



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

**AGENDA**

**REGULAR MEETING OF THE CITY COUNCIL**

**NOVEMBER 8, 2005**

**7:30 P.M.**

**COUNCIL CHAMBERS**

**5300 BELT LINE ROAD**

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**REGULAR SESSION**

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Item #R1 -      Consideration of Old Business.

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Item #R2 -      Consent Agenda.

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## CONSENT AGENDA

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- #2a - Approval of the Minutes for October 24, 2005 and October 25, 2005, Council Meetings.
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- #2b - Consideration and approval of a resolution of the City Council casting its vote to support R. Scott Wheeler as the suburban cities representative to the Dallas Central Appraisal District Board of Directors.
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- #2c - Consideration and approval of a 9-1-1 billing agreement with IQC, LLC dba CNB Communications, which have a Service Provider Certificate of Operating Authority (SPCOA) from the Texas Public Utilities Commission.
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- #2d - Consideration and approval of a 9-1-1 billing agreement with VCI Company, which have a Service Provider Certificate of Operating Authority (SPCOA) from the Texas Public Utilities Commission.
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- #2e - Consideration and approval for final payment in the amount of \$74,221 to Jim Bowman Construction Co., L.P., and acceptance of improvements for construction of the Sampling Manhole Construction Project.
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Item #R3 - Presentation regarding the Addison Arbor Foundation's 2005-2006 Urban Forestry Partnership Grant received for the funding of a forestry intern to conduct a tree inventory and management plan.

Attachments:

1. Council Agenda Item Overview
2. Grant

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Item #R4 - Consideration and approval of an ordinance authorizing the issuance and sale of Town of Addison, Texas, General Obligation Refunding and Improvement Bonds, Series 2005 and levying tax for the payment thereof; approving a bond purchase agreement; approving an official statement; and enacting other provisions relating to the subject.

Attachments:

1. Council Agenda Item Overview
2. Preliminary Official Statement
3. Ordinance

Administrative Recommendation:

Administration recommends approval.

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Item #R5 - Consideration and approval of an ordinance of the Town of Addison, Texas, denying the request of Atmos Energy Corp., Mid-Tex Division, for an annual Gas Reliability Infrastructure Program (GRIP) rate increase in this municipality, as a part of the Company's statewide gas utility distribution system; approving cooperation with other cities within the Atmos Energy Corp., Mid-Tex Division distribution system as part of the Atmos Cities Steering Committee (ACSC); authorizing the ACSC to hire legal and consulting services and to negotiate with the Company and direct any necessary litigation; authorizing intervention as part of ACSC in any appeal of the Town's action to the railroad commission; providing a requirement for a prompt reimbursement of costs incurred by the Town; finding that the meeting at which this ordinance is passed is open to the public

as required by law; and providing for notice of this ordinance to Atmos Energy Corp., Mid-Tex Division.

Attachments:

1. Council Agenda Item Overview
2. Ordinance

Administrative Recommendation:

Administration recommends denial.

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Item #R6 -

Consideration and approval of a resolution by the Town of Addison, Texas, ordering Atmos Energy Corp., Mid-Tex Division to show cause regarding the reasonableness of its existing natural gas distribution rates within the Town; requiring Atmos Energy Corp., Mid-Tex Division to submit a rate package based on a rate year ending June 30, 2005; directing that such filing shall be made by December 31, 2005; requiring reimbursement of reasonable legal and consultant expenses; and requiring delivery of this resolution to the company and legal counsel.

Attachments:

1. Council Agenda Item Overview
2. Ordinance

Administrative Recommendation:

Administration recommends approval.

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Item #R7 -

Consideration and approval of an ordinance approving amendments to the Town's financial policies.

Attachments:

1. Council Agenda Item Overview
2. Amendments to financial policies
3. Ordinance

Administrative Recommendation:

Administration recommends approval.

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Item #R8 - Consideration of an ordinance providing conditional approval of consent of the transfer of a cable franchise agreement from Comcast to C-Native Exchange.

Attachments:

1. Council Agenda Item Overview
2. Agreement
3. Ordinance

Administrative Recommendation:

Administration recommends approval.

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**EXECUTIVE SESSION**

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Item #ES1 - Closed (executive) session of the City Council pursuant to Section 551.087 of the Texas Government Code to discuss and deliberate regarding commercial or financial information that the Town has received from business prospects that the Town seeks to have locate or expand in the Town and with which the Town is conducting economic development negotiations; and to deliberate the offer of a financial or other incentive to such business prospects.

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**REGULAR SESSION**

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Item #R9 - Discussion and consideration of any action regarding an offer by the Town of a financial or other incentive to business prospects that the Town seeks to have locate or expand in the Town and with which the Town is conducting economic development negotiations.

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Item #R10 - Discussion and consideration of amendment to Agreement between the Town and Don Franklin for education cost reimbursement.

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Attachment:

1. Agreement

Administration Recommendation:

Administration recommends approval.

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Adjourn Meeting

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Posted 5:00 p.m.  
November 2, 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**

October 24, 2005

5:30 p.m. – Joint Session between the City Council and Planning and Zoning  
Commission

Conference & Theatre Centre – 15650 Addison Road

Present: Mayor Chow, Councilmembers Braun, Hirsch, Kraft, Mallory, Mellow,  
Niemann.

Absent: None

Present: Commissioners Chafin, Daseke, Doepfner, Jandura, Meier, Wood.

Absent: Bernstein

Photo Session for City Council.

Item #SS1 – Presentation and discussion of a Community Visual Preferencing  
Exercise with Leland Consulting and RTKL.

No action taken.

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

\_\_\_\_\_  
Mayor

Attest:

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

**OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL**

October 25, 2005  
7:30 p.m. - Council Chambers  
5300 Belt Line Road

Present: Mayor Chow, Councilmembers Braun, Hirsch, Kraft, Mallory, Mellow,  
Niemann

Absent: None

Item #R1 - Consideration of Old Business.

The following employees were introduced to the Council: Jeremy Wilkinson (Fire), Jason Means (Police), Bruce Ellis (Development Services).

Item #R2 - Consent Agenda.

#2a – Approval of the Minutes for the October 11, 2005 Council Meetings.  
(Approved as written.)

#2b – Consideration and approval for the City Manager to enter into a contract for FY '06 with the Trinity River Authority to provide inspection, sampling and laboratory analysis on certain industries in Addison to comply with wastewater pretreatment laws as required by EPA.(Approved)

#2c – Consideration and approval of a Resolution authorizing the City Manager to enter into an agreement with Hand and Associates Marketing Communications to advertise in the Addison/North Dallas Corridor Guide publication. (Approved – Resolution No. R05-082)

Councilman Mallory moved to duly approve the above listed items.  
Councilmember Niemann seconded. Motion carried.

Voting Aye: Mayor Chow, Braun, Hirsch, Kraft, Mallory, Mellow, Niemann  
Voting Nay: None  
Absent: None

Item #R3 – Consideration and approval of an Ordinance approving an amendment of Chapter 34, "Drought Contingency Plan," of the Code of Ordinances of the City by amending Article V, Sections 34-171 through 34-179, to meet newly established guidelines and requirements of the Texas Commission on Environmental Quality.

Councilmember Niemann moved to duly approve Ordinance No. 005-056 approving an amendment of Chapter 34, "Drought Contingency Plan," of the Code of Ordinances of the City by amending Article V, Sections 34-171 through

34-179, to meet newly established guidelines and requirements of the Texas Commission on Environmental Quality. Councilmember Braun seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Kraft, Mallory, Mellow, Niemann  
Voting Nay: None  
Absent: None

Item #R4 – Consideration and approval of an Ordinance amending the Code of Ordinances by amending Chapter 66 (Solid Waste) Article II (Collection and Disposal), Section 53 regarding the requirements for a solid waste collection permit.

Councilmember Kraft moved to duly approve Ordinance No. 005-057 amending the Code of Ordinances by amending Chapter 66 (Solid Waste) Article II (Collection and Disposal), Section 53 regarding the requirements for a solid waste collection permit. Councilmember Niemann seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Kraft, Mallory, Mellow, Niemann  
Voting Nay: None  
Absent: None

Item #R5 – Presentation of Department's Quarterly Operation Reports, including video presentation of Addison Shelter effort, report from Fire Department, and report on Special Events.

No action taken.

Item #R6 – Consideration and approval of a Resolution from the Addison City Council to authorize the City Manager to extend an existing contract with Allyn & Company, as the Town's public relations firm for the Town's effort to have the Cotton Belt Rail Line included in DART's 2030 System Plan Update.

Councilmember Hirsch moved to duly approve Resolution No. R05-083 authorizing the City Manager to extend an existing contract with Allyn & Company, as the Town's public relations firm for the Town's effort to have the Cotton Belt Rail Line included in DART's 2030 System Plan Update. Councilmember Mallory seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Kraft, Mallory, Mellow, Niemann  
Voting Nay: None  
Absent: None

**EXECUTIVE SESSION.** At 8:41 p.m., Mayor Chow announced that the Council would convene into Executive Session to discuss the following items:

Item #ES1 - Closed (executive) session of the City Council pursuant to Section 551.071, Texas Government Code, to conduct a private consultation with its attorney to seek the advice of its attorney about pending litigation, to wit: *Town of Addison v. Nile Properties, et al*, Cause No. CC-01-04552-A, County Court at Law No. 1, Dallas County, Texas.

The Council came out of Executive Session at 9:06 p.m.

Item #R7- Consideration of any action deemed necessary by the City Council in connection with pending litigation, to wit: *Town of Addison v. Nile Properties, et al*, Cause No. CC-01-04552-A, County Court at Law No. 1, Dallas County, Texas.

Councilmember Kraft moved to authorize the City Manager to seek settlement in connection with the pending litigation, to wit: *Town of Addison v. Nile Properties, et al*, Cause No. CC-01-04552-A, County Court at Law No. 1, Dallas County, Texas. Councilmember Niemann seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Kraft, Mallory, Mellow, Niemann  
Voting Nay: None  
Absent: None

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

\_\_\_\_\_  
Mayor

Attest:

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

**Council Agenda Item: #2b**

**SUMMARY:**

The Dallas Central Appraisal District is in the process of conducting an election/appointment for their Board of Directors.

**FINANCIAL IMPACT:**

Budgeted Amount: \$ N/A

Cost: \$ N/A

**BACKGROUND:**

By law, DCAD is required to conduct an election/appointment process for their five-member Board of Directors. The process is conducted on odd numbered years and a member is appointed for a two-year term beginning on the even numbered year. The five-member Board of Directors consist of one member from the City of Dallas, one member from Dallas County, one member from DISD, one member from the suburban cities in Dallas County, and one member from the suburban school districts in Dallas County.

Mr. Bill Binford, who represents all the suburban cities has chosen not to serve again on the Board, and in early October the City Council nominated former Mayor, R. Scott Wheeler to replace Mr. Binford. Subsequent to the Council's nomination, Mayor Chow mailed a letter to the suburban Mayors and City Managers requesting their support.

We recently received correspondence from DCAD with all of the names on the ballot. DCAD is requesting that the suburban cities cast their vote for one of the nominees.

**RECOMMENDATION:**

It is recommended that the City Council cast its vote for R. Scott Wheeler as the suburban representative to the Dallas Central Appraisal District Board of Directors.



#2b-2  
RECEIVED  
OCT 31 2005  
CITY MANAGER

**Dallas Central Appraisal District**

Date: October 27, 2005

To: Joe Chow, Mayor, Town of Addison

From: W. Kenneth Nolan, Executive Director/Chief Appraiser

Re: Election of Suburban Cities' Representative to Dallas Central Appraisal District Board of Directors

In accordance with state law, the nomination process for persons to serve on the Dallas Central Appraisal District Board of Directors has been completed. By state law, your agency is required to vote by official ballot resolution, which is enclosed. **You must do so no later than December 15.**

The nominees are as follows, in alphabetical order. Also included are the names of agencies nominating each.

<b>Nominee</b>	<b>Entity(s) Nominating</b>
Mr. Sheyi I. Ipaye	Glenn Heights
Mr. Charles P. Slayton	Cockrell Hill
Mr. Scott Wheeler	Addison
Mr. George Williams	Seagoville

Please act on this election process by official ballot resolution and return the ballot resolution to my office in the enclosed envelope by December 19, 2005.

WKN/vgh

Enclosure (Official Ballot Resolution/Return Envelope)

cc: City Manager  
City Secretary

A RESOLUTION OF THE CITY OF \_\_\_\_\_, DALLAS COUNTY, TEXAS, CASTING ITS VOTE FOR THE FOURTH MEMBER OF THE BOARD OF DIRECTORS OF THE DALLAS CENTRAL APPRAISAL DISTRICT.

WHEREAS, Dallas County eligible taxing entities have expressed and approved an option which allows for representation to the Appraisal District Board of Directors (in accordance with Section 6.03 of the Texas Property Tax Code) as follows:

1. The City of Dallas shall appoint one (1) member to the Board.
2. The Dallas Independent School District shall appoint one (1) member to the Board.
3. The Dallas County Commissioners Court shall appoint one (1) member to the Board. The member appointed by the Dallas County Commissioners Court shall not be a resident of either the City of Dallas or the Dallas Independent School District.
4. Each of the incorporated cities and towns, except for the City of Dallas, shall have the right to nominate by an official resolution one (1) candidate as the fourth member of the Board of Directors. The said cities and towns shall, from the nominations received, elect by a majority vote, with each city and town being entitled to one (1) vote, the fourth member of the Board of Directors.
5. Each of the independent school districts, except for the Dallas Independent School District, shall have the right to nominate by an official resolution one (1) candidate as the fifth member of the Board of Directors. The said independent school districts shall, from the nominations received, elect by a majority vote, with each independent school district being entitled to one (1) vote, the fifth member of the Board of Directors.

The votes required for election to the Board of Directors in 4 and 5 hereof shall be by a majority of those authorized to vote in 4 and 5 respectively and not by a majority of the quorum, and

WHEREAS, the City of \_\_\_\_\_ does hereby cast its vote by marking the ballot below:  
(Check one only)

- Sheyi I. Ipaye**
- Charles P. Slayton**
- Scott Wheeler**
- George Williams**

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of \_\_\_\_\_ does hereby confirm its one (1) vote for the election of \_\_\_\_\_ as the suburban cities' representative to the Board of Directors of the Dallas Central Appraisal District.

PASSED AND APPROVED, this the \_\_\_\_\_ day of \_\_\_\_\_, 2005

\_\_\_\_\_  
MAYOR

ATTEST: \_\_\_\_\_  
CITY SECRETARY

SEAL:

**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:

IQC, LLC dba CNB Communications

**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 \$474,000 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 IQC, LLC d/b/a CNB Communications ("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 60415 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)

Telecom Professionals, Inc.

2912 Lakeside Drive

Oklahoma City, OK 73120

Attention: Judith A. Riley

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.

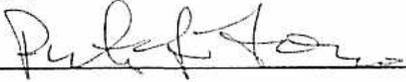
7. This Agreement, together with all attachments, sets forth the entire understanding of the Parties. No representation, promise, or statement of intention has been made by either Party that is not embodied herein.

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

Town of Addison, Texas

IQC, LLC d/b/a CNB Communications

\_\_\_\_\_

  
\_\_\_\_\_

Peter Grosso

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Name)

President

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

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

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

## ATTACHMENT NO. 2

### 9-1-1 ENTITY ESCALATION & CONTACT LIST

#### Database & Billing

Town of Addison  
Finance Department/Collections  
Elaine Difiglia, Manager  
(972) 450-7080

#### PSAP Operations

Janet Cowart  
Communications Supervisor  
Town of Addison Police Department  
(972) 450-7159

#### 9-1-1 Entity Management

Joni Ramsey  
Manager, Public Safety Communications  
Town of Addison Police Department  
(972) 450-7122

#### Company Service Order

Marla J. Hanley  
Vice-President Regulatory  
888-566-0011

#### Company Management

Marla J. Hanley  
Vice-President Regulatory  
888-566-0011

#### Company Billing

Marla J. Hanley  
Vice-President Regulatory  
888-566-0011

**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:

VCI Company

**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 \$474,000 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 \_\_\_\_\_ VCI Company \_\_\_\_\_ ("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 60729 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)

Stan Efferding -  
VCI Company -  
3875 Steilacoom Blvd. SW #A -  
Lakewood, WA 98499 -

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

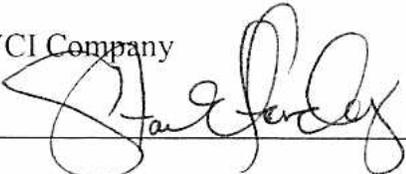
\_\_\_\_\_

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

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

VCI Company

  
\_\_\_\_\_

Stan Efferding  
\_\_\_\_\_  
(Printed Name)

Secretary/Treasurer  
\_\_\_\_\_  
(Title)

Date: 9/15/05

ATTACHMENT NO. 2

9-1-1 ENTITY ESCALATION & CONTACT LIST

Database & Billing

Town of Addison  
Finance Department/Collections  
Elaine Difulgia, Manager  
(972) 450-7080

PSAP Operations

Janet Cowart  
Communications Supervisor  
Town of Addison Police Department  
(972) 450-7159

9-1-1 Entity Management

Joni Ramsey  
Manager, Public Safety Communications  
Town of Addison Police Department  
(972) 450-7122

Company Service Order

Name: Stan Efferding Tel: (206) 419-5948  
Title: VCI Company Fax: (253) 475-6328  
Phone #: 3875 Steilacoom Blvd. SW #A  
Lakewood, WA 98499 E-mail: vilair@comcast.net

Company Management

Name: Stan Efferding Tel: (206) 419-5948  
Title: VCI Company Fax: (253) 475-6328  
Phone #: 3875 Steilacoom Blvd. SW #A  
Lakewood, WA 98499 E-mail: vilair@comcast.net

Company Billing

Name: Stan Efferding Tel: (206) 419-5948  
Title: VCI Company Fax: (253) 475-6328  
Phone #: 3875 Steilacoom Blvd. SW #A  
Lakewood, WA 98499 E-mail: vilair@comcast.net

**Council Meeting Item #2e****SUMMARY:**

This item is for final payment, in the amount of \$74,221.00 to Jim Bowman Construction Co., L.P., and acceptance of improvements for construction of the Sampling Manhole Construction Project.

**FINANCIAL IMPACT:**

Original Construction Cost: \$77,971.00

Final Construction Cost: \$80,471.00

Funding Source: Funds are available from the FY 2005-06 Water and Sewer Fund.

**BACKGROUND:**

In coordination with Dallas Water Utilities (DWU), the Town of Addison prepared engineering plans and specifications for the construction of three sanitary sewer manholes that were constructed over existing DWU mains along the east side of the Dallas North Tollway. Each manhole was located within a DWU easement and was equipped with devices that would allow for more effective sampling and testing of the wastewater flow from Addison into the DWU system. This operation allows for more accurate readings regarding wastewater quality and directly affects future rate structures for treatment of the Town's effluent.

A contract was awarded to Jim Bowman Construction Co., L.P. for construction of this project. The original contract price of \$77,971.00 was increased by a change order, in the amount of \$2500.00, to a final construction cost of \$80,471.00. The higher cost was specifically due to a total increase of 100 s.f. of concrete pavement repair around the three manhole sites, as deemed necessary by staff during construction. In addition, this project included an incentive/disincentive provision, whereby the contractor would be awarded \$250.00/day for early completion of the project, to a maximum award of \$5,000. The disincentive amount was also \$250.00/day with no maximum limit. The contractor was unable to complete the proposed work within the original contract time of 25 calendar days, and required an additional 25 calendar days to complete the original project improvements and successfully address all subsequent "punch list" items. As a result, the contractor is subject to the disincentive provision of the contract, in the total amount of \$6250.00, with a final net payment due by the Town, in the amount of \$74,221.00.

**RECOMMENDATION:**

Staff recommends that Council authorize first and final payment of \$74,221.00 to Jim Bowman Construction Co, L.P., and accept construction of the Sampling Manhole Construction Project.

November 1, 2005

Mr. Adrian Bowman  
Jim Bowman Construction Company, L.P.  
1111 Summit Ave., Suite 1  
Plano, Texas 75074

Re: Sampling Manhole Construction  
Disincentive Provision

Dear Mr. Bowman:

On August 24, 2005, the Town of Addison received your written request that twelve additional calendar days be added to the existing Sampling Manhole Construction Project. It is understood that your request was directly related to the amount of time it took your company to remove existing concrete encasement at each of the three sites. In addition, you met with Nancy Cline, Public Works Director, and other members of her staff on October 10, 2005 and submitted a verbal claim that your company should be compensated approximately \$22,000 for the work involved in the concrete encasement removal. At that time, Ms. Cline asked you to submit further documentation that would substantiate this claim. However, this information was not received by our Public Works Department staff.

As you are aware, the Sampling Manhole Construction project was structured as an "A + B" contract, with specific stipulations as to the granting of additional days or monetary compensation for work performed. The Town obtained a clarification from the design engineer, Jim Baddaker, with Freese & Nichols, Inc., regarding your requests. In affect, it is stated in **Section 15. Existing Structures** of the contract documents that the engineering plans show the locations of all known surface and subsurface structures. However the Owner assumes no responsibility for failure to show any or all of these structures on the Plans, or to show them in their exact location. It is also stated in this section that failure shall not be considered sufficient basis for claims for additional compensation or extra work, or for increasing the pay quantities in any manner.

**Section 30. Explanation of Contract Time** of the contract documents states that in the event the project is altered by work deleted, change orders, supplemental agreements, utility conflicts, design changes or defects, extra work, right of way issues, or other situations which are not the fault of or a direct result of contractor negligence, which may impact the critical path of the project construction schedule, the Town may choose to negotiate the extension of the original contract time with the Contractor.

Accordingly, your request for approximately \$22,000 in additional compensation cannot be accommodated by the Town, as per Section 15 of the contract documents and due to the original assumption stated by both parties that rock excavation would be involved throughout the construction of the three sites. However, the construction "punch list" was completed on September 17, 2005, which is 55 calendar days beyond the established start date of July 25, 2005 and 30 calendar days more than the original 25 calendar days set forth in the contract. Public Works staff evaluated the work performed to complete the punch list and can justify the reduction of 5 calendar days from this total. Consequently, your company must adhere to the disincentive provisions of the contract documents and absorb a reduction in payment for services performed in the amount of \$6250.00. This total is based on 25 calendar days of disincentive at a rate of \$250.00 per day. The original amount of the contract was \$77,971.00 and Change Order No. 1 increased it to \$80,471.00. The resulting net amount of the first and final payment to your company for the Sampling Manhole Construction project will be \$74,221.00.

For many years, the Town of Addison has enjoyed an excellent working relationship with Jim Bowman Construction Company, L.P. Your quality of work has not been an issue in previous construction projects, and we look forward to participating in future endeavors with your company. Your understanding and cooperation in the final disposition of the Sampling Manhole Construction Project is greatly appreciated.

Sincerely,

Ron Whitehead  
City Manager

**Council Agenda Item: #R3****SUMMARY:**

The Addison Arbor Foundation was awarded a 2005-2006 Urban Forestry Partnership Grant for \$10,000. This program is sponsored by the Texas Forest Service for the purpose of hiring a forestry intern to conduct a tree inventory and management plan. The plan will be used as an integral component of the RTKL Comprehensive Streetscape and Street Tree Management Plan. It will identify tree health, species, height, girth, location, ecological value, and maintenance needs for each tree.

**FINANCIAL IMPACT:**

Grant funds will be used to fund the intern. Matching funds from the Addison Arbor Foundation will consist of consulting fees for the RTKL Comprehensive Streetscape and Street Tree Management Plan approved by the Council in April 2005, as well as, in-kind services provided by the parks department to assist the intern with the inventory.

**BACKGROUND:**

The goal of the Urban Forestry Partnership Grant Program is to develop self-sustaining urban forestry programs in communities across Texas. Grants are awarded and paid on a 50/50 matching basis and distributed as reimbursement for eligible project expenditures. Grantees have up to 12 months to meet all technical and financial requirements of the project.

Successful Partnership grant projects focus on public tree management, particularly in areas of inventory and planning, tree ordinance development, and tree board or non-profit development. Staff submitted the application on behalf of the Addison Arbor Foundation citing the development of the Foundation's 20-year strategic plan for planting trees and development of the Comprehensive Streetscape and Street Tree Management Plan as the basis for the grant.

Attachments: Texas Forest Service Notice of Grant Award



5.941

October 4, 2005

Slade Strickland  
Addison Arbor Foundation  
PO Box 9010  
Addison, TX 75001-9010

Re: Urban Forestry Partnership Grant Award

Dear Mr. Strickland:

I am pleased to inform you that the Texas Forest Service (TFS) recently selected your project for funding through the Urban Forestry Partnership Grant Program, as follows:

Grant Number: 05-04-02  
Project Title: Tree Planting & Management Plan  
Grant Award: \$10,000  
Required Match: \$10,000

This letter will serve as official notification of your grant, which officially begins on October 1, 2005. As of this date, you are eligible to accrue expenditures and matching costs associated with your project's activities. Also be advised that, in accordance with policies established in cooperation with the Grants Committee of the Texas Urban Forestry Council, there is a three-year limit on funding for your project. This means that if you should re-apply for funding in future grant years for this same project, you will be limited to a total of three years of funding, subject to the annual application process and funding availability.

Instructions for completing the paperwork associated with this grant are as follows. First, please sign and return BOTH original copies of the Grant Agreement contract included in this packet as soon as possible. If your project includes tree planting, Exhibit A has been attached to the contracts. You must also execute and return the three certification documents included in your packet. These are: 1) the Assurances for Non-Construction Programs, 2) the certification form regarding Debarment, Lobbying Activities, and Drug-Free Workplace Requirements, and 3) a W-9 taxpayer ID form. Failure to return these signed documents by November 30, 2005 -- or at least contact me to explain why -- may result in this offer being withdrawn. Once the State Forester signs both copies of the contract, one will be returned to you for your records.

The representative who signs these documents must be the person authorized by your governing body to execute contracts on the organization's behalf. You must provide us with a resolution from the governing body that endorses the project and commits to the match stated in the Grant Agreement. A sample resolution is included in this handbook.

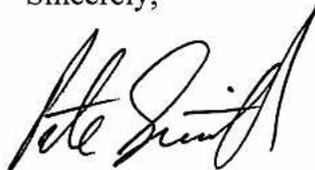
Third, if you will be contracting for goods or services (such as a consultant) be aware that you are expected to use a competitive bid process that conforms to all federal guidelines. Be sure to include minority- and women-owned businesses on any bid solicitation lists to encourage these historically underutilized businesses (HUB's) to become involved in the program. Rules are detailed in the enclosed USDA Uniform Administrative Requirements, 7 CFR Part 3016 for units of local government or Part 3019 for higher education institutions and non-profit groups.

Fourth, grant payments will typically be made on a reimbursement basis. This means that you will have to bear the cost of any purchases needed to complete the project, as well as the required match, before the grant will be paid in full. (For more information on allowable costs, see the enclosed federal cost principles: OMB A-87 for local governments; OMB A-21 for institutions of higher education; or OMB A-122 for nonprofit groups). Any product or accomplishments that result from the project must also be submitted for review before grant payments will be issued. All project costs must be incurred between October 1, 2005, and September 30, 2006, unless an extension has been granted in writing. The final report and supporting documentation (as detailed in the attached Documentation Guidelines) must be submitted by November 30, 2006.

Finally, grant recipients who receive \$300,000 or more in federal assistance from all sources must comply with federal Single Audit Act requirements, as detailed in OMB circular A-133, available upon request. This means that you may have to hire an accounting firm to review your internal cost accounting procedures and compliance with federal regulations and laws. If applicable, this independent audit must be performed for each fiscal year that you receive federal funds, and a copy of the audit report sent to the TFS program administrator for review.

Again, congratulations on your selection as a Partnership grant recipient. If you have any questions about this process, please contact me at 979/458-6650.

Sincerely,



Peter D. Smith  
Partnership Coordinator

/pds  
Enclosures  
cc: Matt Grubisich

**Council Agenda Item: #R4**

**SUMMARY:**

Council approval is requested of an ordinance authorizing the issuance and sale of Town of Addison, Texas, General Obligation Refunding and Improvement Bonds, Series 2005 and levying a tax for the payment thereof; approving a bond purchase agreement; approving an official statement; and enacting other provisions relating to the subject.

**FINANCIAL IMPACT:**

Debt service associated with the new issue of \$1.5 million is expected to average \$134,000 over the 15-year life of the bonds. The savings associated with the issuance of \$7.1 million bonds to refund existing debt, will average \$25,000 over the next 10 years. The net affect to the Town's annual general obligation debt service will be an additional \$109,000 for the next 10 years.

**BACKGROUND:**

In 2000 Addison voters approved a \$48.025 million bond program that included such projects as Arapaho Road Extension, Belt Line Road Streetscape, purchase of Town Hall, and the construction of the Athletic Club expansion and outdoor pool. To date, \$35.7 million in bonds have been issued. The \$1.5 million to be included in this issue will be used to supplement Arapaho Road funding (\$1.25 million) and rehabilitation of Midway Road (\$0.25 million).

**RECOMMENDATION:**

It is recommended Council approve the attached ordinance.

ORDINANCE

\$8,620,000  
TOWN OF ADDISON, TEXAS  
GENERAL OBLIGATION REFUNDING AND IMPROVEMENT BONDS  
SERIES 2005

Dated: November 1, 2005

Adopted: November 8, 2005

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AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF TOWN OF ADDISON, TEXAS, GENERAL OBLIGATION REFUNDING AND IMPROVEMENT BONDS, SERIES 2005 IN THE AGGREGATE PRINCIPAL AMOUNT OF \$8,620,000 AND LEVYING A TAX FOR THE PAYMENT THEREOF; APPROVING A BOND PURCHASE AGREEMENT; APPROVING AN OFFICIAL STATEMENT; AND ENACTING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, the City Council (the "City Council") of the Town of Addison, Texas (the "Town"), has previously issued and there are presently outstanding certain obligations of the Town secured by and payable from a pledge of ad valorem taxes, levied within the limits prescribed by law;

WHEREAS, the Town is authorized, pursuant to the general laws of the State of Texas, and particularly Chapter 1207, Texas Government Code ("Chapter 1207"), to issue its bonds for the purpose of refunding all or a portion of its outstanding obligations;

WHEREAS, by this Ordinance the City Council is authorizing the issuance of its bonds for the purpose of refunding the Town's outstanding obligations identified and described on Schedule I attached hereto and incorporated herein by reference for all purposes (the "Refunded Obligations");

WHEREAS, the City Council hereby finds, determines and declares that the refunding of the Refunded Obligations will result in a net present value savings of approximately \$\_\_\_\_\_ for the Town;

WHEREAS, the City Council hereby finds, determines and declares that the issuance of a portion of the bonds herein authorized for the purpose of refunding the Refunded Obligations is necessary in order to lower the overall annual debt service requirements of the Town;

WHEREAS, a portion of the bonds hereinafter authorized were duly and favorably voted, as required by the Constitution and laws of the State of Texas, at an election held in the Town on February 12, 2000; and

WHEREAS, at said election, the following are among the purposes and amounts of the bonds which were authorized, reflecting any amount previously issued pursuant to each voted authorization, the amount therefrom being issued pursuant to this Ordinance, and the balance that remains unissued after the issuance of such bonds herein authorized, to wit:

<u>Purpose</u>	<u>Amount Voted</u>	<u>Amount Previously Issued</u>	<u>Amount Being Issued</u>	<u>Unissued Balance</u>
<u>2000 Election</u>				
Arapaho Road Street Improvements	20,500,000	20,500,000	-0-	-0-
Street Improvements	11,500,000	7,800,000	1,500,000	2,200,000
Road Utilities/Streetscape	11,000,000	2,370,000	-0-	8,630,000
Community Improvements	<u>725,000</u>	<u>725,000</u>	<u>-0-</u>	<u>-0-</u>
Totals	<u>\$43,725,000</u>	<u>\$31,395,000</u>	<u>\$1,500,000</u>	<u>\$10,830,000</u>

WHEREAS, the City Council hereby finds, determines and declares that it is necessary and in the best interest of the Town and its citizens that it authorize by this Ordinance the issuance and delivery of its bonds for the purposes herein stated at this time, all in a single issue; and

WHEREAS, the meeting at which this Ordinance is considered is open to the public as required by law, and the public notice of the time, place and purpose of said meeting was given as required by Chapter 551, Texas Government Code, as amended; therefore

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

ARTICLE I  
DEFINITIONS AND OTHER PRELIMINARY MATTERS

Section 1.01. Definitions.

Unless otherwise expressly provided or unless the context clearly requires otherwise in this Ordinance, the following terms shall have the meanings specified below:

“Bond” means any of the Bonds.

“Bond Date” means the date designated as the date of the Bonds by Section 3.02(a) of this Ordinance.

“Bonds” means the Town’s bonds authorized to be issued by Section 3.01 of this Ordinance and designated as “Town of Addison, Texas, General Obligation Refunding and Improvement Bonds, Series 2005,” dated as of November 1, 2005.

“Closing Date” means the date of the initial delivery of and payment for the Bonds.

“Code” means the Internal Revenue Code of 1986, as amended, including applicable regulations, published rulings and court decisions.

“Designated Payment/Transfer Office” means (i) with respect to the initial Paying Agent/Registrar named in this Ordinance, the Designated Payment/Transfer Office as designated in the Paying Agent/Registrar Agreement, or at such other location designated by the Paying Agent/Registrar and (ii) with respect to any successor Paying Agent/Registrar, the office of such successor designated and located as may be agreed upon by the District and such successor.

“DTC” means The Depository Trust Company of New York, New York, or any successor securities depository.

“DTC Participant” means brokers and dealers, banks, trust companies, clearing corporations and certain other organizations on whose behalf DTC was created to hold securities to facilitate the clearance and settlement of securities transactions among DTC Participants.

“Event of Default” means any event of default as defined in Section 10.01 of this Ordinance.

“Initial Bond” means the Initial Bond authorized by Section 3.04 of this Ordinance.

“Interest and Sinking Fund” means the interest and sinking fund established by Section 2.02 of this Ordinance.

“Interest Payment Date” means the date or dates on which interest on the Bonds is scheduled to be paid until their respective dates of maturity, such dates being February 15 and August 15, commencing February 15, 2006.

“MSRB” means the Municipal Securities Rulemaking Board.

“NRMSIR” means each person whom the SEC or its staff has determined to be a nationally recognized municipal securities information repository within the meaning of the Rule from time to time.

“Owner” means the person who is the registered owner of a Bond or Bonds, as shown in the Register.

“Ordinance” means this Ordinance.

“Original Issue Date” means the initial date from which interest on the Bonds accrues and which is designated in Section 3.02(a).

“Paying Agent/Registrar” means initially JPMorgan Chase Bank, National Association, Dallas, Texas, a New York state banking corporation authorized to do business in the State of Texas, or any successor thereto as provided in this Ordinance.

“Paying Agent/Registrar Agreement” means the Paying Agent/Registrar Agreement between the Town and the Paying Agent/Registrar relating to the Bonds.

“Record Date” means the last business day of the month next preceding an Interest Payment Date.

“Refunded Obligations” means the obligations described on Schedule I hereto.

“Register” means the Register specified in Section 3.06(a) of this Ordinance.

“Representation Letter” means the Blanket Letter of Representations between the Town and DTC.

“Rule” means SEC Rule 15c2-12, as amended from time to time.

“SEC” means the United States Securities and Exchange Commission.

“SID” means any person designated by the State of Texas or an authorized department, office, or agency thereof as, and determined by the SEC or its staff to be, a state information depository within the meaning of the Rule from time to time.

“Special Payment Date” means the Special Payment Date prescribed by Section 3.03(b).

“Special Record Date” means the Special Record Date prescribed by Section 3.03(b).

“Unclaimed Payments” means money deposited with the Paying Agent/Registrar for the payment of principal of or interest on the Bonds as the same come due and payable and remaining unclaimed by the Owners of such Bonds after the applicable payment or redemption date.

#### Section 1.02. Findings.

The declarations, determinations and findings declared, made and found in the preamble to this Ordinance are hereby adopted, restated and made a part of the operative provisions hereof.

#### Section 1.03. Table of Contents, Titles and Headings.

The table of contents, titles and headings of the Articles and Sections of this Ordinance have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Ordinance or any provision hereof or in ascertaining intent, if any question of intent should arise.

#### Section 1.04. Interpretation.

(a) Unless the context requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa.

(b) Article and section references shall mean references to articles and sections of this Ordinance unless designated otherwise.

(c) This Ordinance and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein.

Section 1.05. Other Definitions.

The term "Town" shall have the meaning assigned in the preamble to this Ordinance.

ARTICLE II  
SECURITY FOR THE BONDS; INTEREST AND SINKING FUND

Section 2.01. Tax Levy.

(a) Pursuant to the authority granted by the Texas Constitution and the laws of the State of Texas, the City Council hereby declares and covenants that there shall be levied and there is hereby levied for the current year and for each succeeding year hereafter while any of the Bonds or any interest thereon is outstanding and unpaid, an ad valorem tax on each one hundred dollars valuation of taxable property within the Town, at a rate sufficient, within the limit prescribed by law, to pay the debt service requirements of the Bonds, being (i) the interest on the Bonds, and (ii) a sinking fund for their redemption at maturity or a sinking fund of two percent (2%) per annum (whichever amount is greater), when due and payable, full allowance being made for delinquencies and costs of collection.

(b) The ad valorem tax thus levied shall be assessed and collected each year against all property appearing on the tax rolls of the Town most recently approved in accordance with law and the money thus collected shall be deposited as collected to the Interest and Sinking Fund.

(c) Said ad valorem tax, the collections therefrom, and all amounts on deposit in or required hereby to be deposited to the Interest and Sinking Fund are hereby pledged and committed irrevocably to the payment of the principal of and interest on the Bonds when and as due and payable in accordance with their terms and this Ordinance.

(d) If the lien and provisions of this Ordinance shall be released in a manner permitted by Article XI hereof, then the collection of such ad valorem tax may be suspended or appropriately reduced, as the facts may permit, and further deposits to the Interest and Sinking Fund may be suspended or appropriately reduced, as the facts may permit. In determining the aggregate principal amount of outstanding Bonds, there shall be subtracted the amount of any Bonds that have been duly called for redemption and for which money has been deposited with the Paying Agent/Registrar for such redemption.

Section 2.02. Interest and Sinking Fund.

(a) The Town hereby establishes a special fund or account, to be designated the "Town of Addison, Texas, General Obligation Refunding and Improvement Bonds, Series 2005, Interest and Sinking Fund," said fund to be maintained at an official depository bank of the Town separate and apart from all other funds and accounts of the Town.

(b) Money on deposit in or required by this Ordinance to be deposited to the Interest and Sinking Fund shall be used solely for the purpose of paying the interest on and principal of the Bonds when and as due and payable in accordance with their terms and this Ordinance.

ARTICLE III  
AUTHORIZATION; GENERAL TERMS AND PROVISIONS  
REGARDING THE BONDS

Section 3.01. Authorization.

The Town’s bonds, to be designated “Town of Addison, Texas, General Obligation Refunding and Improvement Bonds, Series 2005,” are hereby authorized to be issued and delivered in accordance with the Constitution and laws of the State of Texas, including specifically Chapters 1207 and 1331, Texas Government Code, as amended, and Article V, Section 5.11 of the Charter of the Town. The Bonds shall be issued in the aggregate principal amount of \$8,620,000, for the purposes of (i) making the following public improvements, to wit: \$1,500,000 for engineering, constructing, reconstructing, improving, repairing, developing, extending and expanding streets, thoroughfares, bridges, interchanges, intersections, grade separations, sidewalks and other public ways of the Town, including necessary and related storm drainage facilities and improvements, signalization and other traffic controls, street lighting, and the acquisition of any needed rights-of-way therefor (the “Project”); (ii) refunding the Refunded Obligations; and (iii) paying the costs of issuing the Bonds.

Section 3.02. Date, Denomination, Maturities and Interest.

(a) The Bonds shall be dated November 1, 2005. The Bonds shall be in fully registered form, without coupons, in the denomination of \$5,000 or any integral multiple thereof, and shall be numbered separately from one (1) upward or such other designation acceptable to the Town and Paying Agent/Registrar, except the Initial Bond, which shall be numbered T-1.

(b) The Bonds shall mature on February 15 in the years and in the principal amounts set forth in the following schedule:

<u>Year</u>	<u>Principal Amounts</u>	<u>Interest Rate</u>	<u>Year</u>	<u>Principal Amounts</u>	<u>Interest Rate</u>
2006	\$ 645,000		2014	\$1,015,000	
2007	1,200,000		2015	1,055,000	
2008	145,000		2016	105,000	
2009	150,000		2017	110,000	
2010	880,000		2018	115,000	
2011	910,000		2019	120,000	
2012	940,000		2020	125,000	
2013	975,000		2021	130,000	

(c) Interest shall accrue and be paid on each Bond respectively until its maturity or prior redemption, from the later of the Bond Date or the most recent Interest Payment Date to which interest has been paid or provided for at the rates per annum for each respective maturity

specified in the schedule contained in subsection (b) above. Such interest shall be payable semiannually on each February 15 and August 15, commencing February 15, 2006, until maturity or prior redemption. Interest on the Bonds shall be calculated on the basis of a three hundred sixty (360) day year composed of twelve (12) months of thirty (30) days each.

Section 3.03. Medium, Method and Place of Payment.

(a) The principal of and interest on the Bonds shall be paid in lawful money of the United States of America.

(b) Interest on the Bonds shall be payable to each Owner as shown in the Register at the close of business on the Record Date; provided, however, that in the event of nonpayment of interest on a scheduled Interest Payment Date, and for 30 days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (the "Special Payment Date," which shall be at least 15 days after the Special Record Date) shall be sent at least five business days prior to the Special Record Date by United States mail, first class postage prepaid, to the address of each Owner of a Bond appearing on the books of the Paying Agent/Registrar at the close of business on the last business day next preceding the date of mailing of such notice.

(c) Interest shall be paid by check, dated as of the Interest Payment Date, and sent by the Paying Agent/Registrar to each Owner, first class United States mail, postage prepaid, to the address of each Owner as it appears in the Register, or by such other customary banking arrangement acceptable to the Paying Agent/Registrar and the Owner; provided, however, the Owner shall bear all risk and expense of such other banking arrangement. At the option of an Owner of at least \$1,000,000 principal amount of the Bonds, interest may be paid by wire transfer to the bank account of such Owner on file with the Paying Agent/Registrar.

(d) The principal of each Bond shall be paid to the Owner thereof on the due date thereof (whether at stated maturity or upon prior redemption) upon presentation and surrender of such Bond at the Designated Payment/Transfer Office of the Paying Agent/Registrar.

(e) If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, legal holiday, or day on which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are required or authorized by law or executive order to close, the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday, or day on which banking institutions are required or authorized to close, and payment on such date shall have the same force and effect as if made on the original date payment was due and no additional interest shall be due by reason of nonpayment on the date on which such payment is otherwise stated to be due and payable.

(f) Unclaimed Payments shall be segregated in a special account and held in trust, uninvested by the Paying Agent/Registrar, for the account of the Owner of the Bonds to which the Unclaimed Payments pertain. Subject to Title 6 of the Texas Property Code, Unclaimed

Payments remaining unclaimed by the Owners entitled thereto for three (3) years after the applicable payment or redemption date shall be applied to the next payment or payments on the Bonds thereafter coming due and, to the extent any such money remains after the retirement of all outstanding Bonds, shall be paid to the Town to be used for any lawful purpose. Thereafter, neither the Town, the Paying Agent/Registrar nor any other person shall be liable or responsible to any holders of such Bonds for any further payment of such unclaimed monies or on account of any such Bonds, subject to Title 6 of the Texas Property Code.

Section 3.04. Execution and Registration of Bonds.

(a) The Bonds shall be executed on behalf of the Town by the Mayor and the City Secretary, by their manual or facsimile signatures, and the official seal of the Town shall be impressed or placed in facsimile thereon. Such facsimile signatures on the Bonds shall have the same effect as if each of the Bonds had been signed manually and in person by each of those officers, and such facsimile seal on the Bonds shall have the same effect as if the official seal of the Town had been manually impressed upon each of the Bonds.

(b) In the event that any officer of the Town whose manual or facsimile signature appears on the Bonds ceases to be such officer before the authentication of such Bonds or before the delivery thereof, such manual or facsimile signature nevertheless shall be valid and sufficient for all purposes as if such officer had remained in such office.

(c) Except as provided below, no Bond shall be valid or obligatory for any purpose or be entitled to any security or benefit of this Ordinance unless and until there appears thereon the Certificate of Paying Agent/Registrar substantially in the form provided herein, duly authenticated by manual execution by an officer or duly authorized signatory of the Paying Agent/Registrar. It shall not be required that the same officer or authorized signatory of the Paying Agent/Registrar sign the Certificate of Paying Agent/Registrar on all of the Bonds. In lieu of the executed Certificate of Paying Agent/Registrar described above, the Initial Bond delivered at the Closing Date shall have attached thereto the Comptroller's Registration Certificate substantially in the form provided herein, manually executed by the Comptroller of Public Accounts of the State of Texas, or by his duly authorized agent, which Certificate shall be evidence that the Bond has been duly approved by the Attorney General of the State of Texas and that it is a valid and binding obligation of the Town, and has been registered by the Comptroller of Public Accounts of the State of Texas.

(d) On the Closing Date, one initial Bond representing the entire principal amount of all Bonds, payable in stated installments to the initial purchaser, or its designee, executed by the Mayor and City Secretary of the Town by their manual or facsimile signatures, approved by the Attorney General, and registered and manually signed by the Comptroller of Public Accounts, will be delivered to the initial purchaser or its designee. Upon payment for the Initial Bond, the Paying Agent/Registrar shall cancel the Initial Bond and deliver to DTC, on behalf of the initial Purchaser, one typewritten Bond for each maturity representing the aggregate principal amount for each respective maturity, registered in the name of Cede & Co., as nominee for DTC.

Section 3.05. Ownership.

(a) The Town, the Paying Agent/Registrar and any other person may treat the person in whose name any Bond is registered as the absolute owner of such Bond for the purpose of making and receiving payment as provided herein (except interest shall be paid to the person in whose name such Bond is registered on the Record Date), and for all other purposes, whether or not such Bond is overdue, and neither the Town nor the Paying Agent/Registrar shall be bound by any notice or knowledge to the contrary.

(b) All payments made to the person deemed to be the Owner of a Bond in accordance with this Section shall be valid and effectual and shall discharge the liability of the Town and the Paying Agent/Registrar upon such Bond to the extent of the sums paid.

Section 3.06. Registration, Transfer and Exchange.

(a) So long as any Bonds remain outstanding, the Town shall cause the Paying Agent/Registrar to keep at the Designated Payment/Transfer Office a register (the "Register") in which, subject to such reasonable regulations as it may prescribe, the Paying Agent/Registrar shall provide for the registration and transfer of Bonds in accordance with this Ordinance.

(b) The ownership of a Bond may be transferred only upon the presentation and surrender of the Bond at the Designated Payment/Transfer Office of the Paying Agent/Registrar with such endorsement or other evidence of transfer as is acceptable to the Paying Agent/Registrar. No transfer of any Bond shall be effective until entered in the Register.

(c) The Bonds shall be exchangeable upon the presentation and surrender thereof at the Designated Payment/Transfer Office of the Paying Agent/Registrar for a Bond or Bonds of the same maturity and interest rate and in any denomination or denominations of any integral multiple of \$5,000 and in an aggregate principal amount equal to the unpaid principal amount of the Bonds presented for exchange. The Paying Agent/Registrar is hereby authorized to authenticate and deliver Bonds exchanged for other Bonds in accordance with this Section.

(d) Each exchange Bond delivered by the Paying Agent/ Registrar in accordance with this Section shall constitute an original contractual obligation of the Town and shall be entitled to the benefits and security of this Ordinance to the same extent as the Bond or Bonds in lieu of which such exchange Bond is delivered.

(e) No service charge shall be made to the Owner for the initial registration, subsequent transfer, or exchange for any different denomination of any of the Bonds. The Paying Agent/Registrar, however, may require the Owner to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection with the registration, transfer or exchange of a Bond.

(f) Neither the Town nor the Paying Agent/Registrar shall be required to issue, transfer, or exchange any Bond called for redemption, in whole or in part, where such redemption is scheduled to occur within forty-five (45) calendar days after the transfer or exchange date; provided, however, such limitation shall not be applicable to an exchange by the Owner of the uncalled principal balance of a Bond.

Section 3.07. Cancellation.

All Bonds paid or redeemed before scheduled maturity in accordance with this Ordinance, and all Bonds in lieu of which exchange Bonds or replacement Bonds are authenticated and delivered in accordance with this Ordinance, shall be cancelled and proper records shall be made regarding such payment, redemption, exchange or replacement. The Paying Agent/Registrar shall then return such cancelled Bonds to the Town or may in accordance with law destroy such cancelled Bonds and periodically furnish the Town with certificates of destruction of such Bonds.

Section 3.08. Temporary Bonds.

(a) Following the delivery and registration of the Initial Bond and pending the preparation of definitive Bonds, the proper officers of the Town may execute and, upon the Town's request, the Paying Agent/Registrar shall authenticate and deliver, one or more temporary Bonds that are printed, lithographed, typewritten, mimeographed or otherwise produced, in any denomination, substantially of the tenor of the definitive Bonds in lieu of which they are delivered, without coupons, and with such appropriate insertions, omissions, substitutions and other variations as the officers of the Town executing such temporary Bonds may determine, as evidenced by their signing of such temporary Bonds.

(b) Until exchanged for Bonds in definitive form, such Bonds in temporary form shall be entitled to the benefit and security of this Ordinance.

(c) The Town, without unreasonable delay, shall prepare, execute and deliver to the Paying Agent/Registrar the Bonds in definitive form; thereupon, upon the presentation and surrender of the Bonds in temporary form to the Paying Agent/Registrar, the Paying Agent/Registrar shall cancel the Bonds in temporary form and shall authenticate and deliver in exchange therefor Bonds of the same maturity and series, in definitive form, in the authorized denomination, and in the same aggregate principal amount, as the Bonds in temporary form surrendered. Such exchange shall be made without the making of any charge therefor to any Owner.

Section 3.09. Replacement Bonds.

(a) Upon the presentation and surrender to the Paying Agent/Registrar of a mutilated Bond, the Paying Agent/Registrar shall authenticate and deliver in exchange therefor a replacement Bond of like tenor and principal amount, bearing a number not contemporaneously outstanding. The Town or the Paying Agent/Registrar may require the Owner of such Bond to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection therewith and any other expenses connected therewith.

(b) In the event that any Bond is lost, apparently destroyed or wrongfully taken, the Paying Agent/Registrar, pursuant to the applicable laws of the State of Texas and in the absence of notice or knowledge that such Bond has been acquired by a bona fide purchaser, shall authenticate and deliver a replacement Bond of like tenor and principal amount, bearing a number not contemporaneously outstanding, provided that the Owner first:

(i) furnishes to the Paying Agent/Registrar satisfactory evidence of his ownership of and the circumstances of the loss, destruction or theft of such Bond;

(ii) furnishes such security or indemnity as may be required by the Paying Agent/Registrar to save it and the Town harmless;

(iii) pays all expenses and charges in connection therewith, including, but not limited to, printing costs, legal fees, fees of the Paying Agent/Registrar and any tax or other governmental charge that is authorized to be imposed; and

(iv) satisfies any other reasonable requirements imposed by the Town and the Paying Agent/Registrar.

(c) If, after the delivery of such replacement Bond, a bona fide purchaser of the original Bond in lieu of which such replacement Bond was issued presents for payment such original Bond, the Town and the Paying Agent/Registrar shall be entitled to recover such replacement Bond from the person to whom it was delivered or any person taking therefrom, except a bona fide purchaser, and shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by the Town or the Paying Agent/Registrar in connection therewith.

(d) In the event that any such mutilated, lost, apparently destroyed or wrongfully taken Bond has become or is about to become due and payable, the Paying Agent/Registrar, in its discretion, instead of issuing a replacement Bond, may pay such Bond if it has become due and payable or may pay such Bond when it becomes due and payable.

(e) Each replacement Bond delivered in accordance with this Section shall constitute an original additional contractual obligation of the Town and shall be entitled to the benefits and security of this Ordinance to the same extent as the Bond or Bonds in lieu of which such replacement Bond is delivered.

### Section 3.10. Book-Entry Only System.

Notwithstanding any other provision hereof, upon initial issuance of the Bonds, the ownership of the Bonds shall be registered in the name of Cede & Co., as nominee of DTC. The definitive Bonds shall be initially issued in the form of a single separate fully registered certificate for each of the maturities thereof.

With respect to Bonds registered in the name of Cede & Co., as nominee of DTC, the Town and the Paying Agent/Registrar shall have no responsibility or obligation to any DTC Participant or to any person on behalf of whom such a DTC Participant holds an interest in the Bonds except as provided in this Ordinance. Without limiting the immediately preceding sentence, the Town and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any DTC Participant or any other person, other than a Bondholder, as shown on the Register, of any notice with respect to the Bonds, including any notice of redemption, or (iii) the payment to any DTC Participant or any other person, other than a Bondholder, as shown in the Register of any amount with respect to

principal of or interest on the Bonds. Notwithstanding any other provision of this Ordinance to the contrary, the Town and the Paying Agent/Registrar shall be entitled to treat and consider the person in whose name each Bond is registered in the Register as the absolute owner of such Bond for the purpose of payment of principal of, premium, if any, and interest on such Bonds, for the purpose of all matters with respect to such Bond, for the purpose of registering transfer with respect to such Bond, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of, premium, if any, and interest on the Bonds only to or upon the order of the respective owners, as shown in the Register as provided in this Ordinance, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the Town's obligations with respect to payment of, premium, if any, and interest on the Bonds to the extent of the sum or sums so paid. No person other than an Owner, as shown in the Register, shall receive a certificate evidencing the obligation of the Town to make payments of amounts due pursuant to this Ordinance. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., the word "Cede & Co." in this Ordinance shall refer to such new nominee of DTC.

Section 3.11. Successor Securities Depository; Transfer Outside Book-Entry Only System.

In the event that the Town or the Paying Agent/Registrar determines that DTC is incapable of discharging its responsibilities described herein and in the Representations Letter of the Town to DTC, or in the event DTC discontinues the services described herein, the Town or the Paying Agent/Registrar shall (i) appoint a successor securities depository, qualified to act as such under Section 17(a) of the Securities and Exchange Act of 1934, as amended, notify DTC and DTC Participants of the appointment of such successor securities depository and transfer one or more separate Bonds to such successor securities depository or (ii) notify DTC and DTC Participants of the availability through DTC of Bonds and transfer one or more separate Bonds to DTC Participants having Bonds credited to their DTC accounts. In such event, the Bonds shall no longer be restricted to being registered in the Register in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names Bondholders transferring or exchanging Bonds shall designate, in accordance with the provisions of this Ordinance.

Section 3.12. Payments to Cede & Co.

Notwithstanding any other provision of this Ordinance to the contrary, so long as any Bonds are registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of and interest on such Bonds, and all notices with respect to such Bonds, shall be made and given, respectively, in the manner provided in the blanket letter of representation of the Town to DTC.

ARTICLE IV  
REDEMPTION OF BONDS BEFORE MATURITY

Section 4.01. Redemption.

The Bonds shall be subject to redemption before scheduled maturity only as provided in this Article.

Section 4.02. Optional Redemption.

The Bonds maturing on or after February 15, 2014 are subject to redemption at the option of the Town on February 15, 2013 or on any date thereafter, in whole or in part, at a redemption price of par plus accrued interest to the date of redemption.

(a) The Town, at least 45 days before the redemption date, unless a shorter period shall be satisfactory to the Paying Agent/Registrar, shall notify the Paying Agent/Registrar of such redemption date and of the principal amount of Bonds to be redeemed.

Section 4.03. Partial Redemption.

(a) If less than all of the Bonds are to be redeemed pursuant to Section 4.02, the Town shall determine the maturity or maturities and the amounts thereof to be redeemed and shall direct the Paying Agent/Registrar to call by lot the Bonds, or portions thereof, within such maturity or maturities and in such principal amounts for redemption.

(b) A portion of a single Bond of a denomination greater than \$5,000 may be redeemed, but only in a principal amount equal to \$5,000 or any integral multiple thereof. If such a Bond is to be partially redeemed, the Paying Agent/Registrar shall treat each \$5,000 portion of a Bond as though it were a single Bond for purposes of selection for redemption.

(c) Upon surrender of any Bond for redemption in part, the Paying Agent/Registrar, in accordance with Section 3.06 of this Ordinance, shall authenticate and deliver an exchange Bond or Bonds in an aggregate principal amount equal to the unredeemed portion of the Bond so surrendered, such exchange being without charge, notwithstanding any provision of Section 3.06 to the contrary.

(d) The Paying Agent/Registrar shall promptly notify the Town in writing of the principal amount to be redeemed of any Bond as to which only a portion thereof is to be redeemed.

Section 4.04. Notice of Redemption to Owners.

(a) The Paying Agent/Registrar shall give notice of any redemption of Bonds by sending notice by first class United States mail, postage prepaid, not less than 30 days before the date fixed for redemption, to the Owner of each Bond (or part thereof) to be redeemed, at the address shown in the Register on the Business Day next preceding the date of mailing of such notice.

(b) The notice shall state the redemption date, the redemption price, the place at which the Bonds are to be surrendered for payment, and, if less than all the Bonds outstanding are to be redeemed, an identification of the Bonds or portions thereof to be redeemed.

(c) Any notice given as provided in this Section shall be conclusively presumed to have been duly given, whether or not the Owner receives such notice.

Section 4.05. Payment Upon Redemption.

(a) Before or on each redemption date, the Town shall deposit with the Paying Agent/Registrar money sufficient to pay all amounts due on the redemption date and the Paying Agent/Registrar shall make provision for the payment of the Bonds to be redeemed on such date by setting aside and holding in trust an amount from the Interest and Sinking Fund or otherwise received by the Paying Agent/Registrar from the Town and shall use such funds solely for the purpose of paying the principal of, redemption premium, if any, and accrued interest on the Bonds being redeemed.

(b) Upon presentation and surrender of any Bond called for redemption at the Designated Payment/Transfer Office of the Paying Agent/Registrar on or after the date fixed for redemption, the Paying Agent/Registrar shall pay the principal of, redemption premium, if any, and accrued interest on such Bond to the date of redemption from the money set aside for such purpose.

Section 4.06. Effect of Redemption.

(a) Notice of redemption having been given as provided in Section 4.04 of this Ordinance, the Bonds or portions thereof called for redemption shall become due and payable on the date fixed for redemption and, unless the Town defaults in the payment of the principal thereof, redemption premium, if any, or accrued interest thereon, such Bonds or portions thereof shall cease to bear interest from and after the date fixed for redemption, whether or not such Bonds are presented and surrendered for payment on such date.

(b) If the Town shall fail to make provision for payment of all sums due on a redemption date, then any Bond or portion thereof shall continue to bear interest at the rate stated on the Bond until due provision is made for the payment of same by the Town.

ARTICLE V  
PAYING AGENT/REGISTRAR

Section 5.01. Appointment of Initial Paying Agent/Registrar.

JPMorgan Chase Bank, National Association, Dallas, Texas, a New York state banking corporation authorized to do business in the State of Texas, is hereby appointed as the initial Paying Agent/Registrar for the Bonds.

Section 5.02. Qualifications.

Each Paying Agent/Registrar shall be a commercial bank, a trust company organized under the laws of the State of Texas, or any other entity duly qualified and legally authorized to serve as and perform the duties and services of paying agent and registrar for the Bonds.

Section 5.03. Maintaining Paying Agent/Registrar.

(a) At all times while any Bonds are outstanding, the Town will maintain a Paying Agent/Registrar that is qualified under Section 5.02 of this Ordinance. The Mayor is hereby authorized and directed to execute an agreement with the Paying Agent/Registrar specifying the duties and responsibilities of the Town and the Paying Agent/Registrar in the substantially final form presented herewith, the terms and provisions of such form of agreement being hereby approved. The signature of the Mayor shall be attested by the City Secretary of the Town.

(b) If the Paying Agent/Registrar resigns or otherwise ceases to serve as such, the Town will promptly appoint a replacement.

Section 5.04. Termination.

The Town, upon not less than sixty (60) days notice, reserves the right to terminate the appointment of any Paying Agent/Registrar by delivering to the entity whose appointment is to be terminated written notice of such termination, provided, that such termination shall not be effective until a successor Paying Agent/Registrar has been appointed and has accepted the duties of Paying Agent/Registrar for the Bonds.

Section 5.05. Notice of Change to Owners.

Promptly upon each change in the entity serving as Paying Agent/Registrar, the Town will cause notice of the change to be sent to each Owner by first class United States mail, postage prepaid, at the address in the Register, stating the effective date of the change and the name and mailing address of the replacement Paying Agent/Registrar.

Section 5.06. Agreement to Perform Duties and Functions.

By accepting the appointment as Paying Agent/Registrar and executing the Paying Agent/Registrar Agreement, the Paying Agent/Registrar is deemed to have agreed to the provisions of this Ordinance and that it will perform the duties and functions of Paying Agent/Registrar prescribed thereby.

Section 5.07. Delivery of Records to Successor.

If a Paying Agent/Registrar is replaced, such Paying Agent/Registrar, promptly upon the appointment of the successor, will deliver the Register (or a copy thereof) and all other pertinent books and records relating to the Bonds to the successor Paying Agent/Registrar.

ARTICLE VI  
FORM OF THE BONDS

Section 6.01. Form Generally.

(a) The Bonds, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Certificate of the Paying Agent/Registrar, and the Assignment form to appear on each of the Bonds, (i) shall be substantially in the form set forth in this Article, with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance, and (ii) may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including any reproduction of an opinion of counsel) thereon as, consistently herewith, may be determined by the Town or by the officers executing such Bonds, as evidenced by their execution thereof.

(b) Any portion of the text of any Bonds may be set forth on the reverse side thereof, with an appropriate reference thereto on the face of the Bonds.

(c) The definitive Bonds shall be typewritten, printed, lithographed, or engraved, and may be produced by any combination of these methods or produced in any other similar manner, all as determined by the officers executing such Bonds, as evidenced by their execution thereof.

(d) The Initial Bond submitted to the Attorney General of the State of Texas may be typewritten and photocopied or otherwise reproduced.

Section 6.02. Form of the Bonds.

The form of the Bond, including the form of the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the form of Certificate of the Paying Agent/Registrar and the form of Assignment appearing on the Bonds, shall be substantially as follows:

(a) Form of Bond.

REGISTERED

REGISTERED

No. \_\_\_\_\_

\$ \_\_\_\_\_

United States of America  
State of Texas  
County of Dallas  
TOWN OF ADDISON, TEXAS  
GENERAL OBLIGATION REFUNDING AND IMPROVEMENT BOND  
SERIES 2005

INTEREST RATE: \_\_\_\_\_%      MATURITY DATE: \_\_\_\_\_, \_\_\_\_\_      BOND DATE: November 1, 2005      CUSIP NUMBER: \_\_\_\_\_

The Town of Addison, Texas (the "Town"), in the County of Dallas, State of Texas, for value received, hereby promises to pay to

\_\_\_\_\_

or registered assigns, on the Maturity Date specified above, the sum of

\_\_\_\_\_ DOLLARS

unless this Bond shall have been sooner called for redemption and the payment of the principal hereof shall have been paid or provided for, and to pay interest on such principal amount from the later of the Bond Date specified above or the most recent interest payment date to which interest has been paid or provided for until payment of such principal amount has been paid or provided for, at the per annum rate of interest specified above, computed on the basis of a three hundred sixty (360) day year of twelve (12) thirty (30) day months, such interest to be paid semiannually on February 15 and August 15 of each year, commencing February 15, 2006.

The principal of this Bond shall be payable without exchange or collection charges in lawful money of the United States of America upon presentation and surrender of this Bond at the corporate trust office in Dallas, Texas (the "Designated Payment/Transfer Office") of JPMorgan Chase Bank, National Association, as Paying Agent/Registrar or, with respect to a successor Paying Agent/Registrar, at the Designated Payment/Transfer Office thereof. Interest on this Bond is payable by check dated as of the interest payment date, and will be mailed by the Paying Agent/Registrar to the registered owner at the address shown on the registration books kept by the Paying Agent/Registrar or by such other customary banking arrangement acceptable to the Paying Agent/Registrar and the registered owner; provided, however, such registered owner shall bear all risk and expense of such other banking arrangement. At the option of an Owner of at least \$1,000,000 principal amount of the Bonds, interest may be paid by wire transfer to the bank account of such Owner on file with the Paying Agent/Registrar. For the purpose of the payment of interest on this Bond, the registered owner shall be the person in

whose name this Bond is registered at the close of business on the "Record Date," which shall be the last business day of the month next preceding such interest payment date.

If the date for the payment of the principal of or interest on this Bond shall be a Saturday, Sunday, legal holiday, or day on which banking institutions in the city where the Paying Agent/Registrar is located are required or authorized by law or executive order to close, the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday, or day on which banking institutions are required or authorized to close, and payment on such date shall have the same force and effect as if made on the original date payment was due and no additional interest shall be due by reason of nonpayment on the date on which such payment is otherwise stated to be due and payable.

This Bond is one of a series of fully registered bonds specified in the title hereof issued in the aggregate principal amount of \$8,620,000 (herein referred to as the "Bonds"), issued pursuant to a certain ordinance of the Town (the "Ordinance") for the purpose of providing funds to make certain permanent public improvements as described in the Ordinance, to refund certain outstanding obligations of the Town and to pay the costs of issuing the Bonds.

The Bonds maturing on and after February 15, 2014 are subject to redemption at the option of the Town on February 15, 2013 or on any date thereafter at a price of par plus interest accrued to the date of redemption. If less than all of the Bonds are to be redeemed pursuant to an optional redemption, the Town shall determine the maturity or maturities and the amounts thereof to be redeemed and shall direct the Paying Agent/Registrar to call by lot the Bonds, or portions thereof, within such maturity or maturities and in such principal amounts, for redemption.

Notice of such redemption or redemptions shall be given by first class mail, postage prepaid, not less than 30 days before the date fixed for redemption, to the registered owner of each of the Bonds to be redeemed in whole or in part. Notice having been so given, the Bonds or portions thereof designated for redemption shall become due and payable on the redemption date specified in such notice; and, from and after such date, notwithstanding that any of the Bonds or portions thereof so called for redemption shall not have been surrendered for payment, interest on such Bonds or portions thereof shall cease to accrue.

As provided in the Ordinance, and subject to certain limitations therein set forth, this Bond is transferable upon surrender of this Bond for transfer at the Designated Payment/Transfer Office of the Paying Agent/Registrar with such endorsement or other evidence of transfer as is acceptable to the Paying Agent/Registrar; thereupon, one or more new fully registered Bonds of the same stated maturity, of authorized denominations, bearing the same rate of interest, and for the same aggregate principal amount will be issued to the designated transferee or transferees.

The Town, the Paying Agent/Registrar, and any other person may treat the person in whose name this Bond is registered as the owner hereof for the purpose of receiving payment as herein provided (except interest shall be paid to the person in whose name this Bond is registered on the Record Date) and for all other purposes, whether or not this Bond be overdue, and neither the Town nor the Paying Agent/Registrar shall be affected by notice to the contrary.

IT IS HEREBY CERTIFIED AND RECITED that the issuance of this Bond and the series of which it is a part is duly authorized by law, and has been authorized by a vote of the properly qualified electors of the Town; that all acts, conditions and things required to be done precedent to and in the issuance of the Bonds have been properly done and performed and have happened in regular and due time, form and manner, as required by law; and that ad valorem taxes upon all taxable property in the Town have been levied for and pledged to the payment of the debt service requirements of the Bonds, within the limit prescribed by law; and that the total indebtedness of the Town, including the Bonds, does not exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the Town has caused this Bond to be executed by the manual or facsimile signature of the Mayor of the Town and countersigned by the manual or facsimile signature of the City Secretary of the Town, and the official seal of the Town has been duly impressed or placed in facsimile on this Bond.

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City Secretary  
Town of Addison, Texas

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Mayor,  
Town of Addison, Texas

(SEAL)

(b) Form of Comptroller's Registration Certificate.

The following Comptroller's Registration Certificate may be deleted from the definitive Bonds if such certificate on the Initial Bond is fully executed.

OFFICE OF THE COMPTROLLER §  
OF PUBLIC ACCOUNTS § REGISTER NO. \_\_\_\_\_  
OF THE STATE OF TEXAS §

I hereby certify that there is on file and of record in my office a certificate of the Attorney General of the State of Texas to the effect that this Bond has been examined by him as required by law, that he finds that it has been issued in conformity with the Constitution and laws of the State of Texas, and that it is a valid and binding obligation of the Town of Addison, Texas, and that this Bond has this day been registered by me.

Witness my hand and seal of office at Austin, Texas, \_\_\_\_\_.

\_\_\_\_\_  
Comptroller of Public Accounts  
of the State of Texas

SEAL

(c) Form of Certificate of Paying Agent/Registrar.

The following Certificate of Paying Agent/Registrar may be deleted from the Initial Bond if the Comptroller's Registration Certificate appears thereon.

CERTIFICATE OF PAYING AGENT/REGISTRAR

The records of the Paying Agent/Registrar show that the Initial Bond of this series of bonds was approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas, and that this is one of the Bonds referred to in the within-mentioned Ordinance.

JPMORGAN CHASE BANK,  
NATIONAL ASSOCIATION,  
as Paying Agent/Registrar

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Signatory

(d) Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers unto (print or typewrite name, address and Zip Code of transferee):

\_\_\_\_\_

(Social Security or other identifying number: \_\_\_\_\_) the within Bond and all rights hereunder and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within Bond on the books kept for registration hereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

NOTICE: The signature on this Assignment must correspond with the name of the registered owner as it appears on the face of the within Bond in every particular and must be guaranteed in a manner acceptable to the Paying Agent/Registrar.

Signature Guaranteed By:

\_\_\_\_\_

Authorized Signatory

(e) The Initial Bond shall be in the form set forth in paragraphs (a), (b) and (d) of this Section, except for the following alterations:

(i) immediately under the name of the Bond, the headings "INTEREST RATE" and "MATURITY DATE" shall both be completed with the words "As shown below"; and

(ii) in the first paragraph of the Bond, the words "on the Maturity Date specified above" shall be deleted and the following will be inserted: "on February 15 in each of the years, in the principal installments and bearing interest at the per annum rates in accordance with the following schedule:

Years                      Principal Installments                      Interest Rates

(Information to be inserted from schedule in Section 3.02 of this Ordinance)

Section 6.03. CUSIP Registration.

The Town may secure identification numbers through the CUSIP Service Bureau Division of Standard & Poor's Corporation, New York, New York, and may authorize the printing of such numbers on the face of the Bonds. It is expressly provided, however, that the presence or absence of CUSIP numbers on the Bonds shall be of no significance or effect as regards the legality thereof and neither the Town nor the attorneys approving said Bonds as to legality are to be held responsible for CUSIP numbers incorrectly printed on the Bonds.

Section 6.04. Legal Opinion.

The approving legal opinion of Vinson & Elkins L.L.P., Bond Counsel, may be printed on the reverse side of or attached to each Bond over the certification of the City Secretary of the Town, which may be executed in facsimile.

Section 6.05. Statement of Insurance.

A statement relating to a municipal bond insurance policy, if any, to be issued for the Bonds may be printed on or attached to each Bond. To the extent permitted by applicable law, the City will comply with all notice and other applicable requirements of the insurer in connection with the issuance of the Bonds, as such requirements may be in effect and transmitted to the City with the insurer's commitment to issue such insurance.

ARTICLE VII  
SALE AND DELIVERY OF BONDS, DEPOSIT OF PROCEEDS

Section 7.01. Sale of Bonds, Official Statement.

(a) The Bonds are hereby officially sold and shall be delivered to Southwest Securities, Inc. (the "Underwriter") in accordance with the terms and provisions of that certain Bond Purchase Agreement relating to the Bonds between the Town and the Underwriter, dated as of the date of adoption of this Ordinance. The form and content of such Bond Purchase Agreement are hereby approved, and the Mayor of the Town is hereby authorized and directed to execute and deliver such Bond Purchase Agreement. It is hereby found, determined and declared that the terms of this sale are the most advantageous reasonably obtainable. The Initial Bond shall initially be registered in the name of the Underwriter or its designee.

(b) The form and substance of the Preliminary Official Statement, dated October 27, 2005, and any addenda, supplement or amendment thereto (the "Preliminary Official Statement") are hereby in all respects approved and adopted and is hereby deemed final as of its date within the meaning and for the purposes of paragraph (b)(1) of Rule 15c2-12 under the Securities Exchange Act of 1934, as amended. The final Official Statement (the "Official Statement") presented to and considered at this meeting is hereby in all respects approved and adopted. The Mayor and City Secretary of the Town are hereby authorized and directed to execute the same and deliver appropriate numbers of executed copies of the Official Statement to the Underwriters. The Official Statement as thus approved, executed and delivered, with such appropriate variations as shall be approved by the Mayor of the Town and the Underwriter, may be used by the Underwriter in the public offering and sale thereof. The City Secretary is hereby

authorized and directed to include and maintain a copy of the Official Statement and any addenda, supplement or amendment thereto thus approved among the permanent records of this meeting. The use and distribution of the Preliminary Official Statement, and the preliminary public offering of the Bonds by the Underwriters, is hereby ratified, approved and confirmed.

(c) All officers of the Town are authorized to execute such documents, certificates and receipts as they may deem appropriate in order to consummate the delivery of the Bonds in accordance with the terms of this Ordinance.

(d) The obligation of the Underwriter to accept delivery of the Bonds is subject to such purchaser being furnished with the final, approving opinion of Vinson & Elkins L.L.P., Bond Counsel for the Town, which opinion shall be dated and delivered the Closing Date.

Section 7.02. Control and Delivery of Bonds.

(a) The Mayor of the Town is hereby authorized to have control of the Initial Bond and all necessary records and proceedings pertaining thereto pending investigation, examination and approval of the Attorney General of the State of Texas, registration by the Comptroller of Public Accounts of the State of Texas and registration with, and initial exchange or transfer by, the Paying Agent/Registrar.

(b) After registration by the Comptroller of Public Accounts of the State of Texas, delivery of the Bonds shall be made to the initial purchasers thereof under and subject to the general supervision and direction of the Mayor, against receipt by the Town of all amounts due to the Town under the terms of sale.

Section 7.03. Deposit of Proceeds.

(a) All amounts received on the Closing Date as interest accrued from the Bond Date to the Closing Date shall be deposited to the Interest and Sinking Fund.

(b) The sum of \$ \_\_\_\_\_, together with an amount equal to \$ \_\_\_\_\_ which amount shall be transferred from the debt service funds presently securing the Refunded Obligations, shall be deposited irrevocably with the JPMorgan Chase Bank, National Association, as paying agent for the Refunded Obligations, and shall be applied solely to the payment of the principal of and interest on the Refunded Obligations. It is the intent hereof that such irrevocable deposit shall constitute the making of firm banking arrangements with respect to the provision of payment for the Refunded Obligations as contemplated by Chapter 1207.

(c) The sum of \$ \_\_\_\_\_ shall be applied to the payment of the insurance premium with respect to the policy of municipal bond insurance pertaining to the Bonds.

(d) The sum of \$ \_\_\_\_\_ shall be deposited to a special construction fund and shall be used solely to pay the costs of the Project as described in Section 3.01(i).

(e) The remainder of the proceeds from the sale of the Bonds shall be deposited as directed by the Town's Director of Finance and used to pay the costs and expenses pertaining to

the issuance of the Bonds. To the extent any of such sums is not used for such purposes, such excess shall be deposited to the Interest and Sinking Fund.

## ARTICLE VIII INVESTMENTS

### Section 8.01. Investments.

(a) Money in the Interest and Sinking Fund created by this Ordinance, at the Town's option, may be invested in such securities or obligations as permitted under applicable law.

(b) Any securities or obligations in the Interest and Sinking Fund in which money is so invested shall be kept and held in trust for the benefit of the Owners and shall be sold and the proceeds of sale shall be timely applied to the making of all payments required to be made from the fund from which the investment was made.

### Section 8.02. Investment Income.

Interest and income derived from investment of the Interest and Sinking Fund shall be credited to such Fund.

## ARTICLE IX PARTICULAR REPRESENTATIONS AND COVENANTS

### Section 9.01. Payment of the Bonds.

On or before each Interest Payment Date for the Bonds while any of the Bonds are outstanding and unpaid, there shall be made available to the Paying Agent/Registrar, out of the Interest and Sinking Fund, money sufficient to pay such interest on and principal of the Bonds as will accrue or mature on the applicable Interest Payment Date and, if applicable, on a date of redemption for the Bonds.

### Section 9.02. Other Representations and Covenants.

(a) The Town will faithfully perform at all times any and all covenants, undertakings, stipulations, and provisions contained in this Ordinance and in each Bond; the Town will promptly pay or cause to be paid the principal of and interest on each Bond on the dates and at the places and manner prescribed in such Bond; and the Town will, at the times and in the manner prescribed by this Ordinance, deposit or cause to be deposited the amounts of money specified by this Ordinance.

(b) The Town is duly authorized under the laws of the State of Texas to issue the Bonds; all action on its part for the creation and issuance of the Bonds has been duly and effectively taken; and the Bonds in the hands of the Owners thereof are and will be valid and enforceable obligations of the Town in accordance with their terms.

Section 9.03. Provisions Concerning Federal Income Tax Exclusion.

The Town intends that the interest on the Bonds shall be excludable from gross income for purposes of federal income taxation pursuant to sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended (the "Code"), and the applicable regulations promulgated thereunder (the "Regulations"). The Town covenants and agrees not to take any action, or knowingly omit to take any action within its control, that if taken or omitted, respectively, would cause the interest on the Bonds to be includable in the gross income, as defined in section 61 of the Code, of the holders thereof for purposes of federal income taxation. In particular, the Town covenants and agrees to comply with each requirement of Sections 9.03 through 9.10 of this Article IX; provided, however, that the Town shall not be required to comply with any particular requirement of Sections 9.03 through 9.10 of this Article IX if the Town has received an opinion of nationally recognized bond counsel ("Counsel's Opinion") that such noncompliance will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds or if the Town has received a Counsel's Opinion to the effect that compliance with some other requirement set forth in Sections 9.03 through 9.10 of this Article IX will satisfy the applicable requirements of the Code, in which case compliance with such other requirement specified in such Counsel's Opinion shall constitute compliance with the corresponding requirement specified in Sections 9.03 through 9.10 of this Article IX.

Section 9.04. No Private Use or Payment and No Private Loan Financing.

The Town shall certify, through an authorized officer, employee or agent, that, based upon all facts and estimates known or reasonably expected to be in existence on the date the Bonds are delivered, the proceeds of the Bonds will not be used in a manner that would cause the Bonds to be "private activity bonds" within the meaning of section 141 of the Code and the Regulations. The Town covenants and agrees that it will make such use of the proceeds of the Bonds, including interest or other investment income derived from Bond proceeds, regulate the use of property financed, directly or indirectly, with such proceeds, and take such other and further action as may be required so that the bonds will not be "private activity bonds" within the meaning of section 141 of the Code and the Regulations.

Section 9.05. No Federal Guaranty.

The Town covenants and agrees not to take any action, or knowingly omit to take any action within its control, that, if taken or omitted, respectively, would cause the Bonds to be "federally guaranteed" within the meaning of section 149(b) of the Code and the Regulations, except as permitted by section 149(b)(3) of the Code and the Regulations.

Section 9.06. Bonds are not Hedge Bonds.

The Town covenants and agrees not to take any action, or knowingly omit to take any action, and has not knowingly omitted and will not knowingly omit to take any action, within its control, that, if taken or omitted, respectively, would cause the Bonds to be "hedge bonds" within the meaning of section 149(g) of the Code and the Regulations.

Section 9.07. No-Arbitrage Covenant.

The Town shall certify, through an authorized officer, employee or agent, that, based upon all facts and estimates known or reasonably expected to be in existence on the date the Bonds are delivered, the Town will reasonably expect that the proceeds of the Bonds will not be used in a manner that would cause the Bonds to be “arbitrage bonds” within the meaning of section 148(a) of the Code and the Regulations. Moreover, the Town covenants and agrees that it will make such use of the proceeds of the Bonds including interest or other investment income derived from Bond proceeds, regulate investments of proceeds of the Bonds, and take such other and further action as may be required so that the Bonds will not be “arbitrage bonds” within the meaning of section 148(a) of the Code and the Regulations.

Section 9.08. Arbitrage Rebate.

If the Town does not qualify for an exception to the requirements of Section 148(f) of the Code, the Town will take all necessary steps to comply with the requirement that certain amounts earned by the Town on the investment of the “gross proceeds” of the Bonds (within the meaning of section 148(f)(6)(B) of the Code), be rebated to the federal government. Specifically, the Town will (i) maintain records regarding the investment of the gross proceeds of the Bonds as may be required to calculate the amount earned on the investment of the gross proceeds of the Bonds separately from records of amounts on deposit in the funds and accounts of the Town allocable to other bond issue of the Town or moneys which do not represent gross proceeds of any bonds of the Town, (ii) calculate at such times as are required by the Regulations, the amount earned from the investment of the gross proceeds of the Bonds which is required to be rebated to the federal government, and (iii) pay, not less often than every fifth anniversary date of the delivery of the Bonds or on such other dates as may be permitted under the Regulations, all amounts required to be rebated to the federal government. Further, the Town will not indirectly pay any amount otherwise payable to the federal government pursuant to the foregoing requirements to any person other than the federal government by entering into any investment arrangement with respect to the gross proceeds of the Bonds that might result in a reduction in the amount required to be paid to the federal government because such arrangement results in a smaller profit or a larger loss than would have resulted if the arrangement had been at arm’s length and had the yield on the issue not been relevant to either party.

Section 9.09. Information Reporting.

The Town covenants and agrees to file or cause to be filed with the Secretary of the Treasury, not later than the 15th day of the second calendar month after the close of the calendar quarter in which the Bonds are issued, an information statement concerning the Bonds, all under and in accordance with section 149(e) of the Code and the Regulations.

Section 9.10. Continuing Obligation.

Notwithstanding any other provision of this Ordinance, the Town’s obligations under the covenants and provisions of Sections 9.03 through 9.09 of this Article IX shall survive the defeasance and discharge of the Bonds.

ARTICLE X  
DEFAULT AND REMEDIES

Section 10.01. Events of Default.

Each of the following occurrences or events for the purpose of this Ordinance is hereby declared to be an Event of Default:

(i) the failure to make payment of the principal of or interest on any of the Bonds when the same becomes due and payable; or

(ii) default in the performance or observance of any other covenant, agreement or obligation of the Town, which default materially and adversely affects the rights of the Owners, including but not limited to, their prospect or ability to be repaid in accordance with this Ordinance, and the continuation thereof for a period of sixty (60) days after notice of such default is given by any Owner to the Town.

Section 10.02. Remedies for Default.

(a) Upon the happening of any Event of Default, then any Owner or an authorized representative thereof, including but not limited to, a trustee or trustees therefor, may proceed against the Town for the purpose of protecting and enforcing the rights of the Owners under this Ordinance, by mandamus or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief permitted by law, including the specific performance of any covenant or agreement contained herein, or thereby to enjoin any act or thing that may be unlawful or in violation of any right of the Owners hereunder or any combination of such remedies.

(b) It is provided that all such proceedings shall be instituted and maintained for the equal benefit of all Owners of Bonds then outstanding.

Section 10.03. Remedies Not Exclusive.

(a) No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the Bonds or now or hereafter existing at law or in equity; provided, however, that notwithstanding any other provision of this Ordinance, the right to accelerate the debt evidenced by the Bonds shall not be available as a remedy under this Ordinance.

(b) The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy.

ARTICLE XI  
DISCHARGE

Section 11.01. Discharge.

The Bonds may be defeased, discharged or refunded in any manner permitted by applicable law.

ARTICLE XII  
CONTINUING DISCLOSURE UNDERTAKING

Section 12.01. Annual Reports.

(a) The Town shall provide annually to each NRMSIR and to any SID, within six (6) months after the end of each fiscal year, financial information and operating data with respect to the Town of the general type included in the final Official Statement, being the information described in Exhibit A hereto. Any financial statements so to be provided shall be (i) prepared in accordance with the accounting principles described in Exhibit A hereto, and (ii) audited, if the Town commissions an audit of such statements and the audit is completed within the period during which they must be provided. If the audit of such financial statements is not complete within such period, then the Town shall provide notice that audited financial statements are not available and shall provide unaudited financial statements for the applicable fiscal year to each NRMSIR and any SID. The Town shall provide audited financial statements for the applicable fiscal year to each NRMSIR and to any SID, when and if audited financial statements become available.

(b) If the Town changes its fiscal year, it will notify each NRMSIR and any SID of the change (and of the date of the new fiscal year end) prior to the next date by which the Town otherwise would be required to provide financial information and operating data pursuant to this Section.

(c) The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific referenced to any document (including an official statement or other offering document, if it is available from the MSRB) that theretofore has been provided to each NRMSIR and any SID or filed with the SEC.

Section 12.02. Material Event Notices.

(a) The Town shall notify any SID and either each NRMSIR or the MSRB, in a timely manner, of any of the following events with respect to the Bonds, if such event is material within the meaning of the federal securities laws:

- (i) principal and interest payment delinquencies;
- (ii) nonpayment related defaults;

- (iii) unscheduled draws on debt service reserves reflecting financial difficulties;
  - (iv) unscheduled draws on credit enhancements reflecting financial difficulties;
  - (v) substitution of credit or liquidity providers, or their failure to perform;
  - (vi) adverse tax opinions or events affecting the tax exempt status of the Bonds;
  - (vii) modifications to rights of Owners;
  - (viii) bond calls;
  - (ix) defeasances;
  - (x) release, substitution, or sale of property securing repayment of the Bonds;
- and
- (xi) rating changes.

(b) The Town shall notify any SID and either each NRMSIR or the MSRB, in a timely manner, of any failure by the Town to provide financial information or operating data in accordance with Section 12.01 of this Ordinance by the time required by such Section.

Section 12.03. Limitations, Disclaimers and Amendments.

(a) The Town shall be obligated to observe and perform the covenants specified in this Article for so long as, but only for so long as, the Town remains an “obligated person” with respect to the Bonds within the meaning of the Rule, except that the Town in any event will give notice of any Bond calls and any defeasances that cause the Town to be no longer an “obligated person.”

(b) The provisions of this Article are for the sole benefit of the Owners and beneficial owners of the Bonds, and nothing in this Article, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The Town undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Article and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the Town’s financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Article or otherwise, except as expressly provided herein. The Town does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

UNDER NO CIRCUMSTANCES SHALL THE TOWN BE LIABLE TO THE OWNER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY

THE TOWN, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS ARTICLE, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

(c) No default by the Town in observing or performing its obligations under this Article shall constitute a breach of or default under the Ordinance for purposes of any other provisions of this Ordinance.

(d) Nothing in this Article is intended or shall act to disclaim, waive, or otherwise limit the duties of the Town under federal and state securities laws.

(e) The provisions of this Article may be amended by the Town from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the Town, but only if (i) the provisions of this Article, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (ii) either (A) the Owners of a majority in aggregate principal amount (or any greater amount required by any other provisions of this Ordinance that authorizes such an amendment) of the Outstanding Bonds consent to such amendment or (B) an entity or individual person that is unaffiliated with the Town (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Owners and beneficial owners of the Bonds. If the Town so amends the provisions of this Article, it shall include with any amended financial information or operating data next provided in accordance with Section 12.01 an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in type of financial information or operating data so provided.

(f) Any filing required to be made pursuant to this Article may be made through the facilities of DisclosureUSA or such other central post office as may be approved in writing by the SEC for such purpose. Any such filing made through such central post office will be deemed to have been filed with each NRMSIR and SID or MSRB as if such filing had been made directly to such entity.

### ARTICLE XIII

#### REDEMPTION OF REFUNDED OBLIGATIONS; APPROVAL OF ESCROW AGREEMENT; PURCHASE OF ESCROWED SECURITIES

##### Section 13.01. Redemption of Refunded Obligations.

(a) The Refunded Obligations are hereby called for redemption on the dates, in the principal amounts and at a redemption price equal to the principal amount thereof plus interest accrued thereon to the redemption date all as set forth on Schedule I hereto.

(b) The paying agent/registrars for the Refunded Obligations is hereby authorized and directed to give or cause to be given notice of redemption of the Refunded Obligations at the

times and in the manner specified in the ordinance authorizing the issuance of such Refunded Obligations.

(c) The City Secretary is hereby authorized and directed to cause a copy of this Ordinance to be delivered to the paying agent/registrar for the Refunded Obligations, the delivery of which shall constitute notice of redemption and notice of defeasance to such paying agent/registrar.

Section 13.02. Subscription of Federal Securities.

The Mayor and the Director of Finance are each hereby authorized to make necessary arrangements for the purchase of the Federal Securities referenced in the Escrow Agreement, as may be necessary for the Escrow Fund and the application for the acquisition of the Federal Securities is hereby approved and ratified.

Section 13.03. Approval of Escrow Agreement.

The Escrow Agreement, in substantially the form presented at this meeting, and its execution and delivery by the Mayor is hereby authorized and approved. The signature of the Mayor shall be attested by the City Secretary.

Section 13.04. Notice of Deposit and Redemption.

The paying agent/registrar for the Refunded Obligations is hereby authorized and directed to give notice of deposit and redemption with respect to the Refunded Obligations as required under the ordinance pursuant to which the Refunded Obligations were issued.

FINALLY PASSED, APPROVED, AND EFFECTIVE on this 8th day of November, 2005.

By: \_\_\_\_\_  
Joe Chow, Mayor

ATTEST:

\_\_\_\_\_  
Carmen Moran, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Kenneth Dippel, City Attorney

## EXHIBIT A

### DESCRIPTION OF ANNUAL DISCLOSURE OF FINANCIAL INFORMATION

The following information is referred to in Article XII of this Ordinance.

#### **Annual Financial Statements and Operating Data**

The financial information and operating data with respect to the Town to be provided annually in accordance with such Section are as specified (and included in the Appendix or other headings of the Official Statement referred to) below:

1. The portions of the financial statements of the Town appended to the Official Statement as Appendix B, but for the most recently concluded fiscal year.
2. Statistical and financial data set forth in Tables 1 through 6 and 8 through 15

#### **Accounting Principles**

The accounting principles referred to in such Section are the accounting principles described in the notes to the financial statements referred to in Paragraph 1 above.

**SCHEDULE I**

**REFUNDED OBLIGATIONS**

<u>ISSUE</u>	<u>ORIGINAL ISSUE DATE</u>	<u>MATURITIES TO BE REFUNDED</u>	<u>AMOUNT OUTSTANDING</u>	<u>AMOUNT REFUNDED</u>	<u>REDEMPTION DATE</u>
General Obligation Bonds, Series 1995	10/15/1995	08/15/2006	\$505,000	\$505,000	12/16/2005
		08/15/2007	<u>535,000</u>	<u>535,000</u>	
			\$1,040,000	\$1,040,000	
Combination Tax and Revenue Certificates of Obligation, Series 1997	11/15/1997	02/15/2007	\$505,000	\$505,000	12/16/2005
General Obligation Bonds, Series 2000	05/15/2000	02/15/2010	\$ 730,000	\$ 730,000	02/15/2009
		02/15/2011	770,000	770,000	
		02/15/2012	815,000	815,000	
		02/15/2013	865,000	865,000	
		02/15/2014	915,000	915,000	
		02/15/2015	<u>970,000</u>	<u>970,000</u>	
	\$5,065,000	\$5,065,000			

**Council Agenda Item: #R5**

**SUMMARY:**

Council approval is requested of an ordinance denying a request from Atmos Energy Corporation (the Company) for an annual (2004) gas reliability infrastructure program (GRIP) rate increase for customers on the Company's statewide gas utility system.

**FINANCIAL IMPACT:**

Approval of the ordinance would have no direct financial impact to the Town. Costs associated with the Town participating with the Atmos Cities Steering Committee (ACSC) will be reimbursed by the Company, which will then pass those costs to their gas customers.

**BACKGROUND:**

It has been a long-standing policy of the Town to protect the interests of its residents and businesses in any utility rate case. In July, the Council adopted an ordinance denying the GRIP rate increase based on the Company's 2003 investment year. The denial was justified by the ACSC consultants recommendation that the Company's proposal is unjustified, unreasonable and is not in compliance with the GRIP statute (Texas Utilities Code § 104.301) either in fact or in law. As expected, the Company appealed the cities' denials to the Railroad Commission. Early last month, the Commission dismissed the cities' objections and approved the 2003 GRIP rate increase.

In September, the Company submitted to the Town and other cities a GRIP rate increase based on the Company's 2004 investment year. The ACSC consultants' initial review of this submittal reveals that Atmos claims to have lost \$9 million in *gross revenue* after receiving an \$8.5 million annual *revenue increase* in GUD No. 9400 (the base rate case filed by TXU prior to its sale of the gas distribution system to Atmos). This revenue increase from GUD No. 9400 of \$8.5 million is the amount of the rate increase that was attributable to Distribution and put into effect in June 2004. Logically, this revenue increase should have increased Atmos' 2004 revenues by a minimum of \$4.25 million. This discrepancy alone makes the filing extremely suspect. Also, according to Atmos, the O&M expenses increased 28% in 2004, after declining from 2002 to 2003. Atmos once again has failed to show the expense disallowances required by the GUD No. 9400 Final Order, which alone amount to \$22.5 million of the total expense increase.

The two GRIP filings by Atmos thus far are cumulative in their effect. The impact to customer monthly bills is as follows:

	<u>2003 GRIP</u>	<u>2004 GRIP</u>	<u>Total Monthly Surcharge</u>
Residential Customers	\$0.29	\$0.29	\$0.58
Commercial Customers	\$0.96	\$0.98	\$1.94
Industrial Customers	\$31.85	\$26.85	\$58.70

**RECOMMENDATION:**

Because the company has failed to adequately justify its 2004 GRIP rate increase, it is recommended that Council adopt the attached ordinance, which has been approved by the city attorney.

TOWN OF ADDISON, TEXAS

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS, DENYING THE REQUEST OF ATMOS ENERGY CORP., MID-TEX DIVISION, FOR AN ANNUAL GAS RELIABILITY INFRASTRUCTURE PROGRAM (GRIP) RATE INCREASE IN THE TOWN, AS A PART OF THE COMPANY'S STATEWIDE GAS UTILITY DISTRIBUTION SYSTEM; APPROVING COOPERATION WITH OTHER CITIES WITHIN THE ATMOS ENERGY CORP., MID-TEX DIVISION DISTRIBUTION SYSTEM AS PART OF THE ATMOS CITIES STEERING COMMITTEE (ACSC); AUTHORIZING ACSC TO HIRE LEGAL AND CONSULTING SERVICES AND TO NEGOTIATE WITH THE COMPANY AND DIRECT ANY NECESSARY LITIGATION; AUTHORIZING INTERVENTION AS PART OF ACSC IN ANY APPEAL OF THE TOWN'S ACTION TO THE RAILROAD COMMISSION; PROVIDING A REQUIREMENT FOR A PROMPT REIMBURSEMENT OF COSTS INCURRED BY THE TOWN; FINDING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; PROVIDING FOR NOTICE OF THIS ORDINANCE TO ATMOS ENERGY CORP., MID-TEX DIVISION; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on or about September 17, 2005, Atmos Energy Corp., Mid-Tex Division, (the "Company") filed with the Town of Addison, Texas ("Town"), a request for an annual gas reliability infrastructure program (GRIP) rate increase for customers on the Company's statewide gas utility system to be effective November 19, 2005; and

WHEREAS, the Town has exclusive original jurisdiction to evaluate the Company's request as it pertains to the distribution facilities located within the Town, pursuant to Texas Utilities Code Section 102.001(b) and Section 103.001; and

WHEREAS, it is reasonable for the Town to cooperate with other cities in a coalition of cities in opposition to the Company's filing at the Texas Railroad Commission ("Commission"), said coalition being known as Atmos Cities Steering Committee ("ACSC"), in any appeal of the cities' actions to the Commission; and

WHEREAS, the Gas Utility Regulatory Act grants local regulatory authorities the right to intervene in rate proceedings filed at the Railroad Commission; and

WHEREAS, the Texas Utilities Code Section 103.022 provides that costs incurred by the Town in ratemaking activities are to be reimbursed by the regulated utility; and

WHEREAS, counsel for ACSC, upon review of the Company's filing and upon consultation with various consultants, recommends finding that the Company's proposal is unjustified and unreasonable; and

**WHEREAS**, the Company has publicly stated that it will receive substantial profit in 2005 and that its expenses are substantially below those on which the GUD No. 9400 rates it is charging were based; and

**WHEREAS**, the Company's GRIP request fails to account for growth in numbers of customers, thereby undercounting the revenues it will receive from its proposed GRIP rate increase; and

**WHEREAS**, the Company's GRIP request fails to recognize that GUD No. 9400 rates included profit based on TXU Corporation's capital structure rather than Atmos Energy Corp.'s current capital structure, which justifies a lower rate of return.

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

Section 1. The Company's GRIP rate increase request is found to be unreasonable and is therefore denied in all respects.

Section 2. The Town is authorized to cooperate with other Cities within the Company's Distribution System that have formed ACSC to hire and direct legal counsel and consultants, negotiate with the Company, make recommendations to the Town regarding reasonable rates and to direct any necessary litigation associated with an appeal of a rate ordinance and the rate case filed at the Commission.

Section 3. The costs incurred by the Town in reviewing the Company's GRIP request shall be promptly reimbursed by the Company.

Section 4. The Town is authorized to intervene in any appeal of the Town's action filed at the Commission, and to participate in any such appeal as a member of ACSC.

Section 5. This Ordinance shall become effective immediately from and after its passage, as the law and charter in such cases provide.

Section 6. It is hereby officially found and determined that the meeting at which this Ordinance is passed is open to the public as required by law and that public notice of the time, place and purpose of said meeting was given as required.

Section 7. A copy of this Ordinance, constituting final action on the Company's application, be forwarded to the appropriate designated representative of the Company within 10 days as follows: Richard T. Reis, Atmos Energy Corporation, 5420 LBJ Freeway, Suite 1800, Dallas, Texas 75240, and to Geoffrey Gay, legal counsel to the coalition of cities, at Lloyd Gosselink, P.O. Box 1725, Austin, Texas 78767-1725.

Section 8. The above and foregoing premises to this Ordinance are true and correct and are incorporated herein and made a part hereof.

Section 9. This Ordinance shall be effective from and after its adoption.

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

\_\_\_\_\_  
Joe Chow, Mayor

ATTEST:

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Ken Dippel, City Attorney

**Council Agenda Item: #R6****SUMMARY:**

Council approval is requested of a resolution ordering Atmos Energy Corporation's Mid-Tex Division ("the Company") to show cause regarding the reasonableness of its existing natural gas distribution rates within the Town, providing a deadline of December 31, 2005, and requiring reimbursement of reasonable legal and consultant expenses.

**FINANCIAL IMPACT:**

Approval of the resolution would have no direct financial impact to the Town. Costs associated with the Town participating with the Atmos Cities Steering Committee (ACSC) will be reimbursed by the Company, which will then pass those costs to their gas customers.

**BACKGROUND:**

The last rate case at the Railroad Commission affecting the gas distribution system now owned by Atmos Mid-Tex was GUD No. 9400 (Final Order issued May 25, 2004). At that time, the system was owned by TXU Gas Company, which had very different operating expenses and debt structure from Atmos. The rates currently being charged, therefore, are not based on Atmos' cost of service or on its capital structure. As a result, Atmos is most likely *over-earning* and receiving a *greater return* than was authorized by the Commission in GUD No. 9400 as evidenced by:

- In GUD No. 9400, the Commission authorized TXU Gas to earn an 8.25% return on investment.
- Atmos' adjusted Earnings Monitoring Report indicates that it has earned a return of 8.899%, representing an excess return of \$4.9 million.
- After implementation of the first (2003) Pipeline GRIP surcharge, Atmos' return increases to 9.101%, or \$5.8 million in excess return.
- After implementation of the first Distribution GRIP surcharges, Atmos will earn a return of 9.464%, or \$9.3 million in excess return.

Atmos has made numerous public statements regarding the reduction of its operating expenses and the increased revenues it has been making from its Texas systems:

- For example, in its first quarter financial review, Atmos reported that it expects to achieve \$25 million in savings as a result of the purchase of the TXU Gas assets, and an additional \$6 million in annualized savings as a result of moving its customer call center in-house.
- Subsequent reports by the Company have shown that those savings have been met, and exceeded.
- In August 2005, Atmos reported \$45 million year-to-date reductions to the general and administrative costs of TXU Gas used for rate-setting purposes in GUD No. 9400.

In August 2005, the City of Dallas adopted a show cause resolution requiring Atmos to file a rate filing package with the City by November 22, 2005, using a test year ending June 30, 2005. The Dallas resolution does not require the filing to be based on system-wide rates, but it does require compliance with the City of Dallas "Rate Filing Package."

The show cause resolutions for the ACSC Cities also require a filing based upon a test year ending June 30, 2005 and for Atmos to file with the ACSC Cities by December 31, 2005. The show cause resolutions of the ACSC Cities will require Atmos to file (1) on a system-wide basis; and (2) in a form consistent from city to city. If Atmos files system-wide rates with Dallas, and if the Dallas Rate Filing Package is consistent with the Railroad Commission's Rate Filing Package, then Atmos will not be required to duplicate its efforts and the same filing can be used for Dallas and the other ACSC Cities.

**RECOMMENDATION:**

Because the company has failed to adequately justify its 2004 GRIP rate increase, it is recommended that Council adopt the attached ordinance, which has been approved by the city attorney.

TOWN OF ADDISON, TEXAS

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

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS ORDERING ATMOS ENERGY, MID-TEX DIVISION TO SHOW CAUSE REGARDING THE REASONABLENESS OF ITS EXISTING NATURAL GAS DISTRIBUTION RATES WITHIN THE TOWN; REQUIRING ATMOS ENERGY, MID-TEX DIVISION TO SUBMIT A RATE PACKAGE BASED ON A RATE YEAR ENDING JUNE 30, 2005; DIRECTING THAT SUCH FILING SHALL BE MADE BY DECEMBER 31, 2005; REQUIRING REIMBURSEMENT OF REASONABLE LEGAL AND CONSULTANT EXPENSES; REQUIRING DELIVERY OF THIS RESOLUTION TO THE COMPANY AND LEGAL COUNSEL; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Addison, Texas (the "Town") is a regulatory authority under the Gas Utility Regulatory Act, Title 3, Subtitle A, Texas Utilities Code ("GURA") and has original jurisdiction over the gas utility rates of Atmos Mid-Tex; and

**WHEREAS**, the Town has the authority under Section 103.001 and Section 104.151, GURA, to initiate a proceeding to determine whether the existing rates of a gas utility are unreasonable or in any way in violation of any provision of law; and

**WHEREAS**, upon making a finding of unreasonableness, the Town may determine the just and reasonable rates to be charged by Atmos Mid-Tex; and

**WHEREAS**, Atmos Energy Corporation, the parent company of Atmos Mid-Tex has recently experienced system-wide cost reductions due to the doubling of its nationwide customer base with the acquisition of the assets of TXU Gas, and has reported to its investors that it has experienced a significant increase in profits related to its Texas divisions; and

**WHEREAS**, Atmos Mid-Tex is charging rates approved based on the higher expenses and equity-to-debt ratio of TXU Gas, rather than rates that would be justified based on Atmos' lower expenses and equity-to-debt ratio; and

**WHEREAS**, ratepayers of Atmos Mid-Tex, including the Town and its residents, will suffer further unreasonable adverse impact from the GRIP rate increases approved by the Texas Railroad Commission and the second GRIP filing recently made by Atmos Mid-Tex; and

**WHEREAS**, the Commission's failure to consider testimony and argument offered by Cities during its consideration of the Company's piecemeal GRIP rate applications leaves Cities no functional choice but to exercise its statutory right to exercise original jurisdiction over Atmos' base rates and compel a comprehensive rate review; and

**WHEREAS**, the Town has reason to believe that Atmos Mid-Tex is over-earning and that its rates are excessive; and

**WHEREAS**, Cities and their residents are about to experience unprecedented increases in the cost of natural gas during the heating season and protection of the public interest requires a comprehensive review of Atmos' cost of service to determine whether rates and services are just and reasonable; and

**WHEREAS**, Atmos Mid-Tex should be required to justify its rates on a system-wide basis; and

**WHEREAS**, the coalition of cities formed to review Atmos' GRIP filings (the Atmos Cities Steering Committee, or "ACSC") can most efficiently review the Atmos filing on behalf of the Town; and

**WHEREAS**, the reasonable costs associated with the Town's review of the Company's rates are reimbursable from Atmos Mid-Tex.

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

Section 1. Atmos Mid-Tex is hereby directed to show cause regarding the reasonableness of its existing natural gas distribution rates within the Town of Addison, Texas ("Town"). Atmos shall file with the Town information sufficient to determine the Company's rate base, expenses, investment, and rate of return. Such filing shall be on a system-wide basis and shall be based upon a rate year ending June 30, 2005. Atmos Mid-Tex is directed to file its rate filing package to comply, at a minimum, with the regulations and requirements of the Texas Railroad Commission. The filing shall be made with the Town on or before December 31, 2005. An electronic copy of the filing shall be made with the Town simultaneously with the written filing on December 31, 2005. This filing shall be the same filing as made with the first coalition city to pass the same or similar Show Cause Resolution.

Section 2. The Town's designated representatives shall have the right to obtain additional information from Atmos through the filing of written requests for information, to each of which Atmos shall respond in writing within fourteen (14) calendar days from the receipt of each such request for information.

Section 3. A public hearing shall be conducted by the Town. Based upon such hearing, the briefing of staff, and the consultants' findings, a determination of the reasonableness of the existing rates of Atmos shall be made by the Town and, if necessary, just and reasonable rates shall be determined to be thereafter observed and enforced for all services of Atmos within the Town.

Section 4. The Town may, from time to time, amend this procedural schedule and the filing requirements, and enter additional orders as may be necessary in the public interest and to enforce the provisions hereof.

Section 5. Atmos Mid-Tex shall promptly reimburse the Town's reasonable monthly costs associated with the Town's activities related to the rate review.

Section 6. A copy of this Resolution shall be sent to Atmos Mid-Tex, care of Richard T. Reis, at Atmos Energy Corporation, 5420 LBJ Freeway, Suite 1800, Dallas, Texas 75240, and to Geoffrey Gay, legal counsel to the coalition of cities, at Lloyd Gosselink, P.O. Box 1725, Austin, Texas 78767-1725.

Section 7. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof.

Section 8. This Resolution shall become effective from and after its adoption.

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

\_\_\_\_\_  
Joe Chow, Mayor

ATTEST:

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Ken Dippel, City Attorney

**Council Agenda Item: #R7****SUMMARY:**

Council approval is requested of an ordinance that approves amendments to the Town's financial policies.

**FINANCIAL IMPACT:**

There is no financial impact associated with the approval of the financial policies.

**BACKGROUND:**

When preparing the FY 2005-06 annual budget document, staff determined that the Town's financial policies should be amended to reflect revised operations. Staff is recommending the following changes:

- Require that the budget include a five-year financial plan for all major operating funds.
- Revise the Finance Director title to reflect the revised Department of Financial and Strategic Services organizational structure.
- Allow the Council to levy a tax rate above the rollback rate after considering options to increase revenues or reduce expenditures.
- Clarify the procedure used to adopt Expanded Level of Service (ELS) requests in the budget process.

These changes are identified in the attached summary of the Town's financial policies. Since the Town's financial policy is codified, an ordinance is required to make the above changes.

**RECOMMENDATION:**

Staff recommends approval of the ordinance that approves the above amendments to the Town's financial policies.

## TOWN OF ADDISON FINANCIAL POLICIES

### ANNUAL BUDGET (Charter Requirements\*)

1\*. The fiscal year of the Town of Addison shall begin on October 1 of each calendar year and will end on September 30 of the following calendar year. The fiscal year will also be established as the accounting and budget year.

2\*. The City Manager, prior to August first of each year, shall prepare and submit to the City Secretary, the annual budget covering the next fiscal year, which shall contain the following information:

- a. The City Manager's budget message shall outline the proposed financial policies for the next fiscal year with explanations of any changes from previous years in expenditures and any major changes of policy and a complete statement regarding the financial condition of the Town.
- b. An estimate of all revenue from taxes and other sources, including the present tax structure rates and property valuations for the ensuing year.
- c. A carefully itemized list of proposed expenses by office, department, agency, and project for the budget year, as compared to actual expenses of the last ended fiscal year, and estimated expenses for the current year compared to adopted budget.
- d. A description of all outstanding bonded indebtedness of the Town.
- e. A statement proposing any capital expenditure deemed necessary for undertaking during the next budget year and recommended provision for financing.
- f. A list of capital projects which should be undertaken within the next five succeeding years.
- g. A five-year financial plan for the General, Hotel, Airport, and Utility funds~~fund~~.

3\*. The City Manager's budget should assume, for each fund, operating revenues that are equal to, or exceed operating expenditures. The City Manager's budget message shall explain the reasons for any fund that reflects operating expenditures exceeding operating revenues.

4\*. At least one public hearing shall be conducted before the Council, allowing interested citizens to express their opinions concerning items of expenditures, giving their reasons for wishing to increase or decrease any items of expense. The notice of hearing shall be published in the official newspaper of the Town not less than 15 days or more than 30 days following date of notice.

5\*. Following the public hearing, the Council shall analyze the budget, making any additions or deletions which they feel appropriate, and shall, at least three days prior to the beginning of the next fiscal year, adopt the budget by a favorable majority vote. If the Council fails to adopt the budget, the City shall continue to operate under the existing budget until such time as the Council adopts a budget for the ensuing fiscal year.

6\*. On final adoption, the budget shall be in effect for the budget year. Final adoption of the budget by the Council shall constitute the official appropriations for the current year and shall constitute the

basis of the official levy of the property tax. Under conditions which may arise the Council may amend or change the budget to provide for any additional expense.

7. The annual budget document shall be published in a format that satisfies all criteria established by the Government Finance Officers Association's Distinguished Budget Program. The final budget document shall be published no later than ninety days following the date of the budget's adoption by the Council.

## **BASIS OF ACCOUNTING AND BUDGETING**

1. The Town's finances shall be accounted for in accordance with generally accepted accounting principles as established by the Governmental Accounting Standards Board.

a. The accounts of the Town are organized and operated on the basis of funds and account groups. Fund accounting segregates funds according to their intended purpose and is used to aid management in demonstrating compliance with finance-related legal and contractual provisions. The minimum number of funds is maintained consistent with legal and managerial requirements. Account groups are a reporting device to account for certain assets and liabilities of the governmental funds not recorded directly in those funds. Governmental funds are used to account for the government's general government activities and include the General, Special Revenue, Debt Service and Capital Project funds.

b. Governmental fund types use the flow of current financial resources measurement focus and the modified accrual basis of accounting. Under the modified accrual basis of accounting revenues are recognized when susceptible to accrual (i.e., when they are "measurable and available"). "Measurable" means the amount of the transaction can be determined and "available" means collectible within the current period or soon enough thereafter to pay liabilities of the current period. Substantially all revenues are considered to be susceptible to accrual. Ad valorem, sales, hotel, franchise and tax revenues recorded in the General fund and ad valorem tax revenues recorded in the Debt Service fund are recognized under the susceptible to accrual concept. Licenses and permits, charges for services, fines and forfeitures, and miscellaneous revenues (except earnings on investments) are recorded as revenues when received in cash because they are generally not measurable until actually received. Investment earnings are recorded as earned since they are measurable and available. Expenditures are recognized when the related fund liability is incurred, if measurable, except for principal and interest on general long-term debt, which are recorded when due, and compensated absences, which are recorded when payable from currently available financial resources.

c. The Town utilizes encumbrance accounting for its Governmental fund types, under which purchase orders, contracts and other commitments for the expenditure of monies are recorded in order to reserve that portion of the applicable appropriation.

d. The Town's Proprietary fund types are accounted for on a flow of economic resources measurement focus and use the accrual basis of accounting. Under this method, revenues are recorded when earned and expenses are recorded at the time liabilities are incurred.

2. The Town's annual budgets shall be prepared and adopted on a basis consistent with generally accepted accounting principles for all governmental and proprietary funds except the capital projects funds, which adopt project-length budgets. Also, depreciation of fixed assets is not recognized in

proprietary fund budgets. All annual appropriations lapse at fiscal year end. Under the Town's budgetary process, outstanding encumbrances are reported as reservations of fund balances and do not constitute expenditures or liabilities since the commitments will be re-appropriated and honored the subsequent fiscal year.

3. The issuance of Statement 34 by the Governmental Accounting Standards Board has influenced the creation and reporting of individual funds. GASB 34 essentially mandates dual accounting systems: one for government-wide (i.e. the government as a single entity) reporting and another for individual fund reporting. Under GASB 34 for individual funds, the Town will continue utilizing the accounting and budgeting processes as described in paragraphs 1. and 2. of this section. However, because GASB 34 mandates the flow of economic resources measurement focus and accrual basis of accounting for the government-wide reporting, extensive reconciliation must be performed to present aggregated fund information in the government-wide reporting model. Therefore, individual operating funds will be created with the objective of reducing fund to government-wide reconciliation as much as possible. When appropriate, individual funds will be examined as to whether it will be appropriate to account for them as proprietary fund types. Also, the Town will limit the use of internal service funds and incorporate the financial transactions of those funds into other governmental funds.

## **BUDGET ADMINISTRATION**

1. All expenses of the Town shall be made in accordance with the adopted annual budget. The department level is the legal level of control enacted by the town Charter. Budgetary control is maintained at the individual expenditure account level by the review of all requisitions of estimated purchase amounts prior to the release of purchase orders to vendors.

2. The following represents the Town's budget amendment policy delineating responsibility and authority for the amendment process. Transfers between expenditure accounts in one department may occur with the approval of the ~~finance~~ Director of Financial & Strategic Services. Transfers between operating departments may occur with the approval of the City Manager and ~~finance~~ Director of Financial & Strategic Services provided that a department's total budget is not changed by more than five percent. Transfers between funds or transfers between departments that change a department's total budget by more than five percent must be accomplished by budget amendment approved by the City Council. Budget amendments calling for new fund appropriations must also be approved by the City Council.

## **FINANCIAL REPORTING**

1. Following the conclusion of the fiscal year, the Town's ~~Finance~~ Director of Financial & Strategic Services shall cause to be prepared a Comprehensive Annual Financial Report (CAFR) in accordance with generally accepted accounting and financial reporting principles established by the Governmental Accounting Standards Board. The document shall also satisfy all criteria of the Government Finance Officers Association's Certificate of Achievement for Excellence in Financial Reporting Program.

2. The CAFR shall show the status of the city's finances on the basis of generally accepted accounting principles (GAAP). The CAFR shall show fund revenues and expenditures on both a GAAP basis and budget basis for comparison purposes. In all but two cases this reporting conforms to the way the city prepares its budget. Compensated absences (accrued but unused sick leave) are not reflected in the budget but are accounted for in the CAFR's long-term debt account group. Depreciation expense is not

shown in the budget's proprietary funds, although the full purchase price of equipment and capital improvements is reflected as uses of working capital.

3. Included as part of the Comprehensive Annual Financial Report shall be the results of the annual audit prepared by independent certified public accountants designated by the City Council.

4. The ~~Finance Director~~ of Financial & Strategic Services shall within sixty days following the conclusion of each calendar quarter, issue a report to the Council reflecting the Town's financial condition for that quarter. The quarterly report format shall be consistent with the format of the annual budget document.

## REVENUES

1. To protect the Town's financial integrity, the Town will maintain a diversified and stable revenue system to shelter it from fluctuations in any one revenue source. Recognizing that sales tax is a volatile, unpredictable source of revenue, the Town will attempt to reduce its dependence on sales tax revenue.

2. For every annual budget, the Town shall levy two property tax rates: operation/maintenance and debt service. The debt service levy shall be sufficient for meeting all principal and interest payments associated with the Town's outstanding general obligation debt for that budget year. The debt service levy and related debt service expenditures shall be accounted for in the Debt Service fund. The operation and maintenance levy shall be accounted for in the General fund. The operation and maintenance levy ~~shall not exceed~~ will be established within the eight percent (8%) rollback rate as defined by the State of Texas Property Tax Code. Council unless Council determines that there is a sufficient financial need to do so will consider exceeding the rollback rate only after options have been presented by staff to avoid the rollback by increasing revenue from other sources or reducing expenditures.

3. The Town will maintain a policy of levying the lowest tax rate on the broadest tax base. Minimal exemptions will be provided to homeowners, senior citizens, and disabled veterans. The Town will not provide tax abatements to encourage development.

4. The Town will establish user charges and fees at a level that attempts to recover the full cost of providing the service.

a. User fees, particularly utility rates, should identify the relative costs of serving different classes of customers.

b. Where possible, utility rates should be designed to reduce peak (hour and day) demands on the utility systems.

c. The Town will make every reasonable attempt to ensure accurate measurement of variables impacting taxes and fees (e.g. verification of business sales tax payments, verification of appraisal district property values, accuracy of water meters).

5. The Town will attempt to maximize the application of its financial resources by obtaining supplementary funding through agreements with other public and private agencies for the provision of public services or the construction of capital improvements.

6. The Town will consider market rates and charges levied by other public and private organizations for similar services in establishing tax rates, fees and charges.

7. When developing the annual budget, the City Manager shall project revenues from every source based on actual collections from the preceding year and estimated collections of the current fiscal year, while taking into account known circumstances which will impact revenues for the new fiscal year.

The revenue projections for each fund should be made conservatively so that total actual fund revenues exceed budgeted projections.

## **OPERATING EXPENDITURES**

1. Operating expenditures shall be accounted, reported, and budgeted for in the following major categories:
  - a. Operating, Recurring Expenditures
    - i. Personal Services
    - ii. Supplies
    - iii. Maintenance
    - iv. Contractual Services
    - v. Capital Replacement / Lease
  - b. Operating, Non-Recurring Expenditures
    - i. Capital Equipment
2. The annual budget shall appropriate sufficient funds for operating, recurring expenditures necessary to maintain established (i.e. status quo) quality and scope of city services.
3. The Town will constantly examine the methods for providing public services in order to reduce operating, recurring expenditures and/or enhance quality and scope of public services with no increase to cost.
4. Personal service expenditures will reflect the minimum staffing needed to provide established quality and scope of city services. To attract and retain employees necessary for providing high-quality service, the Town shall maintain a compensation and benefit package competitive with the public and, when quantifiable, private service industries.
5. Supply expenditures shall be sufficient for ensuring the optimal productivity of Town employees.
6. Maintenance expenditures shall be sufficient for addressing the deterioration of the Town's capital assets to ensure the optimal productivity of the capital assets. Maintenance should be conducted to ensure a relatively stable level of maintenance expenditures for every budget year.
7. The Town will utilize contracted labor for the provision of city services whenever private contractors can perform the established level of service at less expense to the Town. The Town will regularly evaluate its agreements with private contractors to ensure the established levels of service are performed at the least expense to the Town.
8. Capital equipment is defined as equipment that exceeds \$5,000 and has a useful life of at least one year. Existing capital equipment shall be replaced when needed to ensure the optimal productivity of Town employees. Existing capital equipment associated with General fund operations will be amortized by charges to the departments using the equipment. The amortization charges will be sufficient for replacing the capital equipment at the end of its expected useful life. The amortization charges and application of those funds will be accounted for in the Capital Replacement Fund.
9. Expenditures for additional capital equipment shall be made only to enhance employee productivity, improve quality of service, or expand scope of service.
10. To assist in controlling the growth of operating expenditures, operating departments within the General fund will submit their annual budgets to the City Manager within a ceiling calculated by the Finance Director of Financial & Strategic Services from the General Fund's Long-Term Financial Plan. Projected expenditures that exceed the ceiling must be submitted as separate Expanded Levels of Service (ELS) requests. The City Manager will recommend the ELS requests to the Council, which will vote on the requests, separate from the operating budget.

## **FUND BALANCE**

1. The annual budget shall be presented to Council with each fund reflecting an ending fund balance which is no less than 25% of that fund's annual operating expenditures. To satisfy the particular needs of individual funds, ending fund balances may be established which exceed the 25% minimum.
2. Fund balance that exceeds the minimum level established for each fund may be appropriated for non-recurring capital projects or programs.
3. The Town will exercise diligence in avoiding the appropriation of fund balance for recurring operating expenditures. In the event fund balance is appropriated for recurring operating expenditures to meet the needs of the Addison community, the budget document shall include an explanation of the circumstances requiring the appropriation and the methods to be used to arrest the future use of fund balance for operating expenditures.

## **FUND TRANSFERS**

1. With the exceptions noted below, there will be no operating transfers between funds. Any costs incurred by one fund to support the operations of another shall be charged directly to the fund. (For example, actual hours worked by General fund employees for Hotel fund events.)
2. Fund transfers may occur when surplus fund balances are used to support non-recurring capital expenses or when needed to satisfy debt service obligations.

## **DEBT EXPENDITURES**

1. The Town will issue debt only to fund capital projects that cannot be supported by current, annual revenues.
2. To minimize interest payments on issued debt, the Town will maintain a rapid debt retirement policy by issuing debt with maximum maturities not exceeding fifteen (15) years. Retirement of debt principal will be structured to ensure constant annual debt payments.
3. The Town will attempt to maintain base bond ratings (prior to insurance) of A1 (Moody's Investors Service) and A+ (Standard & Poor's) on its general obligation debt.
4. When needed to minimize annual debt payments, the Town will obtain insurance for new debt issues.

## **CAPITAL PROJECT EXPENDITURES**

1. The Town will develop a multi-year plan for capital projects, which identifies all projects likely to be constructed within a five-year horizon. The multi-year plan will reflect for each project the likely source of funding and attempt to quantify the project's impact to future operating expenditures.
2. Capital projects will be constructed to:
  - a. Protect or improve the community's quality of life.
  - b. Protect or enhance the community's economic vitality.
  - c. Support and service new development.
3. To minimize the issuance of debt, the Town will attempt to support capital projects with appropriations from operating revenues or excess fund balances (i.e. "pay-as-you-go").

## **UTILITY CAPITAL EXPENDITURES**

1. The Town will design utility rates sufficient for funding a depreciation reserve which will accumulate resources to replace or rehabilitate aging infrastructure which no longer can be serviced by regular maintenance. Attempts should be made to fund the reserve at a level approximate to annual depreciation of assets as reported in the Town's annual Comprehensive Annual Financial Report.

## **LONG-TERM FINANCIAL PLANS**

1. The Town will adopt every annual budget in context of a long-term financial plan for the General Fund. Financial plans for other funds may be developed as needed.
2. The General fund long-term plan will establish assumptions for revenues, expenditures and changes to fund balance over a five-year horizon. The assumptions will be evaluated each year as part of the budget development process.

TOWN OF ADDISON, TEXAS

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING CHAPTER 2 (ADMINISTRATION), ARTICLE IV (FINANCE), DIVISION 2 (FINANCIAL POLICIES) BY AMENDING SECTION 2-172 (ANNUAL BUDGET), SECTION 2-174 (BUDGET ADMINISTRATION), SECTION 2-175 (FINANCIAL REPORTING), SECTION 2-176 (REVENUES), SECTION 2-177 (OPERATING EXPENDITURES); PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the Town of Addison, Texas (the "City") has heretofore adopted financial policies regarding the funds under its control; and

WHEREAS, the said financial policies are set forth in Division 2, Article IV, Chapter 2 of the City's Code of Ordinances; and

WHEREAS, the City Council has reviewed the said financial policies and desires to amend the same as set forth herein.

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

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

Section 2. Amendment. Chapter 2 (Administration) of the Code of Ordinances (the "Code") of the Town of Addison, Texas (the "City") is hereby amended in the following particulars, and all other chapters, articles, sections, subsections, paragraphs, phrases, and words are not amended but are ratified and confirmed:

A. Division 2 (Financial Policies) of Article IV (Finance) of Chapter 2 of the Code is amended in part as follows:

1. Section 2-172 (Annual Budget) of the Code is hereby amended by amending subsection (b) thereof to read as follows:

(7) A five-year financial plan for the General, Hotel, Airport, and Utility funds.

2. Section 2-174 (Budget Administration) of the Code is hereby amended by amending subsection (b) thereof to read as follows:

(b) The following represents the Town's budget amendment policy delineating responsibility and authority for the amendment process. Transfers between expenditure accounts in one department may occur with the approval of the Director of Financial & Strategic Services. Transfers between operating departments may occur with the approval

of the City Manager and Director of Financial & Strategic Services provided that a department's total budget is not changed by more than five percent. Transfers between funds or transfers between departments that change a department's total budget by more than five percent must be accomplished by budget amendment approved by the City Council. Budget amendments calling for new fund appropriations must also be approved by the City Council.

3. Section 2-175 (Financial Reporting) of the Code is hereby amended by amending subsections (a) and (d) thereof to read as follows:

(a) Following the conclusion of the fiscal year, the Town's Director of Financial & Strategic Services shall cause to be prepared a Comprehensive Annual Financial Report (CAFR) in accordance with generally accepted accounting and financial reporting principles established by the Governmental Accounting Standards Board. The document shall also satisfy all criteria of the Government Finance Officers Association's Certificate of Achievement for Excellence in Financial Reporting Program.

(d) The Director of Financial & Strategic Services shall within sixty days following the conclusion of each calendar quarter, issue a report to the Council reflecting the Town's financial condition for that quarter. The quarterly report format shall be consistent with the format of the annual budget document.

4. Section 2-176 (Revenues) of the Code is hereby amended by amending subsection (b) thereof to read as follows:

(b) For every annual budget, the Town shall levy two property tax rates: operation/maintenance and debt service. The debt service levy shall be sufficient for meeting all principal and interest payments associated with the Town's outstanding general obligation debt for that budget year. The debt service levy and related debt service expenditures shall be accounted for in the Debt Service fund. The operation and maintenance levy shall be accounted for in the General fund. The operation and maintenance levy will be established within the eight percent (8%) rollback rate as defined by the State of Texas Property Tax Code. Council will consider exceeding the rollback rate only after options have been presented by staff to avoid the rollback by increasing revenue from other sources or reducing expenditures.

5. Section 2-177 (Operating Expenditures) of the Code is hereby amended by amending subsection (j) thereof to read as follows:

(j) To assist in controlling the growth of operating expenditures, operating departments will submit their annual budgets to the City Manager within a ceiling calculated by the Director of Financial & Strategic Services. Projected expenditures that exceed the ceiling must be submitted as separate Expanded Levels of Service (ELS) requests. The City Manager will recommend the ELS requests to the Council, which will vote on the requests.

Section 3. Savings. This Ordinance shall be cumulative of all other ordinances of the City affecting the City's investment policy and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those Ordinances are in direct conflict with the provisions of this Ordinance.

Section 3. Severability. The sections, paragraphs, sentences, phrases, clauses and words of this Ordinance are severable, and if any section, paragraph, sentence, phrase, clause or word in this Ordinance or application thereof to any person or circumstance is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares that it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 4. Effective Date. This Ordinance shall become effective from and after its date of passage and publication as provided by law.

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

\_\_\_\_\_  
Joe Chow, Mayor

ATTEST:

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Ken Dippel, City Attorney

**Council Agenda Item: #R8**

**SUMMARY:**

Council approval is requested of an ordinance that provides conditional approval of the transfer of a cable franchise agreement from Comcast to C-Native Exchange (a subsidiary of Time Warner Cable).

**FINANCIAL IMPACT:**

There is no financial impact associated with this item.

**BACKGROUND:**

In an effort to enter the Dallas/Fort Worth market, Time Warner Cable and C-Native Exchange have requested that the Town approve a transfer of the current cable franchise agreement from Comcast. C-Native Exchange agrees to abide by all terms and conditions of the existing franchise agreement with Comcast. To ensure that the new franchisee can provide a comparable level of service, the Town has received a guarantee letter in connection with this agreement.

**RECOMMENDATION:**

Staff recommends approval of the ordinance that provides conditional approval of the transfer of a cable franchise agreement from Comcast to C-Native Exchange (a subsidiary of Time Warner Cable).

GUARANTEE

GUARANTEE, dated as of \_\_\_\_\_, made by TIME WARNER CABLE INC., a Delaware corporation ("Guarantor"), in favor of \_\_\_\_\_ ("Beneficiary").

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Beneficiary to timely consent to the transfer of \_\_\_\_\_ (the "Franchise") to \_\_\_\_\_ ("Transferee") in accordance with the Federal Communications Commission Form 394 filed by Transferee, Guarantor agrees as follows:

1. Interpretive Provisions.

(a) The words "hereof," "herein" and "hereunder" and words of similar import, when used in this Guarantee, shall refer to this Guarantee as a whole and not to any particular provision of this Guarantee, and section and paragraph references are to this Guarantee unless otherwise specified.

(b) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

2. Guarantee.

(a) Guarantor unconditionally and irrevocably guarantees to Beneficiary the timely and complete performance of all Transferee obligations under the Franchise as the same may be amended from time to time, and all Transferee obligations set forth in the transfer ordinance/resolution dated \_\_\_\_\_, subject to applicable law (the "Guaranteed Obligations"). The Guarantee is an irrevocable, absolute, continuing guarantee of payment and performance, and not a guarantee of collection. If Transferee fails to pay any of its monetary Guaranteed Obligations in full when due in accordance with the terms of the Franchise, Guarantor will promptly pay the same to Beneficiary or procure payment of same to Beneficiary. Anything herein to the contrary notwithstanding, Guarantor shall be entitled to assert as a defense hereunder any defense that is or would be available to Transferee under the Franchise or otherwise.

(b) This Guarantee shall remain in full force and effect until the earliest to occur of: (i) performance in full of all Guaranteed Obligations at a time when no additional Guaranteed Obligations remain outstanding or will accrue to Transferee under the Franchise and (ii) direct or indirect transfer of the Franchise from Transferee to (or direct or indirect acquisition of Transferee or any successor thereto by (whether pursuant to a sale of assets or stock or other equity interests, merger or otherwise)) any other person or entity a majority of whose equity and voting interests are not beneficially owned and controlled, directly or indirectly, by Guarantor. Upon

termination of this Guarantee in accordance with this Section 2(b), all contingent liability of Guarantor in respect hereof shall cease and Guarantor shall remain liable solely for Guaranteed Obligations accrued prior to the date of such termination.

(c) This Guarantee shall apply to the Franchise, any extension or renewal thereof and to any holdover term following the expiration of the Franchise or renewal thereof.

3. Waiver. Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Guaranteed Obligations and notice of or proof of reliance by Beneficiary upon this Guarantee or acceptance of this Guarantee. Guarantor waives diligence, presentment, protest and demand for payment to Transferee or Guarantor with respect to the Guaranteed Obligations; provided, however, that Guarantor shall be furnished with a copy of any notice of or relating to default under the Franchise to which Transferee is entitled or which is served upon Transferee at the same time such notice is sent to or served upon Transferee. Guarantor waives all rights of a guarantor or surety under Chapter 34 of the Texas Business and Commerce Code.

Guarantor agrees that Beneficiary may, without notice to or consent by Guarantor, and without in any way releasing or impairing or otherwise affecting any liability or obligation of Guarantor hereunder (i) modify, amend, supplement, add, or otherwise change any provision of the Franchise to the extent permitted under the terms of the Franchise, (ii) grant extensions or renewals of the Franchise, or effect any release, compromise or settlement in connection therewith, (iii) consent to the assignment or other transfer or conveyance by Transferee of its rights and interest under the Franchise, and (iv) deal in all respects with Transferee and the Guaranteed Obligations as if this Guarantee were not in effect.

4. Representations and Warranties. Each of Guarantor and Beneficiary represents and warrants that: (i) is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of organization; (ii) the execution, delivery and performance by it of this Guarantee is within its corporate, limited liability company or other powers, have been duly authorized by all necessary corporate, limited liability company or other action, and do not contravene any law, order, decree or other governmental restriction, or any agreement or instrument, binding on or affecting it and (ii) no authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by it of this Guarantee except as may have been obtained or made, other than, in the case of clauses (i) and (ii), contraventions or lack of authorization, approval, notice, filing or other action that would not, individually or in the aggregate, impair or delay in any material respect such party's ability to perform its obligations hereunder.

5. Binding Effect; Other Matters. This Guarantee, when executed and delivered by Beneficiary, will constitute a valid and legally binding obligation of Guarantor, and its successor and assigns,—enforceable against it in accordance with its terms, and shall inure to the benefit of Beneficiary and its successors and assigns. except as such enforcement may be limited by applicable bankruptcy, insolvency or other similar laws applicable to creditors' rights generally and by equitable principles (whether enforcement is sought in equity or at law).

Beneficiary shall not be required, before invoking the benefits of this Guarantee, to institute suit against or exhaust its remedies with respect to Transferee or any other person liable for the Guaranteed Obligations or to enforce its rights with respect to any security which shall have ever been given to secure the payment and performance of the Guaranteed Obligations; and the obligations of Guarantor hereunder shall not be released or impaired in any way by any neglect, delay, omission, failure or refusal of Beneficiary to take or prosecute any action for the collection or enforcement of the Guaranteed Obligations, or any failure of Beneficiary to give Guarantor any notice of any kind under any circumstances whatsoever with respect to or in connection with the Guaranteed Obligations. Suit may be brought and maintained against Guarantor without the joinder of Transferee or any other person, and in the event that there is more than one guarantor of the Guaranteed Obligations, Beneficiary may (i) bring suit against all guarantors jointly and severally or against any one or more of them, (ii) compound or settle with any one or more of such guarantors for such consideration as Beneficiary may deem proper, and (iii) release one or more of the guarantors from liability without impairing the liability of the guarantors not so released; and no action brought by Beneficiary against any one guarantor of the Guaranteed Obligations shall impair the right of Beneficiary to bring suit against any remaining guarantor or guarantors.

In addition to and without limiting the foregoing or any other provision of this Guarantee, Guarantor's liability under this Guarantee shall in no way be affected by (i) the release or discharge of Transferee in any process initiated by or on behalf of Transferee which assigns Transferee's assets to the benefit of its creditors, or in any receivership, bankruptcy or other similar proceedings, or any insolvency, bankruptcy, reorganization or other similar proceeding affecting the Transferee or its assets, or any resulting release or discharge of any obligation of the Transferee; (ii) the impairment, limitation or modification of the liability of Transferee or the estate of Transferee in bankruptcy, or of any remedy for the enforcement of Transferee's said liability under the Franchise, resulting from the operation of any present or future provision of the United States Bankruptcy Code or other statute or from the decision in any court, whether state or federal; (iii) the rejection or disaffirmance of the Franchise in any such proceedings; (iv) the assignment or transfer or other conveyance of the Franchise by Transferee except as otherwise provided for herein; (v) any disability of Transferee, except as provided for herein; (vi) the existence of any claim, setoff or other rights, which the Guarantor may have at any time against the Transferee, whether in connection herewith or any unrelated transactions, except as provided for herein; or (vii) any change in the existence, structure or ownership of the Transferee.

Guarantor shall remain liable for the Guaranteed Obligations, even though the Guaranteed Obligations shall be unenforceable against the Transferee because of lack of power or authority on the part of the Transferee.

6. Notices. All notices, requests, demands, approvals, consents and other communications hereunder shall be in writing and shall be deemed to have been duly given and made if served by personal delivery upon the party for whom it is intended or delivered by registered or certified mail, return receipt requested, or if sent by telecopier, provided that the telecopy is promptly confirmed by telephone confirmation thereof, to the party at the address set forth below, or such other address as may be designated in writing hereafter, in the same manner, by such party:

To Guarantor and Transferee:

Time Warner Cable Inc.  
290 Harbor Drive  
Stamford, CT 06902-6732  
Telephone: (203) 328-0631  
Telecopy: (203) 328-4094  
Attention: General Counsel

To Beneficiary:

\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Telecopy: \_\_\_\_\_  
Attention: \_\_\_\_\_

7. Integration. This Guarantee represents the agreement of Guarantor with respect to the subject matter hereof and there are no promises or representations by Guarantor or Beneficiary relative to the subject matter hereof other than those expressly set forth herein.

8. Amendments in Writing. None of the terms or provisions of this Guarantee may be waived, amended, supplemented or otherwise modified except by a written instrument executed by Guarantor and Beneficiary, provided that any right, power or privilege of Beneficiary arising under this Guarantee may be waived by Beneficiary in a letter or agreement executed by Beneficiary.

9. Section Headings. The section headings used in this Guarantee are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

10. No Assignment or Benefit to Third Parties. This Agreement shall be binding upon and inure to the benefit of the parties hereto. Nothing in this Agreement, express or implied, is intended to confer upon anyone other than Guarantor and

Beneficiary and their respective permitted assigns, any rights or remedies under or by reason of this Guarantee.

11. Expenses. All costs and expenses incurred in connection with this Guarantee and the transactions contemplated hereby shall be borne by the party incurring such costs and expenses.

12. Counterparts. This Guarantee may be executed by Guarantor and Beneficiary on separate counterparts (including by facsimile transmission), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

13. **GOVERNING LAW. THIS GUARANTEE SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS AND COURT DECISIONS OF THE STATE OF TEXAS WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. THE OBLIGATIONS OF THE PARTIES TO THIS AGREEMENT ARE PERFORMABLE IN \_\_\_\_\_, COUNTY, TEXAS, AND IF LEGAL ACTION IS NECESSARY TO ENFORCE SAME, EXCLUSIVE VENUE SHALL LIE IN A STATE OR FEDERAL COURT HAVING JURISDICTION FOR \_\_\_\_\_, COUNTY, TEXAS.**

14. **WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS GUARANTEE AND FOR ANY COUNTERCLAIM THEREIN.**

IN WITNESS WHEREOF, each of the undersigned has caused this  
Guarantee to be duly executed and delivered by its duly authorized officer as of the day  
and year first above written.

TIME WARNER CABLE INC.

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

Name:

Title:

BENEFICIARY

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

Name:

Title:

TOWN OF ADDISON, TEXAS

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS, PROVIDING CONDITIONAL APPROVAL OF CONSENT OF THE TRANSFER OF A CABLE FRANCHISE AGREEMENT FROM COMCAST \_\_\_\_\_ TO C-NATIVE EXCHANGE \_\_\_;; PROVIDING FOR THIS ORDINANCE TO BECOME NULL AND VOID IN CERTAIN CIRCUMSTANCES AS SET FORTH HEREIN; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Comcast \_\_\_\_\_ (hereinafter referred to as "Franchisee") is currently a franchisee for cable services in the Town of Addison, Texas (the "City") pursuant to Ordinance No. \_\_\_\_\_ of the City (the "Franchise"); and

WHEREAS, Franchisee is a wholly owned subsidiary of Comcast Corporation ("Comcast"); and

WHEREAS, pursuant to an Exchange Agreement between Time Warner Cable, Inc. ("Time Warner Cable"), Comcast and certain related entities, Comcast will cause the Franchisee to transfer the cable system owned and operated by Franchisee within the City and the Franchise to C-Native Exchange \_\_\_, a INSERT TYPE OF ENTITY AND STATE OF FORMATION ("New Franchisee"), which will become an indirect subsidiary (but subject to the direction and control) of Time Warner Cable (the "Transaction"); and

WHEREAS, Franchisee and Time Warner Cable have requested the City's consent to transfer of the Franchise and have filed a FCC Form 394 with the City requesting such consent; and

WHEREAS, C-Native Exchange \_\_\_\_\_ agrees to abide by all the terms, conditions, standards, duties, responsibilities, and obligations of the franchisee under the Franchise upon the closing of the Transaction; and

WHEREAS, C-Native Exchange \_\_\_\_\_, agrees that, upon the closing of the Transaction, it shall be the successor entity to the incumbent cable service provider, the Franchisee, pursuant to Texas law, including, without limitation, Chapter 66, Texas Utilities Code, [Sec. 66.004 (a) and (c)] as adopted by S.B. 5, 79<sup>th</sup> Texas Legislature, 2<sup>nd</sup> Called Session,, and as such will be operating under the Franchise being transferred from the current incumbent cable provider in the City and will be the incumbent cable provider in the City under applicable law as if it were the incumbent cable provider in the City under the Franchise as of September 1, 2005 and had at all times been the incumbent cable provider in the City thereunder since that date regardless of the actual date of the Franchise transfer; and

WHEREAS, the City is willing to consent to the proposed transfer as detailed in the FCC Form 394, pursuant and subject to the conditions set forth herein.

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

**Section 1.** All matters stated in the above preamble to this Ordinance are found to be true and correct and are incorporated herein as if copied in their entirety.

**Section 2.** Time Warner Cable and New Franchisee agree that upon the closing of the Transaction, New Franchisee will abide by all terms of the Franchise and its amendments, and all other ordinances of the Town of Addison.

**Section 3.** New Franchisee agrees that it will provide service pursuant to the requirements of the Franchise and its amendments after the closing of the Transaction.

**Section 4.** Subject to the closing of the Transaction and Time Warner Cable and the New Franchisee's compliance with the provisions contained herein, the Town of Addison accepts the transfer of the Franchise to C-Native Exchange \_\_\_\_\_. Such acceptance does not preclude further investigation and action by the City of any potential Franchise violations or non-compliance issues, including those occurring prior to the closing of the Transaction. With respect to any violation or non-compliance issues that are not extinguished prior to closing of the Transaction, the City will have all rights following the closing of the Transaction to continue investigation of such matters and to pursue action as determined by the City in connection therewith under the terms set forth in the Franchise.

**Section 5.** Time Warner Cable and New Franchisee acknowledge that the City has certain Franchise fee audit rights pursuant to the Franchise. Time Warner Cable and New Franchisee assure that they do not have any contractual or other restrictions that will limit the ability of the New Franchisee to remit Franchise fees as provided in the Franchise or limit the New Franchisee's ability to provide all relevant information concerning the payment of Franchise fees as required by the Franchise. The first payment of Franchise fees after Time Warner Cable and New Franchisee assume control of the Franchise will be accompanied by a statement itemizing the revenue categories by account on which Franchise fees are being paid with a statement as to any differences between the calculations by Time Warner Cable and the Franchisee.

**Section 6.** Any actions which have the effect of circumventing payment of any lawfully required ordinance fees and/or evasion of payment of the ordinance fees by non-collection or non-reporting of gross receipts, bartering, or any other means which evade the actual collection of revenues for businesses authorized by New Franchisee are prohibited. Pursuant to the Texas Constitution, the City is prohibited from granting anything of value without compensation. The City has the right to audit all records relating to the calculation of the Franchise fee as provided in the Franchise.

**Section 7.** Time Warner Cable will provide to the City within 45 calendar days following the date of closing of the Transaction at the City's discretion one of the following: 1) a guarantee in the form attached hereto, guaranteeing the performance of the New Franchisee under the terms of the Franchise and that all such terms of the Franchise, as noted in the original

document and all amendments and transfers, will be fulfilled; or 2) a guarantee consistent with the most favorable such guarantee agreed to by Time Warner Cable in the State of Texas guaranteeing the performance of the New Franchisee under the terms of the Franchise. Failure to provide such guarantee within the specified time frame will result in the automatic and immediate repeal of this Ordinance without any further action by the City Council of the Town of Addison, and this Ordinance shall thereafter be deemed null and void.

**Section 8.** By granting consent to the transfer of the Franchise, the City does not waive and specifically retains any right to regulate and receive compensation as allowed by law for all Cable Services offered over the Cable System. Upon request and if the City is lawfully allowed to make such a request, Franchisee shall inform the City of any uses of the Cable System by persons who are not Cable Operators.

**Section 9.** In the event that the Transaction is not closed by October 1, 2006, this Ordinance will become and shall be deemed to be null and void. Until the closing of the Transaction, the Franchisee (Comcast \_\_\_\_\_) will continue to be responsible for the performance of the terms of the Franchise. Also in the event that the Transaction does not close by October 1, 2006, Time Warner Cable will reimburse the City for all out-of-pocket costs incurred in review of the Form 394 and related actions up to the amount of \$500.

**Section 10.** The provisions of this Ordinance are severable, and if any section, paragraph, subdivision, clause, phrase, provision or word of this ordinance shall be judged, by a final, non-appealable judicial order or judgment, to be invalid or unconstitutional, such order or judgment shall not affect the remainder of this Ordinance.

**Section 11.** If any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance which shall remain in full force and effect.

**Section 12.** This ordinance shall take effect upon its adoption in accordance with the provisions of the City Charter.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON,  
TEXAS, ON THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2005.**

\_\_\_\_\_  
Joe Chow, Mayor

ATTEST:

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Ken Dippel, City Attorney

## **Council Agenda Item: #ES1**

**There are no attachments for this item.**

**Council Agenda Item: #R9**

**There are no attachments for this item.**

#R10-1

STATE OF TEXAS §  
 COUNTY OF DALLAS §  
 TOWN OF ADDISON §

### AGREEMENT

This Agreement entered into on the 1st day of September 2000 by and between the Town of Addison, Texas ("Town") and Don Franklin ("Franklin").

### WITNESSETH

**WHEREAS**, Franklin has expressed interest to the Town Administration in pursuing an Executive Masters Degree in Business Administration; and

**WHEREAS**, the Town deems that such professional pursuits are beneficial in enhancing a Town Department Head's management and leadership skills; and

**WHEREAS**, such participation in the program by Franklin increases the overall professional level of the Addison Police Department;

**NOW, THEREFORE**, the parties hereto agree as follows:

**Section 1.** The recitals as stated herein are hereby found to be true and correct.

**Section 2.** That Franklin shall be allowed to enroll and participate in the Executive Master of Business Administration program at Texas A & M University for a period of approximately twenty-one (21) months from the date of beginning of scheduled courses. The Town agrees to pay for the cost of tuition plus lodging and meals which is expected not to exceed a cost of \$42,000.00 (the "Town's Costs").

**Section 3.** Franklin agrees to diligently participate in the program and to obtain a Master of Business Administration degree ("MBA"). As stated above, Franklin's participation is deemed to be beneficial to the Town and to enhance the degree of professionalism in the Police Department. In that regard:

(a) If Franklin should leave the employment of the Town prior to obtaining the MBA, or if Franklin fails to obtain the MBA, Franklin shall reimburse the Town the full amount of the Town's Costs.

(b) If Franklin should obtain the MBA and leave the employment of the Town for any reason within sixty (60) months thereafter (the "Post Graduation Period"), he shall reimburse to the Town a pro rata portion of the Town's Costs equal to: (1) the Town's Costs, x(times) (2) the number of months remaining in the Post Graduation Period at the time Franklin leaves the Town's employment (excluding the month in which Franklin leaves) ÷ 60.

Example: Town's Costs = \$40,000. Franklin obtains graduate status on June 1, 2002. Five Year Period begins June 1, 2002 and ends May 31, 2007. Franklin leaves Town's employment on November 15, 2004. Number of months remaining in Five Year Period at time of Franklin's departure = 30. Franklin owes Town  $\$40,000 \times 30/60 = \$20,000$ .

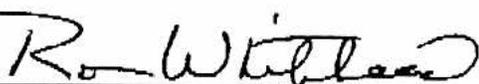
(c) Any reimbursement owed by Franklin to the Town hereunder shall be payable in five (5) equal annual installments at the rate of six percent (6%) per annum. Franklin agrees to and shall execute a promissory note in favor of the Town of Addison further evidencing such reimbursement obligation as may be requested by the Town.

**Section 4.** This Agreement contains the entire understanding of the parties and any change or modification of this Agreement shall be effective only in writing signed by both parties.

**Section 5.** Venue for this Agreement shall be in Dallas County, Texas.

Signed on the date first above written.

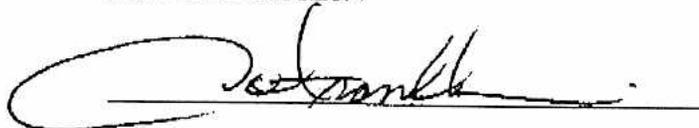
**TOWN OF ADDISON, TEXAS**

By:   
Ron Whitehead, City Manager

ATTEST:

  
City Secretary

**DON FRANKLIN**



# Texas A & M University

To all to whom these presents may come Greeting  
Be it known that

**Donald Gay Franklin**

having completed the studies and satisfied the requirements for the Degree of  
**Master of Business Administration**  
has accordingly been admitted to that Degree with all the honors, rights and  
privileges belonging thereto.

Given under the seal of the University at College Station, Texas, on the  
eleventh day of May, A. D., two thousand and four.



**Business Administration**

*[Signature]*  
Chair, Board of Regents  
*[Signature]*  
President of the University