

Post Office Box 9010

Addison, Texas 75001-9010

5300 Belt Line Road

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AGENDA

REGULAR MEETING OF THE CITY COUNCIL

February 22, 2005

7:30 P.M.

COUNCIL CHAMBERS

5300 BELT LINE ROAD

REGULAR SESSION

Item #R1 - Consideration of Old Business.

Item #R2 - Consent Agenda.

CONSENT AGENDA

- #2a - Approval of the Minutes for the February 7, 2005 and February 8, 2005 Council Meetings.
-
- #2b - Consideration of a Resolution authorizing the City Manager to enter into a joint election agreement in an approximate amount of \$6,000.00 with Dallas County to conduct Addison's Elections on May 7, 2005.
-
- #2c - Consideration of approval of a 9-1-1 billing agreement with Integrated Communications Consultants, Inc., which have a Service Provider Certificate of Operating Authority (SPCOA) from the Texas Public Utilities Commission.
-
- #2d - Consideration of approval of a 9-1-1 billing agreement with Granite Telecommunications, LLC, which have a Service Provider Certificate of Operating Authority (SPCOA) from the Texas Public Utilities Commission.
-
- #2e - Consideration of a Resolution to award the bid for tent rentals to Mike Sandone Productions in the amount of \$102,399 for the 2005 special event season with the option to renew for two additional years.
-
- #2f - Consideration of a Resolution to award the bid for miscellaneous rentals to M&M Special Events in the amount of \$23,909.60 for the 2005 special event season with the option to renew for two additional years.
-
- #2g - Consideration of a Resolution to award the bid for restroom and trash receptacles to Lone Star PPR, L.P. in the amount of \$27,337.20 for the 2005 special event season with the option to renew for two additional years.
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#2h - Consideration of a Resolution to award the bid for rental of fencing to National Construction Rentals in the amount of \$12,863.20 for the 2005 special event season with the option to renew for two additional years.

#2i - Consideration of a Resolution to award the bid for temporary electrical service, lights and air conditioning to Entertainment Services in the amount of \$95,000 for the 2005 special event season with the option to renew for two additional years.

#2j - Consideration of a Resolution to award the bid for stage, sound and lighting equipment to three bidders as follows for the 2005 special event season with the option to renew for two additional years:

- 1) Onstage Systems for Jazz Festival and Taste Addison in the amount of \$56,444
- 2) Gemini Stage Lighting and Sound for Oktoberfest in the amount of \$18,888
- 3) Executive Lighting and Sound Productions for July Jazz and Symphonic Saturdays in the amount of \$9,500

Item #R3 - Appointment of three members to the Addison Board of Zoning Adjustment (BZA).

Attachments:

1. Council Agenda Item Overview
2. List of BZA members

Administrative Recommendation:

Administration recommends appointing three members to the Board of Zoning Adjustment.

Item #R4 - Presentation and consideration of the Addison 2030 Vision Project Report.

Attachments:

1. Cover Memo from Chris Terry
2. Addison 2030 Report

Administrative Recommendation:

Administration recommends approval.

Item #R5 - Presentation from a Dallas Area Rapid Transit representative regarding the DART 2030 Transit System Plan.

Item #R6 - Consideration of a Resolution authorizing an amendment to a Lease between the Town of Addison, as landlord, and CNL APR Partners, LP and Amar Unlimited, Inc., as tenant concerning property located at 4460 Belt Line Road (Clay Pit Grill & Curry House).

Attachments:

1. Council Agenda Item Overview
2. Lease Amendment
3. Original Lease

Administrative Recommendation:

Administration recommends approval.

Item #R7 - Consideration of a Resolution authorizing the City Manager to enter into a contract for services in the amount of \$15,000.00 with the Texas Chamber Orchestra for fiscal year 2004-2005, subject to final review and approval of the City Attorney.

Attachments:

1. Council Agenda Item Overview
2. Contract

Administrative Recommendation:

Administration recommends approval.

Item #R8 - Consideration of a Resolution approving an increase to the Taste Addison admission fee from \$5.00 to \$8.00 after 5 pm on Friday and Saturday evenings.

Attachments:

1. Council Agenda Item Overview
2. Memo from Barbara Kovacevich and Bryan Langley

Administrative Recommendation:

Administration recommends approval.

Item #R9 - Consideration of a Resolution by the Addison City Council demonstrating to the State Legislature its opposition regarding its efforts to make reforms in school finance and existing taxing systems that would negatively affect the Town's revenues and efforts in providing essential services, public safety, and economic development.

Attachments:

1. Council Agenda Item Overview
2. Impact of Appraisal Caps Report
3. Resolution

Administrative Recommendation:

Administration recommends approval.

Item #R10 - Consideration of a Resolution to authorize the City Manager to negotiate and enter into a contract with a legislative advocate for the purpose of providing monitoring and consultation services to the Town during the 79th Texas Legislative Session.

Attachments:

1. Council Agenda Item Overview

Administrative Recommendation:

Administration recommends approval.

Item #R11 - Consideration to authorize the release of the 2004 Comprehensive Annual Financial Report (CAFR).

Attachments:

1. Council Agenda Item Overview
2. Memorandum from Randy Moravec
3. Representation Letter to Weaver and Tidwell, L.L.P.
4. Auditors Report to Management
5. Comprehensive Annual Financial Report (CAFR)

Administrative Recommendation:

Administration recommends approval.

Item #R12 - Consideration of an ordinance granting the right, privilege and franchise to TXU Electric Delivery Company, an electric transmission and distribution utility, and its successors and assigns, to use the public rights-of-way of the Town of Addison, Texas for the transmission and distribution of electric power subject to the conditions, restrictions, and limitations of this ordinance; prescribing the conditions, restrictions and limitations under which such franchise shall be exercised; providing compensation for such use; providing the term of franchise; providing a repealing clause; providing a severability clause;

providing for the method of acceptance; and providing an effective date.

Attachments:

1. Council Agenda Item Overview
2. Memo from Clarence West
3. Ordinance

Administrative Recommendation:

Administration recommends approval.

Item #R13 - Presentation of the Finance Department Quarterly Review.

Attachments:

1. Finance Department Quarterly Report

Administrative Recommendation:

Administration recommends approval.

Adjourn Meeting

Posted 5:00 p.m.
February 17, 2005
Carmen Moran
City Secretary

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

OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL

February 8, 2004
7:30 p.m. - Council Chambers
5300 Belt Line Road

Present: Mayor Wheeler, Councilmembers Braun, Hirsch, Niemann, Ryland, Turner
Absent: None
One Seat Vacant

Item #R1 – Consideration of Old Business

The following employees were introduced to the Council: Justin Pollard (Recreation), Candy Stewart (Human Resources).

Item #R2 – Consent Agenda

Items #2c, #2d, #2f, and #2g were considered separately.

Item #2a – Approval of the Minutes for the January 10, 2005, January 24, 2005, January 25, 2005, January 31, 2005, and February 1, 2005. (Approved as written)

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 \$254,162.00 with J&J Hardscape Construction, Inc., for the construction of Parkview Park in the Cityhomes Development. (R05-014)

Item #2e – Consideration of approval of a final plat for three lots on 2.974 acres located at 4553 Glenn Curtiss Drive, on application from the Addison Jet Center, represented by Mr. Steve Wilson. (Approved subject to the following conditions:

- Revise plat to indicate location of Frank Luke on the re-plat, including bearing and distance to nearest site boundary line.

- Correctly designate proposed adjacent property lines with legend.

- Proposed civil construction plans must be submitted and approved by the Town before the issuance of a building permit).

Councilmember Niemann moved to duly approve the above-listed items, with the approval of plats being subject to all conditions recommended by the Planning & Zoning Commission. Councilmember Turner seconded. The Motion carried.

Voting Aye: Wheeler, Braun, Hirsch, Niemann, Ryland, Turner
Voting Nay: None
One seat vacant.

Item #2c – Consideration of approval of award of bid and a Resolution authorizing the City Manager to enter into a contract in the amount of \$25,318.00 with Smith Pump Company, Inc., for the replacement of two waterfall circulation pumps and one fountain display pump. (R05-015)

Councilmember Turner moved to duly approve Resolution R01-015 approving an award of bid and authorizing the City Manager to enter into a contract in the amount of \$25,318.00 with Smith Pump Company, Inc., for the replacement of two waterfall circulation pumps and one fountain display pump. Councilmember Braun seconded. Motion carried.

Voting Aye: Wheeler, Braun, Hirsch, Niemann, Ryland, Turner
Voting Nay: None
One seat vacant.

Item #2d – Consideration of approval of a final plat for one lot of 378.6 acres, located east of Midway Road, south of Sojourn Drive, west and south of Westgrove Road, and west of Addison Road, on application from the Town of Addison, represented by Mark Acevedo.

Councilmember Niemann moved to approve a final plat for one lot of 378.6 acres, located east of Midway road, south of Sojourn Drive, west and south of Westgrove Road, and west of Addison Road, on application from the Town of Addison, represented by Mark Acevedo, subject to the following condition:

-Mayor Scott Wheeler's name shall replace Ron Whitehead's name as the owner.

Councilmember Turner seconded. Motion carried.

Voting Aye: Wheeler, Braun, Hirsch, Niemann, Ryland, Turner
Voting Nay: None
One seat vacant.

Item #2f – Consideration of approval of a final plat for one lot of .7839 acres, located at 14523 Winnwood Road, in a Planned Development District (Ordinance 091-038), on application from Mr. Venugopal B. Menon, represented by Tom Knicker of NKR Engineering.

This item was withdrawn at the request of the applicant.

Item #2g – Consideration of approval of an award of bid to Covenant Industries in an amount not to exceed \$22,937.50 for roof replacement and repairs at the Town's Finance Building, located at 5350 Belt Line Road. (Approved)

Councilmember Braun moved to award a bid to Covenant Industries in an amount not to exceed \$22,937.50 for roof replacement and repairs at the Town's Finance Building, located at 5350 Belt Line Road. (Approved)

Item #R3 – Appointment of three members to the Addison Board of Zoning Adjustment (BZA).

This item was tabled by the Council.

Item #R4 – Consideration of a Resolution authorizing the City Manager to enter into a Right-of-Way License and Municipal Facilities Use Agreement with RedMoon BROADBAND, for installation of a WiFi mesh network in Addison to provide high speed Internet services to the resident and business community subject to the final review and approval of the Town attorney.

Councilmember Turner moved to duly pass Resolution R05-016 to authorize the City Manager to enter into a Right-of-Way License and Municipal Facilities Use Agreement with RedMoon BROADBAND, for installation of a WiFi mesh network in Addison to provide high speed Internet services to the resident and business community subject to the final review and approval of the Town attorney. Councilmember Niemann seconded. The motion carried.

Voting Aye: Wheeler, Braun, Hirsch, Niemann, Ryland, Turner

Voting Nay: None

One seat vacant

Item #R5 – PUBLIC HEARING and consideration of an Ordinance approving an amendment to an existing Special Use Permit for a restaurant and an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 4930 Belt Line Road, Suite 100, on application from Monica’s Restaurant, represented by Mr. K. Steven Roberts, Attorney at Law.

Mayor Wheeler opened the meeting as a public hearing. There were no questions or comments. Mayor Wheeler closed the meeting as a public hearing.

Councilmember Niemann moved to duly pass Ordinance 005-006 approving an amendment to an existing Special Use Permit for a restaurant and an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 4930 Belt Line Road, Suite 100, on application from Monica’s Restaurant, represented by Mr. K. Steven Roberts, Attorney at Law, subject to the following conditions:

- The irrigation controllers for this center will need to be inspected to ensure the rain and freeze sensors are operable before issuance of a Certificate of Occupancy.

- The applicant shall not use any terms, including the term “club,” or graphic depictions that denote alcoholic beverages in exterior signs.

Councilmember Ryland seconded. Motion carried.

Voting Aye: Wheeler, Braun, Hirsch, Niemann, Ryland, Turner
Voting Nay: None
One seat vacant

Item #R6 – PUBLIC HEARING and consideration of an Ordinance approving an amendment to an existing Special use Permit for a restaurant and an existing special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 4930 Belt Line Road, Suite 190, on application from Go Fish Restaurant.

Mayor Wheeler opened the meeting as a public hearing. There were no questions or comments. Mayor Wheeler closed the meeting as a public hearing.

Councilmember Turner moved to duly pass Ordinance 005-007 approving an amendment to an existing Special Use Permit for a restaurant and an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 4930 Belt Line Road, Suite 190, on application from Go Fish Restaurant, subject to the following conditions:

- The irrigation controllers for this center will need to be inspected to ensure the rain and freeze sensors are operable before issuance of a Certificate of Occupancy.
- The applicant shall not use any terms, including the term “club,” or graphic depictions that denote alcoholic beverages in exterior signs.

Councilmember Braun seconded. The motion carried.

Voting Aye: Wheeler, Braun, Hirsch, Niemann, Ryland, Turner
Voting Nay: None
One seat vacant

Item #R7 – PUBLIC HEARING and consideration of an Ordinance approving a Special Use Permit for a restaurant, located at 5290 Belt Line Road, on application from Extreme Pita, represented by Ms. Beverly Scott.

Mayor Wheeler opened the meeting as a public hearing. There were no questions or comments. Mayor Wheeler closed the meeting as a public hearing.

Councilmember Turner moved to duly pass Ordinance 005-008 approving a Special Use Permit for a restaurant, located at 5290 Belt Line Road, on application from Extreme Pita, represented by Ms. Beverly Scott, subject to the following conditions:

- The irrigation controllers for this center will need to be inspected to ensure the rain and freeze sensors are operable before issuance of a Certificate of Occupancy.

Councilmember Niemann seconded. The motion carried.

Voting Aye: Wheeler, Braun, Hirsch, Niemann, Ryland, Turner

Voting Nay: None
One seat vacant

Item #R8 – Consideration of an Ordinance approving a meritorious exception to Chapter 62, Signs, Section 62-162, Premises Sign for Century Bank, located at 3701 Belt Line Road, on application from Century Bank.

Councilmember Niemann moved to duly pass Ordinance 005-009 approving a meritorious exception to Chapter 62, Signs, Section 62-162, Premises Sign, for Century Bank, located at 3701 Belt Line Road, on application from Century Bank. Councilmember Braun seconded. Motion carried.

Voting Aye: Wheeler, Braun, Hirsch, Niemann, Ryland, Turner
Voting Nay: None
One seat vacant

Councilmember Niemann moved to deny the request for a meritorious exception to Chapter 62, Signs, Section 62-185 for a non-conforming pole sign. Councilmember Ryland seconded. Motion carried.

Voting Aye: Braun, Hirsch, Niemann, Ryland
Voting Nay: Wheeler, Turner
One seat vacant

Item #R9 – Consideration of a Resolution endorsing certain legislative changes to Senate Bill 7 supported by the Cities Aggregation Power Project.

Councilmember Turner moved to duly pass Resolution R05-017 to endorse certain legislative changes to Senate Bill 7 supported by the Cities Aggregation Power Project.

Voting Aye: Wheeler, Braun, Hirsch, Niemann, Ryland, Turner
Voting Nay: None
One seat vacant.

Item #R10 – Consideration of a Resolution authorizing the City Manager to enter into a contract with Mastec & Hanson Pipe & Products, Inc., in an amount not to exceed \$79,650.00, for the construction of the Marsh Lane Emergency Water Interconnection.

Councilmember Turner moved to duly pass Resolution R05-018 authorizing the City Manager to enter into a contract with Mastec & Handon Pipe & Products, Inc., in an amount not to exceed \$79,650.00, for the construction of the Marsh Lane Emergency Water Interconnection.

Voting Aye: Wheeler, Braun, Hirsch, Niemann, Ryland, Turner
Voting Nay: None
One seat vacant.

Item #R11 – Discussion and presentation of information regarding a lease between the Town of Addison, as landlord, and Amar Unlimited, Inc., as the real tenant in interest, concerning the Clay Pit Grill & Curry House located at 4460 Belt Line Road.

There was no action taken on this item.

EXECUTIVE SESSION. At 9:37 p.m., Mayor Wheeler announced that the Council would convene into Executive Session.

Item #ES1 – Closed (executive) session of the City Council pursuant to Section 551.072, Texas Government Code, to deliberate the lease and value of certain real property located at 4460 Belt Line Road.

Councilmember Greg Hirsch recused himself and left the Chamber.

The Council came out of Executive Session at 10:02 p.m.

Item #R12 – Consideration of possible modification of or amendment to a Lease between the Town of Addison, as landlord, and Amar Unlimited, Inc., as the real tenant in interest, concerning property Located at 4460 Belt Line Rd. (Clay Pit Grill & Curry House).

No action taken. Item withdrawn.

The Council went back into Executive Session at 10:03 p.m.

Item #ES2 – Closed (executive) session of the City Council pursuant to Section 551.0724, Texas Government Code, to deliberate a performance evaluation of the City Manager.

Councilmember Greg Hirsch returned to the Chamber.

The Council came out of Executive Session at 11:30 p.m.

Item #R13 – Consideration of a Resolution approving a (i) merit increase and salary adjustment for the City Manager, and (ii) compensation plan (bonus) for the City Manager and other City employees including the Deputy City Manager, Assistant City Manager, Assistant to the City Manager, Department Heads and Assistant Department Heads.

Councilmember Niemann moved to duly pass Resolution No. R04-019 approving a 4% merit increase and salary adjustment for the City Manager, and no compensation plan (bonus) for the City Manager and other City employees including the Deputy City Manager, Assistant City Manager, Assistant to the City Manager, Department Heads and Assistant Department Heads. Councilmember Braun seconded. The motion carried.

Voting Aye: Wheeler, Braun, Hirsch, Niemann, Ryland, Turner

Voting Nay: None

One seat vacant.

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

Mayor

Attest:

City Secretary

OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL

February 7, 2005
6:00 p.m. Town Hall Council Chambers
Work Session
5300 Belt Line Road

Present: Mayor Wheeler, Councilmembers Braun, Hirsch, Niemann, Ryland, Turner
Absent: None
One Seat Vacant

Item #WS1 – Discussion and overview of the Strategic Plan for Real Estate Management and Landside Operations on Addison Airport.

Item #WS2 – Discussion and overview of potential financing strategies for the revitalization of Belt Line Road.

No action was taken on any of the work session items.

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

Mayor

Attest:

City Secretary

Council Agenda Item: #2b

SUMMARY:

Staff requests the Council authorize the City Manager to enter into a joint election agreement in an approximate amount of \$6,000.00 with Dallas County to conduct Addison's Municipal Election on May 7, 2005.

The Council approved an ordinance calling for a 2005 Municipal Election on the January 25, 2005 agenda. The staff is recommending the Town contract with Dallas County Elections to hold the election. We have met with the staff at Dallas County, and they have offered the draft of the final contract, which is attached. Because it is a joint election, Dallas County cannot give us the final cost until all cities that are going to participate have committed. The election typically runs less than \$6,000.00; however we don't know the exact amount until after the election is over and all costs are determined.

FINANCIAL IMPACT:

Budgeted Amount: \$6,000.00

BACKGROUND:

We would like to continue using the Dallas County Elections Division to conduct our election. Overall, we have been very pleased with the service Dallas County has provided to us for our last elections, and the countywide election system provides more opportunities for our residents to vote during early voting.

RECOMMENDATION:

Staff recommends approval or a Resolution authorizing the City Manager to enter into a joint election agreement in an approximate amount of \$6,000.00 with Dallas County to conduct Addison's Municipal Election on May 7, 2005.

JOINT ELECTION AGREEMENT
AND
ELECTION SERVICE CONTRACT
BETWEEN

DRAFT
(Not For Distribution)
DATE: 2-9-05

- TOWN OF ADDISON (TOA)
- CITY OF CARROLLTON COC
- CITY OF CEDAR HILL (COCdH)
- CITY OF COCKRELL HILL (COCKH)
- CITY OF COPPELL (COCp)
- CITY OF DESOTO (CODE)
- CITY OF DUNCANVILLE (CODu)
- CITY OF FARMERS BRANCH (COFB)
- CITY OF GARLAND (COG)
- CITY OF GRAND PRAIRIE (COGP)
- CITY OF HUTCHINS (COH)
- CITY OF IRVING (COI)
- CITY OF LANCASTER (COL)
- CITY OF MESQUITE (COM)
- CITY OF RICHARDSON (COR)
- CITY OF ROWLETT (CORw)
- CITY OF SACHSE (COS)
- CITY OF SEAGOVILLE (COSe)
- TOWN OF SUNNYVALE (TOS)
- CITY OF WILMER (COW)
- CARROLLTON-FARMERS BRANCH INDEPENDENT SCHOOL DISTRICT (CFBISD)
- CEDAR HILL INDEPENDENT SCHOOL DISTRICT (CHISD)
- COPPELL INDEPENDENT SCHOOL DISTRICT (CPISD)
- DALLAS COUNTY SCHOOL BOARD (DCSB)
- DALLAS INDEPENDENT SCHOOL DISTRICT (DISD)
- DESOTO INDEPENDENT SCHOOL DISTRICT (DeISD)
- DUNCANVILLE INDEPENDENT SCHOOL DISTRICT (DuISD)
- GARLAND INDEPENDENT SCHOOL DISTRICT (GISD)
- GRAND PRAIRIE INDEPENDENT SCHOOL DISTRICT (GPISD)
- IRVING INDEPENDENT SCHOOL DISTRICT (IISD)
- LANCASTER INDEPENDENT SCHOOL DISTRICT (LISD)
- MESQUITE INDEPENDENT SCHOOL DISTRICT (MISD)
- RICHARDSON INDEPENDENT SCHOOL DISTRICT (RISD)
- SUNNYVALE INDEPENDENT SCHOOL DISTRICT (SuISD)
- WILMER-HUTCHINS INDEPENDENT SCHOOL DISTRICT (WHISD)

FOR THE CONDUCT OF A JOINT ELECTION
TO BE HELD SATURDAY, MAY 7, 2005

TO BE ADMINISTERED BY THE DALLAS COUNTY ELECTIONS DEPARTMENT

1. JURISDICTION

- 1.1 The Town of Addison (TOA) plans to hold a Special Election to fill a vacancy in 2 City Council Places unexpired terms and a Municipal Election on May 7, 2005 for 3 Councilmembers and a Mayoral position in 3 Dallas County voting precincts. The City of Carrollton (COC) plans to hold a Municipal Election on May 7, 2005 for Councilmember Places 2,4,6 and a Mayoral position in 11 Dallas County voting precincts and 20 Denton County voting precincts. The City of Cedar Hill (COCdH) plans to hold

a General Election for City Council Places 2 and 6 on May 7, 2005 in 8 Dallas County voting precincts and 1 Ellis County voting precincts. The City of Cockrell Hill (COCKH) plans to hold a Municipal Election on May 7, 2005 for City Councilmember Places 3, 4 and 5 in 1 Dallas County voting precinct. The City of Coppell plans to hold a Municipal Election on May 7, 2005 for Councilmembers Places 1,3,5,and 7 in 9 Dallas County voting precincts. The City of Dallas plans to hold a Special Charter Amendment Election and a Municipal Election on May 7, 2005 for Council Places 1,2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 in 369 Dallas County voting precincts, 12 Collin County voting precincts, and 6 Denton County voting precincts. The City of DeSoto (CODE) plans to hold a General City Election on May 7, 2005 for Councilmember Places 2 and 4 in 21 Dallas County voting precincts. The City of Duncanville (CODu) plans to hold a Special Charter Amendment Election and a Municipal Election on May 7, 2005 for City Councilmember Districts 1, 3, 5 and one (1) Councilmember position at-large in 12 Dallas County voting precincts. The City of Farmers Branch (COFB) plans to hold a City Council Election on May 7, 2005 for Councilmember Place 2 and a Mayoral position in 11 Dallas County voting precincts. The City of Garland plans to hold a Local Option Liquor Election and a General Election on May 7, 2005 for Councilmember Districts 3, 6, 7, 8; and a Mayoral position in 51 Dallas County voting precincts and 2 Collin County voting precincts. The City of Grand Prairie (COGP) plans to hold a Special Election and a General Election on May 7, 2005 for Councilmember Districts 1, 3, one (1) Councilmember at-large, and a Mayoral Position in 26 Dallas County voting precincts and 1 Ellis County voting precinct. The City of Hutchins (COH) plans to hold a General Election on May 7, 2005 for three (3) Councilmembers for two-year terms in 1 Dallas County voting precinct. The City of Irving (COI) plans to hold a General Municipal Election on May 7, 2005 for Councilmember Places 1, 3, and a Mayoral position in 47 Dallas County voting precincts. The City of Lancaster (COL) plans to hold a General Election on May 7, 2005 for Councilmember Districts 1, 3, and 5 in 11 Dallas County voting precincts. The City of Mesquite (COM) plans to hold a Municipal Election on May 7, 2005 for Councilmember Places 1, 2, 6 and a Mayoral position in 33 Dallas County voting precincts. The City of Richardson (COR) plans to hold a City Council Election for City Council Places 1,2,3,4,5,6 and 7 in 25 Dallas County voting precincts, and 4 Collin County voting precincts. The City of Rowlett (CORw) plans to hold a Special Election and a General Election on May 7, 2005 for Councilmember Places 1, 3, and 5 in 7 Dallas County voting precincts and 2 Rockwall County voting precincts. The City of Sachse (COS) plans to hold a General Election on May 7, 2005 for Councilmember Places 3 and 4 in 2

Dallas County voting precincts. The City of Seagoville (COSe) plans to hold a Municipal Election on May 7, 2005 for Councilmember Place 2, 4, and a Mayoral position in 2 Dallas County voting precincts. The Town of Sunnyvale (TOS) plans to hold a General Election on May 7, 2005 for two (2) Councilmembers, and a Mayoral position in 1 Dallas County voting precinct. The City of Wilmer (COW) plans to hold a City Council Election on May 7, 2005 for three (3) Councilmembers at-large, in 1 Dallas County voting precinct.

- 1.2 The Carrollton Farmers Branch Independent School District (CFBISD) plans to hold a Board of Education Trustee Election on May 7, 2005 for Places 1 and 2 in 29 Dallas County voting precincts and 16 Denton County voting precincts located wholly or partially within the District and Dallas County. The Cedar Hill Independent School District (CHISD) plans to hold a Board of Education Trustee Election on May 7, 2005 for Places 3, 4, and 5 in 11 Dallas County voting precincts located wholly or partially within the District and Dallas County. The Coppell Independent School District (CpISD) plans to hold a Board of Education Trustee Election on May 7, 2005 for Places 1, 3, 5, and 7 in 16 Dallas County voting precincts located wholly or partially within the District and Dallas County. The Dallas County School Board (DCSB) plans to hold on May 7, 2005 a Board of Trustee's Election for Districts 1 and 4, both six (6) year terms in 307 Dallas County voting precincts located wholly or partially within the District and Dallas County. The Dallas Independent School District (DISD) plans to hold a Special Election to fill a vacancy in District 1, and a Board of Education Trustee Election for Districts 2, 6, and 8 in 334 Dallas County voting precincts located wholly or partially within the District and Dallas County. The DeSoto Independent School District (DeISD) plans to hold a Board of Education Trustee Election on May 7, 2005 for Places 3, 4, and 5 in 23 Dallas County voting precincts located wholly or partially within the District and Dallas County. The Duncanville Independent School District (DuISD) plans to hold a Board of Education Trustee Election on May 7, 2005 for Places 4 and 5 in 25 Dallas County voting precincts located wholly or partially within the District and Dallas County. The Garland Independent School District (GISD) plans to hold a Board of Education Trustee Election on May 7, 2005 for Places 4 and 5 in 58 Dallas County voting precincts located wholly or partially within the District and Dallas County. The Grand Prairie Independent School District (GPISD) plans to hold a Board of Education Trustee Election for Places 3 and 4 on May 7, 2005 in 28 Dallas County voting precincts located wholly within the District and Dallas County. The Irving Independent School District (IISD) plans to hold a Board of Education Trustee Election on May 7, 2005 for Places 1 and 2 in 44

Dallas County voting precincts located wholly or partially within the District and Dallas County. The Lancaster Independent School District (LISD) plans to hold a Board of Education Trustee Election on May 7, 2005 for Districts 4, 5, and 7 in 15 Dallas County voting precincts located wholly or partially within the District and Dallas County. The Mesquite Independent School District (MISD) plans to hold a Board of Trustee Election on May 7, 2005 for Places 3, 4, and 5 in 43 Dallas County voting precincts located wholly or partially within the District and Dallas County. The Richardson Independent School District (RISD) plans to hold a Board of Education Trustee Election on May 7, 2005 for Places 6 and 7 in 73 Dallas County voting precincts located wholly or partially within the District and Dallas County. The Sunnyvale Independent School District (SuISD) plans to hold a Board of Education Trustee Election on May 7, 2005 for Places 1 and 2 in 1 Dallas County voting precincts located wholly or partially within the District and Dallas County. The Wilmer-Hutchins Independent School District (WHISD) plans to hold a Board of Education Trustee Election on May 7, 2005 for Places 3 and 4 in 12 Dallas County voting precincts located wholly or partially within the District and Dallas County.

- 1.3 A list of each election precinct or partial election precinct (each precinct unit) involved in the joint election, together with the name of the participating authority holding an election in that precinct unit, and the number of registered voters in that precinct unit, is shown in Attachment "E". The Elections Administrator will forward an updated version of Attachment "E" to each participating authority showing registered voters as of the deadline for registering to vote in the election.

2. ADMINISTRATION

The Dallas County Elections Administrator agrees to coordinate, supervise and handle all aspects of administering the Joint Election in accordance with the provisions of the Texas Election Code and as outlined in this agreement. Each participating authority agrees to pay Dallas County for equipment, supplies, services and administrative costs as outlined in this agreement. The Dallas County Elections Administrator will serve as administrator for the election; however, each participating authority remains responsible for the lawful conduct of their respective election.

3. LEGAL DOCUMENTS

- 3.1 Each participating authority will be responsible for preparation, adoption and publication of all required election orders, resolutions, notices and any other pertinent documents required by their respective governing bodies.

- 3.2 The Elections Administrator will be responsible for making the submission required by the Federal Voting Rights Act of 1965, as amended, with regard to administration of the joint election. A copy of the submission will be furnished to each participating authority. Any other changes which require preclearance by the U.S. Department of Justice will be the responsibility of each participating authority. Preparation of necessary bilingual materials for notices and preparation of the text for the official ballot will also be the responsibility of each participating authority. Each participating authority will provide a copy of their respective election notices and justice submission to the Dallas County Elections Administrator.
4. DIRECT RECORD VOTING SYSTEM/OPTICAL SCAN
- 4.1 Each participating authority agrees that voting at the joint election will be by use of a direct record and optical scan voting system approved by the Secretary of State in accordance with the Texas Election Code. The Dallas County Elections Department will be responsible for the preparation of programs and the testing of the direct record system and optical scan system used for tabulating the ballots. Testing of the direct record equipment will be conducted at the Elections Department, 2377 N. Stemmons Frwy, Suite 820, Dallas beginning Wednesday, May 4, 2005 at 10:00 am and testing of the optical scan equipment will be conducted at the Election Equipment Warehouse, 1506 East Langdon Road, Hutchins beginning Thursday, April 7, 2005 at 10:00 am, and before ballots are tabulated at the scheduled polling locations listed in Section 13 of this contract and Attachment "B" by the presiding judges. The Dallas County Elections Department agrees to establish ten (10) regional sites and a central counting station to receive and tabulate the voted ballots and provisional ballots as outlined in Section 9 of this agreement.
- 4.2 Dallas County agrees to provide direct record tabulators, precinct tabulators and voting booths for the joint election. The Gemini voting booth allocation will be based on providing one (1) Gemini for each 300 registered voters in each election precinct unit, not to exceed six (6) Gemini voting booths in any given precinct unit, one (1) precinct tabulator per location, not to exceed at any given time eight (8) iVotronics and three(3)Activator PEB's per early voting location.

4.3 It is estimated that (_____) geminis, (_____) precinct tabulators and (_____) iVotronics, and (_____) activator PEB's will be needed to conduct the May 7, 2005 Joint Election. The cost of the direct record voting system for the election will be determined by multiplying the total number of iVotronics by \$250.00 each, and Activator PEB's by \$10.00 each. The cost for the use of the gemini voting booths will be \$35.00 each. The cost for the use of the precinct tabulators will be \$175.00 each (See Attachment "A"). It is agreed by all entity's that ADA voting terminals will not be used during the Joint Election, and that the said terminals will not be part of the Joint Election Agreement.

5. VOTING LOCATIONS

- 5.1 The Elections Administrator will select and arrange for the use of and payment for all voting locations, subject to the approval of each participating authority. Voting locations will be, whenever possible, the usual voting locations for the precincts. Voting precincts may be combined by mutual agreement between the participating authorities. The proposed voting locations are listed in Attachment "B" of this agreement. In the event a voting location is not available, the Elections Administrator will arrange for use of an alternate location with the approval of each participating authority affected by the change. The Elections Administrator will notify each participating authority of any changes from the locations listed in Attachment "B".
- 5.2 The Elections Administrator will send each participating authority a final version of Attachment "B" which reflects the actual locations to be used on the day of the election.

6. ELECTION JUDGES, CLERKS AND OTHER ELECTION PERSONNEL

- 6.1 The Elections Administrator will be responsible for the appointment of the presiding judge and alternate for each polling location subject to the approval of each participating authority. The Elections Administrator shall arrange for the training and compensation of all presiding judges and clerks. The proposed election judges are listed in Attachment "C" of this agreement. If a person is unable or unwilling to serve, the Elections Administrator will name a judge for the precinct and notify each participating authority affected by the change.
- 6.2 In compliance with the Federal Voting Rights Act of 1965, as amended, precincts containing more than 5% Hispanic population, according to the 2000 census statistics, are required to have interpreter assistance. If a presiding judge is not bilingual and is unable to hire a bilingual clerk, the Elections Department may make a recommendation. If the Elections Department is unable to make a recommendation, the participating authorities shall be notified and responsible for providing a recommendation for the precinct.

- 6.3 The Elections Administrator is responsible for notifying all election judges of the eligibility requirements of Subchapter C of Chapter 32 of the Texas Election Code, and will take the necessary steps to insure that all election judges appointed for the joint election are eligible to serve. The presiding judge, with the Elections Department assistance, will be responsible for insuring the eligibility of each appointed clerk hired to assist the judge in the conduct of the election.
- 6.4 If a participating authority recommends a person not listed in Attachment "C", and that recommendation conflicts with the recommendation from any of the other entities involved in the election in that precinct, the Elections Administrator will conduct a drawing from the recommendations to determine the election judge. Once a person has been notified of his/her selection as election judge, no changes may be made by any of the participating authorities.
- 6.5 The Elections Administrator will send joint participants an updated version of Attachment "C" which reflects the names of judges who were sent the letter requesting service for this election. A final version for Attachment "C" which reflects the name of the judges who actually presided on the day of the election will be sent to each participating authority.
- 6.6 The Elections Department will hold two (2) public schools of instruction on the use of optical scan card voting equipment and election laws on Saturday, April 30, 2005 from 10am - 12pm, and Thursday, May 5, 2005, from 7pm -9pm in the Central Jury Room, George L. Allen County Courthouse, 600 Commerce Street, Dallas. No election judge will be appointed unless he/she has attended an election judge training session taught by the Elections Department in the past eighteen (18) months and on the optical scan system. However, participating entities have requested that judges appointed for the joint election should attend one of the two scheduled training sessions.
- 6.7 The election judges are responsible for picking up election supplies at the time and place determined by the Elections Department (which will be set forth in the election judge letter requesting service for this election). Each election judge will receive \$8.00 per hour and each clerk will receive \$7.00 per hour (for a maximum of 14 hours). The election judge will receive an additional \$25.00 for picking up the election supplies prior to election day and for delivering election returns and supplies to their designated regional drop off site.

6.8 The Elections Administrator will employ other personnel necessary for the proper administration of the election, including such part-time help as is necessary to prepare for the election, to ensure the timely delivery of supplies and equipment during the period of early voting and on election day, and for the efficient tabulation of ballots at the central counting station and regional sites. Part-time personnel will be paid an amount agreed to by the participating authorities as outlined in Attachment "A". Part-time personnel working in support of the central counting station and regional sites on election night will receive pay for at least four hours, minimum call for service, regardless of the actual hours worked. (Attachment E)

7. SUPPLIES AND PRINTING

7.1 The Elections Department will arrange for all election supplies and election printing, including, but not limited to, all forms, signs and other materials used by the election judges at the voting locations.

7.2 The Elections Department will provide maps, if necessary, instructions and other information needed to enable the election judges to conduct a proper election.

7.3 Each participating authority shall furnish the Elections Administrator a list of candidates and/or propositions showing the order and the exact manner in which their candidate names and/or proposition(s) are to appear on the official ballot. The list will be delivered to the Elections Administrator as soon as possible after ballot positions have been determined by each of the participating authorities. Each participating authority will be responsible for proofreading and approving the ballot in so far as it pertains to that authority's candidates and/or propositions.

8. OPTICAL SCAN CARD BALLOTS

8.1 The ballot allocation for this election is based on providing enough ballots in every reporting precinct to handle the same turnout as in comparable elections plus twenty-five percent (25%) of that number, for an original allocation of no less than 25% of the registered voters.

8.2 Ballot allocation for Local Option Election will be allocation in accordance to Sec. 251.37 of the Texas Alcohol and Beverage Code.

8.3 Approximately _____ additional ballots will be available for Early Voting By Mail and for use on Election Day to respond to any precinct requesting additional ballots.

9. RETURNS OF ELECTIONS

9.1 The Elections Department will be responsible for establishing and operating the central counting station to receive and tabulate the voted ballots in accordance with the provisions of the Texas Election Code and of this agreement.

9.2 The participating authorities hereby, in accordance with Section 127.002, 127.003 and 127.005 of the Texas Election Code, appoint the following central counting station officials:

Manager - Bruce R. Sherbet
Dallas County Elections
Administrator

Tabulating Supervisor - Stephen Wang
ES & S Representative

Presiding Judge - Brooks Love (COD)
Election Manager

9.3 The manager or his representative will deliver timely cumulative reports of the election results as precincts are tabulated. The manager will be responsible for releasing cumulative totals and precinct returns from the election to the joint participants, candidates, press, and general public by distribution of hard copies or electronic transmittals (where accessible). Dallas County will operate an election result center to release election results in the Health and Human Services Building, 2377 N. Stemmons Frwy, Suite 820, Dallas, Texas. Any participating authority, upon request, may require release of returns be given only at a specified location other than from the result center. Any participating entity that would like the Dallas County Elections Department's web-site linked to their web-site, must provide their web-site address to the Central Counting Station Manager.

9.4 The Dallas County Elections Department will prepare the unofficial canvass report after all precincts have been counted, and will deliver a copy of the unofficial canvass to each participating authority as soon as possible after all returns and provisional ballots have been tabulated, but in no event no later than 10:00am _____, May ____, 2005. All participating authorities will be responsible for the official canvass of their respective elections.

9.5 The Dallas County Elections Department will be responsible for conducting the post election manual recount, unless a waiver is given from the Secretary of State in accordance with Section 127.201 of the Texas Election Code. Notification and copies of the recount, if waiver is denied, will be provided to each participating authority and the Secretary of State's Office. Each political subdivision must notify the Elections Department if waiver has been granted or denied twenty (20) days before the election. The deadline to request a waiver is _____, _____, 2005.

10. ELECTION EXPENSES

- 10.1 The participating authorities agree to share the costs of administering the May 7, 2005 Joint Election. A general supervisory fee not to exceed 10% of the total cost of the election shall be assessed as authorized by the Texas Election Code, Sec. 31.100. Allocation of costs, unless specifically stated otherwise, is mutually agreed to be shared according to a formula which is based on average cost per polling place (unit cost) as determined by adding together the overall expenses and dividing expenses equally among the total number of polling places. Any participants requesting a combination of polling places which exceeds the average cost (Unit Cost), shall be billed directly for any excess expenditures. **The cost of any special request from a participant, which is not agreed upon by all authorities, shall be borne by that participant.** Each participating authority agrees that no participant shall be billed less than minimum of one full unit cost. Each stand alone precinct shall be billed to the requesting entity at no less than twenty-five percent of the cost of a full unit (\$ _____). A stand alone precinct is created when two or more entities are located within a precinct and the participating entities are unable to agree upon a common polling place. See Attachment "A".
- 10.2 The expenses for early voting by mail and personal appearance will be paid equally by each participating authority, unless otherwise amended.
- 10.3 Final election expenses will be determined within 120 days after the election. The Elections Administrator will provide each participating authority with a final accounting in writing of all funds deposited into the joint election account and an accounting of all payments from the joint election account.
- 10.4 If additional funds are needed, the Elections Administrator will bill each participating authority in accordance with the expense formula enumerated herein. Any amount remaining will be refunded accordingly to each participating authority.

11. DEPOSIT OF FUNDS

11.1 Each participating authority agrees to deposit with the Dallas County Treasurer's Office, by no later than Friday, March 25, 2005, a sum equal to 50% of the total estimated cost of election expenses to be paid to Dallas County as administrator of the Joint Election, and the remaining 50% is due by April 15, 2005; however, any participating entity may pay the total sum on or before March 25, 2005. Such funds will be placed in a joint election account to be used by the County for paying expenses as outlined in this agreement. No funds will be expended by Dallas County except for supplies and services outlined in this agreement, or except as may be agreed to, in writing, by each participating authority. No adjustments will be made to deposits for partial withdrawals after contract has been signed by all participating authorities.

11.2 The amounts to be deposited are as follows (calculated on the basis of a cost of \$_____ (per polling place):

	<u>March 25</u>	<u>April 15</u>
TOA	\$	\$
COC	\$	\$
COCH	\$	\$
COckH	\$	\$
COCp	\$	\$
COD	\$	\$
CODe	\$	\$
CODu	\$	\$
COFB	\$	\$
COG	\$	\$
COGP	\$	\$
COH	\$	\$
COI	\$	\$
COL	\$	\$
COM	\$	\$
COR	\$	\$
COS	\$	\$
COSe	\$	\$
TOS	\$	\$
COW	\$	\$
CFBISD	\$	\$
CHISD	\$	\$
CPISD	\$	\$
DCSB	\$	\$
DISD	\$	\$
DeISD	\$	\$
DUISD	\$	\$
GISD	\$	\$
GPISD	\$	\$

12.4 On the first business day which follows the date that the records of the election are eligible for destruction, the Election Administrator will notify in writing each participating authority of the planned destruction of any records of the election. Within fifteen days of receipt of the Election Administrator's notice of intent to destroy the records, each participating authority will provide the Election Administrator with written authorization to proceed with destruction or written instructions to withhold destruction.

13. EARLY VOTING

13.1 Bruce R. Sherbet, Elections Administrator, will be appointed as early voting clerk in compliance with Sections 271.006 of the Texas Election Code. Other deputy early voting judges/clerks will be appointed, subject to the approval of Joint Election participants, as needed to process early voting mail and to conduct early voting at the main location and branch locations. If a participating authority recommends a person not listed in Attachment "D", and that recommendation conflicts with the recommendation from any of the other entities involved in the election in that precinct, the Elections Administrator will conduct a drawing from the recommendations to determine the deputy early voting judge/clerk. Once a person has been notified of his/her selection as deputy early voting judge/clerk, no changes may be made by any of the participating authorities. The recommended deputy early voting judges/clerks for the main and branch early voting locations are listed in Attachment "D".

13.2 Early voting by personal appearance will be conducted on weekdays beginning Wednesday, April 20, 2005, and continuing through Friday, April 22, 2005, between 8:00am and 5:00pm; Monday, April 25, 2005, and continuing through Friday, April 29, 2005 between 8:00am and 5:00pm; Saturday, April 30, 2005 between 8:00 am and 5:00pm; Sunday, May 1, 2005, between 1:00pm and 6:00pm; and Monday, May 2, 2005, through Tuesday, May 3, 2005, between 7:00am and 7:00pm. Any qualified voter for the Joint Election may vote early by personal appearance at either the main early voting location or at any one of the branch locations.

MAIN EARLY VOTING POLLING PLACE

DALLAS COUNTY RECORDS BUILDING
509 Main Street
Dallas 75202

BRANCH EARLY VOTING POLLING PLACES

ADDISON FIRE STATION
4798 AIRPORT PKWY
ADDISON, TEXAS 75240

BARBARA BUSH MIDDLE SCHOOL
515 COWBOYS PKWY
IRVING, TEXAS 75063

BECKLEY SANER RECREATION CNTR. 114 W. HOBSON DALLAS, TEXAS 75224	CARROLLTON-FARMERS BRANCH ISD 1445 N. PERRY CARROLLTON, TEXAS 75006
CEDAR HILL ISD ADMIN. BUILDING 270 S. HWY 67 CEDAR HILL, TEXAS 75104	COCKRELL HILL CITY HALL 4125 W. CLARENDON DALLAS, TEXAS 75211
COPPELL TOWN CENTER 255 W. PARKWAY BLVD. COPPELL, TEXAS 75019	DALLAS CITY HALL 1500 MARILLA DALLAS, TEXAS 75201
DALLAS FIRST ASSEMBLY 11000 E. NORTHWEST HWY DALLAS, TEXAS 75238	DALLAS ISD ADMIN BUILDING 3700 ROSS AVENUE DALLAS, TEXAS 75204
DESOTO TOWN CENTER LIBRARY 211 E PLEASANT RUN DESOTO, TEXAS 75115	DUNCAVILLE LIBRARY 201 JAMES COLLINS DUNCANVILLE, TEXAS 75116
DUNFORD RECREATION CENTER 1015 GREEN CANYON MESQUITE, TEXAS 75150	FARMERS BRANCH CITY HALL 13000 WILLIAM DODSON FARMERS BRANCH, TEXAS 75234
FRANKFORD TOWN HOMES 18110 MARSH LANE DALLAS, TEXAS 75287	FRETZ PARK RECREATION CENTER 6950 BELT LINE DALLAS, TEXAS 75240
GARLAND CITY HALL 200 N FIFTH GARLAND, TEXAS 75040	GARLAND ISD STUDENT SERVICE CENTER 720 STADIUM GARLAND, TEXAS 75040
GARNER ELEMENTARY 145 POLO ROAD GRAND PRAIRIE, TEXAS 75052	GRAND PRAIRIE DEVELOPMENT CENTER 206 W CHURCH GRAND PRAIRIE, TEXAS 75050
GRAUWYLER PARK RECREATION CENTER 7780 HARRY HINES DALLAS, TEXAS 75235	HARRY STONE RECREATION CENTER 2403 MILLMAR DALLAS, TEXAS 75228
HUTCHINS CITY HALL 321 N. MAIN HUTCHINS, TEXAS 75141	IRVING ARTS CENTER 3333 N MACARTHUR IRVING, TEXAS 75062
IRVING CITY HALL 825 W IRVING BLVD IRVING, TEXAS 75060	JOSEY RANCH LIBRARY 1700 KELLER SPRINGS CARROLLTON, TEXAS 75006
LANCASTER RECREATION CENTER 1700 VETERANS MEMORIAL PKWY LANCASTER, TEXAS 75134	MARTIN LUTHER KING CORE BUILDING 2922 MARTIN LUTHER KING JR BLVD DALLAS, TEXAS 75215
MARTIN WEISS RECREATION CENTER 1111 MARTINDELL DALLAS, TEXAS 75211	MOUNTAIN CREEK LIBRARY 6102 MOUNTAIN CREEK DALLAS, TEXAS 75211
NORTH DALLAS GOVERNMENT CENTER 10056 MARSH LANE DALLAS, TEXAS 75229	OAK CLIFF SUB-COURTHOUSE 410 S BECKLEY DALLAS, TEXAS 75203
PLEASANT OAKS RECREATION CENTER 8701 GREENMOUND DALLAS, TEXAS 75227	RENNER-FRANKFORD LIBRARY 6400 FRANKFORD DALLAS, TEXAS 75252

REVERCHON RECREATION CENTER 3505 MAPLE DALLAS, TEXAS 75219	RICHARDSON CIVIC CENTER 400 W ARAPAHO RICHARDSON, TEXAS 75080
ROWLETT CITY HALL ANNEX 4004 MAIN ROWLETT, TEXAS 75030	SACHSE CITY HALL 5560 HWY 78 SACHSE, TEXAS 75048
SAMUELL GRAND RECREATION CENTER 6200 EAST GRAND DALLAS, TEXAS 75223	SANDY JACOBS GOVERNMENT CENTER 1029 W ROSEMEADE CARROLLTON, TEXAS 75007
SEAGOVILLE CITY HALL 702 N HWY 175 SEAGOVILLE, TEXAS 75159	SUNNYVALE CITY HALL 127 COLLINS RD. SUNNYVALE, TEXAS 75182
TOMMIE ALLEN RECREATION CENTER 7071 BONNIE VIEW DALLAS, TEXAS 75241	UNITY CHURCH OF DALLAS 6625 FOREST LN DALLAS, TEXAS 75230
UNIVERSITY PARK METHODIST CHURCH 4024 CARUTH BLVD. DALLAS, TEXAS 75225	VETERANS MEDICAL CENTER (MAIN LOBBY) 4500 S LANCASTER DALLAS, TEXAS 75216
WEST DALLAS MULTI-PURPOSE CENTER 2828 FISHTRAP DALLAS, TEXAS 75212	WILMER COMMUNITY CENTER 101 DAVIDSON PLAZA WILMER, TEXAS 75172
WILMER-HUTCHINS ISD ADMIN 3820 E ILLINOIS DALLAS, TEXAS 75216	

13.3 All requests for early voting ballots by mail that are received by participating authorities will be transported by runner on the day of receipt to the Dallas County Elections Department, 8th Floor, Health and Human Service Building, 2377 N. Stemmons Frwy, Dallas, Texas 75207 for processing. Persons voting by mail will send their voted ballots to the Dallas County Elections Department.

13.4 All early voting ballots will be prepared for counting by an Early Voting Ballot Board appointed in accordance with Section 87.001 of the Texas Election Code. Each participating authority will appoint one member to the board/committee and will notify the Dallas County Elections Administrator of the person's name, telephone number and address no later than April 1, 2005. The participating authorities agree to appoint June Rentmeester as presiding judge and Chorsia Davis as alternate judge of the early voting ballot board.

13.5 A signature verification committee will be appointed in accordance with Section 87.027 of the Texas Election Code. A list of the members of the signature verification committee will be furnished to each participating authority.

14. ELECTION REPORTS

The Election Administrator will be responsible for ensuring the delivery of the reports titled Early Voting Daily Vote Totals and Daily Early Voter Listing (Alphabetical by precinct) to each participating authority each day of Early Voting for the previous day's voting activity. On the day after the conclusion of Early Voting, a Daily Early Voter Listing by precinct report inclusive of all days of Early Voting is to be delivered to each participating authority. When possible, the Early Voters' reports will be delivered by electronic means via e-mail, facsimile, or website.

15. RUNOFF ELECTION

In the event a runoff is necessary, the agreement will automatically be extended to cover the runoff, unless a participating authority states in writing before May 9, 2005 that it does not wish to participate in a joint runoff. The Elections Administrator will provide each participating authority in the joint runoff election with an estimate of funds to be deposited in a special joint runoff election account. The funds must be deposited no later than five (5) days after the runoff estimate figures are received from the Elections Administrator.

16. CONTRACT WITHDRAWAL

Any participating authority that certifies their election in accordance with Section 2.051, 2.052 and 2.053 of the Texas Election Code, may withdraw from the joint election contract. Any expenditure incurred prior to withdrawal shall be billed separately and that contracting authority shall be removed from the contract. An addendum to the contract shall be provided to the remaining participants no later than five (5) days after notification of all intents to withdraw have been received by the Elections Administrator.

17. NOTICE

17.1 Whenever this agreement requires any consent, approval notice, request or demand, it must be in writing to be effective and shall be delivered to the party intended to receive it as shown below:

If to the Elections Administrator:

Bruce R. Sherbet
Dallas County Elections Administrator
Elections Department - Eighth Floor
Health and Human Service Building - 2377 N. Stemmons Frwy
Dallas, Texas 75207
(214)819-6300

If to the Participants:

Carmen Moran, (TOA)
Town Secretary
5300 Beltline Road
Addison, Texas 75240
(972) 450-7018

Ashley Mitchell, (COC)
City Secretary
1945 Jackson Rd.
Carrollton, Texas 75006
(972) 466-3021

Frankie Lee, (COCdH)
City Secretary
502 Cedar Street
Cedar Hill, Texas 75104
(972) 291-5100 ext. 1018

John Hubbard, (COCKH)
City Secretary
4125 W. Clarendon Dr.
Dallas, Texas 75211
(214) 330-6333

Libby Ball, (COCp)
City Secretary
255 Parkway Blvd.
Coppell, Texas 75019
(972) 304-3670

Anell Shipman, (CODe)
City Secretary
211 E. Pleasant Run Rd, Ste A
DeSoto, Texas 75115
(972) 230-9646

Jeanne Fralicks, (CODU)
City Secretary
203 E. Wheatland Road
Duncanville, Texas 75116
(972) 780-5004

Cindee Peters, (COFB)
City Secretary
13000 William Dodson PKWY
Farmers Branch, Texas 75234
(972) 919-2503

Ranette Larsen, (COG)
City Secretary
200 N. Fifth Street
Garland, Texas 75040
(972) 205-2404

Cathy DiMaggio (COGP)
City Secretary
317 W. College
Grand Prairie, Texas 75050
(972) 237-8039

Janis Daniels, (COH)
City Secretary
321 N. Main Street
Hutchins, Texas 75141
(972) 225-6121

Janice Carroll, (COI)
City Secretary
825 W. Irving Blvd
Irving, Texas 75060
(972) 721-2605

Dolle Shane, (COL)
City Secretary
211 N. Henry St.
Lancaster, Texas 75146
(972) 218-1112

Judy Womack, (COM)
City Secretary
1515 N. Galloway
Mesquite, Texas 75149
(972) 216-6401

Pamela Schmidt, (COR)
City Secretary
411 Arapaho
Richardson, Texas 75080
(972) 744-4290

Susie Quinn, (CORw)
City Secretary
4000 Main Street
Rowlett, Texas 75088
(972) 412-6109

Terry Smith, (COS)
City Secretary
5560 Hwy 78
Sachse, Texas 75048
(972) 495-1212 ext. 23

Rosa Rios, (COSe)
City Secretary
702 N. Hwy 175
Seagoville, Texas 75159
(972) 287-2050 ext.123

Anne Harrison, (TOS)
City Secretary
127 Collins Road
Sunnyvale, Texas 75182
(972) 226-7177

Crystal Birdwell, (COW)
City Secretary
128 N. Dallas Ave
Wilmer, Texas 75172
(972) 441-6373

Mark Hyatt, (CFBISD)
Asst. Supt. of Support Svcs
1445 N. Perry Rd
Carrollton, Texas 75006
(972) 466-6104

Kim Lewis, (CHISD)
Associate Superintendent
270 S. HWY. 67
Cedar Hill, Texas 75104
(972) 291-1581 ext. 223

Lisa Ganz, (CpISD)
200 S. Denton Tap Road
Coppell, Texas 75019
(214) 496-8002

Olga Esparza, (DCSB)
Secretary to Superintendent
612 N. Zang
Dallas, Texas 75208
(214) 944-4525

Kay Gulley, (DISD)
Interim Manager-Board Svcs
3700 Ross Avenue, Box 1
Dallas, Texas 75204
(972) 925-3741

Sharon Price, (DeISD)
Assistant Superintendent
Admin. and Operations
200 E. Beltline Road
DeSoto, Texas 75115
(972) 223-6666 ext.214

Jim Schiele, (DUISD)
Assistant Superintendent
802 S. Main
Duncanville, Texas 75137
(972) 708-2011

James A. Smith, (GISD)
Assistant Superintendent
for Business Operations
501 S. Jupiter
Garland, Texas 75042
(972) 487-3101

Dave Crittenden (GPISD)
Buyer-Purchasing Dept
2602 S. Beltline Rd
Grand Prairie, Texas 75052
(972) 237-5592

Bill Althoff, (IISD)
Assistant Superintendent
of Support Services
2621 West Airport Frwy
Irving, Texas 75062-6020
(972) 215-5400

Joyce Brein, (LISD)
Asst. to Superintendent
1201 N. Dallas Ave.
Lancaster, Texas 75146
(972) 227-4141

Michael Coffey, (MISD)
Assistant Superintendent
Administrative Services
405 East Davis
Mesquite, Texas 75149
(972) 882-7313

Judy Whitenton, (RISD)
Exec Asst. to Asst. Supt
Of finance
400 S. Greenville Ave.
Richardson, Texas 75080
(469) 593-0331

Seth Adams, (SISD)
Supt. of Schools
417 E. Tripp Rd
Sunnyvale, Texas 75182
(972) 226-5974

James Damm, (WHISD)
Interim Superintendent
3820 E. Illinois
Dallas, Texas 75216
(214) 376-7311 ext. 319

17. MAY 7, 2005 JOINT CONTRACT ACCEPTANCE AND APPROVAL

RECOMMENDED FOR APPROVAL BY:

BRUCE R. SHERBET,
DALLAS COUNTY ELECTIONS ADMINISTRATOR

ACCEPTED AND AGREED TO BY THE TOWN OF ADDISON:

APPROVED AS TO FORM:

ATTEST:

RON WHITEHEAD,
CITY MANAGER

CARMEN MORAN,
TOWN SECRETARY

Council Agenda Item: #2c

SUMMARY:

Council approval is requested of a 9-1-1 billing agreement with the following communication carrier which has received a Service Provider Certificate of Operating Authority (SPCOA) from the Texas Public Utilities Commission:

Integrated Communications Consultants, Inc.

FINANCIAL IMPACT:

No financial impact to the Town will be realized, as this carrier is currently submitting access fees to the Town. 9-1-1 fees are generating approximately \$580,000 each year. The revenue is collected by the telephone companies from their customers. The fee of the base rate approximates 62 cents on a monthly single-family residential bill. Theoretically, any revenue generated from this billing agreement will simply replace the fees the Town would have received from SBC.

BACKGROUND:

Section 82.202 of the Town's code of ordinances requires that all 9-1-1 carriers establish an agreement with us. Many carriers are operating without a formal agreement, and we are attempting to document each carrier. The carrier listed above has submitted signed 9-1-1 billing agreements developed by the Town attorney (one copy attached for information). With the addition of the above company, Addison will have approximately 40 current 9-1-1 contracts.

RECOMMENDATION:

It is recommended council authorize the city manager to enter into a 9-1-1 agreement with the provider listed above.

RCM:rm

Attachment

9-1-1 EMERGENCY SERVICE AGREEMENT

This 9-1-1 Emergency Service Agreement ("Agreement") establishes the rates, terms, and conditions for 9-1-1 emergency service interconnection by Integrated Communications Consultants, Inc. ("Company") with the Town of Addison 9-1-1 Emergency Network ("9-1-1 Entity") (collectively "Parties").

WHEREAS, the Texas Legislature and the United States Congress have authorized the provision of telecommunications service in the local marketplace by service suppliers other than the holders of certificates of convenience and necessity ("CCN"); and,

WHEREAS a CCN holder is the incumbent local exchange company that holds a certificate of convenience and necessity granted by the Public Utility Commission of Texas ("PUC") on September 1, 1995, for each service area(s) within the territory of the 9-1-1 Entity; and,

WHEREAS, Company is a holder of a service provider certificate of operating authority that has received certificate number 60489 from the PUC and, therefore, a service supplier and a service provider of local telecommunications service ("service supplier") pursuant to Chapter 771 or Chapter 772 of the Texas Health and Safety Code, §§ 771.001 *et seq.*, 772.001 *et seq.*, or other applicable law pertaining to home rule cities (collectively "the Applicable Laws"), as amended, that must provide 9-1-1 emergency service to that portion of the Company's service area located within the territory of the 9-1-1 Entity; and,

WHEREAS, the 9-1-1 Entity is a political subdivision of the State of Texas established pursuant to the Applicable Laws and must interconnect service suppliers into the 9-1-1 emergency service area served by the 9-1-1 Entity; and,

WHEREAS, this 9-1-1 emergency service interconnection must protect, maintain, and further the high quality, standards-based 9-1-1 emergency service and not inappropriately and unreasonably increase the costs of 9-1-1 emergency service to the 9-1-1 Entity;

NOW, THEREFORE, in consideration of the listed mutual promises and benefits, the Parties agree as follows:

1. Company must comply with all provisions of the Applicable Laws and any requirements implementing or interpreting the Applicable Laws promulgated by the 9-1-1 Entity pursuant to the authority vested in the 9-1-1 Entity.
2. Company shall bill, collect, and remit the appropriate 9-1-1 emergency service

fee to the Town of Addison as provided in the Applicable Laws and reflected in Attachment No. 1.

Company shall remit the appropriate fees and/or, if applicable, surcharge per the rules and schedules established by the Comptroller of Public Accounts, and Texas Health and Safety Code Sections 771.071, 771.073, and 771.077. At all times Company shall be responsible for the accuracy of the report. From time to time, the Commission on State Emergency Communications ("CSEC") may change the 9-1-1 emergency service fee. Such changes shall be communicated to Company for changes in Company's collection and remittance of 9-1-1 emergency service fee, according to the provisions of the Applicable Laws. CSEC or the Comptroller shall notify Company of any change Company must make in Company's collection and remittance of 9-1-1 emergency service fee with sufficient advance time, but not to exceed 91 days before the date the change takes effect, to permit Company's billing system to comply timely with the change. Furthermore, also pursuant to the Applicable Laws, Company may retain an administrative fee equal to one percent (1%) of the fees Company collects.

3. This service agreement shall be in full force and effect so long as Company's status is strictly that of a reseller and the Company does not use any facilities. Company shall inform the 9-1-1 Entity of any changes or expansion of its service, or in the use of facilities, in its calling area or service territory 60 days in advance of such change or expansion.

4. Any notice required or permitted to be given by the 9-1-1 Entity to Company under this agreement shall be mailed to Company certified or registered U. S. Mail, postage prepaid, return receipt requested to the following address:

(Name and Address of Company)

Integrated Communications Consultants
17194 Preston Rd. Suite 102, PMB 341
Dallas, TX 75248

Attention: Alex Ponnath

Any notice required or permitted to be given by the Company to 9-1-1 Entity under this agreement shall be mailed by certified or registered U. S. Mail, postage prepaid, return receipt requested or delivered to the following address:

Town of Addison Finance Dept.
P. O. Box 9010
Addison, TX 75001-9010
Attention: Elaine Difiglia, Collections Manager

5. The Company and the 9-1-1 Entity will provide and periodically update a contact list. The contact list is found in Attachment No. 2.

6. The 9-1-1 Entity shall not impose on Company any requirement, service, feature, standard, or rate that is not required of the incumbent local exchange company CCN holder.

7. This Agreement, together with all attachments, sets forth the entire understanding of the Parties. No representation, promise, or statement of intention has been made by either Party that is not embodied herein.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the last date signed below.

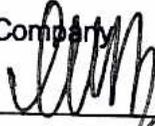
Town of Addison, Texas

(Printed Name)

(Title)

Date: _____

Company



Ivan Zveig
(Printed Name)

CEO
(Title)

Date: 12/16/04

Council Agenda Item: #2d

SUMMARY:

Council approval is requested of a 9-1-1 billing agreement with the following communication carrier which has received a Service Provider Certificate of Operating Authority (SPCOA) from the Texas Public Utilities Commission:

Granite Telecommunications, LLC

FINANCIAL IMPACT:

No financial impact to the Town will be realized, as this carrier is currently submitting access fees to the Town. 9-1-1 fees are generating approximately \$580,000 each year. The revenue is collected by the telephone companies from their customers. The fee of the base rate approximates 62 cents on a monthly single-family residential bill. Theoretically, any revenue generated from this billing agreement will simply replace the fees the Town would have received from SBC.

BACKGROUND:

Section 82.202 of the Town's code of ordinances requires that all 9-1-1 carriers establish an agreement with us. Many carriers are operating without a formal agreement, and we are attempting to document each carrier. The carrier listed above has submitted signed 9-1-1 billing agreements developed by the Town attorney (one copy attached for information). With the addition of the above company, Addison will have approximately 40 current 9-1-1 contracts.

RECOMMENDATION:

It is recommended council authorize the city manager to enter into a 9-1-1 agreement with the provider listed above.

RCM:rm

Attachment

Council Agenda Item: #2e

SUMMARY:

Consideration of a resolution to award the bid for **tent rentals** to **Mike Sandone Productions** in the amount of **\$102,399** for the 2005 special event season with the option to renew for two additional years.

FINANCIAL IMPACT:

Budgeted Amount: \$103,353

Cost: \$102,399

If over budget or not budgeted, what is the budget impact? N/A

BACKGROUND:

See attached memorandum from Barbara Kovacevich.

RECOMMENDATION:

Staff recommends approval as outlined in the attached memorandum.



MEMORANDUM

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

DATE: February 15, 2005

TO: Chris Terry, Assistant City Manager

FROM: Barbara Kovacevich, Special Event Manager

RE: Bids for **Tent Rentals** for the 2005 Special Events

CC: Shanna Sims, Budget and Procurement Manager

I would like to place an agenda item on the February 22, 2005 City Council Agenda to award the bid for **tent rentals** for the 2005 special event season.

Background: The bid was sent to eight companies and was advertised for two weeks in the newspaper and on Demand Star. A pre-bid meeting was conducted on January 26, 2005, and bids were received from five companies. Bidders submitted a bid for a total quantity of tents on an annual basis with the option to renew for two additional years. Insurance and bid bonds were required and submitted by all bidders *except* Alexander Tents.

Selection Committee:

Slade Strickland, Parks Director	Ron Lee, Parks Operations Manager
Barbara Kovacevich, Special Event Manager	Shelley Jasper, Special Event Coordinator
Toni Lang, Special Event Coordinator	

Recommendation: The following chart summarizes the bids that were received along with the selection committee's unanimous recommendation for approval of **Mike Sandone Productions** (highlighted in yellow). A point system was used to analyze the bids and select the best-qualified bidder. Mike Sandone Productions has provided tents to the Town of Addison for over 12 years and they offer a good product at a competitive price.

ITEM 1 – TENT RENTALS		
COMPANY	BID \$	COMMENTS
Alexander Tents	\$31,665	Incomplete bid
Mike Sandone Productions	\$102,399	Lowest and most qualified bid
M&M Special Events	\$111,848	
Aztec Party & Tent Rentals	\$130,592	
Ducky Bob's Party & Tent Rentals	\$157,555	

Budget: Proposed bid is within the budgeted amount of \$103,353.

Council Agenda Item: #2f

SUMMARY:

Consideration of a resolution to award the bid for **miscellaneous rentals** to **M&M Special Events** in the amount of **\$23,909.60** for the 2005 special event season with the option to renew for two additional years.

FINANCIAL IMPACT:

Budgeted Amount: \$39,343

Cost: \$23,909.60

If over budget or not budgeted, what is the budget impact? N/A

BACKGROUND:

See attached memorandum from Barbara Kovacevich.

RECOMMENDATION:

Staff recommends approval as outlined in the attached memorandum.



MEMORANDUM

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

DATE: February 15, 2005

TO: Chris Terry, Assistant City Manager

FROM: Barbara Kovacevich, Special Event Manager

RE: Bids for **Miscellaneous Rentals** for the 2005 Special Events

CC: Shanna Sims, Budget and Procurement Manager

We would like to place an agenda item on the February 22, 2005 City Council Agenda to award the bid for **miscellaneous rentals** for the 2005 special event season.

Background: The bid was sent to eight companies and was advertised for two weeks in the newspaper and on Demand Star. A pre-bid meeting was conducted on January 26, 2005, and bids were received from four companies. Bidders submitted a bid for a total quantity of miscellaneous rentals on an annual basis with the option to renew for two additional years. Insurance and bid bonds were required and submitted by all bidders *except* Alexander Tents.

Selection Committee:

Slade Strickland, Parks Director Ron Lee, Parks Operations Manager
 Barbara Kovacevich, Special Event Manager Shelley Jasper, Special Event Coordinator
 Toni Lang, Special Event Coordinator

Recommendation: The following chart summarizes the bids that were received along with the selection committee’s unanimous recommendation for approval of **M&M Special Events** (highlighted in yellow). A point system was used to analyze the bids and select the best-qualified bidder. M&M Special Events has an extensive list of customer references and offers quality product and service at a competitive price.

ITEM 2 – MISCELLANEOUS RENTALS		
COMPANY	BID \$	COMMENTS
Alexander Tent Rentals	\$14,966.50	Incomplete bid
M&M Special Events	\$23,909.60	Lowest and most qualified bid
Aztec Party & Tent Rentals	\$36,586.66	
Ducky Bob’s Party & Tent Rentals	\$47,474.60	

Budget: Proposed bid is within the budgeted amount of \$39,343.

Council Agenda Item: #2g

SUMMARY:

Consideration of a resolution to award the bid for **restroom and trash receptacles** to **Lone Star PPR, L.P.** in the amount of **\$27,337.20** for the 2005 special event season with the option to renew for two additional years.

FINANCIAL IMPACT:

Budgeted Amount: \$41,490

Cost: \$27,337.20

If over budget or not budgeted, what is the budget impact? N/A

BACKGROUND:

See attached memorandum from Barbara Kovacevich.

RECOMMENDATION:

Staff recommends approval as outlined in the attached memorandum.

Council Agenda Item: #2h

SUMMARY:

Consideration of a resolution to award the bid for **rental of fencing** to **National Construction Rentals**. for the 2005 special event season with the option to renew for two additional years.

FINANCIAL IMPACT:

Budgeted Amount: \$15,105

Cost: \$12,863.20

If over budget or not budgeted, what is the budget impact? N/A

BACKGROUND:

See attached memorandum from Barbara Kovacevich.

RECOMMENDATION:

Staff recommends approval as outlined in the attached memorandum.

Council Agenda Item: #2i

SUMMARY:

Consideration of a resolution to award the bid for **temporary electrical service, lights and air conditioning** to **Entertainment Services** in the amount of **\$95,000** for the 2005 special event season with the option to renew for two additional years.

FINANCIAL IMPACT:

Budgeted Amount - Electrical:	\$36,049
Budgeted Amount – Air Conditioning:	<u>\$30,000</u>
TOTAL:	\$66,049

Cost - Electrical:	\$40,000
Cost - Air Conditioning:	<u>\$55,000</u>
TOTAL:	\$95,000

BACKGROUND:

See attached memorandum from Barbara Kovacevich.

RECOMMENDATION:

Staff recommends approval as outlined in the attached memorandum.



MEMORANDUM

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

DATE: February 15, 2005

TO: Chris Terry, Assistant City Manager

FROM: Barbara Kovacevich, Special Event Manager

RE: Bids for **Temporary Electrical Services, Lights and Air Conditioning** for the 2005 Special Events

CC: Shanna Sims, Budget and Procurement Manager

We would like to place an agenda item on the February 22, 2005 City Council Agenda to award the bid for **temporary rental of electrical services, lights and air conditioning** for the 2005 special event season.

Background: The bid was sent to 26 companies and was advertised for two weeks in the newspaper and on Demand Star. A pre-bid meeting was conducted on January 26, 2005, and bids were received from three companies. The bid was divided into four sections (Taste Addison electrical, Kaboom Town electrical, Oktoberfest electrical and Oktoberfest air conditioning) that can be awarded by section or in total. Bidders submitted a bid for a total quantity of electrical service and air conditioning equipment on an annual basis with the option to renew for two additional years. Insurance and bid bonds were required and submitted by all bidders.

Selection Committee:

Slade Strickland, Parks Director	Ron Lee, Parks Operations Manager
Barbara Kovacevich, Special Event Manager	Shelley Jasper, Special Event Coordinator
Toni Lang, Special Event Coordinator	

Recommendation: The following chart summarizes the bids that were received along with the selection committee's unanimous recommendation for approval of **Entertainment Services** (highlighted in yellow). A point system was used to analyze the bids and select the best-qualified bidder. Entertainment Services has an extensive list of customer references and they offer a good product and service at a competitive price.

ITEM 5 – TEMPORARY ELECTRICAL SERVICES, LIGHTS AND AIR CONDITIONING						
COMPANY	TASTE	KABOOM	OKT.	OKT. A/C	TOTAL	COMMENTS
Entertainment Services	\$18,000	\$3,000	\$24,000	\$55,000	\$100,000	* \$95,000 after discount if awarded all sections
Mid-South Power Systems	\$62,963	\$18,030	\$73,130	\$54,200	\$208,323	* \$197,906 after discount if awarded all sections
Aggrecko	\$90,000	\$25,000	\$80,000 *	\$45,000	\$240,000	* Includes \$45,000 for Okt. A/C so total bid should have been \$195,000

The committee conducted an extensive review of the electrical and air conditioning bids to confirm the validity of the low bid and to determine why there is such a large price variance between the low bidder and other bidders. The committee brought in an electrician that has worked on our events for the past three years, as well as the summer Olympics in Greece, to review the bids and specifications. We also included the Town's Building Official, Lynn Chandler, in the review process.

It was determined that the low bid is valid and the variance is related to the main contact (Donnie Harris) at Entertainment Services knowledge of the Town of Addison special events gained from when he was with a Showpower/Pannell Electric. Additionally, Entertainment Services locally owns most of their equipment whereas the other bidders incur the cost of rental, fuel, freight and labor to bring the equipment to the DFW area.

GE purchased Showpower in 2002 and Showpower purchased Pannell Electric in 1997 but each time the personnel and accounts were retained. GE/Showpower/Pannell provided electrical and air conditioning services to the Town of Addison special events for over 12 years. Bids were not received from GE Energy Rentals because the Dallas office was closed and they are no longer providing temporary electrical and air conditioning services.

Budget: Proposed bid amount is over budget by \$3,951 for electrical services and \$25,000 for air conditioning. Because the other bids (miscellaneous rentals, restrooms, fencing and tents) are under budget, most of this amount (all but \$2,141) can be absorbed in the budget. We will try to absorb the variance in the existing budget and look for ways to trim the scope of the project to get the services within budget. Long-term, we may want to look at the return on investment for air conditioning the main tent at Oktoberfest and consider an alternate date for Oktoberfest when the weather might be cooler.

Council Agenda Item: #2j

SUMMARY:

Consideration of a resolution to award the bid for **stage, sound and lighting equipment** to three bidders as follows for the 2005 special event season with the option to renew for two additional years:

- 1) Onstage Systems for Jazz Festival and Taste Addison in the amount of \$56,444**
- 2) Gemini Stage Lighting and Sound for Oktoberfest in the amount of \$18,888**
- 3) Executive Lighting and Sound Productions for July Jazz and Symphonic Saturdays in the amount of \$9,500**

FINANCIAL IMPACT:

Budgeted Amount: \$78,860

Cost: \$84,832

BACKGROUND:

See attached memorandum from Barbara Kovacevich.

RECOMMENDATION:

Staff recommends approval as outlined in the attached memorandum.



MEMORANDUM

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

DATE: February 15, 2005
TO: Chris Terry, Assistant City Manager
FROM: Barbara Kovacevich, Special Event Manager
RE: Bids for **Stage, Sound and Lighting Equipment Rentals** for the 2005 Special Events
CC: Shanna Sims, Budget and Procurement Manager

We would like to place an agenda item on the February 22, 2005 City Council Agenda to award the bid for **stage, sound and lighting equipment rentals** for the 2005 special event season.

Background: The bid was sent to 12 companies and was advertised for two weeks in the newspaper and on Demand Star. A pre-bid meeting was conducted on January 26, 2005, and bids were received from three companies. The bid was divided into four sections (Jazz Festival, Taste Addison, Oktoberfest, and summer concert series) that can be awarded by section or in total. Bidders submitted a bid for a total quantity of stage, sound and lighting equipment on an annual basis with the option to renew for two additional years. Insurance and bid bonds were required and submitted by all bidders.

Selection Committee:

Slade Strickland, Parks Director	Ron Lee, Parks Operations Manager
Barbara Kovacevich, Special Event Manager	Shelley Jasper, Special Event Coordinator
Toni Lang, Special Event Coordinator	

Recommendation: The following chart summarizes the bids that were received along with the selection committee's unanimous recommendation for approval of **Onstage Systems for Jazz Festival and Taste Addison, Gemini Stage and Lighting for Oktoberfest and Executive Lighting and Sound Productions for the summer concert series** (highlighted in yellow). A point system was used to analyze the bids and select the best-qualified bidder.

- **Jazz Festival** - Onstage Systems (formerly Dallas Backup) was selected for the Jazz Festival because of their extensive knowledge of this festival and the nuances associated with it. They have earned the confidence of the UNT faculty and performing groups. This is the first year the festival and headline concerts will take place in the Crystal Ballroom at

the Hotel InterContinental. Production times are extremely tight so it's important that we work with a group that knows our needs so we can ensure a successful event in an unknown venue. Onstage has provided the stage and sound needs for this event since its inception four years ago.

Onstage was not the lowest bidder; however, they received the highest overall rating due to other factors such as their ability to produce the services, performance on similar contracts, quality of equipment and labor, and understanding of our needs.

- **Taste Addison** - Onstage Systems was selected for Taste Addison because of their extensive knowledge of headline concerts in an outdoor festival setting. Onstage has provided the stage and sound equipment for all Town of Addison events for the past nine years and they have done an outstanding job. Their quality equipment, knowledgeable staff and attention to detail that results in a timely production has impressed the headline talent and made our concerts run smoothly.

Onstage was not the lowest bidder; however, they received the highest overall rating due to other factors such as their ability to produce the services, performance on similar contracts, quality of equipment and labor, and understanding of our needs. Another reason we do not recommend going with the low bidder (Gemini) is because their experience is in producing mostly indoor corporate events and indoor concerts. Onstage Systems provides equipment and services to at least 90% of the major D/FW outdoor festivals.

- **Summer Concerts** - Executive Lighting and Sound Productions was selected for the summer concert series (July Jazz and Symphonic Saturdays). ELS provided the sound equipment last summer and their bid was very competitive due to the small nature of these events.
- **Oktoberfest** - Gemini Stage Lighting and Sound was selected for Oktoberfest because their equipment and experience lends itself to an indoor environment and their cost was lowest. Also, the stage, sound and lighting requirements for Oktoberfest are not as complex as the Jazz Festival and Taste Addison.

ITEM 6 – STAGE, SOUND AND LIGHTING EQUIPMENT						
COMPANY	JAZZ	TASTE	SUMMER CONCERTS	OKT.	TOTAL	COMMENTS
Gemini Stage Lighting and Sound	\$20,450	\$31,575	\$16,200	\$18,888	\$87,113	\$82,757.35 after discount if awarded all sections
Onstage Systems	\$21,044	\$35,400	\$27,040	\$23,340	\$106,824	\$104,687.52 after discount if awarded all sections
Executive Lighting and Sound Productions	No Bid	No Bid	\$9,500	No Bid	No Bid	

Budget: Proposed bid is over budget by \$5,972. Because the other bids (miscellaneous rentals, restrooms, fencing and tents) are under budget by \$32,782, this amount can be absorbed in the budget.

Council Agenda Item: #R3

SUMMARY:

Staff requests the Council appoint three members to the Addison Board of Zoning Adjustment.

BACKGROUND:

The Board of Zoning Adjustment consists of five members with four alternates. The following members terms expired on January 14, 2005:

Corie Ewing	Second term
W. David Griggs	Second term
Richard Lane	First term
Beverly Roberts	First term

Typically, this Board meets less than once a year, and in an effort to get members who could attend, the staff added one alternate member. From the pool of six members, the staff would try to get five members who could attend. However, during the summer, we could not get even four members to attend. Therefore, we exercised the provision in the ordinance to appoint four alternates, but should have appointed only three. We now have more members than we need, so although four members have expired terms, we only need to appoint three members.

A list of the current Board membership is attached. Unlike the Planning and Zoning Commission appointments, these appointments do not belong to individual Councilmembers. Term limits for BZA members were instituted in 2000. Any terms that a member may have served prior to 2000 are not reflected in the listing above.

RECOMMENDATION:

Staff recommends the Council appoint three members to the Board of Zoning Adjustment.

BOARD OF ZONING ADJUSTMENT

MEMBERS

Corie Ewing

4000 Bobbin Lane
Addison, TX 75001-4901
(H) 972-454-3284
Term Expires: 1-14-2005 – 2nd Term

W. David Griggs

14605 Dartmouth Court
Addison, TX 75001-4439
(W) 214-979-9378
(H) 972-406-9667
Term Expires: 1-14-2005 – 2nd Term

Richard Lane

14516 Winnwood Road
Dallas, TX 75254-7639
(W) 972-490-8517
(H) 214-543-4600
Term Expires: 1-14-2005 – 1st Term

Charles “Chick” Martin

14810 Lochinvar Drive
Dallas, TX 75254-7528
(H) 972-733-3177
Term Expires: 8-12-2005 – 1st Term

Maggie McQuown

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

Beverly Roberts

4040 Morman Lane
Addison, TX 75001-3103
(W) 972-851-2181
(H) 972-392-9460
Term Expires: 1-14-2005 1st Term

ALTERNATES

Virgil Burkhardt

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

Joel Davis

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

William Green

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

Alan Wood

14609 Lexus Avenue
Addison, TX 75001-3132
(W) 214-269-3114
Term Expires: 9-28-2006 – 1st Term

Council Agenda Item: #R4

SUMMARY:

In August of 2004, the City Council authorized the formation of a strategic planning group made up of a cross-section of leaders in Addison and other communities to analyze and forecast Addison's future development. The group was called the 2030 Vision Committee and they worked over a six-month period to develop the attached recommendations for the Council's consideration.

Randy Pennington of the Pennington Performance Group served as the facilitator of this strategic planning process. Mr. Pennington will lead the City Council through an overview of the 2030 Vision Project report and wrap up this process with the Council.

FINANCIAL IMPACT:

Budgeted Amount: N/A

Cost: N/A

BACKGROUND:

See attached report document.

RECOMMENDATION:

Administration recommends approval.

THERE ARE NO
ATTACHMENTS
FOR ITEM #R5

Council Agenda Item: #R6

SUMMARY:

To consider approval of a Resolution authorizing an amendment to a ground lease between the Town of Addison, as landlord, and CNL APR Partners, LP and Amar Unlimited, Inc., tenants (Clay Pit Grill & Curry House for they property located at 4460 Belt Line Road.

FINANCIAL IMPACT:

Revenue Budget Amount: \$32,496

Cost: \$0 Payments will be repaid over a 60-month period

BACKGROUND:

Clay Pit Grill & Curry House located at 4460 Belt Line Road is the real tenant-in-interest to the Town of Addison who owns the land, with CNL APR Partners, LP being the legal tenant pursuant to an agreement entitled "Tri-Party Agreement" dated September, 1997 between the Town, CNL and DenAmerica Corp. (then operating the Black Eyed Pea restaurant at that site). Several weeks ago, representatives from Clay Pit approached the Town and CNL with a request to forgive a portion of their lease for twelve months in order to increase the cash flow of their restaurant. The reasons they gave for their request was due to increased costs of food products and other related operating costs.

Since their request, the Town has received financial and operational information from Clay Pit in connection with their request. After reviewing the information, and consulting with Clay Pit and with CNL, Staff has reviewed their request and made the following recommendations.

- Agree to the same terms that CNL is giving to Clay Pit
- Temporarily defer 50% of their ground lease for 12-months (beginning March 05) for a total of \$32,496
- Require that Clay Pit repay \$32,496 over a 60-month period in addition to their normal monthly rent, beginning with the October, 2007 payment.
- Extend the lease for an additional 10-months through December 2012

RECOMMENDATION:

Clay Pit has been good tenant for the last two years and staff recommends approval.

NOW, THEREFORE, the Town of Addison, Texas, Amar Unlimited, Inc., and CNL APF Partners, LP agree as follows:

Section 1. Incorporation of Premises. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof.

Section 2. Amendment to Lease. Notwithstanding anything in the Lease (as amended) to the contrary, the Parties agree as follows with respect to the Lease:

A. *Rent Adjustment*.

(1) For a period of twelve (12) consecutive calendar months, beginning with the March, 2005 and ending with February, 2006 (the "Rent Reduction Period"), the Minimum Rent monthly rental amount shall be Two Thousand Seven Hundred Eight and 34/100 Dollars (\$2,708.34), payable in advance on or before the first day of each calendar month.

(2) Following the expiration of the Rent Reduction Period, beginning October, 2006 and ending September, 2011 (being (60) consecutive calendar months) (the "Rent Recovery Period"), the Minimum Rent monthly rental amount shall be Six Thousand Seven Hundred Thirty Six and 11/100 Dollars (\$6,736.11), payable in advance on or before the first day of each calendar month during the Rent Recovery Period.

(3) Following the expiration of the Rent Recovery Period, the Minimum Rent monthly rental amount shall return to and be the amount set forth in Section 3.1(d) of the Lease, the amount being Five Thousand Eight Hundred Thirty-three and 33/100 Dollars (\$5,833.33), through the end of the Lease (subject, however, to the terms of the Lease).

B. *Term Adjustment*. The Term of the Lease, currently scheduled to end on February 1, 2012, shall end on December 31, 2012 (subject, however, to the termination provisions of the Lease).

Section 3. No Other Amendments. Except as hereby amended, the Lease and all of its terms, conditions, and provisions shall remain unchanged and in full force and effect.

Section 4. Authority to Execute. The undersigned officers and/or agents of the Parties hereto are the properly authorized officials and have the necessary authority to execute this Amendment on behalf of the parties hereto, 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.

Section 5. Effective Date. This Amendment shall be deemed effective as of the date first set forth above (the Effective Date).

IN WITNESS WHEREOF, the undersigned hereto have executed this Amendment to Lease as of the day and year first above written.

TOWN OF ADDISON, TEXAS

AMAR UNLIMITED, INC.

By: _____
Ron Whitehead, City Manager

By: _____

Printed Name: _____

ATTEST:

Title: _____

By: _____
Carmen Moran, City Secretary

CNL APF PARTNERS, LP, a Delaware limited partnership

By: **CNL APF GP Corp.**, a Delaware corporation, as General Partner

By: _____

Printed Name: _____

Title: _____

EXHIBIT 1

[COPY OF LEASE]

LEASE

STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF DALLAS §

This Lease (hereinafter referred to as "Lease" or "Agreement") made and entered into on this 13 day of JUNE, 1996 by and between THE TOWN OF ADDISON, a Texas municipality, hereinafter called "Landlord", and PRUFROCK RESTAURANTS, INC., a Texas corporation, hereinafter called "Tenant", which provides as follows:

SECTION 1. GRANT OF LEASE AND TERM

1.1 Landlord does hereby lease and demise unto Tenant that certain real property in the Town of Addison, Dallas County, Texas, as shown in Exhibit "A" attached hereto with the property being leased identified as the cross-hatched area in Exhibit "A" attached hereto (hereinafter referred to as the "leased premises" or "premises"), such description being subject to amendment as set forth in Paragraph 5.3 hereof. The property shown on Exhibit "A" is the property of Landlord and is intended for future use as a municipal development. This Lease shall be for a term of Twenty (20) years (the "Initial Term") to begin on the "Commencement Date" as defined in Paragraph 5.6 hereof. The term "Lease Year" shall be the one (1) year period to begin on the Commencement Date for each such respective year.

SECTION 2. HOLDOVER

2.1 If Tenant remains in possession of the premises after expiration of any lease term without executing a new lease or exercising its option to extend, such holding over shall be construed as a tenancy from month-to-month, subject to all covenants and conditions of this Lease, except that rental shall be at one hundred fifty percent (150%) of the then current minimum rent. Upon such holding over, Tenant must vacate the premises within thirty (30) days after receiving written notice from Landlord to vacate.

SECTION 3. RENT

3.1 The Minimum Rent for this Lease during the Initial Term and extension periods shall be payable in monthly installments, with each installment payable in advance on or before the first day of each calendar month during the Initial Term. The amount of Minimum Rent to be paid by Tenant to Landlord shall be pursuant to the following:

- (a) for the first five (5) years of the Initial Term of the Lease from the Commencement Date, monthly rental shall be Four Thousand Five Hundred Eighty-three and 33/100 Dollars (\$4,583.33).
- (b) for the second five (5) years of the Initial Term of the Lease from the Commencement Date, monthly rental shall be Five Thousand and No/100 Dollars (\$5,000.00).
- (c) for the third five (5) years of the Initial Term of the Lease from the Commencement Date, monthly rental shall be Five Thousand Four Hundred Sixteen and 67/100 Dollars (\$5,416.67).

- (d) for the fourth five (5) years of the Initial Term of the Lease from the Commencement Date, monthly rental shall be Five Thousand Eight Hundred Thirty-three and 33/100 Dollars (\$5,833.33).

3.2 In addition to the Minimum Rent specified in Paragraph 3.1, Tenant shall pay to Landlord, for each Lease Year during the remainder portion of this Lease and any extension periods, percentage rental determined by multiplying three percent (3%) times the total Gross Sales made in or from the leased premises during the particular Lease Year and then subtracting from the product thus obtained the Minimum Rent paid by Tenant to Landlord for such Lease Year.

Within thirty (30) days after the close of a Lease Year Tenant shall furnish to Landlord a sales report certified to be correct by an officer of Tenant, and if the sales disclosed thereby are sufficient to require a payment under this Paragraph such payment shall accompany the report.

The term "Gross Sales" as used herein shall be construed to include the entire amount of the sales price, whether cash or otherwise, of all sales of merchandise (including gift and merchandise certificates); services and other receipts whatsoever of all business conducted in or from the leased premises, including mail or telephone orders received or filled at the leased premises; deposits not refunded to purchasers; orders taken, although said orders may be filled elsewhere; sales by any sublessee, concessionaire or licensee or otherwise in the leased premises. Each sale upon installment or credit shall be treated as a sale for the full price in the month during which such sale was made, irrespective of the time when Tenant receives payment from its customer. Gross sales shall not include, however, bona fide credits, and any sums collected and paid out for any sales or excise tax imposed by any duly constituted governmental authority, sales to employees, nor shall it include the exchange of merchandise between the stores of Tenant, if any such exchanges are made solely for the convenient operation of the business of Tenant and not for the purpose of consummating a sale which has therefore been made in or from the leased premises and/or for the purpose of depriving Landlord of the benefit of a sale which otherwise would be made in or from the leased premises, nor the amount of returns to shipper's or manufacturer's, nor the amount of any cash or credit refund made upon any sale where the merchandise sold, or some part thereof, is thereafter returned by the purchaser and accepted by Tenant, nor sales of Tenant's fixtures, furniture, and equipment.

The sales reports shall be certified to be correct by an officer of Tenant. In the event Landlord is not satisfied with the statements of gross sales submitted by Tenant, Landlord shall have the right to have an independent Certified Public Accountant make a special audit of all books and records, which shall be located in Dallas County, Texas, pertaining to sales made in and from the leased premises; provided, however, said audit shall be limited to one time with respect to each Lease Year and must be conducted within two (2) years after the end of a Lease Year. Tenant shall have the right to submit any additional information as it may believe pertinent to any audit. If such audit discloses that Tenant understated Gross Sales by more than two percent (2%) over the amount submitted by Tenant, Tenant shall pay the reasonable costs for such audit. Tenant shall promptly pay to Landlord any deficiency or Landlord shall promptly refund to Tenant any overpayment, as the case may be, which is established by such audit.

3.3 Each installment of rent shall be payable to:

Town of Addison
P. O. Box 144
Addison, TX 75001

Attn: Finance Director

or at such other place as the Landlord may from time to time designate in writing.

3.4 If the Commencement Date as defined herein is not on the first day of a calendar month, the Minimum Rent for the period between the Commencement Date and first day of the next succeeding calendar month shall be apportioned at the monthly rental set forth above, and the amount so apportioned shall be payable on the Commencement Date. Likewise, the Minimum Rent for the period between the first day of the last calendar month during the term and ending date of the Lease shall be apportioned at the then current monthly Minimum Rent.

SECTION 4. FORCE MAJURE

4.1 Whenever a period of time is herein prescribed for action to be taken by Landlord or Tenant, such party shall not be liable or responsible for, and therefore shall be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other causes of any kind whatsoever which are beyond the reasonable control of the respective party.

SECTION 5. IMPROVEMENTS

5.1 Tenant shall have the right during the term of this Lease, to erect, maintain, alter, remodel, reconstruct, rebuild and replace buildings and other improvements on the Leased Premises, subject to the following general conditions:

(a) The cost of any such work shall be borne and paid for by Tenant.

(b) The Leased Premises shall be, at all times, kept free of all mechanic's and materialman's liens except that Tenant may post a bond for the payment of any disputed claims.

(c) Landlord shall be notified of the time of commencement and the general nature of any work in excess of \$50,000.00 at the time of commencement.

(d) Nothing contained herein shall constitute Landlord's approval for purposes of obtaining building permits and Landlord assumes no liability or responsibility for the architectural or engineering design or for any defect in any building or improvement constructed from the plans or specifications or that they comply with applicable building and fire codes.

(e) Upon termination of this Lease for any reason, all present and future installations, alterations, additions or improvements made in, on or to the leased premises, by any party, shall be deemed the property of Landlord and shall remain upon and be surrendered with the leased premises as a part thereof.

5.2 Tenant, at its sole cost and expense, shall bring all necessary utilities to the property.

5.3 Tenant, at its sole cost, shall obtain within twenty-one (21) days after the date of this Agreement a current topographical survey of the leased premises by a registered surveyor. The survey shall be staked and pinned on the ground and shall show all buildings, other improvements, easements (including public recording information), encroachments, restrictions, rights-of-way, sidewalks, highway, streets, roads, and utilities serving the property indicating size and location. The survey shall also contain a description of the easements granted under this Lease. Upon the Landlord's and Tenant's approval of the survey, it shall be substituted for the description of the leased premises in Exhibit "A" hereof.

5.4 The improvements referred to in Paragraph 5.1 above shall not be deemed to include any machinery, equipment, trade fixtures, signs, furniture, furnishings, decorations, restaurant equipment, shelving, showcases, mirrors, pictures, art objects, antique items, decorative light fixtures, mantles, and stained glass windows, or other similar items which may be installed, located or placed in the building by Tenant (whether "attached" to the building or not), and such items may be removed by Tenant from time to time in Tenant's sole discretion during this Lease and for a period of fifteen (15) days after termination of this Lease. Tenant shall repair the premises resulting from any damages caused by the removal of such items. Tenant may finance or refinance all or any part of its machinery, equipment, trade fixtures, signs, and other items listed above and in connection therewith may grant security interests in and liens upon such items, provided that Tenant shall not grant or place any liens upon the realty comprising the demised premises or Landlord's interests therein. Landlord hereby expressly waives any liens, constitutional, statutory or otherwise, which Landlord may have with respect to any such items, and Landlord will execute and deliver or cause to be executed and delivered such evidence of this waiver of lien as Tenant's equipment lender or lessor may request from time to time. The term "improvement" referred to in paragraph 5.1 shall include, but not be limited to, air conditioning, heating and ventilation systems, water heaters, plumbing apparatuses and other fixtures. The terms "machinery and equipment" used in this paragraph and other provisions of this Lease shall not include such improvements.

5.5(a) The parties hereto agree that this Lease is entirely contingent upon the leased premises being suitable for the restaurant Tenant intends to construct upon the demised premises. Consequently, notwithstanding anything to the contrary herein set forth, this Lease shall be null and void and neither party shall be under any obligation or liability one to the other in the event the Tenant in its sole judgment determines that for economic or other reasons the premises are not suitable for its restaurant or for the construction of its improvements and/or that it cannot obtain all permits necessary to construct and operate its intended restaurant, such permits and approvals specifically including, but not limited to, liquor licenses, sign permits, access points, and building construction permits. Tenant shall have sixty (60) days in which to inspect the leased premises and give written notice to Landlord that Tenant has determined that, in its judgment, the leased premises are not suitable for the restaurant it intends to construct and in such event this Lease shall terminate and neither party shall have any liability to the other. If Tenant shall not give the notice of termination within such sixty (60) days, the Tenant shall have waived its right to terminate pursuant to

this paragraph 5.5(a). As a part of Tenant's inspection, Tenant and its engineering consultants shall be permitted to come upon the leased premises to perform soil tests, inspections, and other studies, to be used by Tenant in determining feasibility of construction and to determine the environmental conditions of the premises and existing improvements. Tenant shall restore the premises to its condition prior to any such tests, and shall indemnify and hold Landlord harmless from any liens that may arise as a result thereof and for any damages to persons or property.

(b) Tenant shall have one hundred twenty (120) days from the date of this Agreement hereof in order to give written notice to Landlord that the necessary permits are not obtainable and in such event this Lease shall terminate and neither party shall have any liability to the other. Tenant shall apply for its building and zoning permits within sixty (60) days from the date of this Agreement. If Tenant shall not give the notice of termination within such one hundred twenty (120) days, the Tenant shall have waived its right to terminate pursuant to this paragraph 5.5(b).

5.6 If this Lease is not terminated as provided in paragraph 5.5 above, Tenant shall enter the premises and commence the construction of its improvements, and the rental hereunder shall commence upon the earlier of:

- (a) the date Tenant first opens for business on the premises to the public; or
- (b) One hundred twenty (120) days from the earlier date of (i) Tenant's waiver of its right to terminate pursuant to Paragraph 5.5(b) hereof, or (ii) the issuance of all permits necessary to construct the restaurant.

5.7 Tenant and persons, firms or corporations involved in the erection of building contemplated herein and Tenant's subtenants, employees, agents, servants, patrons, and suppliers may enter upon and work in said premises during the period prior to the "Commencement Date", and all covenants and conditions of this Lease shall be applicable except those pertaining to rental and taxes; no rental or other monetary payments being reserved or charged for such period prior to the "Commencement Date". Tenant shall hold Landlord harmless from any lien or claims for liens as a result of Tenant's action during such period.

SECTION 6. STATE OF THE TITLE, ZONING AND RESTRICTIONS

Landlord hereby warrants and represents to Tenant as follows:

6.1 Landlord is owner of the Leased Premises and authorized to execute this Lease. Tenant acknowledges that the Leased Premises are not zoned to permit construction of a restaurant serving alcoholic beverages, and Tenant agrees, at its sole cost and expense, to obtain such zoning.

6.2 No person other than Landlord has the right to lease the leased premises.

6.3 Landlord agrees that it has not and will not hereafter enter into or consent to any restrictive covenant or similar agreement substantially or materially affecting Tenant's use of the leased premises, except Landlord reserves the right to enter into a mutual reciprocal parking and access agreement with the Tenant on Landlord's adjacent property.

6.4 Tenant, within twenty-one (21) days following the date of this Agreement, shall obtain a Commitment for leasehold title policy applicable to the leased premises from a licensed Title Company (the "Title Company") and any easements serving the leased premises. Tenant shall have twenty-one (21) days thereafter in which to have the Commitment examined and to furnish Landlord notice in writing of any objections thereof. In case of valid objections to the title, Landlord shall have twenty-one (21) days within which to satisfy said objections, unless such time be extended by written agreement between the Landlord and Tenant. Landlord warrants that it shall in good faith exercise due diligence to cure title defects, if any, within the time provided, but such obligation shall not exceed \$1,000.00. In the event there is now or shall be in the future a Mortgage or Deed of Trust on the leased premises, Landlord shall provide a Non-Disturbance Agreement to Tenant in such form as Tenant may reasonably require. If there is a current Mortgage or Deed of Trust, Landlord shall deliver a Non-Disturbance Agreement within thirty (30) days after Tenant's receipt of the Title Commitment.

SECTION 7. USE BY TENANT

7.1 The leased premises shall be used for the operation of a restaurant with alcoholic beverage service or retail/service business. Tenant shall not commit waste on the leased premises, shall not maintain, commit or permit the maintenance or commission of a nuisance or lewd or indecent activities on the leased premises, or use all or part of the premises for any use or purpose in violation of any valid or applicable law, regulation or ordinance of the United States, State of Texas, Town of Addison, or other lawful governmental authority having jurisdiction over the leased premises. Tenant shall conform to all applicable laws and ordinances respecting the use and occupancy of the leased premises. In no event shall the leased premises be used or occupied by any business which Gross Sales shall exceed 40% from alcoholic beverages in any calendar year and Landlord shall be entitled to review Tenant's filings with state agencies to confirm such percentage of liquor sales. Tenant shall not conduct within the leased premises any fire, auction, going-out-of-business or bankruptcy sale. Tenant shall not permit any objectionable or unpleasant odors to emanate from the leased premises other than normal restaurant odors; nor place or permit any radio, television, loud speaker, amplifier or sound system or signs or devices emitting flashing lights, loud noises or vibrations on the roof or outside the leased premises; nor commit or permit waste or a nuisance upon the leased premises.

7.2 Tenant shall maintain its improvements in a neat and clean condition, shall keep sidewalks on the premises clean and free from rubbish, and shall arrange for the regular pick up of trash and garbage if such service is not provided by the City or County in which the leased premises are located. Tenant shall not permit rubbish, refuse, or garbage to accumulate or any fire or health hazard to exist about the premises, so long as this Lease is in effect and during any extension thereof. Trash and garbage dumpsters shall be screened from view.

7.3 During the first five (5) years of the original term of this Lease, Tenant shall in good faith continuously conduct and carry out in the entire Demised Premises the type of business described in Section 7.2 above except for periods resulting from fire or other casualty, or reasonable periods for repairs and alterations, all such repairs and alterations to be diligently pursued to completion. Beginning in the

sixth (6th) year of the original term of this Lease, if Tenant discontinues the operation of its business or vacates the Demised Premises for any continuous twelve (12) month period (other than as a result of fire or other casualty, for substantial restoration or alteration, such restoration, alterations or repairs to be diligently pursued to completion), Landlord may terminate this Lease and repossess the Demised Premises. Upon repossession, this Lease will terminate and neither party shall have any further obligation to the other except for the following:

Tenant shall forfeit all of Tenant's permanent improvements to the Demised Premises, but may remove its furniture, fixtures, equipment and all signs.

Landlord shall pay to Tenant at the termination date the unamortized value of its building and permanent improvements based upon a 20-year straight line basis from the Commencement Date.

7.4 Tenant shall procure, at its own expense, any permits and licenses required for the transaction of business on the leased premises and otherwise comply with all applicable laws, ordinances and governmental regulations.

SECTION 8. MAINTENANCE, REPAIRS AND UTILITIES

8.1 At all times during the term of this Lease, Tenant will keep and maintain, or cause to be kept or maintained, all buildings and improvements which may be erected on the Leased Premises in a good state of appearance and repair, reasonable wear and tear and loss by casualty excepted, at Tenant's own expense. Tenant, at Tenant's expense, shall comply with all laws, ordinances, orders, rules and regulations of state, federal, municipal or other agencies or bodies having jurisdiction relating to the use, condition and occupancy of the Leased Premises.

8.2 Tenant shall, at its own cost and expense, pay all charges when due for water, gas, electricity, heat, sewer rentals or charges and any other utility charges incurred by Tenant in the construction and the use of the premises. unless caused by Landlord's negligence or misconduct, Landlord shall not be responsible or liable in any way whatsoever for the quality, quantity, impairment, interruption, stoppage or other interference with service involving water, heat, gas electric current for light and power or telephone.

SECTION 9. ASSIGNMENT AND SUBLETTING

9.1 Tenant shall have the right to assign or sublease the leased premises to any corporation controlling, controlled by or under common control with Tenant, to any corporation with which Tenant merges or consolidates, to any franchisee of Tenant or to any person or entity acquiring all or substantially all of the assets of Tenant. Any other assignment or subletting of this Lease or leased premises by Tenant shall require the prior written consent of Landlord, which consent shall not be unreasonably withheld.

9.2 It is specifically understood that any assignment by Tenant consented to by Landlord allowed in accordance with this section shall be only for the permitted use and for no other purpose. If Landlord consents to the assignment, or the assignment is permitted in accordance with this section, the permitted transferee shall assume by written instrument all of Tenant's obligations under the Lease. In the event of a permitted assignment, Tenant shall continue to be liable hereunder provided Landlord shall give Tenant written notice

of any default following the default of any assignee or sublessee and Tenant shall have a period of thirty (30) days to cure any such default. Any transfer without Landlord's consent shall not be binding upon Landlord, and shall confer no rights upon any third party. Each such unpermitted transfer shall, without notice or grace period for any kind, constitute a default by Tenant under this Lease. Consent by Landlord to any one transfer shall not constitute a waiver of the requirement for consent to any other transfer. No reference in this Lease to assignee, concessionaires, subtenants or licensees shall be deemed to be consent by Landlord to the occupancy of the Leased Premises by any such assignee, concessionaire, subtenant or licensee.

SECTION 10. SIGN AND DISPLAYS

10.1 Provided appropriate governmental consent shall be obtained, Tenant shall have the right at its own cost and expense to erect and maintain a sign or signs advertising its business and such signs may be displayed and placed either by freestanding or pylon signs. Tenant shall also have the right to attach or paint signs on the building. All signs erected by Tenant shall be in compliance with the applicable laws or within a non-conforming use exception allowed by law, and all such signs may be removed by Tenant at any time during or within thirty (30) days after the expiration of this Lease. Tenant shall not place or permit to be placed on the exterior of the leased premises, on the door, window or roof thereof, in any display window space, or within five (5) feet behind the storefront of the leased premises if visible from the outside, any sign, placard, decoration, lettering, advertising matter of descriptive material without Landlord's written approval. All signs installed by Tenant shall be insured, and shall be maintained by Tenant at all times in first-class condition, operating order and repair. Tenant shall commence to repair any of Tenant's signs which have been damaged within ten (10) days after such damage occurs.

SECTION 11. INSURANCE AND TAXES

11.1 At all times during the term of this Lease, Tenant shall keep all buildings and other improvements located or being constructed on the leased premises insured against loss or damage by fire, with extended coverage endorsement or its equivalent. This insurance shall be carried by insurance companies authorized to transact business in Texas, selected by Tenant and shall be paid for by Tenant. The insurance shall be paid for by Tenant and shall be in amounts not less than 90% of the fair insurable value of the buildings and other improvements. Such policy or policies of insurance shall name both Landlord and Tenant as named insured. In the event Prufrock Restaurants, Inc. or its Corporate affiliate shall not be the tenant occupying the leased premises because of assignment, sublease, or other cause, the policy shall provide that any loss of \$75,000 or less shall be payable solely to Tenant, which sum Tenant shall use for repair and restoration purposes; and any loss over \$75,000 shall be made payable jointly to Landlord and Tenant as their interest may appear and shall be for the purpose of rebuilding and repairing the improvements on the leased premises.

11.2 At all times during the term of this Lease, Tenant shall provide and keep in force during the term of this Lease, liability insurance covering Landlord and Tenant for liability for property damage and personal injury. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Tenant and shall be paid for by Tenant. Landlord shall be named as an additional named insured. The insurance provided

shall be a comprehensive general liability insurance with a broad form comprehensive general liability with endorsement applicable to the leased premises and the buildings and improvements located thereon and providing coverage which will pay on behalf of any named or additional named insured all sums which such named and/or additional named insureds shall be liable to pay as damages due to bodily injury (including death) or property damage. The maximum limit of liability of such insurance shall be no less than \$1,000,000 for bodily injury (or death) to any one person, \$1,000,000 for bodily injury (or death) to more than one person and \$500,000 for property damage, or in lieu thereof, \$1,000,000 combined single limit. The public liability insurance shall include, at the same minimum limits of liability as shown above, liquor legal liability coverage.

11.3 Before any alteration, addition, improvements or construction may be undertaken by or on behalf of Tenant, Tenant shall obtain, carry and maintain, at its expense, or Tenant shall require any contractor performing work on the leased premises to obtain, carry and maintain Builders' Risk Insurance in the amount of the replacement cost of the improvements and buildings and Comprehensive General Liability Insurance (including, without limitation, Contractors' Liability Coverage, Contractual Liability Coverage, Completed Operation Coverage, a broad form Property Damage Endorsement and Contractors' Protective Liability Endorsement) providing on an occurrence basis a minimum combined single limit of \$1,000,000.

11.4 Tenant shall furnish Landlord with certificates of all insurance required by this section. Tenant agrees that if it does not keep this insurance in full force and effect, Landlord may notify Tenant of this failure, and if Tenant does not deliver to Landlord certificates showing all such insurance to be in full force and effect within ten (10) days after Tenant's receipt of such notice, Landlord may, at its option, taken out and/or pay the premiums on insurance needed to fulfill Tenant's obligation under the provision of this section. Upon demand from Landlord, Tenant shall reimburse Landlord the full amount of any insurance premium paid by Landlord, pursuant to this section, with interest at the rate of ten percent (10%) per annum from date of Landlord's demand until reimbursement by Tenant. Furthermore, the required certificate of insurance shall provide that Landlord will receive at least fifteen (15) days' written notice prior to cancellation or reduction of any such insurance policy.

11.5 Landlord shall cause the leased premises to be separately assessed and taxed by applicable governmental authorities and Tenant shall pay before they become delinquent all real estate, if any, and personal property taxes and special assessments lawfully levied or assessed against the leased premises and contents thereof. For the lease years for which this Lease commences and terminates, the provisions of this Section shall apply and Tenant's liability for its proportionate share of any taxes and assessments for any such year shall be subject to a pro rata adjustment based on the number of days of any such year during the term of this Lease. Tenant shall furnish to Landlord evidence that such taxes have been paid upon Landlord's written request. Tenant may, in good faith, contest any such taxes provided it pays any and all taxes finally adjudicated against the leased premises.

SECTION 12. DAMAGE OF DESTRUCTION BY
FIRE, WAR OR ACTS OF GOD

12.1 If the building upon the leased premises is destroyed or substantially damaged by fire, acts of God, other peril covered by in fire and extended coverage insurance (including earthquake), or war ("war" included enemy aggression, civil riot or commotion, and insurrection) and shall require more than \$100,000 to rebuild or repair such, Tenant may notify Landlord that it desires that the improvements be repaired and/or rebuilt, such notice to be given in writing within thirty (30) days of such destruction or damage. If such notice is given, Tenant shall promptly proceed to carry out and accomplish such repair or rebuilding (taking into consideration the problems, difficulties and delays in obtaining the insurance proceeds), and all insurance proceeds received or arising from such destruction or damage shall be paid to Tenant for use in such repair or rebuilding except as provided in Section 11.1. If such notice is given, the rent shall abate from the time of such destruction or damage until the improvements are rebuilt or repaired and Tenant has reopened for business, but such period of abatement of rental shall not exceed one hundred twenty (120) days. If such notice of desire for repair and/or rebuilding is not given by Tenant within said thirty (30) days, this Lease shall terminate automatically and the rent shall abate from the time of such destruction or damages and the insurance proceeds from the loss of the building shall be paid to Landlord. The insurance proceeds for loss of furniture, equipment and personalty items shall be paid to Tenant.

12.2 If the building may be repaired for less than \$100,000 to substantially the same condition, Tenant shall not have the option to terminate and Tenant shall proceed to repair and rebuild the damage without unreasonable delay, taking into account the problems, difficulties and delays attending the obtaining of the proceeds of the insurance coverage which shall be paid to Tenant, and if during such period the building is found to be partially untenable or inconvenient, the rent payable hereunder during such period shall be adjusted downward to such extent as may be fair and reasonable under the existing circumstances.

SECTION 13. INDEMNIFICATION COVENANTS

13.1 Tenant shall indemnify, defend and hold Landlord, its officers, employees, officials and agents (collectively the "Indemnitees") harmless from and against all liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including, without limitation, reasonable architect's and attorney's fees, which may be imposed upon, incurred by, or asserted against any of the Indemnitees and arising, directly or indirectly, out of or in connection with the use or occupancy of the leased premises by, through or under Tenant, and (without limiting the generality of the foregoing) any of the following:

(a) Any work or thing done in, on or about the leased premises or any part thereof by Tenant or any of its concessionaires, agents, contractors, employees or invitees;

(b) Any use, nonuse, possession, occupation, condition, operation, holdover occupancy, maintenance or management of the leased premises or any part thereof by Tenant;

(c) Any injury or damage to any person or property occurring in, on or about the leased premises or any part thereof caused by Tenant's negligence or misconduct; or

(d) Any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease with which Tenant, on its part, must comply or perform unless prevented so by the acts of Landlord or force majeure.

In case any action or proceeding is brought against any of the Indemnitees by reason of any of the foregoing, Tenant shall, at Tenant's sole cost and expense, resist or defend such action or proceeding.

Except for the negligence of Tenant, its agents or employees, Tenant shall not be liable for any damage or injury to any property or persons which might occur on property owned or leased by Landlord adjacent to the leased premises. The Landlord shall indemnify, defend and hold harmless Tenant, its officers, employees and agents from any claim, liability or damages (including reasonable attorney's fees and expense) incurred by Tenant which result from any work or thing done in, on or about the Landlord's adjacent property.

SECTION 14. WAIVER OF SUBROGATION

14.1 Landlord and Tenant each hereby waives on behalf of itself and its insurers (none of which shall ever be assigned any such claim or be entitled thereto through subrogation or otherwise) any and all rights of recovery, claim, action or cause of action against the other, its agents, officers, or employees, for any loss or damage that may occur to the leased premises or any improvements thereto or any personal property therein, by reason of fire, the elements or any other cause, which are insured against by the terms of a standard fire and extended coverage insurance policy, regardless of the cause or origin of the damage involved, including negligence of the other party hereto, its agents, officers, or employees and regardless of the amount of the deductible. This release shall not be limited to the liability of the parties to each other. It shall also apply to any liability to any person claiming through or under the parties pursuant to a right of subrogation or otherwise. This release shall apply even if the loss or damage shall have been caused by the fault or negligence of Tenant or Landlord or any person for whom Tenant or Landlord may be responsible. Each party shall cause its policies with its insurers to provide for the waiver of subrogation as set forth herein.

SECTION 15. LANDLORD'S RIGHT TO INSPECT

15.1 Landlord expressly reserves the right to enter the premises at reasonable times during business hours and in a manner so as not to disturb Tenant's business to inspect or examine the improvements.

SECTION 16. SUBORDINATION

16.1 This Lease shall be subject and subordinate at all times to the lien of any Deed of Trust or mortgages now on the premises, and to all advances made or hereafter to be made upon the security thereof, and subject and subordinate to the lien of any Deed of Trust or mortgage or mortgages which at any time may hereafter be made a lien upon the premises by Landlord provided, however, that such subjection

and subordination is upon the express condition that this Lease shall be recognized by the mortgagee and that all the rights of the Tenant shall remain in full force and effect during the full term of this Lease on condition that the Tenant shall not be in default pursuant to the terms of this Lease and further provided that in the event of foreclosure or any enforcement of any such mortgage, the right of the Tenant hereunder shall expressly survive and this Lease shall in all respects continue in full force and effect. Tenant agrees upon demand to execute such further instruments subordinating this Lease as Landlord may request, provided such instruments shall carry the conditions and provisions set forth above.

16.2 Tenant may, at any time and from time to time, encumber the leasehold interest, by deed of trust, mortgage or other security instrument, without obtaining the consent of Landlord, but no such encumbrance shall constitute a lien on the fee-title of Landlord, and the indebtedness by the encumbrance shall at all time be and remain inferior and subordinate to all of the conditions, covenants and obligations of this Lease and to all the rights of Landlord under this Lease.

SECTION 17. DEFAULT AND BANKRUPTCY

17.1 In the event Tenant shall fail to make any rental or other monetary payment due hereunder within seven (7) days after receipt of written notice that the same shall be due or if the Tenant shall breach or fail to perform any other agreement herein and shall fail to commence to cure such breach or to commence to perform such agreement within thirty (30) days after written notice from the Landlord, Landlord in either such event shall have the option to:

(i) to maintain this Lease in full force and effect, whereupon Landlord shall have the right to sue for all amounts of Minimum Rental and other amounts payable by Tenant to Landlord hereunder as the same come due; or

(ii) to terminate this Lease and repossess and retain the premises and the permanent improvements, whereupon Landlord shall have the right to recover from Tenant the present value of all Minimum Rental and other amounts to accrue under this Lease, discounted at the rate of ten percent (10%) per annum, less the cash market value of this Lease for the unexpired portion of the term; or

(iii) to terminate Tenant's right to possession of the premises without terminating this Lease, whereupon Landlord shall have the right (but not the obligation) to repossess the premises and the permanent improvements, to attempt to Lease them to another tenant, and to recover from Tenant all amounts of Minimum Rental and other amounts payable by Tenant to Landlord hereunder as same come due and as reduced by the rental, if any, received by Landlord for the pertinent Lease period from the other tenant, if any, after recovery of all reasonable expenses incurred by Landlord in effecting any reletting of the premises; provided, however, that if Landlord elects or is deemed to have elected to proceed under this subparagraph (iii), then Landlord may at any time thereafter elect to terminate this Lease pursuant to subparagraph (ii).

The remedies provided in this section shall not be exclusive and in addition thereto the Landlord may pursue such other remedies as are provided by law in the event of

any breach or default by Tenant. Landlord agrees to use its reasonable efforts to mitigate its damages.

17.2 In the event Tenant shall be adjudicated a bankrupt or insolvent or take the benefit of any reorganization or composition proceeding or insolvency law or make a voluntary assignment for the benefit of creditors or if Tenant's leasehold interest under this Lease shall be sold under any execution or process of law or if a receiver shall be appointed for Tenant and is not discharged in ninety (90) days and if after thirty (30) days additional notice to Tenant that Landlord desires to terminate this Lease such condition is not cured or remedied, then and thereafter Landlord shall have the right and option to terminate this Lease.

17.3 If Landlord should default or fail to perform any covenant, agreement, undertaking or obligation imposed upon it in this Lease, and such default shall continue for a period of thirty (30) days after service of written notice thereof upon Landlord by Tenant, Tenant may, at its option, upon ten (10) additional days notice served upon Landlord, perform such covenant, agreement, undertaking or obligation for and on behalf of Landlord, and recover damages against Landlord for breach thereon. In addition to the above, Tenant shall have and possess and be entitled to assert all rights and remedies for such default as may then be afforded by applicable statutory or common law to enforce the lease terms, seek damages or both.

SECTION 18. CONDEMNATION

18.1 In the event the leased premises or any part thereof shall be condemned (which shall include any taking of public or quasi-public use under any statute, or by right of eminent domain, or by sale under threat of eminent domain), the interests of Landlord and Tenant in the award or consideration for such transfer and the effect of the taking or transfer on this Lease shall be as follows:

(a) All damages (or settlement in lieu thereof) awarded for any such taking under the power of eminent domain, whether for the whole or part of the leased premises shall be prorated between the Landlord and the Tenant in the following manner. That portion of the award which is reasonably attributable to the land shall belong to Landlord. Landlord shall not be entitled to any award made to Tenant for or reasonably attributable to loss of or damage to Tenant's trade fixtures, leasehold improvements made by Tenant, and removal of personal property or for damages for cessation and interruption of Tenant's business and leasehold estate. That portion of the award which is reasonably attributable to the building and permanent improvements shall be divided between Landlord and Tenant to the effect that Tenant shall be entitled to the unamortized value thereof based upon a twenty (20) year straight line basis from the commencement date.

(b) If the entirety of the leased premises shall be condemned, or if a portion of the leased premises shall be condemned which shall materially affect Tenant's operations in its reasonable judgment, this Lease shall terminate, provided, however, that such termination shall be without prejudice to the respective interests of Landlord and Tenant in the condemnation award or proceeds in lieu thereof as set forth herein.

SECTION 19. ACCESS EASEMENT AND USE OF PROPERTY

19.1 Landlord hereby grants to Tenant during the term of this Lease a non-exclusive license to provide automobile access to Beltline Road over Landlord's adjacent property as shown on Exhibit "A" for the benefit of the Leased Premises. Tenant does hereby grant to Landlord and its future tenant or successor and assign a non-exclusive license to use, without charge, a portion of the Leased Premises as shown on Exhibit "A" to provide vehicular access from Belt Line Road for the benefit of the Landlord's adjacent property. The nonexclusive licenses granted herein to Tenant and Landlord shall be for the purpose of foot and vehicular ingress and egress. Landlord and Tenant shall not erect any curb or barrier between the Leased Premises and the Landlord's property which would interfere with the traffic, and shall cooperate with each other in providing reciprocal access between them. Tenant, at all times, shall maintain in good condition and repair the hard surface paving constructed on its tract and insure that ingress and egress shall not be impeded, and that the access drive to Belt Line Road shall not be altered without the consent of Landlord and Tenant, which consent will not be unreasonably withheld. Landlord agrees that if it shall lease its adjacent property to another tenant, it shall require such tenant to maintain in good condition and repair the hard surface paving constructed on its adjacent tract and insure that the ingress and egress shall not be impeded, and that the access drive to Belt Line Road shall not be altered without the consent of Landlord and Tenant, which consent will not be unreasonably withheld. Prior to the leasing of the adjacent tract by Landlord, Tenant, at its sole cost, shall have the right to make the necessary improvements to the access area to allow vehicular ingress and egress to Belt Line Road across Landlord's adjacent property.

19.2 Landlord agrees that during the term of this Lease, or until any change in use pursuant to this Lease, or until termination of this Lease, whichever shall first occur, Landlord shall not lease, sublease or otherwise operate or contract, by conveyance or otherwise, on the adjacent premises owned by Landlord a food service establishment featuring or specializing in the sale, at retail, of homestyle cooking featuring chicken-fried type entrees and fresh vegetables, cobblers, pies and fresh-baked breads. The term "featuring or specializing," for the purpose of this provision, shall mean that all such items as aforesaid, shall be identified as major menu items in terms of sale volumes or public identification. Examples of prohibitive restaurants are Po Folks Restaurant, Good Eats Restaurant, Country Kitchen Restaurant and Old Country Buffet Restaurant. All other types of restaurants not featuring or specializing in the aforementioned foods are specifically authorized. Landlord shall include in any lease of the adjacent property a prohibition upon the proposed tenant from operating an establishment that conflicts with the provisions of this paragraph for the benefit and enforcement of Tenant herein. Additionally, Landlord shall require in the lease of the adjacent property that the lessee will furnish to the Landlord sufficient records of revenues generated from the lessee's operations in order to verify that the restaurant is being operated in accordance with the foregoing prohibition. This information will be furnished to Tenant upon Tenant's written request. Tenant's right to request information from the lessee shall only be authorized if the lessee operates a food service establishment featuring or specializing home-style cooking of the items provided for hereinabove.

In no event shall the Landlord's property adjacent to the leased premises be used or occupied by any party in which over forty percent (40%) of its sales shall be of alcoholic beverages.

19.3 Landlord has advised and furnished Tenant a copy of that certain Mutual Access and Easement Agreement dated December 19, 1986, by and between Daryl N. Snadon and the Town of Addison, Texas ("Mutual Access and Easement Agreement"). Tenant does hereby agree to abide by the terms and conditions set forth in such Mutual Access and Easement Agreement, and furthermore, Tenant, during the term of this Lease, agrees to assume and perform each of the conditions and obligations imposed upon Landlord by the Mutual Access and Easement Agreement. Landlord warrants and covenants that Tenant shall be entitled to the benefits of the Mutual Access and Easement Agreement as granted to Landlord therein during the term of this Lease.

SECTION 20. MECHANICS' AND MATERIALMEN'S LIENS

20.1 Tenant covenants and agrees with Landlord that from and after the date of execution hereof, Tenant will keep the leased premises free and clear of any and all mechanics' and/or materialmen's liens on account of any construction, repair, alteration or improvements which Tenant shall by virtue of the conduct of alleged conduct of Tenant, and in the event that Tenant will cause the same to be removed as against the leased premises, Tenant will cause the same to be removed as against the leased premises by posting of the necessary bond or indemnification within thirty (30) days from and after such time as said lien shall have attached to, or be asserted upon or against the leased premises. Tenant shall indemnify and hold harmless the Landlord from any and all losses or expenses arising from the discharge of any such lien that shall attach to the leased premises.

SECTION 21. ENVIRONMENTAL MATTERS

21.1 Landlord and Tenant agree to the following with respect to environmental matters.

(a) Landlord's Representations and Warranties. Landlord represents and warrants to Tenant that, to Landlord's knowledge, which shall be limited to the knowledge of the current Mayor, City Councilman and City Manager after due inquiry, (i) no hazardous substance, including, without limitation, asbestos-containing materials and electrical transformers or ballasts containing PCBs, are present, or were installed, exposed, released or discharged in, on or under the leased premises at any time during or prior to Landlord's ownership thereof, except for the asbestos materials used in the construction of the buildings situated on the premises which has been subsequently removed, (ii) no storage tanks for gasoline or any other substance are or were located on the leased premises at any time during or prior to Landlord's ownership thereof, except as noted on the materials previously delivered to Tenant which Tenant acknowledges receipt and is identified by undated letter from Cheryl Nichols to Tom Rodgers with attachments, and (iii) the leased premises and the improvements have been used and operated in compliance with all applicable local, state and federal laws, ordinances, rules, regulations and orders, and Landlord has all permits and authorizations required for the use and operation of the leased premises.

(b) Covenants. Tenant shall at all times comply with applicable local, state and federal laws, ordinances and regulations relating to Hazardous Substances. Tenant shall at its own expense maintain in effect any permits, licenses

or other governmental approvals, if any, required for Tenant's use of the premises. Tenant shall make all disclosures required of Tenant by any such laws, ordinances and regulations, and shall comply with all orders, with respect to Tenant's use of the premises, issued by any governmental authority having jurisdiction over the premises and take all action required of such governmental authorities to bring the Tenant's activities on the premises into compliance with all laws, rules, regulations and ordinances relating to Hazardous Substances and affecting the premises. Landlord shall make all disclosures required of Landlord by any such laws, ordinances and regulations, and shall comply with all orders issued by any governmental authority having jurisdiction over the premises and take all action required of such governmental authorities to bring the leased premises into compliance with all laws, rules, regulations and ordinances relating to Hazardous Substances and affecting the leased premises.

(c) Notices. If at any time Tenant or Landlord shall become aware, or have reasonable cause to believe, that any Hazardous Substance has been released or has otherwise come to be located on or beneath the leased premises, such party shall, immediately upon discovering the release or the presence or suspected presence of the Hazardous Substance, give written notice of that condition to the other party. In addition, the party first learning of the release or presence of a Hazardous Substance on or beneath the premises, shall immediately notify the other party in writing of (i) any enforcement, cleanup, removal, or other governmental or regulatory action instituted, completed, or threatened pursuant to any Hazardous Substance laws, (ii) any claim made or threatened by any person against Landlord, Tenant, the premises and improvements arising out of or resulting from any Hazardous Substances, and (iii) any reports made to any local, state, or federal environmental agency arising out of or in connection with any Hazardous Substance.

(d) Indemnity. Landlord shall indemnify, defend (by counsel acceptable to Tenant), protect, and hold harmless Tenant and each of Tenant's partners, directors, officers, employees, agents, attorneys, successors, and assigns, from and against any and all claims, liabilities, penalties, fines, judgments, forfeitures, losses, costs, or expenses (including attorney's fees, consultants' fees, and expert fees) for the death of or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by (i) the presence in, on, under, or about the premises or the improvements, or any discharge or release in or from the premises or the improvements of any Hazardous Substance, caused by Landlord or existed at the time of the Lease, except to the extent that any such presence, discharge, or release is caused by Tenant's activities on the premises, or (ii) Landlord's failure to comply with any Hazardous Substance law. Tenant shall indemnify, defend (by counsel acceptable to Landlord), protect, and hold harmless Landlord, and each of Landlord's partners, public officials, directors, officers, employees, agents attorneys, successors, and assigns, from and against any and all claims, liabilities, penalties, fines, judgments, forfeitures, losses, costs, or expenses (including attorney's fees, consultants' fees, and expert fees) for the death of or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by (i) the presence in, on, under, or about the premises, the improvements or any discharge or release in or from the premises, the improvements of any Hazardous Substance but only to the extent that any such presence, discharge, or release is caused by Tenant's activities on the

premises, or (ii) Tenant's failure to comply with any Hazardous Substance law, to the extent that compliance is required on account of Tenant's activities on the premises and not to the extent that compliance is required solely because Tenant, as the occupant of the premises, is held accountable for Hazardous Substances on, in, under, or about the leased premises, or released from the leased premises which are not caused by or released on account of Tenant's activities. The indemnity obligation created hereunder shall include, without limitation, and whether foreseeable or unforeseeable, any and all costs incurred in connection with any site investigation, and any and all costs for repair, cleanup, detoxification or decontamination, or other remedial action of the premises and improvements. The obligations of the parties hereunder shall survive the expiration or earlier termination of this Lease.

(e) Limited Indemnity. With regards to any discharge or release in or on the premises or the improvements of any Hazardous Substance by any third party which results in the death of or injury to any person or damage to any property whatsoever, Landlord and Tenant agree as follows:

(i) Landlord shall indemnify, defend, protect and hold harmless Tenant and each of Tenant's partners, directors, officers, employees, agents, attorneys, successors and assigns, from and against any and all claims, liabilities, penalties, fines, judgments, forfeitures, costs or expenses (including attorneys' fees, consultants' fees and expert fees) for any and all costs for cleanup, detoxification or decontamination or other remedial action on the premises.

(ii) If the building upon the leased premises is contaminated and requires Tenant to cease its business therein for a period of more than six months, Tenant shall have the option to terminate this Lease and require the Landlord to reimburse if of its unamortized cost of the building based upon a 20-year straight line basis from the Commencement Date to the date of the incident; and Landlord shall receive all insurance proceeds, if any, relating to the building.

(iii) During the time Tenant's operations have ceased upon the leased premises due to the hazardous waste contamination, the rent shall be abated and the lease term hereof shall be extended for the number of days during which Tenant's operations have ceased.

(iv) Except for each party's respective negligence, Landlord and Tenant shall not be liable to each other for any additional costs and expenses or losses other than set forth above in the foregoing subparagraphs.

(v) Landlord shall use due diligence to remove or cleanup the hazardous waste.

21.2 Hazardous Substances. As used in this Agreement, the term "Hazardous Substances" means any hazardous or toxic substances, materials or wastes, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302)

and amendments thereto, or such substances, materials and wastes which are or become regulated under any applicable local, state or federal law.

SECTION 22. MISCELLANEOUS

22.1 Landlord covenants, represents and warrants that it has full right and power to execute and perform this Lease and to grant the estate demised herein, and that Tenant, so long as it is not in default of the Lease, shall peaceably and quietly have, hold and enjoy the demised premises during the full term of this Lease and any extension or renewal thereof.

22.2 This Lease and the covenants, agreements, restrictions and conditions herein contained shall bind, and the benefits and advantages hereof shall inure to the respective heirs, legal representatives, successors and assigns of the parties hereto. This Lease shall be governed by the laws of the State in which the leased premises are located.

22.3 Whenever used the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders. This instrument may be executed in counterparts, each of which shall be deemed original, but all of which together shall constitute one and the same instrument.

22.4 Any notice required or permitted to be served under this Lease shall be served by delivery in person or by placing the same in the United States registered or certified mail, postage and costs prepaid, addressed to the other party at the address set forth below or at such other address as such party may designate by notice to the other in writing:

<u>Landlord</u>	<u>Tenant</u>
Town of Addison Attn: City Manager P. O. Box 144 Addison, TX 75001	Prufrock Restaurants, Inc. Attn: President 8115 Preston Road, LB 7 Dallas, TX 75225

22.5 Each party agrees that from time to time, upon not less than ten (10) days prior written notice by the other party, it will deliver to the other party a statement in writing certifying that:

(a) The Lease is unmodified and in full force and effect (or if there have been modifications, that the Lease as modified is in full force and effect).

(b) The dates to which rent and other charges have been paid.

(c) The other party is not in default under any provisions of the Lease or if in default the nature thereof in default.

(d) Any such other Lease information related to the Leased Premises as may reasonably be requested.

22.6 Each party agrees that it will, upon request of the other, execute and deliver a Memorandum of Lease in recordable form for the purpose of giving record notice of this Lease.

22.7 Landlord and Tenant acknowledges and represents to each other that Frank N. Bullock, Inc. (FNB) and United Commercial Realty (UCR) have acted as broker in connection with this Lease, and that each party has had no dealings with any broker or agent other than FNB and UCR. Landlord has made separate agreements with UCR and FNB for payment of brokers' fees and Tenant shall have no liability to UCR or FNB for any brokerage fee. In the separate agreement between Landlord and FNB, Landlord has agreed to pay a commission of \$26,374.80, which amount shall be payable as provided in the separate agreement.

22.9 The execution by Tenant of this Lease and the delivery of the same shall constitute an offer, which shall automatically expire unless counterparts of the Lease duly executed by Landlord have been delivered to Tenant on or before ten (10) days following Tenant's execution hereof.

22.10 For purposes of this Agreement, the "date of this Agreement" shall be deemed to be the latter of the dates of execution of this Agreement by Landlord and Tenant, such dates being inserted opposite the signatures of Landlord and Tenant. Such latter date shall be inserted in the preamble on page 1 of this Agreement.

22.11 If (a) Tenant fails to make any payment currently due under this Lease after notice to Tenant and Tenant's failure to cure after five (5) business days when due or (b) Landlord incurs any cost or expense as a result of Tenant's default under the Lease, then Tenant shall pay, upon demand, interest from the date such payment was due or from the date Landlord incurred such cost or expenses relating to the performance of any such obligation or Tenant's default, as the case may be, plus the payment due under (a), or the amount of such reasonable cost and expenses incurred under (b). Failure to insist upon payment on any one or more instances shall not constitute a waiver, and it is understood that is an addition to any other express charges provided for in this Lease. The term "Interest" shall mean interest at the rate of ten percent (10%) per annum.

22.12 If any action or proceeding is commenced in which either party intervenes or is made a party by reason of being a party under this Lease, or if either party shall deem it necessary to engage an attorney to institute any suit against the other in connection with the enforcement of and its rights under the Lease, then the prevailing party shall be entitled to reimbursement from the other party for its reasonable expenses incurred as a result thereof, including without limitation, court costs and reasonable attorneys' fees.

LANDLORD:

~~TOWN OF ADDISON~~

Date: June 13, 1991

By: Ra. Williams

TENANT:

PRUFROCK RESTAURANTS, INC.

Date: June 12, 1991

By: Theodore J. P. Gail

Council Agenda Item: #R7

SUMMARY:

To consider approval of the contract for service between the Town of Addison and the Texas Chamber Orchestra in the amount of \$15,000 as authorized in the FY 2004/05 Hotel Fund budget.

FINANCIAL IMPACT:

Budgeted Amount: \$30,000

Cost: \$15,000

BACKGROUND:

During the FY 2004/05 budget process, the Texas Chamber Orchestra (TCO) made an initial request in the amount of \$75,000. However, the City Council formally approved the funding amount for \$30,000. However, during the budget process deliberations, it was discovered that TCO's Executive Director had resigned. It was also discovered that TCO had not completed its scheduled performances at Anne Frank Elementary and Janie Elementary and was canceling their outdoor performances at Oktoberfest due to a visa problem with the visiting German conductor. As a result of their organizational problems, the Orchestra has cancelled all of their scheduled season performances at the Theatre Centre except for the May 7, 2005 (which is still tentatively scheduled) performance.

Since then, the Orchestra has hired a new Executive Director that is experienced in non-profit fundraising and organizational management. Consequently, staff has been in discussions with them in order to salvage their season and determine the appropriate performances and venues to make up for the missed performances in 2004.

In order to receive the funding amount of \$15,000, the Texas Chamber Orchestra shall agree and provide the following services in FY 2004/05:

- Reschedule one (1) free children's concert at Janie Stark Elementary School and one (1) free concert at Anne Frank Elementary School during the 2005 spring semester.
- Reschedule two (2) outdoor concerts for Symphonic Saturdays at Addison Circle Park on a mutually agreed upon date.
- One (1) concert at the Addison Theatre Centre on May 7, 2005.
- One (1) concert at Kaboom Town on July 3, 2003 in Addison Circle Park.
- Provide a full-page promotional advertisement for the Town in the season program.
- Detailed quarterly financial statements and program results to the City.
- Receive payment from the Town only after the May and Kaboom Town performances in two separate \$7,500 payments.

RECOMMENDATION:

It is recommended that the City Council approve a resolution authorizing the City Manager to enter into a contract with the Texas Chamber Orchestra for an amount not to exceed \$15,000. This contract shall be subject to final review and approval by the City Attorney.

STATE OF TEXAS

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CONTRACT FOR SERVICES

COUNTY OF DALLAS

This Contract for Services is made and entered into as of the 1st day of October, 2004 by and between the Town of Addison, Texas (the “City”), and the Texas Chamber Orchestra (the “Orchestra”).

WITNESSETH:

WHEREAS, the Orchestra is a private, non-profit organization established under the laws of the State of Texas for the purpose of providing concerts of great music and educational opportunities for adults and children within the cities of Addison, Carrollton, Coppell and Farmers Branch; and

WHEREAS, the Orchestra’s productions and work attract tourists to and encourages tourism in the City, and the City has an interest in attracting such tourists and promoting tourism to the area in order to receive the economic benefits associated therewith.; and

WHEREAS, it is the City’s desire to encourage and promote the arts, including, without limitation, music; and

WHEREAS, the City is authorized to expend revenues from its hotel occupancy tax for the encouragement, promotion, improvement, and application of the arts, including, without limitation, music, and desires to encourage and promote the arts (including music) through the execution of this Contract for Services.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the Town of Addison, Texas and the Texas Chamber Orchestra do hereby contract, covenant and agree as follows:

I. TERM

The term of this contract and agreement shall be for a period of one year from the 1st day of October, 2004 through the 30th day of September, 2005, except as otherwise provided for herein.

II. SERVICES

The Orchestra shall provide the following services:

- (a) Re-schedule within the spring semester 2005, a free children’s concert at Janie Stark Elementary School and at Anne Frank Elementary School.
- (b) Re-schedule two (2) outdoor concerts to be held in Addison Circle Park at a mutually agreed upon date.

- (c) Provide one (1) season concert at the Addison Theatre Centre on May 7, 2005. The Orchestra shall contact the Addison Theatre Centre for the purposes of coordinating the concerts.
- (d) Provide one (1) musical performance at Kaboom Town on July 3, 2005 in Addison Circle Park.
- (e) Provide a full-page promotional advertisement for the Town in the season program.
- (f) Submit detailed quarterly financial statements and program results to the City within thirty (30) days after the end of the preceding quarter listing the expenditures made by the Orchestra with the revenues received pursuant to this Contract.

III. COMPENSATION

For the operation and provision of the services, projects and programs of the Orchestra as described herein, the City shall pay the Orchestra the sum of fifteen thousand and No/100 Dollars (\$15,000.00). Such sum shall be paid in the amount of Seven Thousand Five Hundred and No/100 Dollars (\$7,500.00) upon the receipt of a statement after May 7, 2005, and in the amount of Seven Thousand Five Hundred and No/100 Dollars (\$7,500.00) upon the receipt of a statement after July 3, 2005, provided the Orchestra is not then in default of this Contract. The Chamber shall provide its monthly financial statements to the City Manager. Such reports shall include statements of revenues and expenses. The City Manager shall also receive a copy of a quarterly report of program activities. No payment shall be made during any period in which this provision is not complied with. Within 90 days following the termination of the Orchestra's fiscal year, a financial statement for the Orchestra prepared by a Certified Public Accountant of all activities funded by this Contract shall be provided to the City Manager. Such statement shall provide sufficient information as to support the accuracy of the monthly financial statements.

IV. RESPONSIBILITY; INDEMNIFICATION

(A) The Orchestra agrees to assume and does hereby assume all responsibility and liability for damages or injuries sustained by persons or property, whether real or asserted, by or from the performance of services performed and to be performed hereunder by the Orchestra, its officials, officers, employees, agents, servants, invitees, contractors, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

(B) In consideration of the granting of this CONTRACT, the Orchestra agrees to defend, indemnify and hold harmless the town of Addison, Texas, its, officers, agents and employees (each an "Indemnatee") 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 the Orchestra's performance of this Agreement, including Damages caused by the Indemnatee'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.

(C) With respect to the Orchestra's indemnity obligation set forth in subsection (B) OF THIS SECTION, the Orchestra shall have no duty to indemnify an Indemnitee for any Damages caused by the sole negligence of the Indemnitee, OR SOLE GROSS NEGLIGENCE OF THE INDEMNITEE, OR SOLE CONDUCT OF THE INDEMNITEE THAT MAY OR DOES EXPOSE THE INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY.

(c) If an Indemnitee suffers Damages arising out of or in connection with the performance of this Agreement that are caused by the concurrent negligence, GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES RESULT IN EXPOSURE TO STRICT LIABILITY, of both the Orchestra and the Indemnitee, the Orchestra's indemnity obligation set forth in subsection (B) OF THIS SECTION will be limited to a fraction of the total Damages equivalent to the Orchestra's own percentage of responsibility.

(d) With respect to the Orchestra's duty to defend set forth herein in subsection (B) OF THIS SECTION, the Orchestra shall have the duty, at its sole cost and expense, through counsel of its choice, to litigate, defend, settle or otherwise attempt to resolve any claim, lawsuit, cause of action, or judgment arising out of or in connection with this Agreement; provided however, that the Town shall have the right to approve the selection of counsel by the Orchestra and to reject the Orchestra's selection of counsel and to select counsel of the Town's own choosing, in which instance, the Orchestra shall be obligated to pay reasonable attorney fees and the expenses associated thereto. The Town agrees that it will not unreasonably withhold approval of counsel selected by the Orchestra, and further, the Town agrees to act reasonably in the selection of counsel of its own choosing.

(e) In the event that the Orchestra fails or refuses to provide a defense to any claim, lawsuit, judgment, or cause of action arising out of or in connection with this Agreement, the Town shall have the right to undertake the defense, compromise, or settlement of any such claim, lawsuit, judgment, or cause of action, through counsel of its own choice, on behalf of and for the account of, and at the risk of the Orchestra, and the Orchestra shall be obligated to pay the reasonable and necessary costs, expenses and attorneys' fees incurred by the Town in connection with handling the prosecution or defense and any appeal(s) related to such claim, lawsuit, judgment, or cause of action.

(F) THE INDEMNITY, HOLD HARMLESS, AND DEFENSE OBLIGATIONS OF THE ORCHESTRA SET FORTH HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS CONTRACT

V. TERMINATION

This Contract may be canceled and terminated by either party at any time and for any reason upon giving at least thirty (30) days written notice of such cancellation and termination to the other party hereto. Such notice shall be sent certified mail, return receipt requested, and to the most recent address shown on the records of the party terminating the Contract. The thirty (30) day period shall commence upon deposit of the said notice in the United States mail and shall conclude at midnight of the 30th day thereafter. In the event of such cancellation and termination and if Orchestra has failed at the time of such cancellation and termination to provide all of the services set

forth herein, Orchestra shall refund to the City that portion of funds paid to Orchestra under the terms of this Contract in accordance with the following: Prorata funding returned to the City by Orchestra shall be determined by dividing the amount paid by the City under this Contract by 365 (the "daily rate"), and then multiplying the daily rate by the number of days which would have remained in the term hereof but for the cancellation or termination. Upon payment or tender of such amount, all of the obligations of Orchestra and the City under this Contract shall be discharged and terminated (except as otherwise provided herein) and no action shall lie or accrue for additional benefit, consideration or value for or based upon the services performed under or pursuant to this Contract.

VI. CONFLICT OF INTEREST

(a) No officer or employee of the City shall have any interest or receive any benefit, direct or indirect, in this Contract or the proceeds thereof. This prohibition is not intended and should not be construed to preclude payment of expenses legitimately incurred by City officials in the conduct of the City's business.

(b) For purposes of this section, "benefit" means anything reasonably regarded as an economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include contributions or expenditures made and reported in accordance with any law.

VII. ACCOUNTING

Prior to adopting its annual budget, Orchestra shall submit for the City's review a budget showing the use of the City's funds provided pursuant to this Contract, and Orchestra shall make such periodic reports to the City, as provided for herein, listing the expenditures made by Orchestra from the funds provided by the City. The approval of Orchestra's annual budget creates a fiduciary duty in Orchestra with respect to the funds provided by the City under this Contract.

The funds paid to Orchestra pursuant to this Contract shall be maintained in a separate account established for that purpose and may not be commingled with any other money. Funds received hereunder from the City may be spent for day to day operations, supplies, salaries and other administrative costs provided that such costs are necessary for the promotion and encouragement of the purposes for which the funds may be used as described herein.

Orchestra shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the twenty-first (21st) day after the close of each quarter (beginning with the quarter ending December 31, 2004, with the last quarter ending September 30, 2005), Orchestra shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by Orchestra of the funds paid to Orchestra under this Contract; and (b) a year-to-date report of the expenditures made by Orchestra of the funds paid to Dance Council under this Contract (and if this Contract is terminated prior to its expiration, Orchestra shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, Orchestra shall make its records available for inspection and review by the City or its

designated representative(s). Within ninety (90) days of the end of Orchestra's fiscal year, Orchestra shall provide the City with a financial statement signed by the Chairman of Orchestra's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth Orchestra's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

VIII. INDEPENDENT CONTRACTOR

In performing services under this Contract, the relationship between the City and Orchestra is that of independent contractor, and the City and Orchestra by the execution of this Contract do not change the independent status of Orchestra. No term or provision of this Contract or action by Orchestra in the performance of this Contract is intended nor shall be construed as making Orchestra the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship.

IX. NON-ASSIGNABILITY

Orchestra may not and shall have no authority to assign, transfer, or otherwise convey by any means whatsoever this Contract or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City, and any attempted assignment, transfer, or other conveyance of this Contract without such approval shall be null and void and be cause for immediate termination of this Contract by the City.

X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

Nothing contained in this Contract shall be deemed to constitute that the City and Orchestra are partners or joint venturers with each other, or shall be construed or be deemed to establish that their relationship constitutes, or that this Contract creates, a joint enterprise.

XI. COPYRIGHT

Orchestra assumes full responsibility for complying with all United States laws and treaty terms pertaining to intellectual property issues and any applicable regulations, including but not limited to the assumption of all responsibilities for paying all royalties which are due for the use of domestic or foreign copyrighted works in Orchestra's performances, transmissions or broadcasts, and Orchestra, without limiting any other indemnity given by Orchestra as set forth herein, agrees to defend, indemnify, and hold harmless the City, its officials, officers, employees, and agents, for any liability, claims or damages (including but not limited to court costs and reasonable attorney's fees) growing out of Orchestra's infringement or violation of any statute, treaty term or regulation applicable to intellectual property rights, including but not limited to copyrights.

XII. NON-DISCRIMINATION

During the term of this Contract, Orchestra agrees that it shall not discriminate against any employee or applicant for employment because of race, age, color, sex or religion, ancestry, national origin, place of birth, or handicap.

XIII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS

Orchestra shall observe and abide by, and this Contract is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended.

XIV. VENUE; GOVERNING LAW

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

XV. COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

XVI. NO WAIVER; RIGHTS CUMULATIVE

The failure by either party to exercise any right or power, or option given to it by this Contract, or to insist upon strict compliance with the terms of this Contract, shall not constitute a waiver of the terms and conditions of this Contract with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. The rights or remedies under this Contract are cumulative to any other rights or remedies, which may be granted by law.

XVII. NOTICES

All notices, communications and reports, required or permitted under this Contract shall be personally delivered or mailed to the respective parties using certified mail, return receipt requested, postage prepaid, at the addresses shown below. The City and Orchestra agree to provide the other with written notification within five (5) days, if the address for notices, provided below, is changed. Notices by personal delivery shall be deemed delivered upon the date delivered; mailed notices shall be deemed communicated on the date shown on the return receipt. If no date is shown, the mailed notice shall be deemed communicated on the third (3rd) day after depositing the same in the United States mail.

The City's address:

Mario Canizares
Assistant to the City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

Orchestra's address:

P.O. Box 111333
Carrollton, Texas 75011
Attn: _____

XVIII. SEVERABILITY

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

XIX. AUTHORITY TO EXECUTE CONTRACT

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

XX. ENTIRE AGREEMENT

This Contract represents the entire and integrated contract and agreement between the City and Orchestra and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Contract may be amended only by written instrument signed by both the City and Orchestra.

IN WITNESS THEREOF, the parties hereto have caused this Contract to be signed by their proper corporate officers as first above specified, and have caused their proper corporate seal to be hereto affixed the day and year first above written.

TOWN OF ADDISON, TEXAS

TEXAS CHAMBER ORCHESTRA

By: _____
Ron Whitehead, City Manager

By: _____
Chairman of the Board

ATTEST:

ATTEST:

By: _____
Carmen Moran, City Secretary

By: _____

Council Agenda Item: #R8

SUMMARY:

Discussion about revenue generated from Taste Addison admission fees and approval to increase the admission fee from \$5 to \$8 after 5 pm on Friday and Saturday evenings.

FINANCIAL IMPACT:

Current revenue @ \$5 during all hours plus \$5 fee per car for parking = **\$292,105**.

Proposed revenue @ \$5 before 5 pm on Saturday and all day on Sunday and \$8 on Friday night and from 5 pm – close on Saturday = **\$370,300**

Potential net gain in revenue = **\$78,195**

BACKGROUND:

See attached memorandum from Barbara Kovacevich and Bryan Langley

RECOMMENDATION:

Staff recommends approval.



MEMORANDUM

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

DATE: February 14, 2005

TO: Chris Terry, Assistant City Manager

FROM: Barbara Kovacevich, Special Event Manager
Bryan Langley, Assistant Finance Director

RE: Taste Addison Admission Fee

We would like to place an agenda item on the February 22, 2005 City Council Agenda to discuss the Taste Addison admission fee and to seek the City Council's approval to increase the admission fee as defined below as well as eliminate the \$5 per car parking fee.

Background: As you are aware, the cost of producing events continues to rise every year primarily due to salary increases for city staff, rental fees and entertainment costs. Staff is constantly looking for ways to reduce expenses and increase revenue while maintaining a quality event. The marketing and operations budget for Taste Addison 2004 was \$516,242, which was offset by \$420,387 in revenue. The 2005 budget is \$554,110 and projected revenue is \$490,000 so there is approximately \$64,110 additional dollars needed to meet the goal of breaking even on the event.

Admission Fee: To generate additional revenue to cover the increasing expenses, we propose that the admission fee be increased during peak hours of the event. Beginning at 5 p.m. on both Friday and Saturday, we propose that the admission fee be increased to \$8 from the current rate of \$5. A \$5 admission fee has been charged for the past three years and attendance has increased an average of 8% during that time. The following table summarizes the potential revenue related to the proposed admission fee structure:

Day	Attendance (based on 2004)	\$5 Admission / \$5 Parking	\$8 Admission (After 5 p.m.)
Friday (new in 2005)	10,000 (est)	\$50,000 (est)	\$80,000 (est)
Saturday Before 5	8,900	\$44,500	\$44,500 (\$5)
Saturday After 5	21,600	\$108,000	\$172,800
Sunday	14,600	\$73,000	\$73,000 (\$5)
Parking (Net)	NA	\$16,605	\$0 (see note below)
TOTAL	55,100	\$292,105	\$370,300
Variance (from 2004 \$)	NA	NA	\$78,195

When comparing the proposed fee structure to other similar events in the Metroplex (see below table), we believe the Taste Addison event will continue to offer a compelling mix of entertainment and value to our patrons. As such, we do not expect the increased admission fee to have a material effect on attendance.

Parking:

Free parking should be considered again if the admission fee increases after 5 pm on Friday and Saturday. Net parking revenue from Taste Addison 2004 was \$16,605 so the return on the investment may not be worth the inconvenience to the garage owners/tenants as well as the increased cost to the festival patron.

Logistics:

Signage should be displayed at the event that clearly states the event prices. A 15-minute “grace period” is recommended so someone can still get in for the reduced admission fee if they complain about the price increase because they were in line or had trouble parking, etc. The admission fees should be publicized in the marketing materials and on the website so the public can make an informed decision.

The Finance Department will continue to increase the staffing level during peak times and will have plenty of small bills available to make change at the admission kiosks. A greeter position may also prove helpful to keep the lines moving efficiently.

Other Events/Attractions:

Event/Attraction	Weekend Pass	Daily Adult Pass	Kids Pass	Seniors/Other	Parking
Wildflower!	\$20 (3 days)	\$15	\$3 (5-12 yrs)	\$5 resident	\$3
ArtFest		\$5	Free under 6		\$5
Shakespeare		\$7			\$5 Samuel Grand Free Addison
Grapevine	\$10 (3 days)	\$6	\$3 (6-12)	\$3 (62+)	Free
Plano Balloon	\$15	\$6	Free under 36"		\$10
MayFest		\$7	\$4 (6-12)	\$4	\$5 close Free remote
Nokia Theatre		\$16-\$89			\$12+
Gypsy Tea Room		\$8-\$25			\$8-\$10
WaterTower Theatre		\$15-\$30			Free
Cavanaugh Museum		\$8	\$4 (6-12)		Free
Movies		\$8.50	\$5.50	\$5.50	Free

Please let us know if you have any questions or need more information.

Council Agenda Item: #R9

SUMMARY:

To consider a resolution by the Addison City Council demonstrating to the State Legislature its opposition regarding their efforts in school finance reforms and changes in the existing taxing systems that would negatively affect the Town's revenues and efforts in providing essential services, public safety, and economic development.

FINANCIAL IMPACT:

Revenue Budgeted Amount: \$N/A

Cost: \$N/A

BACKGROUND:

For some time there has been ongoing deliberations among our state elected officials on developing a plan to resolve the current school finance problems. Unfortunately, some of the proposed ideas would negatively affect Texas cities and counties in their ability to collect revenues and as a result severely affect our abilities to provide services to citizens. For example, there are bills that have been filed that call for placing a 3% or 5% cap all property appraisals. It is believed by some state officials that once the reforms in school finance are approved, which would lower the school district property tax, that the cities and counties will rush to increase their tax rates to fill the gap.

Town staff, the Texas Municipal League (TML), and the North Texas Commission are monitoring very closely these ongoing developments. In addition, TML is warning cities that the proposals presented by some legislatures are very serious in nature and are calling upon the city elected officials to pass resolutions, write letters, place phone calls, and have face-to-face visits with their legislators explaining the negative effect these proposals will have on city budgets.

The attached resolution was developed by TML and addresses a number of reasons to oppose limitations on the ability for cities to collect property and sales tax revenues, or set tax rates.

RECOMMENDATION:

It is recommended that the City Council approve the resolution demonstrating its opposition to any school finance or taxing system reforms that would negatively affect its revenues and efforts in providing essential services, public safety, and economic development.

Impact of Proposed Appraisal Caps to the Town of Addison

Bryan Langley
Assistant Finance Director
Town of Addison
February 10, 2005

Overview

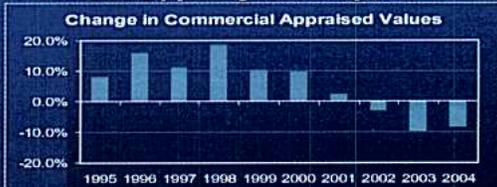
- Taxpayer equity issues
- Who pays the bill?
 - Businesses vs. Residential taxpayers
- Financial consequences during economic downturns
- Existing Truth in Taxation Laws are Sufficient

Appraisal Caps Are Not Equitable

- More affluent homeowners will receive majority of benefit for residential appraisal caps.
 - Wealthier neighborhoods experience the greatest advantage which effectively shifts the tax burden from the wealthy to the middle-class or the poor.
 - Multi-family residents (typically less affluent households) receive few benefits.
- Similar residential properties could pay dramatically different tax bills for identical services.
- Using the Market Value of a property is the only way to ensure that taxes are paid by those with the greatest ability to pay.

Who Pays the Tax Bill?

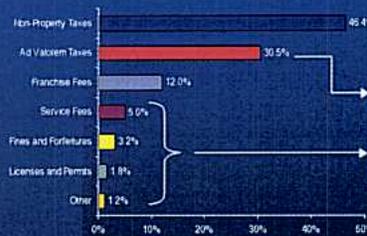
- In Addison, approximately 74% of the Town's tax base is commercial property.
- Historically, these commercial property values have fluctuated sharply during economic cycles.



Who Pays the Tax Bill?

- If commercial appraisals are capped, residential properties will be forced to shoulder more of the tax burden since their values are not typically as volatile.
 - In other words, if appraisal caps are enacted on commercial properties, the tax rate will need to be adjusted upward on residential properties to generate the same level of revenue without the caps.
- Each elected body confronts a unique situation when levying taxes.
- As such, tax matters should remain a local decision for elected officials to consider.
- These officials are directly accountable to voters under our representative form of government.

General Fund Revenue Sources



Only 41% of the FY 2004-05 General Fund revenues are directly controlled by the Town. Remaining revenues are dependent on the overall economic performance of the area.
NOTE: A large portion of the Town's service fees are related to 911 fees. These fees cannot be changed by the Town.

Financial Consequences

- Approximately 59% of the Town's General fund revenue is purely dependent on the overall economic health of the region.
- As such, it is vital that we be able to administer our valorem taxes on the market value of property.
- If the Town is unable to control our revenue stream, we will be unable to deliver our core services such as police and fire services (Approx. 52% of General fund budget).
- In short, the proposed tax reforms would infringe on the ability of the City Council to effectively govern.

Town of Addison, Texas

Truth in Taxation Laws Sufficient

- Existing Truth in Taxation laws are sufficient for explaining the impact of appraisals to the public.
- Current law provides a rollback provision if a tax increase of more than 8% is levied.
- City Council is elected and held accountable by our citizens to establish policy and set the tax rate.

Town of Addison, Texas

Summary

- No such thing as a "one size fits all" city.
- Local elected officials should make property tax determinations – they are directly accountable to the voters.
- Using market value of taxable property is the best way to levy taxes since it will:
 - Avoid the inequities of appraisal caps
 - Not shift the tax burden to residential properties
 - Avoid substantial revenue shortfalls and operational deficiencies.
- Existing Truth in Taxation Laws and the representative form of government offer sufficient protection to taxpayers.

Town of Addison, Texas

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF ADDISON, TEXAS, OPPOSING ANY SCHOOL FINANCE OR TAX SYSTEM REFORMS THAT WOULD NEGATIVELY AFFECT CITY REVENUES AND ECONOMIC DEVELOPMENT EFFORTS

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

WHEREAS, the Texas Legislature will address school finance and tax system reforms in the near future; and

WHEREAS, during these deliberations by the Texas Legislature, proposals to limit the ability of cities to collect property taxes and sales taxes are likely to be offered by some members of the Legislature; and

WHEREAS, additional restrictions on city taxes fly in the face of a history of frugal tax administration by Texas cities; and

WHEREAS, all Texas cities combined collect only 15.3 percent of all property taxes collected in the State of Texas, while schools collect more than 60 percent; and

WHEREAS, between 1985 and 2002, the municipal share of all property tax revenue fell from 20.3 percent to 15.3 percent; and

WHEREAS, Texas cities rely on tax revenue to build basic infrastructure, to ensure public safety through police and fire departments, and to provide numerous essential services for city residents, who are 80 percent of the state's population; and

WHEREAS, Texas cities engage in numerous economic development activities that produce jobs and revenue for the entire State of Texas; and

WHEREAS, cities must meet the challenges of homeland security and compliance with state and federal mandates, many of which are unfunded mandates; and

WHEREAS, Texas cities have shown over the years that they are fiscally responsible and good stewards of taxpayers' money; and

WHEREAS, efforts to limit the ability of cities to collect sales and property tax revenues or to set tax rates would have severe negative impacts on city services, city employees, economic development efforts, and ultimately the citizens of the State of Texas;

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

That the governing body of the Town of Addison will oppose all school finance or tax reform efforts by the Texas Legislature that negatively impact the ability of the Town to provide basic essential services, conduct economic development activities, and ensure public safety by limiting our ability, beyond the provisions of current law, to collect property tax or sales tax revenues.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this _____ day of _____, 2005.

Mayor R. Scott Wheeler

ATTEST:

By: _____
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: _____
Ken Dippel, City Attorney

Council Agenda Item: #R10

SUMMARY:

For the Addison City Council to consider a resolution to authorize the City Manager to negotiate and enter into a contract with a legislative advocate for the purpose of providing monitoring and consultation services to the Town during the 79th Texas Legislative Session.

FINANCIAL IMPACT:

Budgeted Amount: \$0.00

Cost: \$50,000 – not to exceed

BACKGROUND:

The 79th Texas Legislative session is well underway and many bills have been proposed that will affect cities over the long-term. During each Legislative session, the Texas Municipal League (TML) has done a good job in advocating for the interests of Texas cities by doing their part in defeating bad bills. In addition, Town staff has done a good job in keeping abreast of the activities in the legislature and continues to work with TML on behalf of all cities. However, because TML is a representative for all cities in Texas, the organization takes an inactive approach on legislative issues that affect a single community.

As a result, for a community to pursue certain legislation there needs to be an advocate working on behalf of the entity that knows the legislative process and is familiar with the political leaders in Austin. The Council has indicated to staff on a number of occasions their desire to monitor the activities during the session, and then actively pursue developments that are pertinent to Addison.

Unfortunately, Town staff does not have the resources or the contacts to be as effective as a professional legislative advocate. Therefore, staff has made a number of phone calls to consultants that have the expertise in legislative advocacy and we are receiving information regarding their backgrounds, client lists, specialties, and cost figures.

Staff is in the process of developing a short list of firms, and anticipates providing a recommendation at the February 22nd Council meeting.

RECOMMENDATION:

Staff recommends approval to authorize the City Manager to negotiate and enter into a contract with a legislative advocate.

Council Agenda Item: #R11

SUMMARY:

Council authorization to release the 2004 Comprehensive Annual Financial Report (CAFR) is requested.

FINANCIAL IMPACT:

No Financial Impact

BACKGROUND:

Attached is the Town's 2004 Comprehensive Annual Financial Report (CAFR) that thoroughly describes the Town's financial condition as of September 30, 2004. Included with the CAFR is the independent Auditors' Report prepared by Weaver and Tidwell LLP. The Auditors' Report reflects a "clean" opinion indicating the Town's finances are managed and reported in conformity with generally accepted accounting principles.

Also, please find the attached Auditors' Report to Management and the responses by Town staff.

I appreciate the efforts of Jerry Gaither and Michael Lentner at Weaver and Tidwell. They were thorough in their audit and provided valuable assistance to the Town's accounting staff.

RECOMMENDATION:

Staff recommends that the Council authorize the release of the 2004 Comprehensive Annual Financial Report.

Addison!

Finance Department

MEMO

To: Ron Whitehead
From: Randy Moravec
CC: Lea Dunn, Bryan Langley
Re: Auditor's Management Letter
Date: February 15, 2005

Please find attached the Report to Management developed by Weaver and Tidwell LLP as part of their audit of the Town's financial records for the year ending September 30, 2004.

Current Year Comments

For 2004, Weaver and Tidwell identified the following management comment in their report. This comment is not classified as a reportable condition.

Inventory

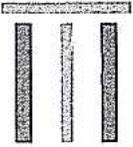
We agree with the auditor's comments. Management is currently working with our software provider to develop an automated solution to include the fuel surcharge costs in inventory. In the meantime, we will be manually adjusting these balances on a monthly basis.

Status of Prior Year Comments

As discussed in the Report to Management, the Town implemented all of the auditor recommendations related to the 2003 report.

It has been a pleasure working with the staff of Weaver and Tidwell. Their assistance with the preparation of the 2004 CAFR is greatly appreciated.

TOWN OF ADDISON, TEXAS
MANAGEMENT RECOMMENDATIONS
SEPTEMBER 30, 2004



January 27, 2005

**WEAVER
AND
TIDWELL**

L L P

CERTIFIED PUBLIC
ACCOUNTANTS
AND CONSULTANTS

The management of the Town of Addison ("the Town") is responsible for establishing and maintaining the Company's internal control. In fulfilling this responsibility, estimates and judgments by management are required to assess the expected benefits and related costs of internal control policies and procedures.

The Town's internal control consists of policies and procedures established by management to provide reasonable, but not absolute, assurance that the financial data are recorded, processed, summarized, and reported consistent with the assertions embodied in the financial statements. In establishing those policies and procedures, management assesses their expected benefits and related costs. Because of the inherent limitations in any system of internal control, errors or irregularities may nevertheless occur and not be detected. Also, projection of any assessment of internal control to future periods is subject to the risk that policies or procedures may become inadequate because of changes in conditions or that the degree of compliance with the policies or procedures may deteriorate.

In planning and performing our audit of the financial statements of the Town of Addison for the year ended September 30, 2004, we considered its internal control in order to determine our auditing procedures for the purpose of expressing our opinion on the financial statements and not to provide assurance on internal controls. Additionally, we evaluated the status of the comments from our audit of the previous year. These matters, which were considered by us during our audit of the financial statements and do not modify the opinion expressed in our report dated November 29, 2004, are presented in the following paragraphs.

Inventory

Observation

The Town maintains a clearing account to credit when fuel inventory is received and recorded in the general ledger. The amount is subsequently reclassified to accounts payable when the invoice for the fuel is received. We noted that the Town has not been including surcharges related to Texas loading fees, state gas tax, and state diesel tax in inventory when fuel was received. Because the surcharges are included on the subsequent invoice, the reclassification to accounts payable exceeded the initial amount recorded in the clearing account when the inventory was received. This resulted in a debit balance in the clearing account at year end.

Recommendation

We recommend that the Town include all costs directly incurred to acquire fuel inventory, including surcharges, as inventory in the general ledger. The clearing account should be reconciled and appropriate adjustments made on a timely basis.

DALLAS

Three Forest Plaza
12221 Merit Drive
Suite 1400
Dallas, Texas 75251-2280
972-490-1970
F 972-702-8321

FORT WORTH

1600 West Seventh Street
Suite 300
Fort Worth, Texas 76102-2506
817-332-7905
F 817-429-5936

WWW.WEAVERANDTIDWELL.COM

AN INDEPENDENT MEMBER OF
BAKER TILLY
INTERNATIONAL

Town of Addison
January 27, 2005
Page Two

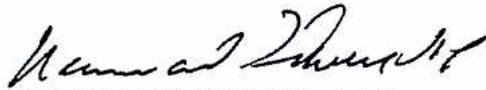
Status of Prior Year Comments

Accompanying this letter is a summary of the status of prior year's comments, which should be read along with our current observations and recommendations

Concluding Comments

If we may be of assistance in further discussion or implementation of the above comments, please feel free to call upon us. We appreciate the opportunity to be of service and wish to express our appreciation to the officers and employees of the Town for their cooperation and assistance during the course of our audit

This report is intended solely for the information and use of the Town Council and management of the Town.

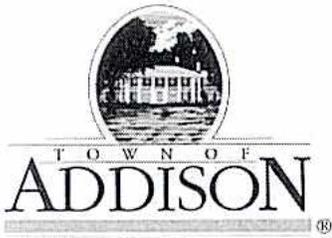


WEAVER AND TIDWELL, L.L.P.

STATUS OF PRIOR YEAR'S COMMENTS

The status of prior year's recommendations is based upon discussion with management and limited review of their implementation.

<u>Recommendations</u>	<u>Implemented</u>	<u>Not Implemented</u>	<u>Implementation In Process</u>
We recommend that the management evaluate the reasons for making the adjustments and develop a plan to make most adjustments in the future prior to the year-end close. Fewer adjustments will eliminate undue complexity in preparing financial statements and provide for a more efficient audit.	X		



February 14, 2005

Weaver and Tidwell, L.L.P.
12221 Merit Drive, Suite 1400
Dallas, Texas 75251

We are providing this letter in connection with your audit of the basic financial statements of the Town of Addison, Texas (the "Town") as of September 30, 2004 and for the year then ended for the purpose of expressing an opinion as to whether the basic financial statements present fairly, in all material respects, the financial position of the governmental activities, the business type activities, each major fund, and the aggregate remaining fund information of the Town of Addison, Texas and the respective changes in financial position and cash flows, where applicable, in conformity with U.S. generally accepted accounting principles. We confirm that we are responsible for the fair presentation of the previously mentioned financial statements in conformity with U.S. generally accepted accounting principles. We are also responsible for adopting sound accounting policies, establishing and maintaining internal control, and preventing and detecting fraud.

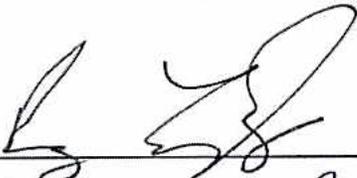
We confirm, to the best of our knowledge and belief, as of November 29, 2004, the following representations made to you during your audit:

1. The financial statements referred to above are fairly presented in conformity with U.S. generally accepted accounting principles and include all properly classified funds and other financial information of the primary government and all component units required by generally accepted accounting principles to be included in the financial reporting entity
2. We have made available to you all—
 - a. Financial records and related data
 - b. Minutes of the meetings of the Town Council or summaries of actions of recent meetings for which minutes have not yet been prepared.
3. There have been no communications from regulatory agencies concerning noncompliance with, or deficiencies in, financial reporting practices.
4. There are no material transactions that have not been properly recorded in the accounting records underlying the financial statements.
5. We acknowledge our responsibility for the design and implementation of programs and controls to prevent and detect fraud.
6. We have no knowledge of any fraud or suspected fraud affecting the Town involving:
 - a) Management,
 - b) Employees who have significant roles in internal control, or
 - c) Others where the fraud could have a material effect on the financial statements.

7. We have no knowledge of any allegations of fraud or suspected fraud affecting the Town received in communications from employees, former employees, analysts, regulators or others.
8. The Town has no plans or intentions that may materially affect the carrying value or classification of assets, liabilities, or fund equity.
9. The following, if any, have been properly recorded or disclosed in the financial statements.
 - a. Related party transactions, including revenues, expenditures/expenses, loans, transfers, leasing arrangements, and guarantees, and amounts receivable from or payable to related parties.
 - b. Guarantees, whether written or oral, under which the Town is contingently liable.
 - c. All accounting estimates that could be material to the financial statements, including the key factors and significant assumptions underlying those estimates, and we believe the estimates are reasonable in the circumstances
 - d. Joint ventures have been properly disclosed in the financial statements.
 - e. Receivables recorded in the financial statements represent valid claims against debtors for transactions arising on or before the balance sheet date and have been properly reduced to their net realizable value.
10. We are responsible for compliance with the laws, regulations, and provisions of contracts and grant agreements applicable to us; and we have identified and disclosed to you all laws, regulations and provisions of contracts and grant agreements that we believe have a direct and material effect on the determination of financial statement amounts.
11. To our knowledge, there are no—
 - a. Violations or possible violations of budget ordinances, laws and regulations, provisions of contracts and grant agreements, tax or debt limits, and any related debt covenants whose effects should be considered for disclosure in the financial statements or as a basis for recording a loss contingency.
 - b. Unasserted claims or assessments that our lawyer has advised us are probable of assertion and must be disclosed in accordance with Financial Accounting Standards Board (FASB) Statement No. 5, Accounting for Contingencies.
 - c. Other liabilities or gain or loss contingencies that are required to be accrued or disclosed by FASB Statement No. 5.
 - d. Reservation or designation of fund equity that was not properly authorized and approved.
12. The Town has satisfactory title to all owned assets, and there are no liens or encumbrances on such assets nor has any asset been pledged as collateral.
13. The Town has complied with all aspects of contractual agreements that would have a material effect on the financial statements in the event of noncompliance.

14. The financial statements properly classify all funds and activities.
15. All funds that meet the quantitative criteria in GASB Statement No. 34 for presentation as major are identified and presented as such.
16. Net asset components (invested in capital assets, net of related debt; restricted; and unrestricted) and fund balance reserves and designations are properly classified and, if applicable, approved.
17. Provisions for uncollectible receivables have been properly identified and recorded.
18. Expenses have been appropriately classified in or allocated to functions and programs in the statement of activities, and allocations have been made on a reasonable basis.
19. Revenues are appropriately classified in the statement of activities within program revenues and general revenues.
20. Interfund, internal, and intra-entity activity and balances have been appropriately classified and reported
21. Deposits and investment securities are properly classified in category of custodial credit risk.
22. Capital assets, including infrastructure assets, are properly capitalized, reported, and if applicable, depreciated.
23. Required supplemental information (RSI) is presented within prescribed guidelines.

To the best of our knowledge and belief, no events have occurred subsequent to the balance sheet date and through the date of this letter that would require adjustment to or disclosure in the aforementioned financial statements.

Signed 
Title Asst. Finance Director

Signed 
Title FINANCE DIR.

Council Agenda Item: #R12

SUMMARY:

Council is requested to have a first reading of an ordinance granting a franchise to TXU Electric Delivery Company and conduct a public hearing concerning the new franchise agreement.

FINANCIAL IMPACT:

There is no direct impact associated with conducting the public hearing. Once approved, the new franchise agreement will provide the same revenue from TXU as the Town has been receiving in the past. For the fiscal year ended 9/30/04, the Town had received \$1,568,012 for TXU's use of public right-of-ways for the distribution of electric power.

BACKGROUND:

The franchise TXU had with the Town expired the end of July 2004. Although the Town had been working with TXU for the past year to negotiate a new agreement, the company's extensive corporate reorganization and restructuring delayed finalization of negotiations until this time. Due to his extensive expertise in public utility law, the Town had Clarence West develop the new franchise agreement with TXU. Mr. West had developed the Town's comprehensive right-of-way ordinance governing the actions of companies utilizing the Town's public right-of-ways to conduct business. Attached is a memo from Mr. West summarizing the major aspects of the new franchise agreement.

The Town's city charter includes a fairly rigorous process for approving franchises. There must be two readings of the ordinance with associated public hearings prior to adoption of the ordinance. Once the ordinance is adopted, it must be published once a week for four consecutive weeks. Thirty days following adoption, the new franchise takes effect.

RECOMMENDATION:

At this time no Council action is necessary, although staff will be recommending approval of the proposed franchise agreement.

CLARENCE A. WEST

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MEMORANDUM

TO: Randy Moravec, Town of Addison

FROM: Clarence A. West, Esq.

RE: **Proposed TXU Electric Franchise**

DATE: December 29, 2004

Background

By adopting Ord. No. 1 in 1953, the Town of Addison entered into a fifty (50) year electric franchise with Texas Power and Light Company, the predecessor to Texas Utilities (“TXU”) in 1953. (“1953 Electric Franchise”). The 1953 Electric Franchise was amended twice, in 1993, by Ordinance No. 093-041, increasing the franchise fee from 2% to 4% of gross revenue, and again in 2002 to conform the franchise fee to the settlement in *Denton v. TXU Electric Company, et al*, concerning the gross revenue franchise fee base and calculation of payments (see explanation below). A new electric franchise has been negotiated and is recommended for adoption.

Below are comments on the key provisions in the proposed new franchise.

Proposed New TXU Electric Franchise

Term – The term of this franchise was intended to be approximately ten years from date the last franchise terminated, and therefore is scheduled to expire on July 31, 2014. (Section 3)

Police Power Reservation of Rights – The franchise ensures that the City retains all of its police power rights to promulgate ordinances which regulate the rights-of-ways and the construction of facilities in its rights-of-ways through its police powers. (Section 8.1)

Franchise Fees – Franchise fees are to be paid consistent with the *Denton v. TXU Electric Company, et al* litigation. The franchise fee has two components, the Municipal Franchise Charge, which is the statutory per kWh charge¹, plus 4% on the gross revenues from

¹ Utility Code Sec. 33.008 (b), kWh charges paid to the City since January 1, 2002 and which is based on the 4% gross revenue franchise fee paid the city in 1998.

“discretionary” income TXU receives from installations, such as (a) charges to connect, disconnect, or reconnect power; (b) charges for automated meter readings; (c) other service charges; and (d) payments for non-standard construction of facilities. With each payment of franchise fees, the franchise expressly requires that a report be given with each payment, detailing the calculations upon which the franchise fee payment is based. The franchise fee provision also provides that in the event another city is paid more in franchise fees, then this franchise would be revised accordingly. (Section 5)

The franchise provides for the right of the City to have access to the records of TXU to conduct an audit. (Section 6)

Relocation of Utility Facilities – This franchise provides that in the event that the City requires the relocation of electric utility facilities for changes in the rights-of-ways for construction for city projects, the electric utility will move its facilities; the cost to relocate those facilities are to be reimbursed by the Town, except to the extent that applicable state or federal law provides that the electric utility is to pay for that cost. The City had requested that TXU agree to relocate its facilities at its cost for any city public works project, but they would only agree to relocate at their cost if it was a street “widening and straightening” project. As a “compromise” we adopted the language in the franchise which reserves the City’s right to have TXU relocate at TXU’s cost as allowed by state law now or in the future. It is the City’s legal position that TXU is to relocate its facilities at its cost in a broader array of city projects than just a street widening or straightening project in accordance with case law. (Section 8.3)

Indemnity and Insurance – This franchise allows TXU Electric to be self-insured. However, if they self-insure, they are required to provide the same type of defense representation and coverage as an insurance carrier. Detailed language was included in this franchise as TXU’s responsibility to indemnify and defend the City for liability claims. (Section 9)

Termination and Compliance Enforcement Provisions – The franchise expressly provides that in the event there is noncompliance with the franchise after notice is given, with an opportunity to cure, the City may terminate the franchise. (Section 12)

ORDINANCE NO. _____

AN ORDINANCE GRANTING THE RIGHT, PRIVILEGE AND FRANCHISE TO TXU ELECTRIC DELIVERY COMPANY, AN ELECTRIC TRANSMISSION AND DISTRIBUTION UTILITY, AND ITS SUCCESSORS AND ASSIGNS, TO USE THE PUBLIC RIGHTS-OF-WAY OF THE TOWN OF ADDISON, TEXAS FOR THE TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER SUBJECT TO THE CONDITIONS, RESTRICTIONS, AND LIMITATIONS OF THIS ORDINANCE; PRESCRIBING THE CONDITIONS, RESTRICTIONS AND LIMITATIONS UNDER WHICH SUCH FRANCHISE SHALL BE EXERCISED; PROVIDING COMPENSATION FOR SUCH USE; PROVIDING THE TERM OF FRANCHISE; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR THE METHOD OF ACCEPTANCE; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. GRANT OF FRANCHISE.

That the Town of Addison, Texas (the "City"), a home rule municipality pursuant to the Texas Constitution, the laws of the State of Texas, and its Home Rule Charter (the "City Charter"), subject to the terms and conditions of this Ordinance (the "Ordinance"), does hereby grant to TXU Electric Delivery Company, an electric transmission and distribution utility and a Texas corporation (the "Electric Delivery Utility"), its successors and permitted assigns, but not its affiliates or subsidiaries, except as provided for herein, the non-exclusive right, privilege and franchise to use the Public Rights-of-Way (hereinafter defined) of the City as provided herein for the purpose of locating, installing, using, maintaining, repairing, constructing, operating, and replacing Facilities for the transmission and distribution of electric power to the City, the inhabitants thereof and persons, firms and corporations beyond the corporate limits thereof. This Franchise does not grant to the Electric Delivery Utility the right, privilege or authority to engage in any other business within the City other than the transmission and distribution of electric power in the City.

The right of the Electric Delivery Utility to use the Public Rights-of-Way as set forth above is not an exclusive right, and the City has and reserves the right in its sole discretion to make or grant a similar or dissimilar use of the Public Rights-of-Way to any other person, firm, corporation, or other business entity of whatever kind.

SECTION 2. DEFINITIONS.

2.1 "Franchise" shall mean this Ordinance and all rights and obligations established herein.

2.2 "Municipal Franchise Charge" shall mean the fee authorized by Section 33.008(b) of the Public Utility Regulatory Act, Title 2, Texas Utilities Code ("PURA"), currently the product of a factor of .002544 cents/kWh multiplied by each kilowatt hour of electricity delivered to each retail customer within the City of Addison's municipal boundaries, or any amended fee calculation for which the Texas Legislature or Public Utility Commission may require.

2.3 "Public Rights-of-Way" shall mean the public streets, public alleys, public highways and other public property, of and owned or controlled by the City and beneath the surface thereof as they may now or hereafter may exist and as defined herein but not including bridges or other City improvements or infrastructure in, on or over the Public Rights-of-Way.

2.4 "Facilities" shall mean electric power lines, with all necessary or desirable appurtenances (including underground conduits, poles, towers, wires, transmission lines and other structures, and telephone and communication lines for its own use), for the purpose of supplying electricity to the City, the inhabitants thereof, and persons, firms and corporations beyond the corporate limits thereof.

SECTION 3. EFFECTIVE DATE; TERM OF FRANCHISE.

Upon the filing with the City by the Electric Delivery Utility of the acceptance required under Section 4, this Franchise shall be in full force and effect thirty (30) days from and after the date of the final passage and approval of this Ordinance by the City in accordance with the City's Home Rule Charter until July 31, 2014.

SECTION 4. ACCEPTANCE OF FRANCHISE.

4.1 When this Franchise becomes effective, all previous ordinances of the City granting a franchise for the transmission and distribution of electric power purposes that were held by the Electric Delivery Utility (or its predecessor in interest) shall be automatically repealed, and shall be of no further force and effect; provided, however, that any City claim,

action or complaint that arose under or pursuant to any such previous ordinance shall continue to be governed by the provisions of that ordinance and such previous ordinance shall continue in full force and effect for such purposes. The Electric Delivery Utility shall, within thirty (30) days from the final passage of this Franchise by the City, file its written acceptance of this Franchise with the Office of the City Secretary.

4.2. This Franchise shall be rendered null and void if written acceptance of this Franchise is not filed by the Electric Delivery Utility within such thirty (30) day period.

SECTION 5. FRANCHISE FEE.

5.1 In consideration of the grant of said right, privilege and franchise by the City and as full payment for the right, privilege and franchise of using and occupying the Public Rights-of-Way, and in lieu of any and all occupation taxes, assessments, municipal charges, fees, franchise taxes, license, permit and inspection fees or charges, bonds, street or alley rentals, certain regulatory expenses, subject to sections 5.5 and 5.6 herein, as may be otherwise due and owing under Section 33.023 of PURA, as amended, or any similar or successor law, and all other taxes, charges, levies, fees and rentals of whatsoever kind and character which the City may impose or hereafter be authorized or empowered to levy and collect, excepting only the usual general or special ad valorem taxes which the City is authorized to levy and impose upon real and personal property, sales and use taxes, and special assessments for public improvements, the Electric Delivery Utility agrees to and shall pay to the City a franchise fee consisting of the following:

(a) the Municipal Franchise Charge. The first payment hereunder shall be due and payable on August 1, 2005, based on each kilowatt hour of electricity delivered by the Electric Delivery Utility during the preceding twelve-month period ended June 30, 2005, to each retail customer whose consuming facility's point of delivery is located within the City's municipal boundaries. This initial payment and the payments provided on or before August 1 of each year throughout the life of this Franchise are for the rights and privileges granted hereunder for the twelve month period succeeding the payment date (August 1 – July 31). Thereafter, on or before August 1 of each year throughout the life

of this Franchise, the Electric Delivery Utility shall pay to the City the Municipal Franchise Charge as required or authorized by Section 33.008(b) of PURA, as currently enacted and as amended during the term of this Franchise, based on the preceding twelve-month period ending June 30. The final Municipal Franchise Charge payment under this Franchise is due on or before August 1, 2013 and covers the privilege period of August 1, 2013 – July 31, 2014; and

(b) a sum equal to four percent (4%) of gross revenues received by the Electric Delivery Utility from services identified in the Electric Delivery Utility's "Tariff for Retail Delivery Service", Section 6.1.2, "Discretionary Service Charges," items DD 1 through DD24, that are for the account or benefit of an end-use retail electric consumer (the "Discretionary Service Charges Fee") within the municipal boundaries of the City.

(1) The Discretionary Service Charges Fee shall be calculated on an annual calendar year basis, i.e., from January 1 through and including December 31 of each calendar year.

(2) The Discretionary Service Charges Fee shall be paid at least once annually on or before April 30 each calendar year based on the total Discretionary Service Charges received during the preceding calendar year. The initial Discretionary Service Charge Fee amount due under this Franchise shall be paid on or before April 30, 2005 and will be based on the calendar year January 1 through December 31, 2004. The final two Discretionary Service Charge Fee amounts due under this Franchise shall be paid as follows: On or before April 30, 2014 the last full twelve month payment will be due and will be based on the calendar year January 1 through December 31, 2013, with a final Discretionary Service Charge Fee payment for the last six months under this Franchise to be paid on October 15, 2014 for the period January 1, 2014 to July 31, 2014. The obligation to make the final Discretionary Service Charge Fee payment shall survive the expiration of this Franchise.

5.2 The Electric Delivery Utility shall provide the City a statement which shall accompany each payment to the City to evidence a correct payment to the City. Electric Delivery Utility hereby stipulates that its reports may be treated by the City exactly as if they were filed

under oath. Late or delinquent payment by the Electric Delivery Utility shall accrue interest. Interest shall be calculated in accordance with the interest rate for customer deposits established by the PUC in accordance with Texas Utilities Code Section 183.003 for the time period involved.

5.3 Electric Delivery Utility Discretionary Service Charges Fee Recovery Tariff

(a) Electric Delivery Utility may file a tariff amendment(s) to provide for the recovery of the Discretionary Services Charges Fee.

(b) City agrees (i) to the extent the City acts as regulatory authority, to adopt and approve that portion of any tariff which provides for 100% recovery of the Discretionary Services Charges Fee; (ii) in the event the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of the Discretionary Services Charges Fee is an issue, the City will take an affirmative position supporting the 100% recovery of such Fee by Electric Delivery Utility and; (iii) in the event of an appeal of any such regulatory proceeding in which the City has intervened, the City will take an affirmative position in any such appeals in support of the 100% recovery of such Fee by Electric Delivery Utility.

(c) City agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such Discretionary Service Charges Fees by Electric Delivery Utility.

5.4 This Section applies only if, after the effective date of this Franchise Agreement, Electric Delivery Utility enters into a new municipal franchise agreement or renews, modifies or amends an existing municipal franchise agreement with another municipality that provides for a different method of calculation of franchise fees for use of the public rights-of-way than the calculation under 33.008(b) of PURA, which, if applied to the City, would result in a greater amount of franchise fees owed the City than under this Franchise Agreement.

(a) City shall have the option to:

(1) Have Electric Delivery Utility select, within 30 days of the City's request, any or all portions of the franchise agreement with the other municipality or

comparable provisions that, at Electric Delivery Utility 's sole discretion, must be considered in conjunction with the different method of the calculation of franchise fees included in that other franchise agreement; and

(2) Modify this franchise to include both the different method of calculation of franchise fee found in the franchise agreement with the other municipality and all of the other provisions identified by Electric Delivery Utility pursuant to Section 5.4(a). In no event shall City be able to modify the franchise to include the different method of calculation of franchise fee found in the franchise agreement with the other municipality without this franchise also being modified to include all of the other provisions identified by Electric Delivery Utility pursuant to Section 5.4(a)(1).

(b) City may not exercise the option provided in Section 5.4(a) if any of the provisions that would be included in this franchise are, in Electric Delivery Utility's sole opinion, inconsistent with or in any manner contrary to any then-current rule, regulation, ordinance, law, Code, or Charter of City.

(c) In the event of a regulatory disallowance of the increase in franchise fees paid pursuant to City's exercise of its option under this Section, then at any time after the regulatory authority's entry of an order disallowing recovery of the additional franchise fee expense in rates, Electric Delivery Utility shall have the right to cancel the modification of the franchise made pursuant to this Section, and terms of the franchise shall immediately revert to those in place prior to City's exercise of its option under this Section.

(d) Notwithstanding any other provision of this franchise, should the City exercise the option provided in Section 5.4(a), and then adopt any rule, regulation, ordinance, law, Code, or Charter of City that, in Electric Delivery Utility's sole opinion, is inconsistent with or in any manner contrary to the provisions included in this franchise pursuant to Section 5.4(a), then Electric Delivery Utility shall have the right to cancel all of the modifications to this franchise made pursuant to this Section and, effective as of the date of the City's adoption of the inconsistent provision, the terms of the franchise shall revert to those in place prior to City's exercise of its option under this Section.

(e) The provisions of this Section apply only to the amount of the franchise fee to be paid and do not apply to other franchise fee payment provisions, such as the timing of such payments. The provisions of this Section do not apply to differences in the franchise fee factor that result from the application of the methodology set out in Section 33.008(b) of PURA or any successor methodology.

5.5 Notwithstanding anything to the contrary in Section 5.1 hereof, if during the term of this Franchise the Electric Delivery Utility files general rate cases and the City incurs cumulative expenses in connection with all general rate cases filed during the period beginning June 1, 1993, and ending August 24, 2008 which would otherwise have been reimbursable by Electric Delivery Utility under Section 33.023 of PURA, as amended, or similar or successor law, in excess of Four Million and No/100 Dollars (\$4,000,000.00), then in such event, the Electric Delivery Utility shall reimburse all of the expenses incurred by the City in connection with all general rate cases filed during the period beginning June 1, 1993, and ending August 24, 2008, in excess of said \$4,000,000.00. The term "general rate case" as used in this Ordinance means a rate case initiated by the Electric Delivery Utility in which it seeks to increase its rates charged to a substantial number of its customer classes in the City and elsewhere in its system and in which the Electric Delivery Utility's overall revenues are determined in setting such rates. The City agrees to exercise reasonable best efforts, considering the facts and circumstances, to keep its expenses on average to under One Million and No/100 Dollars (\$1,000,000.00) per general rate case.

5.6 Notwithstanding the above section 5.1, City reserves its rights and does not waive any claim that Ordinance No. 093-041 requires reimbursement of general rate case expenses incurred by the City after August 24, 2008, and ending with the term of this Franchise, that would have been otherwise reimbursable by Electric Delivery Utility under Section 33.023 of PURA, as amended, or similar or successor law.

SECTION 6. AUDIT OF ELECTRIC DELIVERY UTILITY'S RECORDS AND REPORTS.

6.1 Books of Account. The Electric Delivery Utility shall keep complete and accurate books of accounts and records of its business and operations under and in connection

with this Franchise. To the extent practicable, all such books of accounts and records shall be made available at the Electric Delivery Utility's principal office in Dallas, Texas.

6.2 Access by City. The City Manager or the City Manager's designee shall, upon thirty (30) days prior written notice to the Electric Delivery Utility, have the right to access and to inspect the books of accounts and records of the Electric Delivery Utility for the period then subject to audit under Section 33.008(e) of the Public Utility Regulatory Act to ascertain the correctness of any payments and reports to the City, as provided for in Section 33.008(e) of the Public Utility Regulatory Act, and as to the Electric Delivery Utility's compliance with this Franchise, and Electric Delivery Utility shall fully cooperate in making available its accounts and records and otherwise assisting in these activities.

6.3 Audits. The City Manager may cause to be conducted no more than once annually, an audit to verify the accuracy of the method used to compute the Electric Delivery Utility's Franchise Fee payments to the City and to verify that all utility accounts within the City are properly included in the computation of the Franchise Fee. Said audit shall be limited to the time period subject to audit under PURA Section 33.008(e). If either party discovers that the Electric Delivery Utility has failed to pay the entire or correct amount of compensation due, the correct amount shall be determined and the City shall be paid by the Electric Delivery Utility within thirty (30) calendar days of such determination. Any overpayment to the City through error or otherwise will, at the option of the City, either be refunded within thirty (30) days of determination OR be offset against the next payment due from Electric Delivery Utility. Such payments shall include interest as provided for in Section 5.2.

SECTION 7. ANNEXATION.

This Franchise shall extend to and include any and all territory that is annexed by or otherwise added to the corporate limits of the City during the term of this Franchise. Upon receipt of written notification by the City of newly annexed areas, or other areas added to the City limits, the Electric Delivery Utility shall promptly initiate a process to reclassify affected customers into the City limits in a timely manner. The annexed areas or other areas added to the City limits will be included in future franchise payments in accordance with the effective date of the annexation.

Upon request from the City, the Electric Delivery Utility will provide documentation to verify that affected customers were appropriately reclassified and included for purposes of calculating franchise payments.

SECTION 8. CONSTRUCTION IN THE PUBLIC RIGHTS-OF-WAY.

8.1 In connection with any activity of, by, on behalf of, or for the benefit of the Electric Delivery Utility on or within the Public Rights-of-Way under this Franchise, the Electric Delivery Utility shall comply with the City Charter and all lawful ordinances, rules, codes, laws, standards, policies, and regulations of the City (including, without limitation, the right-of-way construction, permitting, and relocation provisions of the Code of Ordinances) as now existing or as the same may be adopted, supplemented, amended or revised (together, "City Standards"). To the extent any City Standards conflict with this Franchise, the requirements of this Franchise shall govern. The Electric Delivery Utility shall also comply with any and all applicable laws, standards, policies, regulations, and rules, whether federal or state. This Franchise shall in no way affect or impair the rights, obligations or remedies of the parties under the Texas Public Utility Regulatory Act, or other State or Federal Law. Nothing herein shall be deemed a waiver, release or relinquishment of either party's right to contest, appeal, or file suit with respect to any action or decision of the other party, including, without limitation, ordinances adopted by the City, that it believes is contrary to any federal, state or local law or regulation. To the extent practicable City shall provide Electric Delivery Utility with reasonable notice and opportunity to review and comment upon any new or revised City Standards that impact Electric Delivery Utility's use of the Public Rights-of-Way.

8.2 Electric Delivery Utility shall locate, install, use, maintain, repair, construct, operate, and replace its Facilities to minimize interference with traffic (motor vehicle, pedestrian, or otherwise) and shall perform work in a timely and expeditious manner, and shall promptly clean up and restore to the approximate condition at the time disturbed, all Public Rights-of-Way that it may disturb to the satisfaction of the City consistent with applicable City Standards. With respect to Electric Delivery Utility Facilities not located in public streets, alleys or highways, to the extent the Electric Delivery Utility is authorized to locate such Facilities in Public Rights-of-Way other than public streets, alleys, or highways, the location of Electric Delivery Utility's

Facilities shall be subject to approval by the City Manager prior to construction or installation; provided however, said approval shall not be unreasonably withheld. When Electric Delivery Utility makes, or causes to be made, excavations, or places, or causes to be placed, obstructions in any Public Rights-of-Way, Electric Delivery Utility shall place, erect, and maintain barriers and lights to identify the location of such excavations or obstructions, all in accordance with the most recent edition of the Uniform Manual on Traffic Control Devices and applicable City Standards. In determining the location of Electric Delivery Utility's Facilities within the City, the Electric Delivery Utility shall not interfere with then existing above-ground or underground structures, equipment and facilities of the City, other utility franchisees (which have received a franchise from the City to use the Public Rights-of-Way), and other persons (whether a natural person or business entity of any kind) who have received the City's consent to place and locate equipment and facilities within the Public Rights-of-Way (such other utility franchisees and other persons being "Public Right-of-Way Users"). The City will seek, after the effective date of this Franchise, to include in its agreements with other utilities and users of the Public Rights-of-way provisions requiring that such users shall not interfere with the Electric Delivery Utility Facilities. The Company recognizes that it is the responsibility of other utility franchisees and Public Rights-of- Way Users to ensure that their activities do not interfere or damage the Electric Delivery Utility facilities and will pursue any damage claims directly with the responsible Public Rights-of-Way Users. The Electric Delivery Utility shall be responsible to repair at its sole cost all damage caused by Electric Delivery Utility activities pursuant to this Franchise. If any such damage poses a threat to the health, safety or welfare of the public or residents, Electric Delivery Utility, upon receipt of notice, shall take prompt actions to mitigate the health, safety or welfare concerns and shall promptly initiate repairs. If the City requests the Electric Delivery Utility to initiate repairs and the Electric Delivery Utility fails to initiate and timely complete repairs within a reasonable time after the City's request, after notice to the Electric Delivery Utility of the City's intent, the City may repair or cause repairs to be made at the Electric Delivery Utility's expense, and Electric Delivery Utility shall promptly pay to the City the actual cost incurred by the City in making or causing such repairs. The Electric Delivery Utility shall require its contractors working in the Public Rights-of-Way to hold all necessary contracting licenses and permits required by the City, or otherwise required by any law, rule, or regulation, for such business. Except as otherwise provided for herein, in determining the location of the facilities of

the City, the City shall minimize interference with then existing Facilities of the Electric Delivery Utility. In the event of a conflict between the location of the proposed Facilities of the Electric Delivery Utility and the location of the existing facilities of the City or other Public Right-of-Way Users within Public Rights-of-Way that cannot otherwise be resolved, the City or an authorized agent of the City shall use its reasonable efforts and attempt to resolve the conflict and determine the location of the respective facilities, provided that if the City determines in such instance that proposed Facilities of the Electric Delivery Utility must be relocated from that proposed by the Electric Delivery Utility, the City will designate a reasonable alternate location within the Public Rights-of-Way for Electric Delivery Utility. Except in an emergency, the Electric Delivery Utility shall be required to obtain street cutting, street excavation or other special permits related to excavations in Public Rights-of-Way in connection with the Electric Delivery Utility's operations in Public Rights-of-Way in accordance with City Standards. Under no circumstances, however, shall the Electric Delivery Utility be required to pay for such permitting or be required to post bonds.

8.3 The City reserves the right for any reason whatsoever to use, change the grade of, construct, install, repair, alter, maintain, relocate, modify, open, close, reduce, or widen (collectively "change") any Public Right-of-Way, within the present or future limits of the City. At the City's request, the Electric Delivery Utility shall relocate or remove its Facilities in order to accommodate such change of any Public Right-of-Way. If the Electric Delivery Utility is required by the City to remove or relocate its Facilities, Electric Delivery Utility shall be entitled to reimbursement from the City of the cost and expense of such removal or relocation except to the extent PURA Section 37.101(c) or other state or federal law requires or permits the City to require, the relocation to be done at Electric Delivery Utility's expense.

8.4 If the City abandons any Public Right-of-Way in which the Electric Delivery Utility has Facilities, such abandonment shall be conditioned on the Electric Delivery Utility's right to maintain its use of the former Public Right-of-Way and on the obligation of the party to whom the Public Right-of-Way is abandoned to reimburse Electric Delivery Utility for all removal or relocation expenses if Electric Delivery Utility agrees to the removal or relocation of its facilities following abandonment of the Public Right-of-Way. If the party to whom the Public Right-of-Way is abandoned requests Electric Delivery Utility to remove or relocate its facilities and Electric Delivery Utility agrees to such removal or relocation, such removal or relocation

shall be done within a reasonable time at the expense of the party requesting the removal or relocation. If relocation cannot practically be made to another Public Right-of-Way, the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.

8.5 The Electric Delivery Utility shall install, construct, repair, maintain and replace its Facilities in a good and workmanlike manner.

8.6 City Inspection. The City retains the right to make visual, non-invasive inspections of the Electric Delivery Utility's Facilities.

8.7 Temporary Removal of Wires. The Electric Delivery Utility on the request of any person shall remove or raise or lower its wires within the City temporarily to permit the moving of houses or other bulky structures. The total expense of such temporary removal, raising or lowering of wires shall be paid by the benefited party or parties, and Electric Delivery Utility may require such full payment in advance. Electric Delivery Utility shall be given not less than thirty (30) days advance notice to arrange for such temporary wire changes. The clearance of wires above ground or rails within the City and also underground work shall conform to the basic standards of the National Electrical Safety Code.

SECTION 9. INDEMNITY AND INSURANCE.

9.1 (A) IN CONSIDERATION OF THE GRANTING OF THIS FRANCHISE, ELECTRIC DELIVERY UTILITY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, 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 THE ELECTRIC DELIVERY UTILITY'S PERFORMANCE OF THIS FRANCHISE, 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.

(B) WITH RESPECT TO THE ELECTRIC DELIVERY UTILITY'S INDEMNITY OBLIGATION SET FORTH IN SUBSECTION (A), ELECTRIC DELIVERY UTILITY SHALL HAVE NO DUTY TO INDEMNIFY AN INDEMNITEE FOR ANY DAMAGES CAUSED BY THE SOLE NEGLIGENCE OF THE INDEMNITEE, OR SOLE GROSS NEGLIGENCE OF THE INDEMNITEE, OR SOLE CONDUCT OF THE INDEMNITEE

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

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

(D) WITH RESPECT TO THE ELECTRIC DELIVERY UTILITY'S DUTY TO DEFEND SET FORTH HEREIN IN SUBSECTION (A), THE ELECTRIC DELIVERY UTILITY SHALL HAVE THE RIGHT TO SELECT DEFENSE COUNSEL, SUBJECT TO CITY'S APPROVAL, WHICH WILL NOT BE UNREASONABLY WITHHELD. ELECTRIC DELIVERY UTILITY SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF RECEIPT OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS FRANCHISE AGREEMENT. IF ELECTRIC DELIVERY UTILITY FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND ELECTRIC DELIVERY UTILITY SHALL BE LIABLE FOR ALL REASONABLE AND NECESSARY DEFENSE COSTS INCURRED BY CITY, EXCEPT AS LIMITED IN SUBSECTIONS (B) AND (C) OF THIS SECTION.

9.2 Electric Delivery Utility may self-insure to the extent permitted by applicable law under any plan of self-insurance, maintained in accordance with sound accounting practices, against risks and obligations undertaken pursuant to this franchise and shall not be required to maintain insurance; provided that Electric Delivery Utility furnishes the City satisfactory evidence of the existence of an insurance reserve adequate for the risks covered by such plan of self-insurance. Electric Delivery Utility shall provide the City with evidence of the form and basis for insurance coverage or self insurance, as applicable, within thirty (30) days of the effective date of this franchise ordinance. Provided however that the Electric Delivery Utility's self-insurance shall provide to the City, its officers, employees and agents, with the same defense as would be provided by an insurance carrier and with substantially the same coverage as required by other users of the Public Right-of-Way in the City as set forth in Chapter 70 of the Code of Ordinances, currently or as it may be amended (or any successor ordinance or

regulation). Should Electric Delivery Utility elect to change the form or basis of insurance during the term of this franchise, Electric Delivery Utility shall notify the City. Electric Delivery Utility shall provide documentation necessary for review by the City of the changed circumstances of Electric Delivery Utility.

SECTION 10. TRANSFERS AND ASSIGNMENT.

Prior to assignment, transfer, pledge or other conveyance of its rights, duties and obligations under this franchise, except to an affiliated entity, Electric Delivery Utility shall obtain prior written consent of the governing body of the City, which consent will not be unreasonably withheld or delayed. For purposes hereof, an “affiliated entity” means Electric Delivery Utility’s corporate parent owning more than 50% of the voting shares of Electric Delivery Utility, a subsidiary of Electric Delivery Utility’s corporate parent (provided the corporate parent owns more than 50% of the voting shares of the subsidiary), a partnership or joint venture in which Electric Delivery Utility owns a controlling interest of more than 50%, or a subsidiary entity of Electric Delivery Utility in which Electric Delivery Utility owns a controlling interest of more than 50%. Electric Delivery Utility shall provide notice of any assignment, transfer, pledge or conveyance to an affiliated entity at the same time it provides written notice to the Public Utility Commission. Any assignment, transfer, pledge or other conveyance, whether to an affiliated entity or otherwise, shall require the assignee or transferee to perform all of the terms and conditions of this franchise.

SECTION 12. FORFEITURE AND TERMINATION.

12.1 The City shall notify the Electric Delivery Utility, in writing, of an alleged failure of the Electric Delivery Utility to comply with a material provision of this Franchise, which notice shall specify the alleged failure with reasonable particularity. The Electric Delivery Utility shall, upon its receipt of such notice, either:

- (a) diligently cure such failure, but in any event within not more than thirty (30) days after such receipt; or
- (b) if such failure cannot with due diligence be cured within the said thirty (30) day period, then cure such failure within an additional reasonable period of time so long as

the Electric Delivery Utility has submitted to the City in writing its plan (including, without limitation, the time period) to cure such failure and has commenced curative action within the said thirty (30) day period, and thereafter is diligently attempting to cure the failure; or

(c) if the Electric Delivery Utility reasonably believes that the failure specified in the notice from the City is not a failure of a material provision of this Franchise, submit to the City within ten (10) days after its receipt of the notice the Electric Delivery Utility's written response specifying facts and presenting arguments in refutation or defense of such alleged failure (the "Electric Delivery Utility's Defense").

12.2 In the event that the Electric Delivery Utility does not comply with subparagraphs (a), (b), or (c) above, or if the Electric Delivery Utility does comply with subparagraph (c) above but the City, after its review of the Electric Delivery Utility's Defense, nevertheless believes that the Electric Delivery Utility has failed to comply with a material provision of this Franchise, the City may declare this an Uncured Event of Default, which shall entitle City to exercise the remedies provided for in Section 12.3. Notice of such declaration shall be given to the Electric Delivery Utility prior to the City's exercise of any such remedies.

12.3 Not sooner than seven (7) days following the City's declaration of an Uncured Event of Default and the giving of notice of such declaration to the Electric Delivery Utility, the City shall be entitled to exercise any and/or all of the following remedies:

- (a) The commencement of an action against Electric Delivery Utility at law for monetary damages.
- (b) The commencement of an action in equity seeking injunctive relief or the specific performance of any of the provisions, that as a matter of equity, are specifically enforceable.
- (c) The commencement of any other action which may be available to the City.
- (d) The termination of this Franchise in accordance with the provisions of Section 12.4.

12.4 In accordance with the provisions of Section 12.3(d), this Franchise Agreement may be terminated upon at least thirty business day's prior written notice to Electric Delivery Utility. City shall notify Electric Delivery Utility in writing at least fifteen (15) business days in advance of the City Council meeting at which the question of forfeiture or termination shall be considered, and Electric Delivery Utility shall have the right to appear before the City Council in person or by counsel and raise any objections or defenses Electric Delivery Utility may have that are relevant to the proposed forfeiture or termination. The final decision of the City Council may be appealed to any court or regulatory authority having jurisdiction within thirty days following the effective date of such final decision. Upon timely appeal by Electric Delivery Utility of the City Council's decision terminating the Franchise, the effective date of such termination shall be either when such appeal is withdrawn or a court or administrative order upholding the termination becomes final and unappealable. Until the termination becomes effective the provisions of this Franchise shall remain in effect for all purposes. The City recognizes Electric Delivery Utility's right and obligation to provide service in accordance with the Certificate of Convenience and Necessity authorized by the Public Utility Commission in accordance with the Texas Utilities Code.

SECTION 13. NONEXCLUSIVE FRANCHISE.

Nothing contained in this Franchise shall ever be construed as conferring upon the Electric Delivery Utility any exclusive rights or privileges of any nature whatsoever.

SECTION 14. ENTIRE AGREEMENT.

This Franchise contains all of the agreements of the parties with respect to the subject matter covered in this Franchise, and no prior or contemporaneous agreements or understandings pertaining to any such matters shall be effective for any purpose, with the exception of the Compromise Settlement Release agreement signed by the City on October 24, 2002.

SECTION 15. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or portion of this Franchise is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION 16. NON-WAIVER; RIGHTS CUMULATIVE; SURVIVING RIGHTS, REMEDIES, AND OBLIGATIONS.

Failure of the City to declare, or any delay by the City in taking any action in connection with, any breach or default of this Franchise by the Electric Delivery Utility immediately upon the occurrence thereof shall not constitute or be construed to be a waiver by the City of such breach or default, but the City shall have the right to declare any such breach or default at any time. Failure of the City to declare one breach or default of the Electric Delivery Utility does not act as a waiver of the City's rights to declare another breach or default. By entering into this ordinance, City does not waive any claim which the City may have under the Prior Electric Franchise, except to the extent any such claims were settled in that certain Compromise Settlement Release agreement signed by the City on October 24, 2002. Except as otherwise provided for herein, the rights and remedies provided by this Franchise are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law statute, ordinance, or otherwise.

SECTION 17. GOVERNING LAW.

This Ordinance shall be governed by and construed in accordance with the laws of the State of Texas and the City Charter; 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 interpretation, validity and enforcement of this Ordinance.

SECTION 18. NOTICES.

Any notice required to be given from one party to the other party under this Franchise shall be in writing and shall be deemed to have been given and received if (i) delivered in person

to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America, proper postage prepaid, and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

<u>To the City:</u> Town of Addison, Texas 5300 Belt Line Road Dallas, Texas 75254 Attn: City Manager	<u>To Electric Delivery Utility:</u> TXU Electric Delivery Company <u>500 N. Akard Street, Suite 13-062</u> <u>Dallas, TX 75201</u> Attn: Manager Municipal Regulatory Affairs
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SECTION 19. PARAGRAPH HEADINGS; CONSTRUCTION.

The paragraph headings contained in this Franchise are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the preparation of this Ordinance and this Ordinance shall not be construed either more or less strongly against or for either party.

SECTION 20. THIRD PARTIES.

This Franchise and each of its provisions are 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.

First reading of this Ordinance by the City Council of the Town of Addison, Texas occurred on the ____ day of _____, 2004.

Second reading of this Ordinance by the City Council of the Town of Addison, Texas occurred on the ____ day of _____, 2004.

DULY PASSED AND APPROVED by the City Council of the City of Addison, Texas on the ____ day of _____, 2004.

APPROVED:

MAYOR

APPROVED AS TO FORM:

CORRECTLY ENROLLED:

CITY ATTORNEY

CITY SECRETARY