commissioner of Internal Revenue that such substitution is required because it has failed to comply with the requirements of section 1.408-2(e) of the Income Tax Regulations.

### Article X. Non-Assignability

10.01 **General:** Except as provided in Article VIII and Section 10.02, no Participant or Beneficiary shall have any right to commute, sell, assign, pledge, transfer or otherwise convey or encumber the right to receive any payments hereunder, which payments and rights are expressly declared to be non-assignable and non-transferable.

#### 10.02 Domestic Relations Orders:

- (a) **Allowance of Transfers:** To the extent required under a final judgment, decree, or order (including approval of a property settlement agreement) that (i) relates to the provision of child support, alimony payments, or marital property rights and (ii) is made pursuant to a state domestic relations law, and (iii) is permitted under Sections 414(p)(11) and (12) of the Code, any portion of a Participant's Account may be paid or set aside for payment to a spouse, former spouse, child, or other dependent of the Participant (an "Alternate Payee"). Where necessary to carry out the terms of such an order, a separate Account shall be established with respect to the Alternate Payee who shall be entitled to make investment selections with respect thereto in the same manner as the Participant. Any amount so set aside for an Alternate Payee shall be paid in accordance with the form and timing of payment specified in the order. Nothing in this Section shall be construed to authorize any amount to be distributed under the Plan at a time or in a form that is not permitted under Section 457(b) of the Code and is explicitly permitted under the uniform procedures described in Section 10.2(d) below. Any payment made to a person pursuant to this Section shall be reduced by any required income tax withholding.
- (b) **Release from Liability to Participant:** The Employer's liability to pay benefits to a Participant shall be reduced to the extent that amounts have been paid or set aside for payment to an Alternate Payee to paragraph (a) of this Section and the Participant and his or her Beneficiaries shall be deemed to have released the Employer and the Plan Administrator from any claim with respect to such amounts.
- (c) **Participation in Legal Proceedings:** The Employer and Administrator shall not be obligated to defend against or set aside any judgement, decree, or order described in paragraph (a) or any legal order relating to the garnishment of a Participant's benefits, unless the full expense of such legal action is borne by the Participant. In the event that the Participant's action (or inaction) nonetheless causes the Employer or Administrator to incur such expense, the amount of the expense may be charged against the Participant's Account and thereby reduce the Employer's obligation to pay benefits to the Participant. In the course of any

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proceeding relating to divorce, separation, or child support, the Employer and Administrator shall be authorized to disclose information relating to the Participant's Account to the Alternate Payee (including the legal representatives of the Alternate Payee), or to a court.

- (d) **Determination of Validity of Domestic Relations Orders:** The Administrator shall establish uniform procedures for determining the validity of any domestic relations order. The Administrator's determinations under such procedures shall be conclusive and binding on all parties and shall be afforded the maximum amount of deference permitted by law.

### Article XI. Relationship to other Plans and Employment Agreements

This Plan serves in addition to any other retirement, pension, or benefit plan or system presently in existence or hereinafter established for the benefit of the Employer's employees, and participation hereunder shall not affect benefits receivable under any such plan or system. Nothing contained in this Plan shall be deemed to constitute an employment contract or agreement between any Participant and the Employer or to give any Participant the right to be retained in the employ of the Employer. Nor shall anything herein be construed to modify the terms of any employment contract or agreement between a Participant and the Employer.

### Article XII. Amendment or Termination of Plan

The Employer may at any time amend this Plan provided that it transmits such amendment in writing to the Administrator at least 30 days prior to the effective date of the amendment. The consent of the Administrator shall not be required in order for such amendment to become effective, but the Administrator shall be under no obligation to continue acting as Administrator hereunder if it disapproves of such amendment.

The Administrator may at any time propose an amendment to the Plan by an instrument in writing transmitted to the Employer at least 30 days before the effective date of the amendment. Such amendment shall become effective unless, within such 30-day period, the Employer notifies the Administrator in writing that it disapproves such amendment, in which case such amendment shall not become effective. In the event of such disapproval, the Administrator shall be under no obligation to continue acting as Administrator hereunder.

The Employer may at any time terminate this Plan. In the event of termination, assets of the Plan shall be distributed to Participants and Beneficiaries as soon as administratively practicable following termination of the Plan. Alternatively, assets of the Plan may be transferred to an eligible deferred compensation plan maintained by another eligible governmental employer within the same State if (i) all assets held by the Plan (other than Deemed IRAs) are transferred; (ii) the receiving plan provides for the receipt of transfers; (iii) the Participants and Beneficiaries whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer; and (iv) the Participants or Beneficiaries whose deferred amounts are being transferred is not eligible for additional annual deferrals in the Plan unless the Participants or Beneficiaries are performing services for the employer maintaining the receiving plan.

## **457 Plan and Trust Document**

Except as may be required to maintain the status of the Plan as an eligible deferred compensation plan under Section 457(b) of the Code or to comply with other applicable laws, no amendment or termination of the Plan shall divest any Participant of any rights with respect to compensation deferred before the date of the amendment or termination.

### **Article XIII. Applicable Law**

This Plan and Trust shall be construed under the laws of the state where the Employer is located and is established with the intent that it meet the requirements of an "eligible deferred compensation plan" under Section 457(b) of the Code, as amended. The provisions of this Plan and Trust shall be interpreted wherever possible in conformity with the requirements of that Section of the Code.

In addition, notwithstanding any provision of the Plan to the contrary, the Plan shall be administered in compliance with the requirements of Section 414(u) of the Code.

### **Article XIV. Gender and Number**

The masculine pronoun, whenever used herein, shall include the feminine pronoun, and the singular shall include the plural, except where the context requires otherwise.

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IN WITNESS WHEREOF, the Employer has caused this instrument to be executed on this \_\_\_\_ day of \_\_\_\_\_, 2004, to be effective \_\_\_\_\_, 2004.

**EMPLOYER:**

TOWN OF ADDISON, TEXAS

By: \_\_\_\_\_

## Appendix B

### 457 Plan and Trust Document

# DECLARATION OF TRUST

This Declaration of Trust (the "Group Trust Agreement") is made as of the 19th day of May, 2001, by Vantage Trust Company, which declares itself to be the sole Trustee of the trust hereby created.

WHEREAS, the ICMA Retirement Trust was created as a vehicle for the commingling of the assets of governmental plans and governmental units described in Section 818(a)(6) of the Internal Revenue Code of 1986, as amended, pursuant to a Declaration of Trust dated October 4, 1982, as subsequently amended, a copy of which is attached hereto and incorporated by reference as set out below (the "ICMA Declaration"); and

WHEREAS, the trust created hereunder (the "Group Trust") is intended to meet the requirements of Revenue Ruling 81-100, 1981-1 C.B. 326, and is established as a common trust fund within the meaning of Section 391:1 of Title 35 of the New Hampshire Revised Statutes Annotated, to accept and hold for investment purposes the assets of the Deferred Compensation and Qualified Plans held by and through the ICMA Retirement Trust.

NOW, THEREFORE, the Group Trust is created by the execution of this Declaration of Trust by the Trustee and is established with respect to each Deferred Compensation and Qualified Plan by the transfer to the Trustee of such Plan's assets in the ICMA Retirement Trust, by the Trustees thereof, in accord with the following provisions:

1. Incorporation of ICMA Declaration by Reference; ICMA By-Laws. Except as otherwise provided in this Group Trust Agreement, and to the extent not inconsistent herewith, all provisions of the ICMA Declaration are incorporated herein by reference and made a part hereof, to be read by substituting the Group Trust for the Retirement Trust and the Trustee for the Board of Trustees referenced therein. In this respect, unless the context clearly indicates otherwise, all capitalized terms used herein and defined in the ICMA Declaration have the meanings assigned to them in the ICMA Declaration. In addition, the By-Laws of the ICMA Retirement Trust, as the same may be amended from time-to-time, are adopted as the By-Laws of the Group Trust to the extent not inconsistent with the terms of this Group Trust Agreement.

Notwithstanding the foregoing, the terms of the ICMA Declaration and By-Laws are further modified with respect to the Group Trust created hereunder, as follows:

- (a) any reporting, distribution, or other obligation of the Group Trust vis-à-vis any Deferred Compensation Plan, Qualified Plan, Public Employer, Public Employer Trustee, or Employer Trust shall be deemed satisfied to the extent that such obligation is undertaken by

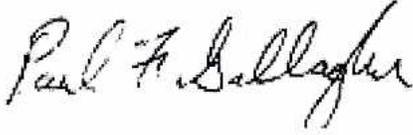
## 457 Plan and Trust Document

- (b) the ICMA Retirement Trust (in which case the obligation of the Group Trust shall run to the ICMA Retirement Trust); and
  - (b) all provisions dealing with the number, qualification, election, term and nomination of Trustees shall not apply, and all other provisions relating to trustees (including, but not limited to, resignation and removal) shall be interpreted in a manner consistent with the appointment of a single corporate trustee.
- 2. Compliance with Revenue Procedure 81-100. The requirements of Revenue Procedure 81-100 are applicable to the Group Trust as follows:
  - (a) Pursuant to the terms of this Group Trust Agreement and Article X of the By-Laws, investment in the Group Trust is limited to assets of Deferred Compensation and Qualified Plans, investing through the ICMA Retirement Trust.
  - (b) Pursuant to the By-Laws, the Group Trust is adopted as a part of each Qualified Plan that invests herein through the ICMA Retirement Trust.
  - (c) In accord with the By-Laws, that part of the Group Trust's corpus or income which equitably belongs to any Deferred Compensation and Qualified Plan may not be used for or diverted to any purposes other than for the exclusive benefit of the Plan's employees or their beneficiaries who are entitled to benefits under such Plan.
  - (d) In accord with the By-Laws, no Deferred Compensation Plan or Qualified Plan may assign any or part of its equity or interest in the Group Trust, and any purported assignment of such equity or interest shall be void.
- 3. **Governing Law.** Except as otherwise required by federal, state or local law, this Declaration of Trust (including the ICMA Declaration to the extent incorporated herein) and the Group Trust created hereunder shall be construed and determined in accordance with applicable laws of the State of New Hampshire.
- 4. **Judicial Proceedings.** The Trustee may at any time initiate an action or proceeding in the appropriate state or federal courts within or outside the state of New Hampshire for the settlement of its accounts or for the determination of any question of construction which may arise or for instructions.

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IN WITNESS WHEREOF, the Trustee has executed this Declaration of Trust as of the day and year first above written.

VANTAGETRUST COMPANY

A handwritten signature in cursive script that reads "Paul F. Gallagher".

By: \_\_\_\_\_

Name: Paul F. Gallagher

Title: Assistant Secretary

**Appendix C**  
**ADMINISTRATIVE SERVICES AGREEMENT**

Type: 457

Account Number: 305687

## **ADMINISTRATIVE SERVICES AGREEMENT**

This Agreement, made as of the 11<sup>th</sup> day of May, 2004 (herein referred to as the "Inception Date"), between The International City Management Association Retirement Corporation ("RC"), a nonprofit corporation organized and existing under the laws of the State of Delaware; and the Town of Addison, Texas ("Employer") a town organized and existing under the laws of the State of Texas with an office at 16801 West Grove, Addison, TX, 75001.

### **RECITALS**

Employer acts as a public plan sponsor for a retirement plan ("Plan") with responsibility to obtain investment alternatives and services for employees participating in that Plan;

VantageTrust (the "Trust") is a common law trust governed by an elected Board of Trustees for the commingled investment of retirement funds held by state and local governmental units for their employees;

RC acts as investment adviser to the Trust; RC has designed, and the Trust offers, a series of separate funds (the "Funds") for the investment of plan assets as referenced in the Trust's principal disclosure document, "Making Sound Investment Decisions: A Retirement Investment Guide." The Funds are available only to public employers and only through the Trust and RC.

In addition to serving as investment adviser to the Trust, RC provides a complete offering of services to public employers for the operation of employee retirement plans including, but not limited to, communications concerning investment alternatives, account maintenance, account record-keeping, investment and tax reporting, form processing, benefit disbursement and asset management.

### **AGREEMENTS**

1. Appointment of RC

Employer hereby designates RC as Administrator of the Plan to perform all non-discretionary functions necessary for the administration of the Plan with respect to assets in the Plan deposited with the Trust. The functions to be performed by RC include:

- (a) allocation on a daily basis in accordance with participant direction of individual accounts to investment Funds offered by the Trust;
- (b) maintenance of daily valued individual accounts for participants reflecting amounts deferred, income, gain, or loss credited, and amounts disbursed as benefits for funds in RC's Mutual Fund Alliance that are offered by the Employer to Plan participants;

- (c) provision of periodic reports to the Employer and participants (through mailing to home addresses supplied by the Employer) of the status of Plan investments and individual accounts;
- (d) communication to participants of information regarding their rights and elections under the Plan;
- (e) provision of a Certified Financial Planner available on-site for one full week during the first year of the Agreement, and a minimum of two days in each subsequent year, to be used at the discretion of the Employer; and
- (f) disbursement of benefits as payor in accordance with terms of the Plan, and satisfaction of federal income tax withholding obligations as payor;
- (g) provision, through EZLink, of capability to generate a report listing participants whose elective deferral amounts approach or exceed the annual deferral limit;
- (h) access to RC's website for participant and employer inquiries and investment and election changes and transfers, and withdrawal and distribution requests;
- (i) access to RC's voice response system 24 hours per day, 7 days per week, with live service representatives available during business hours;
- (j) maintenance of Plan documents;
- (k) participant education services provided on-site at least one day per quarter;
- (l) tracking of age 70 ½ distribution requirements with participant notification and initiation of benefit payments;
- (m) preparation of participant tax forms (1099R);
- (n) transition services, including weekly conversion status update calls/conferences, communication with prior recordkeeper/trustee, transfer of assets to RC, fund mapping services as described in Appendix C-2, on-site participant meetings (5 to 10 sessions prior to the transfer of funds with RC paying all travel costs for its employees), employee communication materials and reconciliation of records to facilitate the conversion;
- (o) review of domestic relations orders and procedures to determine the qualified status of proposed or final orders;
- (p) processing of emergency hardship withdrawals;
- (q) loan processing services at the following costs: i. loan initiation, refinancing or

amortization -- \$50.00; and ii. Annual loan maintenance -- \$35.00; and

- (r) making available on-line participant investment advice service through RC's arrangement with Morningstar.

2. Adoption of Trust

Employer has adopted the Declaration of Trust of VantageTrust and agrees to the commingled investment of assets of the Plan within the Trust. Employer agrees that operation of the Plan and investment, management and disbursement of amounts deposited in the Trust shall be subject to the Declaration of Trust, as it may be amended from time to time and shall also be subject to terms and conditions set forth in disclosure documents (such as the Retirement Investment Guide or Employer Bulletins) as those terms and conditions may be adjusted from time to time. It is understood that the term "Employer Trust" as it is used in the Declaration of Trust shall mean this Administrative Services Agreement.

3. Exclusivity Agreement

Employer agrees that for the initial or succeeding term of this Agreement specified in Section 10, so long as RC continues to perform in all material respects the services to be performed by it under this Agreement, Employer shall not obtain plan administration and investment advisory services from anyone other than RC. Employer acknowledges that RC has agreed to the compensation to be paid to RC under this Agreement in the expectation that RC will be able to offset costs allocable to performing this Agreement with revenues arising from Employer's exclusive use of RC at the rates provided herein throughout the initial or succeeding term.

4. Employer Duty to Furnish Information

Employer agrees to furnish to RC on a timely basis such information as is necessary for RC to carry out its responsibilities as Administrator of the Plan, including information needed to allocate individual participant accounts to Funds in the Trust, and information as to the employment status of participants, and participant ages, addresses and other identifying information (including tax identification numbers). RC shall be entitled to rely upon the accuracy of any information that is furnished to it by a responsible official of the Employer or any information relating to an individual participant or beneficiary that is furnished by such participant or beneficiary, and RC shall not be responsible for any error arising from its reliance on such information. RC will provide account information in reports, statements or accountings.

5. Certain Representations, Warranties, and Covenants

RC represents and warrants to Employer that:

- (a) RC is a non-profit corporation with full power and authority to enter into this Agreement and to perform its obligations under this Agreement. The ability of RC to

serve as investment adviser to the Trust is dependent upon the continued willingness of the Trust for RC to serve in that capacity.

- (b) RC is an investment adviser registered as such with the Securities and Exchange Commission under the Investment Advisers Act of 1940, as amended. ICMA-RC Services, Inc. (a wholly owned subsidiary of RC) is registered as a broker-dealer with the Securities and Exchange Commission (SEC) and is a member in good standing of the National Association of Securities Dealers, Inc.

RC covenants with employer that:

- (c) RC shall maintain and administer the Plan in compliance with the requirements for eligible deferred compensation plans under Section 457 of the Internal Revenue Code of 1986, as amended (the "Code"); provided, however, RC shall not be responsible for the eligible status of the Plan in the event that the Employer directs RC to administer the Plan or disburse assets in a manner inconsistent with the requirements of Section 457 or otherwise causes the Plan not to be carried out in accordance with its terms; provided, further, that if the plan document used by the Employer contains terms that differ from the terms of RC's standardized plan document, RC shall not be responsible for the eligible status of the Plan to the extent affected by the differing terms in the Employer's plan document.
- (d) RC shall maintain availability of access to alternative computer processing facilities and duplicate copies of such files, records, systems, etc., which are necessary to provide the services hereunder. Such alternate computer processing facilities shall be maintained in a secure location which is separate from the location where original systems, records and facilities are maintained.
- (e) Unless Employer has provided written consent to the contrary, RC shall utilize only its employees (including employees of affiliates) and such third party vendors as may be necessary to perform services hereunder.

Employer represents and warrants to RC that:

- (f) Employer is organized in the form and manner recited in the opening paragraph of this Agreement with full power and authority to enter into and perform its obligations under this Agreement and to act for the Plan and participants in the manner contemplated in this Agreement. Execution, delivery, and performance of this Agreement will not conflict with any law, rule, regulation or contract by which the Employer is bound or to which it is a party.

RC further covenants with the Employer that:

- (g) RC shall maintain insurance during the term of this Agreement for professional liability (including errors and omission coverage) in the amount of at least \$1 million

per occurrence and \$5 million in the aggregate, comprehensive general liability insurance in the amount of at least \$2 million per occurrence, and \$5 million in the aggregate, and fidelity bond coverage in the amount of at least \$5 million per occurrence, and shall submit certificates to Employer evidencing such.

- (h) RC shall maintain records in connection with each service performed and shall retain such records relating to distributions and loans to participants for seven (7) years and all others records for four (4) years after the respective record was produced. Employer or its designated representative, at Employer's expense, may, during the term of this Agreement and up to forty-eight (48) months after the month in which the last services were performed, audit and examine all relevant records of RC in connection with the services provided pursuant to this Agreement.
- (i) RC shall maintain in strictest confidentiality all employee data, including but not limited to the participant names, addresses, Social Security numbers and other personal information.

6. Participation in Certain Proceedings

Unless Employer notifies RC otherwise, Employer consents to the disbursement by RC of benefits that have been garnished or transferred to a former spouse, spouse or child pursuant to a domestic relations order that has been determined to be a "qualified domestic relations order" as defined by Section 414 of the Code.

7. Compensation and Payment

- (a) Plan Administration Fee. The amount to be paid for plan administration services under this Agreement shall be 0.00% per annum of the amount of Plan assets invested in the Trust.
- (b) Account Maintenance Fee. There shall be an annual account maintenance fee of \$0.00.
- (c) Compensation for Management Services to the Trust and Advisory and other Services to the Vantagepoint Funds. Employer acknowledges that in addition to amounts payable under this Agreement, RC receives fees from the Trust for investment management services furnished to the Trust. Employer further acknowledges that certain wholly-owned subsidiaries of RC receive compensation for advisory and other services furnished to the Vantagepoint Funds, which serve as the underlying portfolios of a number of Funds offered through the Trust. The fees referred to in this subsection are disclosed in the Retirement Investment Guide. These fees are not assessed against assets invested in the Trust's Mutual Fund Series.
- (d) Mutual Fund Services Fee. There is an annual charge of 0.00% assessed against average daily net Plan assets invested in the Trust's Mutual Fund Series.

- (e) Investment Advice Service. The annual fee for the on-line investment advice service made available by RC through its arrangement with Morningstar is hereby waived throughout the term of this Agreement.
- (f) Payment Procedures. All payments to RC pursuant to this Section 7 shall be paid out of the Plan assets held by the Trust and shall be paid by the Trust. The amount of Plan assets held in the Trust shall be adjusted by the Trust as required to reflect such payments.
- (g) RC agrees that the fees set forth in this Section 7 shall not be increased throughout the term of this Agreement.
- (h) There will be no charges for postage, telephone, out of pocket expenses, preparation of withdrawal and distribution checks and tax reporting.

8. Custody

Employer understands that amounts invested in the Trust are to be remitted directly to the Trust in accordance with instructions provided to Employer by RC and are not to be remitted to RC. In the event that any check or wire transfer is incorrectly labeled or transferred to RC, RC will return it to Employer with proper instructions.

9. Responsibility Indemnification

- (a) RC shall not be responsible for any acts or omissions of any person other than RC, its affiliates and each of their agents and employees in connection with the administration or operation of the Plan. If, as a direct result of an error made by RC, a loss is incurred by a Plan participant (or a gain was not received), RC will adjust the participant's account retroactivity according to the following policy:
  - i. For transactions that are confirmed in writing, if RC is notified within 30 days following the confirmation date, RC will correct the transaction and the participant's account will be made whole at RC's expense;
  - ii. For transactions that are reflected on quarterly statements only, if RC is notified within 90 days following the receipt of the quarterly statement, RC will correct the transaction and the participants' account will be made whole at RC's expenses.

- (b) If Employer, its employees or agents, and/or the Plan or any agent or fiduciary of the Plan are made parties to any judicial or administrative proceeding arising out of the negligent act of omission of RC or the willful misconduct of RC, then RC shall indemnify and hold Employer, its employees and agents, and/or the Plan, or any agent or fiduciary of the Plan harmless for any and all judgments, settlements, and costs (including reasonable attorneys fees) which Employer, the Plan or its employees or fiduciaries or agents, incur or pay in connection therewith. This indemnification shall survive the termination of this Agreement.

10. Term

This Agreement shall be in effect for an initial term beginning on the Inception Date and ending five years after the Inception Date. This Agreement will be renewed automatically for each succeeding year unless written notice of termination is provided by either party to the other no less than 60 days before the end of such year. Any reference in this Agreement to the "term" of this Agreement shall refer to both the initial term and any succeeding year of renewal. The Employer shall have the right to terminate this Agreement if the Employer gives 30 days written notice to RC that it has breached any presentation or covenant set forth in this Agreement, or has failed to perform its obligations, including the performance standards set forth on Appendix C-1 to this Agreement, such failure or breach is material and RC has failed to cure its performance in all material respects during such 30-day period. Any termination of this Agreement shall not release RC from any contractual or indemnity intended to survive the termination hereof.

Either party may terminate this Agreement in the event the other party becomes insolvent, becomes subject to any proceeding under any bankruptcy or insolvency law or is liquidated, voluntarily or otherwise.

11. Amendments and Adjustments

- (a) This Agreement may not be amended except by written instrument signed by the parties.
- (b) Notwithstanding the forgoing, the parties agree that an adjustment to compensation or administrative and operational services under this Agreement may only be implemented by RC through a proposal to the Employer via correspondence or the Employer Bulletin. The Employer will be given at least 60 days to review the proposal before the effective date of the adjustment. Such adjustment shall become effective unless, within the 60 day period before the effective date, the Employer notifies RC in writing that it does not accept such adjustment, in which event the parties will negotiate with respect to the adjustment.
- (c) No failure to exercise and no delay in exercising any right, remedy, power or privilege hereunder shall operate as a waiver of such right, remedy, power or privilege.

12. Notices

All notices required to be delivered under Section 11 of this Agreement shall be delivered personally or by registered or certified mail, postage prepaid, return receipt requested, to (i) RC at: Legal Department, ICMA Retirement Corporation, 777 North Capitol Street, N.E., Suite 600, Washington, D.C, 20002-4240; (ii) Employer attention: Finance Director, at the office set forth in the first paragraph hereof, or to any other address designated by the party to receive the same by written notice similarly given.

13. Complete Agreement

This Agreement shall constitute the sole agreement between RC and Employer relating to the object of this Agreement and correctly sets forth the complete rights, duties and obligations of each party to the other as of its date. Any prior agreements, promises, negotiations or representations, verbal or otherwise, not expressly set forth in this Agreement are of no force and effect.

14. Governing Law

This agreement shall be governed by and construed in accordance with the laws of the State of Texas, applicable to contracts made in that jurisdiction without reference to its conflicts of laws provisions.

15. Relationship of Parties

The relationship of the parties under this Agreement shall be that of independent contractors. RC shall not act as an agent or employee of the Employer or the Plan or as a fiduciary of the Plan.

16. Assignment

Neither party shall assign or transfer any duty or interest in this Agreement without the written consent of the other party, except to an affiliate. This Agreement shall be binding on any successor in interest of either party.

17. Severability

If any part of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the remaining terms shall survive intact, and this Agreement shall be construed as if the invalid or unenforceable term had never been contained herein.

In Witness Whereof, the parties hereto have executed this Agreement as of the Inception Date first above written.

by:  
Signature/Date

Name and Title (Please Print)

ICMA RETIREMENT CORPORATION

by:   
\_\_\_\_\_  
Paul Gallagher  
Corporate Secretary

## APPENDIX C-1

Performance Standards will include the following:

Service	Standard	Guarantee
<b>Transition Timeline</b>	Transition of assets to ICMA-RC by agreed upon deadline and reconciliation of assets within one week (assuming that proper reconciled data has been provided by the prior record keeper in a timely manner).	\$1,500 if delay caused by factors controllable by RC.
<b>Participant Services Phone Response Time</b>	Calls picked-up within an average of less than 30 seconds for all ICMA-RC plans.	\$250 for each quarter in which aggregate call wait times average more than 30 seconds due to factors controllable by RC
<b>Plan Sponsor Services phone response time</b>	Calls picked-up within an average of less than 30 seconds for all ICMA-RC plans.	\$250 for each quarter in which aggregate call wait times to RC's toll free employer services unit average more than 30 seconds due to factors controllable by RC
<b>Quarterly Statement delivery</b>	Quarterly statements mailed within 12 business days, unless performance returns received late due to factors beyond ICMA-ICMA-RC's control.	\$500 for each quarter in which less than 99% of participant statements for the plan meet deadline due to circumstances under RC control.
<b>Confirmations</b>	Mailing of confirmations within two business days of transaction.	\$250 for each quarter in which less than 95% of confirmations to plan participants fail to be mailed by deadline due to circumstances under RC control.
<b>Contribution posting</b>	Same business day, upon receipt of good data and funds by 3:00 p.m. Central Time.	\$250 for each for each payroll in which posting of contributions received in good order is not processed within benchmark due to RC error.
<b>Fund transfers</b>	Same business day, upon receipt of instructions in good order by 3:00 p.m. Central Time.	Participants made whole if fund transfer instructions are not implemented on time and RC is informed of error as described in paragraph 9a of this contract.
<b>Withdrawals</b>	Process lump sum payments within three business days when received in good order.	\$250 for each withdrawal received in good order not processed within benchmark due to RC error.
<b>Emergency Withdrawals</b>	Process emergency withdrawal within three business days of receipt of employer's approval in good order.	\$250 for each withdrawal received in good order not processed within benchmark due to RC error.
<b>Loan processing</b>	Process loans within three business days when received in good order.	\$250 for each loan request received in good order not processed within benchmark due to RC error.
<b>Plan Sponsor reports</b>	Plan Sponsor Reports mailed within 15 business days of quarter end or other mutually agreed-upon period.	\$250 for each quarter in which the employer statement is not mailed by deadline due to circumstances under RC control.

- On-line statements shall be available to participants within 10 business days after quarter-end;
- Annual plan reviews of financial activity and participant transactions shall be provided within 60 days following year-end; a \$250 penalty will apply in any year in which the standard is not met.
- Forms 1099-R shall be mailed before January 31 each year for the preceding year
- All minimum required distributions shall be paid in accordance with the requirements of Code Section 401(a)(9)

APPENDIX C-2

Fund Mapping Conversion Method

The Employer shall direct the liquidation of the present investment choices on the first business day following the final valuation date of the prior recordkeeper/trustee for subsequent transfer to investment choices under the RC Plan that match, as nearly as possible, the prior investment's risk and return characteristics as determined by the Employer. RC will promptly invest proceeds from the liquidation of the prior trust fund into the mapped fund choices provided that the prior recordkeeper delivers to RC at the time of fund liquidation and transfer all information concerning fund liquidation needed by RC to complete the fund mapping investment process. Existing fund balances will remain invested in the mapped funds throughout the conversion process. In accordance with the fund mapping conversion method, the Employer directs RC to invest transferred Plan assets in accordance with the following instructions as noted in Appendix C-3.

**Appendix C-3**  
**ICMA Retirement Corporation / Town of Addison, TX**  
**457 Plan Fund Mapping Conversion Method**

Previous Fund	Morningstar Category	New Fund <sup>1</sup>	Morningstar Category <sup>2</sup>	Morningstar 3 Yr Rating
Gartmore Inv Cons A	Conservative Allocation	Vantagepoint Svgs Orient	Conservative Allocation	3
Putnam Intl Equity A	Foreign Large Blend	Amer Funds EuroPac R4	Foreign Large Blend	5
Templeton Foreign A	Foreign Large Value			
AmCent Intl Disc Inv	Foreign Small/Mid Growth			
Federated US 2-5 Instl	Short Government	AmCent Inf-Adj Bond Inv	Intermediate Government	5
Waddell&Reed Adv Hi-IncA	High Yield Bond	PIMCO Total Ret Admin	Intermediate-term Bond	5
MSIF Tr Inv Grade Fix-Inc	Intermediate-term Bond			
PIMCO Total Ret A	Intermediate-term Bond			
Nationwide Bond Idx A	Intermediate-term Bond	Vantagepoint Core Bd II	Intermediate-term Bond	4
Dreyfus Appreciation	Large Blend	Fidelity Contrafund	Large Blend	5
Fidelity Contrafund	Large Blend			
Fidelity Magellan	Large Blend			
Dreyfus S&P 500 Index	Large Blend	Vantagepoint 500 Stk II	Large Blend	3
Nationwide S&P 500 Svc	Large Blend			
Gartmore Nationwide D	Large Blend	Vantagepoint Gwth & Inc	Large Blend	4
Amer Funds Grth Fund A	Large Growth	Amer Funds Grth Fund R4	Large Growth	5
Janus	Large Growth			
AmCent Ultra Inv	Large Growth			
Morgan Stan Ins Foc Eq A	Large Growth			
Nationwide Large Cap Gr Inst	Large Growth			
MFS Mass Inv Grth Stk A	Large Growth	Vantagepoint Growth	Large Growth	4
Dreyfus Prem Thrd Cent Z	Large Growth			
Putnam Voyager A	Large Growth			
AmCent Growth Inv	Large Growth			
Van Kampen Growth & IncA	Large Value	Vantagepoint Equity Inc	Large Value	4
AmCent Inc & Growth Inv	Large Value			
Fidelity Equity-Inc	Large Value			
Dreyfus Prem Midcap StkA	Mid-Cap Blend	Fidelity Adv LevCo Stk T	Mid-Cap Blend	5
Strong Opportunity Adv	Mid-Cap Blend			
Nationwide MidMkt Idx A	Mid-Cap Blend	Vantagepoint Mid/Sm Coll	Mid-Cap Blend	2
Nationwide Sm Cp Idx A	Small Blend			

**Appendix C-3**  
**ICMA Retirement Corporation / Town of Addison, TX**  
**457 Plan Fund Mapping Conversion Method**

Previous Fund	Morningstar Category	New Fund <sup>1</sup>	Morningstar Category <sup>2</sup>	Morningstar 3 Yr Rating
INVESCO Dynamics A One Group Mid Cap Grth A	Mid-Cap Growth Mid-Cap Growth	Fidelity Adv Mid Cap T	Mid-Cap Growth	5
AmCent Value Inv	Mid-Cap Value	Hotchkis Wiley Md Val I	Mid-Cap Value	5
Gartmore Inv Mod Con A	Moderate Allocation	Vantagepoint Cons Gr	Conservative Allocation	3
Gartmore Inv Mod A Amer Funds Inc Fund A Fidelity Asset Mgr	Moderate Allocation Moderate Allocation Moderate Allocation	Vantagepoint Trad Gr	Moderate Allocation	3
Nationwide Small Cp InSv Neuberger Ber Genesis Tr	Small Blend Small Blend	AmCent Small Co Inv	Small Blend	4
Brown Cap Small Co Instl INVESCO Sm Co Gr A GVIT Small Company Fund I	Small Growth Small Growth Small Growth	PIMCO CCM Emerg Co Admin	Small Growth	4
Franklin Bal Sh Invmt A	Small Value	T. Rowe Price Sm Val Adv	Small Value	4
Oppenheimer Glob A	World Stock	Amer Funds CapWrldGI R4	World Stock	5
Nationwide Fixed Account	Fixed	VantageTrust PLUS Fund	Fixed	N/A
Gartmore Money Market	Money Market	Vantagepoint Money Mkt <sup>3</sup>	Money Market	N/A
<b>Additional Funds</b>				
		Vantagepoint Overseas II <sup>4</sup>	Foreign Large Blend	3
		Vantagepoint Broad MkII	Large Blend	4
		Vantagepoint Lng Trm Gr	Large Growth	5
		Vantagepoint All-Eq Gr	Large Growth	5

<sup>1</sup>Please consult both the current Vantagepoint Funds prospectus and MAKING SOUND INVESTMENT DECISIONS: A Retirement Investment Guide carefully for a complete summary of all fees, expenses, charges, financial highlights and investment objectives, risks and performance information prior to investing any money. Vantagepoint securities are distributed by ICMA-RC Services LLC, a broker dealer affiliate of ICMA-RC, member NASD/SIPC. For a current prospectus, contact ICMA-RC Services LLC, 777 North Capitol Street NE, Washington, DC 20002-4240. 1-800-669-7400.

## **Appendix C-3**

### **ICMA Retirement Corporation / Town of Addison, TX**

### **457 Plan Fund Mapping Conversion Method**

<sup>2</sup>Morningstar, Inc.® provides independent analysis of open-ended mutual fund companies and is not affiliated with the ICMA Retirement Corporation (“ICMA-RC”). For each fund with at least a three-year history, Morningstar calculates a Morningstar Rating (based on a Morningstar Risk-Adjusted Return measure that accounts for variation in a funds monthly performance including the effects of sales charges, loads and redemption fees), placing more emphasis on downward variations and rewarding consistent performance. The top 10% of funds in each category receive 5 stars, the next 22.5% receive 4 stars, the next 35% receive 3 stars, the next 22.5% receive 2 stars and the bottom 10% receive 1 star. Highly rated funds are defined as those that have a four or five star Morningstar rating. Morningstar reports reflect the actual fund itself and does not represent a specific share class. Performance depicted is representative and may not be the actual performance received by an investor in a different class of shares. Performance reflected above represents past performance. Investment returns and principal value of an investment will fluctuate so that an investor’s shares, when redeemed, may be worth more or less. Past performance is not indicative of future returns. Individuals are advised to consider any new investment strategies carefully prior to implementing. Data provided by Morningstar, Inc.®. All rights reserved. The information contained herein; (1) is proprietary to Morningstar and/or its affiliates; (2) may not be copied or distributed; (3) is not warranted to be accurate, complete or timely. Neither Morningstar nor its content providers nor ICMA-RC are responsible for any damages or losses arising from any use of this information. This information is being provided for informational purposes only and is not intended as or to be relied upon as investment advice or the solicitation or offer of a particular product or service. ICMA-RC does not review the Morningstar data and, for mutual fund performance information, please consult the current Vantagepoint Funds prospectus carefully for a complete summary of all fees, expenses, charges, financial highlights, investment objectives, trading risks and performance information prior to investing any money. Investment returns and fluctuate, so that an investor's shares, when redeemed, may be worth more or less than their original cost. Current performance may be lower or higher than the performance data illustrated. Vantagepoint securities are distributed by ICMA RC Services LLC, a broker dealer affiliate of ICMA RC, member NASD/SIPC. For performance data current to the most recent month end, contact ICMA-RC Services, LLC by calling 1-800-669-7400 or by writing to 777 North Capitol Street, NE, Washington, DC 20002-4240, or by visiting [www.icmarc.org](http://www.icmarc.org).

<sup>3</sup>An investment in the Money Market Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation (FDIC) or any other government agency. Although the Fund seeks to maintain the value of your investments at \$1.00 per share; it is possible to lose money by investing in this Fund.

<sup>4</sup>Investors who transfer assets out of this Fund must wait at least 91 days before transferring assets back into the Fund. The policy affects transfers only. It does not affect regular contributions or disbursements.

**THERE ARE NO  
ATTACHMENTS  
FOR ITEM #ES1**

**THERE ARE NO  
ATTACHMENTS  
FOR ITEM #ES2**