

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

October 12, 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 September 28, 2004 Council Meeting.

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#2b – Consideration of approval of final payment in the amount of \$14,526.74 to Ratliff Hardscape, LTD. for the replacement of masonry walls on Chancey Drive and Proton Drive in the Les Lacs residential area.

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#2c – Consideration of a Resolution authorizing the City Manager to enter into a contract in the amount of \$36,741.11 with SBC for the relocation and installation of telephone cable in connection with the extension of Arapaho Road, Phase III, from Addison Road to Surveyor Boulevard.

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#2d – Consideration of a Resolution authorizing the City Manager to enter into an agreement with Hand and Associates Marketing Communications for advertisement in the November 2004, March 2005 and August 2005 Addison/North Dallas Corridor Guide publication.

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#2e – Consideration of a Resolution authorizing the City Manager to enter into a contract in the amount of \$49,896.00 with Hotel Inter-Continental for meeting space and room guarantees for the 2005 North Texas Jazz Festival.

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#2f – Consideration of a Resolution authorizing the City Manager to enter into an agreement in an amount not to exceed \$30,000 with the City of Carrollton for service and maintenance provided for the Police and Fire Radio System in Fiscal Year 2003-2004.

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Item #R3 – Consideration of approval of a final plat for one lot on .5219 acres, located at the southwest corner of the intersection of Midway Road and Belt Line Road, on application from Piedmont-Midway Partners, L.P. represented by Mr. Bryan Burger of Lawrence A. Cates and Associates, LLP.

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 September 22, 2004, voted to recommend approval of a final plat for one lot on .5219 acres, located at the southwest corner of the intersection of Midway Road and Belt Line Road, subject to the following conditions:

1. Engineering plans and specifications must be submitted and approved by the Town and must include a drainage and grading plan, existing and proposed utilities and sidewalks.
2. A utility easement is necessary in order to relocate an existing signal pole at the intersection. The exact location of the utility easement must be coordinated with the Town's Public Works Department.

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

Voting Nay: None

Absent: Doepfner

Administrative Recommendation:

Administration recommends approval.

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Item #R4 – **PUBLIC HEARING** and consideration of an Ordinance amending a Special Use Permit for a public building to be used by the federal government, located at 4900 Airport Parkway, on application from the United States Postal Service, represented by Mr. Dennis Delisse of MPI Architects.

Attachments:

1. Docket Map
2. Staff Report
3. Memorandum from Angela Washington
4. Letter from Mr. Kent Hope
5. Letter from Mr. J. J. Horan
6. Plans

The Planning and Zoning Commission Findings:

The Addison Planning and Zoning Commission, meeting in regular session on August 26, 2004, voted to recommend approval to amend a Special Use Permit for a public building to be used by the federal government, subject to the following conditions:

1. All of the planting beds and turf shall be renovated and replanted according to the original landscaping plan, or an alternative planting plan needs to be submitted for review and approval.
2. Final civil drawings shall be approved prior to issuance of a building permit.
3. The existing fence that runs north and south on the east property line shall be replaced with a new wooden (site barring) fence.

Voting Aye: Chafin, Doepfner, Jandura, Knott, Mellow

Voting Nay: None

Absent: None

Administrative Recommendation:

Administration recommends approval.

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Item #R5 – **PUBLIC HEARING** and consideration of an Ordinance approving a change of zoning from Commercial-1 (C-1) district to a Planned Development (PD) district for a hotel/motel use and approval of a Special Use Permit (SUP) for a restaurant and a Special Use Permit (SUP) for the sale of alcoholic beverages for on-premises consumption only, Wingate Inn, located at 4960 Arapaho Road, on application from Hospitality Management Corporation, represented by Mr. John O'Connor.

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 September 22, 2004, voted to recommend approval of a change of zoning from Commercial-1 (C-1) district to a Planned Development (PD) district for a hotel/motel use, and 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, subject to the following condition:

1. The term “bar”, “tavern”, or any equivalent term, or graphic depiction associated with alcoholic beverages shall not be used in exterior signs.

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

Voting Nay: None

Absent: Doepfner

Administrative Recommendation:

Administration recommends approval.

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Item #R6 – **PUBLIC HEARING** and consideration of an Ordinance approving a Special Use Permit (SUP) for a restaurant and a Special Use Permit (SUP) for the sale of alcoholic beverages for on-premises consumption only, Café Japon/Bo Ba Tea House, located at 4933 Belt Line Road, on application from Mr. Chung Keung Lui.

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 September 22, 2004, voted to recommend approval of a Special Use Permit (SUP) for a restaurant and a Special Use Permit (SUP) for the sale of alcoholic beverages for on-premises consumption only, subject to the following condition:

1. The landscaping on the southwest corner of the building must be installed prior to the issuance of a Certificate of Occupancy for the restaurant.
2. The term “bar”, “tavern”, or any equivalent term, or graphic depiction associated with alcoholic beverages shall not be used in exterior signs.

Voting Aye: Benjet, Bernstein, Chafin, Jandura, Knott, Mellow  
Voting Nay: None  
Absent: Doepfner

Administrative Recommendation:

Administration recommends approval.

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Item #R7 – Consideration of a Resolution authorizing the City Manager to enter into an agreement with Xelerate Group to provide marketing, events and sponsorship services October 1, 2004-September 30, 2005 for the Town of Addison.

Attachments:

1. Council Agenda Item Overview
2. Agreement

Administrative Recommendation:

Administration recommends approval.

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Item #R8 – Consideration of a Resolution relating to the giving of notice of intention to issue Town of Addison, Texas Combination Tax and Revenue Certificates of Obligation, Series 2004 and appointing a Hearing Officer for the purpose of conducting a public hearing pursuant to Section 147(F) of the Internal Revenue Code of 1986, as amended.

Attachments:

1. Council Agenda Item Overview
2. Resolution

Administrative Recommendation:

Administration recommends approval.

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Item #R9 – Consideration of a Resolution authorizing the City Manager to enter into a Memorandum Of Understanding (MOU) with the Dallas County Health Authority for assistance during health emergencies and acts of bio-terrorism.

Attachments:

1. Council Agenda Item Overview
2. Memorandum from Chief Padden
3. Memorandum Of Understanding

Administrative Recommendation:

Administration recommends approval.

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Item #R10 – Consideration of a Resolution authorizing the City Manager to enter into a Third Supplemental Agreement to the Interlocal Agreement with the City of Carrollton for the installation, operation and maintenance of a Metrocrest Radio System.

Attachments:

1. Council Agenda Item Overview
2. Agreement

Administrative Recommendation:

Administration recommends approval.

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Item #R11 – Consideration of a Resolution authorizing the City Manager to enter into an agreement with Affiliated Computer Services, Inc. (ACS) in connection with the Supplemental Metrocrest Radio System Interlocal Agreement between the City of Carrollton, Texas and the Town of Addison, Texas.

Attachments:

1. Council Agenda Item Overview
2. Agreement

Administrative Recommendation:

Administration recommends approval.

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Item #R12 – Consideration of approval of award of bid and a Resolution authorizing the City Manager to enter into a contract, including incentives, in an amount not to exceed \$830,766.00 with APAC-Texas, Inc. for the construction of the Belt Line Road pavement rehabilitation from Marsh Lane to Dallas North Tollway.

Attachments:

1. Council Agenda Item Overview
2. Bid Talley Sheet

Administrative Recommendation:

Administration recommends approval.

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Adjourn Meeting

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Posted 5:00 p.m.  
October 7, 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

September 28, 2004  
7:30 p.m. - Council Chambers  
5300 Belt Line Road

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

### Item #R1 – Consideration of Old Business

The following employee was introduced to the Council: Keith Davis (Fire).

Ron Whitehead, City Manager, presented Council with an updated calendar highlighting upcoming events.

### Item #R2 – Consent Agenda

Item #2a – Approval of the Minutes for the September 14, 2004 Council Meeting.  
(Approved)

Item #2b – Consideration of approval of award of bid and a Resolution authorizing the City Manager to enter into a contract in the amount of \$59,225.00 with Davis Excavation for construction of the Westfield Court Water Service Replacement Project. (Approved)  
(R04-077)

Councilmember Chow moved to duly approve the above listed items. Councilmember Niemann seconded. The motion carried.

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

Councilmember Hirsch arrives in Council Chambers.

Item #R3 – Consideration of approval and appointment of four additional members to the Board of Zoning Adjustment to serve as alternates.

Councilmember Turner moved to duly approve the appointment of alternate members to the Board of Zoning Adjustment. The appointed alternate members are:

- Virgil Burkhardt, 4007 Winter Park
- Alan Wood, 14609 Lexus
- Joel Davis, 4067 Beltway Drive #148
- William Green, 3845 Canot

Councilmember Niemann seconded. The motion carried.

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

Voting Nay: None

Absent: Braun

Item #R4 – **PUBLIC HEARING** and consideration of an Ordinance amending a Special Use Permit for a public building to be used by the federal government, located at 4900 Airport Parkway, on application from the United States Postal Service, represented by Mr. Dennis Delisse of MPI Architects.

The public hearing is continued from the September 14, 2004 Council meeting until the October 12, 2004 Council meeting.

Item #R5 – Consideration of a Resolution authorizing the City Manager to enter into an agreement in the amount of \$67,750.00 with Daktronics for an LED sign for the Addison Arts and Events District.

Councilmember Chow moved to duly pass Resolution No. R04-078, authorizing the City Manager to enter into an agreement in the amount of \$67,750.00 with Daktronics for an LED sign for the Addison Arts and Events District, subject to the site work not being approved. Councilmember Turner seconded. The motion carried.

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

Voting Nay: None

Absent: Braun

Item #R6 – Presentation and consideration of approval of the Addison Arbor Foundation's 20 year strategic plan.

Councilmember Chow moved to duly approve the Addison Arbor Foundation's 20-year strategic plan. Council Niemann seconded. The motion carried.

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

Voting Nay: None

Absent: Braun

Item #R7 – Presentation and consideration of approval of schematic design concept of the Landmark Boulevard/Quorum Drive park area.

Councilmember Niemann moved to duly approve the schematic design concept of the Landmark Boulevard/Quorum Drive park area, subject to the inclusion of Council comments. Councilmember Turner seconded. The motion carried.

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

Voting Nay: None

Absent: Braun

Item #R8 – Consideration of approval of award of bid and Resolution authorizing the City Manager to enter into an agreement in the amount of \$46,680.00 with David Baldwin, Inc. for landscape architecture design and construction services for Landmark Place.

Councilmember Chow moved to duly approve award of bid and pass Resolution No. R04-079 authorizing the City Manager to enter into an agreement in the amount of \$46,680.00 with David Baldwin, Inc. for landscape architecture design and construction services for Landmark Place. Councilmember Niemann seconded. The motion carried.

Voting Aye: Chow, Hirsch, Niemann, Silver, Turner

Voting Nay: Wheeler

Absent: Braun

Item #R9 – Consideration of approval of changes to the Addison Hotel Support Program.

Mayor Wheeler opened the meeting as a courtesy public hearing. Todd Walther spoke on this item. There were no further comments or questions. Mayor Wheeler closed the meeting as a courtesy public hearing.

Councilmember Niemann moved to duly approve changes to the Addison Hotel Support Program, subject to the program to be designated for the following three hotels:

- Hotel Intercontinental
- Marriott Quorum
- Crowne Plaza

Councilmember Silver seconded. The motion carried.

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

Voting Nay: None

Absent: Braun

Item #R10 – Consideration of approval of award of bid and approval of a Resolution authorizing the City Manager to enter into a contract in the amount of \$68,464.15 with Air Vacuum Corporation for the purchase and installation of vehicle exhaust systems for the Addison Fire Station #1 and Addison Fire Station #2.

Councilmember Silver moved to duly approve award of bid and pass Resolution No. R04-080 authorizing the City Manager to enter into a contract in the amount of \$68,464.15 with Air Vacuum Corporation for the purchase and installation of vehicle exhaust systems for the Addison Fire Station #1 and Addison Fire Station #2. Councilmember Turner seconded. The motion carried.

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

Voting Nay: None

Absent: Braun

Item #R11 – Consideration of a Resolution authorizing the City Manager to enter into a three-year extension of an existing contract in the amount of \$24,480.00 with Metrocrest Medical Services for pre-hospital emergency medical control purposes.

Councilmember Niemann moved to duly pass Resolution No. R04-081 authorizing the City Manager to enter into a three-year extension of an existing contract in the amount of \$24,480.00 with Metrocrest Medical Services for pre-hospital emergency medical control purposes, subject to review by the City Attorney. Councilmember Chow seconded. The motion carried.

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

Councilmember Niemann recused himself from Council Chambers.

Item #R12 – Consideration of a Resolution supporting the review commenced by the steering committee of cities served by TXU to determine the just and reasonable rates to be charged by TXU Electric Delivery Company.

Councilmember Chow moved to duly pass Resolution No. R04-082 supporting the review commenced by the steering committee of cities served by TXU to determine the just and reasonable rates to be charged by TXU Electric Delivery Company. Councilmember Turner seconded. The motion carried.

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

Councilmember Niemann returned to the Council Chambers.

Item #R13 – Consideration of a Resolution adopting the Town of Addison Investment Strategy for FY 2004-2005.

Councilmember Turner moved to duly pass Resolution No. R04-083 adopting the Town of Addison Investment Strategy for FY 2004-2005. Councilmember Niemann seconded. The motion carried.

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

Item #R14 – Consideration of an Ordinance approving the Town's FY 2004-2005 Investment Policy and amending the Town of Addison Code of Ordinances Chapter 2 (Administration), Article IV (Finance), Division 3 (Investment Policy) by amending Section 2-207 (Authorized Securities Investments), Section 2-211 (Selection of Broker/Dealers),

Section 2-212 (Selection of Depositories), and Section 2-216 (Policy Revisions); adding Section 2-217 (Policy Revisions).

Councilmember Niemann moved to duly pass Ordinance No. 004-044 approving the Town's FY 2004-2005 Investment Policy and amending the Town of Addison Code of Ordinances Chapter 2 (Administration), Article IV (Finance), Division 3 (Investment Policy) by amending Section 2-207 (Authorized Securities Investments), Section 2-211 (Selection of Broker/Dealers), Section 2-212 (Selection of Depositories), and Section 2-216 (Policy Revisions); adding Section 2-217 (Policy Revisions). Councilmember Silver seconded. The motion carried.

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

Item #R15 – Consideration of an Ordinance of the Town of Addison, Texas approving and adopting the annual budget for the fiscal year beginning October 1, 2004 and ending September 30, 2005; providing that said expenditures for said fiscal year shall be made in accordance with said budget; providing for a repeal clause and declaring an emergency.

Councilmember Chow moved to duly pass Ordinance No. 004-045 approving and adopting the annual budget for the fiscal year beginning October 1, 2004 and ending September 30, 2005; providing that said expenditures for said fiscal year shall be made in accordance with said budget; providing for a repeal clause and declaring an emergency. Councilmember Turner seconded. The motion carried.

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

Item #R16 – Consideration of an Ordinance of the Town of Addison, Texas fixing and adopting the tax rate of \$.4760 on all taxable property for the year 2004; and declaring an emergency.

Councilmember Chow moved to duly pass Ordinance No. 004-046 fixing and adopting the tax rate of \$.4760 on all taxable property for the year 2004; and declaring an emergency. Councilmember Turner seconded. The motion carried.

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

Item #R17 – Consideration of a Resolution authorizing the City Manager to enter into an agreement in an amount not to exceed \$34,350.00 with the Waters Consulting Group for the purpose of conducting a study of the Town's classification system, compensation plan and employee benefits.

Councilmember Silver moved to duly pass Resolution No. R04-084 authorizing the City Manager to enter into an agreement in an amount not to exceed \$34,350.00 with the Waters Consulting Group for the purpose of conducting a study of the Town's classification system, compensation plan and employee benefits. Councilmember Turner seconded. The motion carried.

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

**EXECUTIVE SESSION.** At 10:21 p.m., Mayor Wheeler announced that the Council would convene into Executive Session.

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 pending litigation to wit: *LaTaste Enterprises, et al. vs. Addison Airport of Texas, Inc., et al.*; Cause No. DV 98-02259-F, 116<sup>th</sup> District Court, Dallas County, Texas.

Item #ES2 – Closed (executive) session of the Addison City Council pursuant to Section 551.071, Texas Government Code, to consult with its attorney to seek advice regarding certain pending litigation, to wit: *Transcontinental Realty Investors, Inc., et al. v. Addison Airport of Texas, Inc., et al.*; Cause No. 03-03457-H; 160<sup>th</sup> District Court, Dallas County, Texas.

The Council came out of Executive Session at 11:00 p.m.

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

\_\_\_\_\_  
Mayor

Attest:

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

**Council Agenda Item: #2b**

**SUMMARY:**

Staff recommends that the Council approve final payment to Ratliff Hardscape, LTD. totaling \$14,526.74 for the replacement of masonry walls on Chancey Drive and Proton Drive in the Les Lacs residential area. The attached aerials show the location of the walls for the Council's reference.

**FINANCIAL IMPACT:**

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

Cost: \$145,267.42

The additional \$5,267.42 was funded from surplus funds left over from the Brookhaven Club Drive median grass planting project. The Brookhaven project was completed; however, it did not require the quantity of sod first estimated.

There were no change orders on this project.

**BACKGROUND:**

In March 2004, staff requested the engineering services of PBS&J 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.

Ratliff completed the work in a satisfactory manner according to PBS&J's design and specifications. PBS&J representatives, as well as, staff inspected the work and completed a final punchlist walk-through.

According to PBS&J the life expectancy of the new walls should be 18 – 20 years. The original walls lasted about 12 years.

**RECOMMENDATION:**

Staff recommends final payment.



*Area Along Marsh Lane West of Chancey Street*

PROJECT LOCATION



**Council Agenda Item: #2c**

**SUMMARY:**

This item is for Council authorization for the City Manager to enter into a Contract Agreement with SBC for the relocation and installation of telephone cable in connection with the extension of Arapaho Road, Phase III, from Addison Road to Surveyor Blvd.

**FINANCIAL IMPACT:**

Budgeted Amount: Utility relocation is part of the \$23.08 million allocated for the Arapaho Road, Phase III

Cost: \$36,741.11

Source of Funds: Funds have been appropriated in fiscal year 2005 budget from the various Capital Project funds.

**BACKGROUND:**

Of the many aspects relating to the Arapaho Road, Phase III construction project, the relocation of all affected utilities is a substantial undertaking. SBC has recently determined that existing telephone cables along the project limits, must be relocated at this time. In accordance with the attached agreement, SBC will place cable, hand hole, and several pedestals behind each business on the north side of Centurion Way. Money had been allocated to accommodate funding requirements for this portion of the project and it is within the existing budget limits.

**RECOMMENDATION:**

Staff recommends that the City Manager be authorized to enter into an agreement with SBC, in the amount of \$36,741.11, for relocation and installation of telephone cable in connection with the extension of Arapaho Road, Phase III, from Addison Road to Surveyor Blvd.



funds as necessary to perform the work, and additional time, as necessary to complete the work. Said request for additional funds and/or additional time will be through change order.

All change orders will be in writing.

All change orders will be submitted and accepted by Applicant, its agents, servants or employees, before Southwestern Bell Telephone, L.P. proceeds to execute the work or, if work has been initiated on the project, continues with executing the work except in an emergency endangering life or property.

Applicant, its agents, servants or employees, are deemed to have accepted the terms of any change order by signing where indicated on the change order.

Under no circumstances will Southwestern Bell Telephone, L.P.'s request for a change order be deemed or used as evidence of delay on the project. Nor will any change order issued in this project be used to charge Southwestern Bell Telephone, L.P. with responsibility for any alleged delay on the project.

#### NO DAMAGE FOR DELAY

Under no circumstances will Southwestern Bell Telephone, L.P. be held liable to Applicant, Applicant's agents, employees, or contractors, for any alleged delay on the project that forms the basis for this custom work order.

#### TIME TO COMPLETE

Any representation by Southwestern Bell Telephone, L.P., its agents, servants or employees that the project, or any additional work authorized by change order, will be complete by a certain date or certain time period is strictly an estimate and not binding on Southwestern Bell Telephone, L.P., its agents, servants, or employees. All estimated completion dates are subject to changing conditions in the field, changes in the scope of the work, relocation of existing utilities not within Southwestern Bell Telephone, L.P.'s control, Acts of God, weather delays, labor disputes, vendor/contractor disputes, and other conditions or circumstances that Southwestern Bell Telephone, L.P., its agents, servants, or employees, could not reasonably anticipate at the time of the estimate.

#### PAYMENT

Applicant agrees to make an advance payment of **\$ 36,151.79** prior to commencement of the work. Applicable charges for Custom Work will be billed on a special bill separate from the bill that Applicant receives for telephone service.

Applicant, its agents, servants, or employees agree to make payment on change orders within thirty (30) days of the date of signature on the change order. Failure to make payment within the designated thirty (30) day time period will operate to cancel the change order and Southwestern Bell Telephone, L.P. will cease all work activity on the project until payment is made.

When the Applicant agrees to Interval Billing \*, the balance of the Contract Price or Actual Cost (as applicable) will be made in monthly payments. If the Actual Cost made varies from the Estimated Cost, then a correcting adjustment will be made in the last payment. If the parties cannot agree to Interval Billing, Applicant will make an advance payment as indicated above.

\*Applicable to orders over \$25,000 and work will take 6 or more months to complete.

#### CANCELLATION

If the applicant cancels the work prior to completion, Applicant agrees to pay Southwestern Bell Telephone, L.P. for the costs it has incurred in starting performance under the contract and before being notified to cease only.

If Applicant elects to cancel the work prior to completion, Applicant agrees to pay Southwestern Bell Telephone, L.P. for the costs it has incurred in starting performance under the contract. If Applicant has made an advance payment, Southwestern Bell Telephone, L.P. will deduct its costs and expenses incurred as of the date of Applicant's notice of cancellation from the amount of the advance payment. Any amount remaining will be refunded to Applicant.

#### ESTIMATED PRICE QUOTE

The above estimated price is guaranteed for 60 days from September 29, 2004. If the charges are not accepted within 60 days the order will be cancelled and a new order will need to be placed. The second estimate may be higher than the estimated price set out above.

STOP WORK ORDER

In the event that Applicant issues a stop work order, or places the project "on hold", at any point during the progress of the work, said stop work order or request to "hold" work must be issued in writing and must be delivered via certified mail, return receipt requested to **Bill Mize, 11930 Airline, Rm. 215, Houston, TX 77037**. If Applicant issues a stop work order, or a request to "hold" work, the contract price quoted herein will remain valid until sixty (60) days from the date of the stop work or "hold" work order. At the expiration of the sixty (60) days, the contract price quoted herein will expire and a new contract price will be determined and provided, in writing, to Applicant. The new contract price may be higher than the contract price quoted in this custom work order. If, after issuing a stop work, or "hold" work order, Applicant elects to cancel the contract, Applicant must inform Southwestern Bell, L.P., in writing of the cancellation. Southwestern Bell Telephone, L.P. will deduct any expenses incurred in performing the work from Applicant's advance payment and refund any remaining funds to Applicant.

Under no circumstances will Southwestern Bell Telephone, L.P. be responsible to Applicant for any alleged damages or additional expenses incurred by Applicant as a result of a stop work order or an order to "hold" work on the project.

CHOICE OF LAW AND ARBITRATION

Should any dispute arise between the parties concerning the subject matter of this agreement, or any term contained therein, the parties agree that the dispute or claim shall be submitted to binding arbitration before the American Arbitration Association. The parties further agree that the prevailing party in any such dispute will be entitled to recover attorney's fees and costs of arbitration.

Texas law governs the application of this agreement and all terms contained therein.

INDEMNIFICATION AND HOLD HARMLESS

Applicant, its agents, servants, and employees hereby agree to indemnify and hold harmless Southwestern Bell Telephone, L.P., and its employees, agents and contractors, from and against any and all claims, costs, expenses, judgments or actions for damage to property or injury or death to persons, and/or arising from or relating to the work that is the subject of this agreement, to the extent any such claims are caused by the negligent acts or omissions of the Applicant, its agents, servants, or employees.

ENTIRE AGREEMENT

The parties agree that the terms set forth herein constitute the entire agreement and there are no other agreements regarding the project that is the subject of this agreement between the parties.

MODIFICATION & NOTICE

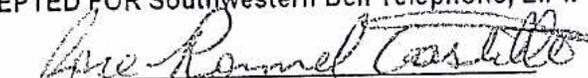
Any modification to this agreement must be made in writing and signed by both parties.

Any party to this agreement may provide the other party with notice of any fact or condition by providing such information in writing and serving said writing via certified mail, return receipt requested.

ACCEPTED FOR CUSTOMER:

\_\_\_\_\_  
Authorized Signature, Title or  
Relationship to Company or Individual  
Company: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Date: \_\_\_\_\_

ACCEPTED FOR Southwestern Bell Telephone, L.P.:

  
Title: Mgr Oprs-Cntl/CWOTS

Date: September 29, 2004

CUSTOM WORK ORDER #5166T04

TOWN OF ADDISON

THIS COST ESTIMATE IS ISSUED TO PLACE CABLE, HAND HOLE, AND 5 PEDESTALS FROM THE REAR OF 5101 CENTURION WAY TO THE REAR OF 4139 CENTURION WAY, ADDISON TX.

BREAKDOWN OF CHARGES:

BROAD GAUGE WORK SHEET  
RECORD 5166T04 JOB

MATERIAL DESCRIPTION	MATL/CONTR QTY	CAPITAL EXPENSE			TOTAL
		COST (EA)	C, *RUC	M, *X	
ANWM 600 PR CA	905	4.07	3683.35	0.00	3683.35
ANMW 200 PR CA	100	1.37	137.00	0.00	137.00
ANMW 100 PR CA	90	0.74	66.60	0.00	66.60
HANDHOLE	1	1400.00	1400.00	0.00	1400.00
TRENCH CABLE (C)	1	10145.00	10145.00	0.00	10145.00
ENGR (S)	32	113.43	3629.76	0.00	3629.76
TECH (S)	125	89.95	11243.75	0.00	11243.75

CONTRACTOR: LABOR 10145.00 SWBT: LABOR 14873.51 MATERIAL 5286.95

CONTRACTOR LABOR: \$10,145.00

SWBT LABOR: \$14,873.51

MATERIALS: \$ 5,286.95

MISC. ADMIN CHARGES: \$ 5,846.33

TOTAL: \$36,151.79

PURCHASE ORDER COST \$ 589.32

TOTAL WITH P.O. \$36,741.11





STATE OF TEXAS

Addison/North Dallas Advertising Agreement

COUNTY OF DALLAS

This Agreement is made as of October 12, 2004 by and between the Town of Addison, Texas (the "Town") and Rodney Hand & Associates Marketing Communications, LP ("Hand").

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

WHEREAS, Hand is a sole proprietorship doing business in the State of Texas; and

WHEREAS, Hand is the owner of a publication known as the Addison/North Dallas Publication (the "Publication"), and the Town desires to advertise in the Publication for the purpose of promoting the Town and the surrounding area to visitors through distribution in hotel rooms in the Town and North Dallas; and

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

NOW, THEREFORE, for and in consideration of the above and foregoing premises, the mutual promises and covenants contained herein, and other good and valuable consideration, the Town of Addison, Texas and Hand & Associates Marketing Communications do contract and agree as follows:

1. Incorporation of Premises. The above and foregoing premises are true and correct and are incorporated herein in their entirety.
2. Term. This Agreement shall be in effect from the date of execution hereof by the Town and shall terminate, except as otherwise provided for herein, upon completion of the third issue of the Publication, including its distribution.
3. Conduct of Publication. Hand shall be the owner/publisher of the Publication and the Town shall be considered an advertiser.
4. Obligations, Representations and Warranties; Indemnification.
  - A. Hand: Hand represents, warrants and covenants that:
    - (1) Hand shall acquire any and all licenses, agreements, permits, waivers, releases, registrations, approvals, authorizations, or any other permit or document required or necessary to produce the Publication.

- (2) In the production of the Publication, Hand shall comply with all applicable federal, state and local laws, rules and regulations.
- (3) During the term of this Agreement, neither Hand nor any of Hand's associates or employees shall participate, whether directly or indirectly, financially or otherwise, in the production of any other publication related to Addison or the North Dallas area.
- (4) Hand shall keep and hold all information provided to it by the Town in connection with this Agreement in confidence and shall not disclose such information to any third party. This paragraph shall survive the termination hereof.
- (5) Hand shall indemnify the Town, its agents, officers and employees against, and hold the Town, its agents, officers and employees harmless from, any and all claims, actions, causes of action, liability, lawsuits, judgments, damages, injuries costs or expenses, including reasonable attorney's fees, for injury to person or property or death of any person resulting from or based upon, in whole or in part, any act or omission of Hand, its agents, officers and employees performed in connection with or pursuant to this Agreement. The provisions of this paragraph shall survive the termination of this Agreement.
- (6) Hand, its officers, agents and employees do hereby waive any and all claims for damage, injury or loss to any person or property, including the death of any person, that may be caused, in whole or in part, by the act or failure to act of any officer, agent or employee of the Town. Hand, its officers agents and employees assume the risk of all conditions whether dangerous or otherwise, in and about the premises of the Town, and waive any and all specific notice of the existence of any defective or dangerous condition in or about the said premises. The provisions of this paragraph shall survive the termination of this Agreement.

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

- (1) The Town shall pay Hand a sum of \$35,000 for 18 pages of R.O.B. (Run of Book) advertising in the November 2004 issue of the Publication, \$35,000 for 18 pages of R.O.B. advertising in the March 2005 issue and \$35,000 for 18 pages of R.O.B. advertising in the August 2005 issue of the Publication. Such payment shall be made in accordance with the terms of this Agreement, including Exhibit A.

- (2) The Town shall pay Hand a sum of \$1,500 for distribution of each of the November 2004, March 2005 and August 2005 Publications respectively to the top 100 employers in that area which includes the Town and extends from the borders of the Town south to LBJ Freeway (IH 635), north to Frankfort Road, east to Hillcrest Road, and west to Marsh Lane. The top 100 employers shall be determined by the Town. Such sum shall be paid by the Town to Hand upon the Town receiving proof acceptable to the Town of the completion of the distribution.
  - (3) The Town shall pay Hand a sum of \$750.00 for distribution of each of the November 2004, March 2005 and August 2005 Publications in the lobbies of the principal 25 buildings located in that area which includes the Town and extends from the borders of the Town south to LBJ Freeway (IH 635), north to Frankfort Road, east to Hillcrest Road, and west to Marsh Lane. The principal 25 buildings shall be determined by the Town. Such sum shall be paid by the Town to Hand upon the Town receiving proof acceptable to the Town of the completion of the distribution.
5. Termination. This Agreement may be terminated at any time by either party hereto in the event that the other party is in breach of any term of this Agreement and such breach continues for more than three (3) days after receipt by the breaching party of written notice of the breach from the non-breaching party. In the event of such termination Hand shall be compensated for all services properly performed to the date of termination. In the event of such termination, should Hand have been paid by the Town for services not yet properly performed then Hand shall reimburse the Town all such payments. Acceptance or payment of such reimbursement shall not constitute a waiver of any claim that may otherwise arise out of this Agreement.
6. Delays. No delay by either of the parties hereto in performing their respective duties, or obligations hereunder shall be deemed a breach of this Agreement if such delay arises from causes beyond the reasonable control of party, including delays resulting from labor disputes, strikes, wars, riots, insurrection, civil commotion, government regulations, fire, flood, storm, or acts of God, provided that such affected party uses its best efforts to avoid non-performance and resumes full performance hereunder as soon as practical. Shortage of material or equipment or changes in price of materials or equipment shall not constitute valid grounds for delay.
  - b. It will constitute a breach of this Agreement, allowing for termination and/or recovery of damages which the non-breaching party sustains if:
    - (i) The Town fails to make any payment due hereunder within thirty (30) days following the receipt of an invoice therefor,

(and each such invoice shall include a summary statement of services rendered; and Hand shall supply such supporting documentation with each invoice regarding the services performed by Hand as may be requested by Town from its Staff employees), or

- (ii) Hand fails to deliver the November 2004 issue of the Publication, in the required quantities (see Exhibit A) on or before November 22, 2004, the March 2005 issue in the required quantities (see Exhibit A) on or before March 21 or the August 2005 issue in the required quantities (see Exhibit A) on or before August 22, 2005, provided, however, that the Town agrees to allow Hand a period not to exceed five (5) business days from the delivery date set out above to fully complete Hand's required distribution of the Publications. Failure by Hand to deliver on the dates set above shall result in a late fee of \$400.00 per day which the Town shall deduct from the final amount then payable.

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

To Addison:

Town of Addison  
P. O. Box 9010  
Addison, TX 75001  
Attn: Lea Dunn  
Deputy City Manager

To Hand:

Rodney Hand & Associate  
Communications, LP  
PO Box 7444  
Dallas, TX 75209  
Attn: Rodney Hand

- 8. Assignment. This Agreement shall not be assigned in whole or in part by Hand without the prior written consent of the Town. Because this is a services contract, the Town is not obligated to consent to any assignment of any portion of this Agreement. Any attempted assignment hereof by Hand shall be null, void and of no force or effect.
- 9. Independent Contractor. The relationship of Hand to the Town is that of an independent contractor. Neither the Town nor Hand shall be deemed to be the agent of the other and neither is authorized to take any action binding upon the other.
- 10. Texas Law to Apply. This Agreement and Exhibit "A" shall be governed by the laws of the State of Texas, and shall be performable and all compensation payable in Dallas County Texas. Venue under this Agreement lies in Dallas County, Texas.

11. Entire Agreement. This Agreement and the attached “Exhibit A” represents the entire and integrated agreement between the Town and Hand and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both parties.
12. Severability. If any clause, paragraph, section or portion of this Agreement shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Agreement shall remain in full force and effect.
13. Authority to Execute. The undersigned officers and/or agents of the Town and Hand are properly authorized officials of the said parties and have the authority necessary to execute this Agreement on behalf of the respective party, and the parties hereby certify one to the other that any necessary resolutions extending said authority have been duly passed and are now in full force and effect.

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

TOWN OF ADDISON, TEXAS

RODNEY HAND & ASSOCIATES  
MARKETING  
COMMUNICATIONS, LP

By: \_\_\_\_\_  
Ron Whitehead, City Manager

By: \_\_\_\_\_  
Rodney Hand, Principal

Attest: \_\_\_\_\_  
City Secretary

## EXHIBIT "A"

### DESCRIPTION OF ADDISON/NORTH DALLAS PUBLICATION

A. **Schedule:** The (i) November 2004 issue of the Publication shall be completed and distributed by Hand on or before November 22, 2004, (ii) the March 2005 issue of the Publication shall be completed and distributed on or before March 21, 2005, and the (iii) August 2005 issue of the Publication shall be completed and distributed by Hand on or before August 22, 2005.

B. **Duties of Town:** The Town shall:

1. Become the anchor advertiser for the November 2004, March 2005, and August 2005 issue of the Publication. The Town shall be provided (a) 18 pages of R.O.B. (Run of Book) advertising and editorial, for the November 2004 issue of the Publication at a total cost not to exceed \$35,000, (b) 18 pages of R.O.B. (Run of Book) advertising and editorial, for the March 2005 issue of the Publication at a total cost not to exceed \$35,000, and (c) 18 pages of R.O.B. advertising and editorial for the August 2005 issue of the Publication at a total cost not to exceed \$35,000. Payments shall be due based on the following schedule:

For the November 2004 issue, a total of \$35,000.00 will be due 30 days after completion by Hand of delivery of the Publication to all the hotels contained on a distribution list designated by the Town and the distribution of the Publication to all other sources as described herein.

For the March 2005 issue, a total of \$35,000.00 will be due 30 days after completion by Hand of delivery of the Publication to all the hotels contained on a distribution list designated by the Town and the distribution of the Publication to all other sources as described herein.

For the August 2005 issue, a total of \$35,000.00 will be due 30 days after completion by Hand of delivery of the Publication to all the hotels contained on a distribution list designated by the Town and the distribution of the Publication to all other sources as described herein.

2. Submit to Hand in writing: changes and/or corrections to proofs or artwork, photos, and editorial layout. The Town shall return requests for proofing within 96 hours of receipt from Hand.

3. The Town agrees to permit Hand to review its collection of photographs, and agrees to grant to Hand a non-exclusive, royalty free license to use or reproduce such photographs, but solely as a part of the content of the publications which are the subject hereof; provided, however, that if any

other person, firm or entity is the owner of any intellectual property rights in connection with any of such photographs, Hand is required to pay such fees, or enter into agreements with third parties as Hand and such third party may agree, without any cost or expense to the Town

4. Town authorizes Hand to produce the Town's logo, royalty free, but solely in connection with the publications which are the subject of this Agreement, and for no other purpose.

C. **Duties of Hand:** Hand shall provide:

1. On or before November 1, 2004 a timeline that details the elements of the Publication with key milestones.
2. A minimum 64-page Perfect Bound magazine of 30,000 copies each for the November 2004 issue, March 2005 issue, and the August 2005 issue of the Publication.
3. Proofs of the editorial outline, story ideas, cover design, photos, artwork, and layout and input for approval by the Town. No editorial material of any nature will appear in the Publications unless it has been reviewed and approved by the Town.
4. The Town shall have prior approval of all promotional material including advertising rates pertaining to the Publication.
5. Hand shall be responsible for the distribution of the Publication to the participating hotels and shall also verify placement of Publication in guest rooms. Hand shall also provide placement copies to hotels as needed. In addition, Hand shall also distribute the publication to the following sources:

Participating Hotel Sales Offices  
Corporate Concierges (4 buildings in area)  
Commercial Leasing Offices (12 locations of new construction in Addison)  
Residential Real Estate Offices.  
Advertisers

Hand shall provide to the Town a list of all sources to whom copies of the Publication are distributed.

Hand shall coordinate distribution of the Publication at the Dallas Market Center, provided, however that, the Town shall assume the costs associated with this distribution.

6. As the anchor advertiser, the Town will be given copies for distribution.
7. Advertising sales area will be limited to:

South of Frankfort East of  
Marsh Lane North of  
Harvest Hill West of  
Hillcrest Road

**Major retail concentrations such as the Galleria and Valley View Mall shall be included.**

**Restaurants outside the area shall not be included.**

**No advertising will be accepted from any person, business or organization unless it meets the geographic limitations set out above without express permission from the Town of Addison Deputy City Manager or City Manager. The Town shall receive a list of advertisers one (1) week following the posted space reservation deadline for each issue.**

- 8. The Town and Hand agree that the ratio of advertising to editorial shall not exceed 40% ads to 60% editorial.**
- 9. The Town and Hand agree that the average ad rate for a run of space, full page/4 color insertion shall not exceed \$3,500.00 and for exclusive positions, a full page/4 color insertion shall not exceed \$4595.00.**

**Council Agenda Item: #2e**

**SUMMARY:**

Approval of the Contract between the Town of Addison and Hotel Inter-Continental for the meeting space and sleeping room guarantee for the 2005 North Texas Jazz Festival.

**FINANCIAL IMPACT:**

Budgeted Amount:    \$49,896 \*

Cost:                    \$49,896 \*

\* Amount will be partially offset by revenues from the sale of concert tickets, brunch tickets and participant sleeping rooms.

**BACKGROUND:**

See the attached memorandum.

**RECOMMENDATION:**

Staff recommends approval.

**ATTACHMENTS:**

Staff Memorandum  
Group Sales Contract



## MEMORANDUM

P.O. Box 9010 • 16801 Westgrove Drive • Addison, TX 75001-9010 • 972-450-6221 • 972-450-2834FAX

---

**DATE:** October 5, 2004  
**TO:** Chris Terry, Assistant City Manager  
**FROM:** Barbara Kovacevich, Special Event Manager  
**RE:** 2005 North Texas Jazz Festival Contract with Hotel Inter-Continental

I would like to place the approval of the 2005 North Texas Jazz Festival Contract with Hotel Inter-Continental on the Consent Agenda for the October 12, 2004 City Council Meeting.

This will be the 3<sup>rd</sup> year the Town of Addison has hosted the education aspect of the North Texas Jazz Festival in Addison at the Hotel Inter-Continental. The Town has secured the assistance of Helms-Brisco again this year to negotiate the agreement with the hotel, and the following will summarize the proposed changes to the terms of the contract:

- **\$49,896 Commitment** - An increase of \$1,732 due to food and beverage for a new student reception we are proposing to host on Thursday evening when the Directors are at the Welcome Reception at Town Hall. We received input that the students were looking for something to do when they arrived on Thursday night and this will also provide an additional opportunity for them to view the Hal Miller film series.
  - Last year, the Town was able to reduce the hotel expenditure to just over \$37,000 – a 12% savings off the guarantee and \$60,000 less than 2003.
  - We expect to book approximately 700 hotel room nights that would generate nearly \$70,000 in revenue for the hotel. We booked 657 rooms last year, which was up 60% from 2003.
- **Meeting and Concert Space** – Moved in its entirety to the second floor for several reasons:
  - The Crystal Ballroom will allow us to sell approximately three times the number of tickets to the evening concerts. We are planning to feature the One O’Clock Lab Band on Friday night and a national headliner with more name recognition on Saturday night.
  - Using the Crystal Ballroom for the evening concerts should eliminate the sound issues we experienced last year because there will not be another group performing above us.
  - The entire event can be held on one floor and in a more convenient and conducive setting.
  - Additional exhibit space can be sold in the foyer outside the Crystal Ballroom. This would generate incremental revenue and provide additional interest in the festival.
- **2005 Budget:** This expenditure is included in the 2005 budget of \$191,900.00, which is 10% less than last year and over \$88,000 less than the 2003 budget.



**INTERCONTINENTAL.**  
DALLAS

Group Sales Contract

Between

INTERCONTINENTAL DALLAS

And

Town of Addison

Date Prepared: October 8, 2004

Name of Organization: Town of Addison

Name of Meeting: 2005 North Texas/Addison Jazz Festival

Official Meeting Dates: March 30 – April 04, 2005

Authorized Representative: Mr. Chris Terry  
Assistant City Manager

Address P.O. Box 9010  
Addison, TX 75001-0144

Telephone 972-450-7037

Fax Number 972-450-7043

Hotel Sales Contact: Patty Cipoletti  
Director of Sales & Marketing

Telephone 972-789-3031

Fax Number 972-404-1848

Email patty.cipoletti@ichotelsgroup.com

Town of Addison ("Group") and InterContinental Dallas ("Hotel") agree as follows:

The following arrangements have been set aside on a first option tentative basis. With a first option, you have first right of refusal to the dates we have offered. If we receive a request for the dates and space held for you from another organization, we will notify you immediately and you will have 48 hours from the time of notification by the Hotel to confirm your interest in the dates and space by signature of this contract. If the Hotel does not have a fully executed contract within the 48 hours, we have the right to release the space being held.

\_\_\_\_\_ Initial

**OPTION DATE:**

This contract and option is valid until June 18, 2004 at which time we will require a signed copy of this contract. If confirmation has not been received by this date, this contract is invalid and a new contract must be renegotiated.

**GUEST ROOM BLOCK:**

	Thu 03/31	Fri 04/01	Sat 04/02	Total Room Block
Run of House	175	255	200	630

The Hotel and the Group agree that the above room block shall be reserved for the Group at the guest room rates agreed to by the parties in this contract subject to the terms and conditions of this contract.

**RESERVATION PROCEDURES:**

Since your attendees will be calling in their own reservations directly to the Hotel, please instruct them to identify your meeting as 2005 North Texas/Addison Jazz Festival so we may extend your group rate to them.

Individual reservations are entitled to the group rate if the guest makes their reservations and pays a deposit equal to the room rate for one night plus tax currently at 13% at the time of making the reservation. Subject to availability, the Hotel will allow Group members to extend their stay up to three (3) days prior and three (3) days after the official meeting dates at the group rate based upon availability. Furthermore, reservation requests received after the cut-off date will be accepted on a space and rate available basis.

Any guaranteed reservation that is considered a "no show" will result in a charge of one night's room and tax and will be charged to the individual credit card or the master account and is non-refundable.

For any VIP reservations, we suggest a list be forwarded to the Hotel prior to the cut off date so we may personally identify and apply any special guest services required.

All reservations require a one night's deposit, by check or credit card, for each room reserved. Cancellation will be accepted up to 4:00 p.m. seventy-two (72) hours prior to arrival. After 72 hours, a cancellation will result in a charge of one night's room and tax and will be charged to the individual credit card or to the Master Account.

Please note our guest check-in time is 3:00 P.M. Every attempt will be made to accommodate those guests arriving prior to 3:00 P.M. Check-out time is 12:00 P.M.

A credit card is required upon check-in to guarantee incidentals. Guests who do not wish to provide a credit card will be required to provide daily cash deposit of \$50.00.

**CUT OFF DATE:**

We have established a cut-off date of 12:01 a.m. on February 28, 2005 for guest room accommodations. Any requests received after this date shall be handled on a space available basis. If the group rate is not available after the cut-off date, the prevailing rack rates will apply for any reservations confirmed. Additionally, after such date, we have the right to release the rooms not reserved.

**ROOMS GUARANTEE:**

At the cut-off date, if Group is unable to provide names for the reserved guestrooms they will be released back to the hotel for resale. If you wish to hold the rooms for your organization's exclusive use, you may guarantee payment for all room nights and provide a rooming list one (1) week prior to the groups' arrival. Group will be required to pay for all room nights that were reserved/guaranteed for your exclusive use on/after the cut off date.

**GUEST ROOM RATES SCHEDULE:**

Room	Single Rate	Double Rate	Triple Rate	Quad Rate
Run of House	\$99	\$99	\$110	\$110

All rates are subject to the appropriate state, local and any occupancy taxes in effect at the time of the Group's meeting. These taxes are currently 13% percent.

The rates provided for the Group have been negotiated based on the needs and the size of the Group, as well as the number of food and beverage functions and meeting space required over the dates specified.

**COMMISSION**

The group guest room rates quoted by the Hotel shall be commissionable to HelmsBriscoe as agent of record for Group. Commissions shall be paid at the rate of ten percent (10%) of the guestroom rate for all rooms actually used and paid for by the Group over the meeting dates. Said commissions shall be paid to HelmsBriscoe no later than thirty (30) days after the payment in full of the Master Account.

**STAFF RATES:**

We are pleased to provide a special staff rate at \$69.00 for up to 2 rooms, based on picking up the present room block. (These rooms do not apply to complimentary guest room determinations.)

These rates are confirmed on a net non-commissionable basis.

**SUITES:**

All suite prices are quoted as a one bedroom suite. Two and three bedroom suites shall be calculated at an additional Concierge King or Double Double rate.

Suites are not to be used as open hospitality suites. Hosted functions in Concierge Floor suites are limited to invitation only groups of 20 people or less and must be approved by Hotel Management. Patio Suites located on the fifth floor or Hospitality Suites on the third floor are available for open hospitality functions.

**COMPLIMENTARY GUEST ROOMS:**

Our complimentary policy is to provide one (1) room for each 50 occupied guestrooms consumed at the negotiated group rate. Earned complimentary guestrooms may be assigned in advance by providing us with the names of designated guests 30 days prior to arrival. The following table will explain what constitutes a room night:

King	1 Room Night
Double Double	1 Room Night
Patio Suites	2 Room Nights
<u>Executive Suites</u>	
One Bedroom	2 Room Nights
Two Bedroom	3 Room Nights
<u>Luxury Suites</u>	
One Bedroom	5 Room Nights
<u>Presidential Suites</u>	
One Bedroom	5 Room Nights
Two Bedroom	6 Room Nights
Three Bedroom	7 Room Nights

Complimentary room units may not be used as credit. Complimentary room nights not used have no monetary value.

**GUEST ROOM ATTRITION/ROOM BLOCK REVIEW:**

In the event the guestroom pickup falls below 80% of the original confirmed block, Town of Addison will be responsible for 100% of the reduction multiplied by the room rate of \$99.00 plus applicable taxes. However the Town of Addison reserves the right to purchase any rooms needed to make up the 80% of the room block.

Any adjustments to the room block will result in a proportionate adjustment in the Group's meeting and function space block.

**SCHEDULE OF EVENTS:**

Date	Start Time	End Time	Description	Room	Setup	Agr	Room Rental
Thu, 3/31/05	2:00 PM	10:00 PM	Office	Hamilton			
Thu, 3/31/05	5:00 PM	7:00 PM	Registration	Crystal Foyer 4-5			
Thu, 3/31/05	7:00 PM	11:00 PM	Exhibits (set up)	Crystal Foyer 4-5	8 Foot Table		
Thu, 3/31/05	7:00 PM	11:00 PM	Vocal Warm Up (Set Up)	Spectrum			
Thu, 3/31/05	7:00 PM	11:00 PM	Big Band Warm Up (Set Up)	Crystal VIII			
Thu, 3/31/05	7:00 PM	11:00 PM	Small Combo Clinic Set Up	Crystal 2-3			
Thu, 3/31/05	7:00 PM	11:00 PM	Trombone Master Class (set up)	Colonnade			
Thu, 3/31/05	7:00 PM	11:00 PM	Set Up	Crystal 4-5			\$1,000.00
Thu, 3/31/05	7:00 PM	11:00 PM	Clinic Set Up	Crystal 6-7			
Thu, 3/31/05	7:00 PM	11:00 PM	Combo Warm Up Set Up	Crystal I			
Thu, 3/31/05	9:00 PM	11:00 PM	Jazz Vocals Set Up	Lalique Ballroom			
Thu, 3/31/05	10:00 PM	7:00 AM	24 Hour Hold	Hamilton			
Thu, 3/31/05	11:00 PM	8:00 AM	24 Hour Hold	Colonnade			
Thu, 3/31/05	11:00 PM	8:00 AM	24 Hour Hold	Crystal I			
Thu, 3/31/05	11:00 PM	8:00 AM	24 Hour Hold	Crystal VIII			
Thu, 3/31/05	11:00 PM	8:00 AM	24 Hour Hold	Spectrum			
Thu, 3/31/05	11:00 PM	9:00 AM	24 Hour Hold	Crystal 4-5			
Thu, 3/31/05	11:00 PM	9:00 AM	24 Hour Hold	Crystal 2-3			
Thu, 3/31/05	11:00 PM	9:00 AM	24 Hour Hold	Crystal 6-7			
Thu, 3/31/05	11:00 PM	9:00 AM	24 Hour Hold	Lalique Ballroom			
Fri, 4/01/05	7:00 AM	10:00 PM	Office	Hamilton			
Fri, 4/01/05	7:30 AM	11:00 AM	Break	Hamilton			
Fri, 4/01/05	8:00 AM	3:30 PM	Big Band Warm Up	Crystal VIII			
Fri, 4/01/05	8:00 AM	4:00 PM	Film Presentation	Colonnade			
Fri, 4/01/05	8:00 AM	5:00 PM	Registration	Crystal Foyer 4-5			
Fri, 4/01/05	8:30 AM	3:30 PM	Combo Warm Up	Crystal I			
Fri, 4/01/05	8:30 AM	4:00 PM	Choral Warm Up	Spectrum			
Fri, 4/01/05	9:00 AM	4:00 PM	Big Band Performance	Crystal 4-5			\$2,000.00
Fri, 4/01/05	9:00 AM	4:30 PM	Small Combo Clinic	Crystal 2-3			

Fri, 4/01/05	9:00 AM	4:30 PM	Jazz Vocals	Lalique Ballroom			
Fri, 4/01/05	10:00 AM	4:30 PM	Big Band Clinic	Crystal 6-7			
Fri, 4/01/05	11:00 AM	2:00 PM	Cash Sales	Crystal Foyer 1-8			
Fri, 4/01/05	12:15 PM	1:15 PM	Trombone Master Class	Colonnade			
Fri, 4/01/05	2:00 PM	4:30 PM	Break	Hamilton			
Fri, 4/01/05	3:30 PM	9:00 AM	24 Hours	Crystal VIII			
Fri, 4/01/05	3:30 PM	9:30 AM	24 Hour Hold	Crystal I			
Fri, 4/01/05	4:00 PM	8:00 AM	24 Hours	Colonnade			
Fri, 4/01/05	4:00 PM	9:30 AM	24 Hours	Spectrum			
Fri, 4/01/05	4:30 PM	9:30 AM	24 Hour Hold	Crystal 2-3			
Fri, 4/01/05	4:30 PM	9:30 AM	24 Hour Hold	Lalique Ballroom			
Fri, 4/01/05	4:30 PM	9:30 AM	24 Hour Hold	Crystal 6-7			
Fri, 4/01/05	6:00 PM	8:00 PM	Band Refreshments	Crystal 4-5			
Fri, 4/01/05	7:00 PM	11:30 PM	Performance	Crystal 4-5			
Fri, 4/01/05	10:00 PM	8:00 AM	24 Hour Hold	Hamilton			
Fri, 4/01/05	11:30 PM	9:00 AM	24 Hour Hold	Crystal 4-5			
Sat, 4/02/05	8:00 AM	11:00 AM	Break	Hamilton			
Sat, 4/02/05	8:00 AM	4:00 PM	Film Presentation	Colonnade			
Sat, 4/02/05	8:00 AM	5:00 PM	Registration	Crystal Foyer 4-5			
Sat, 4/02/05	8:00 AM	10:00 PM	Office	Hamilton			
Sat, 4/02/05	9:00 AM	3:30 PM	Combo Warm Up	Crystal I			
Sat, 4/02/05	9:00 AM	3:30 PM	Jazz Vocals	Lalique Ballroom			
Sat, 4/02/05	9:00 AM	3:30 PM	Big Band Warm Up	Crystal VIII			
Sat, 4/02/05	9:00 AM	4:00 PM	Big Band Performances	Crystal 4-5			\$2,000.00
Sat, 4/02/05	9:00 AM	4:30 PM	Big Band Clinic	Crystal 6-7			
Sat, 4/02/05	9:00 AM	4:30 PM	Small Combo Clinic	Crystal 2-3			
Sat, 4/02/05	11:00 AM	2:00 PM	Cash Sales	Crystal Foyer 4-5			
Sat, 4/02/05	12:15 PM	1:15 PM	Trombone Master Class	Colonnade			
Sat, 4/02/05	2:00 PM	4:30 PM	Break	Hamilton			
Sat, 4/02/05	6:00 PM	8:00 PM	Band Refreshments	Crystal 4-5			
Sat, 4/02/05	7:00 PM	11:30 PM	Performance	Crystal 4-5			
Sat, 4/02/05	10:00 PM	8:00 AM	24 Hour Hold	Hamilton			
Sat, 4/02/05	11:30 PM	8:00 AM	24 Hour Hold	Crystal 4-5			
Sun, 4/03/05	8:00 AM	11:00 AM	Set-Up	Crystal 4-5	Rounds of 10	500	
Sun, 4/03/05	8:00 AM	12:00 PM	Office	Hamilton			
Sun, 4/03/05	11:00 AM	2:00 PM	Jazz Brunch	Crystal 4-5	Rounds of 10	500	

The room names listed above are recommended venues for each function and must be verified prior to printing materials or finalizing your program. Room assignments are based upon the anticipated number of guest rooms, as well as the number of people who shall attend the meeting or banquet function. We reserve the right to change the function room assignments to space more suitable, or available, for the actual attendance if actual attendance is more or less than originally requested. We will inform you of any such changes at the earliest opportunity; however, we do reserve the right to make such reassignments as we deem either necessary or appropriate. In the event of a larger attendance, we will use our best efforts to accommodate such a group, but we are not in a position to assure that we will be able to do so.

Guestroom revenue is based upon the contracted minimum of \$49,896.00 which is 80% of the block and a Food and Beverage minimum of \$8,000.00 with \$5,000.00 Room Rental fee totaling \$62,896.00.

**MEETING ROOM RENTAL:**

The Hotel will provide all of the function and meeting space required by your group in accordance with the above Schedule of Events and the Group agrees to pay the function and meeting space room rental charges in addition to any food, beverage and miscellaneous costs for each function for services requested by Group provided that the Group has an eighty percent (80%) pickup of the agreed sleeping room block. (Rental is based on the agreed room block.

Function/Meeting room rental and set up fees are assessed separately and are not in lieu of any liquidated damages for room revenue or food and beverage revenue set forth herein.

All function and meeting space is assigned by the Hotel according to the number of persons guaranteed to attend the Group's function. The Hotel reserves the right to reassign the space listed on the Schedule of Events to accommodate both the Group and all other groups or parties using the Hotel's facilities during the Group's meeting. A failure to submit a finalized Schedule of Events to the Hotel by the date required by the terms of this Contract may result in a release by the Hotel of the space being held by the Group and/or a reassignment to space more suitable for the finalized Schedule of Events once submitted. The Group agrees to promptly notify the Hotel of any changes in its function or meeting space requirements. All fees for meeting and function space will include a twenty percent (20%) surcharge and are subject to 8.25% for sales tax.

The Hotel is currently holding function space based on the Schedule of Events. This is considered to be a firm commitment by the Group and any increase or decrease to that commitment may result in additional charges by the Hotel.

**FOOD AND BEVERAGE:**

Prior to the submission of the Final Schedule of Events, the Hotel retains the right to reassign any meeting rooms or function space to accommodate all of the Hotel's business needs.

Because of our legal liability for all food and beverage served on Hotel premises and our licensing restrictions, our policy requires that only Hotel purchased food and beverage be served on hotel property. Being accountable for food and beverage origin, condition, and transportation, we will make every effort to meet our responsibilities in the protection of our guest's health and safety.

Banquet prices will be confirmed twelve (6) months prior to the Arrival Date. All meals should be planned a minimum of thirty (30) days prior to your function allowing us to send you the Banquet Event Orders for your approval prior to arrival. Meal guarantees are required 72 hours prior to your function.

**FOOD AND BEVERAGE ATTRITION:**

Should it become necessary for you to cancel or substantially reduce by more than twenty percent (20%) any or all of the functions as listed in the Schedule of Events, the Hotel will be entitled to liquidated damages based on the following scale:

More than six (6) months prior to the scheduled date, an amount equal to twenty-five percent (25%) of the estimated food, beverage, and meeting room revenue based on the minimum estimate of the total value of the function.

More than ninety (90) days to six (6) months prior to the scheduled date, an amount equal to fifty percent (50%) of the estimated food, beverage, and meeting room revenue based on the minimum estimate of the total value of the function.

More than thirty (30) days to ninety (90) days prior to the scheduled date, an amount equal to seventy-five percent (75%) of the estimated food, beverage, and meeting room revenue based on the minimum estimate of the total value of the function.

Less than thirty (30) days prior to the scheduled date, an amount equal to one hundred percent (100%) of the estimated food, beverage, and meeting room revenue based on the minimum estimate of the total value of the function.

This provision applies to food and beverage functions only. Reductions in the Group's room block commitment are addressed in the provision entitled Meeting Room Rental.

If cancellation or such reduction (more than 20%) occurs, an invoice will be sent to you at the time of cancellation for one-half of the liquidated damages due as outlined in the above schedule. The remainder will be due at the time the group was to have arrived at the Hotel.

The "estimated total price of the reduced/canceled function(s)" referenced above shall refer to the estimated price of the function(s) as set forth in the Final Schedule of Events.

Liquidated damages due to the Hotel as a result of such cancellation or reduction of the function or functions shall be charged to the Group's Master Account, if one has been established. Otherwise, the Group shall pay liquidated damages due to the Hotel as a result of such cancellation or reduction of the function or functions at the time of such cancellation or reduction.

#### **CREDIT AND BILLING ARRANGEMENTS:**

Individuals will be responsible for their own room, tax, incidental charges and any other charges not authorized by the Group to be billed to the Master Account. All charges incurred are to be paid upon check-out. The Group's Master Account is limited to charges for meeting/function room rental, food and beverage functions and other requested services.

In the event that the Group wishes to set up direct billing for the Master Account a credit application must be completed and returned no later than 3 months before arrival in order to be processed for approval. Credit procedures are provided by the Hotel upon the request of the Group for a credit application.

The Town of Addison will specify the events and rooms for their master account.

Master account **Credit Card** payments must be approved in advance by the Hotel's Controller. If approved, Credit Card will be charged for 90% of estimated charges, balance must be received within 30 days of receipt of the invoice.

In the event that credit is not requested or is not approved, payment of the Group's total estimated Master Account will be due to the Hotel one (1) month before arrival. Failure to remit the appropriate payment on a timely basis will result in cancellation of all arrangements outlined in this contract and the Group shall be liable for amounts-as described in the cancellation provision.

#### **MISCELLANEOUS:**

##### Convention Services and Catering

A Convention Services Manager will assist you with all details of your meeting. They are responsible for working with you and your staff to coordinate all arrangements made with the hotel to ensure a successful program.

##### Rigging

Rigging Services at the Hotel are provided exclusively by National Production Services Inc. To view drawings of our ceiling and all the permanent rigging points visit ([www.rigginginfo.com](http://www.rigginginfo.com)).

##### Signs, Banners and Displays

To maintain the professionalism of our hotel, it is necessary to have prior approval from the Convention Services Department on the following:

- a) The hanging of any type of signage. It is hotel policy that items are to be displayed on easels and not attached to any wall surface throughout the hotel.
- b) The placement on, or moving of, equipment across carpeted areas.

If damages occur, your organization will be financially responsible for repair/replacement costs.

Security

In order to assure that the Security service meets our professional standards, we reserve the right to approve or deny outside security arrangements. Please coordinate your security arrangements through the Convention Services Department upon final selection of the security service. We shall not be responsible for any act, omission or loss whatsoever resulting from any act or omission occurring by any security service selected by you.

**CANCELLATION AGREEMENT:**

Group may cancel this Contract without cause at any time prior to the event by paying a liquidated damages fee to the other party an amount based on the following scale:

<b>Signature of Contract</b> to July 1, 2004	50% of total anticipated revenue
July 2, 2004 to October 31, 2004	75% of total anticipated revenue
November 1, 2004 to <b>(arrival date)</b>	\$100% of total anticipated revenue

The Hotel may not cancel this contract. The exercise by Group of the option to cancel is agreed by the parties to constitute the exercise of a contractual option and not a default and in no event shall the canceling party be liable for more than the option price paid hereunder.

Payment due as a result of cancellation of this contract under this provision shall be made by the canceling party to the non-canceling party at the time the contract is cancelled by written notice.

Nothing contained in the above section is intended to allow the Group the right to cancel for the purpose of holding the same meeting in another facility or city.

Once notice of cancellation is given, the Hotel shall immediately return the room block and reserved function space and meeting rooms to its inventory and make good faith, commercially reasonable (based on standards of first class hotels in the Dallas, Texas metropolitan area) efforts to resell the rooms, function space and meeting rooms. If, as a result of its efforts, the Hotel's losses as determined in good faith by the Hotel are less than the cancellation fee already invoiced to or paid by the Group, Hotel shall adjust the invoice and refund any such difference to the Group.

**RIGHTS OF TERMINATION FOR CAUSE:**

Except as otherwise provided in the Contract, neither party shall have the right to terminate their obligations under this Contract This Contract is, however, subject to termination for cause without liability to the terminating party, under any of the following conditions:

- a. The parties' performance under this Contract is subject to acts of God, war, government regulation, terrorism, disaster, strikes, civil disorder, curtailment of transportation facilities, or any other emergency beyond the parties' control, making it inadvisable, illegal or which materially affects a party's ability to perform its obligations under this contract. Either party may terminate this Contract for any one or more of such reasons upon written notice to the other party within three (3) days of such occurrence or receipt of notice of any of the above occurrences.

- b. In the event that either party shall make a voluntary or involuntary assignment for the benefit of creditors or enter into bankruptcy proceedings prior to the date of the Group's meeting, the other party shall have the right to terminate this contract without liability upon written notice to the other.
- c. The Hotel shall promptly notify the Group if there is a change in the management company which operates the Hotel prior to the meeting, and Group shall have the right to terminate this Contract without liability upon written notice to the Hotel.
- d. The phrase "without liability" wherever used in this Contract shall be deemed to include a refund by the Hotel of all deposits and prepayments made within days of the notice of termination.

**INDEMNIFICATION AND HOLD HARMLESS:**

Hotel and Group each agree to indemnify and hold harmless the other party from and against all claims, actions or causes of action, liabilities, including reasonable attorneys' fees and costs arising from the defense of any claim, action, cause of action or liabilities arising out of or resulting from any act taken or committed by Hotel or Group pursuant to the performance of each party's obligations hereunder. Hotel and Group each agree to indemnify and hold harmless the other party for any claim, action, cause of action and liabilities which may be asserted by third parties arising out of the performance of either party's obligations pursuant to this Contract, except for the willful misconduct or gross negligence of the other party.

**AMERICANS WITH DISABILITIES ACT:**

The Hotel represents and warrants that, as a place of "public accommodation", it is in compliance to the extent applicable with the applicable provisions of Title III of the Americans with Disabilities Act. Hotel facilities, including, but not limited to, meeting space, restrooms, dining areas, other common areas and sufficient guest rooms, shall be reasonably accessible and usable by persons with disabilities. It is the responsibility of the Group to ensure the availability of all auxiliary aids and services required in order to allow the attendees to have full participation and equal access to the facilities utilized by the Group for its meeting. The Hotel will make available to the Group any auxiliary aids which it has available during the meeting, if requested by the Group for its attendees. Any extraordinary costs for special auxiliary aids requested by the Group shall be borne by the Group provided the Hotel notifies the Group in writing.

**INSURANCE:**

The Hotel and the Group shall obtain and maintain and provide evidence of insurance upon request in amounts sufficient to provide coverage for any liabilities arising out of or resulting from the respective obligations pursuant to this contract.

**BINDING AGREEMENT:**

The Group Sales Contract, along with the attachments called "Schedule of Events" and Hotel Policies and Procedures are all of the terms agreed to by the parties. Any changes to these terms must be made in writing and signed by both parties to be effective. All prior agreements, verbal or written, are no longer effective once this Contract is signed by the parties.

**NOTICE:**

Any notice required or permitted by the terms of this Contract should be made in writing. Notice must be delivered through one of the following methods in order to be deemed given:

\_\_\_\_\_ Initial

- 1) Certified Mail, return receipt requested (and delivery shall be deemed accomplished within (3) days following the deposit of the notice in the United States Mail, postage prepaid, and addressed as set forth herein.)
- 2) Registered Mail, return receipt requested (and delivery shall be deemed accomplished within (3) days following the deposit of the notice in the United States Mail, postage prepaid, and addressed as set forth herein.)
- 3) Overnight Delivery, with a signature signifying receipt (and delivery shall be deemed accomplished upon the actual receipt of the delivery by the party to whom it is sent.)

All notices must be addressed to the person named on the first page of this Contract as that party's contact/representative. The notice shall be deemed effective as of the date shown on the receipt signifying delivery of such notice to the party to whom it is addressed.

**ADDENDA:**

See the attached addendum.

**HEADINGS:**

The headings and numbers appearing in this Contract have been inserted as a matter of convenience. If there is any conflict between the headings and numbers and the text of this Contract, the text will control.

**WAIVER:**

If one party agrees to waive its right to enforce any term of this Contract, it does not waive its right to enforce such term or any or all other terms of this Contract at any other time.

**SEVERABILITY:**

In the event any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Contract that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Contract which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

**ASSIGNMENT:**

This Contract may not be assigned, transferred, sold, pledged, or otherwise conveyed by the Hotel in whole or in part, and Hotel shall have no power or authority to assign, transfer, sell, pledge, or otherwise convey this Contract or any part thereof, without the Group's prior written consent. Any attempted transfer or conveyance of any kind or by any method without the Group's prior written consent shall be null and void, and the Group shall be entitled to immediately terminate this Contract.

**THIRD PARTIES:**

It is understood and agreed between the parties that the Hotel and the Group, in satisfying the conditions of this Contract, have acted independently, and assume no responsibilities or liabilities to third parties in connection with these actions.

**SURVIVAL OF COVENANTS:**

\_\_\_\_\_ Initial

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

**DISPUTE RESOLUTION:**

In an effort to resolve claims, disputes or other matters in question arising out of or relating to this Contract or breach thereof, the parties agree that all claims, disputes, or other matters in question may be submitted to nonbinding mediation as a first step in seeking a resolution of the same. By mutual agreement, the parties may use a nonbinding form of dispute resolution other than mediation.

**GOVERNING LAW, VENUE:**

This Contract shall be governed by and construed under the laws of the State of Texas (and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing interpretation, validity and enforcement of this Contract). If any provision of the Contract is unenforceable under applicable law, the remaining provisions shall continue in full force and effect. In the event of any action under this contract, venue for all causes of action shall be instituted and maintained in Dallas County, Texas.

This signature page may be signed by the parties and sent by electronic transmission (facsimile) and shall be acceptable to the Hotel to hold the space for seventy-two (72) hours provided that the Hotel receives the fully executed Contract with the original signature by mail without any further changes within seventy-two (72) hours of the date shown on the facsimile signature page (provided, however, that if the end of the 72 hour period should occur on a Sunday, Saturday, or a holiday, the time period by which the Hotel must receive the original Contract shall be extended to the end of the next regular business day following such Sunday, Saturday, or holiday).

When signed by representatives of both parties, this Contract, which includes The Schedule of Events, and the Hotel's Policies and Procedures which are incorporated by reference, will constitute a binding agreement between the Group and the Hotel.

**AGREED UPON:**

By the Group's  
Authorized Representative

By the Hotel's  
Authorized Representative

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

Patty Cipoletti  
Director of Sales & Marketing

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_ Initial

## **Town of Addison HOTEL CONTRACT ADDENDUM**

The terms of this addendum shall be incorporated into, become part of, and govern the contract between The Town of Addison and Hotel Intercontinental Dallas . This agreement, when signed by both parties, constitutes a legally binding agreement and an addendum to the original contract. If there is a conflict between the contract and the addendum, the addendum will supersede the contract.

### **COMPLIMENTARY ROOMS**

The Hotel agrees to provide Town of Addison with (1) complimentary room per every fifty (50) paid rooms occupied on a cumulative basis. Adding together the total paid room usage and dividing by forty (50) shall compute this. In addition, Town of Addison requests two complimentary staff rooms as listed in contract.

### **UPGRADES**

Listed in contract

### **ANTICIPATED HOTEL RENOVATION:**

The Hotel shall promptly notify Town of Addison. in writing of any interior or exterior renovation that will be performed immediately prior to or during the meeting, and Town of Addison. shall have the right to terminate this contract without liability upon written notice to the hotel. In the event this contract is terminated pursuant to this section, Hotel shall refund to Town of Addison any and all sums or monies deposited with Hotel regarding this Contract.

If Town of Addison decides to hold the meeting at the Hotel, the Hotel will use reasonable effort to provide a quiet environment for the meeting. If such loud activities occur due to renovation, Town of Addison will be extended courtesies and discounts to minimize the inconvenience.

### **RE SELL:**

Upon notice of cancellation and/or guestroom attrition by Town of Addison to the Hotel, the Hotel will use reasonable best efforts to resell the guestrooms and meeting/function space. The Hotel will prorate and credit the cancellation fee and/or attrition penalty to Town of Addison for any or all meeting/function space and guestrooms resold. Prior to billing for cancellation/attrition the Hotel must submit documented proof that the rooms & meeting space were not resold or reused.

### **CUT OFF DATE**

Any reservation accepted after the cutoff date will be accepted at the Town of Addison group rate. Town of Addison rate will be available three days prior and three days post based on availability

### **CHANGE OF OWNERSHIP**

1. The Hotel shall promptly notify Town of Addison in writing if there is a change in ownership or management, which operates the Hotel prior to the meeting. Town of Addison shall have the right to terminate this contract without liability upon written notice to the hotel. If Town of Addison terminates this contract under the provisions of this section, Hotel shall immediately refund to Town of Addison any and all sums or deposits paid by Town of Addison to Hotel under this contract.

2. In the event of a sale, change in management or the flag of the property, the new owner will be required, as a term of condition of the sale, to honor the contract for Town of Addison.

### **DISCLOSURE OF IN-HOUSE GROUPS & NOISE CONTROL**

The Hotel shall keep Town of Addison informed of other in-house groups during the same time period. Disclosure of other in-house groups is to avoid a company or company(s) whose meeting content requires loud activities or music and who will be utilizing adjacent space. The Hotel will use reasonable efforts to provide a quiet environment for the meeting. If such loud activities occur, Town of Addison will be extended courtesies and discounts to minimize the inconvenience.

In addition, the Hotel must immediately inform Town of Addison at any time (from date of signature to arrival of Town of Addison.) of a competitor holding a meeting at the same hotel. Town of Addison shall have the right to terminate this agreement without liability in the event a competitive group is meeting at the Hotel. If Town of Addison terminates this contract under the provisions of this section, Hotel shall immediately refund to Town of Addison any and all sums or deposits paid by Town of Addison to Hotel under this contract.

### **RELOCATION PROVISIONS**

In the event that a guest room is not available for a guest holding a guaranteed reservation, the Hotel will pay for a guest's lodging (room and tax) at a comparable facility, transportation to and from such property and two long distance phone calls per day until the hotel can accommodate the guest. The Hotel will also list the guest's name with the hotel switchboard, in order to facilitate the transfer of the guest's phone calls to the alternate hotel. Further, in the event of any such relocation, Town of Addison will continue to receive room night credits in the calculation of complimentary room policy and attrition policy.

### **ROOM BLOCK**

Town of Addison shall earn credit for any reservation, which may not be coded to Town of Addison block, but can be proven to be a registered attendee at the Town of Addison meeting. Individual reservations made through an independent source and not originally viewed as an Town of Addison. member reservation shall be reverted to and counted towards the Town of Addison group room block. The Hotel will agree to credit Town of Addison and HelmsBriscoe for these rooms/room nights for the purposes of earned comps, performance fees and attrition. Town of Addison may provide the Hotel with a printed registration list of the Town of Addison meeting attendees for the Hotel to compare with the in-house total hotel list.

### **RATE PARITY AND CODING**

In as much as performance of Town of Addison is tied to the cumulative pick up of rooms in Town of Addison block, the Hotel agrees to not deter from Town of Addison performance by offering any rates to Town of Addison attendees that are lower or otherwise coded to any account other than Town of Addisons block. In the event rates are offered to attendees lower than the confirmed Town of Addison rate, the Hotel agrees that all rates for attendees will be adjusted to the lowest rate offered over the meeting dates. All reservations received after the cut off date (whether at the Town of Addison rate or higher rate), will be credited to Town of Addison block, and in the event of a dispute, Hotel agrees to match Town of Addison attendance list against its in-house reservation list for the purpose of verifying if any attendee(s) was not properly credited to Group's reservation list and room block. Hotel will provide Town of Addison. with a list of attendees it found to be registered in the Hotel over the dates of Town of Addison meeting but not correctly credited to Group's reservation list and/or as part of their block. The Hotel will agree to credit Town of Addison and HelmsBriscoe for these rooms/room nights for the purposes of earned comps, performance fees and attrition.

### **CANCELLATION BY HOTEL**

In the event that the hotel cancels the contract or otherwise is in the breach of any of the material terms and provisions in this agreement, the hotel will be liable for all damages, direct and indirect, which Town of Addison may suffer, including all costs related to rescheduling the room block and function

space. Such costs shall include, but not limited to: expenses of Town of Addison staff to research alternate facilities, including airfare; any increase in cost at the alternate facility; administrative and operational costs, including return of pre-registration fees, program printing, attendee notification, and any other costs and expenses associated with rescheduling the meeting. In the event that Town of Addison is unable to secure alternative facilities the hotel will also be liable to Town of Addison for out of pocket expenses on the canceled event. The hotel will refund all deposits within ten days of the hotel's notice of cancellation, and such notice shall constitute "cause", entitling Town of Addison to terminate its obligation under this agreement without liability.

**MEETING SPACE**

All space booked for meetings, meals, receptions, etc. is to be specified by name in the contract, along with the room set-up specifications, and is not to be changed under any circumstances without the prior approval of Town of Addison. The projection clearance for the general session is to be no less than 16 FT.

**FORCE MAJEURE**

The performance of this agreement by either party is subject to acts of God, Government regulations, terrorist acts, disaster, strikes, civil disorder, and curtailment of transportation or other emergencies making it illegal, commercially impractical, or commercially impossible to provide the facilities for the event or conduct the meeting. It is provided that this agreement may be terminated for one or more of such reasons by written notice from one party to the other. If this agreement is terminated pursuant to this section, Hotel shall refund to Town of Addison all sums, monies, deposits or prepayments made to Hotel by Town of Addison with regard to this agreement.

**CONCESSIONS IF ROOM BLOCK IS EXCEEDED**

Hotel will come up with sliding scale as an incentive to exceed the anticipated room block. It will address the following concessions:

- \* Waive a portion of the set up fee (sliding scale)
- \* Waive the welcome amenities to our 51 guests (4 choc. covered strawberries @8 for a total of \$408).
- \* Credit master bill for staff rooms not already covered by 1 per 50 policy (sliding scale)

\_\_\_\_\_  
Hotel Representative

\_\_\_\_\_  
Town of Addison

\_\_\_\_\_

\_\_\_\_\_

**Council Agenda Item: #2f**

**SUMMARY:**

Council approval is requested to authorize payment to the City of Carrollton of an amount not to exceed \$30,000 for service and maintenance provided for the Police and Fire Radio System in Fiscal Year 03-04, attached as Service Agreements #1 and #2. Staff was unable to bring this item to Council prior to this time until the legal negotiations for a service agreement were completed.

**FINACIAL IMPACT:**

The first months of radio maintenance were budgeted in the Capital Replacement Fund for Fiscal Year 03-04.

**BACKGROUND:**

During the development and legal negotiations of the Service Agreement for the new radio equipment located at our dispatch office and the Spectrum Center, Carrollton provided service and maintenance for those hours not covered by the new product warranty.

**RECOMMENDATION:**

Staff recommends approval.









RECOMMENDATION:

Staff recommends approval subject to the conditions listed above.

Respectfully submitted,

A handwritten signature in black ink that reads "CMORAN". The "C" is a large, stylized loop, and the "MORAN" is written in a more standard, slightly slanted font.

Carmen Moran  
Director of Development Services

## COMMISSION FINDINGS

The Addison Planning and Zoning Commission, meeting in regular session on September 22, 2004, voted to recommend approval of the request for final plat approval on application from Piedmont-Midway Partner, LP, subject to the following conditions:

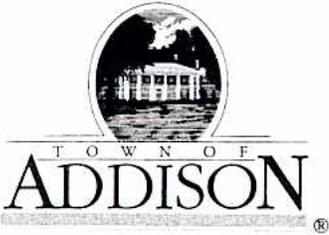
-Engineering plans and specifications must be submitted and approved by the Town and must include a drainage and grading plan, existing and proposed utilities; and sidewalks.

-A utility easement is necessary in order to relocate an existing signal pole at the intersection. The exact location of the utility easement must be coordinated with the Town's Public Works Department.

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

Voting Nay: None

Absent: Doepfner



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

## MEMORANDUM

September 16, 2004

The following comments are submitted for items listed on the September 22, 2004 agenda:

### **Case 1473-SUP/Wingate Inn**

No comments.

### **FINAL PLAT/Addison Plaza Addition, Lot 1A, Block 1**

Engineering plans and specifications must be submitted and approved by the Town, and must include a drainage and grading plan, existing and proposed utilities, and sidewalks.

A utility easement is necessary in order to relocate an existing signal pole at the intersection. The exact location of the utility easement must be coordinated with the Town's Public Works Department.

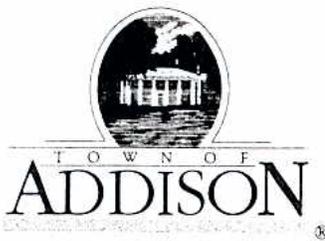
### **Case 1474-SUP/Cafe Japon/Bo Ba TeaHouse**

No comments.

Should you have any questions, please let me know.

Steven Z. Chutchian, P.E.  
Assistant City Engineer





50 YEARS OF FUN!

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

August 19, 2004

STAFF REPORT

RE: Case 1472-SUP/U.S. Postal Service, Addison Addition

LOCATION: 4900 Airport Parkway

REQUEST: Amendment to an existing Special Use Permit public building to be used by the Federal government

APPLICANT: U.S. Postal Service, represented by Mr. Dennis Delisse of MPI Architects

DISCUSSION:

Background. Under the provisions of Article XII, SPECIAL USES, of the Addison zoning ordinance, a special use permit is required for:

- (1) Any public building to be erected or used by the City, County, State, or Federal Government in any district.

The Council approved the Special Use Permit for the Post Office on July 23, 1996 through Ordinance 096-027. When the original post office was approved, it was not expected that Addison would run mail delivery out of it. However, as soon as the post office was completed, the post office changed to one that would have mail carriers. At that point, the Postmaster requested to add temporary trailers out behind the post office to accommodate a workroom for the mail carriers. The temporary trailers have been in place on the site since 1996. At this time, the Postal Service would like to expand the building to add on a permanent workroom for mail carriers, locker rooms for carriers, and some storage space. The expansion would take place within the existing fenced yard that is already in place at the post office. The addition to the post office will not add any more space for customers or any more post office boxes.

Proposed Plan. The new post office addition will add 7,249 square feet, which will bring the total square footage of the Post Office to 20,137 square feet. The addition is brick

with concrete trim and will be finished to match the building. The bulk of the improvements will take place behind the fence that separates the public areas of the Post Office property from the "Employee Only" areas of the property. The improvements will add 25 additional parking spaces to the site. The parts of the Post Office property that are visible and accessible by the public will not change.

Landscaping. The staff has reviewed the landscape plan and notes that it needs to show calculations on the percentage of landscaping to be removed versus what will remain. In addition, the existing landscaping has not been routinely maintained. All of the planting beds and turf need to be renovated and replanted according to the original landscaping plan, or an alternative planting plan needs to be submitted for review and approval.

Engineering. The applicant has submitted engineering plans, which are currently being reviewed. The final civil drawings must be approved prior to issuance of a building permit.

**RECOMMENDATION:**

Staff recommends approval of the amendment to the existing Special Use Permit for the Addison Post Office, subject to the following conditions:

- All of the planting beds and turf shall be renovated and replanted according to the original landscaping plan, or an alternative planting plan needs to be submitted for review and approval.
  
- Final civil drawings shall be approved prior to issuance of a building permit.

Respectfully submitted,



Carmen Moran  
Director of Development Services

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on August 26, 2004, voted to recommend approval of the above-cited request subject to the following conditions:

- All of the planting beds and turf shall be renovated and replanted according to the original landscaping plan, or an alternative planting plan needs to be submitted for review and approval.
- Final civil drawings shall be approved prior to issuance of a building permit.
- the existing fence that runs north and south on the east property line shall be replaced with a new wooden (site barring) fence.

Voting Aye: Chafin, Doepfner, Jandura, Knott, Mellow,

Voting Nay: None,

Absent: Benjet, Bernstein

## Memorandum

Date: August 19, 2004  
To: Carmen Moran, Director of Development Services  
From: Slade Strickland, Director of Parks and Recreation  
Subject: **Case 1472-SUP/United States Postal Service**

The landscape plan needs to show calculations on the percentage of landscaping to be removed versus what will remain. It appears that the expanded parking and road base additions will put the site below the 20 percent landscape requirement.

All of the existing landscaping has not been routinely maintained. All of the planting beds and turf need to be renovated and replanted according to the original landscaping plan, or an alternative planting plan need be submitted for review and approval if the applicant plans to change from the original plan.

## Memorandum

Date: August 19, 2004  
To: Carmen Moran, Director of Development Services  
From: Slade Strickland, Director of Parks and Recreation  
Subject: **Case 1472-SUP/United States Postal Service**

The landscape plan needs to show calculations on the percentage of landscaping to be removed versus what will remain. It appears that the expanded parking and road base additions will put the site below the 20 percent landscape requirement.

All of the existing landscaping has not been routinely maintained. All of the planting beds and turf need to be renovated and replanted according to the original landscaping plan.

## **Carmen Moran**

---

**From:** Steve Chutchian  
**Sent:** Monday, August 16, 2004 2:49 PM  
**To:** Carmen Moran  
**Subject:** Planning & Zoning Commission Agenda

The following comments are submitted for items listed on the August 26, 2004 Planning & Zoning Commission Agenda:

### **Case 1468-SUP/Patton's Corner**

No Comments

### **Case 1469-SUP/Chat's Coffee House**

No Comments

### **Case 1470-SUP/Grand Buffet Chinese Restaurant**

No Comments

### **Case 1471-Z/Raymond Construction**

Engineering plans and specifications must be developed for the site and approved by the Town of Addison, including the following:

- Grading & drainage plan  
A drainage channel existing across the southern portion of the site. Stormwater from the property adjacent and to the east, as well as on-site drainage, must be accommodated in this channel or by construction of underground conduit.
- Existing and proposed utilities, including water, sewer, fiber optic, and franchise utilities.
- All drainage and utilities easements required on-site.
- Paving details  
Proposed driveway and median improvements must be located, dimensioned, and detailed on the civil drawings.
- Erosion control plan
- Traffic control plan
- Landscaping and irrigation plan (to be approved by Parks Dept.)

### **Case 1472-SUP/United States Postal Service**

Engineering plans were previously submitted for review and comments on this site. At this time, revised civil drawings have not been re-submitted or approved by the Town of Addison. Final civil drawings must be approved prior to issuance of a permit for construction.

Steve Chutchian, P.E.  
Assistant City Engineer

# COWLES & THOMPSON

## MEMORANDUM

---

**TO:** Carmen Moran  
Director of Development Services

**FROM:** Angela K. Washington

**RE:** Agenda Item #R7 – 4900 Airport Parkway

**DATE:** September 9, 2004

---

You have received two complaint letters concerning the zoning application filed by the United States Postal Service proposing to amend the specific use permit governing property located at 4900 Airport Parkway. The letters complain that the Town is not requesting a dedication of five feet of right-of-way from the property owner to increase the width of Airport Parkway from 55 feet to 60 feet in accordance with the Town's current Thoroughfare Plan.

Right-of-way dedications are addressed when property is platted, not in the context of a zoning case. Should the property owner file an application to replat the property, requesting a dedication based on the Town's current Thoroughfare Plan would be appropriate at that time. The issue before the council in connection with the zoning case is whether the requested changes to the zoning are appropriate at the subject location from a land use perspective.

If you have any questions, please give me a call.

c: Kenneth C. Dippel  
John M. Hill

**HWK, Inc.**

Asset Management Services  
US Mail: Post Office Box 427, Addison, TX 75001  
Delivery: 15842 Addison Road, Addison, TX 75001  
Telephone: 972/239-1324  
Fax: 972/239-0026  
E-mail: [box222@family.net](mailto:box222@family.net)

September 1, 2004

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

972-450-7018 dd  
972-450-7043 fx

Re: Case No. 1472-SUP/U.S. Postal Service, Addison Addition at 4900 Airport Parkway

Dear Ms. Moran:

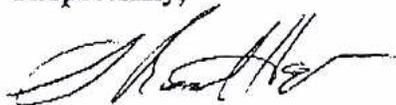
Reference my visit to your office before the August 26, 2004, Planning and Zoning Commission hearing concerning my protest regarding the referenced case. I represent the property on the west side of the post office. The Town of Addison is not asking the post office for the five (5) feet of right-of-way necessary to take Airport Parkway from 55 feet wide to 60 feet as per the thoroughfare plan.

If the Town does not ask the post office for the right-of-way, then the thoroughfare plan should be amended and the Town should not ask for it when the remaining undeveloped properties on the south side of Airport Parkway come in for development.

It does not make sense to ask for the right-of-way from the rest of us on the south side of Airport Parkway and not be uniform.

If the potential to widen Airport Parkway, as it probably will need to be, is to be preserved, then this right-of-way will be needed.

Respectfully,



S. Kent Hope



South & Western "The Specialty Company"

J.J. HORAN

President

jj-horan@southandwestern.com

September 3, 2004

**SENT VIA FAX**

Ms. Carmen Moran  
Director of Development Services  
Town of Addison  
P.O. Box 9010  
Addison, Texas 75001-9015

Fax #: 972-450-7043, 1 page

Re: Case No. 1472-SUP / U.S. Postal Service, Addison Addition at 4900 Airport Parkway

Dear Ms. Moran:

I represent two properties which are owned by SWGA Ventures, LTD located on the east side and adjacent to the U.S. Post Office. Please accept this letter as my formal protest to the above referenced case. After meeting with you during my visit to your office on August 25<sup>th</sup>, I have become aware that the Town of Addison is not asking the post office for the five (5) feet of right-of-way necessary to take Airport Parkway from 55 feet wide to 60 feet as per the thoroughfare plan.

If the Town does not ask the post office for the right-of-way, then the thoroughfare plan should be amended and the Town should not request such right-of-way from other landowners when the remaining undeveloped properties on the south side of Airport Parkway prepare for development.

The town's consideration to applying a consistent approach to all property on the south side of Airport Parkway is appreciated.

Sincerely,

J.J. Horan

# UNITED STATES POSTAL SERVICE

MAIN POST OFFICE  
4900 AIRPORT PARKWAY  
ADDISON, TEXAS 75001

## BUILDING EXPANSION

**STRUCTURAL ENGINEERS**  
 1100 W. WILSON  
 SUITE 100  
 ADDISON, TEXAS 75001  
 (972) 382-1100  
 WWW.MPI-ARCH.COM



STRUCTURAL  
ENGINEERS

**MECHANICAL/ELECTRICAL ENGINEERS**  
 1100 W. WILSON  
 SUITE 100  
 ADDISON, TEXAS 75001  
 (972) 382-1100  
 WWW.MPI-ARCH.COM



MECHANICAL/  
ELECTRICAL  
ENGINEERS

**ARCHITECTS**  
 1100 W. WILSON  
 SUITE 100  
 ADDISON, TEXAS 75001  
 (972) 382-1100  
 WWW.MPI-ARCH.COM



ARCHITECTS

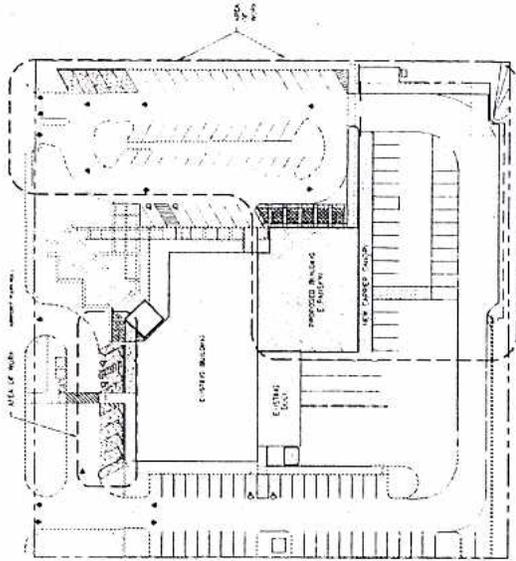
Architecture & Planning & Interior Design  
 1100 W. WILSON SUITE 100 • ADDISON, TEXAS 75001

### Index of Drawings:

- GENERAL
- 011 COVER SHEET/INDEX OF DRAWINGS
- LANDSCAPE
- 011 LANDSCAPE PLAN
- ARCHITECTURAL
- A1.1 PROPOSED ARCHITECTURAL SITE PLAN
- A1.2 PROPOSED FLOOR PLAN
- A2.1 EXTERIOR ELEVATIONS

SET No. \_\_\_\_\_  
 ARCHITECT'S PROJECT No. 601045

5/17/04



2 KEY PLAN  
SCALE: 1/8" = 1'-0"



1 VICINITY MAP  
SCALE: 1/8" = 1'-0"





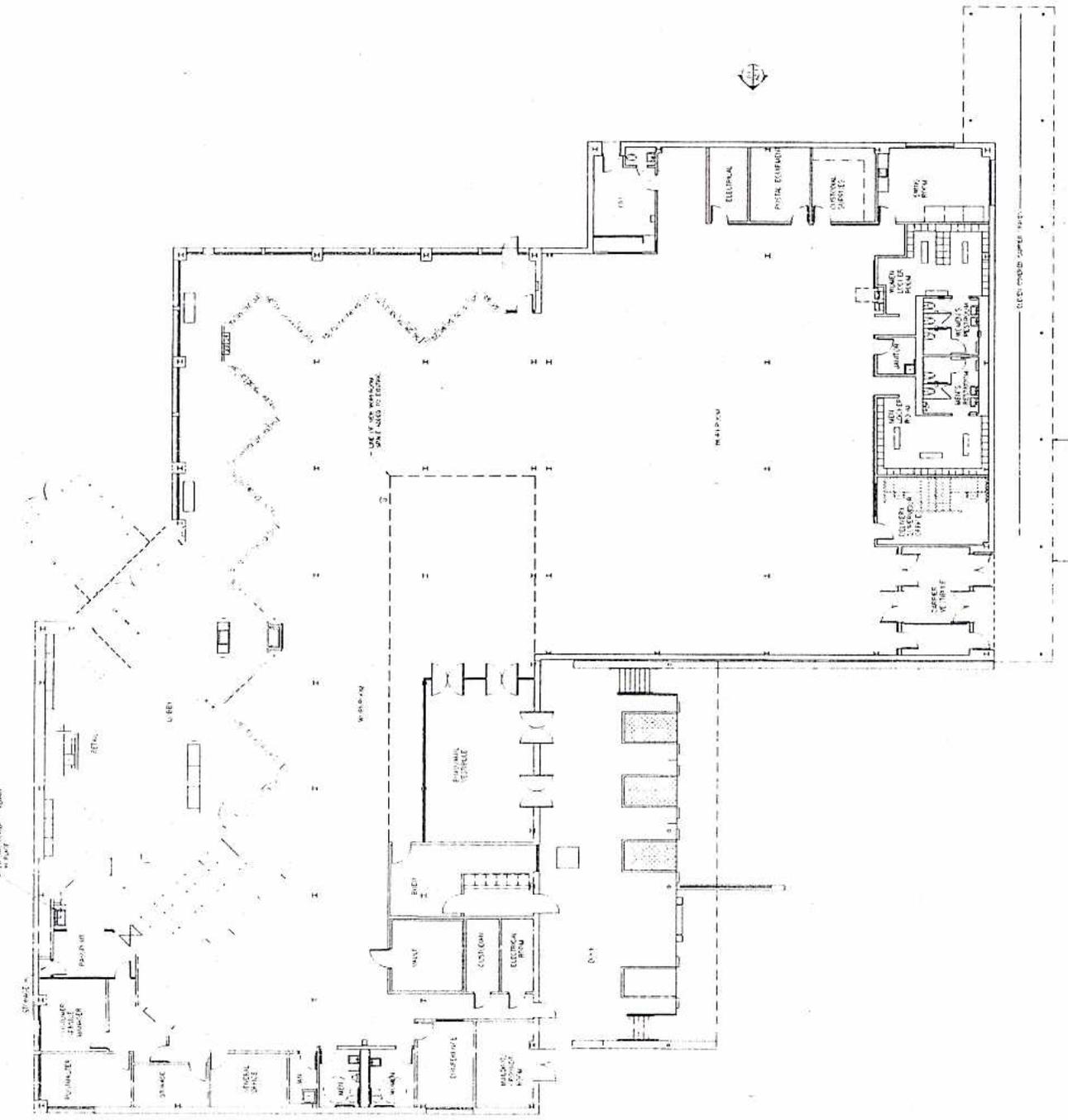


MAIN POST OFFICE  
4500 AIRPORT PARKWAY  
ADDISON, TX 75001

Architecture Planning Interior Design  
5100 Oak Lane • Suite 408 • Dallas, Texas 75244  
MPT

ADDISON MPO - BUILDING EXPANSION  
AREA TABULATIONS

Program Space	Existing Space	New Space Provided
<b>RETAIL LOBBY</b>	5900 sf	4253 sf
<b>ADMINISTRATION AREA</b>		
Postmaster	160 sf	164 sf
General Conference Room	210 sf	167 sf
Customer Service Manager	120 sf	172 sf
General Office	80 sf	141 sf
Inventory Supervisor	210 sf	254 sf
Director	30 sf	30 sf
Janitor closet	40 sf	40 sf
Electric Closet	85 sf	85 sf
MEPLAN	65 sf	65 sf
Storage	70 sf	113 sf
<b>MAINTENANCE &amp; BUILDING SERVICE</b>		
Comstor	50 sf	48 sf
Janitor Closet	83 sf	83 sf
Custodial	83 sf	83 sf
Custodial Supplies	182 sf	189 sf
Building & Grounds Room	50 sf	80 sf
<b>EMPLOYEE FACILITIES</b>		
Men's Restroom	50 sf	91 sf
Women's Restroom	220 sf	276 sf
Swing Room	165 sf	167 sf
Locker Room - Male	200 sf	235 sf
Locker Room - Female	100 sf	289 sf
Restroom - Female	100 sf	108 sf
Restroom - Male	130 sf	135 sf
Janitor	50 sf	55 sf
<b>STORAGE</b>		
Stamped Envelope Storage	108 sf	108 sf
General Storage	100 sf	141 sf
Valu	176 sf	176 sf
<b>MISCELLANEOUS SUPPORT</b>		
Carrier Vestibule	100 sf	246 sf
Workroom Staging Del Cart	100 sf	98 sf
Electrical Room	216 sf	132 sf
Postroom Office	250 sf	210 sf
Postroom	200 sf	151 sf
<b>BUSINESS MAILING ENTRY UNIT</b>		
Business Mailing Entry Unit	367 sf	357 sf
<b>WORKROOM</b>		
BM&J Storage	1601 sf	551 sf
Workroom	4753 sf	10884 sf
<b>TOTALS</b>	18,704 sf	20,137 sf

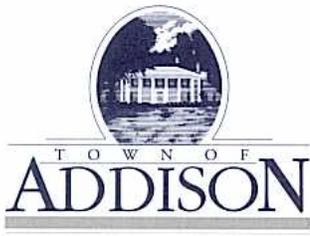




# 1473-SUP

Case 1473-SUP/Wingate Inn. Requesting approval of a change of zoning from Commercial-1 (C-1) district to a Planned Development (PD) district for a hotel/motel use and 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, located at 4960 Arapaho Road, on application from Hospitality Management Corporation, represented by Mr. John O'Connor.





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



50 YEARS OF FUN!

September 17, 2004

STAFF REPORT

RE: Case 1473-SUP/Wingate Inn

LOCATION: 4960 Arapaho Road

REQUEST: Approval of a change of zoning from C-1 (Commercial-1) district to a PD (Planned Development) district for a hotel/motel use and 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: Hospitality Management Corporation,  
Represented by Mr. John O'Connor

DISCUSSION:

Background. This property is currently zoned C-1 (Commercial-1). Wingate Inn received zoning approval through a Special Use Permit for a hotel, approved by the Council on April 14, 1998 (Ordinance 098-022). The Wingate Inn opened shortly thereafter, and has been in continuous operation since that time. The Wingate Inn offered a continental breakfast to guests, but did not have a full-service restaurant and did not serve alcoholic beverages.

At this point, the owners are going to "change flags." They will rename the hotel, possibly to Holiday Inn Express, and will associate the hotel with a different nation-wide hotel company. As part of the change, the owners would like to convert the breakfast room to a full restaurant, and offer the sale of alcoholic beverages for on-premises consumption only. The existing Commercial-1 district allows a restaurant (with a

Special Use Permit), but does not allow the sale of alcoholic beverages for on-premises consumption only. Therefore, the hotel must have a zoning change in order to sell alcohol.

Proposed Plan. The applicant is planning to convert the breakfast room into a full restaurant. The existing pantry will be expanded into a full kitchen, and a small bar will be added in the dining area. The restaurant does not anticipate bringing in from customers who are not guests of the hotel, but it will serve non-guests. The staff has determined that about 3,550 square feet of the ground floor, which includes the kitchen, restroom, lobby and meeting room, could be available for food and alcohol service.

Facades. The applicant will be making some minor modifications to the facades. The curved cornices, that were part of the Wingate Inn brand, will be changed to squared cornices.

Parking. The change in zoning and the Special Use Permits to not cause any changes to the parking requirements. However, the owners are planning to add a swimming pool to the east end of the hotel, and they will eliminate four parking spaces in order to make room for the pool. The owners are planning to replace those spaces on the west end of the site.

Landscaping. The staff has examined the site, and finds that it meets the requirements of the ordinance and is being maintained.

Signs. The applicant has shown signs on the facades. However, it should be aware that all signs must be permitted under the requirements of the Addison Sign ordinance, and cannot be approved through this process. In addition, Addison has a policy against the use of the term "bar", "tavern", or any equivalent terms in exterior signs.

Food Service Code. The applicant should be aware that the new restaurant must comply with all the requirements of the Food Service Code, including the installation of a grease trap.

#### RECOMMENDATION:

Staff feels that a restaurant and the sale of alcoholic beverages for on-premises consumption only are appropriate uses for this site. Staff recommends approval of the change of zoning from C-1 (Commercial-1) to PD (Planned Development) zoning, approval of the development plans, approval of a Special Use Permit for a restaurant, and approval of a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, subject to the following condition:

-The term "bar", "tavern", or any equivalent terms, or graphic depictions associated with alcoholic beverages shall not be used in exterior signs.

Respectfully submitted,

Carmen Moran  
Director of Development Services

COMMISSION FINDINGS:

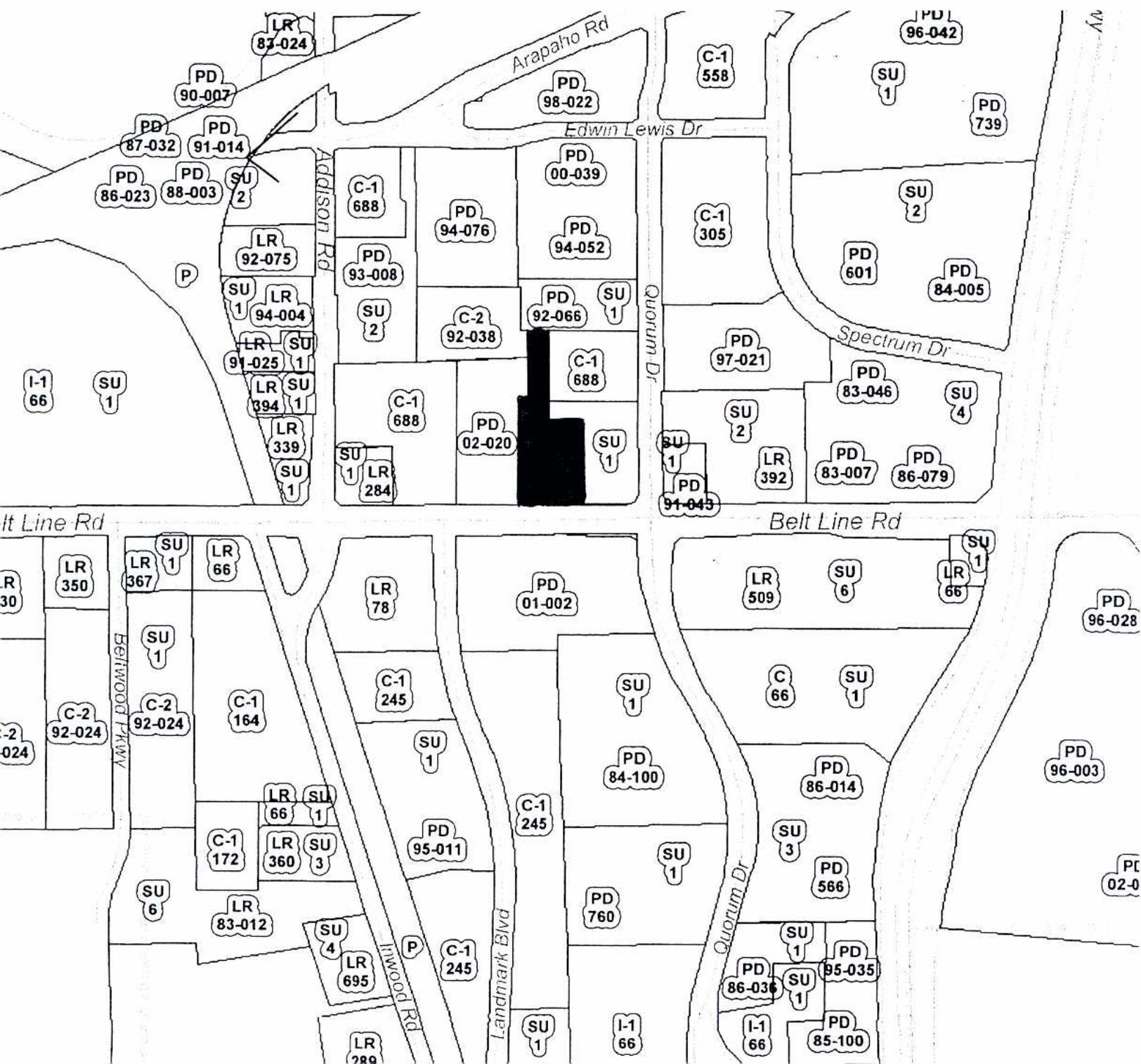
The Addison Planning and Zoning Commission, meeting in regular session on September 22, 2004 voted to recommend approval of the request on application from Wingate Inn, subject to the following condition:

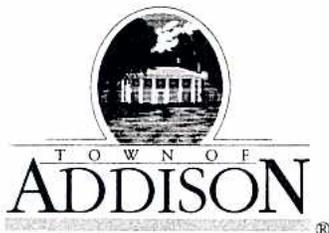
-The term "bar", "tavern", or any equivalent term, or graphic depiction, associated with alcoholic beverages shall not be used in exterior signs.

Voting Aye: Benjet, Bernstein, Chafin, Jandura, Knott, Mellow,  
Voting Nay: None,  
Absent: Doepfner

# 1474-SUP

Case 1474-SUP/Café Japon/Bo Ba TeaHouse. 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 only, located at 4933 Belt Line Road, on application from Mr. Chung Keung Lui.





50 YEARS OF FUN!

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

September 17, 2004

STAFF REPORT

RE: Case 1474-SUP/Café Japon/Bo Ba TeaHouse

LOCATION: 4933 Belt Line Road

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: Café Japon, represented by Mr. Chung Keung Lui

DISCUSSION:

Background. This building is zoned LR (Local Retail) and was formerly occupied by The Container Store. Several months ago, Beltway Commercial Real Estate redeveloped the building to convert it to separate shallow bay retail lease spaces. Beltway replatted the lots to add more parking into the Container Store lot so that it would have the parking capacity for some restaurant space. Potbelly Sandwich Works, was the first tenant for the newly-remodeled building.

At this point, the applicant is planning to open a Japanese Restaurant, with a sushi bar and a Japanese Tea House in the 3,800 square-foot lease space.

Proposed Plan. The plans indicate that both facilities will occupy 3,800 square feet. The restaurant will occupy 3,400 square feet of the space and the teahouse will occupy 400 square feet. The restaurant includes a 189 square-foot patio, a 234 square-foot bar, a 986 square-foot kitchen, and a 1,991 square-foot dining area (includes restrooms). The restaurant will operate as a full-service restaurant with a sushi bar.

Facades. The applicant will be making some modifications to the façade of the building, which include adding a stone base at the bottom of the walls and two stone columns on the front façade. The applicant will add a metal awning to the Café Japon restaurant space. The southwest corner of the building will be notched out to provide a covered patio within the footprint of the building.

Parking. This building qualifies as a mixed-use center; however, it is less than 30,000 square feet total, so all restaurant uses in this new center must park at a ratio of one space per 70 square feet. The restaurant will require 54 spaces. As noted above, the site has been replatted to provide additional parking. There is sufficient parking for on the site for this use

Landscaping. The staff has been working with the property owner on getting the landscaping installed on the site. The landscaping on the southwest corner of the building was not completed pending the finish out of the two remaining spaces. The landscaping will need to be completed at this time. In addition, there was a Bradford Pear tree removed in a planting island at the east end of the building when Potbelly Sandwich Works was constructed, and that tree needs to be replaced.

Signs. The applicant has shown signs on the facades. However, he should be aware that all signs must be permitted under the requirements of the Addison Sign ordinance, and cannot be approved through this process. In addition, Addison has a policy against the use of the term "bar", "tavern", or any equivalent terms in exterior signs.

Dumpsters. There is a dumpster on the site and it meets the requirements of the ordinance.

Food Service Code. The applicant should be aware that the restaurant must comply with all the requirements of the Food Service Code, including the installation of a grease trap.

#### RECOMMENDATION:

The staff recommends approval of this request for a 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:

-The landscaping on the southwest corner of the building must be installed, and the tree that was removed on the east end of the building must be replaced, prior to the issuance of a Certificate of Occupancy for the restaurant.

-The term "bar", "tavern", or any equivalent terms, or graphic depictions associated with alcoholic beverages shall not be used in exterior signs.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C Moran', with a stylized flourish at the end.

Carmen Moran  
Director of Development Services

**COMMISSION FINDINGS:**

The Addison Planning and Zoning Commission, meeting in regular session on September 22, 2004, voted to recommend approval of the request on application from Café Japon/ BoBa TeaHouse, subject to the following conditions:

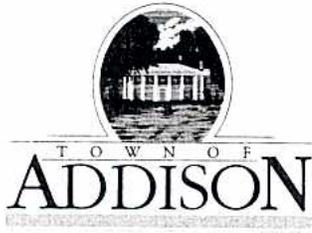
-The landscaping on the southwest corner of the building must be installed prior to the issuance of a Certificate of Occupancy for the restaurant.

-The term "bar", "tavern", or any equivalent terms, or graphic depictions associated with alcoholic beverages shall not be used in exterior signs.

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

Voting Nay: None,

Absent: Doepfner



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

## Memorandum

Date: September 15, 2004  
To: Carmen Moran, Director of Development Services  
From: Slade Strickland, Director of Parks and Recreation  
Subject: **Café Japon/Bo Ba Teahouse**

When the landscaping was installed for Potbelly Sandwich, the landscaping on the southwest corner of this center was not completed pending finish out of the two remaining spaces. This landscaping will need to be completed as a condition for approval.

**Council Agenda Item: #R7**

**SUMMARY:**

Approval of an agreement with the Xelerate Group to provide marketing, events and sponsorship services to the Town from October 1, 2004 to September 30, 2005.

**FINANCIAL IMPACT:**

**Budgeted Amount:**

The \$36,000 for the retainer and funds for specific media buys is provided in the Marketing budget. Any payments due as a result of the cash or trade sponsorships will be funded from the Special Events budget.

**BACKGROUND:**

Two years ago as part of the reorganization of the Visitor Services Department and the development of the Arts and Events District, it was determined it would be a better use of resources and manpower to outsource the sponsorship component of Special Events. As a result, staff contracted with Xelerate to provide these services. It has proved to be a very beneficial arrangement for the Town and as such, staff is recommending that the Town once again enter into contract with the Xelerate Group. The proposed agreement provides the following:

- \$3,000 per month retainer for consulting and marketing services
- 15% success fee on each cash sponsorship secured by Xelerate Group under \$3,000
- 12% success fee for each cash sponsorship secured by Xelerate over \$3,000 and up to \$100,001 each
- 7.5% success fee on each cash sponsorship secured by Xelerate sold over \$100,001 each
- 7.5% success fee on all trade sponsorships secured by Xelerate including media
- 7.5% fee on all media bought on behalf of the Town of Addison

**RECOMMENDATION:**

Staff recommends approval.

**Town of Addison  
Proposal for Marketing,  
Events, and Sponsorship  
Services**

Presented by:  
Xelerate Group



October 5, 2004

## **Xelerate Group Background**

Xelerate Group is a marketing, events, and sponsorship consulting and sales firm that specializes in making corporate and civic businesses and events more successful. Whether it be marketing, sales, development, public relations, sponsorship, event management, event production, food and beverage, or entertainment Xelerate Group provides cost effective success based solutions to your business, your city, or your event.

With over 25 years experience in the hospitality, food service, attractions, casino gaming, and entertainment industries Xelerate Group offers a multi-faceted approach to solving problems, identifying opportunities to expand, and developing strategic plans for the future for your organization. Dallas, Texas based Xelerate was formed in 2002, however, Xelerate has many years experience in the Dallas and Addison markets.

### *Eric Terry - President*

Experienced in sales, marketing, governmental affairs, and operations in the hospitality, casino gaming, attractions, food service, and entertainment industries for both public and private corporations. His experience with Anheuser Busch Entertainment, Marriott Hotels and Resorts, Bristol Hotels, Pratt Hotel Corporation, Hollywood Casino Corporation, and Malibu Entertainment Worldwide and his extensive work in partnership marketing including work with NASCAR Winston Cup driver Mark Martin and many auto racing and non-racing partners, brings a broad background of experience to clients of Xelerate.

### *Tibbets Media- Associate*

Tibbets Media was established in 1983, to provide sophisticated and effective media planning and buying services to advertising agencies and direct clients. Media expertise includes spot radio, spot television, spot and network cable, newspaper, magazine, outdoor and transit. Tibbets client roster includes- Ewing Automotive Group, Presbyterian Healthcare Systems, Scarborough Faire/Screams Halloween Park, El Fenix, Post Properties, Mrs. Bairds, and The Dallas Mavericks.

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### **Town of Addison Proposed Services**

Xelerate Group will provide to the Town of Addison, Texas and to the Town's reasonable satisfaction, the following services to commence on October 1, 2004 through September 30, 2005:

1. Assist Town of Addison (TOA) in marketing and advertising consulting, with particular emphasis on events, Arts and Entertainment District, and Visitor Services.
2. Assist TOA in evaluation and management of various third party advertising, media, and public relations agencies.
3. Work with staff to develop an events sponsorship plan along with marketing materials for implementation.
4. Develop events and Arts district sponsorship packages to obtain long-term sponsors for the district and events.
5. Continue to assist staff with the Arts and Entertainment District programming, evaluation criteria, usage requirements, logistics, and fee schedules.
6. Handle marketing and sales for Events and District Sponsorships and partnerships including sponsor wrap-ups and solicitation.
7. Assist Staff in the development of Visitor Services Strategic Plan and direction.
8. Provide general marketing, advertising, and development consulting as needed.
10. Plan and buy media for TOA Events, Visitor Services, and Hotel/Restaurant advertising specifically and other media as requested.

[Remainder of Page Intentionally Left Blank]

## Fees

Xelerate Group is built upon a success-based formula. Our ability to achieve success for The Town of Addison is primarily how we would be compensated. We therefore propose the following:

- \$3,000 per month retainer for Consulting and Marketing Services
- 15% success fee on each cash sponsorship secured by Xelerate Group under \$3,000
- 12% success fee on each cash sponsorship secured by Xelerate Group over \$3,000 and up to \$100,001 each
- 7.5% success fee on each cash sponsorship secured by Xelerate Group sold over \$100,001 each
- 7.5% success fee on all trade sponsorships secured by Xelerate Group sold including media
- 7.5% fee on all media bought on behalf of TOA

For a cash sponsorship, the applicable percentage of success fee to be paid to Xelerate Group shall be determined based on the amount of cash actually received by the Town from a sponsor in each fiscal year of the Town; in accordance therewith, for cash sponsorships extending beyond a single budget year, the applicable percentage of success fee shall be determined based on the amount of cash actually received in each fiscal year during the multi-year sponsorship.

Example: Company agrees to a 3 year sponsorship in the total amount of \$150,000, with \$50,000 to be paid each year; Town actually receives \$50,000 in year 1; applicable percentage of success fee is 12% of \$50,000, since \$50,000 is between \$3,000 and \$100,001. No payment shall be due and owing to Xelerate Group unless and until The Town has actually received a cash or trade sponsorship except as required under the termination payment.

All pre-approved third party expenses incurred on behalf of the Town of Addison, with the exception of media, would be billed at net with no mark-up. Multiple year sponsorships would be paid as revenue or goods and services are actually received by the Town.

Trade or in-kind sponsorships are defined as media or other goods and services normally utilized by The Town in the conduct of its events and business. Media trades will be discounted to the fair market value of media traded.

In the event of expiration of this Agreement without renewal, the Town would agree to pay Xelerate Group 50% of the net present value of the applicable commission (which commission would otherwise be due to Xelerate if this Agreement had been renewed) on the revenues or trade values of multi-year sponsorship contracts (the "Termination Payment") if such multi-year contracts were secured by the work of Xelerate Group prior to the expiration of this Agreement.

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## Termination

(a) *Without cause.* Either party may terminate this Agreement at any time and for any reason by giving to the other party at least 30 days written notice of such termination. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. In the event of termination, all finished or unfinished data, studies, reports and other materials and items (whether kept electronically, in writing, or otherwise) prepared by Xelerate Group shall be and become the property of the Town and Xelerate Group shall promptly deliver such items to the Town. If the Town exercises this right to terminate this Agreement without cause, the Town agrees to pay to Xelerate Group the Termination Payment. If the Xelerate Group exercises this right to terminate this Agreement without cause, no Termination Payment shall be due or owing.

(b) *With cause.* If Xelerate Group (i) fails to perform Xelerate Group's duties to the reasonable satisfaction of the Town, or (ii) if Xelerate Group fails to fulfill in a timely and professional manner Xelerate Group's obligations under this Agreement, or (iii) if Xelerate Group shall violate any of the terms of provisions of this Agreement (the said (i), (ii) and (iii) being referred to together in this paragraph as a "Failure"), or (iv) if Xelerate Group, Xelerate Group's agents or employees fail to exercise good behavior either during or outside of working hours that is of such a nature as to bring discredit upon the Town, then Town shall have the right to terminate this Agreement effective immediately upon the Town giving written notice thereof to Xelerate Group; provided, however, that with respect to a Failure: (x) such right of termination shall not be exercised by the Town unless and until a Failure remains uncured by Xelerate Group for a period of 5 consecutive days after notice thereof (which notice shall specifically identify the Failure) from the Town is received by Xelerate Group, but (y) if the Failure cannot with diligence be cured within said 5 day period, if within such 5 day period Xelerate Group provides the Town written notice of the curative measures which it proposes to undertake, and proceeds promptly to initiate such measures to cure such Failure, and thereafter prosecutes the curing of such Failure with diligence and continuity, the time within which such Failure may be cured shall be extended for such period as may be necessary to complete the curing of such Failure with diligence and continuity, not to exceed 15 days following the receipt of the said notice. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. In the event of termination, all finished or unfinished data, studies, reports and other items (whether kept electronically, in writing, or otherwise) prepared by Xelerate Group shall be and become the property of the Town and Xelerate Group shall promptly deliver such items to the Town. Xelerate Group shall be paid for all work satisfactorily completed prior to the effective date of such termination. In event of termination by the Town under this paragraph, no Termination Payment shall be due or owing.

*Statement.* Xelerate Group shall submit to the Town, on or before the 10<sup>th</sup> day of each month, a detailed statement in writing of the services provided and work performed by Xelerate Group during the immediately preceding month (the first such statement being due on or before October 10, 2004, and the last such statement due on or before October, 2005). In addition, each such statement shall include such additional documents, materials or information as the Town may request in connection with the statement and/or the compensation paid to Xelerate Group.

*Entire Agreement and Modification.* This Agreement supersedes all previous Agreements and constitutes the entire understanding of the parties hereto. Xelerate Group shall be entitled to no

other benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both parties. Xelerate Group specifically acknowledges that in entering into and executing this Agreement, it relies solely upon the provisions contained in this Agreement and no others.

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

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

*Enforceability.* If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

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

*Indemnity.* Xelerate Group shall defend and indemnify the Town, its officials, officers, employees and agents (together, for purposes of this section, the "Indemnified Parties") against, and hold the Indemnified Parties harmless from, any and all liability, actions, causes of action, lawsuits, judgments, claims, damages, penalties, fines, costs or fees, including attorney's fees and costs of defense, for personal injury, property damage or destruction (including without limitation loss of use of property not otherwise physically injured), breach of contract, or other harm for which recovery of damages or any other form of relief (whether at law or in equity) is sought (and including, without limitation, any claim relating to copyright or any other intellectual property right), resulting from or arising out of, in whole or in part, any act or omission of Xelerate Group, its officers, employees and agents under this Agreement. The provisions of this paragraph shall survive the expiration or termination of this Agreement.

*Insurance.* At all times in connection with this Agreement, Xelerate Group shall maintain in full force and effect commercial general liability insurance (as set forth in the Quotation attached hereto) at minimum combined single limits of \$1,000,000 each occurrence, \$2,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations (\$Per BG-G-173), \$1,000,000 personal and advertising injury liability, \$100,000 fire damage legal liability, and \$5,000 medical expense limit - any one person. The Town of Addison shall be named

as an additional insured with respect to all such insurance. Liability policies shall contain no cross liability exclusions or insured versus insured restrictions. A waiver of subrogation in favor of the Town of Addison shall be contained in all such policies. All policies shall be endorsed to require the insurer to immediately notify the Town of Addison of any material change in the insurance coverage. All insurance policies shall be endorsed to the effect that the Town of Addison will receive at least sixty (60) days' notice prior to cancellation or non-renewal of the insurance. All insurance policies, which name The Town of Addison as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance. Xelerate Group may maintain reasonable and customary deductibles, subject to approval by the Town of Addison. Insurance must be purchased from insurers that are financially acceptable to the Town of Addison.

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

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

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

**Records**

- (a) Xelerate Group shall keep complete and accurate records for the services performed pursuant to this Agreement and any records required by law or government regulation and shall make such records available to Town upon request.
- (b) Xelerate Group shall assure the confidentiality of any records that are required by law to be so maintained.
- (c) Xelerate Group shall prepare and forward such additional or supplementary records as Town may reasonably request.

Notices. Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be sent first class mail to the Town at:

Mr. Ron Whitehead  
Town Manager  
Town of Addison  
P.O. Box 9010  
Addison, TX 75001-9010

and to Xelerate Group:

Eric D. Terry  
President  
4560 Belt Line Road, Suite 424  
Addison, Texas 75001

*Findings Confidential.* No reports, information, documents, or other materials given to or prepared by Xelerate Group under this Agreement which Town requests in writing to be kept confidential, shall be made available to any individual or organization by Xelerate Group without the prior written approval of Town. However, Xelerate Group shall be free to disclose such data as is publicly available.

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

*Ownership of Reports.* The reports, documents and materials prepared by Xelerate Group under this Agreement shall be the sole property of the Town upon payment by the Town to Xelerate Group for the fees earned under this Agreement in connection with the preparation and delivery of such reports, documents and materials.

*Agreement Controlling.* The Proposal is incorporated into this Agreement, except to the extent any such terms or provisions are in conflict with any term or provision of this Agreement, in which event the express terms and provisions of this Agreement shall control.

Respectfully submitted,

\_\_\_\_\_  
Eric D. Terry  
President  
Xelerate Group

\_\_\_\_\_  
Date

Accepted and agreed to:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Date

**Council Agenda Item: #R8**

**SUMMARY:**

Council approval is requested of a resolution providing notice that the Town intends to issue \$4.4 million in certificates of obligation for Airport capital improvements.

**FINANCIAL IMPACT:**

The certificates will have a maturity of 15 years and based on a 4.75% annual interest rate, the annual debt service payment would be \$416,770. Although the Town pledges its full faith and credit behind the CO's (i.e. levy a property tax rate if needed), the certificates will be paid from the Airport fund. The 2005 Airport fund budget and long-term plan include funds for this purpose.

**BACKGROUND:**

The Airport fund long-term plan anticipates using fund balances to pay for capital projects that are eligible for matching federal and state grants. Two projects that are needed by the airport but are unlikely to receive matching grants are construction of a new fuel farm and drainage improvements. The fuel farm project budget is \$2 million while \$2.4 million has been allocated for the drainage project.

Because certificates of obligation do not require voter approval, the Town must publish its intent to issue the certificates. Also, Section 147 of the Tax Code contains special public approval requirements for debt issuances when the proceeds are to be used to finance a facility or facilities located at an airport and the governmental unit issuing the bonds is the owner or operator of such airport. Under the Tax Code, public approval is required through a hearing requirement, often known as a "TEFRA" hearing. Public approval through a hearing process is required in order to maintain the tax-exempt status of the bonds, which are private activity bonds.

Due to the law's publication requirements, the public hearing will be held at the November 9 council meeting and the ordinance authorizing the issuance of the certificates will be scheduled for the November 23 meeting. The law requires the naming of a "hearing officer" for the public hearing. Since the Town has scheduled the hearing during a Council meeting, the resolution names the Mayor as the "hearing officer".

**RECOMMENDATION:**

It is recommended Council approve the resolution.

A RESOLUTION RELATING TO THE GIVING OF NOTICE OF INTENTION TO ISSUE TOWN OF ADDISON, TEXAS COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2004 AND APPOINTING A HEARING OFFICER FOR THE PURPOSE OF CONDUCTING A PUBLIC HEARING PURSUANT TO SECTION 147(F) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED

WHEREAS, the Town of Addison, Texas (the "Town"), pursuant to Subchapter C, Chapter 271, Texas Local Government Code, as amended, is authorized to issue its certificates of obligation for the purpose of paying contractual obligations to be incurred for the purposes set forth in Exhibit A hereto; and

WHEREAS, the City Council of the Town has found and determined that a notice of intention to issue certificates of obligation should be published in accordance with the requirements of applicable law; and

WHEREAS, Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), requires that the Town hold a public hearing regarding the Certificates and appoint a hearing officer to conduct such meeting;

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

Section 1. The findings and determinations set forth in the preambles hereto are hereby incorporated by reference for all purposes.

Section 2. The City Secretary of the Town is hereby authorized and directed to issue a notice of intention to issue certificates of obligation in substantially the form set forth in Exhibit A hereto incorporated herein by reference for all purposes.

Section 3. The notice as set forth in Exhibit A shall be published once a week for two consecutive weeks, the date of the first publication being not less than the fourteenth (14th) day prior to the date set forth in the foregoing notice for passage of the ordinance authorizing the Combination Tax and Revenue Certificates of Obligation. Such notice shall be published in a newspaper of general circulation in the area of the Town of Addison, Texas.

Section 4. That Scott Wheeler is hereby appointed by the City Council of the Town as hearing officer for the purpose of conducting a public hearing regarding the Certificates pursuant to the Code.

Section 5. That this resolution shall take effect from and after the date of its passage.

FINALLY PASSED, APPROVED AND EFFECTIVE this 12th day of October, 2004.

TOWN OF ADDISON, TEXAS

ATTEST:

\_\_\_\_\_  
Mayor

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

Exhibit A

NOTICE OF INTENTION TO ISSUE TOWN OF  
ADDISON, TEXAS COMBINATION TAX AND  
REVENUE CERTIFICATES OF OBLIGATION,  
SERIES 2004

NOTICE IS HEREBY GIVEN that on November 23, 2004, the City Council of the Town of Addison, Texas, at 7:30 p.m. at a regular meeting of the City Council to be held at the Town Hall, 5300 Beltline, Addison, Texas, the regular meeting place of the City Council, intends to pass an ordinance authorizing the issuance of not to exceed \$4,400,000 principal amount of Certificates of Obligation for the purpose of paying contractual obligations to be incurred for the purpose of constructing improvements to and expanding the Addison Airport, including, to wit: (i) constructing improvements to runways, taxiways, lighting, drainage systems and facilities; (ii) constructing, designing and engineering a fuel farm (collectively with (i), the "Project"), (iii) payment of professional services of attorneys, financial advisors and other professionals in connection with the Project and the issuance of the Certificates. The Certificates shall bear interest at a rate not to exceed fifteen percent (15%) per annum, and shall have a maximum maturity date of not later than twenty (20) years after their date. Said Certificates shall be payable from the levy of a direct and continuing ad valorem tax, levied within the limits prescribed by law, against all taxable property within the City sufficient to pay the interest on this series of Certificates as due and to provide for the payment of the principal thereof as the same matures, as authorized by Subchapter C, Chapter 271, Texas Local Government Code, as amended, and from all or a part of the surplus revenues of the Town's combined waterworks and sewer system, such pledge of surplus revenues being limited to \$1,000.

THIS NOTICE is given in accordance with law and as directed by the City Council of the Town of Addison, Texas.

GIVEN THIS October 12, 2004.

/s/ Carmen Moran  
City Secretary  
Town of Addison, Texas

**Council Agenda Item: #R9**

**SUMMARY:**

The Addison Fire Department wishes to enter into a Memorandum of Understanding (MOU) with the Dallas County Health Authority for assistance during health emergencies and acts of bio-terrorism. The Town does not maintain such services in-house and as such needs to work with other municipalities that can offer these services.

**FINANCIAL IMPACT:**

Budgeted Amount: \$0.00

Cost: \$0.00 (Unknown during an actual emergency)

**BACKGROUND:**

The Town of Addison does not have the facilities, equipment or staff to handle an emergency involving a health emergency or a bio-terrorism incident. The Dallas County Health and Human Services Department (Dallas County Health Authority) has offered to supply such services to municipalities within Dallas County. The Dallas County Health Authority, along with the Department of State Health Services, already has some legal responsibilities for such services. Such occurrences typically do not affect just the confines of one political subdivision; therefore, a regional approach should be pursued. The MOU has been sent to all political subdivisions within Dallas County for approval. The MOU would also cover the unincorporated areas of Dallas County.

Our participation would result in the Dallas County Health Authority along with other signatories supplying assistance to the Town of Addison during such an emergency. The Town would also be committing to assist other Dallas County municipalities during an emergency in their cities.

**RECOMMENDATION:**

The Addison Fire Department recommends the Town Council approve the Memorandum of Understanding for Bio-Terrorism or Health Emergency Assistance between Dallas County and the Town of Addison.



## MEMORANDUM

TO: Mayor and Town Council

FROM: Noel Padden  
Fire Chief

DATE: October 1, 2004

SUBJECT: Memorandum of Understanding For Bio-Terrorism or Health  
Emergency Assistance

### **Background**

The Town of Addison does not operate a full service local health authority. Typically, only large cities and/or counties operate full service local health authorities. As a result, there are many health services not provided by smaller municipalities. These services include immunizations, disease testing and identification, laboratory services, health education, etc.

Another service that has recently come to the forefront is bio-terrorism and health emergency response. An outbreak of disease from natural or man-made sources, or as the result of an act of bio-terrorism can pose both a facility and staffing problem beyond the capabilities of the Town of Addison. Also, as part of a very high-density metropolitan area, Addison and all municipalities have a duty to cooperate in such events in order to contain, isolate and treat citizens who are exposed or could be exposed to health emergencies and acts of bio-terrorism.

The Dallas County Health and Human Services Department has offered to supply bio-terrorism and health emergency assistance services to municipalities within Dallas County that do not provide these services individually.

## **Memorandum of Understanding (MOU)**

In the event of a local health emergency or act of bio-terrorism, this MOU would designate the Dallas County Health Authority (Dallas County Health and Human Services Department) as the local health authority for the Town of Addison. A local health emergency is defined as the outbreak of disease from natural or man-made sources, or as the result of an act or acts of bio-terrorism, requiring the application of control measures. Control measures include immunization, detention, restriction, disinfection, decontamination, isolation, quarantine, disinfestations, chemoprophylaxis, preventative therapy, prevention and education.

During bio-terrorism and health emergencies, this formal agreement would allow for better coordination on a countywide basis. It would help to identify and secure adequate facility space and assist in staffing such an emergency. This MOU takes a regional approach similar to existing mutual aid agreements and weapons of mass destruction emergency response. During such health emergencies and acts of bio-terrorism, the Town of Addison would furnish mutual aid to jurisdictions within Dallas County as well as unincorporated areas of Dallas County, and we would receive mutual aid in return. The Town of Addison would maintain, and make available at its sole discretion, the equipment and staffing necessary to furnish the requested aid. If equipment and staff are provided, the Town maintains the option to discontinue such services at any time.

A total of 26 political subdivisions have been asked to enter into this MOU. As such, it is very difficult to craft language that is suitable to all. This results in a limited ability to make changes to the MOU. Also, the lead-time from inception to all jurisdictions signing is substantial. In the case of this MOU, a change in State statute needs to be brought to your attention. In section IV (Duties) B of this MOU, it states "...However, pursuant to Chapter 81, the LHA (local health authority) may not impose a quarantine of an area until he or she consults with and obtains the approval of the Texas Commissioner of Health and the governing body of the County and of each City in the LHA's jurisdiction." After consultation with John Hill, we believe the following amended State Statute applies:

Texas Health and Safety Code Chapter 81 (81.085 (b))

A health authority may not impose an area quarantine until the authority consults with the department (Department of State Health Services). A health authority that imposes an area quarantine shall give written notice to and shall consult with the governing body of each county and municipality in the health authority's jurisdiction that has territory in the affected area as soon as practicable.

There are several other changes that will be requested in the final MOU such as the correct spelling of "Belt Line Road" and the correct name of the Dallas County Health and Human Services Department Director. Also, the document referenced in exhibit A was not provided.

The term of this agreement is for a 24-months from the date of the last signature approving this agreement. All parties have the right to terminate its participation in this agreement upon (90) day's written notice to the other parties.

### **Recommendation**

Based on the information provided, the Addison Fire Department recommends the Town Council approve the Memorandum of Understanding for Bio-Terrorism or Health Emergency Assistance between Dallas County and the various municipalities within Dallas County.

**MEMORANDUM OF UNDERSTANDING  
FOR BIOTERRORISM OR HEALTH EMERGENCY ASSISTANCE**

**BETWEEN**

**DALLAS COUNTY, TEXAS**

**AND**

**THE CITIES OF ADDISON, BALCH SPRINGS, CARROLLTON, CEDAR HILL, COCKRELL HILL, COPPELL, DALLAS, DESOTO, DUNCANVILLE, FARMERS BRANCH, GARLAND, GLENN HEIGHTS, GRAND PRAIRIE, HIGHLAND PARK, HUTCHINS, IRVING, LANCASTER, MESQUITE, RICHARDSON, ROWLETT, SACHSE, SEAGOVILLE, SUNNYVALE, UNIVERSITY PARK, and WILMER.**

THIS AGREEMENT (the "Agreement"), is made and entered into by and between the following Parties:

County of Dallas, Texas (hereinafter referred to as "COUNTY"), located at the Administration Building – 2<sup>nd</sup> Floor, 411 Elm Street, Dallas, TX 75202, is a corporate and political body recognized as legal subdivision of the State of Texas pursuant to Article XI, Section 1 of the Texas Constitution; and

Town of Addison, Texas (hereinafter referred to individually as "ADDISON"), located at Town Hall, 5300 Beltline Rd., Dallas TX 75254, is a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution; and

City of Balch Springs, Texas (hereinafter referred to individually as "BALCH SPRINGS"), located at City Hall, 3117 Hickory Trce, Balch Springs, TX. 75180, is a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution; and

City of Carrollton, Texas (hereinafter referred to individually as "CARROLLTON"), located at City Hall, 1945 Jackson Road, Carrollton, TX 75006, is a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution; and

City of Cedar Hill, Texas (hereinafter referred to individually as "CEDAR HILL"), located at City Hall, 502 Cedar Street, Cedar Hill, TX 75106, is a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution; and

City of Cockrell Hill, Texas (hereinafter referred to individually as "COCKRELL HILL"), located at City Hall, 4125 W. Clarendon, Dallas, TX 75211, operates under general law pursuant to Title 2, Subtitle B of the Local Government Code; and

City of Coppell, Texas (hereinafter referred to individually as “**COPPELL**”), located at City Hall, 255 Parkway Blvd, Coppell, TX 75019, is a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution; and

City of Dallas, Texas (hereinafter referred to individually as “**DALLAS**”), located at City Hall, Room 7D North, 1500 Marilla Street, Dallas, TX 75201, is a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution; and

City of DeSoto, Texas (hereinafter referred to individually as “**DESOTO**”), located at Town Center, 211 E. Pleasant Run Rd., DeSoto, TX 75115, is a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution; and

City of Duncanville, Texas (hereinafter referred to individually as “**DUNCANVILLE**”), located at City Hall, 203 E. Wheatland, Duncanville, TX 75116, is a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution; and

City of Farmers Branch, Texas (hereinafter referred to individually as “**FARMERS BRANCH**”), located at City Hall, 321 Becket Ridge, Farmers Branch, TX 75234, is a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution; and

City of Garland, Texas (hereinafter referred to individually as “**GARLAND**”), located at City Hall, 200 North Fifth Street, 4<sup>th</sup> Floor, Garland, TX 75040, is a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution; and

City of Glenn Heights, Texas (hereinafter referred to individually as “**GLENN HEIGHTS**”), located at City Hall, 1938 S. Hampton, Glenn Heights, TX 75154, is a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution; and

City of Grand Prairie, Texas (hereinafter referred to individually as “**GRAND PRAIRIE**”), located at City Hall, 317 West College, Grand Prairie, TX 75050 is a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution; and

Town of Highland Park, Texas (hereinafter referred to individually as “**HIGHLAND PARK**”), located at Town Hall, 4700 Drexel Dr., Highland Park, TX 75205, is a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution; and

City of Hutchins, Texas (hereinafter referred to individually as “**HUTCHINS**”), located at City Hall, 321 N. Main, Hutchins, TX 75141, operates under general law pursuant to Section 5, Article 11 of the Texas Constitution; and

City of Irving, Texas (hereinafter referred to individually as “**IRVING**”) located at City Hall, 825 West Irving Boulevard, Irving, TX 75060, is a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution; and

City of Lancaster, Texas (hereinafter referred to individually as “LANCASTER”), located at City Hall, 102 N. Henry, Lancaster, TX 75146, is a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution; and

City of Mesquite, Texas (hereinafter referred to individually as “MESQUITE”), located at Municipal Center, 1515 North Galloway, Mesquite, TX 75185, is a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution; and

City of Richardson, Texas (hereinafter referred to individually as “RICHARDSON”), located at City Hall, 411 W. Arapaho, Suite 201, Richardson, TX 75083, is a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution; and

City of Rowlett, Texas (hereinafter referred to individually as “ROWLETT”), located at City Hall, 4000 Main, Rowlett, TX 75088, is a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution; and

City of Sachse, Texas (hereinafter referred to individually as “SACHSE”), located at City Hall, 5516 Hwy 78, Sachse, TX 75048, is a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution; and

City of Seagoville, Texas (hereinafter referred to individually as “SEAGOVILLE”), located at City Hall, 300 Environmental Way, Seagoville, TX 75159, is a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution; and

City of Sunnyvale, Texas (hereinafter referred to individually as “SUNNYVALE”), located at City Hall, 53 Long Creek Rd., Sunnyvale, TX 75182, operates under general law pursuant to Title 2, Subtitle B of the Local Government Code; and

City of University Park, Texas (hereinafter referred to individually as “UNIVERSITY PARK”), located at City Hall, 3800 University, University Park, TX 75205, is a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution; and

City of Wilmer, Texas (hereinafter referred to individually as “WILMER”), located at City Hall, 128 N. Dallas Ave., Wilmer, TX 75172, operates under general law pursuant to Title 2, Subtitle B of the Local Government Code; and

The aforementioned cities shall be referred to collectively in this Agreement as the **CITIES**.

## **I. PURPOSE**

**WHEREAS**, the **COUNTY**, and the **CITIES** agree that the outbreak of disease from natural or man-made sources, or as the result of an act or acts of bioterrorism can pose facility and manpower problems beyond the capacity of most individual cities; and

**WHEREAS**, in order to protect the health and safety of the public throughout Dallas County, subject to the limitations of Article III of this Agreement, the CITIES desire to designate COUNTY's Health Authority as the Local Health Authority of each CITY in the event of a local health emergency or act of bioterrorism; and

**WHEREAS**, a formal agreement between local governmental entities would allow for better coordination of this effort, provide that adequate facility space and manpower is available, and help ensure that this effort is accomplished as quickly as possible if the need arises; and

**WHEREAS**, the governing officials of the entities who have executed this Agreement of identical counterparts, collectively desire to secure for each such entity the benefits of mutual aid and protection of life and health in the event of a such an outbreak of disease; it is agreed as follows:

## **II. DEFINITIONS**

- A. **Political Subdivision:** Any corporate and political entity organized under state law, as defined in Chapter 791, Texas Government Code ("Chapter 791")
- B. **Local Health Authority:** ("LHA"), means the physician employed by the Dallas County Health and Human Services Department that has been appointed as Health Authority for Dallas County pursuant to Chapter 121 of the Texas Health & Safety Code ("Chapter 121").
- C. **Local Health Authority's Jurisdiction:** Includes the unincorporated area of Dallas County and the territory within the boundaries of each political subdivision within Dallas County that executes the Certificate of Appointment made part of this Agreement.
- D. **Control Measures:** Pursuant to Chapter 81 of the Texas Health & Safety Code, known as the Texas Communicable Disease Prevention and Control Act ("Chapter 81"), a communicable disease control measure may be imposed by the Local Health Authority in the Local Health Authority's jurisdiction.
  - 1. Pursuant to Chapter 81, control measures may be imposed on an individual, animal, place or object as appropriate.
  - 2. Pursuant to Chapter 81, control measures may include: immunization, detention, restriction, disinfection, decontamination, isolation, quarantine, disinfection, chemoprophylaxis, preventive therapy, prevention and education.
- E. **Local Health Emergency:** the outbreak of disease from natural or man-made sources, or as the result of an act or acts of bioterrorism, requiring the application of control measures under the provisions of Chapter 81.

### III. DESIGNATION OF HEALTH AUTHORITY

- A. The CITIES agree to designate the COUNTY's Health Authority to serve as their Local Health Authority ("LHA") for purposes of a local health emergency or incident of bioterrorism pursuant to Section 121.028 of the Health & Safety Code and Chapter 791. The terms and conditions under which the LHA's powers are invoked are more fully described in Section IV herein. A copy of the Certificate of Appointment for each CITY is attached hereto as Exhibit "A".
- B. The City of Garland will not designate the COUNTY's Health Authority to serve as their Local Health Authority under Section III (A). However, in all other respects, the City of Garland agrees to and will act in accordance with this Agreement during conditions under which the powers of the LHA that has been designated by this Agreement are invoked. Further, the City of Garland agrees that its Health Authority will cooperate with and maintain communication with the LHA designated by this Agreement during conditions under which the powers of the LHA are invoked. A copy of the signature page for the City of Garland is attached hereto as Exhibit "B".
- C. The City of Irving will not designate the COUNTY's Health Authority to serve as their Local Health Authority under Section III (A). However, in all other respects, the City of Irving agrees to and will act in accordance with this Agreement during conditions under which the powers of the LHA that has been designated by this Agreement are invoked. Further, the City of Irving agrees that its Health Authority will cooperate with and maintain communication with the LHA designated by this Agreement during conditions under which the powers of the LHA are invoked. A copy of the signature page for the City of Irving is attached hereto as Exhibit "C".
- D. The City of Richardson will not designate the COUNTY's Health Authority to serve as their Local Health Authority under Section III (A). However, in all other respects, the City of Richardson agrees to and will act in accordance with this Agreement during conditions under which the powers of the LHA that has been designated by this Agreement are invoked. Further, the City of Richardson agrees that its Health Authority will cooperate with and maintain communication with the LHA designated by this Agreement during conditions under which the powers of the LHA are invoked. A copy of the signature page for the City of Richardson is attached hereto as Exhibit "D".

### IV. DUTIES

- A. Upon request of the LHA, each entity which is a party hereto shall furnish mutual aid in coping with a local health emergency, and the forces necessary to provide such mutual aid to requesting entity or entities, during a state of local health emergency as declared by the LHA, subject to the conditions hereinafter stated.

- B. The provisions of this Agreement are activated whenever the LHA declares a local health emergency. The governing body of the COUNTY and each CITY, by signing this Agreement, authorizes the provision of assistance upon a declaration of a local health emergency. However, pursuant to Chapter 81, the LHA may not impose a quarantine of an area until he or she consults with and obtains the approval of the Texas Commissioner of Health and the governing body of the COUNTY and of each CITY in the LHA's jurisdiction.
- C. Any furnishing of facilities, and forces pursuant to this Agreement are subject to the following conditions:
1. Any request for aid hereunder shall specify the location(s) and include a stated number of personnel requested at said locations(s), and shall state the time period for which such facilities and personnel are requested. The CITY furnishing aid hereunder shall in its sole discretion, determine what equipment and personnel are available to furnish the requested aid.
  2. The responding CITY shall designate one individual at each facility to serve as a single point of contact to the LHA and/or the LHA's agent designated to operate that facility.
  3. A responding CITY shall be released by the LHA when the services of the responding CITY are no longer required or when the individual in charge of the responding CITY=s forces determines, in his or her sole discretion, that further assistance should not be provided.
- D. Each entity which is a party hereto shall prepare and keep current an emergency management plan for its jurisdiction providing for disaster preparedness, response, recovery, and rehabilitation. The plan shall provide for curfews, blockades, and crowd control in an area affected by a "disaster" as defined by Chapter 418 of the Texas Government Code (the Texas Disaster Act). The plan shall provide rules governing entrance to and exit from the affected area, and other security measures deemed necessary.
- E. The LHA will act as the coordinating agency for mutual aid responses under this Agreement. However, in the event of a wide spread local health emergency affecting more than one entity which is a party hereto, the City of Dallas has agreed to assist the LHA by allowing its Emergency Operations Center ("EOC") to be used as the central command and contact center. The EOC agrees to provide all necessary communications requested by the LHA. Such communications shall include the call-up and assignment of personnel and equipment to the areas affected by the emergency. The EOC agrees that it shall maintain a current listing of all parties to this Agreement. Such listing shall include personnel to be contacted in each member CITY, appropriate telephone and facsimile numbers, and other information which would be needed in order to contact each member in the case of a response.

## V. WAIVER

Each party to this Agreement waives all claims against the other entities which are parties hereto, and further waives compensation for any loss, damage, personal injury, or death occurring as a consequence of the performance of this Agreement, except those caused in whole or in part by the negligence of an officer or employee of another entity. Provided, however, that this waiver shall not apply in those cases in which the claim is specifically covered by the civil liability provisions of Section 791.006 of the Texas Government Code and any subsequent amendments.

## VI. REIMBURSEMENT OF EXPENSES

- A. Personnel who are assigned, designated or ordered by the governing body of a participating CITY or by the COUNTY to perform duties pursuant to this Agreement shall receive the same wages, salary, pension, and other compensation and rights for the performance of such duties, including injury or death benefits and workers' compensation benefits, as though the service had been rendered within the limits of the entity where he or she is regularly employed. All wage and disability payments (except for any payments arising from Section 791.006 of the Government Code), pension payments, damage to equipment and clothing, medical expenses, and expenses of travel, food and lodging shall be paid by the entity in which the employee in question is regularly employed.
- B. Federal funds awarded within Dallas County related to a health emergency covered by this Agreement will be distributed as directed and/or required by the Federal Emergency Management Agency or other appropriate Federal agency and/or the State of Texas.

## VII. EQUIPMENT

All equipment used by a responding CITY in carrying out this Agreement will be, during the time response services are being performed, owned, leased, or rented by it; and all personnel acting for the responding CITY under this Agreement will, during the time response services are required, be paid by the responding CITY. At all times while equipment and personnel of any responding CITY are traveling to, from, or within the geographical limits of another member CITY or within the unincorporated area of Dallas County in accordance with the terms of this Agreement, such personnel and equipment shall be deemed to be employed or used, as the case may be, in the full line and cause of duty of the responding CITY. Further, such personnel shall be deemed to be engaged in a governmental function of their CITY.

## VIII. SOVEREIGN IMMUNITY

The parties to this Agreement agree that each shall be responsible for their own negligent acts or omissions or other tortious conduct in the course of the performance of this Agreement, without waiving any sovereign or governmental immunity available to any party under Texas law and without waiving any available defenses under Texas law. Nothing in this paragraph shall be construed to create or grant any rights, contractual or otherwise, in or to any third persons or entities.

## **IX. LIABILITY**

In the event that an individual performing duties subject to this Agreement shall be cited as a defendant party to any state or federal civil lawsuits arising out of his or her official acts while performing duties pursuant to the terms of this Agreement, such individual shall be entitled to the same benefits that he or she would be entitled to receive had such civil action arisen out of an official act within the scope of his or her duties for the entity where regularly employed or volunteering and occurred within the jurisdiction of this entity where regularly employed or volunteering. The benefits described in this paragraph shall be supplied by the entity where the individual is regularly employed or volunteering. However, in situations where another political subdivision which is party to this Agreement may be liable, in whole or in part for the payment of damages, then that other political subdivision may intervene in such cause of action to protect its interests.

## **X. LIMITATION ON LIABILITY OF PRIVATE PERSONS**

Pursuant to Section 81.007 of the Texas Health & Safety Code and any subsequent amendments, a private individual performing duties in compliance with orders or instructions of the LHA issued pursuant to a quarantine, is not liable for the death of or injury to a person or for damage to property except in a case of willful misconduct or gross negligence.

## **XI. ENTIRE AGREEMENT**

This Agreement contains all commitments and agreements of the parties hereto as to mutual aid to be rendered during or in connection with the declaration of a local health emergency. No other oral or written commitments of the parties shall have any force or effect if not contained herein. Notwithstanding the preceding sentence, it is understood and agreed that certain signatory entities may have heretofore contracted or may hereafter contract with each other for mutual aid in disaster situations, and it is hereby agreed that this Agreement shall not invalidate any such individual contract.

## **XII. STATUTORY AUTHORITY**

The parties agree that this Agreement is entered into by and between the entities pursuant to the authority of Chapter 81 of the Health & Safety Code, applicable provisions of Chapter 418 of the Government Code and Chapter 791 of the Government Code. The entities which are parties hereto agree that this Agreement is for the performance of governmental functions and services as described in Chapter 791.

## **XIII. SEVERABILITY**

In case one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

#### XIV. APPROVAL.

This Agreement has been officially authorized by the governing body of each party hereto. Pursuant to Chapter 791 of the Government Code, each entity which performs services or furnishes equipment pursuant to the terms of this Agreement shall do so with funds available from current revenues of the entity.

#### XV. TERM

The term of this Agreement shall commence on the date of the last signature approving this Agreement and shall remain in full force and effect for a 24 month term, pursuant to Section 121.023 of the Health & Safety Code. Notwithstanding the provisions hereof, any local government which is a party hereto may provide emergency assistance to another local government as provided in Section 791.027 of the Government Code.

#### XVI. CANCELLATION NOTICE

It is agreed by and between the parties hereto that any party hereto shall have the right to terminate its participation in this Agreement upon ninety (90) days written notice to the other parties.

#### XVII. NOTICE

Any notice or certification provided for in this Agreement to be given by either party to the other shall be required to be in writing and shall be deemed given when personally delivered or within three (3) business days after being deposited in the United States Mail, postage prepaid, certified, return receipt requested or registered addressed as follows:

To County: County Judge  
Margaret Keliher  
Administration Building – 2<sup>nd</sup> Floor  
411 Elm Street  
Dallas, TX 75202

To Cities: Town of Addison  
Mayor Scott Wheeler  
P.O. Box 9010  
Addison, TX 75001

City of Balch Springs  
Mayor Brenda Haas  
City Hall  
3117 Hickory Tree  
Balch Springs, TX 75180

City of Carrollton  
Mayor Mark Stokes  
City Hall  
1945 E. Jackson Road  
Carrollton, TX 75006

City of Cedar Hill  
Mayor Robert Franke  
City Hall  
P.O. Box 96  
Cedar Hill, TX 75106

City of Cockrell Hill  
Mayor Charles P. Slayton  
City Hall  
4125 W. Clarendon  
Dallas, TX 75211

City of Coppell  
Mayor Candy Sheehan  
P.O. 9478  
Coppell, TX 75019

City of Dallas  
Mayor Laura Miller  
City Hall  
1500 Marilla, 5E North  
Dallas, TX 75201

City of DeSoto  
Mayor Michael Hurt  
Town Center  
211 E. Pleasant Run Road  
DeSoto, TX 75115

City of Duncanville  
Mayor Glenn Rapp  
P.O. Box 380280  
Duncanville, TX 75138

City of Farmers Branch  
Mayor Bob Phelps

321 Becket Ridge  
Farmers Branch, TX 75234

City of Garland  
Mayor Bob Day  
P.O. Box 469002  
Garland, TX 75046

City of Glenn Heights  
Mayor Mary K. Coffman  
1938 S. Hampton  
Glen Heights, TX 75154

City of Grand Prairie  
Mayor Charles England  
P.O. Box 534045  
Grand Prairie, TX 75053

Town of Highland Park  
Mayor Gifford Touchstone  
4700 Drexel Dr.  
Highland Park, TX 75205

City of Hutchins  
Mayor Artis Johnson  
P.O. Box 500  
Hutchins, TX 75141

City of Irving  
Mayor Joe Putnam  
825 W. Irving Blvd  
Irving, TX 75060

City of Lancaster  
Mayor Joe Tillotson  
P.O. Box 940  
Lancaster, TX 75146

City of Mesquite  
Mayor Mike Anderson  
P.O. Box 850137  
Mesquite, TX 75185

City of Richardson  
Mayor Gary Slagel  
411 W. Arapaho, Suite 201  
Richardson, TX 75083

City of Rowlett  
Mayor Shane Johnson  
P.O. Box 99  
Rowlett, TX 75030

City of Sachse  
Mayor Hugh Cairns  
5516 Highway 78  
Sachse, TX 75048

City of Seagoville  
Mayor David Maroney  
300 Environmental Way  
Seagoville, TX 75159

City of Sunnyvale  
Mayor Jim Phaup  
City Hall  
53 Long Creek Rd  
Sunnyvale, TX 75182

City of University Park  
Mayor Harold Peck  
3800 University  
University Park, TX 75205

City of Wilmer  
Mayor Eugene Lowe  
128 N. Dallas Ave.  
Wilmer, TX 75172

**EXECUTED** by the parties hereto, each respective entity acting by and through its duly authorized official as required by law, on the date specified on the multiple counterpart executed by such entity.

The County of Dallas, State of Texas, has executed this Agreement pursuant to Commissioners Court Order Number \_\_\_\_\_ and passed on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

COUNTY OF DALLAS:

APPROVED AS TO FORM:

\_\_\_\_\_  
BY: Margaret Keliher  
County Judge

\_\_\_\_\_  
BY: Janet Ferguson  
Assistant District Attorney  
Chief, Civil Section

RECOMMENDED:

\_\_\_\_\_  
BY: Betty Culbreath-Lister  
Director  
Health & Human Services Department  
Dallas County

## EXHIBIT "A"

**CERTIFICATE OF APPOINTMENT**

The Town of Addison, State of Texas, has executed this Agreement pursuant to Town Council Ordinance Number \_\_\_\_\_ and passed on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

TOWN OF ADDISON:

\_\_\_\_\_  
BY: Mayor Scott Wheeler

**Council Agenda Item: #R10**

**SUMMARY:**

Council approval is requested of an item related to the Town's public safety radio system. The item, attached as Third Supplemental Metrocrest Radio System Interlocal Agreement and ACS/City of Carrollton Service Agreement Unit Pricing, is to authorize the City Manger to enter into an agreement with the City of Carrollton for an amount not to exceed \$42,000 annually or an amount in future years of no more than 5% of the previous years payment, to provide service and maintenance for radio equipment located at the Spectrum building, 5080 Spectrum Drive and at Dispatch, 4799 Airport Parkway.

**FINANCIAL IMPACT:**

Radio maintenance in the amount of \$42,000 was included in the Fiscal Year 04-05 budget.

Future Costs: The original agreement establishing the Metrocrest Radio Consortium included a provision to increase system management fees by no more than 5% of the prior years fee.

**BACKGROUND:**

Following the acceptance of a service agreement for radio equipment located at the Spectrum building and dispatch offices the Town's simulcast radio project will be completed. The final cost of the project was \$1,087,011.

**RECOMMENDATION:**

The item was reviewed by the City Attorney and staff recommends approval.

**THIRD SUPPLEMENTAL METROCREST RADIO  
SYSTEM INTERLOCAL AGREEMENT**

This Third Supplemental Metrocrest Radio System Interlocal Agreement is made to supplement the METROCREST RADIO SYSTEM INTERLOCAL AGREEMENT executed on September 11, 2001 by the Cities (as hereinafter defined) and the City of Farmers Branch, Texas ("Farmers Branch")\_ and is made by and between the **CITY OF CARROLLTON, TEXAS**, a home-rule municipal corporation with the authorization of its governing body, (hereinafter referred to as "Carrollton and the **TOWN OF ADDISON, TEXAS**, a home rule municipal corporation with the authorization of its governing body, (hereinafter referred to as "Addison") (Carrollton, and Addison are hereinafter sometimes referred to together as the "Cities" or the "Parties" or referred to individually as a "City" or a "Party"), as follows:

**WITNESSETH:**

**WHEREAS**, the Cities, together with the City of Farmers Branch, have heretofore used a single-site nine-channel 800MHz Trunked Radio system; and Carrollton, Addison and Farmers Branch are upgrading the 800 MHz Trunked Radio System to be a four-site nine-channel 800Mhz Trunked Simulcast Radio System; and

**WHEREAS**, the Cities have upgraded the 800 MHz Trunked Radio System to a four-site nine-channel 800Mhz Trunked Simulcast Radio System (the "Trunked System"); and

**WHEREAS**, Carrollton previously installed and implemented the said nine-channel 800MHz Trunked Simulcast Radio Site for Addison and Farmers Branch, and installed and implemented the Dispatch Center Upgrade for Addison and Farmers Branch; and

**WHEREAS**, the performance of the Trunked System is of critical importance to Addison, and because the radio systems of Addison, Carrollton and Farmers Branch are interrelated and because the three cities support each other in connection with matters involving emergency response, Addison desires to retain the services of Carrollton, and Carrollton desires to provide the services to Addison, for the maintenance of the Trunked System as set forth herein.

**NOW, THEREFORE**, Carrollton, and Addison, for and in consideration of the mutual benefits and obligations set forth in this Agreement, agree as follows:

**Section 1                    DEFINITIONS**

"Service Agreement" or "Agreement" means this Third Supplemental Metrocrest Radio System Interlocal Agreement and its Attachments; "Equipment" means, collectively and in part, the communication equipment that is specified in the Attachments or that is subsequently added to this Service Agreement.

**Section 2**                    **TERM**

The term of this Agreement, subject to the termination provisions hereof, shall be for a period of one year, beginning on \_\_\_\_\_, 2004.

**Section 3**                    **SERVICE DEFINED**

- A. From time to time as requested by Addison, Carrollton agrees to provide services for the Equipment as specified in the Attachments and in accordance with the following standards: (i) Parts that are new or are warranted as "like new" will be used; (ii) the Equipment will be serviced at levels set forth in the Equipment manufacturer's product manuals and will be maintained in good operating condition; and (iii) routine service procedures that are prescribed from time to time by the Equipment manufacturers for the Equipment will be followed.
  
- B. All Equipment must be in working order on the applicable Start Date of this Service Agreement or at the time Equipment is added to the Service Agreement (the applicable Start Date for the Equipment which is identified in each Attachment hereto is referred to as the "Contract Start Date" in each such Attachment). Addison must provide a complete serial number and model number list either prior to the Start Date or prior to the time that the Equipment is added to this Service Agreement and must indicate in the Attachments any Equipment that is labeled intrinsically safe for use in hazardous environments.
  
- C. Addison must promptly notify City of Carrollton or its approved subcontractor in writing when any Equipment is lost, damaged, or stolen and for which Addison may request service. Addison's obligation to pay Service fees for such Equipment will terminate at the end of the month in which ACS / City of Carrollton receives such written notice. For purposes of this Agreement, Affiliated Computer Services, Inc., a Texas corporation ("ACS"), is an approved subcontractor of Carrollton.
  
- D. If Equipment cannot, in Carrollton's reasonable opinion, be properly or economically serviced for any reason, including excessive wear, unavailability of parts, the state of technology, or the practical feasibility of the scope of Services as specified in the Attachments, Carrollton may: (1) modify the scope of Services related to such Equipment; (2) remove such Equipment from this Service Agreement; or (3) increase the price to service such Equipment; provided, however, that Carrollton shall give Addison at least thirty (30) days written notice prior to taking any such action (the "Modification Notice"). Addison has the right to object to such proposed action by Carrollton, and if Addison so objects, Addison shall have the right to terminate this Service Agreement applicable to such Equipment by giving to Carrollton written notice of such termination within twenty (20) days after Addison's receipt of the Modification Notice. If Addison does not give notice of termination, any such action by Carrollton shall not become effective until thirty (30) days after Addison's receipt of the Modification Notice.

- E. Addison must notify Carrollton promptly of any Equipment failure or malfunction for which Addison may request service. ACS / City of Carrollton will respond to Addison's notification in a manner consistent with the level of service purchased as indicated in the Attachments.

#### **Section 4 EXCLUDED SERVICES**

- A. Except as may be caused by Carrollton or its authorized subcontractor, service does not include the repair or replacement of Equipment that has become defective or damaged due to physical or chemical misuse or abuse from causes such as lightning, power surges, or liquids.
- B. Unless specifically included in the Attachments, service does not include repair or maintenance of any transmission line, antenna, tower or tower lighting, duplexer, combiner, or multicoupler. Carrollton has no obligation or responsibility for any transmission medium, such as telephone lines, computer networks, or the worldwide web, or for Equipment malfunction caused by such transmission medium, except to the extent caused by Carrollton or its authorized subcontractor.
- C. Unless specifically included in the Attachments, service of Equipment does not include items that are consumed in the course of normal operation of the Equipment, such as, but not limited to, batteries, magnetic tapes, and computer supplies.
- D. Service does not include reprogramming of Equipment; accessories, belt clips, or battery chargers; custom or special products; modified units; or software.

#### **Section 5 TIME AND PLACE OF SERVICE**

Service will be provided at the location specified in the Attachments. When Carrollton performs service at the Equipment's location, Addison agrees, with reasonable prior notice from Carrollton and as provided for herein, to provide Carrollton full and free access to the Equipment ("Equipment Access"). Addison will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing (the "Interfacing Information") that enable Carrollton to perform its obligations under this Service Agreement. Unless otherwise specified in the Attachments, the hours of Service will be hours of 7:30 a.m. to 4:30 p.m., excluding weekends and holidays. For purposes hereof, "holidays" means New Year's Day, Memorial Day, Independence Day (4th of July), Labor Day, Thanksgiving Day, and Christmas Day.

Carrollton acknowledges that: (i) the Equipment is used by Addison in connection with the health, safety, and security of the public and that the location, type, and service history of Equipment ("Location Information") is confidential, and that (ii) Addison may designate to Carrollton in writing that certain Interfacing Information is confidential ("Confidential Interfacing Information"). Carrollton agrees that Location Information and Confidential Interfacing Information (together, "Confidential Information") will be held in strict confidence by Carrollton, and that Carrollton will not, without Addison's prior written consent, disclose any

such Confidential Information to any person or entity other than to Carrollton employees or representatives legally bound to abide by the terms hereof and having a need to know such information in connection with Carrollton's performance of services hereunder, or use any such Confidential Information other than in connection with the performance of the services hereunder. In the event of Carrollton's breach or threatened breach of this provision, Addison shall be entitled to an injunction or restraining order obtained from any court having appropriate jurisdiction restraining Carrollton from any unauthorized use or disclosure of such Confidential Information, but such injunction or restraining order shall not limit Addison's right to seek any other remedy available to Addison, whether at law or in equity or otherwise, in connection with such breach or threatened breach. The obligations set forth in this paragraph shall survive the expiration or termination of this Agreement. Any assignment or subcontract of this Service Agreement shall contain a provision identical to this provision.

## **Section 6                      PAYMENT**

Carrollton will invoice Addison in advance for each payment period the monthly amount set forth in the Attachments. Addison must pay each invoice within thirty (30) days of Addison's receipt of the invoice from Carrollton. Addison agrees to reimburse Carrollton for all property taxes, sales and use taxes, excise taxes, and other taxes or assessments (except income, profit, and franchise taxes of Carrollton) now or hereafter lawfully and properly imposed on this Service Agreement by any governmental entity. Carrollton does not by this Agreement make any price guarantees except as stated in the Order Form. Carrollton may increase the fee for maintenance services covered under this Agreement on an annual basis, starting with the fiscal year which begins October 1, 2005. In no event shall the fee for Annual Maintenance Services exceed the prior year's fee by more than 5% without the Parties agreeing to an amendment to this Agreement.

## **Section 7                      DEFAULT/TERMINATION**

Either party upon thirty (30) days prior written notice may cancel this agreement. All payments will be made for work completed and materials provided up to the time of termination.

## **Section 8                      EXCLUSIVE TERMS AND CONDITIONS**

Addison and Carrollton acknowledge that this Service Agreement supersedes all prior and concurrent agreements and understandings, whether written or oral, related to the services described herein. The Service Agreement may not be altered, amended, or modified except by a written agreement signed by both Parties.

## **Section 9 FCC LICENSES AND OTHER AUTHORIZATIONS; RELATIONSHIP OF PARTIES**

Addison is solely responsible for obtaining licenses or other authorizations for itself as required by the Federal Communications Commission (“FCC”) or any other federal, state, or local government agency and for complying as to itself with all rules and regulations required by such agencies. Neither Carrollton nor any of its employees is an agent or representative of Addison in any matter. The parties and their personnel shall not be considered to be employees or agents of the other party. Nothing in this Agreement shall be interpreted as granting either party the right or authority to make commitments of any kind for the other. This Agreement shall not constitute, create, or in any way be interpreted as a joint venture, joint enterprise, partnership or formal business organization of any kind.

## **Section 10 OWNERSHIP OF INTELLECTUAL PROPERTY**

- A. This Service Agreement does not grant directly or by implication, estoppel, or otherwise, to Addison any ownership right or license under any Carrollton patent, copyright, trade secret, or other intellectual property including any intellectual property created as a result of or related to the products sold or Services performed under this Service Agreement. This Service Agreement does not grant directly or by implication, estoppel, or otherwise, to Carrollton any ownership right or license under any Addison patent, copyright, trade secret, or other intellectual property.
- B. Carrollton and Addison reserve the right to limit access to their respective confidential and proprietary information including cost and pricing data.

## **Section 11 Insurance, Indemnification and Warranty**

Addison may obtain agreements from subcontractors retained by Carrollton to perform the work or a portion thereof described herein regarding insurance, indemnification, and warranties.

## **Section 12 Miscellaneous**

This Agreement is intended to supplement the Metrocrest Radio System Interlocal Agreement executed on September 11, 2001, and nothing herein shall be construed or be deemed to modify, alter, amend or change any term or condition of the Service Agreement, as between Carrollton and Addison except as may set forth herein. The Cities agree that Articles X (Assignment and Subletting) (except that ACS is approved as a subcontractor), XI (Entire Agreement), XII (Severability), XIII (Venue), XIV (Interpretation of Agreement), XV (Remedies), XVI (Successors and Assigns), XVII (Notice), and XVIII (Authority) of the said Metrocrest Radio System Interlocal Agreement apply to this Supplemental Agreement as between Carrollton and Addison and are incorporated herein and made a part hereof.

Except as otherwise provided for herein, this Agreement and each of its provisions is solely for the benefit of the Parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

**Section 13 Funding Availability**

Each party paying for the performance of governmental functions or services will make those payments from current funds available to the paying party.

**Town of Addison, Texas**

**City of Carrollton, Texas**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**Council Agenda Item: #R11**

**SUMMARY:**

Council approval is requested of an item related to the upgrade of the Town's public safety radio system. The item, attachment: Letter agreement between Affiliated Computer Services, Inc. and the Town in connection with the Supplemental Metrocrest Radio System Interlocal Agreement Between the City of Carrollton, Texas and the Town of Addison, Texas, is for Affiliated Computer Services, Inc., to provide insurance, indemnification and warranty to the Town concerning its work providing service and maintenance on radio equipment located at 5050 Spectrum Drive and 4799 Airport Parkway as a subcontractor for the City of Carrollton.

**BACKGROUND:**

This letter agreement is a part of the overall public safety radio system upgrade and is in connection with the interlocal agreement between the Town and the City of Carrollton to provide installation of the radio system.

**RECOMMENDATION:**

The agreement was reviewed by the City Attorney and staff recommends approval.

On ACS Letterhead

\_\_\_\_\_, 2004

Mr. Ron Whitehead  
City Manager  
Town of Addison, Texas  
5300 Belt Line Road  
Addison, Texas \_\_\_\_\_

Re: Third Supplemental Metrocrest Radio System Interlocal Agreement Dated  
\_\_\_\_\_, 2004 Made By and Between the City of Carrollton, Texas and the  
Town of Addison, Texas

Dear Mr. Whitehead:

The City of Carrollton, Texas ("Carrollton") and the Town of Addison, Texas ("Addison") have entered into or intend to enter into an agreement entitled Third Supplemental Metrocrest Radio System Interlocal Agreement (the "Third Supplemental Agreement"). The Third Supplemental Agreement supplements the Metrocrest Radio System Interlocal Agreement executed on September 11, 2001 by and between the Carrollton, Addison, and the City of Farmers Branch, Texas. For emergency and other communication purposes, these three cities have used a single-site nine-channel 800MHz Trunked Radio system, and that system has now been upgraded to be a four-site nine-channel 800Mhz Trunked Simulcast Radio System. Under the Third Supplemental Agreement and as described therein, Carrollton will maintain at certain times the nine-channel 800MHz Trunked Simulcast Radio Site at the locations described in the Second Supplemental Agreement.

In order to provide the work and services (or a portion thereof) described in the Third Supplemental Agreement, Carrollton, with the consent of Addison, has retained the services of our company, ACS State & Local Solutions, Inc., a New York corporation ("ACS"), and a wholly-owned subsidiary of Affiliated Computer Services, Inc. as a subcontractor. ACS is duly authorized to conduct business in Texas, and will be performing that work and those services described in Attachment A ("Service Agreement Maintenance Plan") attached to this letter and incorporated herein (the "ACS Work"). Under and pursuant to the Third Supplemental Agreement, Addison is authorized to obtain agreements from ACS regarding insurance, indemnification, warranties, and service matters in connection with the ACS Work. For and in consideration of Addison's consent to Carrollton's utilization of ACS as a subcontractor, the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, the sufficiency of which is hereby acknowledged and agreed, ACS agrees to provide the following in connection with the ACS Work:

- A. ACS will provide and maintain the minimum insurance coverages set forth below during all times material to the ACS Work, but in any event at least during the term of the Third Supplemental Agreement:
1. Commercial General Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations (\$1,000,000 products/ completed operations aggregate), contractual liability and XCU (Explosion, Collapse, Underground) hazards related to the ACS Work. Coverage for products/completed operations must be maintained for at least two (2) years after the work described herein has been completed.
  2. Workers Compensation insurance at statutory limits, including Employers Liability coverage at minimum limits of \$1,000,000 each accident/\$1,000,000 by disease each-employee/\$1,000,000 by disease – policy limit.
  3. Business Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-accident for bodily injury and property damage, including ACS' owned, non-owned, and hired car coverage.
  4. All Risk Property Insurance or Installation floater covering the full replacement cost for personal property in ACS' care, custody, or control, being installed by ACS prior to and during installation and until such time as the installation has been accepted by Addison.

With reference to the foregoing insurance requirement, ACS shall include a provision or specifically endorse applicable insurance policies as follows:

1. The Town of Addison, Texas shall be named as an additional insured with respect to General Liability and Automobile Liability.
2. All liability policies shall contain no cross liability exclusions.
3. A waiver of subrogation in favor of the Town of Addison, Texas shall be contained in the Workers Compensation, and the Commercial General Liability insurance policies.
4. All insurance policies shall include a provision or be endorsed to require the insurer to provide at least thirty (30) days notice to the Town of Addison prior to any material change in the insurance coverage.
5. All insurance policies shall include a provision or be endorsed to the effect that the Town of Addison will receive at least thirty (30) days notice prior to cancellation or non-renewal of the insurance.

6. The Commercial General Liability and Business Automobile Liability insurance policies, which name The Town of Addison as an additional insured, shall include a provision or be endorsed to read as primary coverage regardless of the application of other insurance.

7. Required limits may be satisfied by any combination of primary and umbrella liability insurances.

8. ACS' insurance shall be primary. ACS shall be responsible in full for any deductible in place with its applicable insurance policies.

9. Insurance must be purchased from insurers that are financially acceptable to the Town of Addison and authorized to do business in the State of Texas.

All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Standard Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, shall be delivered by ACS prior to the effective date of this letter agreement (and updated from time to time as appropriate), and shall contain the following provisions:

1. Standard additional insured wording and primary insurance wording.
2. Standard cancellation or termination provision, in accordance with the requirements and instructions contained herein.
3. Provisions stating that property coverage extends to the installation of property of others while being installed by the named insured and in the care, custody, or control of the named insured.

Upon request, ACS agrees to furnish the Town of Addison with standard certificates of insurance.

- B. (1) IN CONSIDERATION OF THIS AGREEMENT, ACS AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS ADDISON, ITS, OFFICERS, AGENTS AND EMPLOYEES (EACH AN "INDEMNITEE") FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, JUDGMENTS, LIABILITIES, PENALTIES, FINES, EXPENSES, FEES AND COSTS (INCLUDING REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF DEFENSE), AND DAMAGES (TOGETHER, "DAMAGES") ARISING OUT OF OR IN CONNECTION WITH ACS' PERFORMANCE OF THE ACS WORK, INCLUDING DAMAGES CAUSED BY THE INDEMNITEE'S OWN NEGLIGENCE, OR GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES EXPOSE AN INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY, EXCEPT AS SPECIFICALLY LIMITED HEREIN.

(2) WITH RESPECT TO ACS' INDEMNITY OBLIGATION SET FORTH IN SUBSECTION (A), ACS SHALL HAVE NO DUTY TO INDEMNIFY AN INDEMNITEE FOR ANY DAMAGES CAUSED BY THE SOLE NEGLIGENCE OF THE INDEMNITEE, OR SOLE GROSS NEGLIGENCE OF THE INDEMNITEE, OR SOLE CONDUCT OF THE INDEMNITEE THAT MAY OR DOES EXPOSE THE INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY.

(3) IF AN INDEMNITEE SUFFERS DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT THAT ARE CAUSED BY THE CONCURRENT NEGLIGENCE, GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES RESULT IN EXPOSURE TO STRICT LIABILITY, OF BOTH ACS AND THE INDEMNITEE, ACS' INDEMNITY OBLIGATION SET FORTH IN SUBSECTION (A) WILL BE LIMITED TO A FRACTION OF THE TOTAL DAMAGES EQUIVALENT TO ACS' OWN PERCENTAGE OF RESPONSIBILITY.

(4) WITH RESPECT TO ACS' DUTY TO INDEMNIFY SET FORTH HEREIN IN SUBSECTION (A), ACS SHALL HAVE THE DUTY, AT ITS SOLE COST AND EXPENSE, THROUGH COUNSEL OF ITS CHOICE, TO LITIGATE, DEFEND, SETTLE OR OTHERWISE ATTEMPT TO RESOLVE ANY CLAIM, LAWSUIT, CAUSE OF ACTION, OR JUDGMENT ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. ACS WILL HAVE SOLE CONTROL OVER THE DEFENSE AND SETTLEMENT OF SUCH CLAIM; PROVIDED, HOWEVER THAT (I) THE INDEMNITEE WILL BE ENTITLED TO PARTICIPATE IN THE DEFENSE OF SUCH CLAIM AND TO EMPLOY COUNSEL AT ITS OWN EXPENSE TO ASSIST IN THE HANDLING OF SUCH CLAIM, AND (II) THE INDEMNITOR WILL OBTAIN PRIOR WRITTEN APPROVAL BEFORE ENTERING INTO ANY SETTLEMENT OF SUCH CLAIM OR CEASING TO DEFEND AGAINST SUCH CLAIM. ACS WILL NOT BE REQUIRED TO INDEMNIFY THE INDEMNITEE FOR ANY AMOUNT PAID BY THE INDEMNITEE IN THE SETTLEMENT OF ANY CLAIM FOR WHICH THE AMOUNT WAS AGREED TO WITHOUT NOTICE TO, AND PRIOR APPROVAL OF, ACS.

(5) IN THE EVENT THAT ACS FAILS OR REFUSES TO PROVIDE A DEFENSE TO ANY CLAIM, LAWSUIT, JUDGMENT, OR CAUSE OF ACTION ARISING OUT OF OR IN CONNECTION WITH THE ACS WORK, ADDISON SHALL HAVE THE RIGHT TO UNDERTAKE THE DEFENSE, COMPROMISE, OR SETTLEMENT OF ANY SUCH CLAIM, LAWSUIT, JUDGMENT, OR CAUSE OF ACTION, THROUGH COUNSEL OF ITS OWN CHOICE, ON BEHALF OF AND FOR THE ACCOUNT OF, AND AT THE RISK OF ACS, AND ACS SHALL BE OBLIGATED TO PAY THE REASONABLE AND NECESSARY COSTS, EXPENSES AND ATTORNEYS' FEES INCURRED BY ADDISON IN CONNECTION WITH HANDLING THE

PROSECUTION OR DEFENSE AND ANY APPEAL(S) RELATED TO SUCH CLAIM, LAWSUIT, JUDGMENT, OR CAUSE OF ACTION.

(6) THE PROVISIONS OF THIS INDEMNITY OBLIGATION SET FORTH IN THIS PARAGRAPH B SHALL SURVIVE THE TERMINATION OR CANCELATION OF THIS LETTER AGREEMENT.

- C. ACS represents and warrants that (i) it has the skills, qualifications, expertise and experience necessary to perform the ACS Work with a high degree of quality and responsiveness, and that (ii) its services will be provided in a professional, good and workmanlike manner, consistent with commercially accepted best practices and standards within the Dallas/Fort Worth Metroplex area as of the time the services are provided, and with a high degree of quality and responsiveness.
- D. ACS warrants to Addison that the ACS Work will be free from defects not inherent in the quality required or permitted, and that the ACS Work will conform to the requirements of the Second Supplemental Agreement. ACS Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. ACS' warranty excludes remedy for damage or for defect caused by (i) modifications not executed by ACS, (ii) failure of Addison, its employees or agents, to operate the System in accordance with the operating instructions of the manufacturer, or (iii) exposure to unusual physical or electrical stress not caused by ACS or its officers, employees, agents, or representatives.
- E. If, within one year after the date of acceptance by Addison of the work and services provided by Carrollton under the Second Supplemental Agreement (including, without limitation, the ACS Work) or by ACS hereunder, any of the ACS Work is found to be not in accordance with the requirements of the Second Supplemental Agreement or this letter agreement, ACS shall correct it promptly after receipt of written notice from Addison requesting such correction. This obligation shall survive acceptance of the work and services under the Second Supplemental Agreement and termination thereof for a period not to exceed one year. Addison shall give such notice promptly after discovery of the condition.
- F. The limited warranty set forth herein is made to the City of Addison exclusively, and is in lieu of all other warranties. ACS MAKES NO OTHER WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH REGARD TO THE ACS WORK, IN WHOLE OR IN PART. ACS EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ACS EXPRESSLY DOES NOT WARRANT THAT THE SYSTEM, IN WHOLE OR IN PART, WILL BE ERROR FREE, OR WILL OPERATE WITHOUT INTERRUPTION.
- G. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES. ACS' TOTAL,

AGGREGATE LIABILITY HEREUNDER SHALL NOT EXCEED THE SUM OF \$500,000.00, EXCLUSIVE OF APPLICABLE INSURANCE COVERAGE.

G. Nothing in this letter agreement shall be construed to relieve Carrollton in any way from any of its obligations, duties, responsibilities, and liabilities under the Second Supplemental Agreement or otherwise.

H. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions of this Agreement will not be affected or impaired thereby.

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

J. This letter agreement is solely for the benefit of the parties hereto and is not intended to create or grant any rights, contractual or otherwise, to any third person or entity. Neither party shall have the right to, nor shall, assign, transfer, or otherwise convey this letter agreement without the prior written consent of the other party.

K. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this letter agreement on behalf of the parties hereto.

L. Either party may terminate this letter agreement upon at least 10 days written notice to the other party.

If the above reflects your understanding of our arrangement, please indicate so by signing on behalf of the Town of Addison in the space provided below.

Very truly yours,

ACS State & Local Solutions, Inc.

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

Mr. Ron Whitehead  
\_\_\_\_\_, 2003

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Accepted and Agreed to:

Town of Addison, Texas

By: \_\_\_\_\_  
Ron Whitehead, City Manager

Date: \_\_\_\_\_

## Attachment A: Service Agreement Maintenance Plan

Town of Addison staff will contact the ACS Help Desk at 972-466-3280 to request service on fixed equipment. In addition to the terms, conditions, and standards set forth herein and in the letter agreement to which this Attachment A is attached, maintenance of the Equipment by ACS shall be in accordance and comply with the terms, conditions, and standards set forth in that Second Supplemental Metrocrest Radio System Agreement between the City of Carrollton, Texas and the Town of Addison, Texas dated \_\_\_\_\_, 2004.

### Repair of Equipment

Repair shall be defined as the best-effort required to restore to normal operating condition any equipment covered under this Contract which is in disrepair (not functioning in a normal fashion) or has become defective through normal wear and usage ("defective equipment"). Repair shall consist of the labor, supervision, transportation and parts required to restore defective equipment to normal operation

### Field Replaceable Units (FRUs)

Equipment components will be replaced wherever possible with FRU's or spare equipment in an effort to restore the System to proper operation in the least amount of time. The exact quantity of spare equipment and FRU's inventory will be determined based on facility location and equipment priority should changes to equipment quantities, type, etc occur.

### Hours of Service

Fixed equipment shall be repaired on a twenty-four hour per day, seven days per week basis for major failures. Minor fixed equipment failures will be serviced during normal working hours.

### Response times

ACS maintenance personnel shall respond within one (1) hour of notification from the City that any piece of Public Safety fixed equipment is in disrepair or is defective, and within four (4) hours of notification from the City that any piece of non-Public Safety fixed equipment is in disrepair or is defective.

### Restoration times

Restoration for all reported failures of fixed equipment will be modeled after the chart below. All non-critical equipment shall be restored on a "best effort" basis. This requirement may be met by temporary or permanent repairs or temporary or permanent equipment replacement and is subject to the local availability of a FRU or spare unit or sub assembly.

#### SEVERITY RESPONSE AND RESTORAL REQUIREMENTS

SEVERITY	RESPONSE TIME	RESTORE TIME
Severity One: System Down or Degraded > 60%	2 Hours	4 Hours
Severity Two: System < 60% Degraded,	4 Hours	12 Hours

Non-Public Safety Users Affected		
Severity Three: Non-Emergency Or Technical Questions	Best Effort	Best Effort

Test Equipment and Tools

All test equipment and tools required for proper service of Town of Addison Systems will be provided by ACS or its subcontractors who have been approved by the Town of Addison ("authorized subcontractors").

Preventive Maintenance

A Preventive Maintenance inspection shall include but is not limited to :

- Transmitter power output,
- Reflected power,
- Frequency,
- Modulation level,
- Coded Squelch frequency and modulation level,
- Receiver sensitivity,
- Power supply voltages.

Checklists will be followed for fixed equipment and Systems. This information will be kept on file for quality control purposes.

ACS will perform preventive maintenance on a periodic basis Preventive maintenance service that would result in a Severity One failure condition will be performed at mutually agreed times to be negotiated prior to the performance of the service.

UPS & Battery Systems

ACS or its authorized subcontractor will provide services in reference to the UPS and battery Systems on a semi-annual basis. The inspections will be reported to ACS for action and logged on a semi-annual UPS and battery inspection report.

## Attachment B: Equipment List

### Spectrum Center Equipment

<b>Quantity</b>	<b>Description</b>
9	Quantar Repeaters
1	Channel Bank with Cards
1	7 KVA UPS System
1	Receiver Multicoupler
1	Transmitter Combiner
1	Rubidium Atomic Standard w/GPS
1	Simulcast Remote Site Controller

### Dispatch Center Equipment

<b>Quantity</b>	<b>Description</b>
	<u>Fire Department</u>
2	Console Operator Positions (with CEB)
2	TDN8503 Modem
3	DSFE1400VA UPS
1	BDN6767 Call Check Ups
3	L99ZX Control Station
1	L99ZX Spectra VHF Control Station
1	MSR2000 Base Station
3	Spectra Control Stations
2	Tone Decoder II
	<u>Police Department</u>
2	Syntor 9000 Control Stations
3	Console Operator Positions (with CEB)
3	TDN8503 Modem
4	DSFE1400VA UPS
1	SIP Terminal with CPU

## **Attachment C: Definitions and Acronyms**

### **Definitions**

**Contract:** Defined as this Service Agreement Maintenance Plan, together with the letter of agreement between ACS and the Town of Addison to which it is attached.

**Normal Wear and Usage:** Normal wear and usage is defined as the gradual deterioration of components that affects the normal operation of the equipment.

**Response Time or "respond":** defined as the time from the receipt by ACS or its authorized representative of a Town of Addison or other request for service until an ACS Service Technician arrives on site and begins diagnostic procedures by any means available on the equipment identified to be in disrepair or defective.

**Service:** any system support service provided by ACS pursuant to this Contract.

**System:** shall be defined as the Town of Addison Trunked Radio System.

### **Acronyms:**

**FRU:** Field Replacement Unit

**Council Agenda Item: #R12**

**SUMMARY:**

This item is for the award of contract to APAC, Texas, Inc, including incentives, in an amount not to exceed \$830,766.00 for construction of the Belt Line Road Pavement Rehabilitation, from Marsh Lane to Dallas North Tollway.

**FINANCIAL IMPACT:**

Construction Cost: \$730,766.00 (with incentives the amount is not to exceed \$830,766.00)

Funding Source: \$1.25 million from the proceeds of the 2004 sale of General Obligation Bonds.

**BACKGROUND:**

For many years the surface conditions of Belt Line Road have been deteriorating. About 3 years ago the Town began a process of grooving the surface on the roadway to improve traction conditions, especially during wet weather events. This process was only a temporary solution. As a result of the success of the “slab jacking” process used on Midway Road, sufficient funds were freed up to accommodate the necessary resurfacing of Belt Line Road. The firm of HNTB Corporation prepared engineering plans and specifications for construction of a hot mix asphaltic concrete overlay (asphalt) that will provide an aesthetically attractive look to the roadway and enhanced skid resistance to the surface. In addition, temporary pavement markings will be placed to establish cross walks and vehicle turn indicators. All construction work will be performed from 10:00 p.m. to 6:00 a.m. during the week and 1:00 a.m. to 11:00 a.m. on weekends. This will minimize any disruption or inconvenience to adjacent businesses. Concurrently, HNTB Corporation has initiated the design of proposed concrete crosswalks that will be placed along Belt Line Road in spring 2005.

The contract stipulated that all construction must be completed by November 15, 2004. An incentive/disincentive provision is also included, whereby; the contractor will be awarded \$20,000 per day for early completion, with a 5 day maximum. The disincentive amount is \$10,000 per day for every day that construction exceeds the contractual deadline. APAC, Texas, Inc. submitted the lowest responsive bid, in the amount of \$730,766.00. The actual bid amount is substantially lower than the \$1,100,000 engineering estimate. The contractor is a very large and well respected company that has successfully performed similar improvements in numerous municipalities.

## **RECOMMENDATION**

Staff recommends that Council authorize the City Manager to enter into a contract with APAC, Texas, Inc., including incentives, in an amount not to exceed \$830,766.00 for construction of the Belt Line Road Pavement Rehabilitation, from Marsh Lane to Dallas North Tollway.

**Belt Line Resurfacing**  
**BID NO 04-33**  
**Bid Opening: September 28, 2004**  
**2:00 PM**

Bidder	Signed	Bid Bond	Addendum 1	Total Bid
APAC-Texas	y	y	y	\$730,766.00
Austin Bridge and Road LP	y	y	y	\$888,010.50
PeachTree Construction, LTD	y	y	y	\$1,308,540.50

*Minok Suh*

Minok Suh, Purchasing Coordinator

*Corey Gayden*

Corey Gayden, Witness